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The Parliament of the Commonwealth of Australia

# **The 2001 Federal Election**

**Report of the Inquiry into the conduct of the 2001 Federal Election, and matters related thereto**

**Joint Standing Committee on Electoral Matters**

June 2003  
Canberra

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ISBN



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## Foreword

This report on the conduct of the 2001 federal election marks the 20<sup>th</sup> anniversary of the Joint Standing Committee on Electoral Matters and its predecessor the Joint Select Committee on Electoral Reform. These committees have made an important contribution to the conduct of free and fair Australian federal elections, by reviewing the conduct of each election since 1983 and making recommendations for improvement to electoral law and practice in Australia.

The conduct of a federal election is one of Australia's greatest participatory exercises. In 2001, over 12 million people cast their vote, more than 1,300 candidates stood for election to 150 House of Representatives seats and 40 Senate seats, and over 60,000 AEC staff were involved in the conduct of election day, along with thousands of party and candidate workers and volunteers.

In all, the Committee has made 34 recommendations either to amend the Electoral Act, or for the AEC to change its practices in relation to election management. It is worth noting that this report is unanimous. (Two members have also made joint supplementary remarks.)

The recommendations cover many aspects of election management, including the management of the electoral roll, preparations for the election, the conduct of polling, the scrutiny and publication of election results, and the regulation of political parties, donations and electoral campaigning.

Two of the Committee's recommendations, if implemented, would result in a significant change to electoral procedures. The integrity of the electoral roll has been the subject of public debate for a number of years. Confidence in the electoral system should not be undermined because the proof of identity required to vote to determine the government of Australia, is less than that required, for example, to become a member of a video library.

A number of proposals to strengthen the requirements for enrolment have been made over the years. The most recent were contained in legislation which was

passed by the Parliament in 1999, however the associated regulations to implement the new changes were disallowed in the Senate.

The Committee has reached a unanimous proposal to strengthen enrolment procedures, which may resolve the impasse over this issue. The Committee agreed on a streamlined proof of identity requirement that:

- addresses proven cases of manipulation;
- sets standards that all people entitled to vote can reasonably meet;
- is consistent with proof of identity requirements in other areas of Australian life; and
- reassures the public that barriers against roll manipulation have been strengthened.

The Committee recommends that people making a first-time enrolment, those seeking re-enrolment, and those transferring their enrolment details, first be required to provide proof of identity and address, via a driver's licence or similar form of documentation or where this is not possible, by a written confirmation of identity and address given by any two persons on the electoral roll. Applications could be made either in person by producing the required identification, or by post by providing photocopied versions of the required documentation. This scheme should be introduced with a three-year sunset clause.

The Committee believes that its proposed scheme strikes the appropriate balance between the need for an electoral roll with high integrity and high inclusiveness, that maximises voting by those entitled to do so, while minimising the opportunities for electoral manipulation.

The Committee proposes that similar proof of identity and address requirements be applied to voters making a provisional vote. Under the current provisions of the Electoral Act, there is a real possibility that many provisional voters are casting votes for Divisions in which they no longer reside. The Committee's proposal would overcome this loophole in the Act.

The above recommendations are perhaps the most far-reaching of the Committee's 34 recommendations. However, the Committee considers that all its recommendations will contribute to ongoing reform of the Electoral Act and election management procedures.

The Committee thanks all organisations and individuals who made submissions to this inquiry and appeared at public hearings. Participation in such inquiries is an important contribution to the work of the Australian Parliament.



Finally, I would like to thank my Committee colleagues and the Committee Secretariat for their work throughout this inquiry. I commend the report to the Parliament.

**Petro Georgiou MP**  
**Chair**





## **Membership of the Committee**

**Chair** Mr Petro Georgiou MP

**Deputy Chair** Mr Michael Danby MP

**Members** Mr John Forrest MP

Ms Jill Hall MP  
(25 June 2002 to 19 August 2002)

Mrs Sussan Ley MP  
(to 5 December 2002)

Mr Daryl Melham MP  
(until 25 June 2002 and from 19 August 2002)

Ms Sophie Panopoulos MP  
(from 5 December 2002)

Senator Andrew Bartlett

Senator George Brandis  
(from 28 August 2002)

Senator Jeannie Ferris  
(until 28 August 2002)

Senator Brett Mason

Senator Andrew Murray

Senator Robert Ray

## **Committee Secretariat**

**Secretary**

Mr Trevor Rowe (to February 2003)

Mr Russell Chafer (from February 2003)

**Principal Research Officers**

Mr Alex Olah (to February 2003)

Ms Bronwen Jagers (from February 2003)

Ms Sonia Palmieri

**Additional Research**

Mr Andrew Bomm

**Administrative Officers**

Mr Shane Read

Ms Katie Hobson



## **Terms of reference**

In May 2002 the Special Minister of State, Senator the Hon Eric Abetz, referred to the Committee an inquiry with the following terms of reference:

*That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2001 Federal Election and matters related thereto.*





## List of abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFHO	The Australian Federation of Homelessness Organisations
AFP	Australian Federal Police
AGS	Australian Government Solicitor
ALP	Australian Labor Party
ANAO	Australian National Audit Office
APVIS	Automated Postal Voting Issue System
ARO	Assistant Returning Officer
ATL	Above The Line voting on Senate ballot papers
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEIS	Aboriginal and Torres Strait Islander Electoral Information Service
CCPM	Case Categorisation and Prioritisation Model
CJC	Criminal Justice Commission
CRU	Continuous Role Update
DFAT	Department of Foreign Affairs and Trade

<b>DIMIA</b>	<b>Department of Immigration and Multicultural and Indigenous Affairs</b>
<b>DPP</b>	<b>Department of Public Prosecutions</b>
<b>DRO</b>	<b>Divisional Returning Officer</b>
<b>DVD</b>	<b>Digital Video Disc</b>
<b>EOE</b>	<b>Eligible Overseas Elector</b>
<b>ERSSA</b>	<b>Electoral Reform Society of South Australia</b>
<b>FoL</b>	<b>Festival of Light</b>
<b>GPV</b>	<b>General Postal Votes</b>
<b>HPLC</b>	<b>Homeless Persons' Legal Clinic</b>
<b>HREOC</b>	<b>Human Rights and Equal Opportunity Commission</b>
<b>HTV</b>	<b>How-to-vote</b>
<b>HWS</b>	<b>Hanover Welfare Services</b>
<b>International IDEA</b>	<b>International Institute for Democracy and Electoral Assistance</b>
<b>JSCEM</b>	<b>Joint Standing Committee on Electoral Matters</b>
<b>OGC</b>	<b>Office of General Council</b>
<b>OIC</b>	<b>Officer in Charge</b>
<b>OLD</b>	<b>Office of Legislative Drafting</b>
<b>PVA</b>	<b>Postal Vote Application</b>
<b>PVC</b>	<b>Postal Vote Certificate</b>
<b>RMANS</b>	<b>(AEC's) Role Management System</b>
<b>SAAP</b>	<b>National Supported Accommodation Assistance Program</b>
<b>SCG</b>	<b>Southern Cross Group</b>
<b>SIMs</b>	<b>Service Identity Modules</b>
<b>TCP</b>	<b>Two-candidate preferred</b>
<b>UCMS</b>	<b>United Customer Management Solutions</b>
<b>VAP</b>	<b>Voting age population</b>
<b>VTR</b>	<b>Virtual Tally Room</b>



# List of recommendations

## 2 The Electoral Roll

### Recommendation 1

The Committee recommends that all applicants for enrolment, re-enrolment or change of enrolment details be required to verify their name and address. Regulations should be made under the *Commonwealth Electoral Act 1918* to require people applying to enrol to provide documentary evidence of their name and address:

- by showing or providing a photocopy of their driver's licence or other document or documents accepted by the AEC in a particular case (or, in the event that all States and Territories make driver's licence records available to the AEC for data-matching purposes, by providing their driver's licence number); or
- where such documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the person's identity and current residential address. These persons must have known the enrollee for at least one month.

The Committee endorses the amendment which has been made to the *Commonwealth Electoral Act 1918* which requires that only a person who is enrolled to vote may witness an enrolment form. However, the Committee does not consider it necessary that the witness be within a specified class of people, given the other safeguards that would be introduced by its recommended scheme.

Increased penalty provisions should be introduced for false declarations including:

- false enrolments;
- false claims by the witnesses; and

- false claims by enrollees including that they are unable to produce primary forms of identification.

Provisions introducing requirements for verification of identity on enrolment should be introduced with a sunset clause of three years. An independent investigation into the operation of such provisions should be conducted to enable an assessment of the benefits and disadvantages of the scheme, including such matters as whether the scheme improves the roll's integrity, and whether concerns that identity requirements will increase disenfranchisement are justified. (para 2.123)

### Recommendation 2

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that:

- a person whose name does not appear on the certified list of electors used on election day, who claims to have remained resident within the Division of last enrolment, shall only be issued with a provisional vote where they can validate, by producing proof of name and address, before the close of polls, that they have remained resident within the Division of last enrolment. In such cases the elector would be issued with a provisional vote for both the House of Representatives and the Senate. This would be subject to the existing requirement that the objection action that removed the elector from the roll was actioned after the last redistribution or previous federal election, whichever is later; and
- where a provisional vote is admitted from a person whose name could not be found on the certified list of electors used on election day, verification that the elector is at their claimed address shall take place by way of a habitation review as soon as practicable after the election, and only persons whose address is verified shall be reinstated to the roll. (para 2.146)

### Recommendation 3

The Committee recommends that the existing seven-day period between the issue of writs and the close of rolls be retained. (para 2.175)

### Recommendation 4

The Committee recommends that subsection 94A(1) of the *Commonwealth Electoral Act 1918* be amended so that expatriate Australians applying for Eligible Overseas Elector status are not required to state the reason why they left Australia. (para 2.234)

#### Recommendation 5

The Committee recommends that subsection 94A(2) of the *Commonwealth Electoral Act 1918* be amended so that the current two-year cut off point for application for Eligible Overseas Elector status be extended to three years. (para 2.235)

#### Recommendation 6

The Committee recommends that the AEC provide comprehensive information on overseas voting entitlements and enrolment procedures to all electors who contact the AEC about moving overseas. (para 2.244)

#### Recommendation 7

The Committee recommends in relation to homeless electors:

- that the itinerant elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* be amended so as to make clear their applicability to homeless persons;
- that the AEC continue its efforts to simplify the itinerant elector application form and ensure that its applicability to homeless persons is made more apparent; and
- that the AEC target homeless persons in its next public awareness campaign, informing them about itinerant elector enrolment. (2.312)

#### Recommendation 8

The Committee recommends that the AEC investigate the completeness of the electoral roll, with a view to further reducing the percentage of those Australians eligible to be on the roll, but not currently enrolled. (para 2.330)

### 3 Election Preparation

#### Recommendation 9

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the name of each candidate elected to be included in an attachment to a writ, rather than printed or photocopied on the reverse side of the original writ. (para 3.32)

#### Recommendation 10

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that incumbent Independent Members and Senators who were elected as Independents need not provide 50 signatures at each election after their first or subsequent elections, but may be nominated by

just one other person, who is enrolled in the relevant Division, State or Territory. (para 3.55)

#### **Recommendation 11**

The Committee recommends that where a person has been generally known by a legally registered name for at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the 'fictitious' and 'frivolous' grounds set out in section 98A of the *Commonwealth Electoral Act 1918*. (para 3.68)

#### **Recommendation 12**

The Committee recommends that the AEC be required to provide detailed reasons for a decision, with reference to the *Commonwealth Electoral Act 1918*, to all parties involved in an application under section 129 of the Act, and that those reasons be published to assist the understanding of the application of the relevant provisions. (para 3.84)

#### **Recommendation 13**

The Committee recommends that the AEC:

- conduct market research on the impact of advertising using the concept of numbering the boxes 1 to 4; and
- make appropriate improvements to its advertising in light of the results of the research. (para 3.97)

#### **Recommendation 14**

The Committee recommends that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns be clarified, and that the Department of Finance and Administration establish a telephone hotline from the day of the issue of the writs to provide advice on the guidelines to incumbent candidates. (para 3.167)

## **4 Voting**

#### **Recommendation 15**

The Committee recommends that postal votes cast on or before polling day, received by an AEO, ARO or another DRO other than the DRO for the elector's home Division, after the close of poll, be included in the scrutiny if it is subsequently received by the home DRO within 13 days after the close of the poll. (para 4.24)

**Recommendation 16**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to explicitly allow scrutineers to be present at pre-poll voting centres. (para 4.63)

**Recommendation 17**

The Committee recommends that the AEC report to it in detail on how mobile polling currently operates, exactly where it believes mobile polling should take place, how mobile polling should be administered, and who should be entitled to cast their vote at a mobile polling station. (para 4.86)

**5 Election Day and the Scrutiny****Recommendation 18**

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

**Recommendation 19**

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

**Recommendation 20**

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

**Recommendation 21**

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

**Recommendation 22**

The Committee recommends that subject to advice from the AEC, section 340 of the *Commonwealth Electoral Act 1918* be amended so as to prohibit

the broadcast of political material which is clearly audible within the six metres surrounding a polling place on election day. (para 5.48)

#### **Recommendation 23**

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

Presiding officers should be empowered to advise all relevant parties of the DRO/AEO decision regarding disputed materials, and to advise that any continued handing out of materials considered by the AEC to be in breach of the *Commonwealth Electoral Act 1918* may be restrained via Federal Court injunction. (para 5.70)

## **6 Other Issues**

#### **Recommendation 24**

The Committee recommends that the suggested technical amendments to the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* at Appendix F of this report, with the exception of amendment 18 ('No State Referendum or Vote to be held on polling day'), be made. (para 6.7)

#### **Recommendation 25**

The Committee recommends that co-location of AEC Divisional Offices not proceed, and that the AEC be given funding to ensure a minimum of three full-time electoral staff (or equivalent) in each House of Representatives Division. (para 6.31)

#### **Recommendation 26**

The Committee recommends that the AEC provide all candidates with written advice of the date on which pre-polling will commence, seven days prior to that date. (para 6.40)

#### **Recommendation 27**

The Committee recommends that public access to the roll in AEC Divisional Offices be provided by a regularly updated electronic list of all names and addresses of electors enrolled for the relevant Division, with the provision of all other Divisions held in particular offices such as the State Head Office.

Hard copies of the roll should continue to be printed once in the life of a Parliament and be available for public inspection in AEC Divisional Offices. (para 6.69)

**Recommendation 28**

The Committee recommends that an internet enquiry facility be provided whereby electors can verify their own electoral enrolment details, and as much of the detail of any elector's enrolment as the enquirer is able to provide.

This facility should not replace public access to the full electoral roll in AEC offices as recommended in Recommendation 27. (para 6.73)

**Recommendation 29**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the electoral roll is no longer available for sale in any format. (para 6.77)

**Recommendation 30**

The Committee recommends that the certified lists provided to candidates during an election *not* contain the gender and date of birth details that will appear on the certified lists used by polling officials if the relevant legislation is passed by the Parliament. (para 6.95)

**Recommendation 31**

The Committee recommends that end-use restrictions and related penalties for wrongful disclosure or commercial use apply to all information relating to electors which is contained in the electoral roll, regardless of the medium of supply. (para 6.98)

**Recommendation 32**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the penalty for accepting an anonymous donation above the limits nominated in the Act shall be an amount double the sum received through that anonymous donation. (para 6.121)

**Recommendation 33**

The Committee recommends that, at each federal election inquiry, the AEC report to the Committee on all cases of overseas donations made during the previous parliament. (para 6.124)

**Recommendation 34**

The Committee recommends that the AEC seek definitive advice on the constitutional validity of section 306B of the *Commonwealth Electoral Act 1918* and if necessary, address the substantive issue in more appropriate legislation such as in insolvency law. (para 6.133)







# **Executive summary**

## **Chapter one – Introduction**

The 2001 federal election coincided with Australia's celebration of one hundred years of Federation and the establishment of a national Parliament. Over 12 million people voted at the 2001 federal election. The 150 seats of the House of Representatives were contested by 1,039 candidates. Another 285 candidates contested 40 seats in the Senate. Several hundreds of thousands of volunteers were involved in election activity.

Total outgoing expenditure by political parties in the 2001-2002 financial year was over \$131.5 million. The AEC's expenditure on the election was over \$67 million.

### **Voter turnout**

By international standards, at over 94 per cent voter turnout in Australian elections is remarkably high.

The magnitude of difference in voter turnout is illustrated by comparing the 98.45 per cent voter turnout in the 2001 Australian election with a turnout of 75.4 per cent in New Zealand 2002, 59.4 per cent in the UK 2001 House of Commons election and 67.5 per cent in the US presidential election. Factors contributing to differential voter turnouts are canvassed.

### **Completeness of the electoral roll**

Not all eligible Australians are enrolled to vote. The AEC and the ANAO estimate that 95 or 96 per cent of Australians are on the roll, with around 550,000 entitled Australians not on the roll.

## **Method of voting**

The vast majority of votes in federal elections are cast by electors in their enrolled Division on polling day. Known as 'ordinary votes', these accounted for 84 per cent of all votes cast at the 2001 federal election.

A significant number of votes were cast through postal, pre-poll, provisional and absent votes. Collectively known as 'declaration votes', these constituted the balance of almost 16 per cent of votes cast.

Absent votes constitute the largest number, followed by pre-poll and postal votes. Provisional votes have traditionally accounted for a small proportion of all votes cast.

## **Composition of the Parliament**

The 2001 federal election resulted in the Coalition being returned to government for a third term, with an increased majority in the House of Representatives. The Coalition won a total of 82 seats, the Australian Labor Party won 65, and three seats were won by Independents. The composition of the Senate remained diverse with the Liberal Party, the National Party and the Australian Greens increasing their representation.

## **Scope and conduct of the inquiry**

On 13 May 2002, the Special Minister of State, Senator the Hon. Eric Abetz, requested that the Committee inquire into and report on 'all aspects of the conduct of the 2001 federal election and matters related thereto'. The inquiry was advertised in all major newspapers.

The Committee also wrote to all Members and Senators and Senators-elect; State Premiers, Territory Chief Ministers, and the Administrators of External Territories; the Australian Electoral Commissioner, and State and Territory Electoral Commissioners; registered political parties; and the heads of university government and politics departments.

The Committee received 203 submissions to this inquiry from a variety of individuals and organisations, and held eight public hearings.

## **Structure of the report**

The report is primarily chronological in its examination of significant elements in the conduct of the 2001 federal election.

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## Chapter two – The Electoral Roll

Australia's electoral roll is the bridge between the right to vote and the ability to exercise that right. Australian democracy depends on an electoral roll with high integrity and high inclusiveness, that maximises voting by those entitled to do so while minimising the opportunities for electoral manipulation.

Achieving integrity and inclusiveness requires careful balance. Confidence in the democratic process can be eroded by the perception that the electoral roll can be manipulated, or that it excludes people entitled to vote.

Submissions to the inquiry raised concerns about:

- the appropriateness and reliability of the AEC's Continuous Roll Update (CRU) process, some implying that it allowed significant electoral manipulation, others wanting to improve what they regarded as a generally effective system.
- The adequacy of proof of identity requirements, the integrity of close of rolls arrangements, and the admission of provisional votes.
- Perceived bias in the enrolment process against some groups, in particular overseas voters, Aboriginal and Torres Strait Islanders, and homeless persons.

### The Continuous Roll Update process

The Committee examined the operation of the CRU process. It concludes that while there is no viable comprehensive alternative to the CRU process, there is room to improve outcomes in terms of electoral roll accuracy, integrity, validity and completeness.

The Committee found a limited number of demonstrated manipulations of the electoral roll but no persuasive evidence of any widespread malpractice. The Committee believes that it is not sufficient to rest on the absence of such evidence. Further efforts are needed to achieve and publicly demonstrate that the electoral roll is of the highest integrity and inclusiveness.

### Proof of identity

The Committee reviewed the contentious and protracted debate on proof of identity requirements. It believes that the time has come to achieve a consensual, constructive resolution of this matter. Confidence in the electoral system should not be undermined because the proof of identity required to vote to determine the government of Australia is less than that required, for example, to become a member of a video library.

The Committee agreed on a streamlined proof of identity requirement that:

- addresses proven cases of manipulation;
- sets standards that all people entitled to vote can reasonably meet;
- is consistent with proof of identity requirements in other areas of Australian life, and
- reassures the public that barriers against roll manipulation have been strengthened.

The Committee recommends that all applicants for enrolment, and re-enrolment provide documentary evidence verifying their name and address by providing photocopies of a driver's licence or other documents accepted by the AEC, and where such documents cannot be provided, by two people who are on the electoral roll supplying a confirmation of identity and address.

It is proposed that these identification requirements be introduced with a three year sunset clause.

### **Provisional voters**

A person whose name cannot be found on the electoral roll may still cast a vote on the grounds that they were removed from the roll because of 'official error'. Their 'provisional' vote may be admitted to the scrutiny subject to further checking of their entitlement by the AEC. In 2001, 107,396 provisional votes were admitted to the Senate count and 81,266 provisional votes were admitted to the House of Representatives count. Submissions raised a number of concerns about provisional voters and their entitlement to vote.

The AEC has submitted that many of those claiming a provisional vote 'are not living at the address they claim as their enrolled address and may not have lived there for some years'. There is a real possibility that a significant number of people claiming a provisional vote may not be living in the Division in which they are voting.

The Committee believes there is a need to define more precisely who is entitled to a provisional vote. The Committee recommends that a person whose name does not appear on the certified list of voters, and who claims to still be resident within the Division of their last enrolment, shall only be issued with a provisional vote where they can validate that claim by producing proof of name and address before the close of polls.

## The close of rolls

From the time the election writs are issued, electors have seven days to enrol, re-enrol, or change their enrolment details. This period is known as the 'close of rolls' period. At the 2001 election, 373,732 voters enrolled or re-enrolled during the close of rolls period, 83,027 of whom were new enrollees.

Concerns about the close of rolls period derived from the perception that the AEC cannot properly check the validity of enrolments made during that time, and that inappropriate enrolments could influence outcomes in marginal seats. Close of rolls transactions occurred in every electorate, the average per electorate being 2,400. An examination of electorates with the highest close of rolls transactions indicates that there is no apparent pattern of high close of rolls enrolments in marginal seats. The Committee examined the AEC's process for checking enrolment transactions during the close of rolls period and found that it did not differ from the processes that applied at other times. Where the checking processes indicate anomalies in enrolment applications, such applications are not added to the roll.

The Committee examined proposals to shorten the close of rolls period but concludes that, particularly in light of the checking process in place and the recommendations to strengthen proof of identity requirements for enrolment and re-enrolment, the close of rolls period should remain at seven days.

## Overseas electors

The Committee received a large number of submissions raising concerns about the current provisions for enrolment by Australians overseas.

There are an estimated 720,000 Australian expatriates. During the 2001 federal election, 63,036 sets of ballot papers were issued by DFAT's overseas posts. The majority of these were issued to Australians overseas on short term travel. Of the 63,036 votes issued, only 5,882 were issued to expatriates with Eligible Overseas Elector (EOE) status.

Australians living overseas may enrol to vote by registering as an EOE three months prior to or up to two years after departure, if they intend to return to Australia within six years of departure, and are overseas for their career purposes, or those of their spouse. They are enrolled at their last Australian address, or the Division in which they were born or with which they have the 'closest connection'. If they do not vote, or apply for a postal vote, at an election their EOE status is terminated.

Submissions objected to all the criteria governing admission to EOE status on the grounds that they derogated from the right to vote to which every Australian is entitled. The Committee believes that Australians living overseas need to

demonstrate a continued interest in Australian political affairs if they are to retain their right to vote. Accordingly it does not support removing the 'intention to return to Australia' or the 'use it or lose it' provisions of the Electoral Act. Conversely, the Committee sees no justification for differentiation between Australians on the basis of their reasons for leaving. The Committee also considers that the time limit for enrolling while overseas should be extended.

A number of submissions asserted that Australians leaving for overseas did not have adequate information about EOE status. The AEC indicated that there is no reason to provide people with information if the Act disqualifies them from EOE status. The Committee considers that the AEC should provide information about overseas enrolment to all people who contact the Commission about moving overseas.

### **Homeless electors**

Submissions raised the franchise of homeless people, contending that provisions of the Electoral Act restrict the ability of homeless people to enrol to vote in federal elections.

The Australian Bureau of Statistics (ABS) provided a three-tiered definition of homelessness: primary homelessness refers to those persons 'without conventional accommodation'; secondary homelessness includes those who move frequently from one form of temporary shelter to another; and tertiary homelessness refers to those persons who live in boarding houses on a medium to long-term basis.

The ABS estimated that the Australian homeless population totalled 105,304 at the time of the 1996 census. Estimates of the proportion of homeless people eligible to vote, but not enrolled, vary considerably, with estimates of the number of homeless people who may have been eligible to vote in the 2001 federal election but did not do so ranging from 29,000 to 80,000.

It was submitted that each of the requirements applying to ordinary voters limits the ability of homeless people to enrol and vote. Proposals were made to amend the ordinary elector provisions so as to remove these impediments.

Individuals seeking to enrol for the purposes of voting in a federal election must provide a residential address, a postal address, and a signed declaration of eligibility witnessed by someone who is eligible to be on the roll. Individuals must enrol in a Division within 21 days of becoming eligible to enrol. Once enrolled they must exercise their right to vote or risk being issued a penalty notice.

The Committee, while appreciating the difficulties confronted by the homeless in enrolling and voting, is concerned about the implication of addressing these difficulties by way of amending provisions applicable to ordinary electors.

The Committee formed the view that the very real issues confronting the homeless in regard to enrolment and voting would be better addressed through more effective utilisation of the existing itinerant elector provisions.

To enrol as an itinerant elector, a person must be an Australian citizen, over the age of 17, with no real place of living. A 'real place of living' is defined as the 'place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place'. Itinerant voter status can be revoked if the itinerant does not attend a polling booth or apply for a postal vote, goes overseas for one month or longer, or establishes a permanent place of living and resides there for a period of one month. There is a hierarchy for determining the Division in which an itinerant voter may enrol.

The itinerant voter provisions may apply to homeless persons, although this is not explicit:

- they do not require that an elector have an 'address' or a fixed place of living;
- there are no financial penalties for failing to update one's enrolment details; and
- there is no financial penalty for itinerant electors who fail to vote, although their name will be removed from the roll if they fail to exercise that right.

The Committee recommends that the itinerant elector provisions be amended to make clear their applicability to homeless persons. The AEC should continue its efforts to simplify the itinerant elector application form and ensure that its applicability to homeless persons is made more apparent, and the AEC should target homeless persons in its next public awareness campaign, informing them about itinerant elector enrolment.

The AEC undertook to include homeless people as a target group in its public awareness campaign for the next federal election, acknowledging that there would be some challenges in reaching this group, and foreshadowed that it could use some of the welfare agencies as information imparters.

### **Aboriginal and Torres Strait Islander electors**

The ALP's submission recommended re-establishing the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) arguing that its abolition in 1996/97 had disenfranchised a significant proportion of indigenous Australians. It estimated that 54 per cent of the indigenous community is currently not enrolled to vote. The AEC and the Aboriginal and Torres Strait Islander Commission have

also previously raised concerns that indigenous community enrolments are 'significantly below overall enrolments'.

The Committee inquiring into the 1998 federal election recommended that the AEC report to the Committee on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders before the next federal election. As this is still not complete the Committee will be making a separate report on this specific matter.

### **Enrolment of certain groups and electoral roll completeness**

The submissions to the inquiry concerning the enrolment of overseas, homeless and indigenous persons raise the general question of the electoral roll's completeness. Approximately 550,000 eligible Australians (or four per cent) are not on the electoral roll. The Committee reiterates its concern about this and recommends that the AEC further investigate what the ANAO recently termed 'high-risk factors for non-enrolment' with a view to ensuring that all those eligible to be enrolled are enrolled.

## **Chapter three – Election Preparation**

The period between the calling of an election and polling day is one of intense activity by the AEC and by political parties and candidates. The number of submissions, and the range of issues raised, indicate the details that need to be dealt with in this period.

### **Notification of election and election writs**

#### **Notification of an election**

The AEC submitted that it would like to receive formal advice of a forthcoming election. In 2001, the AEC was notified of the election by a faxed press release from the Prime Minister's Office. Prior to 2001, the AEC received the advice by informal telephone calls from the Department of Prime Minister and Cabinet (PM&C) to the Electoral Commissioner. As suggested by the Committee, the AEC and PM&C are now dealing with the AEC's concerns about procedures administratively.

#### **Preparation of election writs**

The AEC prepares the election writs for the House of Representatives and Territory Senators. These are the legal documents that 'command' an electoral officer to hold an election and specify key dates for the election, including polling day. The AEC suggested that the Office of Legislative Drafting might be a 'more



appropriate organisation' than the AEC to prepare the House of Representatives and Territory Senator writs. The Committee can see no reason why the AEC is not the appropriate body to prepare writs.

#### **Format of writs**

The AEC also raised the physical form of returned writs. Following the election, the names of the candidates elected are required to be endorsed on the reverse side of the relevant writ. The AEC was concerned about the risk of damaging or destroying the original writs in the process of printing or photocopying the names onto the writs. Although this has never been known to happen, the Committee supports the AEC's recommendation to allow the name of each elected candidate to be included in an attachment to the writ.

#### **Return of writs**

The High Court sitting as the Court of Disputed Returns is the body that determines any disputes as to the validity of an election or a return. Presently, a petition to the Court of Disputed Returns must be filed within 40 days after the writ to which the petition relates is actually returned. This results in varying closing dates for petitions as the different writs are returned. The AEC and the Office of General Counsel have considered amendments to address this. The Committee considers that the operation of the Court of Disputed Returns generally, is worthy of further examination in the future.

### **Nominations and registrations**

#### **Nominations**

Nominations of candidates are an important formality in the preparation for an election. A notable circumstance in the 2001 election was a candidate simultaneously having nominations for both the Senate and the ACT Legislative Assembly, but this was ultimately unproblematic.

#### **Deposits**

A suggestion was made that the deposit paid by candidates upon nominating for election (which is currently \$350 for House of Representatives candidates and \$700 for Senate candidates) should be raised to \$10,000, to discourage candidates and minimise the size of ballot papers. The Committee considers that this would unduly inhibit participation in the democratic process.

## Signatures

Candidates may be nominated for election by either a registered political party, or by 50 or more electors who are entitled to vote in the relevant election. It was submitted that incumbent Independent members should not need to provide 50 signatures at each election after their first, but be able to be nominated by just one other person enrolled in the Division in question. The Committee generally supports this, but not for members elected on behalf of a registered political party who leave that political party to sit as Independents.

### 'Inappropriate' candidate names

Candidates must nominate using the name under which they are enrolled (or entitled to enrol) to vote. In certain circumstances, the AEC may refuse to enrol a person, including where the person's name is 'fictitious' or 'frivolous'. In the 2001 election, Nigel Freemarijuana (who in 1996 had changed his name by deed poll from David Nigel Quinlan) nominated as a candidate for the 2001 election. The AEC replaced the name Nigel Freemarijuana on the roll with the elector's given name. Mr Freemarijuana had his legal name reinstated to the roll after a successful appeal to the Administrative Appeals Tribunal (AAT), which referred to the 'strong public interest in the applicant being enrolled in his legal name – the name he is generally known by.' The Committee considers that where a person is generally known by a legally registered name for a period of at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the 'fictitious' and 'frivolous' grounds.

### Registration of political parties and party names

A party may not register a name that resembles another party's name to such an extent that it is likely to be confused with or mistaken for the other party's name, abbreviation or acronym. It was asserted that, notwithstanding this prohibition and a pre-registration process, some parties have been allowed to register despite having a similar name to an existing party. The ALP cited the 'Curtin Labor Alliance' as an example, and recommended that the AEC report on options for reform in this area.

At the Committee's request, the AEC suggested options for dealing with this issue. Essentially these are either: amending the Act to restrict the use of words such as 'liberal' or 'labor' in some way; or maintaining the status quo, allowing the AEC to continue to use its discretion to determine when a new party name might be likely to be confused with, or mistaken for, another party's name. The Committee considers that banning names in the abstract may have a number of unintended consequences, and that to assist in the understanding of the application of the relevant provisions, the AEC should be required to provide, and publish, detailed reasons for its reviewable decisions.

## Public awareness campaign

A substantial element of the AEC's election preparation is a public awareness campaign, which seeks to inform the voting public about how, when and where to enrol and vote, and about the AEC's role. For the 2001 federal election, the AEC spent a total of more than \$17 million on national and local advertising; public relations activities; a national call centre; internet sites including the Virtual Tally Room (VTR); responses to email enquiries; and the distribution of various publications.

### AEC advertising

One element of the AEC's public awareness campaign is educating electors about how to correctly complete a ballot paper. One MP expressed concern that AEC advertising distributed in his electorate may have increased informal voting involving not numbering all the boxes on a House of Representatives ballot paper. The Committee appreciates this concern, and recommends that the AEC conduct market research on the impact of the relevant advertising and make appropriate improvements to its advertising in light of the results of the research.

### National call centre

In 2001, the AEC's national telephone enquiry service answered a total of 513,347 calls. There has been a history of a high level of unanswered calls to the enquiry service, and on the day the rolls closed for the 2001 federal election, 50 per cent of calls made were not answered. The Committee is concerned about this, particularly given that arrangements put in place for the 2001 federal election were intended to overcome difficulties encountered in the 1998 federal election. The AEC acknowledged that the number of calls missed was an issue of concern. It has in-principle agreement for the transfer of the national call centre service to Centrelink, and expects that this will improve the situation.

## Other means of improving election awareness

### Civics education

Some submissions stressed the importance of community electoral education generally. There are a wide range of ongoing programs and activities in this area, including: the Commonwealth Government's multi-million dollar *Discovering Democracy* program for civics education in primary and high schools; the Australian Parliament's Parliamentary Education Office, which aims to encourage participation in and awareness of Australian parliamentary democracy; AEC Electoral Education Centres in Canberra, Melbourne and Adelaide; and parliamentarians' contributions such as participating in local civics education, meetings with constituents, and meeting groups visiting Parliament House.

### **Distribution of information on candidates and policies**

Information on parties, candidates and their policies is an important aspect of electoral public awareness, which to a large extent is the responsibility of the candidates and parties themselves. Submissions recommended improvements to information provided about candidates (in particular individual Senate candidates), and expressed concern about poor or inadequate coverage of parties and electoral information.

The Committee supports the widest possible facilitation of political debate.

### **Regulation of political campaigning**

Political parties and candidates compete for public attention to promote their electoral platforms through mail-outs, television and radio broadcasts, and print advertising. By virtue of their political nature, these campaigns can be contentious.

#### **Definition of electoral advertisements**

It was noted that a provision of the Electoral Act that requires electoral advertisements in certain printed material to have a heading of 'advertisement', now implies that all political commentary in any journal must be labelled as an advertisement. Following a recommendation out of the inquiry into the 1998 federal election, amendments have been introduced to the parliament to make clear that this provision is meant to apply only to advertisements. These amendments have not yet been debated or passed. In the meantime, the application of section 331 caused some uncertainty at the 2001 election, and also led to concern about the timeliness of the AEC's responses to issues in the time-critical context of a election campaign.

#### **Push polling**

One submission was concerned about 'push polling' - used in this context to refer to representations made in the guise of independent market research with a view to influencing electors' voting intentions. The Committee notes the difficulty in regulating polling undertaken by political parties. However, given the competitive nature of the Australian party political system, any problematic polling practices tend to be made public quickly, with the potential for political embarrassment to the offending party and the risk of defamation proceedings against that party.

#### **Regulation of factual content of political advertising**

The Committee considered attempts to regulate the factual content of political advertising. The Committee notes evidence that South Australian legislation on truth in political advertising created opportunities to disrupt the electoral process, and had not had any appreciable effect on the nature of political advertising. The

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Committee considers that regulation of truth in political debate would be unwise and unworkable, particularly if the AEC was appointed to undertake such regulation.

#### **How-to-vote cards**

Concerns about cost, environmental waste, harassment of voters and difficulties faced by smaller parties and independents, motivated calls for the abolition or restriction of how-to-vote cards. Alternatives to this practice would have their own problems and the importance of the practice of distribution of how-to-vote cards on election day – in mobilising democratic participation and keeping political parties in touch with their members – should not be underestimated.

The order of preferences on how-to-vote cards was also an issue, in particular where preferences on candidates' how-to-vote cards are different to the relevant party's authorised preferences. The Committee considers that such internal disputes between candidates and their parties should be resolved internally. Requiring advance registration of how-to-vote cards would impose an undue administrative burden on parties, candidates and the AEC, and such a scheme would be likely to be undermined by political parties lodging multiple how-to-cards to keep their options open.

#### **Entitlements of incumbent candidates**

Concern was expressed about the entitlements of incumbent candidates and their use as well as parliamentarians' uncertainty about material they could produce and distribute during the campaign, and the difficulty in obtaining adequate guidance on this. It is difficult to define exhaustively 'parliamentary business', 'electorate business' and 'party business' – terms that are fundamental to determining eligibility for entitlements. The Committee considers that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns should be clarified, and that the Department of Finance and Administration establish a telephone hotline from the day of the issue of the writs to provide advice on the guidelines to incumbent candidates.

#### **Government advertising**

Governments advertise for a variety of purposes including, for example, social security entitlements and defence force recruitment. Some advertising may be perceived to be political. While there is agreement that political advertising by governments is inappropriate, there are significant difficulties both in defining what constitutes government advertising for political purposes, and in determining appropriate regulation and enforcement mechanisms. Moreover, the issue of political matter in government advertising goes well beyond the election

context. However, within this immediate context, both ALP and Liberal Party/National Party governments have been committed to observing the caretaker convention that government advertising should be terminated on the calling of an election.

## **Chapter four – Voting**

This chapter examines the voting methods available to Australians on polling day: ordinary voting, declaration voting, mobile polling and assisted voting. Informal voting and multiple voting are also considered.

### **Declaration voting**

At the 2001 federal election, 15.92 per cent of all votes were cast as 'declaration votes'. Declaration votes include postal, pre-poll and absent votes, as well as 'provisional' votes as discussed in chapter two.

At the 2001 federal election, 451,900 electors (3.74 per cent of the total) cast postal votes. Electors wishing to cast a postal vote may request a Postal Vote Application (PVA) form from the AEC, or download it from the AEC website. Alternatively they may receive a PVA sent by political parties or candidates. Once PVAs are returned to the AEC, postal ballot papers are dispatched to the elector.

The AEC expressed concern about candidates and parties receiving completed PVAs from electors and allegedly not then forwarding those PVAs expeditiously to the AEC. The AEC raised the scenario of political parties returning PVAs to the AEC either after the cut-off for receipt, or so close to the deadline that the AEC had insufficient time to process them and provide ballot papers to the applicants.

The Committee is of the view that distribution of PVAs by parties and candidates provides an important service to electors. The Committee notes that, when requested to do so, the AEC conceded that it could provide no evidence of instances where PVAs delivered to the AEC by political parties were received too late to be processed.

The Electoral Act stipulates that where a postal vote certificate envelope has been postmarked after polling day, the enclosed vote shall not be counted. Where there is no legible postmark, and the signature of the witness bears a date on or before polling day, the envelope may be admitted for further scrutiny.

The AEC argued that if a postal ballot paper is postmarked after polling day, but is signed and witnessed before polling day, it should be admitted rather than discarded as an invalid vote. However, the Committee believes it is a fundamental

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feature of Australia's electoral system that all votes are known to be cast before polls close. The AEC's proposal would weaken this aspect of the electoral system, and the Committee therefore does not support it.

The AEC also raised concerns about the timeframe for receipt of postal votes. The Electoral Act allows a period of 13 days after the close of polling for late receipt of postal votes by the Divisional Returning Officer (DRO) for the elector's 'home' Division. If the postal vote is sent to another AEC officer, it must be received by that officer before the close of the poll. The Committee agrees with the AEC that this is illogical and recommends that all valid postal votes cast on or before polling day be included in the scrutiny if they are received by the home DRO within 13 days after the close of the poll.

Electors may apply to be registered as General Postal Voters (GPVs) if they are not able to attend a polling booth in person. This may be because they do not live within 20 kilometres of a polling place, are physically unable to travel, are unable to attend because of religious beliefs, are in custody, or have a 'silent' enrolment for personal safety reasons. The key service provided by the AEC to GPVs is that ballot papers are sent to them as soon as practicable following the declaration of nominations for a federal election. GPVs are not required to fill out a Postal Vote Application form.

The AEC submitted that residents of 'special hospitals' (such as nursing homes) should be able to register as GPVs as an alternative to mobile polling, and that all remote workers, even those living within 20 kilometres of a mobile polling booth, should also be able to register as GPVs. The Committee does not consider the AEC's arguments compelling.

A number of submissions commented on perceived inefficiency in the operation of the postal voting process used by Australians overseas. The AEC suggested that overseas postal voting could be expedited by removing the requirement that PVAs be signed by a witness as well as the elector. However, the Electoral Act allows overseas voters who cannot find a suitable witness to complete a signed statement setting out the reasons why they were unable to meet the witnessing requirement. The Committee does not consider that current anecdotal evidence of difficulties encountered in voting by post from overseas is sufficient to warrant the removal of any key steps in the process.

Electors who cannot attend a polling place on polling day can cast a pre-poll vote in the lead up to polling day or on polling day if they are voting outside the State or Territory in which they are enrolled. Just under five per cent (585,616) of all votes cast in the 2001 federal election were pre-poll votes.

Since 1993, the AEC has recommended to successive election inquiries that the Electoral Act be amended to allow a pre-poll vote which is cast in an elector's

home Division to be considered as an ordinary vote, rather than a declaration vote. The AEC cites administrative efficiencies as the reason for this proposed change. The Committee believes that in general, an ordinary vote should only be available to an elector when voting in their home Division on election day.

Under the Electoral Act's current provisions, candidates' scrutineers, who play an important role in ensuring the integrity of the voting and scrutiny processes, are not explicitly allowed access to pre-poll centres. The Committee recommends that this oversight be rectified. Implementation of this recommendation may address some of the concerns about pre-poll voting which were expressed in evidence to the inquiry.

### **Mobile polling**

Certain electors unable to access a normal polling booth may be visited by a mobile polling booth. Mobile polling takes place in hospitals and nursing homes, remote areas and prisons.

The AEC recommended that the Electoral Act be amended so that mobile polling at 'special hospitals' (such as nursing homes) is available to all residents and patients, not just patients under 'continuous nursing care'. The Liberal Party of Australia also highlighted confusion surrounding mobile polling in special hospitals.

Current regulations and arrangements for mobile polling sit uncomfortably with the ever-changing landscape of retirement, nursing home, and hospital accommodation. The Committee recommends that the AEC report to it in detail on how mobile polling currently operates, and what changes may be required.

### **Assisted voting**

The Electoral Act permits some voters to have assistance (from a person of their choosing or a polling official) to mark, fold, and deposit their ballot paper. A voter may have assistance if their sight is so impaired, or they are so physically incapacitated or illiterate, that they are unable to vote without assistance.

Concern was expressed about high levels of assisted voting in some communities in one electorate. The Committee awaits the report which the AEC is currently drafting on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders. This report and any action that follows from it may impact on the issue of assisted voting by Aboriginal people.



## **Informal voting**

'Informal' ballots are those not filled out correctly and consequently not counted towards any candidate. At the 2001 federal election there were 580,590 informal votes (4.82 per cent) in the House of Representatives ballot. The Committee examined a number of potential reasons behind informal voting, and possible solutions.

## **Multiple voting**

The term 'multiple voting' is often used to describe the deliberate act of fraudulently casting two or more ballots at the same election. The number of apparent fraudulent multiple votes in the 2001 federal election was low, and the Committee accepts the AEC's assertion that these cases do not illustrate a pattern of concentrated multiple voting in particular Divisions.

In February 2002, the Australian Federal Police (AFP) and the AEC signed a service agreement so as to formalise the process of referring potential multiple voters to the AFP. The Committee welcomes this more systematic approach, and expects that the levels of apparent dual and multiple voting at federal elections will continue to be closely scrutinised.

## **Chapter five – Election Day and the Scrutiny**

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

### **Polling booth administration**

Proposals to streamline checking of electors' enrolment details at polling booths were noted by the Committee. The Committee recommends that at the next federal election, the AEC conduct a pilot scheme using computers at the ten polling booths which had the largest number of absent votes at the 2001 federal election, in order to provide electronic access to the certified list of voters for the purpose of verifying the enrolment details of those voters seeking to make an absent vote.

The Committee notes submissions from polling place officials relating to their remuneration, training and working conditions. The Committee recommends that the AEC review the evidence to this inquiry regarding polling booth administration, and take account of it in its future planning for election day administration and staff training.

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

The Electoral Act stipulates that polling may be adjourned to another day if it is interrupted by 'riot or open violence' or 'storm, tempest, flood or an occurrence of like kind'. The Committee agrees with the AEC that this provision is too narrow, and recommends that the Act be amended to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical and safety reasons.

Several concerns about electioneering at polling places are examined. The Liberal Party expressed concern about political parties using loudspeakers for electioneering near polling places. The AEC advised that such broadcasts were unlikely to be a breach of the Act unless the source of the broadcast was within six metres of the polling place (the Act bans 'canvassing for votes' within this limit). The Committee recommends that the Electoral Act be amended so as to prohibit the broadcast of political material which is audible within the six metres surrounding a polling place on election day.

Disputes about a variety of issues, such as polling booth dressing, how-to-vote cards, and noise, are commonplace on election day. The Committee examines the powers of polling booth presiding officers to resolve disputes which arise on polling day, and recommends:

- that the AEC ensure that decisions by DROs and higher authorities are communicated as quickly as possible to polling booth presiding officers; and
- that presiding officers be empowered to advise all relevant parties of AEC's decisions regarding disputed materials, and to advise that any continued distribution of materials considered by the AEC to be in breach of the Electoral Act may be restrained via Federal Court injunction.

### **Conduct of the scrutiny and re-counts**

The count of ballot papers is known as the 'scrutiny'. The Committee notes the potential for further use of electronic vote counting, accepts the need for continued electronic counting of the complex Senate vote, and encourages the AEC to continue its development of accredited and accountable computerised counting programs. The Committee intends to continue to encourage independent expert review of this area by organisations other than the AEC.

Any candidate for election may request a re-count of the votes before the declaration of the relevant result. A DRO or Australian Electoral Officer (AEO)

may also initiate a re-count. For the 2001 federal election, re-counts were undertaken in the seats of Hinkler and Solomon.

The AEC submitted that the Electoral Act should be amended so that faxed or electronic versions of ballot papers could be used for re-counts. The Committee believes that it is important to maintain the integrity of the re-count process and that for this reason, re-counts should continue to be made on the basis of the original ballot papers only.

### **Transmission of results**

The Committee does not support proposals that there be a 'blackout' of the broadcast of early results from the Eastern States until polling has concluded in Western Australia. There is no evidence to support concerns that the broadcast of early results from the Eastern States influences voters' decisions in Western Australia.

As in previous elections, the National Tally Room provided progressive voting information for the 2001 federal election. Electoral results were also published on the Virtual Tally Room on the AEC's website. While noting concerns raised in one submission about the use of the Virtual Tally Room, the Committee does not see a need for a review of the Virtual Tally Room.

## **Chapter six – Other Issues**

This chapter covers a range of issues, including: proposed amendments to the Electoral Act; the AEC's administration and responsibilities; privacy and access issues relating to the provision and use of the electoral roll; and election funding and financial disclosure. Litigation arising out of the election, and redistribution of electoral boundaries, are also briefly examined.

### **Proposed amendments to the Electoral Act**

The AEC submitted that ongoing amendments to the Electoral Act have resulted in an Act 'that is becoming unnecessarily cumbersome and a barrier to effective electoral administration'. The AEC nominated 'large-scale systematic issues' in the Act which it believed warranted legislative change. However, the Committee has a number of concerns about the AEC's proposal to rewrite the Electoral Act, and awaits a detailed submission from the AEC on this matter.

The AEC also recommended a number of technical amendments to the Electoral Act and the Referendum (Machinery Provisions) Act. The Committee supports the implementation of these technical amendments, with one exception related to the

conduct of State referenda on polling day. The AEC also made a series of substantive recommendations concerning the operation of referenda. However, many of these proposed changes were not supported by adequate justification. The Committee does not support these amendments.

### **AEC administration and responsibilities**

The resources, operation and structure of the AEC were raised in a number of submissions to the inquiry. The AEC sought the Committee's support for a substantial funding increase. The Committee considers that the AEC has not provided sufficient information to warrant such support at this stage. The Committee intends to seek from the Special Minister of State a further reference regarding the administration and funding of the AEC. The AEC's call for increased funding would be examined in detail in the context of that review.

The AEC has created some co-located Divisional Offices and proposes further co-location. While co-location of offices might deliver administrative efficiencies, the Committee is not satisfied that the AEC has addressed longstanding concerns about:

- 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.

The Committee recommends that co-location not proceed further, and that the AEC maintain a minimum of three full-time staff in each House of Representatives Division.

Some submissions raised concerns about adequacy of communications with the AEC during the election period. The Committee considers that where appropriate, new procedures for communicating with parliamentarians instigated by the AEO for South Australia should be applied nationally.

### **Privacy and access**

Privacy and access to information on the electoral roll are important issues for many Australians. The Committee has reviewed current privacy and access arrangements, as well as recent AEC proposals for change. The Committee recommends that an internet enquiry facility be provided to allow electors to verify their own enrolment details, and confirm as much of any other elector's

details as they are able to provide. However, this facility should not replace access to the full electoral roll in AEC offices. In light of modern technology which allows information on a purchased copy of the electoral roll to be extracted for commercial purposes, the Committee recommends that the electoral roll no longer be available for sale in any format.

The AEC recommended that the Electoral Act be amended to remove all stipulations as to the form of medium by which access to the roll is provided. The Committee does not support the open-ended discretion sought by the AEC. Instead, as and when appropriate, the AEC should seek specific amendments to the Act to stipulate new media through which the electoral roll may be provided.

Regrettably, three separate government agencies have recently created the wrong impression that there are no end-use restrictions on the use of electoral roll information by political parties and Members of Parliament. In fact, the Electoral Act sets out the uses to which such information may be put, specifically prohibits political parties and Members of Parliament from using this information for commercial purposes, and attaches substantial penalties to unauthorised use. The Committee supports continued access to the electoral roll by registered political parties and MPs, because of their obligation to communicate with their constituencies.

A report by this Committee's predecessor recommended that gender and date of birth details be included on the certified list, as a means of limiting the possibility of a person attempting to vote in the place of another person of a different gender or an obviously different age. For privacy reasons, the Committee recommends that the certified lists provided to candidates during an election not contain the gender and date of birth details that will appear on the certified lists used by polling officials.

The Committee recommends that end-use restrictions and related penalties for wrongful disclosure or commercial use apply to all information relating to electors which is contained in the electoral roll, regardless of the medium of supply.

The AEC recommended an expansion of its powers to demand information from State Government authorities in order to facilitate the CRU process described in chapter two, subject to consultation with the Privacy Commissioner. The Committee believes that the AEC should, as a matter of priority, consult with the Privacy Commissioner about its recommendations. The Committee will consider the recommendations that emerge from this consultation.

## **Funding and disclosure**

Part XX of the Electoral Act provides for public funding of election campaigns and disclosure of amounts received by, and paid to, political parties and candidates.

The ALP submitted that political parties (and their associated entities) should be compelled to have their disclosure returns certified by a registered auditor 'to guarantee they are free from errors and omissions at the time they are made public', and that persons and organisations that donate above \$25,000 should be subject to compliance audits by the AEC. In response to the first suggestion, the Committee notes that the penalties specified in the Electoral Act for providing false information in a return, and the attendant risk of negative publicity for the party, already provide an adequate incentive for parties to ensure that their returns are accurate. In relation to compliance audits of persons and organisations that have disclosed contributions of \$25,000 or more, this is now provided for in the Electoral Act.

Submissions from the ALP and the B'nai B'rith Anti-Defamation Commission also expressed concern about disclosure of donations to the Citizens Electoral Council (CEC), stating that the CEC had received a high proportion of its donations from undisclosed sources. The Committee stresses that the comments by the ALP and the Anti-Defamation Commission do not amount to evidence that the CEC is failing to meet its obligations under the disclosure provisions of the Electoral Act. The Committee further notes that the AEC has the power to conduct random audits, and that the Electoral Act already requires any person making donations to a political party totalling \$1,500 or more in a financial year to furnish a return to the AEC.

The Committee believes that the current penalty for accepting anonymous donations above limits prescribed in the Electoral Act (namely, forfeiting an amount equivalent to the amount received) is limited in its deterrent effect. The Committee recommends that the Act be amended so that the penalty for accepting an anonymous donation shall be an amount double the sum received through that donation.

The ALP submitted that donations to political parties from overseas, while relatively rare, may be a mechanism for hiding the source of donations. The Committee recommends that the AEC monitor and report back to the Committee on instances of overseas donations.

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## Chapter seven – Proposed Changes to the Electoral System

Submissions raised a number of broader issues than those pertaining specifically to the conduct of the 2001 federal election. These included compulsory voting, changes to the preferential voting system, the length of the parliamentary term, electronic voting, and public participation in the democratic process.

### Compulsory voting

One of the distinguishing features of Australian democracy is what is often described as compulsory voting for federal elections. It is important to note that under the Electoral Act, the duty of the elector is to: attend a polling station; have their name marked off the certified list; receive a ballot paper and take it to an individual voting compartment; and fold the ballot paper and either place it in the ballot box, or return it to the presiding officer if making a declaration vote.

Some submissions commenting on compulsory voting recommended that voting in Australian federal elections be made voluntary. The main thrust of these submissions was that citizens should be allowed to exercise ‘the democratic right to choose not to vote.’ The Committee notes that in public polling 74 per cent of respondents supported compulsory voting at federal elections, and that there are a number of arguments in favour of compulsory voting that counter the arguments against it.

After the 1998 federal election, this Committee’s predecessor concluded that while there were strong views on compulsory voting, it had no plans to pursue the issue of voluntary voting. The Committee concurs with this view.

### Changes to the voting system

Submissions raised a number of proposals for change to the current voting systems for the House of Representatives and the Senate. The changes proposed included:

- optional preferential voting for House of Representatives and Senate elections;
- various amendments to Senate ‘above the line’ voting;
- various ‘weighting’ methods for preference distributions; and
- proportional representation for the House of Representatives.

The Committee notes the views of those advocating changes to the current electoral system, but does not support the broad changes suggested. The

Committee is of the view that the single-member constituencies of the House of Representatives elected through full preferential voting, combined with the Senate's system of proportional representation, provide a good balance in the Australian political system.

### **The parliamentary term**

The Committee received a number of submissions arguing that the parliamentary term should be changed to a four-year term. Predecessors of this Committee have endorsed four-year terms for the House of Representatives. This Committee also endorses this reform, and expresses the hope that the Government will progress it.

### **Electronic voting**

A number of submissions called for the introduction of electronic voting. The Committee examined the advantages and disadvantages of electronic voting, noting trials of electronic voting in the Australian Capital Territory and the United States.

The AEC submitted that electronic voting for federal elections should be offered as an alternative or addition to postal voting. The AEC recommended that the Electoral Act and the Referendum Act be amended to allow pilot trials of electronic voting to take place.

The Committee believes that while electronic voting may offer some potential benefits, there are also many risks involved. It does not support the AEC's recommendation to proceed with unspecified pilot trials of electronic voting, which have as-yet unexplored implications for the operation of the Electoral Act. Prior to any approval for pilot trials, the AEC should first provide to the Parliament, via this Committee, a detailed implementation plan.

### **Public participation**

A number of submissions made recommendations concerning public participation in the democratic process. These included:

- calls for the introduction of citizen-initiated referenda;
- placement of 'voting computers' in public places, to enable citizens to learn the background of proposed Bills and indicate their views; and
- convening of a Constitutional Convention or similar independent commission to discuss all matters related to the operation of the Federal Government, Parliament and the electoral system.



The Committee notes the contribution of these submissions to the inquiry, and believes that these important issues should be subject to broad public debate.



## Introduction

- 1.1 The 2001 federal election coincided with Australia's celebration of one hundred years of Federation and the establishment of a national Parliament. While the Australian colonies had a rich history of parliamentary democracy even before 1901, Federation brought with it a new framework of national governance.
- 1.2 Certain features of the Australian electoral system have remained constant throughout the last century. The secrecy of the ballot has endured, as have the six-year term for Senators<sup>1</sup> and the term of three years and 10 days (after the first meeting of a House of Representatives) within which writs must be issued for a general election of members of the House.<sup>2</sup>
- 1.3 Other features of the electoral system, however, have evolved, including compulsory attendance at a polling booth and the voting system. Today, the Australian electoral system comprises full preferential voting for the House of Representatives and proportional representation for each State and Territory in the Senate.
- 1.4 The conduct of Commonwealth elections is determined by the Constitution and by various Acts of Parliament, in particular the

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1 Section 42 of the *Commonwealth Electoral Act 1918* provides that Senators for the Australian Capital Territory and the Northern Territory are elected for a term commencing on the day of their election and expiring 'at the close of the day immediately before the polling day for the next general election'.

2 Sections 7, 28 and 32 of the Australian Constitution refer. To date only the 3<sup>rd</sup> Parliament, 1907-1910, has expired by effluxion of time. All other general elections have occurred following dissolution of the House of Representatives, or of both houses of Parliament, by the Governor-General.

*Commonwealth Electoral Act 1918*. The Australian Electoral Commission (AEC) administers the Act and conducts Commonwealth parliamentary elections and referendums.

- 1.5 Predecessors of this Committee have examined every federal election since 1983, facilitating public comment on the conduct of elections and generating recommendations for legislative change. This report examines the conduct of the 2001 federal election.

## **The 2001 federal election**

- 1.6 An election mobilises a great deal of democratic activity amongst voters, political candidates and volunteers alike. Over 12 million people voted at the 2001 federal election. The 150 seats of the House of Representatives were contested by 1039 candidates. Another 285 candidates contested 40 seats in the Senate.<sup>3</sup> Thousands of volunteers are involved in election activity on behalf of political parties or individual candidates, particularly on election day.
- 1.7 Political parties also spend a significant amount of money on elections. As indicated by Annual Returns provided to the AEC, total outgoing expenditure made by political parties in the 2001-2002 financial year totalled over \$131.5 million. While this includes non-election expenditure such as utilities, rent and staff wages, election costs such as advertising and direct mail-outs comprise a significant proportion of this sum.<sup>4</sup>
- 1.8 The administration of an election is the responsibility of the AEC. From announcement of the polling date to the return of the writs, the 2001 federal election took the AEC over three months of concerted organisation. The AEC calculated that its expenditure on the election was over \$67 million.<sup>5</sup> Among other things, this included advertising and the public awareness campaign, the production of ballot papers and the certified lists (being the certified copies of the electoral roll used by polling officials on election day to identify eligible voters),

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3 AEC, *Electoral Pocketbook*, Commonwealth of Australia, July 2002. p. 42. As a half-Senate election, only 40 of the 76 Senate seats were contested in 2001.

4 These figures were current as of February 2003. Since 1997/1998, parties have not been required to provide election returns with detailed election payments.

5 Submission (AEC, no. 147), p. 60.

and election management.<sup>6</sup> In addition, the AEC administered \$38.5 million of public funding provided to political parties and independent candidates.<sup>7</sup>

1.9 Table 1.1 details the election timetable.

**Table 1.1 The 2001 federal election timetable**

<b>Event</b>	<b>Date</b>
Election announcement and dissolution of House of Representatives	5 October 2001
Issue of writs	8 October 2001
Close of rolls	15 October 2001
Close of nominations	18 October 2001
Declaration of nominations	19 October 2001
Pre-polling commences	20 October 2001
<b>Polling day</b>	<b>10 November 2001</b>
Return of writs	
House of Representatives	6 December 2001
Senate	3-6 December 2001
First meeting of the 40th Parliament	12 February 2002

*Source* AEC, Electoral Pocketbook, Commonwealth of Australia, July 2002, p 28.

## Voter turnout

1.10 By international standards, voter turnout in Australian elections is remarkably high (at over 90 per cent). Table 1.2 compares recent Australian turnout rates with recent rates of turnout in the United States, the United Kingdom and New Zealand. These turnout figures are based on the proportion of enrolled voters casting a vote.

6 'Election management' consists of permanent staff overtime, polling place hire, permanent staff other entitlements, freight, postage, printing and binding and other small expenditures including furniture hire, security, storage, telephone and travel costs. Submission (AEC, no. 182), p. 14.

7 Submission (AEC, no. 147) pp. 44-46. Public funding is further examined in chapter six.

Table 1.2 Voter turnout in recent elections in Australia, the USA, the UK and New Zealand

Country (election)	Voter turnout	
	Latest Election (year)	Previous Election (year)
	%	%
Australia (House of Representatives)	94.85 (2001)	94.99 (1998)
New Zealand	75.4 (2002)	84.8 (1999)
United Kingdom (House of Commons)	59.4 (2001)	71.4 (1997)
United States of America (Presidential)	67.5 (2000)	65.9 (1996)

Source Australia: AEC, Electoral Pocketbook, *Commonwealth of Australia, 2002*. p. 40; New Zealand: Elections New Zealand <http://www.elections.org.nz/elections/news/020920.html>, accessed 3 April 2003; United Kingdom: UK Electoral Commission. Election 2001: Official Statistics, <http://www.electoralcommission.gov.uk/elections/2001report.cfm>, accessed 3 April 2003; United States of America: Federal Election Commission, Voter Registration and Turnout 2000, <http://www.fec.gov/pages/2000turnout/reg&to00.htm>, and <http://www.fec.gov/pubrec/summ.htm>, accessed 3 April 2003.

- 1.11 While voter turnout has traditionally been low in the United States of America,<sup>8</sup> the United Kingdom and New Zealand have both suffered a decline in turnout rates in the last few years.
- 1.12 It is important to note, however, that there is some difficulty in comparing turnout rates across these countries. While enrolment (or 'registration') is compulsory in New Zealand, the United Kingdom and Australia, this is not the case in the United States.
- 1.13 For this reason, voter turnout figures for United States elections are more often compiled by comparing the number of votes cast against the 'voting age population'.<sup>9</sup> This figure is derived from census statistics on the number of people over the age of 18.<sup>10</sup> On this calculation, in the 2000 United States' Presidential election, 51.3 per cent of the 'voting age population' actually voted.<sup>11</sup>

8 United States Congressional elections have even lower rates of turnout than Presidential elections. The 5 November 2002 House of Representatives elections saw 39 per cent of the 'voting age population' vote.

9 US Federal Election Commission: *Voter Registration and Turnout 2000*, at: <http://www.fec.gov/pages/2000turnout/reg&to00.htm>, accessed 3 April 2003.

10 The VAP also includes those who may be ineligible to vote in United States elections because they are not US citizens, for example.

11 Electionworld.org: Elections around the world, at: <http://www.electionworld.org/unitedstates.htm>, accessed 18 February, 2003.

- 1.14 Various factors may account for differing rates of voter turnout.<sup>12</sup> In its recent report on voter turnout, the International Institute for Democracy and Electoral Assistance (International IDEA) compared voter turnout (expressed as a percentage of votes cast by the voting age population) for elections held in countries with both compulsory and non-compulsory voting.<sup>13</sup> While those countries identified by International IDEA as having some element of compulsory voting had an average voter turnout rate of almost 70 per cent, non-compulsory voting countries averaged 63 per cent.<sup>14</sup>
- 1.15 International IDEA concluded that:
- a somewhat surprising result of this study is that the 24 nations which have some element of compulsion associated with voting have only a small lead in turnout over the 147 nations without any compulsory voting laws. One reason for this is that the turnout figures we use are based on the total voting age population, not just on the number of persons enrolled to vote – where the compulsory voting countries do have a marked advantage – so that the impact of compulsory voting may only be significant if registration rates are also high.
- 1.16 Compulsory *enrolment* (rather than *voting*) then may be an influential factor in voter turnout.
- 1.17 Another indicator to explain voter turnout levels used by International IDEA is the electoral system. Here the survey found that countries with plurality-majority systems (such as first-past-the-post used in the United Kingdom) and semi-proportional systems (such as ‘Mixed-Member-Proportional’ used in New Zealand) average 59 to 60 per cent turnout rates, while straight proportional representation

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12 Anecdotally, it is believed that the regular frequency of elections in the United States is a deterrent to voter turnout. Similarly, a perception that the outcome of an election is ‘inevitable’, or ‘a *fait accompli*’ tends to discourage high voter turnout. For example, in the United Kingdom, Tony Blair was widely predicted to win a second term in 2001.

13 International Institute for Democracy and Electoral Assistance. 2002. *Voter turnout since 1945: A global report*. See [http://www.idea.int/vt/survey/voter\\_turnout8.cfm](http://www.idea.int/vt/survey/voter_turnout8.cfm), accessed 3 April 2003.

14 International Institute for Democracy and Electoral Assistance, at: [http://www.idea.int/vt/survey/voter\\_turnout8.cfm](http://www.idea.int/vt/survey/voter_turnout8.cfm), accessed 3 April 2003. While several countries have compulsory voting, many do not strictly enforce it. For example, in Italy and Mexico, there are no formal sanctions against non-voting. Social sanctions, such as being unable to place a child in government-funded daycare, may be imposed however. [http://www.idea.int/vt/analysis/Compulsory\\_Voting.cfm](http://www.idea.int/vt/analysis/Compulsory_Voting.cfm), accessed 1 April 2003.

systems (such as that used for the Australian Senate) average turnout rates of 68 per cent. International IDEA suggests that higher rates of voter turnout may be linked to electoral systems which provide greater choice for voters.<sup>15</sup>

- 1.18 Both indicators (compulsory voting/enrolment and electoral system) may account for Australia's particularly high voter turnout rates. Table 1.3 details the percentage of voter turnout in recent federal elections.

**Table 1.3 Voter turnout at federal elections**

<b>Voter Turnout</b>	<b>1990</b>	<b>1993</b>	<b>1996</b>	<b>1998</b>	<b>2001</b>
	%	%	%	%	%
House of Representatives	95.32	95.75	95.77	94.99	94.85
Senate	95.81	96.22	96.20	95.34	95.20

*Source* Australian Electoral Commission. 2002. Electoral Pocketbook, Canberra, AEC, p 40.

## Completeness of the electoral roll

- 1.19 Given that high turnout may be related to compulsory enrolment, it is important to note that the Australian electoral roll is not 100 per cent complete – that is, not all eligible Australians are enrolled to vote. The AEC estimated that for the 2001 federal election, 96 per cent of the eligible Australian population were enrolled to vote.<sup>16</sup> This means that approximately 550,000 eligible Australians were not enrolled.
- 1.20 The AEC sets itself a target of 95 per cent 'completeness' of the electoral roll.<sup>17</sup> Measuring the completeness of the roll is difficult because the AEC does not have access to a list of all eligible Australians against which to compare the roll. However, both the Australian National Audit Office (ANAO) and the AEC have recently asserted that the roll is 95 per cent complete.<sup>18</sup>

15 International Institute for Democracy and Electoral Assistance, at: [http://www.idea.int/vt/survey/voter\\_turnout8.cfm](http://www.idea.int/vt/survey/voter_turnout8.cfm), accessed 3 April 2003.

16 Submission (AEC, no. 147), p. 20.

17 AEC, *Annual Report 2001-02*, Commonwealth of Australia, September 2002, p. 20.

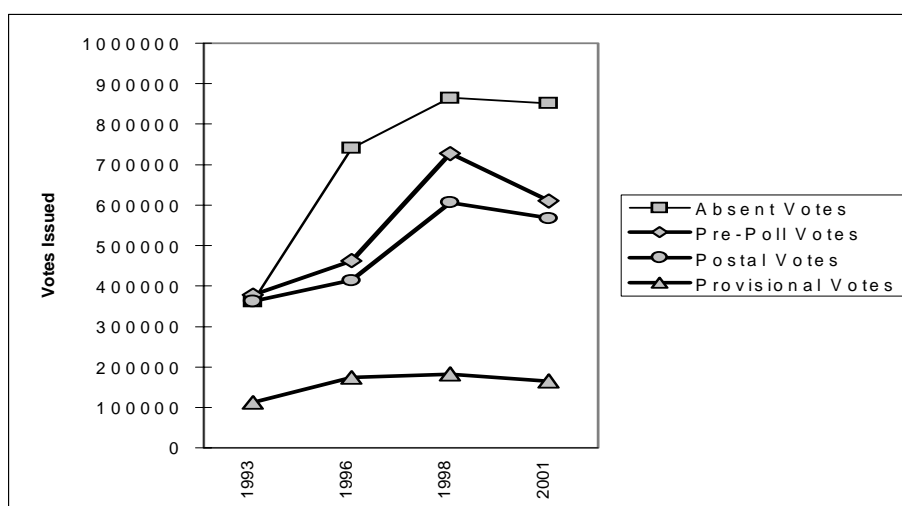
18 The AEC uses Newspoll telephone surveys to determine enrolment levels. These surveys have reported enrolment levels around the 95 per cent target level, see AEC, *Annual Report 2001-02*, Commonwealth of Australia, p. 20, and ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, pp. 79 and 84-85. In its audit of the electoral roll, the ANAO cross-matched Medicare data with electoral roll records. Despite this different methodology, the ANAO also found that the electoral roll



## Method of voting

- 1.21 The vast majority of votes in federal elections are cast in person in electors' enrolled Divisions on polling day. Known as 'ordinary votes', these accounted for 84 per cent of all votes cast at the 2001 federal election.
- 1.22 Nonetheless, a significant number of votes were cast through other methods including postal votes, pre-poll votes, provisional votes and absent votes. These are collectively known as 'declaration votes'. Briefly, postal and pre-poll votes are those cast before election day by post or at a pre-poll voting centre;<sup>19</sup> provisional votes are primarily cast in circumstances where the elector claims the right to vote but where his or her name cannot be found on the electoral roll; and absent votes are those cast by an elector outside their enrolled Division on election day.

Figure 1.1 Declaration Voting Trends 1993-2001



Source AEC submission no. 147, p. 32

was 95.1 per cent complete. In its report, however, the ANAO noted that the AEC's survey methodology excluded various groups including residents of the Northern Territory; residents with unlisted telephone numbers; residents without telephones; homeless persons; and persons with insufficient English language skills to participate in an interview. The ANAO concluded that 'as there is a high risk that certain of these groups are not well represented on the roll, their exclusion from the survey would tend to bias the survey result and to overstate the completeness of the roll' (See ANAO, *Audit Report No. 42, 2001-02*, p. 79). Electoral roll completeness is further examined in chapter two.

<sup>19</sup> It should be noted that pre-poll votes may be cast at a pre-poll centre on polling day where an elector is voting outside the State in which he or she is enrolled.

- 1.23 Figure 1.1 indicates the trends in declaration voting. Absent votes constitute the largest number, followed by pre-poll and postal votes. Provisional votes have traditionally accounted for a small proportion of all votes cast.<sup>20</sup>
- 1.24 Table 1.4 provides a breakdown of the numbers of ordinary and declaration votes admitted to the count.

**Table 1.4 Votes admitted to the count, 1996 to 2001**

	1996 federal election		1998 federal election		2001 federal election	
	Votes	%	Votes	%	Votes	%
<b>Ordinary Votes</b>	9 737 404	86.21	9 513 300	82.10	10,172,617	84.08
<b>Declaration Votes</b>						
Absent votes	657 539	5.82	776 859	6.70	780 961	6.46
Provisional votes*	105 091	0.93	116 158	1.00	107 396	0.89
Pre-poll votes	434 841	3.85	692 377	5.98	585 616	4.84
Postal Votes	359 604	3.18	488 671	4.22	451 900	3.74
Sub-Total	1 557 075	13.79	2 074 065	17.90	1 925 873	15.92
<b>Total Votes</b>	<b>11 294 479</b>	<b>100.00</b>	<b>11 587 365</b>	<b>100.00</b>	<b>12 098 490</b>	<b>100.00</b>

Source AEC submission, no. 147, p. 31.

Note \* These figures represent the number of provisional votes accepted to the Senate scrutiny out of the 165,177 actually cast. Of the total votes cast, 81,266 provisional votes were accepted to the House of Representatives scrutiny. Provisional votes have a high rejection rate because in many cases it is discovered that those casting the vote are not in fact eligible. The Committee comments further on provisional voting in chapter two, at paragraph 2.124.

## Composition of the 40<sup>th</sup> Parliament

- 1.25 The 2001 federal election resulted in the Coalition being returned to government for a third term, with an increased majority in the House of Representatives. The Coalition won a total of 82 seats, the Australian Labor Party won 65, and three seats were won by Independents.<sup>21</sup> Tables 1.5 and 1.6 outline the changes in the party make-up of the House of Representatives from 1998 to 2001.

<sup>20</sup> Declaration voting is further examined in chapter four.

<sup>21</sup> Since the election the Division of Cunningham has been won by the Australian Greens (at a by-election held on 19 October 2002), reducing the ALP's representation in the House of Representatives to 64.

Table 1.5 House of Representatives results, 1998 and 2001

Party	1998			2001		
	Seats won	First Preference Vote	Swing	Seats won	First Preference Vote	Swing
		%			%	
Liberal Party	64	33.9	-4.80	68	37.1	+3.19
National Party	16	5.3	-2.91	13	5.6	+0.32
Country Liberal Party	-	0.3	-0.03	1	0.3	0.00
Australian Labor Party	67	40.1	+1.34	65	37.8	-2.26
Australian Democrats	-	5.1	-1.63	-	5.4	+0.27
Greens	-	2.6	-0.30	-	5.0	+2.34
Pauline Hanson's One Nation	-	8.4	+8.43	-	4.3	-4.09
Other	1	1.9	-1.41	3	9.5	+0.24
<b>Total</b>	<b>148</b>			<b>150</b>		

Source Scott Bennett, Andrew Kopras and Gerard Newman. 2001. Commonwealth Election 2001, Department of the Parliamentary Library, p. 51; Gerard Newman. 1999. Federal Elections 1998, Department of the Parliamentary Library p. 14.

Table 1.6 House of Representatives results, two-party preferred\* vote 1998 and 2001

State/Territory	1998			2001		
	Per cent		Swing	Per cent		Swing
	ALP	LP/NP	%	ALP	LP/NP	%
New South Wales	51.5	48.5	4.4 to ALP	48.3	51.7	2.9 to LP/NP
Victoria	53.5	46.5	3.2 to ALP	52.1	47.9	1.4 to LP/NP
Queensland	46.9	53.1	4.2 to ALP	45.1	54.9	1.8 to LP/NP
South Australia	46.9	53.1	4.1 to ALP	45.9	54.1	1.0 to LP/NP
Western Australia	49.5	50.5	5.5 to ALP	48.4	51.6	1.1 to LP/NP
Tasmania	57.3	42.7	5.7 to ALP	57.7	42.3	0.4 to ALP
Northern Territory	50.6	49.4	0.9 to ALP	52.5	47.5	1.9 to ALP
Australian Capital Territory	62.4	37.6	7.0 to ALP	61.1	38.9	1.4 to LP/NP
<b>Total</b>	<b>51.0</b>	<b>49.0</b>	<b>4.7 to ALP</b>	<b>49.0</b>	<b>51.0</b>	<b>1.8 to LP/NP</b>

Source Scott Bennett, Andrew Kopras and Gerard Newman. 2001. Commonwealth Election 2001, Department of the Parliamentary Library, p. 97; Gerard Newman. 1999. Federal Elections 1998, Department of the Parliamentary Library p. 59.

Note \* The 'two-party preferred' vote refers to the proportion of the total House of Representatives vote directed to each of the two major political groupings (the Liberal / National Party Coalition and the ALP) after all preferences have been taken into account.

1.26 The composition of the Senate remained diverse with the Coalition holding 35 of the 76 Senate seats, the ALP holding 28 seats, the Australian Democrats holding seven seats,<sup>22</sup> and the remainder divided between the Australian Greens (two seats), Pauline Hanson's One Nation party (one seat) and two independent Senators. Tables 1.7 and 1.8 detail the results of the Senate election, with comparative data from 1998.

Table 1.7 2001 Senate results, seats won by State

Party	Seats won								Total	Change from 1998
	NSW	VIC	QLD	WA	SA	TAS	ACT	NT		
Liberal Party	2	3	2	3	3	3	1	-	17	+2
National Party	1	-	1	-	-	-	-	-	2	+1
Country Liberal Party	-	-	-	-	-	-	-	1	1	0
Australian Labor Party	2	2	2	2	2	2	1	1	14	-3
Australian Democrats	-	1	1	1	1	-	-	-	4	0
Greens	1	-	-	-	-	1	-	-	2	+2
<b>Total</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>40</b>	

Source Australian Electoral Commission. 2002. Electoral Pocketbook, Canberra, AEC, p 79.

Table 1.8 2001 Senate results, 1998 and 2001

Party	1998		2001	
	Per cent votes	Swing	Per cent votes	Swing
Liberal/National Party*	21.88	-2.61	23.88	+2.00
Liberal Party	13.64	-2.60	15.69	+2.05
National Party	1.86	-1.01	1.92	+0.06
Country Liberal Party	0.32	-0.05	0.35	+0.03
Sub-total	37.70	-6.27	41.83	+4.13
Australian Labor Party	37.30	+1.15	34.32	-2.98
Australian Democrats	8.46	-2.36	7.25	-1.21
Greens	2.72	-0.45	4.94	+2.22

Source Scott Bennett, Andrew Kopras and Gerard Newman. 2001. Commonwealth Election 2001, Department of the Parliamentary Library, p. 104. Scott Bennett, Andrew Kopras and Gerard Newman. 1999. Federal Elections 1998, Department of the Parliamentary Library at <http://www.aph.gov.au/library/pubs/rp/1998-99/99Rp09d.htm#table13> (accessed 13 May 2003).

Note \* This category refers to those States/Territories where the Liberal and National Parties ran a combined group voting ticket at the Senate election.

22 After the election, the Australian Democrats held eight seats in the Senate. Since that time, however, one of the Senators has left the party.

- 1.27 The 40<sup>th</sup> Parliament first met on 12 February 2002. The Parliament will expire on 11 February 2005, and an election for the House of Representatives must be held by 16 April 2005. A Senate half-election must be held by 30 June 2005.<sup>23</sup> Section 57 of the Constitution provides that both Houses of Parliament may be dissolved simultaneously if there is a legislative deadlock. The last date a double dissolution is allowed is six months prior to the date of expiry for the House of Representatives. This means that the last possible date for the dissolution of both Houses is 11 August 2004, with the subsequent election to be held no later than Saturday 16 October 2004.

## Scope and conduct of the inquiry

- 1.28 Since 1983 the Joint Standing Committee on Electoral Matters (or its predecessor, the Joint Select Committee on Electoral Reform) has investigated aspects of each federal election.
- 1.29 On 13 May 2002 the Special Minister of State, Senator the Hon Eric Abetz, wrote to the Committee asking it to inquire into and report on 'all aspects of the conduct of the 2001 federal election and matters related thereto'. The inquiry was advertised in all major newspapers on Saturday 25 May and Wednesday 29 May 2002 and members of the public were invited to make submissions.
- 1.30 The Committee also wrote to all Members and Senators and Senators-elect; State Premiers, Territory Chief Ministers, and the Administrators of External Territories; the Australian Electoral Commissioner, State and Territory Electoral Commissioners; registered political parties<sup>24</sup>; and heads of university government and politics departments.
- 1.31 The Committee received 203 submissions to this inquiry from a variety of individuals and organisations. The submissions are listed at Appendix A. The Committee held eight public hearings, in Canberra,

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23 In all probability, it would be conducted at least six weeks prior to this date, to allow counting to be finalised before the beginning of a new Senate term on 1 July 2005. R Lundie, *Timetable for the Next Commonwealth Election*, DPL Research Note 37, 2001-02 at: <http://www.aph.gov.au/library/pubs/rn/2001-02/02rn37.htm>, accessed 15 January 2003.

24 The Secretariat wrote to the National Secretariats/Divisions, and each of the State Head Offices, of the Australian Labor Party, the Liberal Party of Australia, the National Party of Australia, the Australian Democrats, the Greens and Pauline Hanson's One Nation Party. These parties fronted 838 of the total 1324 candidates (or 63 per cent) contesting seats in both the House of Representatives and the Senate.

Melbourne, Sydney and Adelaide from August through to December 2002. A list of the hearings and witnesses is at Appendix C.

- 1.32 The submissions and transcripts of evidence from the public hearings are available on the internet from:

<http://www.aph.gov.au/house/committee/em/elect01/index.htm>

## **Structure of the report**

- 1.33 The report's structure is primarily chronological in relation to the significant elements involved in the conduct of 2001 federal election. Chapter two discusses the electoral roll and enrolment issues; chapter three outlines the preparations undertaken by the AEC, political parties, candidates and others in the lead-up to election day; chapter four considers the various processes for voting under the existing electoral system; chapter five is concerned with the issues surrounding the operation of polling booths on election day, and the conduct of the count of votes (the 'scrutiny'); and chapter six covers various other issues relevant to the conduct of the 2001 federal election. The final chapter considers some wide ranging proposals for changes to the current electoral system, such as: non-compulsory voting; optional preferential voting; and electronic voting.

## The Electoral Roll

- 2.1 The Australian democratic process ideally requires that all qualified electors cast their ballot, at each federal election, for both the House of Representatives and the Senate. So basic is this requirement considered, that for those entitled to do so, enrolling to vote and attending the polls are prescribed by law.<sup>1</sup>
- 2.2 The integrity of the electoral system demands that persons not entitled to vote are excluded from voting, and that entitled voters cast ballots only for the appropriate Division, State and Territory.
- 2.3 As it would be practically impossible to verify everyone's entitlement to vote on election day, there is a mechanism for registering this entitlement – the electoral roll. Consequently, to be eligible to vote in a federal election a person not only has to be qualified to do so by virtue of their age and citizenship,<sup>2</sup> but must also be validly registered on the electoral roll.<sup>3</sup>
- 2.4 Pursuing the objectives of both maximising voting by those entitled to do so, and ensuring that only entitled people vote in the appropriate electorate and that opportunities for electoral manipulation are minimised, requires careful balance. The electoral roll has to have

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1 *Commonwealth Electoral Act 1918*, section 101.

2 *Commonwealth Electoral Act 1918*, section 93. Subsection 93(8) sets out exceptions to this entitlement to vote, relating to persons of unsound mind, persons serving a prison sentence of five years or longer and persons convicted of treason or treachery.

3 See discussion of provisional voters at paragraph 2.124, in relation to those electors who on polling day cannot be found on the electoral roll but who claim to be eligible to vote at the election in question.

both high integrity and a high level of completeness. Public confidence in the electoral process can be eroded by either the fact or the perception that the roll's management and processes permit inappropriate voting or electoral manipulation, or that they unwarrantedly exclude people who are entitled to vote. This needs to be taken into account when examining issues regarding the electoral roll and its administration.

2.5 Submissions made to this inquiry on matters relating to the electoral roll and enrolment processes focussed on four issues:

- that current processes for managing the electoral roll cannot guarantee its integrity, leaving it open to manipulation, and that anecdotally, such manipulation does occur and that therefore the system needs to be changed;
- that while the current enrolment system strikes an acceptable balance between integrity and completeness, much can be done to improve it;
- that enrolment is biased against certain classes of voters obstructing their ability to translate entitlement to vote into enrolment (namely overseas voters, Aboriginal and Torres Strait Islanders and the homeless); and
- that specific enrolment procedures need to be changed, in particular:
  - ⇒ the proof of identity requirements;
  - ⇒ the duration of the close of rolls period; and
  - ⇒ the enrolment of provisional voters.

2.6 The Committee believes that, given appropriate processes and procedures, there is no irreducible tension between maximising eligibility to vote and meeting demands for a roll of high integrity.

2.7 The Committee is of the view that while there is no viable comprehensive alternative to the current enrolment system, there are clearly areas where the system can be positively and productively modified.

2.8 While the Committee was not presented with evidence of any widespread malpractice, it does not believe it is sufficient to assert that the absence of such evidence proves that the integrity of the roll is high. It is fundamental that the electoral system should seek to



achieve the highest degree of integrity and inclusiveness and demonstrate that this is the case.

## Enrolment at the 2001 federal election

- 2.9 For the 2001 federal election, over 12.5 million Australians were eligible to vote.<sup>4</sup> A person was eligible to vote if they were over the age of 18,<sup>5</sup> were either an Australian citizen or a British subject enrolled before 26 January 1984, and had lodged a valid enrolment form prior to the close of rolls at 8pm, 15 October 2001. Australian citizens living overseas and not on the electoral roll, but who would be eligible if they were in Australia, may apply to register as Eligible Overseas Electors if they have been outside Australia for less than two years. This is subject to two conditions: they must have left Australia for their own or their spouse's career or employment purposes and intend to resume residence in Australia within six years of departing.<sup>6</sup>
- 2.10 Approximately 600,000 more electors were enrolled to vote for the 2001 election than for the 1998 federal election. Enrolments increased in all States and Territories, except Tasmania, where enrolments decreased by 922. Table 2.1 (below) presents enrolment figures for both the 1998 and 2001 federal elections, by State and Territory.

Table 2.1 Enrolments as at the close of rolls, 1998 and 2001

State/Territory	Number of Electors		Difference		State's percentage of national voters
	7 September, 1998	15 October, 2001	n	%	%
New South Wales	4 031 749	4 204 383	+172 634	+4.3	33
Victoria	3 056 887	3 218 746	+161 859	+5.3	25
Queensland	2 177 556	2 319 481	+141 925	+6.5	18
Western Australia	1 140 845	1 200 438	+59 593	+5.2	10
South Australia	1 006 398	1 034 377	+27 979	+2.8	8
Tasmania	329 751	328 829	-922	-0.3	3
Australian Capital Territory	208 684	219 876	+11 192	+5.4	2
Northern Territory	104 755	110 501	+5 746	+5.5	1
<b>National Total</b>	<b>12 056 625</b>	<b>12 636 631</b>	<b>+580 006</b>	<b>+4.8</b>	<b>100</b>

4 AEC, *Electoral Pocketbook*, Commonwealth of Australia, July 2002, p. 37.

5 People may enrol when they turn 17, but they are not eligible to vote until they are 18 years old. *Commonwealth Electoral Act 1918*, section 100.

Source AEC submission 147, p 20.

- 2.11 As noted in chapter one, the electoral roll is not 100 per cent complete. It is estimated that at the 2001 federal election, 550,000 Australians – approximately four per cent of those who were entitled to vote – could not have done so because they were not enrolled.<sup>7</sup>

## **Integrity and completeness of the electoral roll**

- 2.12 The integrity and completeness of the electoral roll has been a contentious issue, examined by the Committee and its predecessors over a number of years, through a number of inquiries.<sup>8</sup>
- 2.13 In this inquiry, once again, many submissions were received from political parties, interested groups and individuals, concerning the appropriateness and reliability of the system used by the AEC for managing the electoral roll and the validity and accuracy of the roll itself.

## **The enrolment process**

- 2.14 The key process whereby the integrity and completeness of the roll is pursued is the continuous roll update process, or CRU.
- 2.15 The CRU process was introduced in 1999 after the AEC terminated its traditional ‘habitation reviews’; that is, nationwide doorknocks held at least once every two years to check that people were correctly enrolled.
- 2.16 Increasing population mobility, rising costs and the difficulties encountered in conducting the habitation reviews, together with the

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6 *Commonwealth Electoral Act 1918*, section 94A.

7 Submission (AEC, no. 147), p. 20.

8 See previous reports by the Joint Standing Committee on Electoral Matters: *The Integrity of the Electoral Roll: Review of ANAO Report No.42, 2001-2002*, (October 2002); *User Friendly, Not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll* (May 2001); *The 1998 Federal Election* (June 2000); *The 1996 Federal Election* (June 1997); *The 1993 Federal Election* (November 1994); *The Conduct of Elections: New Boundaries for Cooperation* (September 1992); *Aboriginal and Islander Electoral Information Service* (September 1991); *1990 Federal Election* (December 1990); *The 1987 Federal Election* (May 1989); and Joint Select Committee on Electoral Reform, *The Operation During the 1984 General Election of the 1983-84 Amendments to Commonwealth Electoral Legislation* (December 1986); *First Report* (September 1983).

rapid advance of data-matching processes over the previous decade, convinced the AEC to move in 1999 to the new CRU system.

- 2.17 Like the previous roll management system based on habitation reviews, CRU supplements 'autonomous' enrolment and re-enrolment, that is, electors advising the AEC of their enrolment status or applying to enrol either in person at an AEC Divisional Office, or by post.
- 2.18 CRU differs from its predecessor system in that it uses, among other things, regular data-matching processes, rather than static habitation reviews, to update the roll and check it for accuracy, clean it of errors and prompt new applications for enrolment where appropriate.

### CRU activities

- 2.19 CRU is the combination of a number of electoral roll activities including:
- data-matching of AEC information against data from external agencies to identify:
    - ⇒ electors who change address;
    - ⇒ new electors (youths coming of age and new citizens); and
    - ⇒ people to be removed from the roll (for example, deceased electors);
  - data-mining conducted on the AEC's computerised 'roll management system' (RMANS) and its in-built 'Address Register' to identify addresses which may need updating;
  - including enrolment forms in mail-outs undertaken by various State and Territory agencies, for example, change of address for motor vehicle licences;
  - a limited number of targeted doorknocks where there has been no response to mail-outs generated by CRU data-matching and data-mining; and
  - AEC attendance at Citizenship ceremonies to encourage new citizens to enrol.<sup>9</sup>
- 2.20 CRU activities instigate a significant proportion of all enrolment forms processed, although the precise figure has varied since the

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<sup>9</sup> AEC, *Annual Report 2000-01*, Commonwealth of Australia, October 2001, pp. 25-27; and *Annual Report 2001-02*, Commonwealth of Australia, September 2002, pp. 26-28.

inception of the CRU in 1999. The AEC's 2001-02 Annual Report stated that during that year, over 2.5 million enrolment forms were processed. Of these, nearly 1.18 million (46.8 per cent) enrolment forms were processed as a result of CRU activities.<sup>10</sup> This compares with approximately 70 per cent of all enrolment activity in the 2000-2001 financial year, and 41 per cent in the 1999-2000 financial year.<sup>11</sup>

- 2.21 Table 2.2 provides a breakdown of all enrolments processed by the AEC for the 2001-02 financial year. The majority (53.1 per cent) of all enrolment forms processed are those provided to the AEC by individuals, either in person at an AEC Divisional Office, or by mail through Australia Post. A third of enrolment forms (36.6 per cent) are prompted by AEC data-matching activities.

**Table 2.2 Enrolment forms processed, 2001-02**

<b>Enrolment Activity</b>	<b>Number of enrolments processed</b>	<b>Percentage of all enrolments processed</b>
*Enrolment reminder mailings sent as a result of data-matching and data-mining	920 927	36.6
*State and Territory agencies' activities	187 630	7.5
*Targeted fieldwork	28 232	1.1
*Attendance at Citizenship ceremonies	42 437	1.7
Enrolment by electors at Divisional Offices or by post	1 335 827	53.1
<b>Total</b>	<b>2 515 053</b>	<b>100</b>

Source AEC, *Annual Report 2001-02*, Commonwealth of Australia, September 2002, p. 26.

Note \* Denotes CRU activity

### **CRU data-mining**

- 2.22 The most significant new components of CRU are data-mining and data-matching. Where other elements of the CRU, such as attendance at Citizenship ceremonies, have played a major role in the AEC's electoral roll maintenance for some time, data-mining and data-matching are the key innovations.
- 2.23 In 1997, the AEC moved to an address-based enrolment system. Accompanying this change was the inclusion of an Address Register in the AEC's computerised roll management system. This Register identifies each separate address, and lists a range of attributes for each known address including a land use code, occupancy status, an

10 AEC, *Annual Report 2001-02*, Commonwealth of Australia, September 2002, p. 26.

11 AEC, *Annual Report 2000-01*, Commonwealth of Australia, October 2001, p. 25; and *Annual Report 1999-2000*, Commonwealth of Australia, September 2000, p. 25.

enrolment limit, the last review date, and whether the address is 'enrollable', that is valid for enrolment.<sup>12</sup>

2.24 An important component of CRU then, is the examination and updating of this existing AEC data, known as data-mining. The AEC has argued that this kind of 'global-level' analysis is undertaken to 'uncover aberrant data on the roll, which can direct fieldwork in a more cost efficient manner'.<sup>13</sup> For example, the AEC can identify:

addresses that are incorrectly described or duplicated, those that have a high number of enrolments and/or an abnormally high turnover of electors, and those that have two or more groups of electors resident with different family names. [Data-mining of the] Address Register also makes it less likely that a person can apply for enrolment at a non-existent address or a non-residential address, and ensures that official correspondence, including postal ballot papers, is sent to the correct postal address.<sup>14</sup>

2.25 Data-mining primarily uses two RMANS databases:

- the 'vacant address' database (valid addresses where no one is currently enrolled); and
- the 'melimit addresses' database (addresses where the number of electors or the number of surnames enrolled at an address exceeds predetermined limits, usually because electors have moved without updating their enrolment and new electors have moved into that address).<sup>15</sup>

2.26 The AEC conducts mail-outs to these addresses and may follow up unanswered letters with doorknocks. The AEC reported that over 300,000 addresses were visited under this program during 2000-01.<sup>16</sup>

### CRU data-matching

2.27 Another component of CRU activities is data-matching. This is defined as the 'large scale comparison of records or files of personal information, collected or held for different purposes, with a view to

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12 AEC submission to the JSCEM: *User Friendly Not Abuser Friendly, Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. S509.

13 AEC submission to the JSCEM, *User Friendly Not Abuser Friendly, Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. S509.

14 AEC submission to JSCEM *User Friendly Not Abuser Friendly inquiry* (2001), as above.

15 AEC, *Annual Report 2001-02*, Commonwealth of Australia, September 2002, p. 27.

16 AEC, *Annual Report 2000-01*, Commonwealth of Australia, October 2001, p. 26.

identifying matters of interest'.<sup>17</sup> Under CRU, existing (RMANS) data is matched against data provided by Commonwealth and State and Territory agencies.

2.28 The data sources used for CRU data-matching are listed below:

Table 2.3 Data sources used for CRU data-matching

Commonwealth data sources	State/Territory data sources*
Australia Post	Boards of Studies
Centrelink	Fact of death files
Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) citizenship database	Land Administration Motor Transport Authorities Power and water companies Public housing State Revenue Offices Rental Bond Authorities

*Source* ANAO, Integrity of the Electoral Roll, Audit Report no. 42, 2001-02, p. 44. See also JSCEM 2001. User Friendly, Not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll, Parliament of Australia, May 2001, pp. 26-27; and AEC Submission no. 200, pp. 3-10.

*Note* \* Not all State and Territory jurisdictions make all of these data sources available; see paragraph 2.43 below.

2.29 Every month, the AEC's Head Office uploads all the data obtained from external agencies (both Commonwealth and State) and runs a computer program which matches the external data with RMANS data, by address. The data-matching program firstly discards all those addresses which show a perfect match between AEC and external data. The program then generates reports for each of the 150 federal Divisions, listing those addresses which show a potential change to the electoral roll.<sup>18</sup> The system generates the appropriate form letter to be sent to each mismatched address record. These letters are sent from Head Office.

2.30 If, for example, the report generated by the data-matching process shows that there may be a new person living at a particular address (as indicated, for instance, by a change-of-address form provided by that elector to Australia Post), the AEC sends a letter and enrolment form to the occupant at the identified address, inviting that person to

17 Office of the Federal Privacy Commissioner, *The use of data-matching in Commonwealth administration – guidelines*. Sydney, Australia, February 1998, p. 3.

18 These reports may be checked by staff in Divisional Offices on the basis that they have the local knowledge to assess the validity of (mis)matches.

update his or her enrolment details. As individuals respond to the letters the roll is updated.<sup>19</sup>

- 2.31 However, this kind of CRU mail-out is not necessarily appropriate for all electorates, particularly rural or regional electorates where mail may be difficult to deliver or undeliverable in some areas. For example, CRU mail-outs are not conducted in some areas of the Divisions of Kalgoorlie (in Western Australia), Barker and Grey (in South Australia).<sup>20</sup> By way of checking that the roll did not contain the names of deceased electors, for example, in 2001-02 the AEC purchased the national 'Fact of Death File', a compilation of data on deaths from all State and Territory births, deaths and marriages registries and data-matched this file against its RMANS system. This check is now undertaken each quarter.<sup>21</sup>

### Direct enrolment

- 2.32 Some long-standing AEC activities are now embraced in CRU. For example, AEC Divisional staff have attended Citizenship ceremonies so as to collect pre-printed enrolment cards and provide advice to new electors.
- 2.33 Other direct enrolment strategies include:
- the provision of enrolment cards and electoral information in results packages sent to final year students in Queensland by the Board of Secondary School Studies;
  - the use of a common change-of-address form for State government transactions; and
  - the Victorian Electoral Commission's practice of sending birthday cards with an enrolment card to all 18 year olds.<sup>22</sup>

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19 ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, p. 39.

20 In Kalgoorlie, over one-third of addresses are excluded from CRU mail-outs; in Barker approximately 40 per cent are excluded; and in Grey just under 30 per cent are excluded. AEC correspondence to Committee secretariat, 13 June 2003.

21 AEC, *Annual Report 2001-02*, Commonwealth of Australia, September 2002, p. 25.

22 AEC submission to the JSCEM: *User Friendly Not Abuser Friendly, Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, pp. S511-12. See also pp. 28-29 of the JSCEM report.

- 2.34 The AEC has argued that CRU strategies have ‘yielded considerable benefits in improving roll accuracy’<sup>23</sup> and considers that:

steady and consistent CRU activities are placing people on the electoral roll and keeping them there by reviewing elector movements and targeting addresses that are either vacant or where the number of electors exceeds the expected limit.<sup>24</sup>

#### **ANAO and previous Committee findings on the Continuous Roll Update program**

- 2.35 CRU activities were originally examined in the previous Committee’s report on the integrity of the electoral roll, *User Friendly, not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll*.<sup>25</sup> Pertinently, that report recommended that the AEC:

investigate and report on the financial cost, legal requirements, privacy implications and priorities for upgrading RMANS data-processing and expanding Continuous Roll Updating data-matching.<sup>26</sup>

- 2.36 When the effectiveness of the CRU program was later examined by the ANAO in Audit Report No. 42 of 2001-02, *Integrity of the Electoral Roll*, the Auditor-General supported this recommendation, noting that while:

the CRU methodology is an effective means of managing the electoral roll, and is capable of providing a roll that is highly accurate, complete and valid, [the process has developed in an ad hoc manner,] without the benefits of strategic planning by the AEC to achieve a consistent national approach and to maximise its effectiveness’.<sup>27</sup>

- 2.37 The ANAO was particularly concerned that there had only been ‘limited strategic direction and planning to reposition the AEC since its move from habitation reviews to CRU’, noting that co-operation and communication between stakeholders, and in particular, State and Territory electoral authorities required improvement. In this

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23 AEC submission to the JSCEM: *User Friendly Not Abuser Friendly, Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. S506.

24 AEC, *Annual Report 2001-02*, Commonwealth of Australia, October 2002, p. 24.

25 JSCEM, *User Friendly, not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001.

26 JSCEM, *User Friendly, not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. 28.

27 ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, p. 13.



respect, the ANAO concluded that the data used for CRU is not consistent across States and Territories, and stressed the need for the AEC to develop national standards for data used to update the roll, to identify gaps in CRU coverage, and to determine which data are required to address those gaps.<sup>28</sup>

- 2.38 The ANAO made recommendations specifically directed at improving:
- the consistency of the CRU approach across all States and Territories, so as to achieve national standards and a timetable for national implementation of these standards (ANAO Recommendation 1);
  - the suite of data used by the AEC, so as to maximise the benefits of its data-matching activities in maintaining the electoral roll (ANAO Recommendation 2);
  - the arrangements between the AEC and its State and Territory counterparts for access to relevant data (ANAO Recommendation 3); and
  - the correspondence generated by the data-matching process, including a reference to citizens' legal obligation to enrol to vote (ANAO Recommendation 4).
- 2.39 The ANAO sought to validate the AEC's claims that the electoral roll is accurate and reliable by matching data on the electoral roll against the Medicare database. The ANAO concluded:
- that at the close of roll for the November 2001 election, the roll was over 96 percent accurate. The remaining four percent would require additional investigation to confirm their accuracy.<sup>29</sup>
- 2.40 The ANAO Report was the subject of an inquiry by this Committee in 2002.<sup>30</sup>
- 2.41 In that report, the Committee was concerned that the assertion of 96 per cent accuracy by the ANAO was potentially misleading. The Committee reported that:

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28 ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, p. 13.

29 ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, pp. 78-79.

30 JSCEM, *The Integrity of the Electoral Roll: Review of ANAO Report No. 42 2001-2002*, Parliament of Australia, October 2002.

In fact the independent data matching [by the ANAO] established only that the Electoral Roll was accurate to 96 percent as to names and dates of birth, that is, as to individuals entitled to be on it. It did not establish that people defined by name and date of birth were correctly enrolled in the State, the Division or at the address at which they resided. The Committee is of the view that, given the AEC's definition of accuracy, the ANAO should have sought to match not only names and birth dates, but also addresses. In the absence of such matching, the ANAO's conclusion of 96 percent accuracy is not proven.<sup>31</sup>

- 2.42 The Committee also noted that 'assertions that the Roll is 96 per cent accurate do not necessarily imply four per cent inaccuracy.'<sup>32</sup>
- 2.43 A key deficiency identified by the ANAO in the existing CRU process was that not all State and Territory jurisdictions give the AEC similar sets of data, which could be beneficial in the data-matching process.<sup>33</sup> While the Commonwealth data sources provide national information, the ANAO noted that these are not always as effective as State data sources in identifying electors who change address.<sup>34</sup> These State data sources have proven more difficult to access consistently. The ANAO found that only the Fact of Death File was consistently available across all States and Territories.<sup>35</sup> The Motor Transport agencies of Victoria,<sup>36</sup> Queensland, South Australia, the ACT and the Northern Territory provide data for CRU purposes. However, at the time of the ANAO's inquiry, data from NSW, Tasmania and Western Australia were not provided although access was being sought to Tasmanian and Western Australian data. Similarly, only Victoria and Queensland provide Rental Bond data to the AEC for data-matching purposes.<sup>37</sup> Of particular concern is that in the most populous State,

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31 JSCEM, *The Integrity of the Electoral Roll: Review of ANAO Report No. 42 2001-2002*, Parliament of Australia, October 2002, p. xiii.

32 JSCEM, *The Integrity of the Electoral Roll* (2002), as above, p. xiii.

33 ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, pp. 42-44.

34 ANAO, *Integrity of the Electoral Roll: Audit Report No. 42, 2001-02*, Commonwealth of Australia, 2002, pp. 42-43.

35 ANAO, *Integrity of the Electoral Roll* (2002), as above, p. 44.

36 CRU matching and mail-outs with this data source are undertaken by the Victorian Electoral Commission (see ANAO, *Integrity of the Electoral Roll*, as above, p. 44).

37 This inconsistency is significant because these two data sources were identified by the ANAO as being part of an 'optimal suite' of sources (ANAO, *Integrity of the Electoral Roll*, as above, p. 46).

New South Wales, the Fact of Death File is the only State data source available to the AEC for data-matching.<sup>38</sup>

- 2.44 The ANAO concluded that there was ‘scope for the AEC to improve further the completeness of the roll’.<sup>39</sup>

## Issues raised in submissions and AEC responses

- 2.45 A number of submissions argued that there are deficiencies in the processes for maintaining the electoral roll.
- 2.46 For example, the Festival of Light argued that ‘waving the wand of fancy computer technology does not guarantee the integrity of the roll’. It questioned the accuracy of an electoral roll produced on the basis of data-matching, given that the government agency data used to match AEC enrolment records may not always be accurate or complete itself.<sup>40</sup> For example, it asserted that ‘many Australians are not yet on social security data sets’.<sup>41</sup>
- 2.47 In response, the AEC asserted that CRU is an important tool in managing the roll, given that only around 40 per cent of enrolments processed during 2000-01 were the result of the elector advising the AEC in the first instance.<sup>42</sup> The AEC also countered questioning of the roll’s accuracy by citing the ANAO’s conclusion that, ‘overall, the Australian electoral roll is one of high integrity, and ... can be relied on for electoral purposes’.<sup>43</sup>
- 2.48 The Council for the National Interest (Western Australia Committee) commented on the need to ‘amend and improve the Electoral Act’, specifically in relation to the electoral roll, recommending, among other things, that the AEC:
- undertake data-matching with the Australian Bureau of Statistics (ABS) to validate the electoral roll and isolate unregistered inhabitants;
  - undertake biennial habitation surveys to ‘re-check the rolls’; and

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38 ANAO, *Integrity of the Electoral Roll* (2002), as above, p. 44.

39 ANAO, *Integrity of the Electoral Roll* (2002), as above, p. 85.

40 Submission (Festival of Light, no. 71), p 2.

41 Submission (Festival of Light, no. 71), p 2.

42 Submission (AEC, no. 174), p. 7.

43 ANAO, *Integrity of the Electoral Roll* (2002), as above, p. 11. See also AEC, submission no. 174, p. 7.

- receive regular advice from State Registrars of Deaths as to names which should be removed from the roll.<sup>44</sup>
- 2.49 In response, the AEC indicated that it does not data-match names or addresses with specific ABS data because section 13 of the *Census and Statistics Act 1905* prohibits the ABS from releasing personal information that might identify the individuals providing the information.<sup>45</sup>
- 2.50 The AEC noted, however, that the ANAO considered that data-matching of non-specific data from the Census would be beneficial in targeting areas for further CRU activity.<sup>46</sup> The ANAO have suggested that data for Census Collection Districts (which typically contain several hundred electors) be compared with the electoral roll to identify areas of apparent under-enrolment. The AEC made a copy of the electoral roll on census night 2001, so that it could be compared with the data recorded at the same time by the national census.
- 2.51 The ANAO also observed that in 1999 the AEC considered engaging the ABS to evaluate aspects of roll data and suggested that there could be merit in the AEC reviewing this proposal once census data became available.<sup>47</sup>
- 2.52 In relation to the restoration of two-yearly habitation reviews, the AEC viewed these as no longer viable because they were exercises that were:
- highly resource intensive, requiring the employment of thousands of ... officers to visit every habitation in the nation ... [B]ecause of the high mobility of the Australian population, this periodic snapshot of the roll became rapidly dated, particularly around the time of the close of rolls for an election. Further, [these] exercises produced almost 60-70 per cent no-change information every two years. Finally, tensions between the Joint Roll partners arose over when to conduct a [review], with each jurisdiction wanting the [review] as close as possible to their own electoral event.<sup>48</sup>

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44 Submission (Council for the National Interest, no. 103), p. 1.

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

46 Submission (AEC, no.174), p. 19; ANAO, *Integrity of the Electoral Roll* (2002), as above, p. 59.

47 ANAO, *Integrity of the Electoral Roll* (2002), as above, p. 59.

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

- 2.53 The AEC noted that these reviews were similar in scale to the census<sup>49</sup> and that targeted doorknocks may be conducted when anomalies appear in the CRU process.<sup>50</sup>
- 2.54 The AEC's response to the Council for the National Interest's recommendation that the AEC receive advice from State registrars of deaths, was that section 108 of the Electoral Act requires all State registrars of births, deaths and marriages to forward to the AEC at the end of each month the details of all registered deaths in that State.<sup>51</sup>
- 2.55 The Liberal Party recommended that 'as one part of action to deal with the continuing problems with the integrity of the electoral roll', the AEC be required to mail a personalised letter to every person on the roll at a time no more than 12 months before the likely date of the next general election.<sup>52</sup> According to the Liberal Party:
- This would be a significant help in cleaning up the roll when all the undelivered letters returned to the AEC are followed up.<sup>53</sup>
- 2.56 The AEC's response was that such a mail-out, while less costly than the habitation reviews conducted by the AEC prior to the implementation of CRU (estimated at \$5 million rather than \$12 million), would still only capture the movements of the Australian population at a point in time, a snapshot that quickly becomes out-of-date.<sup>54</sup>
- 2.57 The ALP submission highlighted a proposal by the AEC to a previous inquiry – 'direct address change' – as possibly improving the maintenance of the electoral roll.<sup>55</sup> Direct address change would enable an elector's address to be changed without the elector completing an enrolment form, when the AEC received information from another agency that the elector had advised of a change of address.

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49 The 2001 Census of Population and Housing cost \$130,688,000. Australian Bureau of Statistics, *Annual Report 2001-2002*, Commonwealth of Australia, August 2002, p. 168.

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

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

52 Submission (Liberal Party of Australia, no. 149), p. 3.

53 Submission (Liberal Party of Australia, no. 149), pp. 3-4.

54 Submission (AEC, no. 174), p. 38.

55 The AEC proposed the 'Direct Address Change' program in its submission to the 2001 JSCEM inquiry *User Friendly Not Abuser Friendly: Report on the Integrity of the Electoral Roll*. See AEC submission no. 26 to that inquiry.

- 2.58 The AEC originally raised the direct address change proposal in the Committee's inquiry into the integrity of the electoral roll, indicating that the process would involve:
- a complete match of all necessary details with two trusted agencies before any enrolment details were changed;
  - a notification that enrolment details would be changed, once the complete match had been achieved. This would be done by posting a card to the elector; and
  - where the posted cards are not delivered, but returned to the AEC, an AEC investigation of the reasons for this. The investigation would determine the next course of action.<sup>56</sup>
- 2.59 The ALP recommended that the Committee request a report from the AEC on the feasibility of implementing the direct address change proposal, including an assessment of cost, security, suitable data sources, privacy, consultative processes, and legislative and regulatory requirements.<sup>57</sup>
- 2.60 The AEC was supportive of the direct address change proposal, as it believed efficiencies could be gained in the processing of enrolments.<sup>58</sup> In its submission, the AEC noted the potential benefits for elderly and infirm people who move into assisted care facilities. Many of these people find, at election time, that they are not correctly enrolled, and 'find it very stressful to be queried by electoral officials regarding where they may be enrolled'.<sup>59</sup> The AEC has however conceded that it has not yet identified agencies that could be used as 'trusted agencies' for the purposes of direct address change, and noted that it would be 'cautious' in developing a list of such agencies.<sup>60</sup>
- 2.61 A submission from Mr Brun asserted that the current enrolment system would never produce a totally accurate electoral roll, and proposed a new system which would create the electoral roll after an election was called by data-matching government records (for example, Medicare, Centrelink, and DIMIA records). After production

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56 Submission (AEC, no. 198), p. 14.

57 Submission (Australian Labor Party, no. 153), p. 10.

58 Submission (AEC, no. 174), pp. 47-48.

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

60 Submission (AEC, no. 198), p. 14.

of the roll in this way, a nation-wide mail-out would notify individuals of their enrolment details.<sup>61</sup>

- 2.62 The AEC response focused on the limitation of the databases Mr Brun referred to, submitting:

While Medicare and ATO data may be relatively comprehensive in terms of the number of people covered, the addresses on these databases are not likely to be as up to date as those on the roll ... Centrelink and motor registry data would not be comprehensive enough to ensure that the details of everybody with an entitlement to vote were contained on the databases. All of the databases would contain data on people who would not be eligible to vote, such as non citizens, which would need to be cleansed in order to produce an accurate roll.<sup>62</sup>

## Committee views and recommendations

- 2.63 The implicit premise of some of the submissions was that the current roll management practices allow significant electoral manipulation. The Committee's view is that there have been a limited number of demonstrated individual manipulations of the roll, for instance those investigated by the Shepherdson Committee in Queensland and by this Committee's predecessor in its 2001 inquiry into the integrity of the electoral roll. There is however no persuasive evidence that the electoral roll has been manipulated to change the outcome in a single federal Division, let alone a federal election. As acknowledged in the Committee's 2001 report, the number of false enrolments uncovered by both the AEC and the Shepherdson Inquiry was not large and 'occurred over a span of many years in diverse geographical locations'.<sup>63</sup> The report cited the evidence of Professor Colin Hughes who noted that:

the possibility of overturning a general election result and ejecting the elected government through a by-election whose outcome was influenced by fraudulent enrolments has not occurred at the federal level.<sup>64</sup>

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61 Submission (Mr P. Brun, no. 133), pp. 1-3.

62 Submission (AEC, no. 174), p. 25.

63 JSCEM, *User Friendly, not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. 18.

64 JSCEM, *User Friendly, not Abuser Friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. 18.

- 2.64 Equally the Committee believes that more needs to be done to demonstrate that the CRU process does deliver a roll of even higher integrity and completeness. In particular, the Committee reiterates its views that the ANAO report on the integrity of the electoral roll did not demonstrate that the roll had a high degree of integrity with respect to people entitled to vote being enrolled at the correct address, because this was not examined except in a small number of cases. Indeed, in these cases where enrolment addresses were matched against motor registration records, there was a significant rate of mismatch.
- 2.65 The Committee considers that there is significant room for delivering improved outcomes in terms of electoral roll accuracy, validity and integrity. This was a principal theme in the Committee's recent report: *The Integrity of the Electoral Roll – Review of ANAO Report no. 42 2001-02*. In that report the Committee made a number of recommendations aimed at improving (among other things) the AEC's management of the electoral roll to enhance the accuracy and integrity of the roll. It recommended that the AEC:
- conduct periodic, random spot checks of enrolment details at a sample of addresses to test whether the CRU process is working effectively in maximising accuracy of enrolment details;
  - test the integrity of the electoral roll by conducting a total habitation review of a sample electoral Division in a State which has not had an election in the preceding 12 months;
  - set a target for electoral roll validity and use this target as a performance indicator in its Portfolio Budget Statements and report its performance in its annual reports;
  - set a target for electoral roll accuracy, embracing accurate name, birth date, and address and use this target as a performance indicator in its Portfolio Budget Statements and report its performance in its annual reports;
  - provide the Committee with annual progress reports on the development and implementation of national standards for updating the electoral roll, and a timetable for the implementation of a consistent national CRU program;
  - conduct negotiations with State and Territory agencies to ensure that it has optimal access to relevant CRU data sources in all States and Territories; and



- consider whether Joint Roll Arrangements should be modernised to take into account the CRU process, as the Arrangements do not currently include agreements on the provision of data for CRU purposes.<sup>65</sup>
- 2.66 The Committee is awaiting the Government's response to these recommendations. The Committee considers that, if implemented, these recommendations will address a number of the concerns regarding the accuracy of the electoral roll raised in submissions to this inquiry.
- 2.67 The Committee believes that the implementation of these recommendations would give some greater reassurance to Australians as to the integrity of the electoral roll.
- 2.68 Proposals put to the inquiry which are not covered specifically by existing Committee recommendations include:
- The Council for the National Interest's proposal for two-yearly habitation reviews;
  - The Liberal Party of Australia's proposal that the AEC conduct a mail-out to all electors 12 months prior to an election;
  - The Council for the National Interest's recommendation that the AEC conduct data-matching with ABS statistics;
  - The ALP suggestion that the AEC report to the Committee on the feasibility of implementing direct address change;
  - Mr P. Brun's proposal that the electoral roll be compiled from government records after an election is called.
- 2.69 The Committee's views on these issues are as follows:
- While the opportunity costs of supplementing the CRU process with two yearly habitation reviews are too high to be contemplated, the proposal for a systematic two yearly mail-out would be a worthwhile addition to the CRU process. However, given the cost of this proposal, further consideration should be deferred until after the implementation of the Committee's 2001
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65 The Joint Roll Arrangements set out financial arrangements between the AEC and State/Territory electoral authorities, for payment for collection of data and maintenance of joint electoral rolls. The extent of the Joint Roll Arrangements differs between the States; Victoria and Western Australia maintain separate State electoral rolls, although the Commonwealth has a joint enrolment procedure (a common enrolment form) with each of those two States. See JSCEM, *The Integrity of the Electoral Roll: Review of ANAO Report No. 42 2001-02*, Parliament of Australia, October 2002, Recommendation nos. 6-9.

recommendations provide a gauge of the magnitude of potential deficiencies in the existing system.

- Using ABS data should be pursued through the proposed comparison of non-specific 2001 census data with the electoral roll, and the possible engagement by the AEC of the ABS to evaluate aspects of the roll.
- Direct address change systems contain an inherent potential for inaccurate outcomes, when the elector is not directly involved in the process and, as noted by the Committee, should only be contemplated after careful consideration by the AEC.<sup>66</sup>
- Construction of an electoral roll from other government records at the time an election was called would be a far less efficient method of compiling the electoral roll than the current processes, impractical to achieve in the time envisaged, and unlikely to result in a more accurate, complete or valid roll.

### Proof of identity

- 2.70 The second significant issue that arose in relation to the integrity of the roll concerns proof of identity of electors at enrolment. This has been contentious for a number of years, and understandably so. It is a pivot of the tension between the demand for accessibility of enrolment to ensure that all entitled people are reasonably able to enrol, and the demand that the roll have unquestioned and publicly recognised integrity.
- 2.71 To enrol to vote under the current provisions, individuals must complete an enrolment form and must have the form signed and dated by a witness (who is eligible to be on the roll but who need not actually be enrolled) declaring that he or she saw the applicant sign the form and is satisfied that all statements made by the applicant are correct.<sup>67</sup>
- 2.72 There is substantial agreement that the verification of identity on enrolment should be more rigorous. This agreement is premised on

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66 JSCEM, *The Integrity of the Electoral Roll: Review of ANAO Report No. 42 2001-02*, Parliament of Australia, October 2002, p. 29.

67 See Electoral Enrolment Form, at: [http://www.aec.gov.au/\\_content/what/enrolment/forms/act.pdf](http://www.aec.gov.au/_content/what/enrolment/forms/act.pdf), accessed 15 February 2003. The content of the form itself is not enshrined in legislation, copyright excepted. Paragraph 98(2)(a) of the Electoral Act refers to the 'approved form' ie, made by notice in the Gazette.

an understanding that the system, as it currently operates, is open to abuse. It is vital not only that the system have integrity, but that it be seen to have integrity.

- 2.73 However, there are differences about how to achieve this. The Committee believes that the time has come to seek to achieve a constructive, consensual resolution on this point. Three issues are significant in this regard.
- 2.74 The first issue is that there have been a limited number of cases where it has been established that the roll has been manipulated. The evidence is that these were limited manipulations directed at influencing internal preselection processes in one political party. The Shepherdson Inquiry found that there is no evidence that they were designed to manipulate the outcome of a federal election in any seat.<sup>68</sup> Nevertheless, they did prove that the roll is capable of being manipulated if people are sufficiently motivated to do so.<sup>69</sup> Accordingly, stronger barriers are needed to prevent such manipulation, and to reassure the public that roll manipulation cannot compromise the outcome of federal elections.
- 2.75 Given this, the second issue is whether existing or proposed proof of identity processes would prevent or deter such manipulations, and whether new initiatives are necessary.
- 2.76 The third issue is addressing the tension between the requirements for proof of identity to enrol and maximising the commitment to having all entitled Australians vote. The Committee believes that this depends on proof of identity requirements on enrolment being congruent with proof of identity requirements that exist in Australian society at large. To frame this issue crudely, the question is whether it is acceptable in principle, and conducive to public confidence in the integrity of the electoral roll, if enrolling to vote requires less proof of identity than hiring a video or DVD from a video store?

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68 Queensland Criminal Justice Commission, *Shepherdson Inquiry: An investigation into electoral fraud*. CJC, Brisbane, April 2001, p. XIV.

69 For example enrolments may be made fraudulently, with the intention of improperly manipulating voting in a particular electoral Division, by a person deliberately enrolling: him or herself at an incorrect or false address; a non-existent person at an address; or another person at a real or false address. See JSCEM, *User Friendly, Not Abuser Friendly, Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. 13. See also Legislative Assembly of Queensland Legal, Constitutional and Administrative Review Committee, *Inquiry into the prevention of electoral fraud: Issues Paper*, Parliament of Queensland, September 2000, p. 13; and Submission (Festival of Light, no. 71), p. 4.

### Arguments for and concerns about more rigorous identity checks on enrolment

- 2.77 Several submissions to this inquiry favoured the introduction of more stringent proof-of-identity measures than are currently required.<sup>70</sup> Such arguments were based on the three key concerns:
- that there is potential for the system to be abused and thereby undermined;<sup>71</sup>
  - that confidence in the system is undermined by perceptions of the potential for abuse, whether or not it is being abused;<sup>72</sup> and
  - that it is inappropriate that proof of identity requirements on enrolment are lax in comparison with other transactions which are equally or less important.<sup>73</sup>
- 2.78 One proposal is that applications for enrolment be required to be made in person at an AEC office.<sup>74</sup>
- 2.79 Other proposals for strengthening proof of identity requirements do not require enrolment in person. For example, the ALP's submission noted the 'genuine merit' of a proposal for proof of identity by requiring drivers' licence numbers to be included on enrolment forms.<sup>75</sup> Under the proposal (which the ALP attributed to the Victorian Government), those applying for enrolment would be required to provide their driver's licence number on the enrolment form. Those without a driver's licence would need to have their enrolment declaration witnessed by a person who did hold a current licence. That witness would include their licence number on the enrolment form. Verification would rely on data-matching with State and Territory licence agencies' data.<sup>76</sup>
- 2.80 Concerns have been raised that proposed additional proof-of-identity requirements would have disenfranchised certain potential electors

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70 The submission from the Liberal Party of Australia specifically endorsed the scheme proposed under the *Electoral and Referendum Amendment Regulations 2001 (No. 1)*, which were disallowed in the Senate (see paragraphs 2.90 to 2.91).

71 Submission (The Hon C Gallus MP, no. 162), p. 1.

72 See for example Submission (Salt Shakers, no. 135), p. 2 and Submission (Liberal Party of Australia, no. 149), p. 2.

73 See for example Submission (Festival of Light, no. 71), p 1.

74 See Submission (Festival of Light), no. 71.

75 Submission (ALP, no. 153), p. 7.

76 Submission (ALP, no. 153), p. 9.

(notably homeless people, Aborigines and Australians living in remote areas) but would not have stopped fraud.<sup>77</sup>

- 2.81 On the other hand, proponents of more stringent identification requirements argue that some inconvenience is the cost of protecting many institutions from fraud, and that, with education, people will accept that such checks are needed.<sup>78</sup>

#### Previous recommendations to introduce identification requirements

- 2.82 In a chapter on 'electoral integrity' in its Report on the 1996 federal election, this Committee's predecessor recommended that verification of identity on enrolment be made more rigorous in two respects, namely the witnessing of enrolment forms and provision of documentary proof of identity. It noted '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 ... lesser transactions', for example, opening a bank account, or applying for a passport, a driver's licence, or social security benefits and that this was 'unacceptable'.<sup>79</sup>
- 2.83 The Committee considered that 'the witnessing portion of the Electoral Enrolment Form should be upgraded into a proof of identity declaration', to be completed by a witness who is a member of a prescribed class of persons like those eligible to sign passport applications. It recommended that the AEC nominate the classes of persons eligible to be witnesses to the upgraded proof of identity declaration, taking into account the situation of people who would face unusual difficulties finding a witness. The Committee also recommended that witnesses be required to actually be on the electoral roll.<sup>80</sup>

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77 Submission (ALP, no. 153), p. 7, referring to amendment Act and Regulations discussed below.

78 Anticipating that people would argue that more stringent identification checks would be 'unnecessarily cumbersome and costly and would discourage many people from enrolling', a submission which favoured more stringent identification requirements, counter-argued that, while the system might cause some inconvenience, people accept the need for identity checks for other transactions such as getting a driver's licence, and that '[t]his is the price we willingly pay for protecting many institutions in our society from fraud', submission (Festival of Light, no. 71, p. 1). Another submission similarly argued that, with education, people would accept that identity checks were necessary, submission (Salt shakers, no. 135, p. 2).

79 JSCEM, *The 1996 Federal Election: Report on the Inquiry into the Conduct of the 1996 Federal Election and matters related thereto*, Parliament of Australia, June 1997, p. xvii.

80 JSCEM, *The 1996 Federal Election: Report on the Inquiry into the Conduct of the 1996 Federal Election and matters related thereto*, Parliament of Australia, June 1997, p. 7. In comments

- 2.84 On documentary evidence of identity, the Committee recommended the Electoral Act require a person enrolling or re-enrolling to 'produce at least one original item of documentary proof of identity', or, where no other acceptable document is available, a written reference.<sup>81</sup>
- 2.85 The implication of this recommendation was that applicants would have to enrol in person. In its submission to the 1996 federal election inquiry, the AEC discussed various methods of electors providing proof of identity when enrolling, including electors appearing in person at AEC electoral offices. The AEC identified two separate steps in a personal enrolment process:
- at interview, the applicant would be required to produce documentary evidence of eligibility to the electoral officer; and
  - the electoral officer would examine the documentary evidence and decide whether or not to enrol the person. This decision would be based on either a formal hierarchy of categories of documents, or an evaluation based on the Department of Foreign Affairs' more flexible method for issuing passports.<sup>82</sup>
- 2.86 The AEC's submission to the 1996 inquiry indicated that between 1995 and 1996, 2,238,701 personal interviews would have been required, equating to over 50 interviews per Divisional office per working day. The AEC concluded that this would require significant augmentation of current AEC staffing.<sup>83</sup>
- 2.87 In the 1996 Report, the Committee acknowledged that requiring original copies of documents would limit the 'enrolment by mail' system, increasing the load on AEC Divisional staff. The Committee envisaged that an agency such as Australia Post would serve as an additional enrolment agency, with 'alternative arrangements' to be devised for enrolments in remote areas. The Committee recommended that these issues be addressed by the AEC in an 'implementation plan'.<sup>84</sup>

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immediately before this recommendation, also at page 7, the Committee stated: 'To allay possible concerns in Aboriginal communities the list of eligible witnesses should include members of Aboriginal community councils and other such bodies.'

81 JSCEM, *The 1996 Federal Election* (1997), as above, p. 9.

82 AEC submission to the 1996 JSCEM Inquiry: See JSCEM, *The 1996 Federal Election* (2002), as above, p. 8.

83 Submission (AEC, no. 174), pp. 7-8.

84 JSCEM, *The 1996 Federal Election*, as above, p. 9. Recommendation 1 of the Report was 'that the AEC prepare a comprehensive implementation plan on the Committee's proposed measures to improve the integrity of the enrolment and voting process' (at p.7).

- 2.88 The AEC's subsequent *Electoral Reform Implementation Plan* expressed reservations as to the impact on AEC offices of requiring people to produce original documentation in person, and noted that the use of enrolment agencies other than the AEC was not viable.<sup>85</sup> The Plan stated that the alternative proposal for an approved witness to verify identity at least had the advantage that original identity documents would not need to be sent to the AEC, 'eliminating the bottleneck of having to sight, copy (possibly)/record, and return original documents'.<sup>86</sup>
- 2.89 The Government Response to the 1996 federal election report supported the recommendation that electors be required to provide proof of identity. However, the Response also stated that 'the amendment should only apply to new enrolments'.<sup>87</sup>

***Electoral and Referendum Amendment Act (No. 1) 1999***

- 2.90 A modified version of the amendments recommended in the Report on the 1996 federal election was contained in the *Electoral and Referendum Amendment Act (No. 1) 1999*. The Act was passed,<sup>88</sup> and most of its provisions have commenced. However, the provisions relating to proof of identity at enrolment (namely Schedule items 10, 11 and 12) have not come into effect. This is because those provisions were to commence on a date to be fixed by proclamation,<sup>89</sup> which the Government, to date, has not done.
- 2.91 The Government decided not to proclaim schedule items 10 to 12 until the regulations containing detailed provisions for the operation of the proof of identity requirement (including the classes of witnesses and types of documents) were accepted by Parliament.<sup>90</sup>

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85 AEC, *Electoral Reform Implementation Plan*, submitted to the Committee on 9 March 1998, paragraphs 2.2.1 to 2.2.20.

86 AEC, *Electoral Reform Implementation Plan*, paragraph 2.2.20.

87 Government Response to the JSCEM report: *The 1996 Federal Election*, tabled 8 April 1998, p. 2.

88 The Opposition did not support the Bill. In the Senate, the Act passed with the support of Senator Brian Harradine. See Senate Journal SJ No. 188, 30 June 1998, p. 4115.

89 Section 2 of the *Electoral and Referendum Amendment Act (No. 1) 1999* provides that, with specified exceptions, the Act commences on the day on which it receives the Royal Assent. The first exceptions are items 1-9, which the Act states are to commence on the 28<sup>th</sup> day after the day on which the Act receives Royal Assent. The second exceptions are items 10, 11 and 12 – the proof of identity provisions – which commence on a day to be fixed by Proclamation. The Governor-General gave the Act Royal Assent on 13 October 1999: Senate Journal SJ No. 81, 19 October 1999, p. 1935.

90 Advised in AEC correspondence to secretariat, 21 February 2003. Regulations are not required to be passed by the parliament, but they are required to be tabled, and may be

The *Electoral and Referendum Amendment Regulations 2001 (No. 1)* (the Regulations) contained the detailed arrangements for the proof of identity scheme under the *Electoral and Referendum Amendment Act (No. 1) 1999*, for example what documents could be used to verify identity and which classes of people could witness enrolment forms. The Regulations were introduced by the Government in 2001,<sup>91</sup> but disallowed in the Senate on 15 May 2002 on the motion of the Leader of the Opposition in the Senate, Senator Faulkner.<sup>92</sup>

**Verification of identity under the *Electoral and Referendum Amendment Act (No. 1) 1999* and the *Electoral and Referendum Amendment Regulations 2001 (No. 1)***

- 2.92 Had the *Electoral and Referendum Amendment Act (No. 1) 1999* and relevant regulations come into effect, they would have introduced more onerous requirements for witnessing of enrolment forms, and a requirement for documentary proof of identity on enrolment.
- 2.93 Two main distinctions can be drawn between the recommendations of the report on the 1996 federal election and the amendments contained in the *Electoral and Referendum Amendment Act*:
- the amendments requiring verification of identity would only apply to new enrolments with the amendments affecting witnessing of enrolment forms applying to all enrolments, re-enrolments and transfers of enrolments; and
  - the amendments would retain the existing ‘enrolment by mail’ system, rather than requiring electors to produce original documents in person.

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disallowed by the parliament within 15 sitting days after tabling (unless a different time is prescribed in the enabling Act). If they are not disallowed in that time, they are taken to be accepted by the parliament.

91 *Electoral and Referendum Amendment Regulations 2001 (No. 1)*, Statutory Rules 2001 No. 248. Senate Journal SJ No. 211, 18 September 2001, p. 4856.

92 The ALP and Australian Democrats voted together to disallow the regulations. See Senate Journal SJ No. 12, 15 May 2002, p. 351. The reasons for the disallowance given by the ALP and the Australian Democrats are discussed in paragraphs 2.107 and 2.108.



*Witnessing*

- 2.94 Under the Electoral Act currently, a claim for enrolment:
- shall ... be attested to by an elector or a person entitled to enrolment, who shall sign the claim as witness in his or her own handwriting.<sup>93</sup>
- 2.95 The amendments would limit the people who could attest a claim for enrolment, re-enrolment or transfer of enrolment, to 'elector[s] in a class of persons prescribed by the regulations'. This would limit the potential witnesses in two respects, to people who are:
- actual electors (not merely people entitled to be enrolled); and
  - within one of the classes specified in a new schedule to the Regulations.
- 2.96 The relevant schedule, Schedule 4, is a list of 41 classes of people who can attest claims for enrolment. The list includes:
- Accountants who are registered tax agents;
  - Commissioners for affidavits, declarations and oaths;
  - Diplomatic and consular officers;
  - Employees of community, ethnic or remote resource centres who counsel or assist clients as part of their duties;
  - Commonwealth, State and Territory employees;
  - Teachers;
  - Liquor licensees;
  - The ground staff of airlines; and
  - A person who is not described in a preceding item in [the] Schedule who is authorised in writing by at least 3 persons described in items in the Schedule.<sup>94</sup>
- 2.97 Schedule 4 of the Regulations is reproduced in full in Appendix D.

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93 Electoral Act, subsection 98(2), paragraph (c). The AEC form requires the witness to sign under the statements: 'I saw the applicant sign this form. I am satisfied that all statements in it are true.' The legal status of this form is outlined in footnote no. 67. All States and Territories use the same enrolment form (see [http://www.aec.gov.au/\\_content/what/enrolment/forms.htm](http://www.aec.gov.au/_content/what/enrolment/forms.htm) , accessed 2 May 2003.

94 *Electoral and Referendum Amendment Regulations 2001 (No. 1)*, Statutory Rules 2001 No. 248.

- 2.98 The Regulations also provide that where no person in one of the specified classes is available an elector who is not related to the person making the claim, and who is approved by the relevant Australian Electoral Officer or DRO, could attest to a claim for enrolment.

*Documentary verification of identity*

- 2.99 In addition to the strengthened witnessing requirements, the amendments to the Electoral Act would introduce a requirement for verification of identity of first-time enrolees.<sup>95</sup> The disallowed Regulations provided for identity to be verified by:

- providing to the AEC an original document of a specified type; or
- showing such a document to a person in one of the specified classes of witnesses (see paragraph 2.96 above), and having the person state on the enrolment form that they are satisfied as to the applicant's identity.<sup>96</sup>

- 2.100 Thirteen forms of documentary identification were specified in the *Electoral and Referendum Regulations 2001 (No. 1)*, namely:

- Birth certificate or extract of birth which is at least five years old;
- Australian Defence Force discharge document;
- Australian marriage certificate;
- Certificate of Australian citizenship;
- Current Australian driver's licence or learner driver's licence;
- Current Australian passport;
- Current Australian photographic student identification card;
- Current concession card issued by the Department of Veterans' Affairs;
- Current identity card showing the signature and photograph of the card holder, issued by his or her employer;
- Current pensioner concession card issued by the Department of Family and Community Services;

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<sup>95</sup> *Commonwealth Electoral Act 1918*, subsection 98(2A) (inserted by the *Electoral and Referendum Amendment Act (No. 1) 1999*, but not yet proclaimed).

<sup>96</sup> *Electoral and Referendum Amendment Regulations 2001 (No. 1)*, Statutory Rules 2001 No. 248, Schedule 1, item 12 (disallowed).

- Current proof of age card issued by a State or Territory authority;
  - Decree *nisi* or a certificate of a decree absolute made or granted by the Family Court of Australia; and
  - Document of appointment as an Australian Justice of the Peace.<sup>97</sup>
- 2.101 The Regulations also provided for a final ‘catch-all’: ‘a document ... that is accepted by the Electoral Commission as evidence of the identity of a person’.<sup>98</sup>
- 2.102 When a person could not verify his or her identity using one of the specified documents, the Regulations provided for that person to verify their identity by providing a written reference to the relevant Australian Electoral Officer or DRO.<sup>99</sup> The referee was to:
- be an elector; and
  - have known the applicant for at least one month; and
  - be:
    - ⇒ a person within a class of persons listed in Schedule 4 of the Regulations; or
    - ⇒ a person ‘who the Australian Electoral Officer or DRO is satisfied is a community leader or representative of a community organisation’; or
    - ⇒ a person ‘who is approved in writing by the Australian Electoral Officer, or the DRO, as a referee for the purposes of the particular claim’.<sup>100</sup>
- 2.103 The reference was to include the referee’s name and address, state that the referee had known the person making the claim for at least one month, and state the referee’s qualification to give the reference (for example, state which of the specified classes of people the referee is in, or include evidence that the person is a community leader).<sup>101</sup>

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97 *Electoral and Referendum Regulations 2001 (No. 1)*, Schedule 5, items 501 to 513 inclusive (disallowed).

98 *Electoral and Referendum Regulations 2001 (No. 1)*, Schedule 5, item 514 (disallowed).

99 *Electoral and Referendum Regulations 2001 (No. 1)*, Schedule 1, item 12 (disallowed).

100 *Electoral and Referendum Regulations 2001 (No. 1)*, Schedule 1, item 13(3) (disallowed).

101 *Electoral and Referendum Regulations 2001 (No. 1)*, Schedule 1, items 13(4)(a)(b) and (e) (disallowed).

*Responses to the scheme proposed under the Electoral and Referendum Amendment Act (No. 1) 1999*

- 2.104 The Committee reporting on the conduct of the 1998 federal election noted the recommendations in the report on the 1996 federal election regarding witnessing and enrolment, and stated that they had been given effect by the *Electoral and Referendum Amendment Act (No. 1) 1999* although the provisions had not yet been proclaimed. That Committee recommended that the AEC report on the actual or potential impact of these changes.<sup>102</sup>
- 2.105 The majority of the Committee reporting in May 2001 on the integrity of the electoral roll (the *User friendly, not abuser friendly* Report) recommended the implementation of the *Electoral and Referendum Amendment Regulations 2000* 'to alleviate public concerns about the potential for enrolment fraud and restore public confidence in the integrity of the roll'.<sup>103</sup> However, the minority report by the ALP members of that Committee opposed this recommendation and the Regulations on the basis that they would 'discourage and frustrate the genuine enrolment of many voters ... [and] have little or no effect on the problem of fraudulent enrolments.'<sup>104</sup>
- 2.106 There was also doubt as to whether the provisions would have prevented known cases of electoral manipulation. The closing submission of Mr Russell Hanson QC to the Queensland CJC's Shepherdson Inquiry (as cited in the Minority report of the *User friendly, not abuser friendly* report), made this point:

The evidence suggests that in the vast majority of detected cases of false enrolment, a requirement for the person when initially enrolling to provide more detailed proof of identity would have had little impact on the conduct disclosed. It was at the point of change of enrolment that the possibility arose of false details being provided. The evidence is overwhelming that persons had originally been lawfully enrolled at an address at which they resided. Being lawfully enrolled,

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102 JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Parliament of Australia, June 2000, pp. 17-18.

103 JSCEM, *User friendly, not abuser friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, pp. 44-45.

104 JSCEM, *User friendly, not abuser friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, p. 99. The Australian Democrats members of the Committee did not make a dissenting report but made 'Supplementary remarks' on the fact that the party had 'a larger agenda on matters of electoral law and practice': see report p. 112.

sometimes for many years, it is alleged they changed their enrolment to a false address to enable them to vote at a particular plebiscite.<sup>105</sup>

2.107 As noted in paragraph 2.91 above, the Opposition moved a motion in the Senate that the Regulations be disallowed, and that motion was carried. The Opposition's arguments for the disallowance were essentially that:

- the Government's proposals were unnecessarily bureaucratic and could potentially disenfranchise sections of the electorate, in particular, young people, the homeless and those living in remote areas;
- all States and Territories objected to the regulations on the basis that these would create differential rolls across the three levels of government; and
- the proposals would not necessarily improve the integrity of the electoral roll.<sup>106</sup>

2.108 Despite the view that 'tightening the roll is advantageous ... and minimising the opportunity for fraud is desirable',<sup>107</sup> the Australian Democrats supported the Opposition's motion in the Senate. This was primarily on the basis of their view that a Joint Roll (between the Commonwealth and the States and Territories) is highly desirable and there was a fear that the Joint Roll Arrangements would be at risk under the proposed changes. The Australian Democrats Senators also expressed concerns about people not enrolling under the new scheme. However, the Australian Democrats suggested a trial of these regulations with a sunset clause, with a view to obtaining an independent report evaluating whether the scheme improved the integrity of the electoral roll, and what the benefits and shortcomings of the scheme were.<sup>108</sup>

2.109 As alluded to by the Australian Democrats, the proposed changes to proof of identity at enrolment did concern State and Territory governments. The AEC reported that there was the possibility of State

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105 Cited in JSCCEM, *User friendly, not abuser friendly*, as above, p. 100.

106 Senator J. Faulkner, *Parliamentary Debates – Senate Official Hansard*, No. 4 2002, 15 May 2002, p. 1608.

107 Senator A. Murray, *Parliamentary Debates – Senate Official Hansard*, No. 4 2002, 15 May 2002, p. 1610.

108 Senator A. Murray, *Parliamentary Debates – Senate Official Hansard*, No. 4 2002, 15 May 2002, p. 1610. See also Senator A. Bartlett, *Parliamentary Debates*, as above, p. 1623.

and Territory governments refusing to progress legislation to introduce corresponding requirements into State and Territory enrolment processes, and of a consequent breakdown of Joint Roll Arrangements.<sup>109</sup> (See footnote 65 for an explanation of these Arrangements.)

- 2.110 The majority report of the *User friendly, not abuser friendly* report by this Committee's predecessor also referred to the threat to the Joint Roll Arrangements. The majority urged State and Territory cooperation, but said that the Commonwealth should implement the regulations even if that meant that separate State and Territory electoral rolls would be established or re-established.<sup>110</sup>

#### Committee comment

- 2.111 The dilemma facing the Committee is not whether there is a need for greater proof of identity for enrolment, but how to achieve this. The electoral roll is the bridge to the exercise of a person's right to vote. The Committee considers that it should not be open to people to undermine confidence in the electoral system with the valid assertion that the identification requirements to get onto the electoral roll are less onerous than, for example, the identification requirements for becoming a member of a video library.
- 2.112 The constraints on verification of identity are those of administration, inclusiveness, acceptability and effectiveness. What type of scheme is it reasonable to expect the AEC to implement and manage? What form of identification can be required that those who are entitled to vote can reasonably produce that does not raise the bar to people entitled to vote so high that they feel that it is not commensurate with what is required in other spheres? What requirements can be

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109 AEC, *Status Report on progress of JSCEM recommendations from the Inquiry into the 1996 federal election, April 2002*, p. 1. See also AEC submission no. 199, p. 12. In 2000 the Queensland Parliament's Legal, Constitutional and Administrative Review Committee did not endorse the proposed changes and recommended that the Queensland Government consider the re-establishment of a separate Queensland Electoral Roll. See Legal, Constitutional and Administrative Review Committee, *Report No. 19: Implications of the new Commonwealth enrolment requirements*, March 2000, available at: <http://www.parliament.qld.gov.au/comdocs/legalrev/lcar019.pdf>, accessed 16 February 2003. There were other informal reports of State Governments' refusal to implement complementary legislation. See 'ACT set to adopt tougher electoral processes', *The Canberra Times*, 3 December 1999 and 'Fewer teens tipped to vote under new law', *The West Australian*, 8 December 1999.

110 JSCEM, *User Friendly, not abuser friendly*, as above, p. 44. The Minority report of Mr Laurie Ferguson MP, Senator the Hon John Faulkner, and Mr Robert McClelland MP, did not address the Joint Roll Arrangements.

implemented which will in any way counter any potential for manipulation?

- 2.113 Established cases of electoral manipulation have been achieved primarily through changes to existing enrolments rather than new enrolments, and by using a false address rather than a false personal identity, as noted in paragraph 2.106 above. Accordingly, the Committee considers that verification of both name and address identity, by providing documentary identification, should be required for all enrolment transactions, that is, re-enrolments and applications to change enrolment details, as well as enrolments to vote for the first time.
- 2.114 The provisions of the *Electoral and Referendum Amendment Act (No. 1) 1999* to introduce identification requirements to verify name and address were straightforward. However, the regulations that provided the detail of the identification requirements were complex and somewhat unwieldy, demonstrating the difficulty of maximising integrity while ensuring inclusiveness and accessibility.<sup>111</sup>
- 2.115 The Committee considers that these objectives can be achieved with a more straightforward scheme whereby:
- primarily, verification of name and address would be achieved using drivers' licences;
  - the AEC would have discretion to accept another document or combination of documents to verify name and address identity (for example a passport and a utility bill showing address);
  - where a person could not verify their name and identity with such documents, they could obtain, from an existing elector, a written reference verifying the applicant's identity; and
  - photocopies of documents would be acceptable, thereby removing the requirement for enrolment in person or sighting an original document by an authorised witness.
- 2.116 It is estimated that over 90 per cent of Australians over 18 have some form of driver's licence.<sup>112</sup> (This is a strength of the scheme described

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111 See submission (AEC, no. 199), pp. 12-15.

112 There were 13.6 million motor vehicle licences issued as at June 2002. This number includes learner's permits and various classes of driver's licences such as heavy and ordinary vehicle licences (see ABS, *Yearbook Australia 2003: Transport Licenced Operators*, at <http://www.abs.gov.au/ausstats/abs@.nsf/0/F4BA5462D9DE9ECCCA256CAE00162687?Open&Highlight=0,licences#Links>, accessed 2 May 2003.) There were 14.8 million adult

in the ALP's submission noted in paragraph 2.79.) Drivers' licences in all Australian States and Territories show the licence-holder's name and address. Accordingly, the name and address identity of the vast bulk of electors will be able to be verified using a single type of document – one which is very commonly accepted as verification of identity in other transactions in the community, and whose value as a form of identification for enrolment is implicit in the *Electoral and Referendum Amendment Regulations 2000* introduced by the Government, and in the ALP's submission to this inquiry.

- 2.117 However, an alternative means of verifying the identity of people who do not have a driver's licence is required to prevent them being disenfranchised. The Committee considers that it is appropriate for the AEC to have discretion to accept another document or documents as verification of identity (as was provided in the Regulations under *Electoral and Referendum Amendment Act (No. 1) 1999*). For example, a person may be able to verify their identity with a student identification card, a passport, a concession card issued by the Department of Veterans' Affairs or the Department of Family and Community Services. Some of these alternative forms of identification may not verify the person's address, and in such cases, the applicant must produce another document which verifies the person's address, for example an electricity, gas or telephone bill from within the last three months.
- 2.118 This discretion to accept documents other than drivers' licences would be likely to accommodate a very significant proportion of the relatively small number of applicants without a driver's licence. However, there is likely to be a small proportion of people who do not have sufficient documentary identification, or are unable to obtain copies of such documentation to send with their enrolment form. The Committee considers that it should be acceptable in such circumstances for a person to verify their identity with a written reference given by any two persons on the electoral roll who can confirm the person's identity and current residential address. It is envisaged that this would address difficulties which might otherwise be encountered by, for example, young people and people living in remote areas. Substantial penalties may be prescribed for a false claim by a witness or for a false claim by an enrollee that they are unable to



- produce primary forms of identification (that is, a drivers' licence or other document).
- 2.119 It is impractical to require universal enrolment in person using original documents. People enrolling in person at an AEC office should be required to show their documents to an AEC officer. People enrolling by mail should be required to send a photocopy of their documents with their application form. The AEC officer who sights the original of the documentary evidence of a person's identify, or who receives the copy of such documents or a written reference as to a person's identity, would be required to satisfy themselves that the name and address details on the application form match the name and address on the identification or reference.
- 2.120 The Committee acknowledges the possibility that documents, and particularly photocopies of documents, may be forged or manipulated.<sup>113</sup> Nevertheless, introducing a requirement for documentary verification of name and address will make the enrolment system more difficult to manipulate and improve public confidence that this is the case.
- 2.121 The Committee considers it appropriate that a person may only witness an enrolment form if that person is enrolled to vote. However, given the safeguards that would be instituted by the scheme the Committee recommends, the Committee considers that the proposal to limit witnesses to specified classes of electors would be superfluous.
- 2.122 Finally, in view of the level of debate on this issue, the Committee considers it appropriate that this verification of identity scheme be introduced with a three-year sunset clause. This would provide an opportunity for the scheme's efficacy to be evaluated, and a well-informed and considered determination to be made as to whether it should be made permanent.

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113 For example, in a study conducted by Westpac and the NSW Registry of Births, Deaths and Marriages over a period of four to five weeks, 13 per cent of birth certificates presented to the bank as part of identification documentation were found to be false. See House of Representatives Standing Committee on Economics, Finance and Public Administration, *Numbers on the Run: Review of the ANAO Audit Report No. 37 1998-99 on the Management of Tax File Numbers*, Parliament of Australia, August 2000, p.67.

## Recommendation 1

2.123 **The Committee recommends that all applicants for enrolment, re-enrolment or change of enrolment details be required to verify their name and address. Regulations should be made under the *Commonwealth Electoral Act 1918* to require people applying to enrol to provide documentary evidence of their name and address:**

- **by showing or providing a photocopy of their driver's licence or other document or documents accepted by the AEC in a particular case (or, in the event that all States and Territories make driver's licence records available to the AEC for data-matching purposes, by providing their driver's licence number); or**
- **where such documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the person's identity and current residential address. These persons must have known the enrollee for at least one month.**

**The Committee endorses the amendment which has been made to the *Commonwealth Electoral Act 1918* which requires that only a person who is enrolled to vote may witness an enrolment form. However, the Committee does not consider it necessary that the witness be within a specified class of people, given the other safeguards that would be introduced by its recommended scheme.**

**Increased penalty provisions should be introduced for false declarations including:**

- **false enrolments;**
- **false claims by the witnesses; and**
- **false claims by enrollees including that they are unable to produce primary forms of identification.**

**Provisions introducing requirements for verification of identity on enrolment should be introduced with a sunset clause of three years. An independent investigation into the operation of such provisions should be conducted to enable an assessment of the benefits and disadvantages of the scheme, including such matters as whether the scheme improves the roll's integrity, and whether concerns that identity requirements will increase disenfranchisement are justified.**

## Enrolment and provisional voters

- 2.124 A number of submissions raised the issue of provisional voters, being persons who cast a vote even though their name cannot be found on the certified list of electors used on polling day.<sup>114</sup> As noted at Table 1.4 (page 8), 107,396 provisional votes were admitted at the 2001 federal election (0.89 per cent of the total vote).<sup>115</sup>
- 2.125 The submissions from the Liberal Party of Australia and the Festival of Light raised concerns about persons potentially misusing the provisional voting system to vote in Divisions where they do not live.<sup>116</sup> The Liberal Party's concerns were based on the AEC's response to high levels of 'return to sender' mail received by Mr Jim Lloyd MP, the member for Robertson. After the 2001 federal election Mr Lloyd conducted a mail-out of letters to new constituents as listed on the electoral roll. Mr Lloyd encountered a very high rate of 'return to sender' mail – 10 per cent as compared to approximately 0.1 per cent previously experienced. Such returned mail suggests inaccuracy in people's enrolled addresses.
- 2.126 Mr Lloyd was advised by the AEC that this was a result of provisional voters being returned to the roll after the election. The AEC identified this problem as being related to the basis of enrolment, and in its submission to this committee reaffirmed that '[w]hat Mr Lloyd has identified is the nexus between lodging a provisional vote and being reinstated on the roll'.<sup>117</sup>
- 2.127 Currently, section 99 of the Electoral Act specifies that enrolment is on the basis of a Division rather than an address. Consequently, once

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114 The Electoral Act allows a person to cast a 'provisional vote' (by way of a declaration vote) if their name cannot be found on the certified list on polling day, or if a mark on the certified list indicates that the person has already voted. Before provisional votes are counted, the enrolment details or entitlements of the person to enrol are scrutinised. See *Commonwealth Electoral Act 1918*, section 235; AEC, *Types of Voting in Australia*, at [http://www.aec.gov.au/\\_content/what/voting/vote\\_aust.htm](http://www.aec.gov.au/_content/what/voting/vote_aust.htm), accessed 16 February 2003.

115 As noted in chapter one (p. 8), some of these votes were admitted to the Senate scrutiny only.

116 Submission (Festival of Light, no. 71), p. 3. Submission (Liberal Party of Australia, no. 149), p. 2. The Festival of Light stated that the high rejection rate for provisional votes could indicate attempted fraudulent voting (based on statistics from the 1998 federal election, where 'some 183 000 provisional votes were submitted but only about 116 000 were accepted for counting'). The Festival of Light recommended that all applicants for a provisional vote produce suitable identification and proof of address.

117 Submission (AEC, no. 174), pp. 37-38.

enrolled in a Division an elector can claim a vote even if they are no longer resident at their enrolled address, so long as they are still resident in the Division.<sup>118</sup> When a DRO has reason to believe that an elector has moved out of the Division, usually because a letter sent to the elector at his or her enrolled address is returned as undeliverable, the DRO can remove that elector from the roll on the assumption that they have left the Division.

- 2.128 Where an elector so removed from the roll claims on election day to still be living at an address within the Division, the elector is permitted to cast a provisional vote.<sup>119</sup> 81,266 such votes were admitted to the House of Representatives scrutiny at the 2001 federal election.<sup>120</sup> In such cases, the objection action that removed the elector from the roll is deemed to have been based on an official 'error of fact'. As the elector would have been continuously on the roll apart from the error of fact (essentially the assumption that, because an elector apparently is not at their enrolled address, the elector has moved out of the Division), the elector is reinstated to the roll at their claimed address. This reinstatement typically takes place immediately after the count of votes for the election is completed.
- 2.129 Therefore, voters in Robertson who had been removed from the roll by objection action and who cast a valid provisional vote in the 2001 federal election were reinstated to the roll at their last claimed address within the Division. According to the AEC, the copy of the roll provided to Mr Lloyd immediately after the election may have thereby lead to Mr Lloyd's problem with return-to-sender mail – the clear implication being that many of the addresses in Robertson cited by provisional voters were incorrect.
- 2.130 In evidence to the 1998 election inquiry, the AEC advised that the current provisions create a loophole for people to claim enrolment for an obsolete address almost indefinitely:

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118 Section 101 of the Electoral Act provides that enrolment and *transfer of enrolment* is compulsory. Electors are obliged to change their enrolment details within 21 days of becoming eligible (that is, having lived at a new residence for one month).

119 Assuming, based on a check of the elector's details, that: the elector is not currently enrolled for another Division; that their last enrolled address was within the Division for which they now claim to be entitled to vote; that the address on the declaration vote envelope does in fact fall within the Division in question; and that the objection action that removed them from the roll was actioned after the last redistribution or previous federal election, whichever is later.

120 Submission (AEC, no. 200), p. 18.

where an elector has been removed by objection under sections 116 and 118 of the Electoral Act, and the elector then casts a provisional vote and claims to have moved to an address within the [Division] of previous enrolment, the DRO is required to reinstate that elector to that address and admit the vote. The notice of determination of admissibility of the declaration vote must be sent to the elector, but in many cases it is either returned unclaimed or with a notation that the person is not living at that address. The DRO then has to again take objection action ... to remove the elector from the roll for that address. And so the cycle continues.

Clearly, many of these reinstated electors are not living at the address they claim as their enrolled address, and may not have lived there for some years. In effect, the AEC is obliged to incorrectly update the roll, which loses a measure of integrity in the process.<sup>121</sup>

- 2.131 The AEC has argued that making address, rather than Division, the basis for enrolment would remedy this. It would mean that when an elector claims to have remained within the Division, but has not met the requirement in the Electoral Act to notify the AEC of a change of address, his or her removal could not be deemed to be based on an official 'error of fact'. Address-based enrolment would thereby remove the entitlement for provisional voters to be re-instated to the roll, potentially for addresses where they do not live.<sup>122</sup>
- 2.132 The AEC's recommendation to move from Division-based enrolment to address-based enrolment has met with some resistance in previous inquiries. The fear was that electors who failed to keep their enrolment up-to-date but who still lived within the Division would be disenfranchised.
- 2.133 To address this, the AEC proposed a compromise solution in its submission to the 1998 federal election inquiry, whereby electors who had moved within the Division could still cast a provisional vote, but would not be automatically re-instated to the roll. Specifically, the AEC recommended that address-based enrolment be implemented, but with the following 'saving provision':

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121 AEC submission to JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Parliament of Australia, June 2000, pp. S414-415.

122 It should be noted that the AEC does make errors of fact in removing electors who have not moved from their enrolled address.

- (1) If an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general election; and
  - (2) That if an elector moves outside their enrolled Division, but remains within the State/Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count.<sup>123</sup>
- 2.134 The 1998 federal election report endorsed the AEC's recommendation and the proposal is contained in the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002.
- 2.135 As happens currently, provisional votes of the type discussed above would be admitted to the count, subject to a check of the following details on the declaration vote envelope:
- that the elector is not currently enrolled for another Division;
  - that the elector's last enrolled address was within the Division for which they now claim to be entitled to vote;
  - that the address on the declaration envelope falls within the Division in question; and
  - that the objection action occurred after the last redistribution or previous federal election, whichever was more recent.
- 2.136 The elector would not however be re-instated to the roll at their claimed address. At the time of claiming a provisional vote the elector would be given an enrolment form, which would be subject to a follow-up mail-out by the AEC. Where the enrolment cannot be confirmed, the elector would not be returned to the roll, and could not then cast a provisional vote at the next election (as they would have then been off the roll for two electoral events).

### **Committee comments and recommendations**

- 2.137 The Committee agrees with the AEC that the reinstatement to the roll of voters at addresses known to be (or likely to be) inaccurate, and the capacity for electors to continue to be reinstated to such addresses for successive elections, should be rectified.

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123 AEC submission to JSCEM, *The 1998 Federal Election*, as above, p. S720.

- 2.138 However, the Committee does not believe that the core of the problem raised by Mr Lloyd's case is the nexus between lodging a provisional vote and being reinstated to the roll. Further, the Committee believes that the proposal currently before the Parliament creates a new set of problems.
- 2.139 The fundamental problem that the Lloyd case highlights is not that people voting in a Division are living at an address within the Division other than the address at which they are enrolled. The fundamental problem is that there is a real possibility that a significant number of people are claiming a provisional vote for a Division while not living in that Division. This conclusion is inescapable given the AEC's evidence that:
- provisional voters are reinstated to the roll at the address within the Division at which they claimed they were resident at the time of the election; and
  - DROs' letters to provisional voters advising them that their provisional vote has been admitted are 'in many cases either returned unclaimed or with a notation that the person is not living at that address'.<sup>124</sup>
- 2.140 The new problem created by the proposed change to address-based enrolment currently before the Parliament is that it breaks the connection between voting and being on the roll. Admission to vote has always required that a person is either on the roll or was on the roll and was only removed because of an official error. At present people who have been removed from the roll by objection action are permitted to vote if they were removed from the roll erroneously. Under the proposed new system, people would be permitted to vote despite the fact that they have been removed from the roll correctly. Moreover, they will be able to do so despite uncertainty as to whether they are voting in the Division in which they are living.
- 2.141 The roll is an essential mechanism, and the prospect that someone could vote at an election having been removed from the roll properly, is objectionable on principle. The proposed legislation, while solving the problems identified at paragraphs 2.128 - 2.129 above, creates a new and substantial problem in that it undermines the central importance of the electoral roll.

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124 AEC submission to JSCEM, *The 1998 Federal Election* (2002), as above, p. S414.

- 2.142 The Committee believes that the appropriate solution is to define more precisely who is entitled to a provisional vote. These voters should be issued a provisional vote, subject to them furnishing proof of name and address prior to the close of polls, and subsequently be reinstated to the roll at their validated address.
- 2.143 The Committee believes that the current requirement that a provisional vote be issued to any person whose name 'cannot be found on the certified list of voters for the Division for which the person claims to vote' (paragraph 235(1)(a) of the Act<sup>125</sup>), is too broad. The Electoral Act should instead provide that a person whose name does not appear on the certified list of voters but who claims to still live within the Division in which they are enrolled may only be issued with a provisional vote where they claim (and can validate, through production of satisfactory proof of identity before the close of polls) that they have remained resident within the Division of last enrolment. Where this is the case, they would be issued with a provisional vote for both the House of Representatives and the Senate.
- 2.144 These requirements would need to be made clear in training for AEC polling place staff at future elections.
- 2.145 The Electoral Act should also be amended to require that where a provisional vote is admitted from an elector whose name could not be found on the certified list, verification that the elector is at their claimed address takes place by way of a habitation review as soon as practicable after the election.

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125 Subsection 235(1) of the Electoral Act also provides for provisional votes to be issued where a person's name but not address appears on the certified list (that is, 'silent' electors, overseas electors and itinerant electors) and where a mark on the certified list used at a polling place indicates that the person has already voted at that polling place.



**Recommendation 2**

2.146 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that:**

- **a person whose name does not appear on the certified list of electors used on election day, who claims to have remained resident within the Division of last enrolment, shall only be issued with a provisional vote where they can validate, by producing proof of name and address, before the close of polls, that they have remained resident within the Division of last enrolment. In such cases the elector would be issued with a provisional vote for both the House of Representatives and the Senate. This would be subject to the existing requirement that the objection action that removed the elector from the roll was actioned after the last redistribution or previous federal election, whichever is later; and**
- **where a provisional vote is admitted from a person whose name could not be found on the certified list of electors used on election day, verification that the elector is at their claimed address shall take place by way of a habitation review as soon as practicable after the election, and only persons whose address is verified shall be reinstated to the roll.**

2.147 This recommendation addresses both the problem of people provisionally voting at an address and in a Division at which they do not live, and the problem of people being reinstated to an address at which they do not live. This is preferable to address-based enrolment as currently envisaged because it does not create a new problem regarding treatment of people who move within a Division but do not update their enrolled address, either by:

- disenfranchising them when in fact their vote would be appropriately cast in the Division; or
- creating an anomaly in the electoral system in that people who have been properly removed from the roll because they do not live at their enrolled address are nevertheless permitted to vote.

2.148 Accordingly, the Committee recommends that the proposed change to address-based enrolment contained in the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill

2002 be withdrawn, to be replaced by the mechanism outlined in the Committee's recommendation above.

## Close of rolls

2.149 Some concerns about the integrity of the electoral roll centre on enrolments made or changed during the 'close of rolls' period immediately prior to an election.<sup>126</sup> Between the close of rolls and election day, electors may not enrol to vote or change their enrolment details. The Electoral Act stipulates that the close of rolls period is seven days from the time writs are issued for the election. In the 2001 federal election, the close of rolls period was from 8 to 15 October, with rolls closing at 8pm on 15 October 2001.<sup>127</sup>

## Close of rolls statistics

2.150 In 2001, a total of 373, 732 enrolments were processed in the close of rolls period. This figure, an increase of 18, 543 from the 1998 election, includes new enrolments, re-enrolments and transfers of enrolment.<sup>128</sup> As can be seen in Table 2.4 below, the 18 year age cohort accounted for a substantial part of the increase.

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126 See for example submissions (Hon C Gallus MP, no. 162, p. 1; The Council for the National Interest, no. 103, p. 2; The Festival of Light, no. 71, p. 2).

127 AEC, *Electoral Pocketbook*, Commonwealth of Australia, July 2002, p. 37.

128 Submission (AEC, no. 147), p. 20.

Table 2.4 Enrolment during close of rolls period, 1993 to 2001

	1993 Election	1996 Election	1998 Election	2001 Election
<i>Age Cohort</i>				
18 years*	37388	38 526	33 016	47 473
19-30 years	153 810	149 248	142 500	146 342
31-40 years	84 214	81 616	74 749	71 615
41-50 years	47 614	50 164	46 539	46 985
51-70 years	37 075	36 618	40 715	43 064
71+ years	11 459	11 316	11 797	12 027
Total Close of Rolls Enrolments	377 769	376 904	355 189	373 732
Total Enrolments	11 348 967	11 655 190	12 056 625	12 636 631
<b>Close of Rolls Enrolments as a Percentage of Total Enrolments</b>	<b>3.32%</b>	<b>3.23%</b>	<b>2.94%</b>	<b>2.96%</b>

*Source* Data on Age Cohort enrolments provided by AEC Enrolments Section, 2002. Data on Total Enrolments sourced from AEC Electoral Pocketbook 1999: p. 37; 2002: p. 39.

*Note* \* The number of 18 year olds includes people who enrolled while they were 17, who then turned 18 in the close of rolls period. The AEC computer system automatically activates these individuals' enrolment on their 18th birthday. As a result, the total number of enrolments recorded by the system during the close of rolls period is higher than the number of individuals who enrolled in that period.

- 2.151 Enrolments and enrolment changes made within the close of rolls period are a small proportion of total enrolment transactions. The recent high point of close of rolls enrolment transactions was 377,769 (3.32 per cent) in 1993. Since then, the number and proportion have fallen until the 2001 election when they slightly increased.
- 2.152 Overwhelmingly, the enrolment activities in the close of rolls period were re-enrolments and transfers rather than first time enrolments (see Table 2.6 below). AEC figures show that around ten per cent of all eligible 18 year olds enrol to vote during the close of rolls period. Table 2.5 shows enrolment statistics for 18 year olds between elections and during the close of rolls period.

Table 2.5 Comparison of 18 year old enrolments during elections and between elections, 1993 to 2001

	1993-1996		1996-1998		1998-2001	
	Total 18 year old enrolments 1993-1996	Close of Rolls enrolments 1996 election	Total 18 year old enrolments 1996-1998	Close of Rolls enrolments 1998 election	Total 18 year old enrolments 1998-2001	Close of Rolls enrolments 2001 election
Number	302 264	33 070	255 669	28 725	341 776	41 816
Percentage of Total		8.96 %		10.10%		10.90%

Source AEC submission no. 190, p. 4.

Note The AEC also provided data on 17 year old enrolments, which showed only 2-3 per cent of 17 year olds who enrol and then turn 18 before the next election, enrol during close of rolls period. See AEC supplementary submission no. 190, p. 4.

- 2.153 The AEC's evidence to the Committee's *User friendly, not abuser friendly* inquiry was that as a consequence of the initiation of CRU, electors were 'increasingly being enrolled when they [became] eligible' rather than when they chose to 'initiate contact with the AEC'.<sup>129</sup>
- 2.154 The AEC's assumption was that with improvements to the CRU process, the number of new enrolments and enrolments requiring updating during the close of rolls period would gradually decrease.
- 2.155 In its submission to this inquiry, however, the AEC stated that:
- At the time the AEC made this informal argument, it was not possible to make anything more than an assumption about the effect of the CRU process on the number of enrolment transactions during the close of roll period ... as the circumstances of each federal electoral event are unique, it is likely that the AEC's informal assumption may never prove to be accurate.<sup>130</sup>
- 2.156 The day-by-day data on close of rolls enrolment transactions for both the 1998 and 2001 federal elections (see Table 2.6 below) shows that the number of new and re-enrolments increased daily during the seven-day period (except on Saturday and Sunday), culminating in nearly 50 per cent of new and re-enrolments occurring on the last day. This was true across nearly every House of Representatives electoral Division.<sup>131</sup>

129 See JSCem, *User friendly, not abuser friendly* (2001), as above, p. 35.

130 Submission (AEC, no. 198), p. 17.

131 Submission (AEC, no. 190), pp. 32-73.

Table 2.6 Close of rolls enrolment activity, 1998 and 2001

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6*	Day 7**	Day 8	Total
<b>New Enrolments</b>									
1998	1 582	3 720	4 610	6 754	7 759	5 356	419	33 814	<b>64 014</b>
2001	2 561	3 857	6 101	9 074	12 316	5 492	391	43 235	<b>83 027</b>
<b>Movements or Changes</b>									
1998	8 788	18 590	23 645	32 721	34 840	23 460	1 221	123 453	<b>266 718</b>
2001	10 988	15 550	23 611	31 185	40 073	19 423	0	125 010	<b>265 840</b>
<b>Total</b>									
1998	10 370	22 310	28 255	39 475	42 599	28 816	1 640	157 267	<b>330 732</b>
2001	13 549	19 407	29 712	40 259	52 389	24 915	391	168 245	<b>348 867</b>
<b>Percentage of all Close of Rolls enrolments</b>									
1998	<b>3.13%</b>	<b>6.75%</b>	<b>8.54%</b>	<b>11.94%</b>	<b>12.88%</b>	<b>8.71%</b>	<b>0.5%</b>	<b>47.55%</b>	<b>100%</b>
2001	<b>3.88%</b>	<b>5.56%</b>	<b>8.52%</b>	<b>11.54%</b>	<b>15.02%</b>	<b>7.14%</b>	<b>0.11%</b>	<b>48.22%</b>	<b>100%</b>

Source AEC, supplementary submission no. 190.

Notes \* Day 6 (5/9/98 and 13/10/01) was a Saturday, therefore explaining the lower enrolment transactions on that day.

\*\* Day 7 (6/9/01 and 14/10/01) was a Sunday and most AEC offices were not operational.

2.157 This pattern may reflect the impact of the AEC's advertising encouraging electors to ensure that their enrolment details were correct. It may also be that people have a tendency to defer things until the last moment, and that the final day rush would be as intense no matter how long the close of rolls period is.

## Concerns about the close of rolls period

2.158 Submissions raised concerns about the close of rolls period primarily because of a belief that the AEC cannot check the validity of enrolments made during that period.<sup>132</sup> The certified lists of electors are often finalised by the commencement of pre-poll voting.<sup>133</sup>

2.159 These concerns about lack of checking of enrolments, if justified, would be especially pertinent in marginal electorates where small numbers of votes can affect the outcome. The Festival of Light submitted that 'the purpose of those who may wish to defraud the

132 See specifically submissions (Hon C Gallus MP, no. 162, p. 1; The Council for the National Interest, no. 103, p. 2; The Festival of Light, no. 71, p. 2).

133 For the 2001 election, pre-polling commenced at 8.00am on Monday, 22 October 2001, six days after the close of rolls (including the weekend).

electoral process would be to change the outcome of an election in a marginal seat'.<sup>134</sup> This could be done in a number of ways:

- re-enrolment of electors validly enrolled in a safe seat to an address in a marginal seat;
- enrolment of non-existent persons at an address in a marginal seat;
- enrolment of people not entitled to vote at an existent address in a marginal seat; and
- enrolment of 'other' people at a false address in a marginal seat.<sup>135</sup>

2.160 In this context, it is worthwhile examining those electorates which have the greatest number of enrolment transactions in the close of rolls period. Table 2.7 presents figures for the electorates which had the highest numbers of close of rolls changes and new enrolments, at both the 1998 and 2001 federal elections, and their marginalities.

Table 2.7 Electorates with highest close of rolls changes, 1998 and 2001

Electorate	1998		Electorate	2001	
	Number	Marginality		Number	Marginality
Sydney	5 151	16.9 to ALP	Sydney	4 262	15.0 to ALP
Northern Territory	4 957	0.6 to ALP	Melbourne	3 804	20.1 to ALP
Melbourne	4 384	21.8 to ALP	Brisbane	3 530	3.1 to ALP
Fraser	4 256	14.9 to ALP	North Sydney	3 409	13.2 to LP/NP
Melbourne Ports	4 188	5.8 to ALP	Grayndler	3 114	21.3 to ALP
Kalgoorlie	3 976	2.1 to LP/NP	Melbourne Ports	3 022	5.7 to ALP
Fremantle	3 511	10.0 to ALP	Wentworth	2 872	7.9 to LP/NP
Brisbane	3 424	4.6 to ALP	Bendigo	2 836	3.6 to ALP
North Sydney	3 170	12.2 to LP/NP	Adelaide	2 771	0.2 to LP/NP
Curtin	3 040	13.3 to LP/NP	McPherson	2 745	12.5 to LP/NP
<b>All Electorates</b>	<b>355 189</b>		<b>All Electorates</b>	<b>373 732</b>	

Source AEC submission no. 190, pp.32-73; *Marginalities: Scott Bennett and Gerard Newman.2002. Commonwealth Election 2001, Research Paper No.11 2001-02, Department of the Parliamentary Library, p. 102, and Scott Bennett, Andrew Kopras and Gerard Newman.2002. Federal Elections 1998, Research Paper No.9 1998-99, Department of the Parliamentary Library, p. 64.*

2.161 The crude indications are that there seems to be no persistent pattern of high close of rolls enrolments in marginal seats. Of the ten seats with the greatest volume of transactions in this period, few could be considered 'marginal'. Not surprisingly, the greatest volume of

134 Submission (Festival of Light, no. 71), p. 2.

135 Submission (Festival of Light, no. 71), p. 2.

enrolment transactions in the close of rolls period appears to have occurred in inner city seats (in most capital cities) where populations are known to be particularly mobile.

- 2.162 However, it is important to note that close of rolls transactions occurred in every electorate. The number of changes or amendments made to enrolments in the close of rolls period in an electorate averaged 1,942 in 1998 (ranging from 1,031 in Chifley to 5,151 in Sydney), and 1,911 in 2001 (ranging from 1,045 in Maribyrnong to 4,262 in Sydney). Similarly, the number of new enrolments processed in an electorate averaged 458 in 1998 (ranging from 190 in Maranoa to 1,052 in the Northern Territory), and 575 in 2001 (ranging from 252 in Wide Bay to 1,377 in Mitchell).

### Proposals to change the close of rolls period

- 2.163 The evidence given by the AEC to the 1998 federal election inquiry, in relation to the enrolment forms received in the close of rolls period, was that:

there was checking done within the system that it is a legitimate address, but in that close of Roll period there is no field checking done.<sup>136</sup>

- 2.164 This prompted the 1998 Committee to reiterate a recommendation made by its predecessor after the 1996 federal election, that 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 close on the third day after the issue of the writ.<sup>137</sup>
- 2.165 The Committee's 2001 report *User friendly, not abuser friendly* restated this view which is embodied in the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002 currently before the Parliament.<sup>138</sup>

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136 JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election, and matters related thereto*, Parliament of Australia, June 2000, p. 14.

137 JSCEM, *The 1998 Federal Election* (2000), as above, Recommendation 3, p. 15.

138 JSCEM, *User Friendly, Not Abuser Friendly* (2001), as above, p. 50. See *BillsNet* for the current text of the Bill: <http://www.aph.gov.au/bills/index.htm>, accessed 29 April 2003.

- 2.166 The submissions from the Liberal Party of Australia, the Festival of Light and the Council for the National Interest supported these changes.
- 2.167 Emeritus Professor Hughes' submission supported the existing seven-day period on the grounds that: it essentially formalised what had been the practice before 1983; successive investigations have discovered no evidence of widespread fraud warranting an earlier closing; and that change would confuse electors if the States did not follow suit for their elections.<sup>139</sup>
- 2.168 The ALP argued against reducing the current close of rolls period, submitting that it would: reduce enrolment by the young and socially disadvantaged; result in less accurate rolls for polling day; increase queues, confusion and inconvenience at polling booths; increase declaration voting; and produce delays in the delivery of election results.<sup>140</sup>

## Committee comments and recommendations

- 2.169 To evaluate the concerns about enrolments during the close of rolls period, the Committee compared the process by which new voters are added or voters' details are altered prior to an election being called with the process during the close of rolls period.
- 2.170 In both periods the processes are essentially identical. Where the matching and checking processes disclose no anomalies, additions are made to the rolls. Where there are anomalies,<sup>141</sup> changes or additions are not made to the rolls until these are resolved. This applies at all times including during the close of rolls.
- 2.171 Applicants for enrolment are therefore not added to the roll during the close of rolls period until verification of eligibility is complete,

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139 Submission (Emeritus Professor Colin Hughes, no. 73), p. 2.

140 Submission (ALP, no. 153), p. 8.

141 Anomalies occur if, for example, the address is not on the Register, the address is flagged as non-enrollable or inactive, the enrolment limit attributed to that address is exceeded, or if neither the street name nor the street number can be ascertained from the enrolment form. Further anomalies may occur if a match is made with a elector recorded on the RMANS 'DELETED FILE' by reason of being deceased, of unsound mind or not a citizen; there is a match of some special category elector codes (such as itinerant or Norfolk Island electors) and the new form does not indicate that they are to apply to the latest enrolment; there are multiple possible matches; the former name details have been entered and there is no match; or the person is over 18 years and there is no match.



with one exception.<sup>142</sup> If verification is completed after the roll close, the elector is added to the notebook ('additions list') roll and advised on election day to cast a provisional vote. An elector is added to the notebook roll if his or her eligibility for enrolment has been confirmed before election day, but too late to be added to the certified lists of electors used at polling places. As the electors in question are not on the certified lists they must cast a declaration vote (the notebook roll is retained by the DRO for the Division and is not copied to polling places). The AEC advised that for the 2001 election, there were no instances of electors being added to the notebook roll.

- 2.172 The Committee's re-examination of the checking processes indicates that potential difficulties in the close of the roll process are narrower than originally thought. Where anomalies are thrown up by internal checking processes which cannot be field checked, enrolment applications are not added to the roll.
- 2.173 Moreover, insofar as there are residual doubts with respect to enrolments at the close of rolls, the Committee believes that these are addressed by its recommendations relating to proof of identity and address for first time enrolments, re-enrolments, transfers and provisional voters.
- 2.174 In the light of these, the existing checking processes for the close of rolls period, and the prospect of unnecessarily disenfranchising voters by foreshortening the close of rolls, the Committee recommends that the existing seven-day period between the issue of the writs and the rolls closing should be retained.

### Recommendation 3

- 2.175 **The Committee recommends that the existing seven-day period between the issue of writs and the close of rolls be retained.**

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<sup>142</sup> The only exception is where further verification of the exact location of an address is required. This occurs primarily in rural Divisions. The AEC advised that these enrolments comprise a very small proportion of total close of rolls enrolments – less than ten for most Divisions. Submission (AEC, no. 190), p. 5.

## Overseas electors

- 2.176 The issue of enrolment by overseas electors received considerable attention in submissions to the inquiry. Ninety submissions (just under half of the total number of submissions) addressed this particular subject. The majority of these submissions apparently originated from a campaign coordinated by the Southern Cross Group.<sup>143</sup>
- 2.177 Submissions to the inquiry outlined a number of perceived problems with current restrictions applied to Eligible Overseas Electors, and concerns about information available to expatriate Australians regarding enrolment and voting.

## Statistics on overseas electors

- 2.178 The Department of Foreign Affairs and Trade (DFAT) estimates that there are around 720,000 Australian expatriates – that is, Australians living overseas.<sup>144</sup> It is important to note that this number includes people under the age of 18 who therefore are not eligible to vote. DFAT is unable to estimate the proportion of Australian expatriates who are over 18 years of age.<sup>145</sup>
- 2.179 During the 2001 federal election, 63,036 sets of ballot papers were issued by DFAT's overseas posts.<sup>146</sup> The total number of votes cast overseas in the 2001 federal election was slightly lower than that for the 1998 federal election. The number of overseas votes for the 1999 Referendum on a republic was significantly lower than the votes for the 1998 federal election (see Table 2.8).

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143 The Southern Cross Group (SCG) was formed in Belgium in January 2000 as a 'non-profit advocacy organisation which seeks to pursue issues of interest to the international community of Australian expatriates'. The SCG encouraged member contributions to this inquiry, and designed a submission 'template' for members' use. See SCG internet site: <http://www.southern-cross-group.org>, accessed February 2003.

144 Department of Foreign Affairs and Trade, *Annual Report 2001-02*, Commonwealth of Australia, October 2002, p. 137. This figure is based on estimates provided each year by DFAT's overseas posts.

145 Submission (DFAT, no. 188), p. 10.

146 The SCG notes that 'some postal votes issued overseas are returned directly to Australia, and not to the issuing post. Hence, certificates issued for returned postal votes by a particular post will be less than the number of postal votes issued by it. In addition, some postal votes issued by an overseas post may not have been received by voters, or if received, may not have been returned'. See SCG internet site: [http://www.southern-cross-group.org/archives/Statistics/Australian\\_Overseas\\_Voting\\_Comparisons\\_1998\\_1999\\_2001.pdf](http://www.southern-cross-group.org/archives/Statistics/Australian_Overseas_Voting_Comparisons_1998_1999_2001.pdf), accessed 10 February 2003.

Table 2.8 Ballot papers issued by DFAT Overseas Posts, by Region

Region	1998 Election	1999 Republic Referendum	2001 Election
Europe	29 564	27 721	25 864
Asia	24 913	20 175	25 116
Africa	889	623	592
North America	5 426	5 161	5 581
South America	478	332	356
Oceania*	3 816	3 943	5 507
<b>Total</b>	<b>65 086</b>	<b>57 955</b>	<b>63 036</b>

Source Southern Cross Group, from data provided by the Australian Electoral Commission in December 2001.<sup>147</sup>

Note \* 'Oceania' includes New Zealand.

- 2.180 Overseas voting was concentrated in three DFAT posts, with London, Hong Kong and Singapore representing 50 per cent of all votes cast overseas for the 2001 federal election.<sup>148</sup>
- 2.181 All votes cast overseas are pre-poll or postal votes. Nearly 80 per cent (49,981 out of 63,036) of votes issued overseas for the 2001 federal election were pre-poll votes (made at an Embassy or High Commission). The other 20 per cent were issued as postal votes.<sup>149</sup>
- 2.182 The majority of overseas votes are cast by Australians on short-term travel. Of the 63,036 votes issued overseas for the 2001 federal election, only 5,822 were made by expatriate Australians resident overseas with Eligible Overseas Elector status (see below).<sup>150</sup>

147 SCG, *Overseas voting, Comparisons: 1998, 2001 federal elections, and 1999 referendum; Total votes issued by each overseas post*; at: [http://www.southern-cross-group.org/archives/Statistics/Australian\\_Overseas\\_Voting\\_Comparisons\\_1998\\_1999\\_2001.pdf](http://www.southern-cross-group.org/archives/Statistics/Australian_Overseas_Voting_Comparisons_1998_1999_2001.pdf), accessed 10 February 2003.

148 Eight overseas posts issued more than 1,000 ballot papers: London, Hong Kong, Singapore, Dili, New York, Bangkok, Dublin and Washington. See DFAT submission no. 168, Attachment A.

149 Submission (DFAT, no. 168), p. 1

150 Submission (AEC, no. 186), p. 6. Anecdotal evidence to the inquiry suggests that a number of expatriate Australians resident overseas may not inform the AEC of their move out of Australia. These people retain their enrolment at their Australian address (for example, at their parents' address) and ask relatives/friends to post them a postal vote application form for each election. The ballot papers are then issued to the Australian address, and the relative/friend forwards them to the voter overseas. These votes would not be counted as overseas votes, as they are issued to an Australian address. See submission (Ms Linda Reeb, no. 21), p. 1.

## Current provisions for overseas electors

- 2.183 Australians *travelling* overseas for short periods of time remain enrolled at their home Australian address, and may cast a pre-poll vote at an overseas embassy, or lodge a postal vote prior to or during their overseas travel.
- 2.184 Sections 94 and 94A of the Electoral Act set out the grounds on which Australians *living* overseas may enrol to vote in federal elections and referenda.
- 2.185 Australian citizens moving overseas who are already on the electoral roll can remain enrolled by registering with the AEC as an 'Eligible Overseas Elector' (EOE) if they :
- are leaving Australia within three months, or left Australia less than two years ago (and are still enrolled at their previous Australian address);
  - are going to be overseas for up to six years; and
  - intend to return permanently to Australia.<sup>151</sup>
- 2.186 Australian citizens living overseas who are not on the electoral roll, but who would be eligible if they were in Australia, can enrol as an EOE from outside Australia if they:
- left Australia in the previous two years;
  - live outside Australia for career or employment purposes, or those of their spouse; and
  - intend to resume residence in Australia within six years of the date of their departure.<sup>152</sup>
- 2.187 People enrolling from outside Australia are enrolled in the Division for which they last had an entitlement to be enrolled (that is, their last address in Australia), or if that is not relevant, the Division of their next of kin, or the Division in which they were born, or the Division with which they have the 'closest connection'.<sup>153</sup>

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151 *Commonwealth Electoral Act 1918*, section 94. See also discussion of where Australians living overseas vote at paragraphs 2.180 and 2.181.

152 *Commonwealth Electoral Act 1918*, section 94A.

153 *Commonwealth Electoral Act 1918*, subsection 94A(3). These provisions were drafted based on the provisions for enrolment for itinerant voters, at section 96 of the Act. See paragraph 2.261 for further detail.

- 2.188 Australians who are registered as EOE's can maintain their enrolment for a period of six years from their date of departure from Australia. If, after leaving Australia, EOE's find that they will be away longer than six years, they can apply to have their EOE status extended by one year at a time. The application must be made in the three months before the expiry date of their EOE status.<sup>154</sup>
- 2.189 The effect of these provisions is that overseas Australians with EOE status may continue voting in Australian elections indefinitely, so long as they state an intention to eventually return to Australia.
- 2.190 If an elector with EOE status does not vote or apply for a postal vote at a federal election, their EOE status is forfeited and their enrolment is cancelled.<sup>155</sup>
- 2.191 On 15 November 2001 there were 10,636 Eligible Overseas Electors on the electoral roll.<sup>156</sup> The AEC reported that only 5,822 (54.7 per cent) of these voted at the 2001 federal election.<sup>157</sup>

## Concerns about provisions for overseas electors

- 2.192 The submissions from the Southern Cross Group (SCG) were primarily concerned about the current low number of overseas voters, a phenomenon the SCG attributed to:
- provisions in the current legislation, which it claims effectively disenfranchise large numbers of expatriate Australians; and
  - the low level of awareness of the EOE entitlement, which it is claimed is perpetuated by the quality of information being provided to expatriate Australians by the AEC and the Department of Foreign Affairs and Trade.

## Legislative concerns

- 2.193 The SCG noted that the right to vote is a right attached to Australian citizenship,<sup>158</sup> and questioned why Australians living overseas should not have the same access to that right as all other Australians:

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154 *Commonwealth Electoral Act 1918*, subsections 94(8) and 94(9).

155 *Commonwealth Electoral Act 1918*, paragraphs 94 (13)(c) and 94 (14)(b).

156 AEC, *Behind the Scenes: the 2001 Election Report*, Commonwealth of Australia, 2002, p. 9.

157 Submission (AEC, no. 186), p. 6.

158 Submission (SCG, no. 148), p. 6. See Australian Citizenship internet site: <http://www.citizenship.gov.au/why.htm#rights>, accessed 19 March 2003.

An Australian overseas who wants to exercise his or her democratic right to participate in the election of those that make laws and decisions which effect [sic] all Australians should have that right.<sup>159</sup>

2.194 The concerns of the SCG regarding enrolment provisions for overseas electors centred around three provisions in the current Electoral Act, namely those relating to:

- the two-year time limit for enrolment as an EOE;
- the intention to return to Australia within six years; and
- the reason for leaving Australia.

#### The two-year time limit

2.195 Subsections 94(1B) and 94A(2) of the Electoral Act stipulate that an application for EOE status must be made either in the three months before departure from Australia, or within two years after the day on which the elector ceased to reside in Australia.<sup>160</sup>

2.196 The ability to enrol while overseas is a relatively recent addition to the Electoral Act. Prior to 1995, electors were only able to apply for EOE status in the three months before they left Australia.

2.197 The Committee noted this restriction in its report on the conduct of the 1993 federal election, and agreed with submissions that the requirement to register as an EOE prior to departure of Australia was too restrictive.

2.198 The Committee recommended that the provisions be extended to allow enrolled Australians to apply for EOE status within one year of leaving Australia.<sup>161</sup> The Electoral Act was amended accordingly in 1995.<sup>162</sup>

2.199 The issue was again raised in the inquiry into the 1996 federal election, with several submitters highlighting the perceived injustice to overseas Australians who could not enrol to vote in Australian elections because they had missed the new one-year cut-off limit.<sup>163</sup>

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159 Submission (SCG, no. 148), p. 5.

160 *Commonwealth Electoral Act 1918*, subsections 94(1B) and 94A(2).

161 JSCEM, *Report of the Inquiry in the Conduct of the 1993 federal election, and matters related thereto*, Parliament of Australia, November 1994, p. 99.

162 *Electoral and Referendum Amendment Act 1995*, Schedule 1.

163 See AEC submission to JSCEM, *The 1996 Federal Election* (1997), as above, p. S140 and pp. S156-8; and Transcript of Evidence to the same inquiry, 15 August 1995, pp. EM19-22.

- 2.200 The Committee did not specifically recommend extending the one-year deadline for EOE enrolment. The Government nonetheless introduced the current two-year cut-off as part of amendments to the Electoral Act in 1998.
- 2.201 Prior to 1998, those wishing to apply for EOE status were required to already be enrolled to vote in Australia. Australians living overseas who were not enrolled, or who had been removed from the roll (because they were no longer resident in Australia, or because they failed to vote in a federal election), had no avenue to enrol as an overseas voter.<sup>164</sup>
- 2.202 This issue was raised during the inquiry into the 1996 federal election. The Committee noted the inability of unenrolled Australians who were resident overseas to apply for EOE status, and recommended that this be changed.
- 2.203 This recommendation was implemented in the *Electoral and Referendum Amendment Act 1998*. During parliamentary debate on the Bill, the Member for Reid, Mr Laurie Ferguson MP (then a member of the Committee) told the House of Representatives:
- The committee considered that there were quite onerous requirements on Australian citizens who went overseas for a period and could find themselves off the rolls despite a continuing interest in Australian politics ... The committee agreed that they should not be burdened by unnecessary requirements.
- However, the committee was unanimous in its concern that it did not want a situation like that in the Cook Islands or Italy where people who have no contact or relationship with the country any longer can be flown in, in mass numbers, for election day. The committee's provision therefore tries to find balance.<sup>165</sup>
- 2.204 The SCG has now submitted that the two-year limit is 'probably the most insidious of all the restrictions on overseas voters'.<sup>166</sup> The SCG submitted that those overseas Australians who miss the two-year

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164 See *Commonwealth Electoral Act 1918* consolidated as at 6 January 1997: <http://scaleplus.law.gov.au/html/histact/6/3336/top.htm>, accessed 19 March 2003.

165 Mr L. Ferguson MP, *Parliamentary Debates: House of Representatives Official Hansard*, 24 March 1998, p. 1415.

166 Submission (SCG, no. 148), p. 11.

deadline through ignorance of the law, or other reasons, are disenfranchised.

- 2.205 The SCG contended that the two-year limit places a condition on the exercise of the right to vote which is 'not based on objective and reasonable criteria', thereby breaching Australia's obligations under the International Covenant on Civil and Political Rights.<sup>167</sup>
- 2.206 The SCG recommended that the relevant sections of the Act be repealed so that applications for EOE status or to enrol from outside Australia can be made at any time.<sup>168</sup>

#### Intention to return to Australia

- 2.207 The Electoral Act states that an application for EOE status can only be made if the person intends to resume residing in Australia not later than six years after ceasing to reside in Australia.<sup>169</sup>
- 2.208 Prior to 1998, the timeframe for intention to resume residing in Australia was three years. In its report on the 1996 federal election, the Committee recommended:

The qualifying period [for intention to return to Australia] 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).<sup>170</sup>

- 2.209 This recommendation was implemented the *Electoral and Referendum Amendment Act 1998*.
- 2.210 The SCG argued that the six-year provision is impossible to verify and monitor, given that people's intentions and plans change over time. The SCG recommended that the Electoral Act be amended so that no intention to return to Australia within any timeframe be required for Eligible Overseas Electors:

A citizen who intends to stay away from Australia for 20 years should not be deemed less worthy of the right to vote than one who intends to stay away for five years.<sup>171</sup>

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167 Submission (SCG, no. 148), p. 14.

168 Submission (SCG, no. 148), p. 11.

169 *Commonwealth Electoral Act 1918*, paragraphs 94(1)(c) and 94A(1)(d).

170 JSCEM, *The 1996 Federal Election* (1997), as above, p. 47.

171 Submission (SCG, no. 148), p. 15.



- 2.211 The SCG contended that the ‘intention to return’ provision is also in breach of the International Covenant on Civil and Political Rights.<sup>172</sup>
- 2.212 The Committee notes that the ‘six year rule’ is effectively nullified by the Electoral Act’s provision for extending EOE status beyond six years (one year at a time), so long as a person states that they eventually intend to return to Australia.

#### Reasons for leaving Australia

- 2.213 Paragraph 94A(1)(a) of the Electoral Act provides that a person may only apply for enrolment from outside Australia ‘if the person has ceased to reside in Australia for reasons relating to the person’s career or employment or for reasons relating to the career or employment of the person’s spouse’.<sup>173</sup> The ‘reason for leaving Australia’ is not a condition imposed on Australians already enrolled who apply for EOE status.
- 2.214 The SCG argued that there is no sound justification for this. Under the current law several groups, such as retirees and backpackers, are excluded from achieving EOE status while travelling overseas. SCG submitted:

The provision would seem to indicate that those who depart Australia for the more noble purpose of employment are somehow more worthy of the right to enrolment and therefore the right to vote while they are overseas.<sup>174</sup>

#### Compulsory overseas voting and the ‘use it or lose it’ provision

- 2.215 Voting is not compulsory for Australians overseas.<sup>175</sup> However, if an elector with EOE status does not vote in a federal election, or apply for a postal vote, their name will be removed from the electoral roll.<sup>176</sup> The AEC explained that the basis for this arrangement (and the equivalent requirement for itinerant electors) is that:

Bearing in mind that itinerant and overseas enrolment is not compulsory, this is a roll cleansing mechanism allowing the AEC to remove from the roll itinerant and overseas electors

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172 Submission (SCG, no. 148), p. 15.

173 *Commonwealth Electoral Act 1918*, paragraph 94A(1)(a).

174 Submission (SCG, no. 148), p. 17.

175 *Commonwealth Electoral Act 1918*, subsection 245 (17).

176 *Commonwealth Electoral Act 1918*, paragraph 94(13)(c).

when they no longer have an intention or eligibility to be enrolled in this way.<sup>177</sup>

- 2.216 Overseas voters who have been removed from the roll because they failed to vote at an election may apply to be re-instated as an EOE voter if they still meet the requirements in sections 94 and 94A of the Act (outlined in paragraphs 2.183 - 2.188).
- 2.217 The SCG submitted that this provision should be removed from the Electoral Act, arguing that its effect is to impose compulsory voting on overseas Australians with EOE status. The SCG submitted that, in most cases, once an EOE has been removed from the roll they are not eligible for re-instatement because they no longer meet the legislative requirements (in particular the two-year time limit for application). The SCG asked, 'how is this stance consistent with the fact that voting is not compulsory while a citizen is overseas?'<sup>178</sup>

### Proposals for change

#### *Register of Overseas Electors*

- 2.218 Several submissions recommended that the AEC establish a Register of Overseas Electors as an online database, accessible by registered individuals, who could then update their enrolment details as required. The Register would also be used to advise the calling of elections and to issue postal vote applications to overseas voters. The SCG submitted that this would:

overcome the common complaints that lack of information, timeframes for overseas electors, the vagaries of postal services, and distant locations of Australia's Embassies and Consulates all work against effective participation by overseas electors.<sup>179</sup>

- 2.219 The AEC noted that its internet site already provides current information on upcoming electoral events, enrolment and voting procedures, and electronic versions of most forms required by overseas voters. The AEC observed that:

Judging by the submissions made to the JSCEM inquiry by the members of the Southern Cross Group, they are technologically literate and maintain a close interest in

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177 Submission (AEC, no. 199), p. 7.

178 Submission (SCG, no. 148), p. 25.

179 Submission (SCG, no. 148), p. 34.

Australian affairs. The AEC believes the resources currently available to enrolled Australians overseas should be sufficient for them to maintain enrolment.<sup>180</sup>

*A special electorate for overseas voters*

- 2.220 At present an Eligible Overseas Elector will normally be registered in the electorate in which he or she last resided. Several submissions raised the possibility of creating a special electorate to represent expatriate Australians.<sup>181</sup>
- 2.221 Submissions argued that overseas residents have a 'natural community of interests' and that the creation of an overseas electorate would avoid the 'artificial' situation of EOE's voting in the electorate they last lived in, when they may not return to live there.<sup>182</sup>
- 2.222 Several countries have special arrangements for voters living overseas, including:
- the French Sénat, which has 12 senators to represent French people living abroad;
  - the Croatian Sabor (Assembly), which has up to six members representing Croatians living abroad;
  - Portugal, which has four deputies in two constituencies to represent Portuguese citizens resident overseas;
  - Italy, which passed legislation at the end of 2001 allowing voters abroad to register and vote for 12 representatives in the House and six in the Senate.<sup>183</sup>
- 2.223 The AEC commented that while the creation of an overseas electorate would present a number of challenges for administration, none of these would be insurmountable.<sup>184</sup>

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180 Submission (AEC, no. 174), p. 34.

181 See submissions (Ms L. Reeb, no. 21; Mrs P. Sved, no. 48; H and S Brookman, no. 75; Ms J. Magnin, no. 85; Dr R. Mair, no. 104).

182 Submission (H and S Brookman, no. 75).

183 See French Sénat internet site: <http://www.senat.fr/english/role/senate.html>, accessed 19 March 2003; Electionworld internet site: <http://www.electionworld.org/election/parliaments.htm>, accessed 20 March 2003; Southern Cross Group internet site: <http://www.southern-cross-group.org/overseasvoting/directrepresentos.html>, accessed 20 March 2003.

184 Submission (AEC, no. 181), p. 7.

2.224 However, the AEC noted that legal opinion would need to be sought on whether the proposal was constitutional. Two sections of the Constitution have bearing:

- section 24 of the Constitution may imply that Members of the House of Representatives (other than those representing a Territory) must be chosen in one of the States, which would rule out having a single overseas constituency for the whole country, and may require a separate overseas constituency for each State.<sup>185</sup>
- section 29 of the Constitution states, in part, that a 'Division shall not be formed out of parts of different States'. In the context of proposals for a separate electorate for Aboriginal and Torres Strait Islanders, the Attorney-General's Department advised the AEC that the High Court may construe this section as implying that Divisions must be geographically defined.<sup>186</sup>

2.225 At the hearing on 20 September 2002, Senator Murray voiced his support for the concept of a 'whole of Australia' seat for Australians resident overseas. Senator Murray commented:

That would deliver one extra seat to the House of Representatives – which is neither here nor there – but there would be no chance then, in my view, of a particular electorate being influenced by the deliberate location of Australians overseas on a random basis into that electorate.<sup>187</sup>

2.226 Changes to the provisions in the Constitution would require a referendum.

#### **AEC Response to SGC submissions**

2.227 In response to the SCG's concerns and recommendations, the AEC noted that what the group is seeking amounts to a fundamental change to the intention of the legislation governing overseas enrolment, as first introduced in 1983.

2.228 The AEC pointed to the Explanatory Memoranda for the 1983 Bill which first introduced overseas voting entitlements for all Australians (voting for servicemen serving overseas was introduced in 1953), which stated:

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185 Submission (AEC, no. 181), p. 6. See section 24 of the Constitution: <http://www.aph.gov.au/Senate/general/Constitution/index.htm>, accessed 20 March 2003.

186 Submission (AEC, no. 181), p. 6; Section 29 of the Constitution.

187 Transcript of Evidence, 20 September 2002 (Senator A Murray), p. EM 111.

[the new clauses] relate to the enrolment entitlements of electors who are *temporarily living overseas* but who *intend to return to live in Australia* within 3 years of their departure from Australia.<sup>188</sup>

- 2.229 The AEC argued that debate about a change to the limitations on the enrolment entitlements of overseas Australians is a matter for the Parliament in the first instance, not the AEC:

[the recommendations] are clearly aimed at breaking the nexus between enrolment and voting rights and a temporary absence from Australia. The AEC believes that a consideration of the approach to overseas voting rights needs to occur before the sort of amendments being recommended here are adopted.<sup>189</sup>

#### Committee comment and recommendations

- 2.230 The proposals put forward by the SCG are indeed far reaching. Their implementation would stretch not only the Electoral Act, but also the shape of the electoral system as envisaged by the Constitution. The Committee is not of the view that there are sufficient grounds to contemplate such extensive change.
- 2.231 It remains the view of the Committee that Australians living overseas must demonstrate a continued interest in Australian political affairs if they are to retain their right to vote whilst not resident in Australia. Hence, the Committee does not support the removal of the ‘intention to return to Australia’ or the ‘use it or lose it’ provisions of the Electoral Act.
- 2.232 The Committee notes that the ‘use it or lose it’ provisions are not a form of compulsion, but rather a test of continuing interest in Australian political affairs.
- 2.233 The Committee does, however, believe some changes to the existing EOE provisions are warranted. It agrees that there should be no differentiation between voters as to the reasons for which they left Australia. It also considers there to be merit in extending the current two-year time limit to three years. This would ensure the occurrence of at least one electoral event within the cut-off period, and would be a fairer test of continuing interest in Australian political affairs.

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188 Commonwealth Electoral Legislation Amendment Bill 1983 – Explanatory Memorandum, paper no. 15428/1983, p. 18 (Clause 24). Emphasis added.

189 Submission (AEC, no. 174), p. 34.

**Recommendation 4**

- 2.234 **The Committee recommends that subsection 94A(1) of the *Commonwealth Electoral Act 1918* be amended so that expatriate Australians applying for Eligible Overseas Elector status are not required to state the reason why they left Australia.**

**Recommendation 5**

- 2.235 **The Committee recommends that subsection 94A(2) of the *Commonwealth Electoral Act 1918* be amended so that the current two-year cut off point for application for Eligible Overseas Elector status be extended to three years.**

**Awareness of overseas enrolment provisions**

- 2.236 It was asserted in SCG submissions that most Australians moving overseas are not aware of the provisions allowing overseas enrolment.<sup>190</sup>
- 2.237 The AEC responded that it believes there are sufficient sources of information available from 'the most obvious sources' on overseas enrolment and voting procedures,<sup>191</sup> notably:
- the AEC internet site, which includes detailed descriptions of the overseas enrolment process and application forms for EOE status and postal voting;
  - the application form for registration as an EOE, which contains advice regarding how to vote overseas once registered as an EOE; and
  - a letter sent to electors when their application for EOE status is accepted, which explains the restrictions on EOE eligibility and how to vote overseas.<sup>192</sup>

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190 Submission (SCG, no. 148), p. 8.

191 Submission (AEC, no. 181), p. 4.

192 The AEC also referred to a DFAT publication *Hints for Australian Travellers* (AEC, submission no. 181, p. 3). See DFAT internet site: <http://www.dfat.gov.au/consular/download/hints.pdf>, accessed 11 June 2003.

2.238 A number of submissions also referred to a lack of clear advice from AEC officers, regarding overseas voting entitlements. For example, Ms Caroline Bissey reported that her name was removed from the electoral roll after speaking with an AEC officer prior to moving overseas. Ms Bissey stated that:

I was not sure what the process would be or what my options were. I was not aware that I could register as an overseas elector and [the AEC officer] never explained to me that I could.<sup>193</sup>

2.239 The AEC responded to Ms Bissey's submission by stating that its records show that she wrote to the AEC advising that she was 'leaving Australia to live overseas', and that she understood that 'if she ever returned to Australia' she should re-enrol. The AEC concluded that Ms Bissey's correspondence to the AEC indicated that she had no fixed intention of returning to Australia and therefore was not eligible for EOE status.<sup>194</sup>

2.240 The AEC responded generally to complaints about lack of information about overseas voting entitlements by stating that it was probable that the majority of those submitters were ineligible for EOE status, and that:

there is no reason to provide information on the EOE register to people who clearly do not qualify under the provisions of the Act.<sup>195</sup>

2.241 A number of submissions complained of inadequate advice on overseas voting entitlements from DFAT staff at overseas posts.<sup>196</sup> The Committee notes that most of the complaints from submitters referred to encounters with DFAT posts in the 1970s and 1980s. DFAT responded that advice on voting rights is an AEC matter, and that staff at overseas posts should be advising enquirers to contact the AEC directly:

The AEC's instructions to posts make it clear that staff are not to provide advice to electors on questions of enrolment status. Staff are to refer inquirers to the AEC...Overseas posts are not

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193 Submission (Ms C Bissey, no. 60). See also submissions (Ms S Tobin, no. 65; Ms R. Stephenson, no. 112; Ms K. Austin, no. 113; and Ms L. Quinn, no. 123).

194 Submission (AEC, no. 186), p. 6.

195 Submission (AEC, no. 186), p. 6.

196 See submissions (Mr L. Dwyer, no. 54; Mr J. Wulff, no. 111; Mr S. Blackney, no. 118; and Ms C Rawson, no. 137).

provided with copies of the electoral rolls so are unable to confirm enrolment status.<sup>197</sup>

#### Committee comment and recommendation

- 2.242 The Committee appreciates the AEC's assertion that 'there is no reason to provide information on the EOE register to people who clearly do not qualify under the provisions of the Act'. It is nonetheless concerned that this lack of information may lead people to believe that they have been misled by the AEC about their voting rights.
- 2.243 The Committee believes that the AEC should provide information about overseas enrolment entitlements to all people who contact them about moving overseas, rather than only to those people AEC Officers believe may qualify for EOE status. This would alleviate the concerns raised about lack of information.

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#### Recommendation 6

- 2.244 **The Committee recommends that the AEC provide comprehensive information on overseas voting entitlements and enrolment procedures to all electors who contact the AEC about moving overseas.**

#### Other issues relating to overseas enrolment

- 2.245 Two subsidiary issues emerged from submissions to the inquiry about enrolment by overseas electors: the impact of new dual citizenship provisions on voting rights, and misconceptions about the Australian Taxation Office's use of the electoral roll for ascertaining residency status.

#### Dual citizenship

- 2.246 Prior to April 2002, an Australian citizen deliberately acquiring another citizenship would forfeit their Australian citizenship. On 4 April 2002 section 17 of the *Australian Citizenship Act 1948* was repealed, allowing Australians to become citizens of another nation

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<sup>197</sup> Submission (DFAT, no. 168), p. 2. See also submission (AEC, no. 199), p. 11, for further detail on training initiatives for DFAT staff in relation to overseas voting.



without losing their Australian citizenship.<sup>198</sup> Australians who had already lost their Australian citizenship under section 17 did not have their citizenship reinstated.

- 2.247 The effect of the amended dual citizenship arrangements is that expatriate Australians may qualify to enrol and vote for both Australian and overseas elections if they meet the requirements under the *Commonwealth Electoral Act 1918* for overseas voting and any requirements for voting in their new country of residence.
- 2.248 The Southern Cross Group played a significant part in the campaign to repeal section 17 of the *Australian Citizenship Act 1948*. One of the SCG's arguments for change was that many expatriate Australians wish to take up citizenship of their new country of residence for practical reasons such as to overcome limitations on work, finance, taxation, business and property purchase, et cetera.<sup>199</sup>
- 2.249 The SCG also argued that expatriate Australians who remain as foreign nationals in their new country of residence do not usually have the right to vote, and in many cases, are excluded from voting in Australian elections because of the restrictions in the Electoral Act. Many expatriate Australians therefore do not have any democratic right to vote in their homeland (Australia) or their new country of residence.<sup>200</sup>
- 2.250 At this Committee's inquiry hearing on 20 September 2002, Senator Ray raised concerns about dual citizenship and its capacity to allow a person to vote in two countries:
- you could be a resident in Europe and voting for candidates in their local or national elections that insist on agricultural subsidies that absolutely destroy the Australian way of life—and then you are supposed to get a vote within Australia.<sup>201</sup>
- 2.251 Similar concerns were noted by the Australian Citizenship Council in its 2001 discussion paper on proposed dual citizenship arrangements. The Council noted the arguments against the introduction of dual

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198 *Australian Citizenship Legislation Amendment Act 2002*, which received Royal Assent on 4 April 2002.

199 SCG, submission to the Australian Citizenship Council, July 2001, at: [http://www.southern-cross-group.org/archives/Dual%20Citizenship/2001-07/SCG\\_Submission\\_to\\_DIMA\\_6\\_July\\_2001.pdf](http://www.southern-cross-group.org/archives/Dual%20Citizenship/2001-07/SCG_Submission_to_DIMA_6_July_2001.pdf), accessed 18 March 2003.

200 SCG, submission to the Australian Citizenship Council, July 2001, at: [http://www.southern-cross-group.org/archives/Dual%20Citizenship/2001-07/SCG\\_Submission\\_to\\_DIMA\\_6\\_July\\_2001.pdf](http://www.southern-cross-group.org/archives/Dual%20Citizenship/2001-07/SCG_Submission_to_DIMA_6_July_2001.pdf), accessed 18 March 2003.

201 Transcript of Evidence, 20 September 2002 (Senator R Ray), p. EM113.

citizenship which questioned whether dual citizenship would cause problems when nations and their members had interests which may be compromised by conflicting allegiances.<sup>202</sup>

- 2.252 Submissions to this inquiry manifested mixed views on dual citizenship and voting rights. Some were content to have the right to vote in their current country of residency only:

if I am living in Canada where I have taken out Canadian citizenship, then I would feel no urge to vote in Australian elections. My feeling is that as I am not living in Australia, it would not be fair to impose my views and circumstances on the Australian situation.<sup>203</sup>

and,

Choosing where to vote (based on residence) seems reasonable to me, should I become a US citizen. If I should return [to Australia], I would want to resume voting immediately.<sup>204</sup>

- 2.253 However, others felt that their financial and personal ties to Australia and their new country entitled them to vote in both:

If one has an impact on two cultures, it is not unreasonable to vote in both countries. That is not the same as voting twice.<sup>205</sup>

and,

If I am a citizen of two countries, I may have business, social and other interests in both countries. I may well be paying tax in two countries, even if I am a non-resident of one.

Therefore, why shouldn't I be able to vote in two different countries?<sup>206</sup>

- 2.254 The Committee recognises the potential under current EOE provisions for dual citizens to obtain voting entitlements in two different countries. This potential is limited only by the rules for attaining EOE status and the 'intention to return to Australia' and 'use it or lose it' provisions of the Electoral Act.

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202 Australian Citizenship Council, *Discussion Paper on Section 17 of the Australian Citizenship Act 1948*, June 2001, at: <http://www.citizenship.gov.au/0601paper>, accessed 24 March 2003.

203 Submission (SCG, no. 187 response 7), p. 9.

204 Submission (SCG, no. 187, response 8), p. 9.

205 Submission (SCG, no. 187, response 6), p. 9.

206 Submission (SCG, no. 187, response 10), p. 10.

- 2.255 At this early stage of the operation of the dual citizenship provisions, the Committee considers it prudent to keep a watching brief on their impact on the Australian electoral system.

### **ATO assessment of residency**

- 2.256 It was suggested that one reason for the low number of Australian expatriates with EOE status could be that expatriates have an impression that the Australian Taxation Office (ATO) refers to the electoral roll in assessing a person's residency for tax purposes.
- 2.257 Submissions indicated that Australians moving overseas for employment reasons find it advantageous to be treated by the ATO as non-residents for tax purposes. The SCG provided anecdotal evidence suggesting that accountants, lawyers and financial planners often advise clients moving overseas to apply to the AEC to have their names removed from the electoral roll. This is due to the widespread belief that the ATO uses evidence of a person's enrolment, amongst other criteria, to ascertain their residency status for tax purposes.
- 2.258 The ATO responded that:
- historically, the courts have placed next to no emphasis on electoral roll registration as a determinant of residency status. At most it would be a factor only where it was one of and was consistent with a series of factors which indicated that a person was either a resident or not a resident.<sup>207</sup>
- 2.259 The ATO also stated that while the Electoral Act allows overseas Australians to be registered as EOE's for six years or longer, under tax law a person generally would cease to be a resident for tax purposes two years after they ceased to reside in Australia. This further limits the relevance of the electoral roll in determining tax status.
- 2.260 The ATO noted the concern that tax professionals may be giving incorrect advice to Australians departing for overseas. The ATO stated that their information on Australians working overseas does not indicate a widespread problem in relation to incorrect advice from tax professionals. The ATO undertook to clarify the relevance of registration on the electoral roll to determination of residency status.<sup>208</sup>

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207 Submission (Australian Taxation Office [ATO], no. 194), pp. 3-4.

208 Submission (ATO, no. 194), p. 5.

## Homeless electors

2.261 The franchise of homeless people was raised in several submissions to the inquiry. The contention was that certain provisions of the Electoral Act restrict the ability of homeless people to enrol to vote in federal elections.<sup>209</sup>

## Statistics on homelessness in Australia

- 2.262 The Australian Bureau of Statistics (ABS) provides a three-tiered definition of homelessness:
- primary homelessness refers to those persons ‘without conventional accommodation’, namely those living on the streets, sleeping in parks, or squatting in derelict buildings;
  - secondary homelessness includes those who move frequently from one form of temporary shelter to another and covers those who use emergency accommodation (hostels or night shelters, for example), teenagers staying in youth refuges, women and children escaping domestic violence, people residing temporarily with other families and those who use boarding houses on an occasional or intermittent basis; and
  - tertiary homelessness refers to those persons who live in boarding houses on a medium to long-term basis; residents of private boarding houses who do not have a separate bedroom and living room, kitchen or bathroom facilities of their own; and those who do not have the security of tenure provided by a lease.<sup>210</sup>
- 2.263 Using data from both the 1996 census and the National Supported Accommodation Assistance Program (SAAP) Data Collection,<sup>211</sup> the ABS report, *Counting the Homeless*, estimated that the Australian homeless population totalled 105,304 at the time of the census.<sup>212</sup>

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209 Submissions (Homeless Persons’ Legal Clinic [HPLC], no. 145; *The Big Issue*, no. 150; Council to Homeless Persons, no. 105; ALP, no. 153). The HPLC submission was endorsed by 12 organisations including the St Vincent de Paul Community and Support Services, the Salvation Army Adult Services, Melbourne Citymission Western, Urban Seed and the Victorian Council for Social Services (Submission no. 145, pp. 37-38).

210 Submission (HPLC, no. 145), pp. 8-9.

211 The National SAAP Data Collection gathers information on all persons accommodated in services funded by the Supported Accommodation Assistance Program, such as hostels, refuges and other types of emergency accommodation.

212 Chris Chamberlain, *Counting the Homeless: Implications for Policy Development*, ABS Occasional Paper, 1996, p. 3. Available at:

Comparable figures from the 2001 census have not yet been released by the ABS.<sup>213</sup>

2.264 Table 2.9 details the dispersion of homeless persons.

**Table 2.9** Number of persons in different sectors of the homeless population, census night 1996

	Enumerated	Estimated	Total
Boarding houses	23 299		23 299
SAAP accommodation	12 926		12 926
Friends and relatives	35 500	13 000	48 500
Improvised dwellings, sleepers out	19 579	1 000	20 579
<b>Totals</b>	<b>91 304</b>	<b>14 000</b>	<b>105 304</b>

Source Chris Chamberlain, *Counting the Homeless: Implications for Policy Development*, ABS, p. 3.

2.265 The 'estimated' figures represent the number of young people who may have been with friends or relatives, or were in improvised dwellings but not recorded by the census. This is in part explained by the number of young people (aged 12 to 18) recorded as 'visitors' and not accompanied by an adult aged 19 or over. The ABS report noted that of the 26,300 young people who fell into this category, 50 per cent may have run away or been excluded from home.<sup>214</sup>

## The Electoral Act and voting by the homeless

2.266 On the basis of the figures reported in *Counting the Homeless*, the Homeless Persons' Legal Clinic (HPLC) stated that an estimated total of 88,000 homeless people were eligible to vote.<sup>215</sup>

<http://www.abs.gov.au/Ausstats/abs%40.nsf/525a1b9402141235ca25682000146abc/f26f9a1fc5d22f89ca256889000d02fd!OpenDocument>, accessed 6 March 2003.

213 Figures will not be released until the research is completed. This is expected to be finalised by September-October 2003. Further information on the strategies used in the 2001 census is available at the ABS website. See, in particular, ABS Media Release 3 August 2001:

<http://www.abs.gov.au/ausstats/abs@.nsf/0/09A591D8ADC450DFCA256A9D0004ED24?Open&Highlight=0,homeless>, accessed 5 March 2003, and ABS Census Update 24, November 2001,

<http://www.abs.gov.au/852563C300806CB8/0/8E1ABC6ED03A9777CA256B0F007C034B?Open&Highlight=0,homeless>, accessed 5 March 2003.

214 Chris Chamberlain, *Counting the Homeless: Implications for Policy Development*, ABS Occasional Paper, 1996, p. 25.

215 Submission (HPLC, no. 145), p. 9. The HPLC also acknowledged that a certain percentage of the total number of homeless people will be under the age of 17 and are thus ineligible to enrol. They re-iterated the finding that 13,000 youths between the ages of 13-18 were 'missed' by the census.

- 2.267 Estimates of the proportion of homeless people who are eligible to vote, but are not enrolled vary considerably. Hanover Welfare Services (HWS) estimate that ‘approximately one third of homeless people are not registered to vote’.<sup>216</sup> The Australian Federation of Homelessness Organisations (AFHO) estimates that more than 90 per cent of homeless people are not enrolled to vote.<sup>217</sup>
- 2.268 The HWS and AFHO estimates suggest that between 29,000 and 80,000 homeless people who may have been eligible to vote in the 2001 federal election did not do so.

## ‘Ordinary’ elector provisions

### Overview

- 2.269 In addition to the primary qualifications for enrolment outlined earlier in this chapter, an individual seeking to enrol for the purposes of voting in a federal election must provide:
- a residential address;
  - a postal address; and
  - a signed declaration of eligibility witnessed by someone who is eligible to be on the roll.<sup>218</sup>
- 2.270 Section 101 of the Electoral Act establishes that an individual must enrol in a Division within 21 days of becoming eligible to enrol.
- 2.271 Once enrolled, an individual is obliged, under section 245 of the Act, to exercise their right to vote.<sup>219</sup> Those who are recorded as not having accepted a ballot from a polling official are sent a penalty notice requiring a ‘valid and sufficient reason’ for their action.

### Concerns expressed to the Committee

- 2.272 The Homeless Persons Legal Clinic (HPLC) submitted that each of the above requirements affects the franchise of homeless persons.

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216 M Horn, *Social and Democratic Exclusion: Giving Voice to the Homeless*, Hanover Welfare Services, November 2001; cited in submission (HPLC no. 145), p. 9 footnote 6.

217 Australian Federation of Homelessness Organisations, Media Release, 27 June 2001, [http://www.afho.org.au/3\\_news/media\\_releases/27.06.01.htm](http://www.afho.org.au/3_news/media_releases/27.06.01.htm), accessed 11 June 2003.

218 See Part VII of the *Commonwealth Electoral Act 1918*.

219 Section 245, ‘Compulsory Voting’, stipulates that it is ‘the duty of every elector to vote at each election’. In practice, electors need only accept a ballot paper from a polling official so that their name is checked against the Certified List.

- 2.273 Providing a residential address was considered ‘a major impediment’, particularly where homeless persons live in non-conventional housing (for example, doorways, neglected warehouses, or on the street), or lack a consistent and stable address.<sup>220</sup>
- 2.274 While the Act does not define ‘address’, the HPLC predicted that the AEC could feasibly reject the enrolment of a person who nominated as their address ‘a caravan on unused Crown land which could only be adequately located by means of describing the access road’.<sup>221</sup>
- 2.275 Moreover, given the propensity of homeless people to move frequently, the HPLC noted the difficulty of enrolling when the Act requires an individual to be enrolled at an address for at least one month.<sup>222</sup>
- 2.276 According to submissions made by *The Big Issue* and the HPLC, homeless persons are afraid of being fined for not enrolling within the prescribed time frame.<sup>223</sup> These organisations submitted that the fines for not enrolling within 21 days of establishing a residence, and failing to vote are a disincentive for homeless persons to enrol.<sup>224</sup>
- 2.277 The HPLC made several recommendations to change the ordinary elector provisions in the Electoral Act, many of which seek to establish ‘exemptions’ for homeless persons.
- 2.278 The first concerned the address for which a homeless person may enrol. The HPLC recommended that the Act be amended:
- so that persons who give details of why they cannot provide an ‘address’ as to where they ‘live’ are able to nominate an address in the [Division] with which they have a close connection.<sup>225</sup>
- 2.279 The HPLC defined ‘close connection’ as:
- the address of, or which is nearest to, a place where the claimant commonly spends a substantial part of his or her time, whether during the day or night (see section 7B of the *Representation of the People Act 1983 (UK)* as amended in 2000);

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220 Submission (HPLC, no. 145), p. 15.

221 Submission (HPLC, no. 145), p. 15.

222 Submission (HPLC, no. 145), p. 15.

223 Submission (HPLC, no. 145 p. 15; *The Big Issue*, no. 150 p. 3).

224 Submission (HPLC, no. 145), p. 16.

225 Submission (HPLC, no. 145), p. 16.

or 'home base' requirement as provided for under the American 'National Mail Voter Registration form'.<sup>226</sup>

2.280 In addition, the HPLC recommended that the 21-day timeframe for updating enrolment details should be repealed or extended, and that a 'reasonable excuse' provision be incorporated in subsection 105(5) of the Act for those who fail to update their enrolment.<sup>227</sup>

2.281 In relation to the penalty provisions of the Act, both the HPLC and *The Big Issue* recommended that the AEC's internal procedures manual include homelessness as 'a valid and sufficient reason' for not meeting the requirement to vote. The HPLC was of the view that:

a public recognition of the practical difficulties faced by the homeless population which may prevent them from voting is necessary.<sup>228</sup>

2.282 Ms Meg Mundell added that what was involved was 'a matter of perception':

Within the homeless population, the people I have spoken to know that if you are enrolled and you do not vote then you can cop a fine. That is the last thing somebody in that situation is able to deal with.<sup>229</sup>

#### **Committee comment**

2.283 The Committee considered the applicability of ordinary elector provisions to homeless persons in detail.

2.284 Whilst appreciating the difficulties confronted by the homeless in enrolling and voting, the Committee is concerned about the implication of addressing these difficulties by way of amending provisions applicable to ordinary electors.

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226 Submission (HPLC, no. 145), p. 16.

227 The HPLC also recommended that amending legislation to provide for the earlier closure of the rolls and the requirement of proof of identity on application for enrolment not be passed.

228 Submission (HPLC, no. 145), p. 14.

229 Transcript of Evidence, 12 August 2002 (Ms M Mundell), p. EM44. The HPLC requested that the internal manual be made publicly available so as to alleviate the perception amongst homeless persons that they would be fined. However, the AEC does not believe it would be appropriate to publish its confidential internal manual as this could facilitate an increase in non-voting amongst all electors. The AEC is supported in this decision by the Administrative Appeals Tribunal. See Transcript of Evidence, 16 August 2002 (Mr P Dacey), p. EM74.



- 2.285 The Committee doubts that homeless persons who failed to enrol or failed to vote incur penalties.
- 2.286 Senator Ray expressed his belief at the 12 August hearing that:  
if [the homeless person] were to be challenged by the Electoral Commission for not voting, their using that as an excuse would almost certainly be acceptable.<sup>230</sup>
- 2.287 The Committee does not recommend change to existing provisions or penalties for ordinary electors.
- 2.288 The Committee formed the view during discussions that the very real issues confronting the homeless in regard to enrolment and voting would be better addressed through the more effective utilisation of the existing itinerant elector provisions.

## Itinerant elector provisions

### Background

- 2.289 In 1983, the Joint Select Committee on Electoral Reform recommended various reforms to electoral legislation, including an alternative set of enrolment provisions which would cater to itinerant Australians.
- 2.290 The concern was that enrolment qualifications, as set out in subsection 39(3) of the Act,<sup>231</sup> effectively disenfranchised 'itinerant workers and others whose occupation [required] frequent change' of residence.<sup>232</sup>

The Committee considered various options ... including enrolment in the electoral Division in which itinerant workers were born or the last one in which they could have enrolled under the current provisions relating to length of residence.<sup>233</sup>

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230 Transcript of Evidence, 12 August 2002 (Senator R Ray), p. EM49.

231 Following the enactment of the *Commonwealth Electoral Legislation Amendment Act 1984* (No. 45, 1984), sections and parts of the *Commonwealth Electoral Act 1918* were renumbered. For example, section 39 became section 93.

232 Joint Select Committee on Electoral Reform, *First Report*, Parliament of Australia, September 1983, p. 100.

233 Joint Select Committee on Electoral Reform *First Report*, Parliament of Australia, September 1983, p. 100. While that Committee used 'itinerant workers' such as shearers, fruit pickers and farm hands as an example of those electors to which these provisions would cater, the ensuing Act did not refer exclusively to itinerant workers.

- 2.291 Amendments were contained in the *Commonwealth Electoral Legislation Amendment Act 1983*. These effectively allowed itinerant people the opportunity to enrol for:
- the Subdivision for which the person's next of kin was enrolled at the time of application; or if that is not applicable,
  - the Subdivision for which the person last had an entitlement to be enrolled; or if that is not applicable,
  - the Subdivision in which the person was born; or if that is not applicable,
  - the Subdivision with which the person had the closest connection.<sup>234</sup>
- 2.292 To be eligible to enrol as an itinerant elector, a person must be an Australian citizen, over the age of 17, with no real place of living. A 'real place of living' is defined in section 4 of the Electoral Act as the 'place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place'.<sup>235</sup>
- 2.293 Itinerant voter status can be revoked if the itinerant:
- does not attend a polling booth or apply for a postal vote (paragraph 2.215 refers to the corresponding provision in relation to overseas electors);
  - goes overseas for one month or longer; or
  - establishes a permanent place of living and resides there for a period of one month.<sup>236</sup>
- 2.294 As of 15 October 2001, a total of 4,201 Australians were enrolled as itinerant electors.<sup>237</sup>

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234 *Parliamentary Debates: Official Senate Hansard*, 1 December 1983, p. 3144

235 This excludes those people who regularly travel from a fixed address for extended periods in connection with work, such as farm workers, fishing crews and mine workers, and those who are travelling around Australia but who eventually intend to return to a fixed address. Those who intend to leave Australia for a short time are also excluded. (See AEC, *Information on Enrolling as an Itinerant Elector*, at: [http://www.aec.gov.au/\\_content/What/enrolment/forms/itinerant.pdf](http://www.aec.gov.au/_content/What/enrolment/forms/itinerant.pdf), accessed 12 March 2003).

236 AEC, *Information on Enrolling as an Itinerant Elector*, as above. Submission (AEC, no. 199), pp. 6-7.

237 AEC, *Electoral Pocketbook*, Commonwealth of Australia, July 2002, p. 39.

### Concerns about the application of itinerant elector provisions to the homeless

- 2.295 *The Big Issue* noted that there have been no previous efforts by government or the AEC to list the homeless as a category of itinerant voters.<sup>238</sup>
- 2.296 The itinerant voter provisions do allow homeless persons to be encompassed, although this is not explicit:
- they do not require that an elector have an ‘address’ or a fixed place of living;
  - there are no financial penalties for failing to update one’s enrolment details; and
  - there is no financial penalty for itinerant electors who fail to vote, although their name will be removed from the roll if they fail to exercise that right.<sup>239</sup>
- 2.297 Nevertheless, the HPLC argued that as the itinerant voter provisions currently operate, these entail a number of practical difficulties for homeless persons.
- 2.298 The HPLC were particularly concerned with the ‘hierarchy’ of Divisions in which itinerants may enrol, which it argued effectively restricted the application of the ‘closest connection’ provision to those who are born outside Australia.
- 2.299 The HPLC considered that homeless persons should be allowed to enrol in the electorate in which they live, so as to directly choose those who are to represent them.
- 2.300 The Council to Homeless Persons noted that the rates of homelessness differed by region. The Council subsequently provided figures, as presented in Table 2.10 below.

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238 Submission (*The Big Issue*, no. 150, p. 2).

239 A small percentage of itinerant voters do not exercise their right to vote. In 1996, 0.62 per cent of itinerant voters were removed from the roll while in 1998, 0.67 per cent were removed (figures obtained by the HPLC from the AEC, 17 January 2002, see p. 21 of submission no. 145).

**Table 2.10** Number of homeless persons on census night, 1996 and the rate of homelessness per 10,000 of the population by region (Victoria)

	Inner Melbourne	Suburban Melbourne	Regional Victoria	Total
Number of homeless people	3 876	8 214	5 750	17 840
Rate per 10 000 of population	173	28	47	41

*Source* Chris Chamberlain. 2000. 'Homelessness in Victoria: A report prepared for the Victorian Homelessness Strategy, Department of Human Services'.

- 2.301 Inner Melbourne has the greatest concentration of homeless persons. The second highest average rate is found in Regional Victoria, particularly in the areas of East Gippsland (67 per 10,000), Ovens-Murray (56 per 10,000), Mallee (54 per 10,000) and Loddon (52 per 10,000).
- 2.302 The figures are difficult to interpret but under the proposal to allow homeless persons to enrol in the Division with which they have the 'closest connection', the majority of the 3,876 homeless people in Inner Melbourne may be voting in one or two electorates (Melbourne and Melbourne Ports). The 5,750 homeless persons in regional Victoria could be voting in one of three or four electorates (Murray, Gippsland, Mallee or Bendigo).
- 2.303 The period in which an itinerant may have a 'real place of living' is also of concern to the HPLC. Those homeless persons who live on the streets or sleep in parks (classified as the 'primary homeless') may tend to move frequently. Persons who stay in youth and women's refuges, or who stay in boarding houses or other emergency accommodation (classified as the 'secondary' and 'tertiary' homeless) tend to stay in one place for longer than one month. The HPLC argued that the provisions should allow itinerant electors to reside in one place for up to six months rather than only one month before having their itinerant status altered.
- 2.304 The HPLC also submitted that the definition of a 'real place of living' (being the 'place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place') required further clarification. According to the HPLC, a reference to 'unstable housing or non-conventional places of living' would ensure homeless persons are not excluded from the itinerant voter scheme.<sup>240</sup>

240 Submission (HPLC, no. 145), p. 23.

- 2.305 Like 'ordinary' electors, itinerant electors may apply for itinerant elector status up until the close of rolls. The HPLC recommended that an exception be granted to homeless persons so that late applications could be made 'in person up to the day before the election'.<sup>241</sup>
- 2.306 Finally, the HPLC believed the format of the itinerant enrolment application form was confusing. Specifically, it highlighted question 11 of the form which requires 'the address for which [the individual is] claiming enrolment', arguing that this may be taken to mean a 'current address'. The HPLC recommended that the itinerant application form be reviewed.<sup>242</sup>
- 2.307 The AEC accepted that while the itinerant elector provisions do apply to homeless persons, this applicability is not clearly publicised and that the provisions could be amended to make their applicability to homeless persons clear.<sup>243</sup>
- 2.308 In relation to the HPLC's proposals to amend the provisions of the Electoral Act relating to itinerant electors, the AEC underscored the importance of '[minimising] the opportunities for enrolment fraud'.<sup>244</sup>
- 2.309 The AEC stressed that to permit persons to enrol for an address 'in the Subdivision with which they have the closest connection', rather than in accordance with the hierarchy set out in the itinerant provisions, could potentially leave the roll open to manipulation. Accordingly, caution would need to be exercised in contemplating such a change.<sup>245</sup>
- 2.310 The AEC advised that it would consider the needs of homeless and itinerant electors in its forthcoming review of enrolment forms.<sup>246</sup>

#### Committee comment and recommendation

- 2.311 The Committee believes that the itinerant voter provisions hold the most promise for the enrolment of homeless persons, and encourages the AEC to identify strategies to inform homeless persons of their ability to enrol as itinerant electors.

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241 Submission (HPLC, no. 145), p. 24.

242 Submission (HPLC, no. 145), p. 24.

243 Submission (AEC, no. 186), p. 8.

244 Submission (AEC, no. 186), p. 7.

245 Submission (AEC, no. 186), p. 8.

246 Submission (AEC, no. 186), p. 8.

**Recommendation 7**

- 2.312 **The Committee recommends in relation to homeless electors:**
- **that the itinerant elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* be amended so as to make clear their applicability to homeless persons;**
  - **that the AEC continue its efforts to simplify the itinerant elector application form and ensure that its applicability to homeless persons is made more apparent; and**
  - **that the AEC target homeless persons in its next public awareness campaign, informing them about itinerant elector enrolment.**
- 2.313 Regarding the HPLC's recommendation that homeless persons be allowed to register in an electorate with which they had a 'close connection', Committee members were reluctant to deviate from the hierarchy of enrolment Divisions as set out in paragraph 2.291. The 'closest connection' clause originally inserted into the itinerant elector provisions only had the intention of enfranchising those without any claim to enrolment in any other Division.
- 2.314 The proposal that a homeless elector be able to enrol as an itinerant elector in a particular Division up until the day before the election is not supported.
- 2.315 The Committee also considered which groups of homeless persons would be served by these amendments. Senator Murray expressed some concern that even in the event of successful amendments to the itinerant elector provisions, not all categories of homeless persons would be able to enrol. For this reason, Senator Murray raised the possibility of trialling itinerant elector provisions amongst certain groups of homeless persons.<sup>247</sup>

**Non-legislative measures to assist homeless voters**

- 2.316 Both the HPLC and *The Big Issue* argued that non-legislative measures were required to further facilitate enrolment and voting by homeless

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247 Transcript of Evidence, 12 August 2002 (Senator A Murray), pp. EM 46-47.

- persons.<sup>248</sup> In particular, it was submitted that further attention should be paid to elector awareness.
- 2.317 The HPLC recommended that AEC officials liaise with people working in shelters for the homeless, disability services, and welfare organisations with a view to assisting people to exercise their voting rights. The HPLC were also keen to ensure that mobile polling stations were located more strategically so as to capture homeless voters.<sup>249</sup>
- 2.318 In response, the AEC undertook to include homeless people as a target group in its public awareness campaign for the next federal election, acknowledging that there would be some challenges in reaching this group.<sup>250</sup>
- 2.319 The Deputy Electoral Commissioner also foreshadowed that the AEC could:
- use some of the welfare agencies as information imparters ... so that [the AEC could] actually make contact with some of the welfare agencies, have the enrolment forms available and talk about the processes.<sup>251</sup>
- 2.320 The Committee supports and encourages these endeavours.

## Aboriginal and Torres Strait Islander electors

### Education of Aboriginal electors

- 2.321 The ALP's submission expressed concern that the abolition of the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS), had disenfranchised a significant proportion of indigenous Australians.
- 2.322 The Service was established in 1986 to aid Aboriginal and Torres Strait Islander people to develop an understanding of the electoral process, and to assist them to vote where required. The program aimed for Aboriginal and Islander self-management in local electoral matters by giving responsibility for the delivery of electoral

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248 Submissions (HPLC, no. 145, p. 24; *The Big Issue*, no. 150).

249 Submission (HPLC, no. 145), p. 24.

250 Submissions (AEC, nos. 174 and 186).

251 Transcript of Evidence, 16 August 2002 (Mr P Dacey), p. EM 74.

information and education to Aboriginal and Torres Strait Islander people themselves.<sup>252</sup>

2.323 The program operated through the AEC and employed 15 to 20 local Aboriginal field officers, training them to identify, interpret for and assist voters at remote mobile polling locations.<sup>253</sup> In evidence to the JSCEM in 1999, the former Australian Electoral Officer for the Northern Territory, Mr Kerry Heisner, explained that the ATSIEIS program:

also functioned as an enrolment review program in Aboriginal communities. Aboriginal people were encouraged to enrol and their enrolments were checked for the accuracy of name spelling and community address. The movement of people was also informally tracked so that their enrolments could be kept up to date.<sup>254</sup>

2.324 Funding for the service (\$2 million per year) was discontinued in the 1996-97 federal Budget.<sup>255</sup> The AEC advised the JSCEM that it would do what it could within its budget to meet the ongoing education needs of Aboriginal and Torres Strait Islanders.<sup>256</sup>

2.325 The ALP's submission estimated that 54 per cent of the indigenous community is not currently enrolled to vote. The AEC and the Aboriginal and Torres Strait Islander Commission (ATSIC) have also previously raised concerns that indigenous community enrolments are 'significantly below overall enrolments'.<sup>257</sup> For this reason, the recommendation has been made that ATSIEIS be re-instated.<sup>258</sup>

2.326 In 1998 the Committee recommended:

that the AEC report to the Committee on options for an effective integrated educational and enrolment service for

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252 JSCEM, *Report on the Aboriginal and Islander Electoral Information Service*, Parliament of Australia, September 1991, p. 1. Submission (AEC no. 199), pp. 3-4.

253 AEC submission to the JSCEM, *The 1996 Federal Election* (1997), as above.

254 Evidence to the JSCEM, *The 1998 Federal Election* (2000), as above; Transcript of Evidence 29 June 1999, p. EM207.

255 Budget Statements 1996-97, Budget Paper No. 1, pp. 3-48.

256 JSCEM, *The 1996 Federal Election* (1997), as above, p. 44.

257 AEC submission to the JSCEM, *The 1998 Federal Election* (2000), as above; ATSIC submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *'We Can Do It!'*, *The Report of the inquiry into the needs of urban dwelling Aboriginal and Torres Strait Islander Peoples*, Parliament of Australia, November 2000, p. 17.

258 Submission (ALP, no. 153), p. 10.



Aboriginal and Torres Strait Islanders before the next federal election.<sup>259</sup>

- 2.327 The AEC has yet to complete this report. In 2002 the AEC reported that a preparatory meeting was held with representatives from all AEC State and Territory offices to canvass options. The report was to be written after an evaluation of the education program developed for the ATSIC elections held in October 2002. The Committee has been advised that the ATSIC post-election reviews have now been completed and that the report is now being drafted.
- 2.328 The Committee is pursuing the matter further with the AEC. It is proposed that if the AEC has not completed its report by the time the Committee's 2001 federal election report is finalised, the Committee will make a separate report on this specific issue.

## **Enrolment of certain groups and electoral roll completeness**

- 2.329 The submissions made to the inquiry concerning the enrolment of overseas, homeless and indigenous persons return the Committee to the question of the electoral roll's completeness. As noted in paragraph 2.11, approximately 550,000 eligible Australians (or four per cent) are not on the electoral roll. The Committee reiterates its concern about this and recommends that the AEC further investigate what the ANAO recently termed 'high-risk factors for non-enrolment'<sup>260</sup> with a view to ensuring that all those eligible to be enrolled are so enrolled.

### **Recommendation 8**

- 2.330 **The Committee recommends that the AEC investigate the completeness of the electoral roll, with a view to further reducing the percentage of those Australians eligible to be on the roll, but not currently enrolled.**

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259 JSCEM, *The 1998 Federal Election* (2000), as above, p. 84.

260 ANAO, *The Integrity of the Electoral Report* (2002), as above, p. 59.

## **Election Preparation**

- 3.1 The period between the calling of an election and polling day is a period of intense activity on the part of the AEC, political parties and candidates. This activity includes the formal requirements for calling the election and nominating candidates, as well as publicity and advertising.

### **Notification of an election and election writs**

- 3.2 The AEC raised concerns about a number of formalities, namely:
- how it is notified of a forthcoming election;
  - its role in preparing election writs; and
  - the method of certifying the names of the successful candidates on the writs.<sup>1</sup>
- 3.3 The following outlines the context in which these concerns arise, followed by consideration of the submissions on these points.

### **The role of election writs in an election**

- 3.4 An election writ is a legal document that ‘commands’ an electoral officer to hold an election, and specifies the dates for the close of rolls, the close of nominations, polling day and the return of that writ.

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<sup>1</sup> Submission (AEC, no. 147), pp. 9-11, Transcript of Evidence, 16 August 2002 (Mr A Becker), pp. EM68-70.

- 3.5 The provisions governing election writs are detailed in sections 12 and 32 of the Constitution, and Part XIII of the Electoral Act. The function of election writs and how they fit in to the stages of an election is described below.<sup>2</sup>

#### Determination of an election date

- 3.6 Under the Constitution, the Governor-General has the power to prorogue the Parliament and dissolve the House of Representatives.<sup>3</sup> However, as a matter of convention, the Prime Minister determines when he or she wishes an election to be held, subject to the constitutional requirement that the term of the House of Representatives shall be a maximum of three years.<sup>4</sup> It is the convention that the Prime Minister visit the Governor-General to request that an election be held on the date chosen by the Prime Minister.<sup>5</sup> In 2001, the Prime Minister visited the Governor-General on Friday, 5 October, and announced the election date the same day.

#### Dissolution of the House of Representatives

- 3.7 In the event of a House of Representatives and half-Senate election, as was the case in 2001, the House of Representatives is dissolved and the Parliament is 'prorogued'. This has the effect that Senators are 'discharged from attendance' until Parliament is summoned again after the election.<sup>6</sup>

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2 The process described is the process for a 'normal' federal election as occurred in 2001, that is, a full House of Representatives election and a half Senate election. The process has differences when other types of elections are held, for example a double dissolution election in which case both houses of parliament are dissolved and there is a full Senate election as well as a full election for the House of Representatives. IC Harris, *House of Representatives Practice – Fourth edition*, Department of the House of Representatives, Canberra (2001) pp. 94-98, was relied on to compile this description.

3 Constitution, sections 5 and 32.

4 Constitution, section 32.

5 *House of Representatives Practice* notes, 'It is clear that it is incumbent on the Prime Minister to establish sufficient grounds for the need for dissolution, particularly when the House is not near the end of its three year term. The Governor-General makes a judgement on the sufficiency of the grounds. It is in this situation where it is generally recognised that the Governor-General may exercise a discretion not to accept the advice given.' *House of Representatives Practice*, (2001), as above p. 7.

6 According to *House of Representatives Practice*, 'Prorogation terminates a session of Parliament; dissolution terminates a Parliament ... the decision to prorogue the Parliament therefore does not attach to it the same significance as a decision to dissolve the House of Representatives'. When the parliament is prorogued, Senate standing committees are still empowered to meet. However, the practice of proroguing the Parliament immediately before dissolution of the House of Representatives has been said to be aimed at removing the possibility of the Senate sitting following the dissolution of

- 3.8 Parliament is dissolved by a proclamation.<sup>7</sup> The Office of Legislative Drafting, under instructions from the Department of Prime Minister and Cabinet, prepares a proclamation of dissolution of the House of Representatives. The proclamation is signed by the Governor-General and published in the *Commonwealth Gazette*.<sup>8</sup> In 2001, the dissolution occurred on Monday, 5 October.

#### Preparation and issue of writs

- 3.9 As noted above, election writs direct an electoral officer to conduct an election.<sup>9</sup> Writs must be issued within ten days after the dissolution or expiry of Parliament.<sup>10</sup> In 2001, Parliament was dissolved on Friday, 5 October 2001, and the writs were issued on Monday, 8 October 2001.
- 3.10 Different processes exist for the preparation and issue of writs for elections for the House of Representatives, the Senators for the States and the Senators for the Territories. The power to issue writs is a matter of constitutional law. The preparation of the writs is a matter of convention. In the discussion below, the issue of writs is examined first, although in practice obviously writs are prepared first.
- 3.11 The Governor-General issues eight writs for the election of Members of the House of Representatives, one writ for each State and Territory. The Governor-General also issues the two writs for the election of Senators for the Northern Territory and the Australian Capital Territory.<sup>11</sup> The House of Representatives writs are directed to the Australian Electoral Commissioner. The writs for the Territory

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the House. In the event of a double dissolution election, both the House of Representatives and the Senate are dissolved. *House of Representatives Practice*, (2001), as above, pp.225-228.

- 7 Constitution, section 5. Prorogation by the Governor-General may also be by proclamation 'or otherwise'. See *House of Representatives Practice*, (2001), as above, p. 226.
- 8 The practice has been established that immediately prior to the hour of dissolution, the Official Secretary to the Governor-General, accompanied by the Clerk of the House, the Deputy Clerk and the Serjeant-at-Arms, reads the proclamation. The officers then return and the Clerk of the House posts a copy of the proclamation at the door of the House of Representatives Chamber. A 19-gun artillery salute is fired at the precise time of dissolution to mark the end of the Parliament. Officers of the Senate attend the reading of the proclamation on the occasion of a simultaneous dissolution of both Houses. They do not attend when only the House is being dissolved.
- 9 *Commonwealth Electoral Act 1918*, section 154.
- 10 Constitution, sections 12 and 32.
- 11 Constitution, section 32 and *Commonwealth Electoral Act 1918*, section 151. For a by-election, it is the Speaker who has the power to issue the writ, and it is the Speaker to whom the writ is returned (Constitution, section 33).

Senators are directed to the Australian Electoral Officers (AEOs) for the Northern Territory and the Australian Capital Territory.<sup>12</sup>

- 3.12 The Governor of each State issues a writ for the election of Senators for that State.<sup>13</sup> On the Governor-General's agreement to the Prime Minister's request for an election, the Prime Minister:
- informs the Governor-General of the requirements of section 12 of the Constitution (which provides that the State Governors issue writs for the election of State Senators);
  - states that it would be desirable that the States adopt the polling date proposed by the Commonwealth; and
  - requests the Governor-General to invite the State Governors to adopt a suggested date.<sup>14</sup>
- 3.13 The Governor-General then writes to the State Governors advising them of the intention to hold an election and seeking their co-operation in issuing the writs. As a matter of courtesy, the Prime Minister also writes to the State Premiers advising them of the intention to hold an election and the writs are subsequently prepared by the respective Premier's departments. State Governors act on the advice of the State Government.
- 3.14 While the practice is for the State Governors to fix times and polling places for Senate elections identical with those for the elections for the House of Representatives, under the Constitution, State Parliaments do have the power to make laws under which different dates for Senate polls could be set,<sup>15</sup> provided that any date so chosen is a) a Saturday, and b) satisfies the Constitutional requirement that an election to fill vacant Senate places shall be made 'within one year before the places are to become vacant', that is, within one year before the conclusion of the six-year term for the positions in question.<sup>16</sup>

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12 *Commonwealth Electoral Act 1918*, sections 154 and 153 respectively.

13 Constitution, section 12.

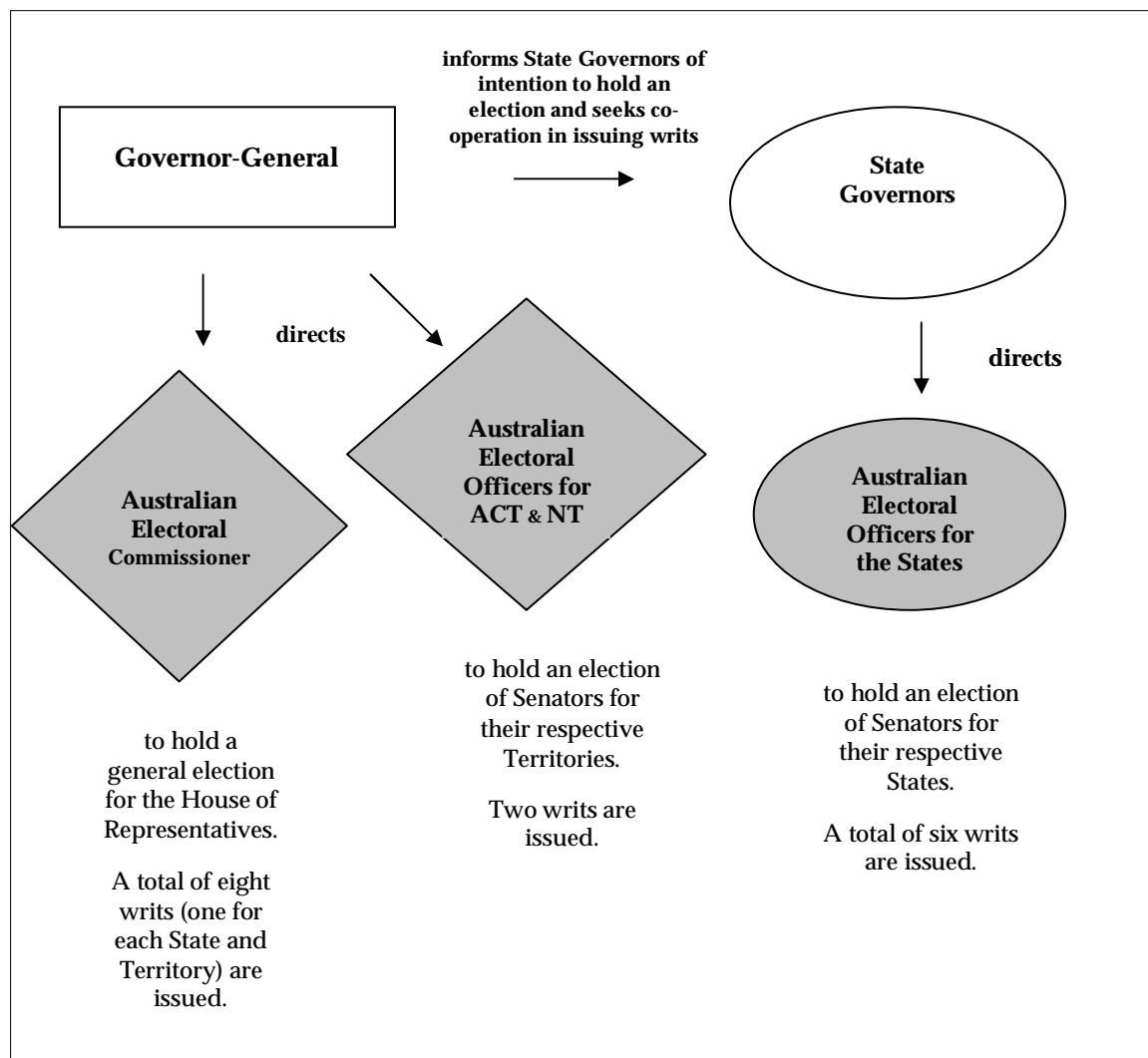
14 JR Odgers, *Australian Senate Practice – Tenth Edition*, Department of the Senate (2001), p.123.

15 Section 9 of the Constitution provides in part that 'The Parliament of a State may make laws for determining the times and places of election of Senators for the State'.

16 Constitution, section 13. On 2 April 1974 the Premier of Queensland used these powers to cause a writ to be issued for a half-Senate election for Queensland (periodical elections for half of the Senate were to be held on 18 May 1974). This followed the announcement, earlier on 2 April, that Queensland Senator Vince Gair had accepted appointment as Australia's next Ambassador to Ireland. Senator Gair had not at that time resigned as a Senator – the effect of issuing a writ prior to the vacancy arising was that the vacancy

- 3.15 The writs for the elections of Senators for the States are directed to each State's respective Australian Electoral Officer.<sup>17</sup>
- 3.16 Figure 3.1 below illustrates the process of issuing writs for the House of Representatives, the writs for the State Senators, and the writs for the Territory Senators.

Figure 3.1 Issue of federal election writs



Sources AEC submission no. 147, p. 9; Commonwealth Electoral Act 1918, sections 153, 154; Constitution, section 12, 32; IC Harris, House of Representatives Practice – Fourth Edition (2001); JR Odgers, Australian Senate Practice – Sixth Edition (1991).

would then be filled by choice of the State Parliament or Governor, and not at the election on 18 May. Speculation was that filling of Senator Gair's position at the election would have improved the ALP federal Government's chances of controlling the Senate from the start of the new Senate term on 1 July 1974. Both Houses of the Parliament were ultimately dissolved on 11 April. See JR Odgers, *Australian Senate Practice – Sixth Edition* (1991), pp. 55-62.

<sup>17</sup> Commonwealth Electoral Act 1918, section 153.

- 3.17 Each writ specifies:
- the date for the close of nominations of candidates;
  - the date for the close of the rolls;
  - the date for polling day; and
  - the date for the return of the writ to the Governor-General (House of Representatives and Territory Senate writs) or the State Governors (State Senate writs).<sup>18</sup>
- 3.18 Writs for the House of Representatives and Territory Senate elections are prepared by the AEC in discussion with the Federal Executive Council Secretariat in the Department of Prime Minister and Cabinet, and the Office of the Special Minister of State.
- 3.19 The election writs for the Senators for the States are prepared by the State Premier's Departments, in consultation with the respective State Australian Electoral Officers.

#### Declaration of the poll and return of writs

- 3.20 As well as being the authority by which an election is held, the writ is the authority by which a candidate is declared elected. As soon as practical after it has been determined that a candidate has been elected, the result is declared.<sup>19</sup> For a House of Representatives seat, the declaration of the poll is made by the relevant Divisional Returning Officers.<sup>20</sup> The declaration of the poll for the Senate is made by the Australian Electoral Officer for that State or Territory.<sup>21</sup>
- 3.21 When all polls for House of Representatives Divisions within a State or Territory have been declared, the Electoral Commissioner certifies on the writ the name of the successful candidate for each Division and forwards the writ to the Governor-General.<sup>22</sup> Following the

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18 *Commonwealth Electoral Act 1918*, section 152. Sections 283 and 284 of the Electoral Act stipulate provisions for the return of the writs (paragraphs 3.33 to 3.40 refer).

19 *House of Representatives Practice*, (2001), as above, p. 98.

20 *House of Representatives Practice*, (2001), as above, p. 98. The declaration in each Division need not necessarily occur on the same day, however, as the time for counting will vary from Division to Division.

21 AEC Factsheet, *How the Votes are Counted* at: [http://www.aec.gov.au/\\_content/What/voting/votes\\_count.htm](http://www.aec.gov.au/_content/What/voting/votes_count.htm), accessed 30 May 2003. Given the more complicated nature of the Senate voting system, it is some weeks before all Senators are declared elected.

22 *House of Representatives Practice*, (2001), as above, p. 98. *Commonwealth Electoral Act 1918*, section 284. In a by-election for a Division of the House of Representatives, an election writ addressed to the Electoral Commissioner, signed by the Speaker of the House and

declaration of the result in a Senate election, the AEO for a State or Territory certifies on the writ the names of the candidates elected for the State or Territory and returns the writ to the Governor of the relevant State, or in the case of the ACT and the NT, to the Governor-General.<sup>23</sup>

- 3.22 The Electoral Act stipulates that the names of candidates elected be certified on the reverse side of the original writ.<sup>24</sup> The writs must be returned within 100 days of their issue.<sup>25</sup>

### The AEC's concerns in relation to notification of the election and election writs

- 3.23 The AEC raised three issues in relation to the notification of an election and election writs: the form of advice to the AEC of the election; the appropriateness of the AEC as the body to prepare the writs for the House of Representatives and the Territory Senators; and the method of certifying the names of the successful candidates on the writs.

#### Notification

- 3.24 In both its written and oral submissions, the AEC indicated that it wished to receive a formal notification of the election, noting that it had never received such formal advice.<sup>26</sup> The AEC stated that, in 2001, the notification of the federal election, which was the basis for it preparing writs, was in the form of a faxed press release from the Prime Minister's Office.<sup>27</sup> Prior to 2001, the AEC has prepared writs for the general election of the House of Representatives and the Territory Senators on the basis of informal telephone calls from officers of the Department of Prime Minister and Cabinet to the Electoral Commissioner.

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embossed with the House of Representatives seal, is, on the declaration of the poll, returned to the Speaker. *House of Representatives Practice*, (2001), as above, pp. 92, 98.

23 *Oggers Senate Practice -- Tenth Edition*, (2001), as above p. 130. *Commonwealth Electoral Act 1918*, section 283.

24 *Commonwealth Electoral Act 1918*, section 283.

25 *Commonwealth Electoral Act 1918*, section 159.

26 Transcript of Evidence, 16 August 2002 (Mr A. Becker), p. EM69. Mr Becker remarked that the press release was 'the most formal' advice they had ever received, Transcript of Evidence p. EM69; Submission (AEC, no. 147), p. 10.

27 Submission (AEC, no. 147), p. 10, Transcript of Evidence, 16 August 2002 (Mr A Becker), pp. EM68-70.



- 3.25 The Committee suggested that the AEC liaise with the Department of Prime Minister and Cabinet regarding notification procedures.<sup>28</sup> The AEC subsequently advised the Committee that it had written to the Department of Prime Minister and Cabinet regarding procedures, and that the matter was being dealt with administratively.<sup>29</sup>

#### Preparation

- 3.26 The AEC's second concern related to which entity should prepare the writs. As noted above, the writs for the House of Representatives and Territory Senators are prepared by the AEC, and the writs for the State Senators are prepared by the State Premier's Departments.
- 3.27 The AEC's submission suggested that the Office of Legislative Drafting (OLD) might be a 'more appropriate organisation' than the AEC to prepare the House of Representatives and Territory Senator writs (on the basis of a brief from the Department of Prime Minister and Cabinet).<sup>30</sup> The AEC submitted that while the OLD is 'a specialist legal drafting office, servicing all Commonwealth agencies', 'one of OLD's functions is to draft non-legislative matters, of which the writs would be an example'.<sup>31</sup>
- 3.28 The AEC advised the Committee that:
- In New South Wales, Queensland, Western Australia and South Australia the writs for the State elections are prepared by the Premier's Department (or equivalent) and in the Northern Territory the Cabinet Office. It is only in Victoria and Tasmania that the State electoral bodies prepare writs for the State elections.<sup>32</sup>

#### Committee comment

- 3.29 The Committee can see no reason why, given the long established Commonwealth practice, the AEC is not the appropriate body to prepare writs. Insofar as it is relevant, the comparison with the practice for State and Territory elections is not compelling because it is not consistent across all jurisdictions.

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28 Transcript of Evidence 16 August 2002 (Mr P Georgiou, MP; Senator R Ray), p. EM70.

29 Submission (AEC, no. 174), p. 56.

30 Submission (AEC, no. 147) p 10.

31 Submission (AEC, no. 190) p. 8.

32 Submission (AEC, no. 147) p 10. The AEC later advised that ACT Elections (the ACT's electoral authority) also prepares election writs for ACT Legislative Assembly elections.

## Format of writs

### 3.30 The AEC raised concerns about the physical form of returned writs:

In order to have the requisite information [that is, the names of the candidates declared elected] on the reverse side of the writ [as required by section 283 of the Electoral Act], the original writs must be processed through a printer or photocopier which involves the inherent risk of damaging or destroying a writ in that process. Any error made during this process cannot be corrected as it is an original writ.<sup>33</sup>

### 3.31 The Committee has been advised that there is no indication of any writ being destroyed in the printing or photocopying process. Nonetheless, in the interests of prudence, the Committee supports the AEC's recommendation that the Electoral Act be amended to allow the name of each candidate elected to be included in an attachment to the writ, rather than printed or photocopied on the reverse side of the original writ.

## Recommendation 9

### 3.32 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the name of each candidate elected to be included in an attachment to a writ, rather than printed or photocopied on the reverse side of the original writ.**

## Return of writs

### 3.33 In the course of this inquiry, members of the Committee expressed an interest in ensuring a uniform closing date for petitions to the Court of Disputed Returns.<sup>34</sup> The High Court sitting as the Court of Disputed Returns is the body that determines any disputes as to the validity of an election or a return.<sup>35</sup>

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33 Submission (AEC, no. 147), p. 11.

34 Transcript of Evidence 16 August 2002 (Senator R. Ray, Senator A. Murray), pp. EM69-70.

35 *Commonwealth Electoral Act 1918*, section 354. See also *House of Representatives Practice*, pp. 101-102.

- 3.34 A petition to the Court of Disputed Returns must be filed within 40 days after the return of the writ to which the petition relates.<sup>36</sup> Accordingly, the return date of a writ determines the closing date for petitions disputing the election to which that writ applies.<sup>37</sup>
- 3.35 As outlined above, there are 16 writs for a federal election for the House of Representatives and the Senate (whether it is a half-Senate election or a full Senate election). All such writs for a general election are *returnable* by the same day.<sup>38</sup> For the 2001 election, the writs were all returnable by 16 January 2002.
- 3.36 However, the *return date* of a writ is the date the writ is in fact returned, that is the date on which the writ, having been endorsed with the names of the successful candidates, comes into the possession of the person authorised to act on it – in the case of a general election the Governor-General.<sup>39</sup> As described in paragraph 3.21, the writ for a State or Territory is returned after all the polls in that State or Territory have been declared, and this is likely to differ between States and Territories.
- 3.37 The return date of the eight writs for the House of Representatives was 6 December 2001. The return dates of the eight Senate writs for the 2001 federal election ranged from 3 December 2001 (Tasmania) to 7 December 2001 (Victoria).<sup>40</sup> Accordingly, the closing dates for petitions to the Court of Disputed Returns following the 2001 federal election ranged from 12 January 2002 to 16 January 2002.
- 3.38 In response to the concerns raised by the Committee, the AEC advised that it had proposed to the Office of General Counsel (OGC) two options for amending the Electoral Act to allow ‘a uniform commencement and closing date for petitions to the Court of Disputed Returns’.<sup>41</sup> The amendments would either:
- deem all writs to be returned on the date of the return of the last writ; or

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36 *Commonwealth Electoral Act 1918*, subsection 355(e).

37 *Commonwealth Electoral Act 1918*, subsection 355(e).

38 *House of Representatives Practice*, (2001) as above, p. 98.

39 *House of Representatives Practice*, (2001) as above, p. 98. (See also paragraphs 3.20 and 3.21 above).

40 Submission (AEC, no. 147), pp. 11-12.

41 Submission (AEC, no. 186), p. 13.

- require that the 40-day period be counted from the day of the return of the last writ.<sup>42</sup>

3.39 The OGC advised the AEC that it preferred the second of these options. This is in line with the current mechanism used in ATSIC elections, where the 40-day period begins after the last declaration of a poll in a round of ATSIC elections.<sup>43</sup>

#### Committee comment

3.40 Presently, a petition to the Court of Disputed Returns must be filed within 40 days after the return of the writ to which the petition relates, leading to varying closing dates for petitions as the different writs are returned. The Committee considers the broader question of the operation of the Court of Disputed Returns to be worthy of further examination in the future.

## Nominations and registrations

### Nominations

3.41 The Electoral Act provides that any Australian citizen who is over the age of 18, and who is either eligible to vote or qualified to become an elector, may nominate as a candidate for election to the House of Representatives or the Senate.<sup>44</sup> This is subject to the Constitution, which sets out grounds for ineligibility for election. Section 44 provides:

Any person who –

- (i) 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; or
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or
- (iii) is an undischarged bankrupt or insolvent; or

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42 Submission (AEC, no. 186), p. 13.

43 Submission (AEC, no. 186), p. 14.

44 *Commonwealth Electoral Act 1918*, section 163. Accordingly, a nominee does not have to be on the roll to nominate.

- (iv) 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; or
- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;

shall be incapable of being chosen or of sitting as a Senator or a member of the House of Representatives.<sup>45</sup>

- 3.42 Members of State or Territory legislatures are also ineligible to nominate for election to the Senate or the House of Representatives.<sup>46</sup>
- 3.43 In each election, a person may only be nominated for one seat in the House of Representatives or one seat in the Senate.<sup>47</sup>
- 3.44 As specified in the writs for the 2001 election, nominations for candidature for the House of Representatives and the Senate closed at 12 noon on Thursday, 18 October 2001.<sup>48</sup> A total of 1,324 candidates nominated for the 2001 federal election: 285 for the Senate and 1,039 for the House of Representatives.<sup>49</sup>
- 3.45 An unusual situation arose in 2001 when Ms Roslyn Dundas nominated as a candidate for the Australian Democrats for both the ACT Legislative Assembly election being held on 20 October 2001, and the federal Senate election being held on 10 November 2001. Neither section 164 nor section 165 of the Electoral Act prevented Ms Dundas from having these two simultaneous nominations, because she was not a member of a State or Territory legislature when nominations for the Senate closed on 18 October 2001, and section 165 only prevents multiple nominations in the same *federal* election.

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45 The Australian Constitution, available at: <http://www.aph.gov.au/senate/general/constitution/index.htm>, accessed Feb 2003. Sub-section (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 forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

46 *Commonwealth Electoral Act 1918*, section 164.

47 *Commonwealth Electoral Act 1918*, section 165.

48 *Commonwealth Electoral Act 1918*, section 175.

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

- 3.46 Ms Dundas won the Legislative Assembly seat of Ginninderra, although the result was not declared until 5 November 2001.<sup>50</sup> At this point, had Ms Dundas wanted to withdraw her Senate candidacy, she could not have done so because section 177 of the Electoral Act only permits nominations to be withdrawn up until the close of nominations, and nominations had closed two days before the ACT Assembly's election.
- 3.47 Ultimately, Ms Dundas was not successful in the Senate election. Nevertheless, this case illustrates the possibility of a candidate simultaneously nominating and successfully contesting two elections.
- 3.48 The AEC has advised that:

As nominations closed for the federal election on 18 October 2001, before polling day for the ACT Legislative Assembly election, Ms Dundas was still only a candidate for the ACT Legislative Assembly when she nominated as a candidate for the Senate. In other words, Ms Dundas did not offend section 164 of the Act.

Anticipating the Ms Dundas might be elected to the ACT Legislative Assembly, the AEC sought legal advice as to whether the ACT Senate election could continue if Ms Dundas was elected to the ACT Legislative Assembly. On the basis of this advice, the AEC believes that Ms Dundas' election to the Legislative Assembly did not require any action in relation to the ACT Senate election.<sup>51</sup>

## Deposits

- 3.49 Under the Electoral Act, candidates must pay a deposit to a Divisional Returning Officer or Australian Electoral Officer as part of the nomination process. The deposit is \$350 for House of Representatives candidates and \$700 for Senate candidates.<sup>52</sup> The candidate's deposit is returned to the candidate after an election if they are elected. The

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50 The ACT's electoral system, Hare-Clark, often produces an outcome which is unknown for at least a week after polling. Jim Chalmers, 'Commentary: The Australian Capital Territory Election of 20 October 2001' (2002) *Australian Journal of Political Science*, 37(1):165-168.

51 Submission (AEC, no. 199), p. 15.

52 *Commonwealth Electoral Act 1918*, section 170. The deposit may be paid by a person other than the candidate, or in the case of political parties, by a party on behalf of all its nominated candidates.

candidate's deposit is also returned to the candidate after the election if they are not elected when:

- the candidate is an ungrouped Senate candidate, and their total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that State or Territory;
- the Senate candidate's name is included in a group, and the sum of the first preference votes polled by all the candidates in the group is at least four per cent of the total number of formal first preference votes in that State or Territory;
- the person is a candidate for the House of Representatives, and their total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that Division.<sup>53</sup>

3.50 Mr Ronald Munro submitted that the deposit should be raised to \$10,000 for both the House of Representatives and the Senate and that deposits not be returned unless a candidate secures 10 per cent of the first preference votes. This would discourage some candidates and therefore keep the size of ballot papers 'manageable'.<sup>54</sup>

#### Committee comment

3.51 The Committee considers Mr Munro's proposed \$10,000 deposit would unduly inhibit participation in the democratic process.

#### Signatures

3.52 Candidates who are endorsed by a registered political party may be nominated for election by either the registered officer or deputy registered officer of that political party, or by 50 or more electors who are entitled to vote at the election for which the candidate is standing. A candidate who is not endorsed by a registered political party must be nominated by 50 or more electors who are entitled to vote in the election. The 50 electors must be enrolled in the Division for which the candidate is standing (for the House of Representatives) or in the

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53 AEC, *Candidates' Handbook 2001*, available at: [http://www.aec.gov.au/\\_content/how/procedures/candidates\\_handbook.htm](http://www.aec.gov.au/_content/how/procedures/candidates_handbook.htm), accessed February 2003.

54 Submission (Mr R Munro, no. 50), p. 1.

State or Territory for which the candidate is standing (for the Senate).<sup>55</sup>

3.53 Mr Peter Andren MP (Independent Member for Calare) recommended that the Electoral Act be amended:

so that incumbent Independent members ... need not provide 50 signatures at each election after their first, but be able to be nominated by just one other person, enrolled in the Division in question.<sup>56</sup>

#### Committee comment

3.54 The Committee generally supports Mr Andren's proposal but considers that it should not apply to Independent incumbents elected as candidates endorsed by a registered political party and who subsequently left that political party to sit as Independents.

### Recommendation 10

3.55 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that incumbent Independent Members and Senators who were elected as Independents need not provide 50 signatures at each election after their first or subsequent elections, but may be nominated by just one other person, who is enrolled in the relevant Division, State or Territory.**

#### Registration of political parties and party names

3.56 A political party must be registered by the AEC if it wishes to have its party name printed next to its candidates' names on ballot papers.<sup>57</sup> The Electoral Act sets out the requirements that political parties must meet to be registered. These requirements include that:

- the party has a minimum of 500 members, or at least one member who is a member of a State or Territory Parliament or the federal Parliament;

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55 *Commonwealth Electoral Act 1918*, section 166. See also AEC, *Candidates' Handbook 2001*, available at: [http://www.aec.gov.au/\\_content/how/procedures/candidates\\_handbook/index.htm](http://www.aec.gov.au/_content/how/procedures/candidates_handbook/index.htm), accessed February 2003.

56 Submission (Mr P. Andren MP, no. 80), p. 2.

57 Submission (AEC, no. 147), p. 44.



- the party lodges a constitution with the AEC; and
  - the party pays a \$500 registration fee.<sup>58</sup>
- 3.57 The party register closes the day before the writs are issued.<sup>59</sup> For the 2001 federal election, the register closed on 7 October 2001, with a total of 64 parties listed.<sup>60</sup>
- 3.58 Before registering a political party, the AEC must undertake a public consultation exercise, including publishing a notice of application in a newspaper in each State and Territory, and inviting submissions regarding the eligibility of the proposed new political party and the proposed name of the new political party.<sup>61</sup>

### **'Inappropriate' party and candidate names**

- 3.59 The issues of 'inappropriate' voter, candidate and party names have been raised by the AEC in a number of previous inquiries, and were raised again in this inquiry.<sup>62</sup>

#### **Inappropriate candidate names**

- 3.60 Candidates must nominate using the name under which they are enrolled to vote, or if they are not enrolled, the name under which they are entitled to enrol.<sup>63</sup>
- 3.61 Under the Electoral Act, AEC officers may refuse to enrol a person if the name is:
- fictitious, frivolous, offensive or obscene;
  - not the name by which the person is usually known;
  - not written in the English alphabet; or
  - 'contrary to the public interest'.<sup>64</sup>

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58 *Commonwealth Electoral Act 1918*, Part XI – Registration of Political Parties.

59 Submission (AEC, no. 147), p.44.

60 The submission from the AEC (no. 147, p. 44) lists all the political parties registered for the 2001 federal election. Election funding and disclosure requirements are discussed in chapter six of the report.

61 *Commonwealth Electoral Act 1918*, section 132.

62 See JSCEM, *The 1996 Federal Election: Report on the Inquiry into the Conduct of the 1996 Federal Election and matters related thereto*, Parliament of Australia, June 1997, and JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Parliament of Australia, June 2000.

63 *Commonwealth Electoral Act 1918*, subsection 166 (2).

- 3.62 The introduction of the ‘fictitious’ and ‘frivolous’ grounds is quite recent. The *Electoral and Referendum Amendment Act (No. 1) 2001*, which came into effect in July 2001, contains provisions giving AEC officers the power to refuse to include fictitious or frivolous names on the electoral roll. Transitional arrangements in the Act also allowed for the removal of existing inappropriate names from the roll. However, these transitional arrangements have lapsed,<sup>65</sup> and there is now no provision to allow the AEC to remove inappropriate names from the roll should they ‘slip through the net’.<sup>66</sup>
- 3.63 The new provisions relating to ‘fictitious’ and ‘frivolous’ names have been tested in several cases. For example, Mr Nigel Freemarijuana is an enrolled Queensland voter who nominated as a candidate for the 2001 election. The name ‘Nigel Freemarijuana’ is the voter’s legal name, having been registered by deed poll in 1996. In 2001, the AEC removed Mr Freemarijuana’s name from the roll and replaced it with his given name, David Nigel Quinlan. Mr Freemarijuana appealed to the Administrative Appeals Tribunal (AAT) and was successful in having his legally registered name reinstated to the roll.<sup>67</sup> The AAT found that:
- To require a person to be enrolled under a name by which they are not known could distort the electoral process. In our view there is a strong public interest in the applicant being enrolled in his legal name – the name he is generally known by.<sup>68</sup>
- 3.64 In its submission to this inquiry, the AEC submitted that the effect of recent AAT decisions is that a name cannot be rejected as ‘frivolous’ or ‘fictitious’ if it is the person’s legal name used for everyday purposes.<sup>69</sup>

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64 *Commonwealth Electoral Act 1918*, section 98A. These provisions would preclude an individual attempting to nominate using an ‘inappropriate’ name even if they were not on the roll, as the Act requires that candidates nominate using their enrolled name or the name under which they would be entitled to enrol.

65 The transitional arrangements were only in place until sections 93A and 98A of the Electoral Act commenced, later in July 2001.

66 Submission (AEC, no. 147), p. 23.

67 Submission (AEC, no. 147), p. 21. See *Freemarijuana and Australian Electoral Officer for Queensland* [2001] AATA 917, 6 November 2001.

68 *Freemarijuana and Australian Electoral Officer for Queensland* [2001] AATA 917 (6 November 2001).

69 Submission (AEC, no. 147), p. 23.

- 3.65 The AEC recommended that a definition of ‘frivolous’ and ‘fictitious’ be included in the Electoral Act and that a review be conducted of the ‘inappropriate names’ already on the roll.<sup>70</sup>
- 3.66 The Committee requested that the AEC advise it on an appropriate form of words for such a legislative definition. The AEC reconsidered its recommendation, concluding that it is ‘now of the opinion that, regardless of the definition, these terms are likely to be unenforceable’.<sup>71</sup> The AEC subsequently recommended that the terms ‘frivolous’ and ‘fictitious’ be removed from section 98A of the Electoral Act.<sup>72</sup>

#### Committee comment

- 3.67 The Committee considers that where a person is generally known by a legally registered name for a period of at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the ‘fictitious’ and ‘frivolous’ grounds.

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### Recommendation 11

- 3.68 **The Committee recommends that where a person has been generally known by a legally registered name for at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the ‘fictitious’ and ‘frivolous’ grounds set out in section 98A of the *Commonwealth Electoral Act 1918*.**

#### Inappropriate party names

- 3.69 Some submissions to the inquiry raised concerns about political parties with similar names.<sup>73</sup>
- 3.70 Section 129 of the Electoral Act specifies that a party may not register a name which so nearly resembles that of another party that it is likely to be confused with or mistaken for the other party’s name or its abbreviation or acronym.<sup>74</sup>

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70 Submission (AEC, no. 147), p. 23.

71 Submission (AEC, no. 199), p. 16.

72 Submission (AEC, no. 199), p. 16.

73 Submission (ALP, no. 153; Ms R. Gibbs, no. 140).

74 *Commonwealth Electoral Act 1918*, paragraph 129(d).

3.71 Several submitters asserted that, notwithstanding this prohibition, some parties have been allowed to register while having a similar name to an existing party.<sup>75</sup> The concern is that this may mislead voters by suggesting that two parties have a close political connection.<sup>76</sup> The Australian Labor Party (ALP) cited the ‘Curtin Labor Alliance’ as an example.<sup>77</sup> According to the ALP:

parties have a legitimate concern that other parties with no association to it should be precluded from using the organisation’s name or part of their name.<sup>78</sup>

3.72 On 14 August 2001, the ALP objected to the registration of the Curtin Labor Alliance on three counts:

- the use of the name ‘Curtin’ was inappropriate and unauthorised;
- the use of the word ‘Labor’ was likely to confuse and mislead voters; and
- the Curtin Labor Alliance was a front party for another organisation, the Citizens Electoral Council.<sup>79</sup>

3.73 The AEC responded to each of the ALP’s three objections. First, in relation to the use of the word ‘Curtin’ the AEC considered that:

the provisions of the Act do not allow the AEC to reject an application where a person’s name has been used in the name of the party, and as the AEC determined that this word was not part of any other registered party name it did not breach the provisions of section 129 of the Act.<sup>80</sup>

3.74 In relation to the ALP’s objection to the use of the word ‘Labor’, the AEC based its response on precedents established by the AAT. In the case of *Keith Woollard v. Australian Electoral Commission*, a decision by the AEC that the name ‘liberals for forests’ too closely resembled that of the Liberal Party of Australia was overturned on appeal to the AAT. The AEC submitted that:

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75 Submission (ALP, no. 153; Ms R. Gibbs, no. 140).

76 Submission (ALP, no. 153), p. 10.

77 See also submission (Ms Ruth Gibbs, no. 140).

78 Submission (ALP, no. 153), p. 10.

79 Tim Gattrell, ‘Labor Challenges Far Right Group Behind Curtin Labor Alliance’, *Labor Herald*, September 2001. <http://www.alp.org.au/laborherald/sept2001/la.html>, accessed 29 May 2003.

80 Submission (AEC, no. 203), p. 11.

In relation to the term 'Labor', the AAT found in the 'liberals for forests' case that the resemblance between the names of the Liberal Party and liberals for forests was limited and subsequently set aside the decision of the Commission not to register liberals for forests. Also, given that another currently registered party also used the same spelling of Labor (that is, the Democratic Labor Party), the AEC believed that there were insufficient grounds to reject the application on that basis.<sup>81</sup>

3.75 Finally, in relation to the ALP's claim that the Curtin Labor Alliance was a front party of the Citizens Electoral Council, the AEC submitted that it:

conducted cross checking against all available party membership lists, including the Citizens Electoral Council, and found that none of the Curtin Labor Alliance members had been identified as members by the Citizens Electoral Council for registration purposes.<sup>82</sup>

3.76 The ALP asked the AEC to review this decision, based on a belief that the AEC had misapplied the relevant section of the Electoral Act as expressed in the 'liberals for forests' case. The appeal was dismissed and the ALP did not pursue the matter with the AAT.

3.77 The ALP recommended that the AEC be required to report to the Committee on legislative options for reforming the rules governing registration of political parties, to restrict the use of the name or part of the name of a recognised organisation.

3.78 In response, the AEC asserted that such a report was not warranted. The AEC advised that its views on necessary changes to party registration provisions in the Electoral Act are set out in previous AEC submissions and reports.<sup>83</sup> Nevertheless, at the request of the Committee, the AEC outlined three options for consideration:

- an amendment to the Act to provide that words such as 'liberal' or 'labor' could only be used by particular parties;
- listing certain words that could not be used by more than one party; or

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81 Submission (AEC, no. 203), p. 11.

82 Submission (AEC, no. 203), pp. 11-12.

83 Submission (AEC, no. 181), p. 33.

- the retention of the status quo.<sup>84</sup>
- 3.79 The AEC suggested that the two options for change would require consideration as to whether the legislation would restrict only future applicants or also cover any currently registered parties.
- 3.80 The AEC favoured maintaining the status quo because it enables the AEC to use its discretion in determining when a new party name might be likely to be confused with, or mistaken for, another party's name.<sup>85</sup>

#### Committee comment

- 3.81 The Committee notes the potential for both options for change to have an impact on well-established parties with similar names, for example, the Australian Labor Party and the Democratic Labor Party.
- 3.82 The Committee is of the view that banning names in the abstract may have a number of unintended consequences and is therefore not convinced that it is the best path to pursue.
- 3.83 While the AEC is obliged under subsection 141(7) of the Electoral Act to give relevant persons associated with the reviewable decision 'written notice' of that decision, the Committee considers that the AEC has a wide discretion in the level of detail it is required to provide in the notice. The Committee believes that the provision of detailed reasons, with reference to the Electoral Act, should be mandatory. Those reasons should be published to assist the understanding of the application of the relevant provisions.

### Recommendation 12

- 3.84 **The Committee recommends that the AEC be required to provide detailed reasons for a decision, with reference to the *Commonwealth Electoral Act 1918*, to all parties involved in an application under section 129 of the Act, and that those reasons be published to assist the understanding of the application of the relevant provisions.**

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84 Submission (AEC, no. 181), p. 33-34.

85 Submission (AEC, no. 181), p. 34.

## Public awareness campaign

- 3.85 A significant component of the AEC's election preparations is its public awareness campaign. The AEC is responsible for informing the voting public about:
- how, when and where to enrol;
  - when and where to vote using services such as pre-poll and postal voting;
  - how to correctly complete a ballot paper for each of the House of Representatives and the Senate; and
  - the role of the AEC in the election.<sup>86</sup>
- 3.86 As for other recent elections, the public awareness campaign for the 2001 federal election consisted of:
- national and local advertising;
  - public relations activities;
  - a national call centre;
  - internet sites, including the Virtual Tally Room (VTR);<sup>87</sup>
  - responses to email enquiries; and
  - distribution of various publications.<sup>88</sup>
- 3.87 The total cost of the public awareness campaign for the 2001 federal election was over \$17 million, including \$10.4 million for the advertising campaign, \$3.6 million for enquiry services and \$1.7 million for an election leaflet.<sup>89</sup> Table 3.1 presents the AEC's public awareness campaign costs for the 1998 and 2001 elections.

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86 Submission (AEC, no. 147), p. 17; AEC. 2002. *Behind the Scenes*. p. 35.

87 For further background on the internet site, see submission (AEC, no. 147) p.19. The VTR is discussed further in chapter five of this report.

88 These publications included *Nominations Pamphlet, Candidates' Handbook, Scrutineers' Handbooks, National Electoral Divisional Profiles, Electoral Backgrounders, 2001 Federal Electoral Boundaries Map, National List of Candidates, 2001 Election Night Guide, and Fact Sheets*. AEC. 2002. *Behind the Scenes*. p. 39.

89 Submission (AEC, no. 147), p. 17. On the election leaflet, Ms Ruth Gibbs submitted that the AEC could more effectively inform voters via a personal letter drop if it had more funding. Submission (Ms R. Gibbs, no. 140), p. 1.

Table 3.1 Summary of public awareness campaign expenditure, 1998 and 2001.

Expenditure item	Cost (\$)	
	1998	2001
Advertising campaign	8 870 782	10 408 504
Election leaflet (mailed to households)	1 463 302	1 712 340
National tally room provision	363 165	615 270
Public information materials and support*	1 300 372	4 459 146
<i>Education &amp; Information Service</i>	--	245 324
<i>Enquiry services</i>	--	3 670 873
<i>Internet</i>	--	38 646
<i>Public relations campaign</i>	--	264 460
<i>Market research and surveys</i>	--	239 843
Election statistics and results*	94 108	83 765
<i>Media and result centre</i>	--	16 729
<i>Newsfiles (publication)</i>	--	49 687
<i>Pocketbook</i>	--	17 349
<b>Total</b>	<b>12 091 729</b>	<b>17 279 025</b>

Source Data for 2001: AEC submission no. 181 p. 36, Data for 1998: AEC. Electoral Pocket Book, p. 63.

Note \* The AEC was not able to provide precisely comparable figures across the two federal elections 'because of changes to the way the public information campaign was organised for the 2001 federal election'. Figures in bold are used to calculate total expenditure across 1998 and 2001, not those in italics. AEC submission no. 202, p. 12.

## AEC advertising

- 3.88 All Australians over the age of 18 were targeted in the AEC's advertising campaign. Special target groups were also identified, namely: electors from non-English speaking backgrounds; electors with print-reading disabilities; Aboriginal and Torres Strait Islander electors; electors living in remote areas; and young electors.<sup>90</sup>
- 3.89 A two-pronged strategy of national and State-based advertising began on Sunday, 7 October 2001, and ran until 5pm on polling day. At the national level, the campaign consisted of 15 different television advertisements, 14 different radio advertisements and ten different press advertisements. State and Territory advertising sought to complement the national campaign by informing voters of local pre-poll and polling booth arrangements. Of the total media budget, 66 per cent was spent on mainstream television, five per cent on mainstream radio and 21 per cent on mainstream press advertising. Expenditure in ethnic and indigenous media accounted for approximately eight per cent of total advertising costs.<sup>91</sup>

90 Submission (AEC, no. 147), p. 17. The under-enrolment of Aboriginal and Torres Strait Islander electors is discussed in chapter two at paragraphs 2.321 to 2.328.

91 AEC, 2002, *Behind the Scenes*, p. 36.



3.90 Table 3.2 (below) elaborates the AEC's advertising expenditure at the 2001 federal election, by advertising phase.

Table 3.2 AEC Advertising costs by election phase – 2001 federal election

Advertising Phase	Cost in \$
<b>Enrolment:</b>	<b>2 883 294</b>
Press	229 608
Radio	338 602
TV	2 026 571
Production costs	288 512
<b>Voter services:</b>	<b>1 406 828</b>
Press	483 056
Radio	123 346
TV	789 389
Production costs	11 036
<b>Formality:</b>	<b>3 585 355</b>
Press	797 784
Radio	195 204
TV	2 500 584
Production costs	91 783
<b>Other items:</b>	
Other production in relation to above	620 480
Non campaign (polling place material)	1 774 262
Other related expenditure	138 285
<b>Total advertising</b>	<b>10 408 504</b>

Source AEC submission 181 pp. 36-37

### Advertising and informal voting

3.91 Mr Peter Andren MP expressed concern about the content of the information distributed in his electorate of Calare, and the possibility that this campaign may have increased the level of informal voting.<sup>92</sup>

3.92 Mr Andren reported anecdotal evidence from his scrutineers that:

many of the informal votes in Calare involved people voting 1, 2, 3 & 4, but not filling in the other boxes on the ballot paper.<sup>93</sup>

3.93 His concern was that this may have been linked to the mock ballot paper presented in AEC newspaper advertisements. This stated, 'Number the boxes from 1 to 4 in the order of your choice'.<sup>94</sup> He

92 Informal voting is further discussed in chapter four.

93 Submission (Mr P. Andren MP, no. 80), p. 4.

94 Submission (Mr P. Andren MP, no. 80), p. 4.

recommended that the AEC compile data on the number of informal votes that included a first, second, third and fourth preference only.<sup>95</sup>

- 3.94 The AEC responded that it has not assessed the number of informal ballot papers thus marked, as this category was not included in its informal ballot paper survey. The AEC asserted that an analysis of incomplete papers marked only from 1 to 4 would be a ‘separate time consuming’ exercise as these papers are now in storage.<sup>96</sup>
- 3.95 The AEC also expressed some reluctance to change the format of the generic ballot paper used in advertisements. Print and electronic media is often not restricted to a single Division, and the campaign is usually prepared well in advance of the election and close of nominations.<sup>97</sup> This means that mock ballot papers used in advertisements in most cases can only present a notional number of boxes rather than the actual number of candidates for a particular Division.<sup>98</sup> The AEC also noted that all advertisements clearly indicate the need to ‘number every box’, which Mr Andren had acknowledged in his submission.<sup>99</sup>

#### Committee comment

- 3.96 The Committee takes Mr Andren’s points and recommends that the AEC conduct market research on its advertisements and improve them in light of the results of this research.

### Recommendation 13

- 3.97 **The Committee recommends that the AEC:**
- **conduct market research on the impact of advertising using the concept of numbering the boxes 1 to 4; and**
  - **make appropriate improvements to its advertising in light of the results of the research.**

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95 Submission (Mr P. Andren MP, no. 80), p. 5.

96 Submission (AEC, no. 181), p. 15.

97 Submission (AEC, no. 181), p. 15.

98 Submission (AEC, no. 181), p. 15-16.

99 Submission (Mr P. Andren MP, no. 80), p. 4.

## National call centre

- 3.98 A telephone enquiry service has formed part of the AEC's public awareness campaign since 1996.<sup>100</sup>
- 3.99 In 1996, the service forwarded callers to their nearest available electoral office or dedicated call centre to have their queries answered. This service operated from 8am to 8pm, Monday to Friday, during the election period.<sup>101</sup> The service answered a total of 317,799 calls, of which 29,220 (or nine per cent) were made on the day the rolls closed. Nearly as many calls as were answered, were not answered: 310,825 calls were unanswered, that is, callers received an engaged signal.<sup>102</sup>
- 3.100 When the telephone enquiry service operated just before the 1998 federal election, the AEC expanded it to seven days a week for the period of the campaign, with extended hours of operation on key dates such as the close of rolls.<sup>103</sup> The service responded to 533,451 calls. Despite the longer hours of operation than for previous elections, the service did not answer 610,171 calls.<sup>104</sup>
- 3.101 Advice from Telstra suggested that many of the callers might have been successful in having their call answered on a second or third attempt, but that an increase in call centre staff would have alleviated the problem of unanswered calls.<sup>105</sup> This advice caused the AEC to re-consider its call centre strategy for the 2001 election.
- 3.102 For the 2001 federal election, the AEC outsourced the operation of the telephone enquiry service to United Customer Management Solutions (UCMS) at a cost of \$2.4 million. AEC officers trained a total of 1,600 call centre operators. The centre operated daily from two sites, one in Melbourne and one in Canberra. The Melbourne site, operating from 2 October 2001 to polling day, 10 November 2001, handled the majority of all calls made to the service. The Canberra site handled calls from 2 October to 16 November 2001.<sup>106</sup>
- 3.103 Across both sites, the centre answered a total of 513,347 calls (82.6 per cent of all calls made to the service). However, 50 per cent of calls

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100 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13

101 AEC, Submission to the 1996 federal election inquiry, p. S146.

102 AEC, Submission to the 1998 federal election inquiry, p. S342.

103 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13; AEC Submission to the 1998 federal election inquiry, p. S342.

104 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13.

105 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13.

106 Submission (AEC, no. 147), p. 18.

made on the day the rolls closed (68,365 out of 136,077 calls) were not answered 'due to congestion'.<sup>107</sup>

- 3.104 An AEC evaluation determined that the call centre service provided by UCMS had 'problems of a technical nature together with issues related to staffing, training, liaison and accuracy of information'.<sup>108</sup> The consequence of that assessment was that alternative call centre solutions would be examined for future events.
- 3.105 The AEC advised that in-principle agreement has now been reached for Centrelink to provide the National Call Centre function at the next electoral event.<sup>109</sup>

#### Committee comment

- 3.106 The Committee is concerned with the number of unanswered calls on the day the rolls closed for the 2001 federal election, particularly given that arrangements put in place for that election were intended to have been an improvement on those for the 1998 election campaign. The AEC acknowledged that the number of calls missed was an issue of concern and said that it expects the transfer of the service to Centrelink will improve the situation. The Committee will no doubt examine call centre performance after the next election.

### Other means of improving election awareness

#### Civics education

- 3.107 The Committee received submissions suggesting that electoral knowledge in the community could be improved by means other than the AEC's public awareness campaigns.<sup>110</sup> For example, Mr David Combe recommended that the topic of elections be incorporated into primary and secondary education curricula 'so as to re-enforce the values of democracy to our young students'.<sup>111</sup> Mr Ian Bowie suggested that 'the Australian Parliament embark on a program of education about the ways of our democracy, both of the electorate

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

108 The AEC considered legal action, but decided not to pursue the matter. This decision was made 'mindful of the significant costs and resources necessary to follow this course of action, the fact that UCMS incurred a financial loss on the project, and whilst not timely to the AEC, attempts had been made by UCMS to rectify the situation'. Submission (AEC, no. 190), p. 10.

109 Submission (AEC, no.190), p.10.

110 Submissions (Mr D. Combe, no. 19; Dr V Yule, no. 26; Mr I Bowie, no. 67).

111 Submission (Mr D. Combe, no. 19), p. 1.

and of its members/potential members'.<sup>112</sup> Mr Bowie cited programs in NSW aimed at informing potential and elected local councillors.

- 3.108 The Committee notes that the Commonwealth Government funds a *Discovering Democracy* program, which provides curriculum materials, professional development for teachers, and national activities for civics education in primary and high schools.<sup>113</sup> It is supervised by a Civics Education Group, chaired by Dr John Hirst. The program was funded with \$18 million from 1997 to 2000. Following program evaluation in 1999, it received additional funding of \$13.6 million to June 2004. In 1999, education ministers also agreed to the development of student performance indicators for civics and citizenship education, with an emphasis on civic knowledge and understanding, and citizenship participation skills and values.
- 3.109 The Australian Parliament's Parliamentary Education Office aims to encourage active and informed participation in and awareness of Australian parliamentary democracy.<sup>114</sup> The AEC operates three Electoral Education Centres in Canberra, Melbourne and Adelaide, which conduct electoral education sessions for groups.<sup>115</sup> Members and Senators contribute to civics education by, for example, participating in civics education in their electorates; meeting constituents at open forums and talking with them on talkback radio; and meeting school groups visiting Parliament House.

#### Distribution of information on candidates and policies

- 3.110 Two submissions complained of insufficient information being available regarding candidates and their policies. Ms Heather Small expressed concern that insufficient information is provided on candidates listed 'below the line' on the Senate ballot paper. She recommended that an information circular, similar to that used for Hobart City Council elections, containing candidates' names, photos, professions, biographical details, party affiliations, policies and intended preference distributions, be distributed to all electors several weeks before the election.<sup>116</sup> Mr Mark Hurd recommended that a

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112 Submission (Mr I. Bowie, no. 67), p. 1.

113 See *Discovering Democracy* internet site: <http://www.curriculum.edu.au/democracy/>, accessed 13 May 2003.

114 Parliamentary Education Office internet site: <http://www.peo.gov.au>, accessed 14 February 2003.

115 AEC internet site: [http://www.aec.gov.au/\\_content/how/education/centres.htm](http://www.aec.gov.au/_content/how/education/centres.htm), accessed 14 February 2003.

116 Submissions (Ms H. Small, nos. 130 & 173).

small 'policy summary' be submitted by every candidate and made publicly available.<sup>117</sup>

- 3.111 Other submissions expressed concern that media coverage of electoral information was inadequate and resulted in electors being unable to make informed voting decisions at the 2001 election.<sup>118</sup> These submissions were mostly critical of the perceived lack of media coverage of minor parties during the campaign.
- 3.112 Submissions also called for broader opportunities for all parties, including minor parties, to appear in nationally televised debates.<sup>119</sup> The Greens NSW recommended that legislation be enacted to compel broadcasters to include in televised debates the leaders of parties that have candidates in more than half of the House of Representatives seats.<sup>120</sup>

#### Committee comment

- 3.113 The Committee supports the widest possible facilitation of political debate and believes the range of existing information sources and programs serves Australia adequately.

## Regulation of political campaigning

- 3.114 Political parties and candidates publicise their electoral platforms through mail-outs, television and radio broadcasts, and print advertising. By virtue of their political nature, these campaigns tend to provoke some controversy. This section discusses concerns raised in submissions about: the definition of electoral advertisements; inconsistencies between television and radio in the broadcasting of political content; the practice of 'push polling'; government advertising; regulation of the factual content of political advertising;

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117 Submission (Mr M. Hurd, no. 1), p. 1.

118 Submissions (Mr D. Combe, no. 19; Dr V. Yule, no. 26; Friends of the Earth, no. 32; Rev. S. Slucki, no. 72; Greens, NSW, no. 158). One submission was so critical of the media's role in election campaigns that it called for the complete abolition of political advertising on television, Submission (Dr. V. Yule, no. 26) p. 4.

119 Submissions (Greens, NSW, no. 158; Mr D. Combe, no. 19; Rev. S. Slucki, no. 72; Dr V. Yule, no. 26).

120 Submission (Greens NSW, no. 158) p. 2.

how-to-vote cards; and the use of parliamentary entitlements for campaigning.<sup>121</sup>

## Definition of electoral advertisements

3.115 Section 331 of the Electoral Act provides that:

where an article or paragraph in a [newspaper, magazine or other periodical, whether published for sale or for distribution without charge] contains electoral matter (whether or not the article was inserted for payment) the proprietor of the journal must cause the word ‘advertisement’ ... to be printed as a headline to the article or paragraph ...

3.116 Section 331 applied only to paid advertisements in newspapers until 1998, when the section was substantially amended by the *Electoral and Referendum Amendment Act 1998*. The 1998 amendments were intended to ensure that the requirement for a heading of ‘advertisement’ applied to advertisements in printed matter other than newspapers.<sup>122</sup> However, in evidence to the 1998 federal election inquiry, the AEC noted that section 331 now implies that all political commentary in any journal must be labelled as an advertisement.<sup>123</sup>

3.117 This Committee’s predecessor therefore recommended that section 331 be amended to make clear that it is meant to apply only to advertisements, and not to all electoral matter in newspapers and magazines.<sup>124</sup> This recommendation was supported by the Government, and provisions to implement this are contained in the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002.

3.118 Given that this legislation was pending, the application of section 331 caused some uncertainty at the 2001 election. On 8 October 2001, the AEO for Queensland issued a letter to Queensland newspapers reminding them of the need to use the heading ‘advertisement’ on electoral matter. The Liberal Party submitted that this action caused:

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121 In addition to the regulatory proposals discussed in this section of the report, some submissions made comments directed at political parties’ internal practices. For example, Mr Combe proposed that less ‘paper junk mail’ be distributed by political candidates (submission (Mr D. Combe, no. 19) p. 1), while Dr Valerie Yule asserted that political parties too often allowed their policies ‘to be draped in secrecy’ for unveiling at an opportune moment. Submission (Dr V. Yule, no. 26), p. 2.

122 JSCEM. *The 1998 Federal Election*, p. 33.

123 AEC, submission to the 1998 federal election inquiry, p. S371.

124 JSCEM. *The 1998 Federal Election*, pp. 32-33. See also submission (AEC, no. 174), p. 39.

considerable confusion concerning newsletters inserted into community newspapers, since it failed to clarify whether the AEC was defining such inserts as journals. If a journal, the insert would have needed to bear the word 'advertisement' in 10 point type or larger (section 331 of the Commonwealth Electoral Act). Parties have traditionally regarded such inserts as pamphlets and thus only needing to meet the authorisation requirements of section 328 [which requires the name and address of the person who authorised the pamphlet, and of the printer, to appear at the end of the pamphlet]. Given the uncertainty caused by the AEC letter, at least one newspaper organisation decided not to proceed with an order of electoral newsletters.<sup>125</sup>

- 3.119 In response to the Liberal Party's submission, the AEC asserted that its letter to Queensland newspapers indicated that the newspapers should seek their own legal advice if clarification was required, and that the content of the letter 'was not incorrect or misleading, and therefore did not require correction.'<sup>126</sup>
- 3.120 During the 2001 election campaign, in response to a complaint, the AEC advised the Liberal Party that the inserts in question, provided that they were not paginated as part of a newspaper, were not journals and so did not need the heading of 'advertisement'.<sup>127</sup> The Liberal Party expressed concern to this inquiry about the time taken for the AEC to produce this advice, noting that it came 11 days after the AEC's letter to the newspapers.<sup>128</sup>
- 3.121 The AEC responded that it only received complaints from the Liberal Party and the ALP on 16 October 2001 and, following receipt of advice from the Director of Public Prosecutions, responded to both three days later, on 19 October 2001.<sup>129</sup> In a supplementary submission, the Liberal Party reiterated its argument that the AEC should:

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125 Submission (Liberal Party of Australia, no. 149), p. 4.

126 Submission (AEC, no. 181), p. 29.

127 Submission (Liberal Party of Australia, no. 149), p. 4.

128 Submission (Liberal Party of Australia, no. 149), p. 4.

129 The AEC received complaints from both the Liberal Party and the ALP that Quest newspapers in Queensland decided not to include pamphlets containing electoral matter unless they contained the heading 'advertisement', submission (AEC, no. 181), p. 29.



respond in a timely fashion to time-urgent inquiries from parties and candidates during an election campaign.<sup>130</sup>

#### Committee comment

- 3.122 The Committee considers that no action should be taken in relation to section 331 pending consideration by Parliament of the relevant provisions of the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002.

#### Inconsistencies in broadcasting of election advertisements

- 3.123 The Liberal Party claimed that inconsistent standards currently apply to the broadcasting of political advertisements on television and radio.<sup>131</sup> The Party's Federal Director, Mr Lynton Crosby, told the inquiry that:

We have had a practical problem with differing attitudes taken by the Federation of Australian Commercial Television Stations on the one hand and the Federation of Australian Radio Broadcasters on the other.<sup>132</sup> Whilst it does not relate to the Electoral Act, the situation is that the Federation of Australian Commercial Television Stations have a very detailed process for the approval of television advertisements before they will allow them to be aired – no television station will run a television ad, as you know, unless it receives an authorisation number from the Federation of Australian Commercial Television Stations – whereas in relation to radio it is open slather; there is no approval or vetting process. At the last election radio scripts were run that were rejected by the Federation of Australian Commercial Television Stations as being false, untrue and unsustainable, but they were able to be run on radio. We think that there needs to be some capacity for consistency between the treatment of these things, otherwise we are allowing false and misleading statements to be perpetuated at least in some media.<sup>133</sup>

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130 Submission (Liberal Party of Australia, no. 183), p. 2.

131 Submission (Liberal Party of Australia, no. 149), p. 4; Transcript of Evidence 16 August 2002 (Mr L. Crosby), p. EM91.

132 The Federation of Australian Commercial Television Stations and the Federation of Australian Radio Broadcasters have since been renamed, respectively, Commercial Television Australia and Commercial Radio Australia.

133 Transcript of Evidence 16 August 2002 (Mr L. Crosby), p. EM91.

- 3.124 After the Liberal Party's submission was received, the Federation of Australian Commercial Television Stations (FACTS, since renamed Commercial Television Australia) advised political parties that it now accepted that it should not seek to regulate the factual content of election advertising.
- 3.125 FACTS had been vetting advertisements during the election in the belief that the Trade Practices Act applied to political advertising. On 8 October 2002, however, FACTS wrote to the political parties in the following terms:

As you are aware, to date FACTS has been seeking verification of statements made in political advertisements and has handled complaints in this context.

In light of a recent Legislation Committee report discussed in this letter and legal advice obtained by FACTS, FACTS will no longer seek substantiation for statements made in political advertisements and will not consider complaints regarding the accuracy of such statements ...

FACTS will continue to review political advertisements prior to broadcast by commercial television stations for the purposes of:

- classifying the advertisement under the Commercial Television Industry Code of Practice [the classification system used for all material broadcast on commercial television];
- ensuring the advertisement includes the authorisation tag [at the end of the advertisement] required by the Broadcasting Services Act... ; and
- assessing whether the advertisement contains defamatory material.

### Push polling

- 3.126 The term 'push polling' does not have a universally accepted meaning. Here it is used to describe representations made in the guise of independent market research with a view to influencing electors' voting intentions. This is distinct from telephone canvassing, where statements (which may be false and prejudicial) are designed to influence voting intentions, but are not made in the guise of independent market research.
- 3.127 The Liberal Party's submission alleged that the ALP engaged in push polling during the 2001 federal election campaign. The submission

recommended, first, that fines be imposed on parties and companies that engage in push polling,<sup>134</sup> and second, that all those undertaking ‘advocacy calls’ in conjunction with an election campaign be required to release their scripts publicly.<sup>135</sup> The submission noted that this was the current practice of the Liberal Party.

#### Committee comment

3.128 The Committee notes the difficulty in regulating polling undertaken by political parties – indeed, in 1995 one of its predecessors began an examination of this issue but found considerable difficulty in defining the term ‘push polling’. Given the competitive nature of the Australian party political system, problematic polling practices tend to be quickly made public, with the potential for political embarrassment to the offending party and the risk of defamation proceedings against that party.

#### Regulation of the factual content of political advertising

- 3.129 Subsection 329(1) of the Electoral Act makes it an offence to print, publish or distribute, during election periods, ‘any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote’.<sup>136</sup> This section applies to radio and television broadcasts and other material.
- 3.130 In the past the AEC has received complaints that have been based on a mistaken belief that subsection 329(1) prohibits ‘untrue’ political advertising.<sup>137</sup> In fact, as decided by the High Court, subsection 329(1) only prohibits material that gives misleading information about obtaining and marking a ballot paper and depositing it in a ballot box.<sup>138</sup> It does not regulate the content of political messages directed at influencing the choice of candidates by voters.
- 3.131 In 1984 the Electoral Act was amended to proscribe advertisements containing statements that were untrue and likely to be misleading or deceptive. The relevant provision of the Act (subsection 329(2)) was repealed eight months after coming into force, following a recommendation by the Joint Select Committee on Electoral Reform

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134 Submission (Liberal Party of Australia, no. 149), p. 3; Transcript of Evidence 16 August 2002 (Mr L. Crosby), p. EM95.

135 Submission (Liberal Party of Australia, no. 149), p. 3.

136 AEC, *Electoral Backgrounder 12*, ‘Election Advertising’, paragraph 21.

137 AEC, submission to the 1996 federal election inquiry, p. S175.

138 See *Evans v Crichton-Browne* (1981) 147 CLR 169.

(JSCER).<sup>139</sup> The JSCER considered subsection 329(2) to be flawed primarily because the determination of whether or not a statement was 'true' seemed:

necessarily to involve a political judgement, based on political premises [and that] to require the courts to enter the political arena in this way [was undesirable].<sup>140</sup>

3.132 The JSCER determined that the safest course was to leave decisions as to the truthfulness of political advertising to electors and the laws of defamation.<sup>141</sup>

3.133 The AEC has no role in determining whether messages directed at influencing the choice of candidates are true or untrue. Candidates who believe that they have been defamed may pursue action in accordance with the common law of defamation, or section 350 of the Electoral Act.<sup>142</sup>

3.134 Recently, there have been moves to re-introduce into the Electoral Act sanctions for 'untrue' political advertising. Senator Andrew Murray has introduced into the Senate a Bill to amend the Electoral Act to prohibit any electoral advertisement containing a purported statement of fact that is 'inaccurate or misleading to a material extent'.<sup>143</sup> Penalties of \$5,000 for individuals and \$50,000 for bodies corporate would apply to breaches of this provision.

3.135 Senator Murray argued that the Bill, if enacted, would:

require political advertising to meet similar standards of probity and honesty as commercial advertising must meet under the Trade Practices Act.<sup>144</sup>

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139 JSCER, *Report of the Inquiry in the Conduct of the 1993 federal election, and matters related thereto*, Parliament of Australia, November 1994, p. 108.

140 JSCER, *Second Report*, Parliament of Australia, 1984, p. 21. Other justifications given for the repeal of the legislation concerned the time it would take parties seeking legal advice on each advertisement and the belief that political advertising should be distinguished from other types of advertising as it sought to promote 'intangibles, ideas, policies and images' and that these could not be subject to legislative regulation (pp. 15-28).

141 JSCER, *Second Report*, (1984), as above, pp. 26-27.

142 AEC, 'Election Advertising', *Electoral Backgrounder 12*, paragraph 50.

143 *Electoral Amendment (Political Honesty) Bill 2000 [2002]*. While this is a Private Senator's Bill, it also encapsulates the policy of the Australian Democrats on accountability.

144 Senator Murray, *Charter of Political Honesty Bill 2000 and Electoral Amendment (Political Honesty) Bill 2000*, Second Reading speech, Senate *Hansard*, 10 October 2000, p. 18198.

- 3.136 Under section 52 of the *Trade Practices Act 1975*, advertising, like other conduct in trade and commerce, can be challenged if it is misleading or deceptive, or likely to mislead or deceive.
- 3.137 In considering Senator Murray's Bill, the Senate Finance and Public Administration Legislation Committee (2002) highlighted four points which distinguished the trade practices model from proposals seeking to regulate political advertising:
- firstly, there is an implied constitutional right to freely discuss political matters;
  - second, given that political parties and candidates have at their disposal a number of means of communicating their political message to the electorate apart from advertising, regulation of advertising might be considered somewhat artificial;
  - third, the Trade Practices Act penalises breaches of the Act through civil remedies only, such as damages and injunctions, while Senator Murray's proposals to regulate advertising would include criminal penalties; and
  - fourth, legal action taken under the Trades Practices Act in corporate advertising cases generally takes longer than the period of an election campaign, that is, the time in which resolution would be required for electoral cases.<sup>145</sup>
- 3.138 The majority of the Senate Finance and Public Administration Legislation Committee recommended:
- that the Electoral Amendment (Political Honesty) Bill 2000 [2002] not proceed because in its current form, it does not present an effective or workable solution to prevent dishonest electoral advertising.<sup>146</sup>
- 3.139 The Senate Committee identified a number of areas where amendments should be made to Senator Murray's proposal, including the appropriateness of the penalties.<sup>147</sup> In his minority report, Senator
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145 Senate Finance and Public Administration Legislation Committee (SFPALC), *Report on the Charter of Political Honesty Bill 2000 [2002]; Electoral Amendment (Political Honesty) Bill 2000 [2002]; Provisions of Government Advertising (Objectivity, Fairness and Accountability) Bill 2000; Auditor of Parliamentary Allowances and Entitlements Bill [No. 2]*, Parliament of Australia, 29 August 2002, p. 92. At: [http://www.aph.gov.au/Senate/committee/fapa\\_ctte/political\\_honesty/report/report.pdf](http://www.aph.gov.au/Senate/committee/fapa_ctte/political_honesty/report/report.pdf), accessed 13 May 2003.

146 SFPALC, Report tabled 29 August 2002, as above, p. 93.

147 SFPALC, Report tabled 29 August 2002, as above, p. 93.

Murray indicated that he would carefully consider the recommendations made by the Committee with a view to refining the Bill.<sup>148</sup>

- 3.140 On a related matter, in its submission the Liberal Party called for clarification of whether the provisions of the Trade Practices Act relating to misleading and deceptive conduct apply to election broadcasting, in that:

it seems that the Federation of Australian Commercial Television Stations believes that [the provisions do apply] while the Australian Competition and Consumer Commission believes that they do not.<sup>149</sup>

- 3.141 As noted at paragraph 3.125, the Federation of Australian Commercial Television Stations subsequently advised political parties in writing that it accepts that the Trade Practices Act does not apply to political campaigning.

#### Committee comment

- 3.142 The Committee notes evidence to the Senate Committee inquiry of Mr Andy Becker, former South Australian Electoral Commissioner (now Australian Electoral Commissioner), that the South Australian legislation on truth in political advertising opened up opportunities for individuals to disrupt the electoral process via nuisance complaints, and that in his opinion the legislation had not had any appreciable effect on the nature of political advertising in South Australia.<sup>150</sup>
- 3.143 The Committee agrees with the AEC's submission to the 1998 federal election inquiry, that any regulation of 'truth' in political debate would be unwise and unworkable, particularly if the AEC were the body appointed to undertake such regulation.<sup>151</sup> Further, the AEC argued that being tasked with the role of 'umpire' in such matters may also diminish its perceived political neutrality in the conduct of elections.<sup>152</sup>

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148 SFPALC, Report tabled 29 August 2002, as above, p. 131.

149 Submission (Liberal Party of Australia, no. 149) p. 4.

150 SFPALC, Report tabled 29 August 2002, as above, pp. 88-89.

151 See AEC submission to 1998 federal election inquiry, p. S376.

152 See AEC submission to 1998 federal election inquiry, p. S376.

## How-to-vote cards

- 3.144 The use of how-to-vote material was an issue in some submissions to this inquiry. As in previous election inquiries, some submissions called for the abolition or restriction of how-to-vote cards.<sup>153</sup> In the past, such recommendations have been motivated by various concerns such as cost, environmental waste, harassment of voters and difficulties faced by smaller parties and independents.<sup>154</sup> Recommendations made to this inquiry were no different.
- 3.145 Submissions to this inquiry suggested that how-to-vote cards be replaced with lists or posters placed in each ballot box.<sup>155</sup> For example, Mr B Joy recommended that the system currently used in South Australia be adopted. There, how-to-vote cards from each candidate are fixed to the wall of each polling booth, and spares are kept by the Officer in Charge.<sup>156</sup>
- 3.146 The Committee is of the view that the distribution of how-to-vote cards on election day mobilises democratic participation and keeps political parties in touch with their membership base.<sup>157</sup> In relation to the specific recommendation that how-to-vote cards be fixed to individual polling booths, the Committee considers that the display of how-to-vote cards would pose a significant problem, given that political parties or candidates whose material is posted in less noticeable sections of the box may feel aggrieved.<sup>158</sup>

## Authorisation and registration

- 3.147 The issue of authorisation and registration of how-to-vote material was raised by the federal member for Barton, the Hon. Robert McClelland, MP. Mr McClelland's submission alleged that the Unity candidate for Barton for the 2001 election, Mr John Lau, distributed a how-to-vote card with a different order of preferences to that authorised by the Unity Party. Mr McClelland argued that the result

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153 Submissions (Mr B Joy, no. 107; Rev S Slucki, no. 72; Dr V Yule, no. 26; Salt Shakers, no. 135; The Progressive Labour Party, no. 66).

154 See JSCEM. *The 1996 Federal Election*, (1997) as above, p. 94 and *The 1998 Federal Election*, (2000), as above, pp. 37-42

155 Submissions (Mr B Joy, no. 107; Rev S Slucki, no. 72; Dr V Yule, no. 26; Salt Shakers, no. 135; The Progressive Labour Party, no. 66).

156 Submission (Mr B Joy, no. 107) p. 1. Section 66(1) of the *Electoral Act 1985 (South Australia)* stipulates that HTV cards must be submitted to the Electoral Commissioner so they may be arranged in poster form.)

157 Transcript of Evidence 12 August 2002 (Mr P. Georgiou MP), p. EM24.

158 Transcript of Evidence 2 October 2002 (Senator R. Ray), p. EM181.

of this difference was that the Liberal candidate was preferenced above the Labor candidate, which was in contradiction to the publicly stated Unity Party position on preferences.

- 3.148 Mr McClelland concluded that the current law is not clear in relation to 'false' how-to-vote cards, and recommended that the Committee consider whether it is necessary to:

expand the concept of electoral irregularity to include a situation where a candidate issues voting instructions which are contrary to those issued by the Party which they represent or purport to represent.<sup>159</sup>

- 3.149 The production of how-to-vote cards is regulated under the Electoral Act in two ways. First, how-to-vote cards must be properly authorised under section 328 of the Act. Authorisation of a how-to-vote card requires the name and address of the person responsible for the advertisement to be clearly cited, as well as the name and place of the business that printed it.<sup>160</sup>

- 3.150 Second, subsection 329(1) stipulates that:

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, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.

- 3.151 Three court decisions have provided some judicial interpretation in this area, namely, *Bray v Walsh*,<sup>161</sup> *Evans v Crichton-Browne*,<sup>162</sup> and *Webster v Deahm*.<sup>163</sup> In the case of *Evans v Crichton-Browne*, for example, the High Court held that the phrase 'in relation to the casting of a vote' referred to the act of recording or expressing the elector's political judgment in obtaining and marking a ballot paper and depositing it in the ballot box, and not to the formation of that political judgment.

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159 Submission (Mr R McClelland, MP, no. 81), p. 2

160 AEC, 'Misleading and Deceptive Electoral Advertising 'Unofficial' How-To-Vote Cards', *Electoral Backgrounder 3* at:

[http://www.aec.gov.au/\\_content/how/backgrounders/03/index.htm](http://www.aec.gov.au/_content/how/backgrounders/03/index.htm) .

161 (1976) 15 SASR 293

162 (1981) 147 CLR

163 (1993) 116 ALR 222



- 3.152 In this inquiry, both the AEC and Mr McClelland argued that section 329 had been construed narrowly by the courts.<sup>164</sup> The AEC has, however, noted that subsection 329(1) may apply to ‘unofficial’ how-to-vote cards in some instances:

When determining whether an ‘unofficial’ HTV [how-to-vote] card breaches section 329(1) of the Act, it is necessary to compare the official and unofficial cards and consider whether the unofficial card is so similar to the official card that it is likely to mislead a voter into thinking it is the official card and thereby mislead the voter in casting a vote. If a card is, in fact, ‘likely to mislead or deceive an elector in relation to the casting of a vote’, the person who printed, published, distributed, caused, permitted or authorised the printing, publishing or distribution may have committed an offence under section 329(1). In those circumstances it is open to the AEC to refer the matter to the AFP for investigation.<sup>165</sup>

- 3.153 In relation to Mr McClelland’s specific concern, the AEC submitted that:

there were a number of differences between the HTV cards apart from the different authorisation and distribution of preferences. [However,] the HTV card in question did in fact have an authorisation and did not attempt to mislead the public about how to obtain and mark a ballot paper. The HTV card in question was therefore legal.<sup>166</sup>

- 3.154 The AEC therefore concluded that:

while the AEC understands Mr McClelland’s position, the AEC has no powers to resolve what was in essence an internal dispute within the Unity Party.<sup>167</sup>

- 3.155 In his submission, Mr McClelland also recommended that all candidates be required to lodge their how-to-vote cards with the AEC 48 hours before polling day.<sup>168</sup>

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164 Submissions (AEC, no. 174, p.15; Mr R McClelland MP, no. 81), and Transcript of Evidence 11 November 2002 (Mr R McLelland MP), p. EM274.

165 AEC, *Electoral Backgrounder 3*, as above, p. 4.

166 Submission (AEC, no. 181), p. 16.

167 Submission (AEC, no. 174), p. 15. The question of AEC powers was previously raised in the Committee’s Report on the 1998 federal election. While that Committee recommended that the AEC develop and expanded authorisation regime for how-to-vote cards, the Government was not completely supportive. Without legislative authority, the AEC have been reluctant to take up any responsibility in relation to authorisation.

- 3.156 The States of Victoria and NSW require how-to-vote cards to be registered with their respective State Electoral Commissioner. Registration must occur at least eight days before polling day in NSW and seven working days before polling day in Victoria.<sup>169</sup>
- 3.157 The AEC did not support Mr McClelland's recommendation requiring how-to-vote cards to be lodged in advance of the election. The AEC submitted that a regime of how-to-vote card registration would be 'administratively unworkable', with parties likely to register more than one card in order to maintain flexibility in preference allocation until polling day.<sup>170</sup> In addition, the AEC maintained that the cost burden associated with administering the system would not be justified by any potential benefit.<sup>171</sup> The AEC stated that, in fact:
- if the Unity Party candidate [had] registered their HTV card, registration would not prevent the situation that arose in Barton.<sup>172</sup>
- 3.158 The AEC suggested that legislative change would be required to prevent candidates producing how-to-vote cards at variance with their own political party, even with compulsory registration. However, the AEC argued that any such legislation could be unconstitutional, insofar as it may be construed as limiting individual candidates' freedom of political expression.<sup>173</sup>

#### Committee comment

- 3.159 The Committee does not consider it practical to regulate internal disputes between candidates and their parties, for the reasons expressed by the AEC. The Committee also does not support registration of how-to-vote cards in advance of election day. Aside from imposing a further administrative burden on parties, candidates and the AEC at a critical time, it is likely that some political parties would lodge 'multiple' how-to-vote cards in order to keep their options open until polling day. The Committee considers it prudent for political parties to have dispute resolution mechanisms in their procedures.

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168 Submission (Mr R McClelland MP, no 81), p. 3

169 Submission (AEC, no. 181), pp. 19-20.

170 Submission (AEC, no. 181), p. 17-19.

171 Submission (AEC, no. 181), p. 19.

172 Submission (AEC, no. 181), p. 20.

173 Submission (AEC, no. 181), p. 20.

## Entitlements of incumbent candidates

- 3.160 Some submissions raised the issue of the entitlements of incumbent candidates. For example, Mr Ian Bowie recommended the restriction of mail-outs conducted by Members of Parliament using their postage allowances. He believed these ‘may give unfair advantages to sitting members’.<sup>174</sup>
- 3.161 The ALP noted the uncertainty of its Members and Senators as to the limits on the material they could produce and distribute during the campaign. The submission referred to the difficulty incumbent ALP candidates faced in obtaining detailed guidance on this issue.<sup>175</sup> The ALP recommended:
- that the guidelines for the use of parliamentary entitlements, particularly during election campaigns, be clarified, and the clarification promulgated well in advance of the next election;
  - that details of entitlements be tabled in Parliament (in addition to travel costs); and
  - ‘[t]hat an independent Auditor of Parliamentary Allowances and Entitlements be established, with appropriate powers of investigation.’<sup>176</sup>
- 3.162 The ALP’s proposal for the establishment of an independent Auditor of Parliamentary Allowances and Entitlements was previously contained in the *Auditor of Parliamentary Allowances and Entitlements Bill 2000 [No. 2]*, which was introduced by the Leader of the Opposition in the Senate.<sup>177</sup> The Senate Finance and Public Administration Legislation Committee was supportive of the object of the Bill in assisting Members of Parliament to observe the rules and regulations governing the use of parliamentary entitlements and allowances. Nevertheless, that Committee recommended that the Bill not proceed because the proposed legislation was flawed ‘and because other options for ensuring compliance with the rules and regulations governing the use of parliamentary entitlements have not been fully considered.’<sup>178</sup>

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174 Submission (Mr I. Bowie, no. 67), p. 2.

175 Submission (ALP, no. 153), p. 11.

176 Submission (ALP, no. 153), p. 12.

177 SFPALC, Report tabled 29 August 2002, as above, p.74.

178 SFPALC, Report tabled 29 August 2002, as above, p.74.

- 3.163 Mr Peter Andren MP recommended that this Committee review the Auditor General's Report on Parliamentarians' Entitlements and forthcoming report on the Members of Parliament Staff Act, with a view to producing recommendations aimed at ensuring the system of entitlements available to MPs, Senators and Ministers is transparent, not open to misuse and not able to be used for party political purposes both before and during election campaign[s].<sup>179</sup>
- 3.164 In Audit Report No. 5 2001-2002, *Parliamentarians' Entitlements: 1999-2000*, the ANAO noted that '[a] particular need for greater clarity and certainty regarding the eligibility of entitlements usage by Parliamentarians arises during periods of by-elections and general elections.'<sup>180</sup>
- 3.165 At the time of writing, the ANAO's report on the Members of Parliament Staff Act had not been tabled.

#### Committee comment

- 3.166 The Committee recognises that, as acknowledged by the ANAO,<sup>181</sup> it is difficult to define exhaustively 'parliamentary business', 'electorate business' and 'party business' - terms that are fundamental to determining eligibility for entitlements. However, the Committee does consider that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns should be clarified.

#### Recommendation 14

- 3.167 **The Committee recommends that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns be clarified, and that the Department of Finance and Administration establish a telephone hotline from the day of the issue of the writs to provide advice on the guidelines to incumbent candidates.**

179 Submission (Mr P. Andren MP, no. 80) p. 7.

180 ANAO, *Parliamentarians' Entitlements: 1999-2000*, Audit Report No. 5 2001-2002, p. 98.

181 ANAO, *Parliamentarians' Entitlements*, as above, pp. 97-98.

## Government advertising

- 3.168 Some submissions raised the issue of advertising by incumbent governments that is perceived to be political.<sup>182</sup>
- 3.169 Dr Valerie Yule submitted that:
- The Party in Power must not put any advertising material for its party on a government-funded website, even under the guise of 'press-releases'.<sup>183</sup>
- 3.170 The Committee sought to clarify Dr Yule's submission at the public hearing on 12 August 2003, asking whether Dr Yule was referring to:
- governments advertising and promoting prior to elections and using pseudo program promotion as a pre-election campaign or ... just ... direct advertising.<sup>184</sup>
- 3.171 Dr Yule responded that she 'meant direct advertising, because certainly you have to know what the government has been doing. They have to inform the people.'<sup>185</sup>
- 3.172 Friends of the Earth referred to government advertising prior to the announcement of the election date, which 'promoted the achievements of the coalition government.' Following this observation, Friends of the Earth recommended that elections be publicly funded as a budget item and thus 'open to public scrutiny.'<sup>186</sup>
- 3.173 The ALP cited examples of government advertising campaigns that it claimed were 'political in purpose and targeted at swinging voters'.<sup>187</sup> The ALP recommended:
- the implementation of recommendations of the Auditor-General's 1998 report, *Taxation reform – Community Education and Information Program, Audit Report No. 12*;
  - the implementation of guidelines on government advertising proposed by the Joint Committee on Public Accounts and Audit (JCPAA); and

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182 Submissions (Dr V. Yule no. 26; Friends of the Earth, no. 32; ALP, no. 153).

183 Submission (Dr V. Yule, no. 26) p. 4.

184 Transcript of Evidence 12 August 2003 (Ms J. Hall MP), p. EM4.

185 Transcript of Evidence 12 August 2003 (Dr V. Yule), p. EM4.

186 Submission (Friends of the Earth, no. 32), p. 2.

187 Submission (ALP, no. 153), p.5.

- extending the requirement under section 310 of the Electoral Act that broadcasters disclose details of election advertising, to require quarterly disclosure of all broadcast non-program matter containing political matter.
- 3.174 As indicated in part by the ALP's recommendations to this inquiry, a number of previous inquiries have considered whether and how to either clarify existing regulation of government advertising, or regulate it further.
- 3.175 The Auditor-General's Report to which the ALP recommendations referred, stated that it would be helpful if 'conventions, principles and guidelines that provide more specific guidance on the use of government advertising' were developed and adopted.<sup>188</sup> The Report added that:
- it is primarily a matter for the Parliament and/or Government to develop and adopt appropriate guidelines that clearly define and articulate characteristics of government advertising which differentiate between Government and party-political material.<sup>189</sup>
- 3.176 The Report included suggested principles and guidelines based on those proposed or existing in other jurisdictions.<sup>190</sup>
- 3.177 Aspects of the Audit Report, *Taxation Reform – Community Education and Information Programme*, were reviewed by the JCPAA, as part of an inquiry that also included a review of government information and advertising arrangements with a view to assisting to determine 'appropriate guidelines for taxpayer funded programs'.<sup>191</sup>
- 3.178 The JCPAA's report on this inquiry, *Guidelines for Government Advertising*, contained a single recommendation, namely that the Government adopt the guidelines for government advertising that the Committee had drafted.<sup>192</sup> These guidelines were similar to those proposed by the Auditor-General.<sup>193</sup>

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188 ANAO, *Taxation Reform: Community Education and Information Programme*, Audit Report No. 12, 1998-1999, paragraph 2.19.

189 ANAO, *Taxation Reform*, as above, paragraph 2.19.

190 ANAO, *Taxation Reform*, as above, Appendix 1.

191 JCPAA, *Report 377, Guidelines for Government Advertising*, September 2000, Terms of Reference.

192 JCPAA, *Report 377*, as above, p. 3.

193 According to the SFPALC Report tabled 29 August 2002, as above, pp. 23-23.

- 3.179 The Government is in receipt of the report of the JCPAA. At the time of writing, there had been no Government response to the JCPAA's recommendation.<sup>194</sup>
- 3.180 Legislation has been proposed in the past to seek to regulate government advertising further. The Senate Finance and Public Administration Legislation Committee reported on two relevant bills in August 2002.<sup>195</sup> The Government Advertising (Objectivity, Fairness and Accountability) Bill 2000 sought to set down minimum standards (based on the guidelines devised by the ANAO and revised by the JCPAA) to regulate government advertising to prevent it being used for party political purposes. The Bill proposed that a designer of a campaign that breached prescribed standards could be subject to penalties.<sup>196</sup> The Senate Committee did not support the introduction of this Bill because of 'severe reservations about the proposed creation of a serious criminal offence defined by reference to vague and uncertain guidelines', and also the involvement of courts in essentially political matters.<sup>197</sup>
- 3.181 The Charter of Political Honesty Bill 2000 [2002] proposed the establishment of a Government Publicity Committee that would 'monitor and enforce compliance by public authorities with statutory guidelines for government advertising campaigns.'<sup>198</sup> The Senate Committee did not support the introduction of the relevant part of this Bill because of concerns about the composition of the proposed Government Publicity Committee.<sup>199</sup>
- 3.182 The Senate Committee noted that '[b]ecause of flaws in the two bills, the Committee believes that more detailed consideration of the regulation of government advertising is essential', and that this should be referred to a proposed parliamentary joint standing committee on a code of conduct for members of parliament 'for further consideration and development of appropriate guidelines',

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194 JCPAA website at:

<http://www.aph.gov.au/house/committee/jpaa/CEIP/contents.htm#contents>, accessed 15 June 2003.

195 SFPALC, Report tabled 29 August 2002, as above.

196 SFPALC, Report tabled 29 August 2002, as above p. 1, and paragraph 6.52. This Bill was introduced by then-Leader of the Opposition, the Hon Kim Beazley MP.

197 SFPALC, Report tabled 29 August 2002, as above p. viii.

198 SFPALC, Report tabled 29 August 2002, as above p. vii. The Bill was introduced by Senator Andrew Murray. The guidelines were similar to those proposed in the *Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*, Report p.1.

199 SFPALC, Report tabled 29 August 2002, as above p. viii.

using the guidelines proposed by the Auditor-General and the JCPAA as a basis.

#### Committee comment

- 3.183 The Committee believes that, while there is agreement that political advertising by governments is inappropriate, there are significant difficulties in defining what constitutes government advertising for political purposes and the issue of political matter in government advertising goes well beyond the election context. However, the Committee notes that within the immediate context of elections, both ALP and Liberal Party/National Party governments have been committed to observing the caretaker convention that government advertising should be terminated on the calling of an election.<sup>200</sup>

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<sup>200</sup> Some advertisements are allowed within the parameters of the caretaker conventions, for example, Defence Force recruiting.





## Voting

- 4.1 This chapter examines the voting methods currently available to Australians on polling day: ordinary voting, declaration voting, mobile polling and assisted voting. Informal voting and multiple voting are also considered.
- 4.2 A number of submissions canvassed more far-reaching changes to the voting system, including voluntary voting, optional preferential voting, changes to the 'Above the Line' voting system used for Senate elections, and electronic voting. These proposals are examined in chapter seven.

### Ordinary voting

- 4.3 The majority of Australian electors cast their vote at a polling booth in their home Division on election day. These votes are referred to as 'ordinary votes'. For the 2001 federal election, 84 per cent (over 10 million) of all votes cast were ordinary votes.

### Declaration voting

- 4.4 At the 2001 federal election, 15.92 per cent of all votes (nearly two million) were cast as 'declaration votes', where the elector must sign a declaration certificate stating that they are eligible to vote, the details

of which are checked before the vote is admitted to the count. Types of declaration votes are outlined in the table below.

**Table 4.1** Types of Declaration Votes

Type of vote	Provision	Electoral Act
Postal vote	Electors who cannot attend a polling place anywhere in the State or Territory for which they are enrolled on polling day can apply in writing for a 'postal vote'. The Divisional Returning Officer (DRO) will then send them the ballot papers which must be posted back to the DRO before polling day.	Part XV – sections 182 to 200
Pre-poll vote	Electors who cannot attend a polling place on polling day can cast a 'pre-poll vote' in person at a Divisional office or pre-poll voting centre in the lead up to polling day and on polling day.	Part XVA – sections 200A to 202
Absent vote	Electors who are out of their Division but still within their home State or Territory, may cast an 'absent vote' at any polling place in that State or Territory.	section 222
Provisional vote	People whose names cannot be found on the certified list of electors for the Division in which they believe themselves to be enrolled, or whose names have already been marked off the certified list but who claim not to have voted, may cast a 'provisional vote'. These votes are not counted until a careful check of enrolment records has been made. Electors will then be advised of the outcome of that check.	section 235

*Source* AEC, 'Voting' at: [http://www.aec.gov.au/\\_content/what/voting/voting.htm#Declarationvotes](http://www.aec.gov.au/_content/what/voting/voting.htm#Declarationvotes), accessed 31 March 2003. Also Commonwealth Electoral Act 1918.

4.5 Submissions to the inquiry raised a number of issues related to declaration voting. These issues are examined below.

## Postal voting

4.6 Electors wishing to cast a postal vote may request a Postal Vote Application (PVA) form from the AEC, or may visit the AEC website and download the form. Alternatively they may receive a PVA sent by a number of political parties by direct mail or letter box drop. The voter completes the PVA and may return it directly to the AEC or to a political party that then forwards it to the AEC. A postal vote certificate (PVC) which contains the ballot papers is then issued to the applicant. The PVC must be sent back to the AEC prior to the close of the poll.<sup>1</sup>

<sup>1</sup> The vote must be cast before the close of polling, although the Electoral Act (subsection 288(5A)) allows 13 days after the close of polls for the receipt of postal votes (paragraph 4.16 also refers).

- 4.7 At the 2001 federal election, 451,900 electors (3.74 per cent of the total) cast postal votes.<sup>2</sup>

#### Distribution and collection of PVAs by political parties

- 4.8 The AEC noted the practice by political parties of wide distribution of PVAs across Divisions, in the absence of requests for PVAs from the electors themselves. As expressed in its submissions to previous inquiries, the AEC was concerned that this practice results in a 'blurring between the political and the electoral'.<sup>3</sup>
- 4.9 The AEC raised two concerns about political parties' distribution and collection of PVAs:
- Candidates or parties may request that electors return the PVA form to them for forwarding to the AEC. The AEC is concerned that candidates and parties do not forward PVAs to the AEC as soon as they are received from electors, but wait until they collect a 'large' number and forward them together at a later date. For example, in the Division of Page, 61 PVAs were received from the National Party on 30 October 2001, and 16 were received from the ALP on 5 November 2001). According to the AEC there is:

a real risk that political parties or candidates holding large numbers of PVAs may lose or misplace some or all of these, or send them to the AEC after the deadline for receipt and thus disenfranchise some voters. Political parties may also deliver them so close to the deadline that the AEC is unable to process them in time and provide ballot materials to the applicant.<sup>4</sup>
  - During the 2001 federal election campaign some candidates and parties returned PVA forms to applicants when they considered that the application did not meet the requirements of the Electoral Act (for example, did not include witness details). According to the AEC, under section 188 of the Electoral Act it is the responsibility of the DRO or the Assistant Returning Officer (ARO) to determine whether a PVA meets the requirements of the Act.<sup>5</sup>

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2 Submission (AEC, no. 147), p. 31.

3 Submission (AEC, no. 147), pp. 33-35. See also AEC submissions to the 1996 and 1998 JSCEM reports, available at AEC internet site:  
[http://www.aec.gov.au/\\_content/why/committee/jscem.htm](http://www.aec.gov.au/_content/why/committee/jscem.htm), accessed 15 June 2003..

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

5 Submission (AEC, no. 147), pp. 33-34.

4.10 The AEC submitted that in the 2001 federal election these activities caused processing problems for the AEC and confusion amongst some electors, particularly those who were already registered as General Postal Voters and who would automatically be sent ballot papers by the AEC (paragraph 4.80 refers). The AEC has alerted political parties to its concerns and:

concedes that political parties are unlikely to desist from the practice of the widespread distribution of PVAs ... If delays continue to occur, the AEC will in the interests of the voter have no option but to pursue action under section 197 of the Electoral Act.<sup>6</sup>

4.11 Section 197 of the Electoral Act requires that PVAs entrusted to another person must be forwarded to the AEC 'as soon as practicable', and stipulates a penalty of \$1,000 for non-compliance.<sup>7</sup>

4.12 The Member for Calare, Mr Peter Andren MP, also expressed concern about the distribution of postal voting material by political parties. Mr Andren was concerned that independent and minor-party candidates are at a disadvantage because they cannot afford mass mail-outs of postal vote material (unless they are incumbent candidates),<sup>8</sup> and also about the impact on voters and the election count:

Allowing applications to be sent by candidates could see households receive multiple applications from different candidates. Besides being likely to annoy many voters, this can only add to the paper waste generated by the election process.

In future elections, if the result is close, the larger the number of postal votes, the less likely it is that results will be known on the night.<sup>9</sup>

4.13 Mr Andren recommended that section 184AA of the Electoral Act be repealed, 'so that candidates can no longer provide postal vote

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

7 Submission (AEC, no. 147), pp. 32-33.

8 Incumbent MPs are permitted to use their Parliamentary Communications Allowance to provide constituents with postal, pre-poll and absentee voting information, and for the return of such forms to the AEC. See advice from Department of Finance and Administration, submission (Mr P Andren MP, no. 80) Attachment B.

9 Submission (Mr P Andren MP, no. 80), pp. 3-4.

applications to constituents as part of other printed election material authorised by them'.<sup>10</sup>

- 4.14 Whilst appreciating the concerns of the AEC and Mr Andren, the Committee is of the view that distribution of PVAs by candidates provides an important and now well-established service to electors, and that it is important for candidates and political parties to be confident that a service initiated by them has been successfully concluded. The relatively high rate of return experienced in many electorates demonstrates the helpfulness and popularity of the service. Breaking with this practice at future elections may lead to significant voter inconvenience and possibly disenfranchisement.
- 4.15 The Committee also notes that, when requested to provide evidence in support of its allegations, the AEC conceded that it could provide no evidence of instances where PVAs delivered to the AEC by political parties were received too late to be processed.<sup>11</sup> In the case of the Page and Hume PVAs, the majority of the PVAs complained of by the AEC were received by the AEC within five days of the date on which the applicants indicated that they had dispatched the PVA, and all were received by the AEC before the cut-off date for PVAs, 8 November 2001.

#### Postmarking and receipt of postal votes

- 4.16 The Electoral Act stipulates that where a postal vote certificate envelope has been postmarked after polling day, the enclosed vote shall not be counted. Where there is no legible postmark, and the signature of the witness bears a date on or before polling day, the envelope may be admitted for further scrutiny to determine if the vote is valid.<sup>12</sup>
- 4.17 The AEC argued that if a postal ballot paper is postmarked after polling day, but is signed and witnessed before polling day, it should be admitted to further scrutiny rather than discarded as an invalid vote. The AEC's reasoning is that many postal electors do not realise that they can (in fact, should) vote before polling day. Postal voters often post their ballot papers in the declaration certificate envelope on polling day. It is therefore a matter of chance whether or not their

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10 Submission (Mr P Andren MP, no. 80), pp. 3-4.

11 Submission (AEC, no. 203), pp. 6-7.

12 *Commonwealth Electoral Act 1918*, Schedule 3: 'Rules for the conduct of a preliminary scrutiny of declaration votes', items 7 and 7A.

envelopes are postmarked on that day, and counted in further scrutiny.<sup>13</sup>

- 4.18 The AEC examined postal vote certificates which were rejected in Western Australia at the 2001 federal election. The AEC found that of the 2,428 postal votes rejected, just under half (1,111) were rejected because they were received too late. Of those rejected because they were too late, 86 per cent (956) were signed and witnessed before polling day.
- 4.19 The AEC recommended changing the Electoral Act so that the date of the witness's signature, rather than the date of the postmark, is used to determine whether a postal vote was cast prior to the close of polling.<sup>14</sup>
- 4.20 The Committee believes it is a fundamental feature of Australia's electoral system that all votes are known to be cast before polls close. This is important to the system's integrity, transparency and fairness. The AEC's proposal would weaken this aspect of the electoral system, and the Committee does not support it. It believes that the AEC should address this issue through public information activities, including information on the PVA document itself.
- 4.21 The AEC also raised concerns about the timeframe for receipt of postal votes by DROs. Under subsection 228(5A) of the Electoral Act, a postal vote which has been postmarked on or before polling day is admitted to the scrutiny if:
- it is received by the DRO for the elector's home Division within 13 days after the close of the poll; or
  - it is received by the DRO from another DRO, ARO outside Australia, or presiding officer within 13 days after the close of poll, unless extended by direction of the Electoral Commissioner. Such postal votes must bear evidence that they were originally *received* by that other officer (as distinct from the vote being cast) prior to the close of the poll.<sup>15</sup>
- 4.22 The AEC argued that this provision has the unintended effect of disenfranchising electors simply because they are unaware that their postal vote must be returned to their specific Divisional office, rather

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13 Submission (AEC, no. 147), p. 36.

14 Submission (AEC, no. 147), p. 36.

15 Overseas postal voters may return their postal vote to the Returning Officer at their local DFAT post.

than to any AEC office or polling facility.<sup>16</sup> According to the AEC, over 5,000 postal votes were excluded from the scrutiny in 2001 because of this provision in the Electoral Act.

4.23 The Committee agrees with the AEC's recommendation that:

postal votes, cast on or before polling day, received by an AEO, ARO or another DRO, other than the DRO for the elector's home Division, after the close of the poll, be included in the scrutiny if it is subsequently received by the home DRO within 13 days after the close of the poll.<sup>17</sup>

### Recommendation 15

**4.24 The Committee recommends that postal votes cast on or before polling day, received by an AEO, ARO or another DRO other than the DRO for the elector's home Division, after the close of poll, be included in the scrutiny if it is subsequently received by the home DRO within 13 days after the close of the poll.**

#### Use of same ballot paper for postal and other votes

4.25 At present, the AEC produces two sets of ballot papers, one set for all votes other than postal votes, and one set for postal votes, which are overprinted with the words 'postal ballot paper'. The original reason for distinguishing the postal ballot papers was to ensure proper reconciliation of all ballot materials.

4.26 The AEC argued that strict procedures are now in force for the issue of postal vote material and for the accounting of all postal ballot papers through production, issue and receipt, thereby removing the requirement for separate identification of postal ballot papers.<sup>18</sup>

4.27 The AEC also raised this issue in the 1998 federal election inquiry, and the Committee recommended that the same ballot paper be used for

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16 Submission (AEC, no. 147), p. 36.

17 Submission (AEC, no. 147), p. 37.

18 Submission (AEC, no. 147), p. 37.



all forms of voting.<sup>19</sup> The Government did not accept this recommendation, stating:

The Government is taking action to strengthen electoral integrity and this should take precedence over administrative and cost efficiencies.<sup>20</sup>

#### **Automated Postal Vote Issue System**

4.28 At the 2001 federal election the AEC used its Automated Postal Vote Issue System (APVIS) for the first time in an election. The System was first used for the 1999 Republic Referendum.

4.29 Under APVIS, the preparation, packaging and dispatch of postal vote materials was undertaken by a private company contracted to the AEC. Prior to implementation of APVIS, these tasks had been undertaken by temporary staff at AEC offices. Under APVIS, delivery of materials to electors continued to be undertaken by Australia Post. The Committee notes the AEC's view that:

the new system alleviated much of the manual workload on staff in Divisions, and achieved significant cost savings, as well as resulting in time savings in the dispatch of postal vote materials to electors. APVIS was accountable and transparent in that it provided a national, computerised reporting system ... [which] could be accessed and monitored on demand by all DROs. APVIS also improved client service by enabling electors to telephone the AEC to obtain immediate information on the status of their postal voting materials.<sup>21</sup>

#### **General Postal Voters**

4.30 Under section 184A of the Electoral Act, electors may apply to be registered as General Postal Voters (GPVs) if they are not able to attend a polling booth in person. This may be because they do not live within 20 kilometres of a polling place (including a mobile polling station), or because they are physically unable to travel (for example, they are a patient in a hospital, or have a serious illness or infirmity,

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19 JSCEM, *The 1998 Federal Election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto*, Parliament of Australia, June 2000, Recommendation 25, p. 52.

20 Government Response to the JSCEM report: *The 1998 Federal Election*, tabled 1 March 2001, p. 10.

21 Submission (AEC, no. 147), p. 13.

or are unable to attend because of religious beliefs, or are in custody), or because they have a silent enrolment.<sup>22</sup>

- 4.31 The key service provided by the AEC to GPVs is that ballot papers are sent to them as soon as practicable following the declaration of nominations for a federal election, or the issue of a writ for a federal referendum.<sup>23</sup> GPVs are not required to fill out a Postal Vote Application form.
- 4.32 The AEC noted several instances where the current eligibility provisions for GPV registration cause difficulty. The first is that a person is not eligible to register as a GPV if they reside in a 'special hospital' (for example, a nursing home – see paragraph 4.30). The AEC submitted that this is a problem because of the need to cancel GPV status for electors who move into a special hospital. The AEC also stated that in some instances, the voting needs of physically handicapped people in special hospitals may be better served through GPV voting rather than mobile polling.
- 4.33 The AEC recommended that the Electoral Act be amended so that residents of special hospitals be allowed to register as General Postal Voters.<sup>24</sup>
- 4.34 The AEC was also concerned about GPV status for remote electors. People living on remote stations whose homes are within 20 kilometres of a mobile polling booth cannot register as GPVs. The AEC submitted that, while the introduction of remote mobile polling has been beneficial, some remote electors (for example, station workers) miss the opportunity to vote at a mobile polling booth because of last-minute work commitments. The AEC stated that:

[Station workers may] miss the small window of opportunity to vote when the remote polling team calls to their area, because they have been called away (often at short notice) to fix fences, drive cattle, etc. Prior to the establishment of remote mobile polling, station workers in remote areas were eligible for a [general] postal vote and this was often the most

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22 In relation to silent enrolment (section 104 of the Electoral Act), electors who consider that the publication of their addresses on the publicly available federal electoral roll would endanger the personal safety of themselves or their families, may make a request to the DRO that their addresses not appear on the roll. A request must give details of the relevant risk and be verified by statutory declaration. Silent electors are given the option of becoming General Postal Voters when filling out their silent elector enrolment form.

23 *Commonwealth Electoral Act 1918*, section 186.

24 Submission (AEC, no. 147), p. 40.

convenient and most appropriate means for many of them to vote.<sup>25</sup>

- 4.35 The AEC also noted that in the Northern Territory, station workers may register as GPVs for Territory elections, adding to the confusion for these electors at federal elections. The AEC recommended that the Electoral Act be amended to allow remote area workers whose occupation has the potential to prevent their voting at a mobile polling booth, to register as General Postal Voters.<sup>26</sup>

#### Committee comment

- 4.36 The Committee does not consider the AEC's arguments compelling. In particular, the Committee notes that mobile polling at special hospitals allows for greater scrutiny to ensure that proper procedures are being followed.

#### Overseas postal voting

- 4.37 Many Australians who are overseas at the time of an election avail themselves of the postal voting facility.
- 4.38 A number of submissions commented on perceived inefficiency in the operation of the postal voting process used by Australians overseas.<sup>27</sup> For example, Ms Michelle Kelleher of Florida, USA, submitted that she did not receive her postal vote until the day after it was due to be returned to the AEC.<sup>28</sup>
- 4.39 The Committee notes that the 2001 federal election took place two months after the September 11 terrorist attacks, which were followed by an anthrax scare. This badly disrupted USA postal services, which may have had an impact on the delivery of PVAs and PVCs to electors, and the return of such forms to diplomatic posts in America.
- 4.40 The AEC responded that the process for accessing, completing, and returning PVAs is as streamlined as possible given current legislative and technological limitations.<sup>29</sup> However, the AEC also advised that it

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25 Submission (AEC, no. 147), p. 40.

26 Submission (AEC, no. 147), p. 40.

27 See submissions (Bantwal Baliga, no. 12; Ms L Reeb, no. 21; Mr A D Zielinski, no. 23; Dr L Zinkiewicz, no. 61; Mr I Moller, no. 64; Ms M Kelleher, no. 76; and Ms L Shelley, no. 87).

28 Submission (Ms M Kelleher, no. 76).

29 Submission (AEC, no. 181), p. 5.

is negotiating with DFAT to dispatch ballot papers to overseas posts electronically.<sup>30</sup>

- 4.41 The AEC also suggested that postal voting could be expedited by a legislative change which would remove the requirement that PVAs require the signatures of the elector and a witness. This would allow the PVA to be completed and submitted as an online form.<sup>31</sup>
- 4.42 This would alleviate the concerns of some submitters. For example, Mr Ian Moller submitted that he had problems finding an Australian citizen in his area (Michigan, USA) to act as a witness.<sup>32</sup>
- 4.43 The Committee notes that the Electoral Act allows overseas voters who cannot find a suitable witness to complete a signed statement setting out the reasons why they were unable to meet the witnessing requirement for their PVA.<sup>33</sup> It seems that some submitters were unaware of this provision.
- 4.44 The Committee does not consider that current anecdotal evidence of difficulties encountered in voting by post from overseas is sufficient to warrant the removal of any key steps in the process. Each of the PVA procedures for application, witnessing, receipt and return, are important in ensuring the integrity and security of the postal voting system.

#### Other issues relating to postal voting

- 4.45 Submissions raised a number of other issues related to postal voting. These are briefly examined below.
- 4.46 A submission from the Hon. Bob Katter MP, Member for Kennedy, called for a change to the provisions for the application for a postal vote.
- 4.47 One of Mr Katter's constituents, Mrs Jenkin, is blind, and her husband has enduring Power of Attorney to sign all documents on her behalf. Mr Katter submitted that the Electoral Act does not allow an elector to have their postal vote application signed by another person under a Power of Attorney. For the 2001 federal election, Mrs Jenkin submitted a PVA signed by her husband, which was rejected by the

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30 Submissions (AEC, no. 181, p. 7 and no. 199, pp. 10-11).

31 Submission (AEC, no. 181), p. 5.

32 Submission (Mr I Moller, no. 64).

33 *Commonwealth Electoral Act 1918*, subsection 184(3A).

AEC. Mr Katter called for a change to the Electoral Act to allow PVAs to be signed by people with enduring Power of Attorney.<sup>34</sup>

- 4.48 The AEC confirmed that, under subsection 336(1) of the Electoral Act, applicants must sign PVAs in their own handwriting. However, the AEC noted that subsection 336(2) of the Act allows applicants who are unable to sign, to make their mark on the application and have it witnessed.<sup>35</sup> The AEC undertook to clarify the situation for future PVA applicants:

Nevertheless, it is extremely unfortunate that Mr Katter's constituent was unable to vote at the last election. The AEC will investigate making it clearer, on its relevant forms in the future that a personal signature or mark is required and that a power of attorney cannot be used.<sup>36</sup>

- 4.49 Two submissions raised concerns about the secrecy of postal votes. The H.S. Chapman Society stated that the inclusion of 'red slashes and symbols' on postal vote envelopes goes against the principle of secrecy for postal ballots:

The voter's vote can hardly be said to be handled with the greatest security and secrecy when it can now be identified with the greatest of ease.<sup>37</sup>

- 4.50 The AEC responded:

The red symbols on postal vote envelopes are intended to make them easier to identify in the sorting process so Australia Post could give them priority. The AEC has no record of difficulties with tampering or the loss of these envelopes.<sup>38</sup>

- 4.51 Mrs Meryl Meiklejohn submitted that declaration votes are not secret, as there is identifying information on the declaration envelope which ties the elector to the ballot paper it contains. Mrs Meiklejohn suggested the use of two envelopes: the declaration envelope which would include the voter's name, address and other relevant information; and a second envelope containing the ballot papers, with

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34 Submission (Hon. B Katter MP, no. 129).

35 *Commonwealth Electoral Act 1918*, section 336.

36 Submission (AEC, no. 174), p. 24.

37 Submission (H.S. Chapman Society, no. 146), p. 1.

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

only the electorate marked on it. The second envelope would be placed into the declaration envelope and sent to the DRO.<sup>39</sup>

- 4.52 The Committee notes that Schedule 3 to the Electoral Act specifies that once the information on declaration envelopes has been examined to determine the validity of the vote, the votes are removed from the envelopes by the DRO ‘without unfolding or inspecting them or allowing any other person to do so’, and placed in a ballot-box for further scrutiny. This existing process already protects the secrecy of declaration votes.<sup>40</sup>
- 4.53 Mr Ronald Munro recommended that postal and absentee votes be ‘cut off within four working days of the election, so that voters are encouraged to vote before the election’.<sup>41</sup>
- 4.54 The Committee notes, in relation to Mr Munro’s suggestion, that:
- most absentee votes are cast at regular polling booths on election day and changing this system would be severely disruptive to both electors and the AEC; and
  - current postmarking requirements already ensure that only postal votes cast before the close of polls on election day are admitted to the scrutiny.

### Pre-poll voting

- 4.55 Electors who cannot attend a polling place on polling day can cast a pre-poll vote in person at a Divisional office or pre-poll voting centre in the lead up to polling day and on polling day if they are voting outside the State or Territory in which they are enrolled. Just under five per cent (585,616) of all votes cast in the 2001 federal election were pre-poll votes.<sup>42</sup>
- 4.56 Schedule 2 to the Electoral Act sets out the specific grounds for application for a pre-poll or postal vote. These include an elector’s absence from their enrolled State or Territory on polling day, or an inability to attend a polling booth on election day for one of a number of reasons (for example, they are a patient in a hospital, have a serious

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39 Submission (Mrs M Meiklejohn, no. 62).

40 *Commonwealth Electoral Act 1918*, Schedule 3, items 17-18. See also AEC: *Frequently Asked Questions – General Voting*, at [http://www.aec.gov.au/\\_content/what/faqs/vote\\_gen.htm#12](http://www.aec.gov.au/_content/what/faqs/vote_gen.htm#12), accessed 7 April 2003.

41 Submission (Mr R Munro, no. 50).

42 Submission (AEC, no. 147), p. 31.

illness or infirmity, are unable to attend because of religious beliefs, are in custody, or will be working throughout the polling hours).<sup>43</sup>

### Pre-polling in home Divisions

4.57 Since 1993, the AEC has recommended to successive election inquiries that the Electoral Act be amended to allow a pre-poll vote which is cast in an elector's home Division to be considered as an ordinary vote, rather than a declaration vote. The AEC's submission to this inquiry again recommended such a change, arguing that:

This would mean that such voters would be immediately marked off the Certified List of Voters for their home Division, and the consequence would be a reduction in the time delay associated with processing of declaration votes through the preliminary scrutiny to verify eligibility; a reduction in the administrative load and the costs associated with the issuing, sorting and collating of declaration votes, and faster election results.<sup>44</sup>

4.58 The AEC noted that pre-poll ordinary voting in home Divisions is allowed for Victorian and ACT parliamentary elections.

4.59 In the 1993, 1996 and 1998 federal election reviews, the Committee's predecessors rejected the AEC's above recommendation, on the basis that in general, an ordinary vote should only be available to an elector when voting in their home Division on election day.

4.60 The Committee has received no evidence in this inquiry warranting a change in this position.

### Scrutineers for pre-polling

4.61 The Electoral Act is silent on the attendance of scrutineers at pre-poll voting centres. The AEC noted that the *Referendum (Machinery Provisions) Act 1984* allows for scrutineers to be present at pre-poll voting centres, as scrutineers are allowed at 'each place in Australia where voting is being conducted'. The AEC recommended that a similar provision be included in the Electoral Act.<sup>45</sup>

4.62 The Committee considers that openness and transparency are key factors in ensuring high levels of electoral integrity, fairness and

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43 *Commonwealth Electoral Act 1918*, Schedule 2 : 'Grounds of application for postal or pre-poll vote'.

44 Submission (AEC, no. 147), p. 38.

45 *Referendum (Machinery Provisions) Act 1984*, section 27. Submission (AEC, no. 147), p. 39.

public confidence. Measures such as opening the pre-poll voting centres to correctly appointed scrutineers would increase openness and transparency.

### Recommendation 16

- 4.63 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to explicitly allow scrutineers to be present at pre-poll voting centres.**

#### Qualification for pre-poll voting

- 4.64 Mr Bruce Kirkpatrick and the H.S. Chapman Society raised concerns about the AEC's issue of pre-poll votes. Mr Kirkpatrick's submission stated that when he attended an AEC pre-poll centre in Sydney to inquire about pre-poll voting, an AEC officer was ready to issue him with a pre-poll vote despite Mr Kirkpatrick's belief that he did not qualify. Mr Kirkpatrick argued that pre-poll centres offer opportunities for electoral fraud:

Where voters are able to vote at any of many polling booths in their electorate without being properly identified and not just on polling day but over an extended period of weeks, where the votes go into envelopes at points from which scrutineers are excluded ... there has to be increased opportunity for the unscrupulous to perpetrate voting fraud.<sup>46</sup>

- 4.65 Mr Kirkpatrick submitted that these problems would be overcome if voters were required to prove their identity at the polling booth.

- 4.66 The H.S. Chapman Society similarly claimed that:

voters who pre-poll vote are not policed in any way to ensure they qualify to receive them. The conditions that apply are not always posted in an obvious area so that voters are aware of them.<sup>47</sup>

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46 Submission (Mr B Kirkpatrick, no. 77), p. 3.

47 Submission (H.S. Chapman Society, no. 146), p. 1.



4.67 Dr Amy McGrath, OAM representing the H.S. Chapman Society, cited two examples of AEC staff being willing to issue her with a pre-poll vote when she believed that she did not qualify.<sup>48</sup>

4.68 The AEC responded to these submissions by stating:

The most likely cause of the circumstance Mr Kirkpatrick describes is that the polling official assumed Mr Kirkpatrick's claim for a pre-poll vote was reasonable, and that, although he claimed he was going to be in the State, he was eligible for a pre-poll vote under one of the other grounds.<sup>49</sup>

4.69 The AEC also reiterated that scrutineers are present at the opening of declaration envelopes.

4.70 Implementation of the Committee's recommendation that it be made explicit that scrutineers are allowed to be present at pre-poll voting centres may address some of the concerns about pre-poll voting.

#### **Advertising of opportunities for pre-poll voting**

4.71 Mrs Ruth Gibbs asked that pre-polling opportunities be more widely advertised, and that more pre-poll centres be made available.<sup>50</sup> The AEC made no response to this submission.

4.72 The Committee is of the view that current pre-poll voting centres are adequate in number and sufficiently well publicised to enable qualifying voters to have ample opportunity to cast their ballot prior to the election.

#### **Absent voting**

4.73 Electors who are away from their Division but still within their home State or Territory on election day, may cast an 'absent vote' at any polling place in that State or Territory. At the 2001 federal election, 780,961 electors (6.46 per cent of the total) cast absent votes.<sup>51</sup>

4.74 Submissions did not raise significant concerns about absent voting provisions or arrangements. Comments by polling booth officials about facilitation of absent voting are discussed in chapter five.

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48 Submission (H.S. Chapman Society, no. 146), p. 1.

49 Submission (AEC, no. 174), pp. 11-12.

50 Submission (Mrs R Gibbs, no. 140).

51 Submission (AEC, no. 147), p. 31.

## Provisional voting

- 4.75 People whose names cannot be found on the certified list of voters for the Division in which they believe themselves to be enrolled, or whose names have already been marked off the certified list but who claim not to have voted, may cast a 'provisional vote'. These votes are not counted until a check of enrolment records has been made. Electors are then advised of the outcome of that check.
- 4.76 In the 2001 federal election, 107,396 provisional votes (0.89 per cent of the total) were admitted to the Senate scrutiny, and 81,266 provisional votes were admitted to the House of Representatives scrutiny.<sup>52</sup> In the course of this inquiry, concerns arose in relation to the reinstatement of provisional voters to the electoral roll. This is discussed in chapter two.

## Mobile polling

- 4.77 Mobile polling was introduced as a feature of the Australian electoral system in order to assist electors who encountered significant physical obstacles (mobility, distance, ill health etc.) to more easily cast their vote.
- 4.78 Certain electors unable to access a normal polling booth may be visited by a mobile polling booth. Mobile polling takes place in:
- hospitals and nursing homes - during the five days preceding polling day and on polling day;
  - remote areas - during the 12 days preceding polling day and on polling day;<sup>53</sup> and
  - prisons - by arrangement with the prison.<sup>54</sup>
- 4.79 Votes cast at mobile polling booths prior to election day are pre-poll votes. Votes cast on election day are ordinary votes, except where the elector is away from their home Division, in which case their vote will be cast as an absent vote.

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52 Submission (AEC, no. 200), p. 18.

53 As determined by the Electoral Commissioner; subsection 227(3) of the Electoral Act refers.

54 *Commonwealth Electoral Act 1918*, sections 224 to 227.

## Mobile polling at 'special hospitals'

- 4.80 The AEC asserted that the current mobile polling provisions do not adequately cover the voting needs of all people resident in 'special hospitals'. Section 224 of the Electoral Act relates to mobile polling at ordinary hospitals. Section 225 allows the AEC to gazette parts of other institutions (such as nursing homes) as 'special hospitals' to allow mobile polling to take place there. Under the current provisions of the Act, only patients at special hospitals who require 'continuous nursing care' qualify to use a mobile polling booth.
- 4.81 This means that electors in self-care facilities in nursing homes do not qualify for a mobile poll vote.
- This can cause frustration and resentment from residents in 'self-care' and 'retirement village' parts of an establishment when they are advised that the mobile polling facility is only available to 'patients' requiring 'continuous nursing care'. It is possible that one person is eligible to vote as a patient in a gazetted part of an establishment while the spouse of that person is not eligible to vote as a resident in another part of the establishment.<sup>55</sup>
- 4.82 The AEC recommended that the Electoral Act be amended so that mobile polling in special hospitals is no longer restricted to patients under 'continuous nursing care'. It cautioned that:
- these establishments are not to become ordinary polling places. The mobile polling facility should be restricted to residents and on-duty staff of the gazetted establishment.<sup>56</sup>
- 4.83 The Committee supports the extension of mobile polling to residents and patients of special hospitals. However, the Committee does not believe that mobile polling should be extended to on-duty staff of special hospitals, as implied by the AEC's recommendation. This would extend the mobile polling provisions for special hospitals beyond those currently relating to ordinary hospitals.
- 4.84 The Liberal Party of Australia highlighted the confusion surrounding mobile polling in 'special hospitals', and recommended that the AEC publish a full statement of how mobile polling in these establishments operates.<sup>57</sup>
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55 Submission (AEC, no. 147), p. 39.

56 Submission (AEC, no. 147), p. 40.

57 Submission (Liberal Party of Australia, no. 149), p. 5.

- 4.85 Current regulations and arrangements for mobile polling appear to be sitting uncomfortably with the ever-changing landscape of retirement, nursing home, and hospital accommodation. The result is confusion and frustration for many of the people mobile polling was designed to assist. The Committee believes further examination of this issue is required and recommends that the AEC provide the Committee with a report on mobile polling with a view to ensuring better management of mobile polling.

### Recommendation 17

- 4.86 **The Committee recommends that the AEC report to it in detail on how mobile polling currently operates, exactly where it believes mobile polling should take place, how mobile polling should be administered, and who should be entitled to cast their vote at a mobile polling station.**

### Remote mobile polling

- 4.87 Mr Barry Wakelin MP, Member for Grey, raised concern about the AEC practice of a mobile remote polling team visiting multiple remote communities and grouping all of those communities' votes together, and then counting and recording the votes of those multiple communities under the same heading, namely the remote mobile team identifier, for example 'Remote Mobile Team 1'.<sup>58</sup> Mr Wakelin submitted:

I remain totally opposed to the methodology of collecting all communities under the title of Mobile Booths. To give dignity and respect to the value of the individual vote in each community the counting should be done on a community by community basis.<sup>59</sup>

- 4.88 The AEC responded that Mr Wakelin's suggestion would have implications for the privacy of the vote:

On mobile polls, votes from a number of small communities are mixed in a single ballot box, decreasing the likelihood that votes from individuals within particular communities can be

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58 Submission (Mr B Wakelin MP, no. 108). See *Commonwealth Electoral Act 1918*, subsection 227(4).

59 Submission (Mr B Wakelin MP, no. 108).

identified. The same practice is applied to mobile teams in special hospitals for the same reason.<sup>60</sup>

- 4.89 The AEC also commented that the provision of a separate ballot box for each community would cause logistical problems:

In the case of remote mobiles undertaken by light aircraft, this suggestion could significantly increase the cost of conducting the mobile poll because the additional materials would require the hire of a larger aircraft, which may not be feasible due to the size of the relevant airstrips.<sup>61</sup>

## Assisted voting

- 4.90 The Electoral Act permits some voters to have assistance (from a person of their choosing or a polling official) to mark, fold, and deposit their ballot paper. A voter may have assistance if their sight is so impaired, or they are so physically incapacitated or illiterate, that they are unable to vote without assistance.<sup>62</sup>

- 4.91 Mr Barry Wakelin MP raised concerns about assisted voting, asserting that in his electorate, 'there is no evidence that the previous 90+% assisted voting has altered'.<sup>63</sup> Mr Wakelin also commented that in these communities, the level of informal voting was very low. He submitted that:

There is a great need to give fair and transparent awareness of individual rights to vote according to their beliefs and not on what one or two people in the polling booth area may be encouraging voters to do.<sup>64</sup>

- 4.92 The AEC responded:

The AEC absolutely refutes the implication of Mr Wakelin's statement that polling staff who assist voters are encouraging voters to vote in a particular way.<sup>65</sup>

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60 Submission (AEC, no. 174), p. 22.

61 Submission (AEC, no. 174), p. 22.

62 *Commonwealth Electoral Act 1918*, section 234.

63 Submission (Mr B Wakelin MP, no. 108).

64 Submission (Mr B Wakelin MP, no. 108).

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

4.93 The issue of assisted voting was examined in detail in the previous Committee's report on the 1998 federal election.<sup>66</sup> In particular, the Committee understands that the AEC is currently drafting a report on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders, which the Committee inquiring into the conduct of the 1998 federal election recommended be done prior to the following federal election. This report and any action that follows from it may impact on the issue of assisted voting by Aboriginal people.

## Informal voting

4.94 The AEC regards a ballot paper as informal if 'it is not filled out correctly'.<sup>67</sup> Informal ballots are not counted towards any candidate, but are set aside for counting and research.

4.95 A vote is informal if:

- the ballot paper is not marked at all;
- the ballot paper does not have the official mark or has not been initialled by the polling official and the ballot paper is not authentic in the eyes of the DRO;
- the ballot paper has writing on it which identifies the voter;
- in the case of an absent, postal or provisional vote, the ballot paper is not contained in the declaration envelope; or
- the voter has not marked a vote correctly for it to be considered acceptable according to section 268 of the Electoral Act.<sup>68</sup>

4.96 Section 268 stipulates that a ballot paper is invalid if:

- in a Senate election, where the vote has been cast 'below the line', it has no vote indicated on it, or it does not indicate the voter's first preference for one candidate and the order of his or her preference for the remaining candidates;<sup>69</sup> or

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66 See AEC, *The 1998 Federal Election* (2000), as above, pp. 78-84.

67 AEC, *Electoral pocketbook*, Commonwealth of Australia, July 2002, p. 45.

68 AEC, *Electoral pocketbook*, Commonwealth of Australia, July 2002, p. 45.

69 A ballot is considered formal if 90 per cent of all candidates are allocated preferences. AEC, *Formal and Informal Votes*, [http://www.aec.gov.au/\\_content/what/voting/votes.htm](http://www.aec.gov.au/_content/what/voting/votes.htm), accessed 9 April 2003.

- in a House of Representatives election, it has no vote indicated on it, or it does not indicate the voter's first preference for one candidate and an order of preference for the remaining candidates.<sup>70</sup>

### **Informal voting at the 2001 federal election**

- 4.97 Australian elections have traditionally been characterised by a small, but not insignificant, informal vote.
- 4.98 At the 2001 federal election there were 580,590 informal votes (4.82 per cent) in the House of Representatives ballot. The AEC's research report states that this was 'the fourth largest since federation'.<sup>71</sup> The Committee believes it important to note that in recent history, informal voting for the House of Representatives was higher in both 1984 and 1987 than it was in 2001. Informal voting for the Senate also rose at the 2001 federal election to 3.9 per cent.
- 4.99 Table 4.2 provides statistics on informal voting from 1984 to 2001 for both the Senate and the House of Representatives.

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70 The Act also notes exceptions. For example, where a voter has indicated a first preference for one candidate and an order of preference for all the remaining candidates except one and the square opposite the name of that candidate has been left blank, the DRO may deem the voter's preference for that candidate to be voter's last preference. The DRO must therefore consider this to be a formal ballot. Sections 240, 268, 270 and 274 of the Electoral Act relate to informal voting for the House of Representatives.

71 AEC, *Research Report 1 – Informal Vote Survey House of Representatives 2001 Election*, Commonwealth of Australia, 2002, p. 1; available at: [http://www.aec.gov.au/\\_content/What/voting/research\\_2001Elections.htm](http://www.aec.gov.au/_content/What/voting/research_2001Elections.htm), accessed 15 June 2003.

Table 4.2 Informal voting at federal elections, 1984-2001 (% of total votes)

	1984	1987	1990	1993	1996	1998	2001
House of Representatives	6.3	4.9	3.2	3.0	3.2	3.8	4.8
Senate	4.3	4.1	3.4	2.6	3.5	3.2	3.9

*Source* AEC, Electoral pocketbook, 2002, p. 45 and AEC Submission 77 to the Inquiry on the conduct of the 1996 federal election, p. 27.

4.100 In 2001, South Australia and New South Wales recorded the highest State averages of informality (see table 4.3 below).

Table 4.3 Informal voting by state at the 2001 federal election (% of total votes)

	SA	NSW	WA	QLD	NT	VIC	ACT	TAS
	%	%	%	%	%	%	%	%
House of Representatives	5.5	5.4	4.9	4.8	4.6	4.0	3.5	3.4
Senate	3.1	3.5	3.6	3.0	2.8	5.6	2.3	3.3

*Source* AEC, Electoral pocketbook, 2002, p. 45.

4.101 Informal voting can take various forms. Table 4.4 outlines the distribution of informal votes by type.



Table 4.4 Informal votes for the House of Representatives by category and State, 2001 federal election (% of total informal votes)

	NSW	QLD	VIC	WA	SA	TAS	ACT	NT	NAT
<i>Category</i>	%	%	%	%	%	%	%	%	%
	<i>(total votes)</i>								
<b>Blanks</b>	20.38	15.67	24.95	23.36	24.52	27.86	30.84	20.74	<b>21.43</b> <b>(124,456)</b>
<b>Number 1 only</b>	32.47	46.42	26.05	29.87	36.63	23.60	28.76	27.95	<b>33.58</b> <b>(194,975)</b>
<b>Ticks and Crosses</b>	12.57	11.46	12.97	9.93	14.95	15.84	8.99	10.62	<b>12.42</b> <b>(72,262)</b>
<b>Langer Style</b>	2.37	2.00	3.22	4.18	1.05	6.88	0.83	14.56	<b>2.68</b> <b>(15,564)</b>
<b>Non Sequential</b>	22.52	10.49	14.15	21.75	13.40	13.17	7.66	15.06	<b>17.18</b> <b>(99,946)</b>
<b>Voter Identified</b>	0.04	0.03	0.07	0.11	0.03	0.02	0.04	0.00	<b>0.04</b> <b>(281)</b>
<b>Marks</b>	5.49	4.91	8.23	7.78	5.97	12.11	4.20	2.98	<b>6.31</b> <b>(37,017)</b>
<b>Slogans making numbering illegible</b>	0.28	0.30	0.42	0.18	0.57	0.01	0.05	0.00	<b>0.31</b> <b>(1,571)</b>
<b>Other</b>	3.87	8.72	3.98	2.83	2.87	0.51	18.63	8.09	<b>6.00</b> <b>(34,571)</b>
<b>Total</b>	<b>5.42</b>	<b>4.83</b>	<b>3.98</b>	<b>4.92</b>	<b>5.54</b>	<b>3.40</b>	<b>3.52</b>	<b>4.64</b>	<b>4.82</b> <b>(580,590)</b>

*Source* AEC. 2002. Research Report 1 – Informal Vote Survey, House of Representatives, 2001 Election [http://www.aec.gov.au/\\_content/what/voting/research\\_2001Elections.htm](http://www.aec.gov.au/_content/what/voting/research_2001Elections.htm)

*Notes* **Blank.** This category contains all those ballot papers that are completely blank, that is, no writing whatsoever.

**Number 1 only.** This category contains ballot papers where the elector expressed only a first preference by placing a single figure 1 against one candidate.

**Langer Style Voting.** This category contains ballot papers with repeating numbers such as 1,2,3,3,3...

**Non Sequential.** This category contains those ballot papers where the numbering is non-sequential such as 1,2,300,324,490 ...

**Voter Identified.** This category contains ballot papers bearing writing identifying the elector.

**Marks.** This category contains those ballot papers where there is no preference, or partial preference but slogans, written comments, marks etc are contained on the ballot papers.

**Slogans making numbering illegible.** This category contains all those ballot papers where slogans, writing or comments have been made and the words or marks interfere with the preferences in such a way that the numbering can not be deciphered.

**Other.** The other category contains ballot papers that can not be categorised into any of the above. Typically this category consists of ballot papers that have insufficient preferences expressed.

4.102 Just over one third of all informal votes were cast by voters who only numbered one box on the ballot paper. The second most prominent form of informal voting was a blank (21 per cent). A significant number of ballots were not marked in a sequential order (17 per cent), or were marked with ticks or crosses (12 per cent).

- 4.103 The inquiry received submissions on a number of issues in relation to informal voting. Many focussed on factors that may explain the increase in informal voting for the 2001 election. Others attempted a broader investigation into the phenomenon of informal voting and its underlying causes.
- 4.104 A thorough investigation of informal voting is beyond the scope of this inquiry. However some issues raised by participants are of particular relevance. These are discussed below.

#### The influence of state-based electoral systems on informality

- 4.105 Optional preferential voting, where voters have the option of 'just voting 1', was introduced for State elections in New South Wales in 1981 and in Queensland in 1991.
- 4.106 The interplay between this system at the State level and full preferential voting at the federal level is often put forward as an explanation of 'number 1 only' informality in federal elections by voters in those States.
- 4.107 Evidence to this inquiry focussed on a small number of seats in New South Wales.
- 4.108 Two months prior to the federal election, a by-election was held for the New South Wales state seat of Auburn. Auburn contains approximately 60 per cent of the federal electorate of Reid, the remainder falling within the federal electorate of Blaxland.
- 4.109 Electoral advertising for the Auburn by-election reminded electors that they were able to 'Vote 1 only', as is permitted by the optional preferential voting system used in NSW.
- 4.110 It was suggested that relatively high rates of informality for the 2001 federal election in both Reid (11.08 per cent<sup>72</sup>) and Blaxland (9.78 per cent<sup>73</sup>) may be explained by the confusion caused when differing preferential systems operate at the two levels of government.

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72 Over 33 per cent of informal ballots in Reid were only marked with the number 1. See AEC, *2001 Election Informal Ballot Paper Survey*, at: [http://www.aec.gov.au/\\_content/what/voting/survey/nsw/reid.htm](http://www.aec.gov.au/_content/what/voting/survey/nsw/reid.htm), accessed 15 June 2003.

73 Over 28 per cent of informal ballots in Blaxland were only marked with the number 1. This, however, was not the most prevalent form of informality in Blaxland. Slightly more prevalent were ballots marked non-sequentially. See AEC, *2001 Election Informal Ballot Paper Survey*, at: [http://www.aec.gov.au/\\_content/what/voting/survey/nsw/blaxland.htm](http://www.aec.gov.au/_content/what/voting/survey/nsw/blaxland.htm), accessed 15 June 2003.

- 4.111 The federal member for Fowler, Ms Julia Irwin MP, raised similar concerns regarding increased informality in her electorate, where the informal vote reached almost 13 per cent in 2001.<sup>74</sup>
- 4.112 It is interesting to note that only 28 per cent of informal votes in the electorate of Fowler were 'number 1 only' (significantly less than the national average of 33 per cent).
- 4.113 In South Australia, which does not operate an optional preferential system, the percentage of informal voting was the highest of any state or territory (at 5.54 per cent) and the proportion of 'number 1 only' informal votes was well above the national average (at more than 36 per cent).
- 4.114 Whilst there is intuitive appeal in the view that optional preferential voting at the State level may play a role in increasing informality at the federal level, and some anecdotal evidence to suggest it may be a factor, it is not overwhelmingly supported by the evidence at this stage and it is certainly not the sole explanatory factor.

#### Langer-style voting

- 4.115 Previous inquiries have spent considerable effort examining the phenomenon of non-sequential numbering and so-called Langer-style voting.<sup>75</sup>
- 4.116 Prior to 1996, subsection 270(2) of the Electoral Act provided that a House of Representatives ballot would still be formal where there was a '1' against the name of one candidate, and there were also numbers in all of the other squares, even if one of the numbers was repeated.
- 4.117 The Act previously stated that:
- any number that is repeated is disregarded in the counting of preferences.<sup>76</sup>
- 4.118 This provision, intending to preserve the franchise of voters who made numbering errors whilst filling in their ballot, had the unintended consequence of, in effect, allowing optional preferential voting (ballots numbered with a clear first preference but unclear later preference, for example, 1,2,3,3).

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74 Submission (Ms J Irwin MP, no. 95), p. 6.

75 See JSC EM, *The 1996 Election: Report of the Inquiry into the conduct of the 1996 Federal Election*, Parliament of Australia, June 1997, pp. 27-33; and JSC EM, *The 1998 Federal Election* (2000), as above, pp. 113-115.

76 JSC EM, *The 1996 Federal Election* (1997), as above, p. 27.

- 4.119 Despite the insertion into the Electoral Act of a prohibition on advertising and promoting the use of this loophole (section 329A), many instances were found in each of the 1987, 1990, 1993 and 1996 elections of individuals and parties encouraging optional preferential voting.
- 4.120 During the 1996 federal election, Mr Albert Langer campaigned for voters to cast a *de facto* optional preferential vote relying on section 270 of the Electoral Act. The AEC took action under section 329A. Mr Langer was ordered by the court to desist from his campaign. He ignored the order and was imprisoned for contempt of court.
- 4.121 This case generated widespread publicity for the optional preferential voting 'loophole', and such votes for the House of Representatives increased seven-fold.<sup>77</sup>
- 4.122 Following the 1996 election, the Committee's predecessor reviewed sections 270 and 329A of the Electoral Act and recommended that section 329A (and related sections) and subsection 270(2) be repealed so that House of Representatives ballot papers marked with non-consecutive numbers or which had numbers repeated would be considered informal.<sup>78</sup>
- 4.123 The Government supported these recommendations and they were enacted in the *Electoral and Referendum Amendment Act 1998*. Consequently, since 1998 ballot papers with repetitive numbering (for example, 1, 2, 2, 2 ... or 1, 2, 3, 3, 3) have been considered informal.
- 4.124 The Committee notes that the AEC's research report into informal voting indicates that Langer-style voting accounted for less than three per cent of all informal votes in 2001, so it can hardly be claimed that the 1998 amendments have driven any generalised increase in informality.
- 4.125 Some of the consequences of the 1998 amendments are of concern to some Committee members. Mr Daryl Melham, MP argued that the amendments eliminate any kind of savings provision for those voters who accidentally make mistakes, including those who marked their ballot papers 'non-sequentially'.<sup>79</sup> Non-sequentially marked papers differ from Langer votes in that there is no repetition of numbers. More often than not, numbers have simply been missed (for example,

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77 JSCEM, *The 1996 Federal Election* (1997), as above, p. 28.

78 JSCEM, *The 1996 Federal Election* (1997), as above, p. 32.

79 Transcript of Evidence 9 December 2002 (Mr D. Melham MP), pp. EM 317-320. See also Submission (AEC, no. 181), p. 23.

'1, 2, 3, 5, 8'). At the public hearing on 9 December 2002, Mr Melham proposed that a new savings provision be considered to preserve the votes of electors who mark their ballots non-sequentially.

- 4.126 The Committee understands and sympathises with Mr Melham's concerns about possible disenfranchisement. Certainly, it would be possible to amend the Electoral Act so as to admit ballots marked non-sequentially. However, as with previous provisions of this kind, it is likely that any new form of savings clause will create a different optional preferential voting 'loophole', which individuals or parties will seek to exploit as it suits them.

#### Other factors

- 4.127 Ms Irwin's submission outlined a number of other factors which may have impacted on the particularly high rate of informal voting in her electorate of Fowler, and by extension the higher than usual rate of informal voting nationwide.

- 4.128 These factors were the size of polling places; the introduction of 'composite' polling places; the number of candidates running for election; and the proliferation of how-to-vote cards and video voting information in various community languages as well as English.

- 4.129 Ms Irwin's overarching recommendation was that:

the AEC identify electorates with an abnormally high informal vote and such electorates should be targeted for special initiatives to reduce the level of informal voting.<sup>80</sup>

- 4.130 More specifically, Ms Irwin submitted that where voters have to queue for long hours to cast their vote, people may be more likely to cast an informal vote. Statistical analysis conducted by Ms Irwin's office suggested that the larger the polling booth and the longer the queue in a polling place (and therefore, overall time taken to cast a vote), the greater the level of informal voting.<sup>81</sup> Ms Irwin recommended that the AEC:

review the voting processes and the level of resources available at larger polling booths with a view to reducing delays in voting. This may include the use of morning only staff to cover the busiest voting times.<sup>82</sup>

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80 Submission (Ms J Irwin, MP, no. 95), p. 10.

81 Submission (Ms J Irwin, MP, no. 95), p. 5.

82 Submission (Ms J Irwin, MP, no. 95), p. 10.

- 4.131 The AEC noted that while it has considered increasing staff, ‘attendance by electors is variable and can depend on local and unforeseen circumstances, so the use of morning only staff, for example, may not be a solution to this problem’.<sup>83</sup> The AEC stressed that DROs have the discretion to manage peaks in elector attendance.<sup>84</sup>
- 4.132 The number of composite polling places – booths registered as polling places for more than one Division – increased from one to seven in the electorate of Fowler. Ms Irwin noted that higher levels of informal voting were evidenced at two of those composite polling places.<sup>85</sup> Ms Irwin suggested that where composite polling places are established, the AEC should continue its practice of writing to voters in the surrounding areas informing them of the change in boundaries and confirming the Division in which they are enrolled.<sup>86</sup>
- 4.133 Ms Irwin supported the use of educational tools such as video voting information, and recommended that the AEC expand the use of community language and English language video voting instructions in ‘targeted’ electorates.<sup>87</sup>
- 4.134 The AEC agreed ‘in principle’ with some of Ms Irwin’s suggestions, including the use in selected polling places of videotapes showing how to cast a formal vote. It emphasised that:
- a variety of factors influence formality, including the number of candidates, so the use of videotapes cannot be relied upon to address this issue ... These matters will be considered by the AEC as it develops a communication plan for the next federal election.<sup>88</sup>

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83 Submission (AEC, no. 174), p. 17.

84 Submission (AEC, no. 174), p. 17.

85 Submission (Ms J Irwin, MP, no. 95), p. 6.

86 Transcript of Evidence 11 November 2002 (Ms J Irwin MP) pp. 268-269.

87 Submission (Ms J Irwin, MP, no. 95), p. 10.

88 Submission (AEC, no. 174), pp. 16-17.

## Multiple voting

- 4.135 The term 'multiple voting' is often used to describe the deliberate act of fraudulently casting two or more ballots at the same election. The term is also associated with 'cemetery voting' or 'ghost voting', which refers to the act of voting in the name of a deceased person.
- 4.136 As explained in the AEC's Electoral Backgrounder on *Electoral Fraud and Multiple Voting*,<sup>89</sup> the procedures currently used for the detection and prosecution of multiple voting are as follows:
- During the election period, copies of the certified lists are issued by the AEC to the relevant DRO, who in turn supplies these to every issuing point at every polling booth in the Division.
  - Polling officials at each issuing point mark off an elector's name by drawing a short line between arrow marks, known as 'clock marks', to signify that that person has been issued with ballot papers.
  - Immediately following polling day, each identical certified list for each Division is electronically scanned to read the marks against the names on the list, in order to generate reports of multiple marks against names, and reports of no marks against names, together with details identifying the issuing location of the certified list.
  - A first round of checking involves Divisional staff manually checking the scanning reports for their Division against the original certified lists. This first round of checking often discovers cases of multiple marks in the scanning which may be attributed to dust specks, coffee stains, or a mark pressed too hard on the previous page. These marks, which are considered to have nothing to do with either official or voter error, or deliberate multiple voting, are then eliminated.
  - A second round of manual checking looks for reported polling official errors and other official errors by checking the remaining multiple marks on the scanning reports against the original certified lists and other documents. An Officer in Charge may report, in his or her return, that mistakes in the marking of the certified list had been made, or that notations may have been made

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89 AEC, *Electoral Fraud and Multiple Voting*, Electoral Backgrounder No. 14, October 2001, pp. 8-10. Available at: [http://www.aec.gov.au/\\_content/How/backgrounders/14/index.htm](http://www.aec.gov.au/_content/How/backgrounders/14/index.htm), accessed 15 June 2003.

in the margins of the lists indicating an error in marking off a name. These multiple marks are eliminated at this stage.

- The DRO then proceeds to investigate the remaining multiple marks by writing to each elector against whose name more than one mark is shown, to seek details of the polling places at which, or the method of declaration vote by which, the votes were apparently recorded. The DRO also writes to those electors with no marks against their name (as stipulated under section 245 of the Electoral Act).
- This correspondence may lead to further eliminations if, for example, a match is discovered between an elector with more than one mark against his or her name, and an elector with a similar name on the line above or below on the certified list, with no mark against his or her name (that is, an assumption is made of official error in marking one of the certified lists).
- If the elector, or close friends or family, write back with a reasonable explanation for casting more than one vote, the DRO generally writes back informing the elector of correct procedures and the penalties for voting more than once, and the matter is not taken further.<sup>90</sup> These names are subsequently eliminated.
- Where the elector writes back to the DRO indicating that more than one vote might have been cast deliberately, or if the elector fails to respond to repeated correspondence from the DRO, then such cases may be referred to the Australian Federal Police (AFP) for investigation. These final cases remain after the elimination of accidental contamination of the certified lists, polling official error, and instances where the DRO has decided that the matter should not be taken any further.
- Where a possible breach of the Electoral Act comes to the attention of the AEC, the matter may be referred to the AFP for investigation, and a brief of evidence may be referred to the Commonwealth Director of Public Prosecutions (DPP) for decision on whether a prosecution against the alleged offender should be instituted in accordance with the *Prosecution Policy of the Commonwealth*.

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<sup>90</sup> A reasonable explanation could be that elderly or confused electors had forgotten that they had already voted by post and subsequently voted again at a polling booth on polling day. Other reasons provided to the AEC have included language or literacy difficulties.



- All cases of detected multiple voting are examined by the AEC in each Division after the election, and where it appears that the level of multiple voting might have exceeded the winning margin for the elected candidate, the AEC considers disputing the election result by petition to the Court of Disputed Returns under section 357 of the Act.<sup>91</sup>
- 4.137 As in previous inquiries, a number of submissions raised concern about the incidence of apparent multiple voting at federal elections.<sup>92</sup> Many were not convinced that the current system does enough to prevent voters from ‘voting early, and voting often’.
- 4.138 Submissions essentially recommended various actions to prevent multiple voting, namely:
- the introduction of a computerised (that is, networked) electoral roll in each polling booth, so that once a person votes, his or her name is immediately deleted from all certified lists;<sup>93</sup>
  - the specification of a particular polling place for each elector, (known as precinct voting) or the specification of a Subdivision for each elector (known as Subdivisional voting);<sup>94</sup> and
  - the production of identification on request of a ballot paper.<sup>95</sup>
- 4.139 The ALP, on the other hand, suggested that age and gender details be included on the certified list of electors on polling day, to improve checking points for voter identity.<sup>96</sup>
- 4.140 Various changes have been made to the law concerning multiple voting, beginning with the widespread changes made to electoral law

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91 Under section 362 of the Electoral Act, the Court can only void the election if it is satisfied that the result of the election was likely to have been affected by an illegal practice, such as multiple voting.

92 Submissions (Ms G Behrens, no. 45; Festival of Light, no. 71; Rev. S Slucki, no. 72; Mr S McConnell, no. 35; The Council for the National Interest (WA Committee), no. 103; Liberal Party of Australia, no. 149; and ALP, no. 153).

93 Submissions (Ms G Behrens, no. 45 p. 1; Council for the National Interest, no. 103, p. 2).

94 Submissions (Festival of Light, no. 71, p. 3, Rev. S Slucki, no. 72, p. 1; Council for the National Interest, no. 103 p. 2.) The Council for the National Interest further recommended that voting outside the electorate of residence should only be done by postal or absentee vote, and with ‘justifiable cause’ demonstrated (p. 2).

95 Submissions (Festival of Light, no. 71, p. 3; Mr S McConnell, no. 35 p. 7; Council for the National Interest, no. 103, p. 2).

96 Submission (ALP, no. 153), p. 10.

in 1983/84.<sup>97</sup> In 1987, computerised scanning of certified lists was introduced, contributing to increased detection rates.<sup>98</sup>

4.141 In its consideration of the 1996 federal election, the Committee's predecessor expressed an interest in the re-introduction of Subdivisional voting and increasing the penalty levels for multiple voting (and other) offences.<sup>99</sup>

4.142 Penalty levels were increased with the passage of the *Electoral and Referendum Act 1998*. Multiple voting was also made a strict liability offence so as to facilitate the prosecution of multiple voters.<sup>100</sup>

4.143 The Government has not re-introduced Subdivisional voting, noting the view expressed in the AEC's 1998 implementation report that:

Such changes as are proposed will reduce the level of service which voters have enjoyed for many years ... This will have an effect on the time it will take to vote, especially for the first election or two after the introduction of this system, as electors become used to not being able to vote at any polling place within their Division. This will also lead to considerable confusion. This voting delay and confusion will cause some resentment and inevitable complaint, regardless of the level of advertising and information organised by the AEC.<sup>101</sup>

4.144 In assessing various proposals to better proof the electoral system against the possibility of deliberate multiple voting, the Committee is mindful of the argument, put consistently by the AEC since 1984, that:

instances of multiple voting that do occur show no pattern of concentration in any Division, marginal or otherwise ... That is, there is no evidence to suggest that the overall outcomes of

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97 AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 3.

98 AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 4.

99 JSCEM, *The 1996 Federal Election* (1997), as above, pp. 14-16 and pp. 90-91.

100 In its submission to the 1996 inquiry, the AEC recommended that the word 'wilfully' be deleted from section 339 of the Electoral Act as it made 'obtaining a prosecution for multiple voting extremely difficult' (1996 Report, p. 17). Both the Committee and the Government supported this recommendation and the Act was changed. In addition, when the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Act 2000* repealed the offences in the Electoral Act of forging and uttering, and making false and misleading statements, such conduct remained unlawful and contrary to offence provisions contained in the *Criminal Code Act 1995*. See AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 8.

101 AEC, *Electoral Reform Implementation Plan*, 1998, paragraph 4.1.5.1.

the 1984, 1987, 1990, 1993, 1996 and 1998 federal elections were affected by fraudulent enrolment or voting.<sup>102</sup>

- 4.145 The AEC submitted that the same was true of the 2001 federal election, noting that ‘the numbers of apparent dual and multiple votes were spread evenly across all Divisions, with no pattern of concentration in a particular Division’.<sup>103</sup>
- 4.146 The total number of cases of apparent dual and multiple voters resulting from the 2001 federal election was 16,980. Of these, 16,903 were cases of apparent dual voters, leaving only 77 cases of apparent multiple voting at the 2001 federal election.<sup>104</sup>
- 4.147 Some cases of apparent dual voting were eliminated from further AEC scrutiny through the two rounds of manual checking described at paragraph 4.136 (which reveal accidental marks on the original certified lists and errors by polling officials at polling places). A large number of apparent dual and multiple votes were then eliminated through the process of matching responses from apparent dual or multiple voters with those of apparent non-voters. Following the 2001 federal election, 9,123 possible dual voters were eliminated from further investigation as a result of matching with apparent non-voters.
- 4.148 Instances of apparent dual or multiple voting where the AEC accepted a ‘reasonable explanation’ at the last two federal elections are outlined in table 4.5.

Table 4.5 Apparent cases of multiple or dual voting with ‘reasonable explanations’, 1998 and 2001

Reason given	1998	2001
Multiple or dual vote as a result of confusion or language difficulties	622	739
Multiple or dual vote as a result of a relative voting on the elector’s behalf	42	23

Source Submission (AEC, no. 203) p. 5.

102 AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 1.

103 Submission (AEC, no. 203), p. 6.

104 Correspondence from the AEC to the JSCEM secretariat, June 2003.

4.149 Where there is no reasonable explanation for an elector casting more than one vote, the cases are referred by the DROs to the AEO for the State or Territory for further consideration. As explained by the AEC:

At this stage, a warning letter may be sent to some electors, informing them of the correct procedures and the penalties for voting more than once, and the matter is taken no further. At the 2001 federal election 867 electors were issued warning notices for apparent dual or multiple voting, compared with 565 in 1998.

Other cases are referred by the AEO to the [AFP] for investigation. It is these final cases that remain after the elimination of accidental marking of the certified lists, polling official error in marking the certified lists, and instances where it has been decided that the matter should not be taken any further, that are of primary interest when examining the possibility of electoral fraud.<sup>105</sup>

4.150 Table 4.6 outlines those apparent cases of multiple or dual voting referred to the AFP for investigation.

Table 4.6 Apparent cases of multiple or dual voting referred to the AFP, 1998 and 2001

	NT	QLD	NSW	ACT	VIC	TAS	SA	WA	Total
<b>Referred to AFP</b>									
2001	4	7	123	2	0	1	0	1	<b>138</b>
1998	0	10	231	6	9	0	6	1	<b>263</b>
<b>AFP rejected*</b>									
2001	4	7	119	2	0	1	0	0	<b>133</b>
1998	0	10	203	6	9	0	6	1	<b>235</b>
<b>Referred by the AFP to the DPP for prosecution</b>									
2001	0	0	4	0	0	0	0	1	<b>5</b>
1998	0	0	28	0	0	0	0	0	<b>28</b>

Source Submission (AEC, no. 203) p. 5

Note \* This includes instances where the AFP rejected because of lack of resources (the majority of the cases), or where the AFP rejected because of insufficient evidence (the minority of cases).

- 4.151 The table shows that there were fewer cases referred to the AFP resulting from the 2001 federal election than the 1998 federal election. The AEC attributed this decrease, in part, to an 'unwritten agreement' between the AEC and the AFP 'to refer only cases where the potential multiple voter had four or more marks recorded against their name'.<sup>106</sup> However, while this unwritten agreement established the general approach of referrals, it was not strictly followed, and cases of apparent dual voting were also referred to the AFP.<sup>107</sup>
- 4.152 In February 2002, the AFP and the AEC signed a service agreement so as to formalise the process of referring potential dual and multiple voters. The Committee welcomes this more systematic approach, and expects that the levels of apparent dual and multiple voting at federal elections will continue to be closely scrutinised.

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<sup>106</sup> Submission (AEC, no. 203), p. 6.

<sup>107</sup> Submission (AEC, no. 203), p. 6. Had the agreement been strictly followed, only the 77 cases of apparent multiple voting would have been referred to the AFP.

## Election Day and the Scrutiny

- 5.1 Election day is the culmination of an intense period of activity by political parties, candidates and the AEC. On election day 2001, over 11.25 million voters attended 7,703 booths, presided over by over 65,000 AEC officials. The largest polling booth was at Wodonga (in the Division of Indi, Victoria), which issued 7,746 votes on election day, including ordinary, absent and provisional votes.<sup>1</sup> The largest 'super booth'<sup>2</sup> was in Sydney, where a total of 8,338 ordinary and declaration votes were issued. The smallest polling booth was at Perisher Valley (in the Division of Eden Monaro, New South Wales), which issued a total of 30 votes, including ordinary and declaration votes. The Sydney pre-poll voting centre (in the Division of Sydney, New South Wales) issued the largest number of pre-poll votes, while the Division of Maranoa in Queensland handled the largest number of postal votes.<sup>3</sup> Counting of votes on election night concluded when the last vote was entered into the AEC's counting system at approximately 1:30am on Sunday, 11 November 2001.<sup>4</sup>

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

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

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

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

Commiserations and congratulations continued around Australia for some time afterward.

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

## Polling booth administration

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

### Enrolment detail verification

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

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

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

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

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

Table 5.1 Treatment of absent votes cast at 2001 federal election

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

Source AEC submission no. 174, p. 22.

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

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

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

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



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

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

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

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

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

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

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

### Recommendation 18

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

### Polling staff pay and training

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

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

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

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

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

### General polling booth administration

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

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

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

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

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

#### Committee comment

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

### Recommendation 19

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

#### Access to polling places

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Recommendation 20

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

### Adjournment of polling

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

### Committee comment

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

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

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

**Recommendation 21**

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

**Electioneering at or near polling places**

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

**Committee comment**

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

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

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

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

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

## Loudspeakers

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

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

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

Penalty: \$500.

(2) Where:

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

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

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

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

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

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

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



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

#### **Committee comment**

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

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

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

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

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

## Recommendation 22

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

### Dispute resolution on polling day

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

### Powers of presiding officers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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51 *Commonwealth Electoral Act 1918*, section 340.

52 *Commonwealth Electoral Act 1918*, section 348.

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

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

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

#### Dispute resolution procedures

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

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

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

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

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

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

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

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

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

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

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

#### Committee comment

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

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

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

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

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

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

### **Recommendation 23**

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

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

## **Conduct of the scrutiny and recounts**

### **The scrutiny**

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

#### **Election night**

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

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

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

### Further scrutiny

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

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

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



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

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

### Concerns about the scrutiny

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

### Electronic vote counting

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

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

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

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

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

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

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

Australia and South Australia<sup>75</sup> and the ACT experience of the ACT Electoral Commission in conducting this electronic vote count is further discussed in Appendix E.

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

#### Concerns about electronic vote counting

- 5.83 Mr John Rogers expressed concern about the computer program used to count votes in the Senate at the 2001 election and in other future ballots.<sup>79</sup> Mr Rogers presented the view that the computer program employed in the distribution of Senate preferences at the 2001 federal election did not meet appropriate 'Trusted Computing' standards, it was not independently verified by a recognised body, and candidates and the electorate were unclear about its operation.
- 5.84 Mr Rogers suggested that computer programs be written and evaluated to meet the international standards for mission-critical and
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75 Elections ACT, *The 2001 ACT Legislative Assembly Election: Electronic Voting and Counting System Review*, ACT Electoral Commission, 2002, p. 15. The ACT also uses electronic vote counting (See Appendix E).

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

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

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

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

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

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

5.85 Mr Rogers therefore recommended that:

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

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

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

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

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

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

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

#### Committee comment

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

#### Alternative method of presenting Senate results

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

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

#### Committee comment

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

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

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

85 *Commonwealth Electoral Act 1918*, section 277.

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

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

## Re-counts

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

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

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

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

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

### Committee comment

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

## Election results

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

### Time differences and the election result

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

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

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

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

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

### Transmission of results

- 5.104 As in previous elections, the National Tally Room (NTR) provided progressive voting information at the 2001 federal election.
- 5.105 Security was upgraded given the proximity in time of the 2001 federal election to the terrorist attacks in the USA on 11 September 2001. As a result, fewer members of the public were admitted to the NTR at any one time than in previous elections, leading to long queues. The AEC advised that this issue would be addressed for the next election.<sup>94</sup>
- 5.106 The AEC will continue to experiment with the means by which results are presented on the Tally Board, and the speed with which these are presented. The AEC's latest initiative for faster presentation of election results was the use of high-speed A3 printers to produce results sheets for each Divisional update.<sup>95</sup>
- 5.107 Electoral results were also published on the Virtual Tally Room on the AEC's website. This was the third election event at which the Virtual Tally Room was used (the first two being the 1998 federal election and the 1999 Republic Referendum). The AEC submitted that this site underwent 'code review and enhancements' to improve the performance of the application on election night 2001.<sup>96</sup> The site received over 5.6 million hits on election night, with an average visit lasting just over 33 minutes.<sup>97</sup>

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

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

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

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

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



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

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

- 5.109 Professor Mackerras confirmed this, recalling that:

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

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

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

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

- 5.111 Ultimately, the AEC noted that:

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

#### **Committee comment**

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

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

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

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

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

## Other Issues

- 6.1 This chapter covers a range of substantial and distinctive issues, namely:
- a proposed review of the Electoral Act;
  - the AEC's administration and responsibilities;
  - privacy and access issues relating to the provision and use of the electoral roll;
  - election funding and financial disclosure;
  - electoral litigation; and
  - redistributions of electoral boundaries.

### Updating the *Commonwealth Electoral Act 1918*

- 6.2 In 1983, the Joint Select Committee on Electoral Reform significantly reviewed the Electoral Act. Since then, the Act has been frequently amended, largely with a view to removing what the AEC describes as 'specific obstacles'.<sup>1</sup> The AEC now submits that this process of ongoing amendment has resulted in 'an Electoral Act that is becoming unnecessarily cumbersome and a barrier to effective electoral administration'.<sup>2</sup>

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1 Submission (AEC, no. 147), p. 5.

2 Submission (AEC, no. 147), p. 5.

- 6.3 The AEC nominated three ‘large-scale systematic issues’ which it believed warranted legislative change, namely:
- how the Electoral Act can be modified to ensure it is flexible enough to cope with the changing social and technological environment;
  - whether the Electoral Act and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) should be merged; and
  - whether the Electoral Act should be a ‘principle driven’ document as opposed to the existing ‘process driven’ document.<sup>3</sup>
- 6.4 The Committee had a number of concerns about the AEC’s proposal to rewrite the Electoral Act, raising the following questions:
- Who will conduct the proposed review of the Electoral Act?
  - How much will the review cost?
  - When will the review be conducted?
  - How long will the review take?
  - What Divisions of the Act would be the AEC’s priorities, if the review of the whole Act could not go ahead?<sup>4</sup>
- 6.5 The AEC has yet to provide a detailed submission in response to these questions.

### Legislative amendments

- 6.6 The AEC identified a number of technical amendments to the Electoral Act and the Referendum Act which it described as being ‘of a relatively minor nature’.<sup>5</sup> These recommended amendments are set out in Appendix F to this Report. The Committee accepts these amendments, with the exception of amendment 18 (‘No State Referendum or Vote to be held on polling day’).

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3 Submission (AEC, no. 147), p. 5.

4 Transcript of Evidence 16 August 2002 (Senator R Ray and Senator A Murray) pp. EM 62 and 67; and Submission (AEC no. 174), p. 56.

5 Submission (AEC, no. 147), p. 16.

## Recommendation 24

- 6.7 **The Committee recommends that the suggested technical amendments to the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* at Appendix F of this report, with the exception of amendment 18 ('No State Referendum or Vote to be held on polling day'), be made.**
- 6.8 Additionally, the AEC made a series of substantive recommendations concerning the operation of referenda.<sup>6</sup> However, many of the AEC's proposed changes to the Referendum Act were not supported by adequate justification. They also give the AEC or the Electoral Commissioner too wide a discretion on significant matters. The Committee therefore does not support the amendments in question.

## AEC administration and responsibilities

- 6.9 Submissions raised a number of issues in relation to the AEC's administration, funding and responsibilities. Three key issues were:
- a proposed restructure of the AEC;
  - the AEC's resources; and
  - the appointment of the AEC's Australian Electoral Officers (AEOs).
- 6.10 The Committee intends to seek from the Special Minister of State a further reference regarding the administration and funding of the AEC. Each of the three issues above would be examined further in the course of that review.
- 6.11 A further issue raised in the course of the inquiry was the co-location of the AEC's Divisional Offices. This issue is one which the Committee believes requires immediate consideration and is examined below.

## Role of the AEC

- 6.12 The AEC was established as an independent statutory authority in February 1984, replacing the Australian Electoral Office (1973-84)

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6 Submission (AEC, no. 147), pp. 50-59.

which was formerly the Commonwealth Electoral Branch. The AEC was established as part of the major reforms to electoral administration initiated by a predecessor of this Committee, the Joint Select Committee on Electoral Reform.

- 6.13 The establishment, functions and powers of the AEC are contained in the Electoral Act which provides for the AEC to:
- perform the functions that are permitted or required to be performed under the Electoral Act, including Commonwealth elections, ATSIC elections and industrial elections;
  - consider and report to the Minister on electoral matters referred to it by the Minister and other such matters it thinks fit;
  - promote public awareness of electoral and parliamentary matters through education and information programs;
  - provide information and advice on electoral matters to the Parliament, the Government, Departments and authorities of the Commonwealth;
  - conduct and promote research into electoral matters and other matters that relate to its functions, and publish material on matters that relate to its functions;
  - provide assistance to foreign countries and organisations in matters relating to elections and referenda (on approval from the Minister for Foreign Affairs and Trade); and
  - perform other functions as are conferred on it by or under any law of the Commonwealth.<sup>7</sup>
- 6.14 The structure of the AEC is organised on a geographic basis with the Central Office based in Canberra, a Head Office in each State capital and the Northern Territory, and a Divisional Office in or near each of the 150 House of Representatives Divisions.

### **Proposed restructure of the AEC**

- 6.15 The Liberal Party raised concern about the current dual roles of the AEC; namely, to maintain the electoral roll and to run all administrative aspects of elections. The Liberal Party submitted:

The Committee should give some consideration to the role of the AEC and consider the desirability of some fundamental

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<sup>7</sup> *Commonwealth Electoral Act 1918*, section 7.

reform. Recent history has shown both the problems the AEC has had with regard to the integrity of the electoral roll and the inability of the AEC to act adequately to deal with unauthorised material being circulated [chapter five paragraphs 5.50 to 5.58 refer] and other such breaches to the Electoral Act.<sup>8</sup>

- 6.16 The Liberal Party recommended that consideration be given to splitting the AEC into two separate bodies, one to maintain the electoral roll and one to run elections.
- 6.17 The AEC responded to the claims of the Liberal Party by pointing to the ANAO Audit Report which found that the electoral roll is of high quality (see paragraph 2.39). The AEC also argued that it had dealt effectively with the situation referred to by the Liberal Party regarding distribution of unauthorised election material (see paragraphs 5.50 to 5.56). Therefore, the AEC argued:

no logical argument has been submitted by the Liberal Party to split the enrolment and election functions into separate bodies. Clearly the criticisms cited bear no relationship to any argument for separation of functions.<sup>9</sup>

### AEC resources

- 6.18 The AEC submitted that it faces a 'very tight' budgetary situation in all output areas, including election funding, and sought the Committee's support in recommending the Government increase funding.<sup>10</sup>
- 6.19 According to the AEC, its funding (CPI adjusted) has not increased appreciably since 1984, yet there has been considerable growth in its services over the same period. The growth has included:
- total expenses growth of two per cent (CPI adjusted) since 1984;
  - a 30 per cent increase in the numbers of Australians enrolled, which is one of the AEC's main indicators of business activity;<sup>11</sup>
  - increased investment in information technology and corporate governance; and

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8 Submission (Liberal Party of Australia, no. 149), p. 5.

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

10 Submission (AEC, no. 147), pp. 6 and 8.

11 This is distinct from an increase in 'enrolment activity', being the number of enrolment transactions such as movements, transfers, and re-enrolments.

- additions to electoral processes over time, in relation to electoral roll management, electoral education, election management, international services, and funding and disclosure.<sup>12</sup>
- 6.20 The AEC argued that while this growth in services was funded through efficiency savings, and occasional additional funding to provide for particular one-off needs (such as referenda), the AEC had now ‘exhausted its capacity for the funding of any future growth in services or new business initiatives without a major restructure.’<sup>13</sup> The AEC sought an additional \$15-20 million per annum, and warned that if such funding is not provided, the services it provides will be negatively affected.
- 6.21 The AEC’s strategies to cope without a funding increase would include:
- a complete restructure of the AEC including Divisional Office arrangements;
  - reviewing the future of Electoral Education Centres;
  - reviewing the AEC’s capacity to provide support for international election activities;
  - restricting development of IT systems; and
  - restricting advertising to legislated minimum requirements at the next federal election.<sup>14</sup>
- 6.22 The Committee sought further detailed information from the AEC on its financial situation and its call for extra funding. The AEC responded in submissions and briefings.<sup>15</sup>
- 6.23 The ALP recommended that the AEC be given increased power and resources to ensure compliance with the financial disclosure provisions.<sup>16</sup> As noted above, the Committee proposes to examine AEC resourcing in a broader inquiry into the administration and funding of the AEC.

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12 Submission (AEC, no. 166), p. v.

13 Submission (AEC, no. 166), p. v.

14 Submission (AEC, no. 166), p. 29.

15 See submissions (AEC, nos. 166 and 182).

16 Submission (ALP, no.153), p.4.

## Appointment of Australian Electoral Officers

- 6.24 One area of the Electoral Act which the AEC considered required particular attention was the appointment of the principal electoral officers of each State and the Northern Territory, known as Australian Electoral Officers (AEOs).<sup>17</sup> These positions, along with those of the Australian Electoral Commissioner and the Deputy Electoral Commissioner, are statutory, positions under Division 3 of Part II of the Electoral Act.<sup>18</sup> As stipulated in sections 20 and 21 of the Act, AEOs are appointed by the Governor-General for a term not exceeding seven years and are subject to direction from the Electoral Commissioner.
- 6.25 The AEC asserted that the statutory appointment of its AEOs is problematic in that (i) it was inconsistent with the practice in other public sector organisations such as the Australian Taxation Office, Australian Customs Service and the Australian Bureau of Statistics;<sup>19</sup> (ii) it was also inconsistent with the internal process for appointing other AEC senior executive staff under section 35 of the Electoral Act;<sup>20</sup> and (iii) the statutory requirements of this appointment process hindered its flexibility in moving ‘senior staff to locations and positions across the agency as priorities change’.<sup>21</sup>
- 6.26 The AEC recommended that the Electoral Act be amended to enable the appointment of Australian Electoral Officers by the Electoral Commissioner.

## Co-location of Divisional Offices

- 6.27 The Committee notes proposals from the AEC to restructure its Divisional representation to allow for co-location of Divisional Offices in some areas. This is already the case in a number of metropolitan areas. For instance, the ‘Ringwood Quad’ comprises the Melbourne metropolitan AEC Divisional Offices of Menzies, Chisholm, Deakin and Casey. These premises were visited by the Committee in the course of the inquiry, as were the co-located Divisional Offices of Sydney, Grayndler and Wentworth. The Committee understands

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17 Section 30 of the *Commonwealth Electoral Act 1918* specifies that an AEO is appointed for the ACT during the time of a federal election. At all other times the Australian Electoral Commissioner acts as the principal electoral officer for the ACT.

18 Submission (AEC, no. 147), p. 14.

19 Submission (AEC, no. 147), p. 14.

20 Submission (AEC, no. 147), p. 15.

21 Submission (AEC, no. 147), p. 15.



further amalgamation has been proposed by the AEC between an already co-located office (for the Divisions of Bennelong, Bradfield and North Sydney) and the Divisions of Warringah and Mackellar.<sup>22</sup>

6.28 While co-location of offices might deliver administrative efficiencies, the Committee is not satisfied that the AEC has addressed longstanding concerns about:

- 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.

6.29 The Committee notes the provisions of the Electoral Act relating to staffing of Divisional Offices:

- Section 32 states that there shall be a Divisional Returning Officer for each Division; and
- Section 38 states that the office of a DRO shall, unless the Commission otherwise directs, be located within the Division.

6.30 The Committee does not support any move for further co-location of Divisional Offices and accepts, in line with the recommendation of its predecessor's 1996 Federal Election Report, that the AEC should be given funding to ensure a minimum of three full-time electoral staff (or equivalent) in each House of Representatives Division.<sup>23</sup>

### **Recommendation 25**

**6.31 The Committee recommends that co-location of AEC Divisional Offices not proceed, and that the AEC be given funding to ensure a minimum of three full-time electoral staff (or equivalent) in each House of Representatives Division.**

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22 Sandra Gibson, 'Poll office merge bid: Critics fear fraud risk', *Manly Daily*, Thursday 17 April, 2003. p. 6.

23 See JSCEM, *The 1996 Federal Election: Report on the Inquiry into the Conduct of the 1996 Federal Election and matters related thereto*, Parliament of Australia, June 1997, Recommendation 66, p. 110.

- 6.32 Following the implementation of this recommendation, the Committee will investigate related issues concerning Divisional Offices in its proposed inquiry into the administration and funding of the AEC.

### Other issues

- 6.33 A number of other issues relating to AEC administration were raised with the Committee. These are outlined below.
- 6.34 The Liberal Party raised concern about the AEC's response to campaign related letters during the 2001 federal election period. The Liberal Party submitted that of 14 letters it sent to the AEC regarding campaign activity and seeking a response, only four were responded to by the AEC prior to election day.<sup>24</sup>
- 6.35 The AEC stated that its records showed only one instance of it making a late reply to Liberal Party correspondence. In that instance, the AEC sought advice from the Director of Public Prosecutions, which delayed the response time until after the election.<sup>25</sup>
- 6.36 A submission from Mrs Chris Gallus MP, Member for Hindmarsh, raised a number of issues regarding the AEC's management of the 1998 federal election in her Division, and 'lack of due process by the AEC'.<sup>26</sup> Specific instances alleged were in relation to:
- advice to her on the date of commencement for pre-polling in the electorate of Hindmarsh;<sup>27</sup>
  - AEC treatment of unused postal vote ballot papers;<sup>28</sup> and
  - the processing of PVA forms by the AEC.<sup>29</sup>
- 6.37 In relation to these alleged instances, the AEC submitted that:
- its records showed that the correct date for commencement of pre-polling in Hindmarsh was advised to a representative of Mrs Gallus prior to that date;<sup>30</sup>

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24 Submission (Liberal Party of Australia, no. 149), p. 5.

25 Submission (AEC, no. 181), p. 30.

26 Submission (The Hon C. Gallus MP, no. 162), p. 3.

27 Submission (The Hon C. Gallus MP, no. 162), p. 2.

28 Submission (The Hon C. Gallus MP, no. 162), p. 3.

29 Submission (The Hon C. Gallus MP, no. 162), pp. 2-3.

30 Submission (AEC, no. 174), pp. 51-2.

- it had found no evidence of the verbal complaint made in relation to AEC treatment of unused postal vote ballot papers;<sup>31</sup> and
- it could 'find no evidence of either losing the [PVA] forms or of Chris Gallus complaining about lost forms in either the files from that election or in the DRO's journal'.<sup>32</sup>

6.38 In relation to a further concern raised by Mrs Gallus regarding the handling of return to sender (RTS) mail by an AEC Divisional Office, the AEC accepted that a misunderstanding had arisen, and that a 'lack of communications from the Hindmarsh Divisional Office during the investigation into the RTS mail' had probably contributed to this.<sup>33</sup> The AEC submitted that this problem should be rectified by new procedures for communicating with Members of Parliament instigated by the South Australian AEO.<sup>34</sup>

#### Committee comment

6.39 The Committee notes that most of the issues raised by Mrs Gallus concern the 1998 federal election rather than the 2001 federal election, and accordingly are somewhat difficult to address now given the passage of time. Nevertheless, the Committee acknowledges that these allegations are cited as examples of a pattern of difficulties with the AEC.

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### Recommendation 26

6.40 **The Committee recommends that the AEC provide all candidates with written advice of the date on which pre-polling will commence, seven days prior to that date.**

6.41 The Committee notes the AEC's submission that the AEO for South Australia has instigated new procedures for communicating with parliamentarians. The Committee considers that where appropriate, such new procedures should be applied nationally.

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31 Submission (AEC, no. 174), p. 52.

32 Submission (AEC, no. 174), p. 52.

33 Submission (AEC, no. 174), p. 51.

34 Submission (AEC, no. 174), p. 51.

## Privacy and access

### Review of sections 89 to 92 of the Electoral Act

6.42 In 1996, a predecessor of this Committee noted that certain sections of the Electoral Act were no longer adequate in dealing with problems created by advances in modern technology with respect to the commercial use of electoral roll information. The 1996 Federal Election Report stated that:

current technology makes it quite feasible for private companies to scan the rolls and produce computerised machine-readable versions...<sup>35</sup>

6.43 The Committee recommended in 1997 that a review be conducted on sections 89 to 92 of the Act, concerning the use of roll information, taking into account developments in computer technology. It also recommended that the access entitlements of parliamentarians and registered political parties be maintained.<sup>36</sup>

6.44 The AEC has only recently completed this review, and included it as an attachment to its July 2002 submission to this inquiry. The review contains ten recommendations aimed at ensuring an appropriate balance between two conflicting principles, namely:

- one, that an open democracy requires the electoral roll to be an open and accessible document. Indeed, it is commonly held that a publicly available electoral roll is one of the safeguards against enrolment fraud; and
- two, that personal information provided by Australians to the AEC for the purpose of constructing and maintaining the electoral roll should be given the protection and security expected by those Australians and required by the *Privacy Act 1988*. Further, there is some concern that the dissemination of elector information may discourage some electors from enrolling and thus exercising their rights and duties.<sup>37</sup>

6.45 Briefly, the AEC's recommendations seek to:

- describe in less prescriptive terms, in the Electoral Act, the media by which access to the roll may be provided;

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35 JSCEM, *The 1996 Federal Election* (1997), as above p. 93.

36 JSCEM, *The 1996 Federal Election* (1997), as above p. 94.

37 Submission (AEC, no. 147 Attachment D), p. 4.

- specify in legislation the details contained in the roll;
- apply end-use restrictions to all information relating to electors;
- change the nature of public access to the electoral roll, such that only a current list of the names and addresses of electors enrolled for a Division is provided publicly;
- provide for an internet enquiry facility so that electors can verify their own enrolment details;
- discontinue the sale of the electoral roll in any format;
- change the content of certified lists provided to candidates during an election, so that gender and date of birth details do not appear;
- implement a technical change in the legislation to better reflect the continual update process by which the Roll is now reviewed; and
- expand the AEC's powers to demand data from government and semi-government sources, through section 92 of the Electoral Act (concerning roll reviews).<sup>38</sup>

### **The provision of electoral roll information**

6.46 Personal information held by the AEC, on its computerised roll management system (RMANS) or elsewhere, may comprise some or all of the information listed in Table 6.1 below:

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38 Submission (AEC, no. 147, Attachment D).

Table 6.1 Personal Information held by the AEC

Personal Information	Other information allocated by RMANS
<ul style="list-style-type: none"> <li>• full name</li> <li>• title</li> <li>• former name</li> <li>• current residential address</li> <li>• former residential address</li> <li>• postal address</li> <li>• phone number (not stored on RMANS)</li> <li>• occupation (required by joint roll partners, in four States/Territories, at present)</li> <li>• gender</li> <li>• date and place of birth (place of birth not stored on RMANS)</li> <li>• citizenship (and details of any grant of Australian citizenship)</li> <li>• elector notations (such as polling staff, overseas, etc)</li> <li>• name and address of witness (not stored on RMANS)</li> <li>• date of enrolment</li> </ul>	<ul style="list-style-type: none"> <li>• unique transaction numbers for each change made</li> <li>• Commonwealth electorate</li> <li>• State/Territory electorates (in some cases for upper and lower houses)</li> <li>• local government areas</li> <li>• census collector districts</li> <li>• land parcel details</li> <li>• address ID (the link to the address register, the register of approved addresses)</li> <li>• delivery point identifiers (if stored on the address register)</li> <li>• global positioning system references (if stored on the address register)</li> <li>• special category of elector (such as overseas, itinerant, etc)</li> <li>• restricted vote indicator (such as Commonwealth only voter, etc)</li> <li>• history of previous enrolment since RMANS commenced</li> <li>• history as apparent non-voter or multiple voter</li> </ul>

Source AEC, submission no. 147, Attachment D, p. 6

6.47 The AEC accepted that it holds a substantial amount of information on a large number of Australian electors, and that:

from an information privacy aspect, the AEC has a legislative responsibility to keep this information secure and private except as required for the maintenance of the electoral roll, the conduct of elections, or as otherwise required by law.<sup>39</sup>

6.48 The electoral roll is currently provided in three main formats:

- for publication and sale;
- for printing as certified lists for use in the conduct of Commonwealth elections; and
- in electronic format, for provision under joint roll arrangements to State and Territory authorities for State, Territory or local government elections.<sup>40</sup>

39 Submission (AEC, no. 147 Attachment D), p. 7.

40 Submission (AEC, no. 147 Attachment D), p. 7.

- 6.49 In addition, information from the roll is provided to a limited degree as follows:
- electronic copies of some elector information are provided to registered political parties and federal parliamentarians;
  - access to elector information is provided to State and Territory electoral authorities who are joint roll partners with the Commonwealth;
  - extracts of limited elector information are provided for medical research and public health screening projects; and
  - access to limited elector information is provided to Commonwealth Government instrumentalities for purposes such as the prevention or prosecution of crime, and the protection of the public revenue.<sup>41</sup>
- 6.50 The Office of the Federal Privacy Commissioner (OFPC) has argued that ‘most citizens remain unsure as to how their personal information contained in the Electoral Roll is used, for what purposes and by whom’.<sup>42</sup> The OFPC wished to see the primary purpose of the electoral roll clarified or reaffirmed, and secondary purposes subjected to stricter scrutiny, public discussion and parliamentary endorsement.<sup>43</sup> Where additional secondary purposes are permitted, the OFPC argued that greater efforts should be made to alert the public as to how personal information may be used.<sup>44</sup>
- 6.51 The AEC noted that:
- to describe the access to the electoral roll and elector information prescribed for a member of the House of Representatives, the reader would have to consult the following sections and paragraphs – 91(2)(c), 91(3), 91(4A)(a), 91(4A)(d), 91(6A) and 91AA(1)(c).<sup>45</sup>
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41 Submission (AEC, no. 147 Attachment D), p. 7. On a related matter, the Committee received a submission from the Law Enforcement Advisory Committee (LEAC) of the Australian Communications Authority (ACA) concerning the potential use of the electoral roll to verify the identity of customers purchasing pre-paid mobile phone SIMs (service identity modules). See submission (ACA no. 195). The Committee considers that the LEAC should consult with both the AEC and the Government, pending the implementation of the Committee’s recommendation (28) that an internet facility be provided to verify electors’ details.

42 Submission (OFPC, no. 164), p. 4.

43 Submission (OFPC, no. 164), p. 5-6.

44 Submission (OFPC, no. 164), p. 6.

45 Submission (AEC, no. 147 Attachment D), p. 9.

- 6.52 The AEC recommended that the detail of access to elector information be set out in a table in a schedule to the Electoral Act, arranged by user groups (eg political parties, medical researchers, etc).<sup>46</sup>
- 6.53 The Committee notes that the AEC is already free to prepare a table of the type it describes, and to make it publicly available through its website and other publications. The Committee therefore sees little point in the proposed amendment to the Act.

### Public access to the electoral roll in AEC offices

- 6.54 The electoral roll is available to the public in two formats: hard copy and microfiche.<sup>47</sup>
- 6.55 Hard copies of the electoral roll are printed only once during the life of a Parliament for public inspection and sale, and are issued to Members of Parliament. Individual rolls for a Division can be purchased from the relevant Divisional Returning Officer. The State Head Offices can supply State-wide sets or various rolls within a State. All rolls are currently priced at \$27.10 each.<sup>48</sup>
- 6.56 The roll is produced on microfiche twice a year and this is available for public inspection at AEC offices, and is also available at the National and State libraries. Every Divisional Office, State Head Office and Central Office has an Australia-wide set of public microfiche on display for public viewing. The microfiche are not available for purchase.<sup>49</sup>
- 6.57 The AEC has previously argued that a universally agreed democratic principle is that the electoral roll should be open and accessible to all citizens so as to facilitate the verification of their own enrolment and the enrolment of others.<sup>50</sup>

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46 Submission (AEC, no. 147 Attachment D), p. 9.

47 <http://www.aec.gov.au/enrol/maintain.htm>, accessed 27 May, 2003.

48 [http://www.aec.gov.au/enrol/how\\_roll.htm](http://www.aec.gov.au/enrol/how_roll.htm), accessed 27 May, 2003.

49 The AEC only stocks the current microfiche. However the National Library in Canberra keeps microfiche of the Commonwealth electoral rolls from 1901 to present. Some of these may be slightly imperfect. The National Library also holds a limited number of State electoral rolls on microfiche for the time prior to Federation. See [http://www.aec.gov.au/enrol/how\\_roll.htm](http://www.aec.gov.au/enrol/how_roll.htm)

50 AEC. Submission to the User friendly, not abuser friendly inquiry, 2000, p.S497.



6.58 As in other election inquiries, the issue of public access to the electoral roll attracted interest.<sup>51</sup> Some submissions expressed a preference for the option of merely allowing public inspection of the roll in AEC offices, as opposed to the provision (by sale, for example) of copies of the roll.<sup>52</sup> Ms Helen Bourke, for example, wrote that the public should not be able to obtain copies of the roll:

Only specially authorised electoral officers should be allowed to access it ... Other government agencies could obtain access via written or emailed requests by specifically authorised and identified officers. Mailing lists (names, address and electorate only) could be forwarded to government printers for electoral material address, labels or envelopes to be printed.<sup>53</sup>

6.59 Mr Trevor Jacobs suggested that a record be kept of those inspecting the roll, including name, date of access, arrival and departure time, address, telephone number, the reason for the search, the use made of information attained from the roll, and signature.<sup>54</sup>

6.60 The OFPC submitted that the law should, unless there is a strong public interest to the contrary, restrict the collection and use of personal information on a public register to the primary purpose for which the register is set up and made public.

6.61 The AEC's review of sections 89 to 92 listed a number of options for public access to the electoral roll in AEC offices, including:

- access to a single national listing of all electors, searchable and retrievable in different formats;
- access to a single national listing of all electors, which did not facilitate any re-sorting of the information into address or other order, or provide bulk printout; and
- access to a single national file of all electors which could only confirm information entered into the system.<sup>55</sup>

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51 Submissions (Mr I. Bowie, no. 67; Mr T. Jacobs, no. 74; Mr N. Worrall, no. 131; Ms M. Frost, no. 143; Ms H. Bourke, no. 160; OFPC, nos. 154 and 164; Liberal Party of Australia, no. 149; Mr G. Stevenson, no. 197).

52 Submissions (Mr I. Bowie, no. 67; Mr T. Jacobs, no. 74, Ms H. Bourke, no. 160).

53 Submission (Ms H. Bourke, no. 160), p. 1.

54 Submission (Mr. T Jacobs, no. 74), pp. 1-2.

55 Submission (AEC, no. 147 Attachment D), pp. 11-12.

- 6.62 The AEC asserted in its review that these levels of access could be provided by various types of media:

For example, in hard copy prints of divisional electoral rolls, in microfiche prints of State or Territory rolls as at present, or by electronic enquiry via a dedicated personal computer or terminal.<sup>56</sup>

- 6.63 The AEC's view was that electronic access to up-to-date enrolment details was the best way to provide public access in AEC offices. The AEC argued that:

access to a single national [electronic] file of all electors which only confirmed the information input would permit any person to verify whether a suspected fraudulent name and address is included on the electoral roll, or to verify their own enrolment details. This type of access would enable an enquirer to verify as much information as they already know about an elector, but would not provide any additional information in response to the enquiry. Consideration would have to be given to the extent to which details such as given names had to match those contained on the electoral roll to achieve a confirmation.<sup>57</sup>

- 6.64 The AEC envisaged that this system would provide access in each Divisional Office to the relevant Divisional listing, extracted at regular intervals from the elector information held by the AEC (for example, RMANS). Particular offices, such as State Head Offices, could provide access to the lists for all other Divisions.

- 6.65 The AEC also based their argument for an electronic roll on the premise that with the AEC's move to continuous roll update, the printed rolls quickly become obsolete. In its submission to the 1998 federal election inquiry, the AEC submitted that:

In practice, electors who wish to investigate the rolls, either to check their own enrolments or those of family or friends, or to prepare for objection action against the enrolment of other electors, or to prepare evidence for a petition to the Court of Disputed Returns, will need to look at not only the printed rolls, but also the supplemental rolls, or the 'the additions and deletions lists' as they are known generally, which are made available on a weekly to monthly basis for public inspection

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56 Submission (AEC, no. 147 Attachment D), p. 12.

57 Submission (AEC no. 147 Attachment D) p. 12.

in each Divisional Office. The AEC also provides the rolls on microfiche for viewing and for sale on a six-monthly basis, but these suffer the same time-lapse problems as the printed rolls.<sup>58</sup>

- 6.66 The AEC considered that an out-of-date printed electoral roll had consequences for those interested in investigating suspected cases of electoral fraud.
- 6.67 The AEC recommended that the Electoral Act be amended to provide public access to the electoral roll in AEC Divisional Offices be by access to a current electronic list of the names and addresses of electors enrolled for a Division, with provision of other Divisions held in particular offices such as the State Head Office.

#### Committee comment

- 6.68 The Committee believes that public access to the electoral roll in AEC Divisional Offices should be provided by a regularly updated electronic list of all names and addresses of electors enrolled for the relevant Division. To accommodate persons unfamiliar with electronic databases, hard copies of the roll should be printed at least once in the life of a Parliament, and be available for public inspection.

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#### Recommendation 27

- 6.69 **The Committee recommends that public access to the roll in AEC Divisional Offices be provided by a regularly updated electronic list of all names and addresses of electors enrolled for the relevant Division, with the provision of all other Divisions held in particular offices such as the State Head Office.**

**Hard copies of the roll should continue to be printed once in the life of a Parliament and be available for public inspection in AEC Divisional Offices.**

#### Proposed internet access

- 6.70 In addition to the access in AEC Divisional Offices, the AEC raised the issue of internet access. The Western Australian Electoral Commission provides an internet enquiry facility at [www.waec.wa.gov.au](http://www.waec.wa.gov.au) which

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58 AEC, Submission (no. 88) to the 1998 federal election inquiry, paragraph 4.7.10.

can, in response to an enquiry that includes the elector's full name, full address and date of birth, confirm an entry in the electoral roll.

- 6.71 The AEC recommended that similar access be established for the Commonwealth roll, with one modification. The WA internet facility does not allow for another person to check an enrolment unless the person knows the name, address and date of birth for the enrollee in question. The AEC's proposed alternative would be more flexible, in that it would confirm any match for as much information as the person checking an enrolment is able to provide on an elector. The system would not provide any additional details on the relevant enrolment or enrolments.
- 6.72 As a general principle, the electoral roll should be widely available to enable electors to readily check their own enrolment and details of other enrolments. The Committee therefore supports the AEC's proposed system for internet access to the roll.

### **Recommendation 28**

- 6.73 **The Committee recommends that an internet enquiry facility be provided whereby electors can verify their own electoral enrolment details, and as much of the detail of any elector's enrolment as the enquirer is able to provide.**

**This facility should not replace public access to the full electoral roll in AEC offices as recommended in Recommendation 27.**

### **Sale of the electoral roll**

- 6.74 As of March 2000, the AEC no longer provides microfiche copies of the Electoral Act for sale. This action was taken in response to concerns about the sale of enrolment information that could then be easily scanned and used for commercial purposes.<sup>59</sup>
- 6.75 The AEC considered that, with the provision of an internet facility, there would be no valid reason for the continued sale of rolls. Accordingly, the AEC recommended that the Electoral Act be amended so that the electoral roll is no longer available for sale in any

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59 JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Parliament of Australia, June 2000, p. 26.

format.<sup>60</sup> The OFPC is supportive of the recommendation to cease the sale of the electoral roll.<sup>61</sup>

- 6.76 The Committee concurs with the AEC that, with the availability of the electoral roll for inspection in both hard copy and eventually through the internet as described, there is no valid reason for the continued sale of the rolls. Given the relative ease with which modern technology could be used to extract electors' information on a purchased copy of the roll for commercial purposes, the Committee recommends that the Electoral Act be amended as proposed by the AEC.

### **Recommendation 29**

- 6.77 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the electoral roll is no longer available for sale in any format.**

- 6.78 On a related matter, Mr Neil Worrall alleged that the AEC sold microfiche copies of the roll between 1990 and 2000 as a direct result of lobbying from the business community, breaching, in his view, the *Privacy Act 1988*. Mr Worrall expressed his concern that more information was provided on the microfiche than on the printed version.<sup>62</sup> The AEC asserted that these allegations were inaccurate.<sup>63</sup>

### **Format of the electoral roll**

- 6.79 Sections 89 to 92 of the Electoral Act specify means by which the electoral roll may be provided, for example, via microfiche, print, disk or tape. The AEC argued that the wording of the Act is quite restrictive, and does not allow for newer forms of access including e-mail and security controlled internet access. The AEC recommended that the Act be amended to remove all stipulations as to the form of medium by which access to the roll is provided.<sup>64</sup>

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60 Submission (AEC, no. 147 Attachment D), p. 14.

61 Submission (OFPC, no. 164), p. 14.

62 Submission (Mr N. Worrall, no. 131), pp. 1-3.

63 Submission (AEC, no. 174), p. 24.

64 Submission (AEC, no. 147 Attachment D), pp. 8-9.

- 6.80 The Committee does not support the open-ended discretion sought by the AEC. Instead, as and when appropriate, the AEC should seek specific amendments to the Electoral Act to stipulate new media through which the electoral roll may be provided.

### Access by registered political parties and MPs

- 6.81 The Electoral Act specifies in detail the elector information which may be provided to registered political parties and Members of Parliament. The Electoral Act also sets out the uses to which the information may be put. Moreover, it specifically prohibits political parties and Members of Parliament from using this information for commercial purposes, and attaches substantial penalties to such unauthorised use. Regrettably, three separate government agencies have recently created the wrong impression – that there are no end-use restrictions on the use of this information by political parties and Members of Parliament.

- 6.82 When discussing ‘Access by Members, Senators and political parties’ in its Audit Report on the Integrity of the Electoral Roll, the ANAO asserted that:

the absence of end use restrictions on data from the electoral roll could increase the potential for electoral fraud.<sup>65</sup>

- 6.83 The AEC in turn noted the ANAO’s comments, implicitly endorsing them.<sup>66</sup> The OFPC reiterated the ANAO’s comment, and repeated it to the Committee in public hearings, and in its supplementary submission which recommended:

that the use or disclosure of data derived from the electoral roll by political parties for commercial purposes should be prohibited.<sup>67</sup>

- 6.84 The fact is that end-use restrictions do apply to the use of elector information provided to Members of Parliament and registered political parties.

- 6.85 Following questioning by the Committee, the Privacy Commissioner made a supplementary submission stating that:

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65 ANAO, *The Integrity of the Electoral Roll*, Audit Report No. 42, 2001-2002, p. 98.

66 Submission (AEC, no. 147 Attachment D), pp. 8-9.

67 Submission (OFPC, no. 164), p. 13.

Restrictions do exist regarding how political parties may use personal information sourced from the electoral roll. I apologise for the miscasting of the operation of the [Electoral Act] in this regard.<sup>68</sup>

- 6.86 Specific provisions of the Electoral Act, most notably sections 91, 91AA, 91A, 91C, 91D, and 91E detail the conditions under which electoral roll information is provided to Members, Senators, registered political parties and candidates to election, and the permitted purposes for use of that information. Permitted purposes include those in relation to election and referendum matters and the monitoring of information on the roll.
- 6.87 Lastly, section 91B is a prohibition on disclosure or commercial use of the roll or habitation index. It expressly applies penalties to any person who uses protected information for a commercial purpose.
- 6.88 Section 91 of the Electoral Act provides for registered political parties and parliamentarians to receive electronic copies of the roll and roll information. Subsection 91AA(2) of the Electoral Act specifies in detail the elector information which may be provided to registered political parties and Members of Parliament. This information includes:
- the person's postal address;
  - the person's sex;
  - the person's date of birth;
  - the person's salutation;
  - the census district in which the person lives;
  - the electoral district in which the person lives for the purposes of State or Territory elections;
  - the local government area in which the person lives; and
  - the Australia Post delivery point identifier for each address of the person.
- 6.89 Mr Ian Bowie was of the view that 'it is not appropriate for political parties to have private access to electoral rolls, in either electronic or

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68 Submissions (OFPC, no. 172), p. 1.

hard copy form, because this is an invitation to send out nuisance mail', and that MPs should only receive one hard copy of the roll.<sup>69</sup>

- 6.90 On a related matter, the Liberal Party, in its submission, supported the provision passed by the Victorian Parliament allowing registered parties and independent MPs to obtain, on request, the names and addresses of voters (excluding silent and itinerant voters) who voted, whether they voted personally or by post, and, if they voted at a voting centre, the location of that voting centre.<sup>70</sup>

#### Committee comment

- 6.91 The Committee believes that the obligation of MPs to communicate with their constituents about a variety of issues requires that they have access to electronic copies of the electoral roll. That access should therefore be maintained as recommended by its predecessor.<sup>71</sup>

#### Candidate access to the certified lists

- 6.92 In addition to the elector information provided to registered political parties and MPs pursuant to section 91 and sub-section 91AA(2), pursuant to section 91C, each candidate for election to the House of Representatives is provided with a copy of the certified list of electors for the Division in which they are standing. The *User friendly, not abuser friendly* report contained a recommendation that gender and date of birth details be included on the certified list as a means of limiting the possibility of a person attempting to vote in the place of another person of a different gender or an obviously different age.<sup>72</sup> However, the AEC expressed concern that providing certified lists with gender and date of birth details to candidates for election will 'create an unnecessary invasion of elector privacy'.<sup>73</sup> The AEC did not indicate any concern with these details being included on the certified list of electors used at polling places.
- 6.93 The AEC recommended that the certified lists provided to candidates during an election *not* contain the gender and date of birth details that will appear on the certified lists used by polling officials if the relevant legislation is passed by the Parliament.

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69 Submission (Mr I Bowie, no. 67), pp. 3-4

70 Submission (Liberal Party of Australia, no. 149), pp. 4-5.

71 JSCEM, *The 1998 Federal Election*, (2000), as above, Recommendation 12, p. 27.

72 JSCEM, *User friendly, not abuser friendly: Report of the Inquiry into the Integrity of the Electoral Roll*, Parliament of Australia, May 2001, pp. 45-46.

73 Submission (AEC, no. 147 Attachment D), p. 15.



### Committee comment

- 6.94 The Committee notes that it was the intention of the previous Committee that gender and date of birth details only be included in certified lists used in polling places. The Committee therefore concurs with the AEC on this point.

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### Recommendation 30

- 6.95 **The Committee recommends that the certified lists provided to candidates during an election *not* contain the gender and date of birth details that will appear on the certified lists used by polling officials if the relevant legislation is passed by the Parliament.**

### End-use restrictions

- 6.96 End-use restrictions and related penalties currently apply to elector information provided on tape or disk. In line with its recommended changes to the format of the provision of elector information, the AEC recommended that end-use restrictions and the related penalties for wrongful disclosure or commercial use apply to *all* information relating to electors which is contained in the electoral roll, regardless of the medium of supply.<sup>74</sup>
- 6.97 The OFPC made the same recommendation as the AEC.<sup>75</sup>

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### Recommendation 31

- 6.98 **The Committee recommends that end-use restrictions and related penalties for wrongful disclosure or commercial use apply to all information relating to electors which is contained in the electoral roll, regardless of the medium of supply.**

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74 Submission (AEC, no. 147 Attachment D), p. 10.

75 Submission (OFPC, no. 164), p. 12.

## Electoral Roll Reviews and data-matching

6.99 As discussed in chapter two, the AEC changed its method of electoral roll review in 1999 when it moved from habitation reviews to continuous roll updating. The AEC's review of sections 89 to 92 argued that this significant change requires three further modifications to the Electoral Act:

- section 92 of the Electoral Act (roll reviews) implies that reviews are periodic, rather than by continuous and various means. The AEC therefore recommended wording changes to the Electoral Act to make this section clearer as to current practice;
- section 92 of the Electoral Act also restricts the AEC's demand powers, in relation to State government authorities, to 'all police, all statistical, and electoral officers in the service of any State'. The AEC has identified other State authorities as holding more useful and relevant data, namely the Registrars of Births, Deaths and Marriages, motor vehicle and licensing authorities, rental tenancy authorities and electricity authorities. The AEC therefore recommended an expansion of the authorities from which it may seek relevant data;<sup>76</sup> and
- further, as it is currently written, section 92 of the Electoral Act does not include an offence provision for failure to comply with AEC demands. The AEC therefore recommended that such provisions be inserted, as well as a provision for the AEC to set a deadline for the provision of information, and a provision that information sought or demanded be provided at no cost to the Commonwealth, or at supply cost only.

6.100 The AEC acknowledged that these recommendations should be subject to consultation with the Privacy Commissioner.<sup>77</sup> Moreover, in its submission, the OFPC stressed that firm grounds should be established for any expansion of data-matching or demand powers, and that strict oversight be applied to data-matching activities, and that the OFPC be given sufficient resources to enable it to discharge its responsibilities.<sup>78</sup>

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76 Submission (AEC, no. 203), p. 8.

77 Submission (AEC, no. 147 Attachment D), p. 19.

78 Submission (OFPC, no. 164), p. 11.

### Committee comment

- 6.101 The Committee believes that the AEC should, as a matter of priority, consult with the Privacy Commissioner about its recommendations in relation to section 92. The Committee will consider the recommendations that emerge from this consultation.

## Funding and disclosure

- 6.102 Part XX of the Electoral Act provides for public funding of election campaigns and disclosure of amounts received by, and paid to, political parties and candidates.
- 6.103 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*. That Committee concluded that public funding was justified on the basis of:
- 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.<sup>79</sup>
- 6.104 A candidate or Senate group receives election funding if they gain at least four per cent of the formal first preference vote in the contested Division or State or Territory. The funding rate for the 2001 federal election was 179.026 cents per vote (the rate is indexed every six months to the Consumer Price Index). The total funding paid at the 2001 federal election was \$38.5 million.<sup>80</sup>
- 6.105 The disclosure requirements of Part XX of the Act are designed to inform:
- the public of the financial dealings of political parties, candidates and others involved in federal elections; in other words, to prevent political corruption by making the financing of political parties and candidates as transparent as possible.<sup>81</sup>

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79 JSCER, *First Report*, Parliament of Australia, September 1983, p.155.

80 Submission (AEC, no.147), pp. 44-46.

81 Submission (AEC, no.147 Attachment G), p. 5.

6.106 Following an election, various persons and organisations are required to lodge with the AEC returns disclosing election campaign transactions, in the form summarised in Table 6.2:

Table 6.2 Post-election disclosure returns

Participant	Type of return	Time frame	Due date (2001 election)
Candidates	donations received and electoral expenditure	within 15 weeks of polling day	25 February 2002
Senate groups	donations received and electoral expenditure	within 15 weeks of polling day	25 February 2002
Third parties	details of electoral expenditure, certain donations received, and donations made to candidates and others	within 15 weeks of polling day	25 February 2002
Broadcasters	electoral advertisements broadcast	within 8 weeks of polling day	7 January 2002
Publishers	electoral advertisements published	within 8 weeks of polling day	7 January 2002

Source AEC, submission no.147, p. 46.

6.107 All the returns which had been received were available for public inspection 24 weeks after polling day, that is, from Monday 29 April 2002. For the first time the AEC published the returns for candidates, Senate groups and third parties on its website.<sup>82</sup>

6.108 Some submissions expressed concern about aspects of the current funding and disclosure provisions. These concerns are examined below.<sup>83</sup>

82 Submission (AEC, no. 147), p. 46.

83 In addition to the proposals examined in this section of the report, Mr David Combe recommended that 'political parties and candidates should be required to disclose fully, post-election, the source(s) and dollar value of all campaign donations received. This should be subjected to random audit by the [AEC]'. The Committee believes that the existing disclosure provisions satisfy these requirements. See Submission (Mr D. Combe, no. 19), p.1. Also, the AEC, in its submission to the inquiry, attached a schedule of outstanding recommendations on funding and disclosure and its two submissions to the previous Committee's funding and disclosure inquiry, and recommended that 'the JSCEM consider the AEC's funding and disclosure submissions [and] all outstanding funding and disclosure recommendations'. While the Committee has responded to submissions on funding and disclosure made to this inquiry, it does not think it appropriate to give a blanket endorsement to recommendations made to other reviews. See submission (AEC, no. 147), p.44.

## Associated entities

- 6.109 An ‘associated entity’ is defined in subsection 287(1) of the Electoral Act as an entity controlled by, or operating ‘wholly or to a significant extent to the benefit of’, one or more registered political parties. Associated entities are required to lodge detailed annual returns under section 314AEA of the Electoral Act.
- 6.110 The ALP submitted that ‘the laws governing political donations must be improved to ensure all fundraising bodies that are assisting political parties fully disclose the source of their donations’.<sup>84</sup> The ALP raised this issue in the context of the Liberal Party and the Greenfields Foundation.<sup>85</sup>
- 6.111 Allegations and counter-allegations by political parties about the source and size of each other’s donations are an inevitable part of the political process. The Committee has taken insufficient evidence in this inquiry to recommend detailed amendments to the ‘associated entity’ provisions, but draws to the Government’s attention a past recommendation by the AEC that the Electoral Act be amended so that transactions undertaken, on behalf of a political party, by another organisation operating on a commercial basis, be disclosed either by: disclosure of the transactions by the political party in its annual return, or disclosure by the service entity in an annual return.<sup>86</sup>

## Auditing of political parties’ and donors’ returns

- 6.112 In its submission, the ALP suggested that political parties (and associated entities) should be compelled to have their disclosure returns certified by a registered auditor ‘to guarantee they are free from errors and omissions at the time they are made public’, and that persons and organisations that donate above \$25,000 should be subject to compliance audits by the AEC.<sup>87</sup>

## Committee comment

- 6.113 Subsection 314AB(1) of the Electoral Act currently gives parties the choice of either filing their annual disclosure returns in the ‘approved form’ or lodging their audited annual accounts.

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84 Submission (ALP, no.153), p. 3.

85 Submission (ALP, no.153), p. 3.

86 See submission (AEC, no.147, Attachment G), p.15.

87 Submission (ALP, no.153), p.3.

- 6.114 In relation to compulsory audited returns by political parties, section 314AB of the Electoral Act clearly identifies the agent of each registered political party (and each State branch thereof) as the person responsible for furnishing the party's return in a form consistent with the requirements of the Act. The penalties specified in section 315 of the Electoral Act for providing false information in a return, and the attendant risk of negative publicity for the party, already provide an adequate incentive for agents to ensure that their parties' returns are accurate.
- 6.115 In relation to compliance audits of persons and organisations that have disclosed contributions of \$25,000 or more, the Committee notes that this is now provided for in subsection 316(2D) of the Electoral Act, as inserted by the *Commonwealth Electoral Amendment Act (No. 1) 2002*.

### The Citizens Electoral Council

- 6.116 Submissions from the ALP and the B'nai B'rith Anti-Defamation Commission raised concern about disclosure of donations to the Citizens Electoral Council (CEC), a registered political party with links to controversial US figure Lyndon LaRouche.<sup>88</sup>
- 6.117 According to the ALP:
- the CEC received over \$1 million in donations in 2000/01, yet declared that it had received only \$106,899 in donations of over \$1,500 [the threshold below which individual donations do not need to be reported in political parties' annual returns]. That is, the CEC received \$958,613 from as yet undisclosed sources. The Labor Party is concerned that the

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88 Submissions (ALP, no. 153, pp.3-4; B'nai B'rith Anti-Defamation Commission, no. 167, p. 3). The Anti-Defamation Commission also submitted that the rules governing registration of political parties should be amended to a) prevent the registration of political parties as 'front' organisations under names likely to mislead voters (in 2000 the CEC's national secretary registered the 'Curtin Labor Alliance' as a political party in Western Australia), and b) prevent the CEC from being able to be registered as a political party, on the basis that it is allegedly 'a totalitarian sect which at its core is both racist and antisemitic' and that it owes its allegiance to a foreign organisation. The Committee believes that public discourse is the proper mechanism to resolve the merits of the CEC's electoral arguments. The Committee is not prepared to endorse the dangerous route of banning organisations from contesting democratic elections on the basis of views attributed to them. The other matter raised by the Anti-Defamation Commission, registration of political party names, is examined in chapter three of this report.

CEC may not be fully disclosing donations or other support it receives that is valued at over \$1,500.<sup>89</sup>

6.118 The B'nai B'rith Anti-Defamation Commission similarly stated that:

If only the last two financial returns of CEC are taken as an example of its operations... donations of \$1,500 or more supply the CEC with only a small percentage of the overall revenue 'given' it. A claim by CEC's national secretary... that its revenues were so large because they included sales of videos and literature beggars credulity. Neither is the enigma answered when it comes to the sect's debt. The 1999/2000 return declares that it has been obliged to dispatch \$941,115.24 of the \$1,113,220.22 collected ... to another LaRouche member, 'Publications and General Management' in Leesburg. Indeed, the bulk of CEC monies is earmarked to LaRouche fronts. In spite of the CEC's acknowledgement that it has 22 field officers fully employed to bring in revenue, their collective wage bill fails to appear in the financial statements. These documents cover-up far more than they reveal.<sup>90</sup>

6.119 The Committee stresses that the comments by the ALP and the Anti-Defamation Commission do not amount to evidence that the CEC is failing to meet its obligations under the disclosure provisions of the Electoral Act. The Committee further notes that the AEC has the power to conduct random audits, and that section 305B of the Act already requires any person making donations to a political party (or a registered Branch of a party) totalling \$1,500 or more in a financial year to furnish a return to the AEC.

### **Anonymous donations and donations from overseas**

6.120 The ALP submitted that the current penalty for accepting anonymous donations over \$200 for candidates, or over \$1,000 for political parties and Senate groups, (namely, forfeiting an amount equivalent to the amount received) is a limited deterrent in that it merely restores the offending party to the financial position it would have held had it observed the law in the first place. The Committee agrees with this proposition and recommends that the relevant penalty be increased.

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89 Submission (ALP, no. 153), p. 3.

90 Submission (B'nai B'rith Anti-Defamation Commission, no. 167), p. 3.

### Recommendation 32

6.121 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the penalty for accepting an anonymous donation above the limits nominated in the Act shall be an amount double the sum received through that anonymous donation.**

6.122 The ALP also suggested that donations to political parties from overseas, while relatively rare, may be a mechanism to hide the source of donations, and that it would be difficult to enforce penalties against persons or organisations domiciled overseas.<sup>91</sup>

#### Committee comment

6.123 The Committee notes that to date, overseas donations constitute a small proportion of all donations made. The Committee believes that it is important to distinguish between donations made from trusts and entities overseas, where the true source of the donation may not be readily apparent, and those made from overseas branches of Australian companies. The Committee recommends that the AEC monitor and report back to the Committee on instances of overseas donations.

### Recommendation 33

6.124 **The Committee recommends that, at each federal election inquiry, the AEC report to the Committee on all cases of overseas donations made during the previous parliament.**

#### Omissions from disclosure returns

6.125 The ALP recommended that where a donation, debt or contingent liability of \$1,500 or more has been omitted from a disclosure return, or the details of a receipt included on such a disclosure return do not 'clearly identify' the true source and value of those funds or debts, then a sum equivalent to that receipt should be forfeited to the Commonwealth.<sup>92</sup>

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91 Submissions (ALP, no. 153), p. 4.

92 Submission (ALP, no. 153), p. 5.



- 6.126 The ALP gave no explanation for this proposed recommendation, and the Committee notes that section 315 of the Electoral Act already sets out penalties for lodging an incomplete return.

### **'Administrative' penalty**

- 6.127 The AEC recommended that the disclosure provisions be amended so that it is able to apply an 'administrative' penalty for apparent offences (similar in principle to the fines for failure to vote).<sup>93</sup>
- 6.128 In the absence of any rationale for this proposed change, and details as to the level of any administrative penalty and how the penalty would be administered, the Committee does not recommend the proposed change to the Electoral Act.

### **Constitutional validity of section 306B of the Electoral Act (return of certain donations)**

- 6.129 Section 306B of the Electoral Act (which was inserted into the Act as a result of an amendment to the *Commonwealth Electoral Amendment Bill (No. 1) 2002* during debate in the Senate) requires that where a company becomes insolvent within a year of making a donation to a candidate or political party, the donation must be returned to the company's liquidator.
- 6.130 Specifically, section 306B states that:

Where:

- (a) a political party, a candidate or a member of a group receives a gift from a corporation being a gift the amount of which is equal to or exceeds \$1,000; and
- (b) the corporation within a period concluding one year after making the gift has been wound up in insolvency or wound up by the court on other grounds;

an amount equal to the amount of the gift is payable by the political party to the liquidator and may be recovered by the liquidator as a debt due to the liquidator by action, in a court of competent jurisdiction against:

- (c) in the case of a gift to or for the benefit of a political party or a State branch of a political party:

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93 Submission (AEC, no. 147), p. 47.

- (i) if the party or branch, as the case may be, is a body corporate—the party or branch, as the case may be; or
- (ii) in any other case—the agent of the party or branch, as the case may be; or
- (d) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

6.131 The AEC has received advice from the Australian Government Solicitor that aspects of section 306B may be constitutionally invalid because they may in effect impose a tax (in breach of section 55 of the Constitution):

In particular, [section 306B] may be considered by a court to impose a tax on party agents, candidates' agents, Senate group agents, or members of a Senate group, who did not actually receive the sum in question. These agents or members of a Senate group will still be required to pay back the amount concerned out of their own money and they will not have a common law right of reimbursement from the principal (the political party, candidate, or Senate group). This is especially significant given that the courts have, in general, not considered political parties to be subject to common law until recently and then only in certain limited circumstances.<sup>94</sup>

6.132 The AEC believes that section 306B could result in an unfair imposition on agents or Senate group members.

### Recommendation 34

6.133 **The Committee recommends that the AEC seek definitive advice on the constitutional validity of section 306B of the *Commonwealth Electoral Act 1918* and if necessary, address the substantive issue in more appropriate legislation such as in insolvency law.**

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94 Submission (AEC, no. 198), pp. 3-4.

## Gifts to persons other than candidates

6.134 Subsection 305A(1) of the Electoral Act provides that:

If a person (other than a registered political party, a State branch of a registered political party, an associated entity, a candidate in an election or a member of a group) makes a gift, during the disclosure period in relation to an election, to:

- (b) any candidate in an election or member of a group; or
- (c) any person or body (whether incorporated or not) specified by the Electoral Commission by notice in the Gazette;

the person must, within 15 weeks after the polling day in the election, furnish to the Electoral Commission a return, in an approved form, setting out the required details of all gifts made during the disclosure period.

6.135 The AEC recommended that this provision be amended 'to clarify who is meant to be captured' by paragraph 305A(1)(c), to extend the due date for lodgement of returns and to clarify where donations to endorsed candidates should be reported.<sup>95</sup> The AEC did not expand on what clarification it felt was needed, and the Committee therefore lacks the basis to support the recommended changes.

## Disclosure of donations at all levels of government

6.136 Manly Council drew the Committee's attention to a motion adopted at the 2001 Annual Conference of the Local Government Association of NSW:

that the Local Government Association urge both the State and Federal Governments to amend their financial donation disclosure regulations to ensure that the true original source of any donation to a candidate or to a politician is fully disclosed throughout all tiers of government.<sup>96</sup>

6.137 The Council added that certain details of donations to local government in NSW are not required to be disclosed, and recommended changes to relevant State legislation.

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<sup>95</sup> Submission (AEC, no. 147), p. 47.

<sup>96</sup> Submission (Manly Council, no. 169), p. 1.

- 6.138 The Committee believes that the disclosure provisions in the Electoral Act adequately meet the Council's concerns at the federal level. Amendments to corresponding State legislation are a matter for State Parliaments to consider.

### Public funding

- 6.139 The inquiry received conflicting submissions on the merits of public funding of elections. The Reverend Stefan Slucki submitted that 'legislation guaranteeing funding to political parties should be abolished as an unwarranted fiscal extravagance'.<sup>97</sup> Conversely, the Progressive Labour Party recommended that public funding be quadrupled, with the qualifying threshold lowered to two per cent of the first preference vote, in order to reduce dependence on corporate donations and to provide greater opportunities to smaller political parties.<sup>98</sup> Friends of the Earth similarly recommended that elections be publicly funded, while Mr Ian Bowie suggested that electoral advertising be partly or fully limited 'to what is paid for out of the public purse'.<sup>99</sup>
- 6.140 The Committee believes that the current public funding regime strikes an appropriate balance between the competing principles expressed in submissions to the inquiry.

### Electoral litigation

- 6.141 For the 2001 federal election, the overall level of litigation, including injunctions, petitions and prosecutions, was less than that which occurred at the last two federal elections.

### Injunctions

- 6.142 During an election period, injunction applications are normally made under section 383 of the Electoral Act. This section allows either the Electoral Commissioner or a candidate at the federal election to apply to the Federal Court of Australia for an injunction to stop alleged breaches of the Electoral Act being committed.

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97 Submission (Rev. S. Slucki, no. 72), p. 1.

98 Submission (Progressive Labour Party, no. 66), p. 9.

99 Submissions (Friends of the Earth, no. 32, p. 2; Mr I. Bowie, no. 67, p. 2).

- 6.143 For the 2001 federal election, four applications were filed for injunctions during the election period. Of the four applications, only two applications for injunctions were made to the Federal Court under section 383 of the Electoral Act. One was made to the High Court under section 75 of the Constitution, and one was made to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act). In one case, the AEC sought an injunction against a candidate. In the three other cases, candidates or people who had intended to nominate as candidates sought injunctions against the AEC.
- 6.144 The four cases were:
- Mr Ned Kelly's (also known as Terry Sharples) application on late candidate nomination;
  - The Ponnuswamy Nadar application on incomplete candidate nomination;
  - The Schorel-Hlavka application on the calculation of the election timetable; and
  - The AEC application in relation to One Nation how-to-vote cards.
- 6.145 Legal proceedings are continuing in the first three of these cases. In the AEC's application for an interim injunction against the One Nation candidate in the Division of Indi (in Victoria) for distributing inaccurate how-to-vote cards, the Federal Court found in favour of the AEC and the candidate ceased distributing the cards. This matter is now finalised.

### **Petitions to the Court of Disputed Returns**

- 6.146 An election result for a House of Representatives Division, or a State or Territory for the Senate, may be challenged by way of petition to the High Court sitting as the Court of Disputed Returns. Petitions to the Court of Disputed Returns must be filed within 40 days of the return of the writ for the relevant State, Territory or Division election. Four petitions to the Court of Disputed Returns under Part XXII of the Electoral Act were filed in the High Court Registry within the relevant 40-day period.
- 6.147 The petitions arising out of the 2001 federal election were:
- Mr Richard S Gunter's petition on gold currency and issue of writs;

- Mr Ned Kelly's petition against the half-Senate election for New South Wales;
- Mr Donald Ditchburn's petition challenging 'Above the Line' voting for the Senate; and
- Mr Donald Ditchburn's petition challenging preferential voting in House of Representatives elections.

6.148 Mr Ditchburn's petitions were dismissed on 24 June 2002. As of 12 July 2002, the legal proceedings were continuing in the other two cases.

### Prosecutions

6.149 As at 17 June 2002, no major prosecutions under the offence provisions of the Electoral Act had been initiated in respect of the 2001 federal election, although a small number of investigations remain in progress.

### Redistributions

6.150 In the 13<sup>th</sup> month after the first meeting of a newly-elected House of Representatives, the Electoral Commissioner is required by law to determine, on the basis of the latest Commonwealth statistics on the Australian population, each State and Territory's entitlements to representation in the House of Representatives.<sup>100</sup> These entitlements are calculated by dividing the total population figure for the Commonwealth (excluding the Territories), by twice the number of Senators for the States to obtain a quota (see Table 6.3 below for calculations as determined in February 2003).

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100 AEC, 'Commissioner Issues Federal Electoral Determination', Media Release, 20 February, 2003 p. 3.

Table 6.3 Redistribution changes for the federal election following the 2001 federal election

State/Territory <sup>1</sup>	Population	Result <sup>2</sup>	Number of Members to be chosen	Change
New South Wales	6 657 478	49.9176	50	0
Victoria	4 888 243	36.6519	37	0
Queensland	3 729 123	27.9609	28	+1
Western Australia	1 934 508	14.5049	15	0
South Australia	1 522 467	11.4154	11	- 1
Tasmania <sup>3</sup>	473 371	3.5493	5	0
Australian Capital Territory <sup>4</sup>	322 871	2.4209	2	0
Northern Territory <sup>5</sup>	199 760	1.4978	1	-1
Australian Antarctic Territory	65			0
Territory of Heard Island and McDonald Islands				
Coral Sea Islands Territory				
Territory of Ashmore and Cartier Islands				

Source AEC. 'Commissioner Issues Federal Electoral Determination', Media Release, 20 February, 2003 p. 6.

Notes 1 Under section 38A of the Commonwealth Electoral Act 1918 (the Act), the Territory of Norfolk Island is not taken to be a Territory for the purposes of this determination. However, under subsection 45(2) of the Act, a Norfolk Island resident who is one of the people of a State for the purposes of sections 7 and 24 of the Constitution is included in the count of the population of the relevant State and of the Commonwealth for the purposes of this determination and, under subsection 46(2) of the Act, a Norfolk Island resident who is enrolled in the Australian Capital Territory under subsection 95AA(3) of the Act is also included in the count of the population of the Australian Capital Territory for the purposes of this determination.

2 Result is derived by dividing each State/Territory's respective population by the quota of 133 369.375. The quota is derived by dividing the population of the States by twice the number of State Senators.

3 Tasmania is guaranteed a minimum of five Members under section 24 of the Constitution.

4 Under section 4 of the Act, the Jervis Bay Territory is taken for the purposes of this determination to be part of the Australian Capital Territory.

5 Under subsection 48(2C) of the Act, the Territories of Cocos (Keeling) Islands and Christmas Island are taken for the purposes of this determination to be part of the Northern Territory because they lack sufficient population to qualify for representation in their own right.

6.151 On the basis of these calculations the House of Representatives of the 41<sup>st</sup> Parliament will comprise 149 Members (one less than the current 40<sup>th</sup> Parliament). The Northern Territory and South Australia will each lose one seat, while Queensland will gain a seat.

## Proposed Changes to the Electoral System

- 7.1 A number of submissions proposed broader changes to Australia's electoral system than those canvassed in previous chapters. Some of the core issues in Australian democracy were raised, including: compulsory voting; preferential voting; the introduction of electronic voting; and ideas for further involvement of the public in political decision-making. This chapter explores those proposals.

### Compulsory voting

- 7.2 One of the distinguishing features of Australian democracy is what is often described as compulsory voting for federal elections. It is important to note that under the Electoral Act, the duty of the elector is to: attend a polling station; have their name marked off the certified list; receive a ballot paper and take it to an individual voting compartment; and fold the ballot paper and either place it in the ballot box, or return it to the presiding officer if making a declaration vote.<sup>1</sup>

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1 *Commonwealth Electoral Act 1918*, sections 231 to 233.



- 7.3 While Australia is one of 24 countries to impose some form of compulsory voting,<sup>2</sup> our system is widely considered to be a 'template' for compulsory voting because it is well administered despite complications such as federalism and geographical constraints, and because the compulsion is widely accepted by Australian citizens.<sup>3</sup>
- 7.4 There are several aspects of the Australian federal electoral system which are compulsory. The most obvious of these is that all those who are eligible are required to enrol, and to attend a polling booth or apply for a postal vote at each election.<sup>4</sup> In addition, in order to cast a formal vote an elector must record a preference for all candidates standing for election. The full preferential voting system is discussed further at paragraph 7.25.
- 7.5 Subsection 245(1) of the Electoral Act provides that '[i]t shall be the duty of every voter to vote at every election'. Compulsory voting for federal elections was enacted in Australia with bipartisan support in 1924.<sup>5</sup> Compulsory voting is also mandated for all Australian State and Territory elections.<sup>6</sup>
- 7.6 The Electoral Act prescribes penalties for failure to vote. Unless an elector who appears to the AEC not to have voted can show that they did vote as required, or that they had a 'valid and sufficient reason' for not voting, they may be fined. If the elector fails to show a 'valid and sufficient reason' and fails to pay the fine, the matter may be taken to court, in which case a maximum penalty of \$50 may be imposed.<sup>7</sup>

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2 International Institute for Democracy and Electoral Assistance (IDEA), *Compulsory voting*, at: [http://www.idea.int/vt/analysis/Compulsory\\_Voting.cfm](http://www.idea.int/vt/analysis/Compulsory_Voting.cfm), accessed 21 May 2003.

3 Lisa Hill, *Democratic assistance: a compulsory voting template*, paper presented to the Jubilee conference of the Australasian Political Studies Association, ANU, Canberra, October 2002, p. 2.

4 See chapter two for explanation of eligibility to enrol. *Commonwealth Electoral Act 1918*, section 101 and subsection 245(1).

5 AEC, 'Compulsory Voting', *Electoral Backgrounder 8*, at: [http://www.aec.gov.au\\_content/how/backgrounders/08/index.htm](http://www.aec.gov.au_content/how/backgrounders/08/index.htm), accessed 10 April 2003.

6 Initial enrolment is not compulsory in South Australia, however once enrolled, voting is compulsory. Electoral Council of Australia, *Electoral Systems*, at: [http://www.eca.gov.au/systems/australia/by\\_category/eligibility.htm](http://www.eca.gov.au/systems/australia/by_category/eligibility.htm), accessed 20 May 2003.

7 *Commonwealth Electoral Act 1918*, section 245.

7.7 Five submissions commenting on compulsory voting recommended that voting in Australian federal elections be made voluntary.<sup>8</sup> The main thrust of these submissions was that citizens should be allowed to exercise ‘the democratic right to choose not to vote.’<sup>9</sup> There was also a concern that forcing indifferent voters to participate diminishes the electoral process:

compulsory voting creates a situation where electioneering becomes no more than a marketing exercise appealing to the lowest common denominator.<sup>10</sup>

7.8 Other arguments against compulsory voting raised in submissions were that it:

- increases the incidence of informal voting;<sup>11</sup>
- encourages complacency amongst incumbent members in safe seats;<sup>12</sup> and
- unduly assists the major parties as their prominence in advertising and at polling booths helps sway the uninterested or undecided voter.<sup>13</sup>

7.9 None of the submissions to this inquiry expressed support for the existing compulsory voting system. The Committee notes that in public polling 74 per cent of respondents supported compulsory voting at federal elections.

7.10 There are a number of arguments in favour of compulsory voting that counter the arguments against it. For example, that:

- Full participation provides electoral outcomes with greater legitimacy, as there is high voter turnout and Parliaments are elected according to the wishes of all citizens.
- Voting is a civic duty, and the significance of the vote should not be undermined by apathy.
- People *can* choose not to vote – they are merely compelled to attend a polling booth and return a ballot paper to the ballot box.

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8 Submissions (Mr P. Goss, no. 25; Mr B. Sheehy no. 37; Mr I. Bowie, no. 67; Mr B. Joy, no. 107; Salt Shakers, no. 135).

9 Submission (Salt Shakers, no. 135).

10 Submission (Mr I. Bowie, no. 67).

11 Submission (Mrs Pitman, no. 47).

12 Submission (Mr B. Sheehy, no. 37).

13 Submission (Salt Shakers, no. 135).

- A number of studies (such as the 1994 Report of the Civics Experts Group) have found that Australians are familiar with the mechanics of voting and have a fair understanding of the Australian political system.<sup>14</sup> This weighs against the argument that the participation of those who are indifferent or uninterested in the political process diminishes the significance of the vote.
- Contrary to the argument that compulsory voting encourages complacency in safe seats, political parties assert that they value their 'safe' electorates, and the political activism of electors in safe seats is demonstrated through good participation in party membership, branch activities, party forums, and election campaigning.<sup>15</sup>
- Regarding the prominence of major party advertising, it can be argued that compulsory voting may reduce the role of money in elections, as parties and candidates do not need to convince people to turn out to vote.
- A national survey carried out immediately after polling day for the 1996 federal election found that 74 per cent of respondents supported compulsory voting at federal elections.<sup>16</sup>

7.11 Compulsory voting was investigated as part of the inquiry into the conduct of the 1996 federal election. The majority report out of that inquiry included a recommendation that compulsory voting be repealed, but that compulsory enrolment be retained in the interests of effective management of the electoral system and maintenance of records of turnout. The report stated:

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

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14 *Whereas the people ... Civics and Citizenship Education*, Report of the Civics Expert Group, Commonwealth of Australia, AGPS, 1994.

15 Petro Georgiou MP, *The Case for Compulsory Voting*, Address to the Inaugural Meeting of the John Stuart Mill Society, Parliament House, Canberra, 29 October 1996.

16 AEC, citing Newspoll Market Research Survey 3 March 1996, at: *Electoral Backgrounder 8*, as above. For further discussion of compulsory voting see: Keith Faulks, 'Should voting be compulsory?' in *Politics Review*, February 2001, pp. 24-24; Lisa Hill, 'On the Reasonableness of Compelling Citizens to Vote: the Australian Case', in *Political Studies*, vol. 50(1), Political Studies Association, 2002; and Senator Andrew Murray, Minority Report in JSCEM: *The 1996 Federal Election, Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*; Parliament of Australia, June 1997, p. 141; International Institute for Democracy and Electoral Assistance (IDEA), *Compulsory voting*, at: [http://www.idea.int/vt/analysis/Compulsory\\_Voting.cfm](http://www.idea.int/vt/analysis/Compulsory_Voting.cfm), accessed 21 May 2003.

conscientiously choosing not to exercise that right – or rather, for conscientiously exercising the right not to vote.<sup>17</sup>

- 7.12 However, the ALP and Democrat members of the 1996 federal election inquiry Committee did not support this recommendation. The ALP minority report stated:

Compulsory voting allows the entire electorate to feel that they have a degree of ownership in government and its decisions. People feel that 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.<sup>18</sup>

- 7.13 The Government rejected the recommendation to repeal compulsory voting.<sup>19</sup>

- 7.14 The Committee inquiry into the 1998 federal election reviewed a number of submissions regarding compulsory voting, and concluded that while there were strong views on compulsory voting, it had no plans to pursue the issue of voluntary voting.<sup>20</sup>

- 7.15 The Committee concurs with this view.

## Changes to the preferential voting system

- 7.16 A number of submissions took issue with the current practices of full preferential voting for the House of Representatives, and ‘above the line’ (ATL) voting for the Senate. The voting systems for the House of Representatives and the Senate are briefly outlined below, followed by concerns raised in the submissions.

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17 JSCEM, *The 1996 Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*, Parliament of Australia, June 1997, p. 26.

18 JSCEM, *The 1996 Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto; Minority Report by Senator S. Conroy, Mr L. Ferguson MP and Mr R. McClelland MP*, Parliament of Australia, June 1997, p. 125.

19 *Government Response*, tabled 8 April 1998.

20 JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of 1998 Federal Election and matters related thereto*, Parliament of Australia, June 2000, pp. 106-107.

## House of Representatives voting system

- 7.17 Section 240 of the Electoral Act implements a full preferential system for electing members of the House of Representatives. For each Division (electorate) of the House of Representatives, ballot papers include each candidate's name with a box next to it. Electors must number each candidate's box in the order of their choice. Every box must be numbered in order for the vote to count. The Electoral Act specifies a detailed process for a random draw by each electorate's DRO, to determine the order of the candidates' names on the ballot paper.<sup>21</sup>
- 7.18 House of Representatives candidates must gain more than 50 per cent of the vote to be elected. A candidate receiving more than 50 per cent of the first preference votes is immediately elected. If no candidate gains 50 per cent of first preferences, the candidate with the fewest votes is excluded from the count. That candidate's votes are then transferred to the other candidates according to the preferences shown on the ballot papers which gave the eliminated candidate the first preference. This process continues until one candidate has more than 50 per cent of the votes and is declared elected.<sup>22</sup>

## Senate voting system

- 7.19 The following description of the Senate voting system is largely adopted from AEC publications.
- 7.20 Senators are elected via a proportional representation voting system within their State or Territory. Proportional representation systems are used in multi-member electorates (such as those for the Senate – each State or Territory is a multi-member electorate) to elect candidates who receive a set proportion of the vote.
- 7.21 Unlike House of Representatives elections in which candidates must gain more than 50 per cent of the votes to be elected, Senate candidates must gain a quota of the formal votes to be elected. The quota is calculated by dividing the total number of formal ballot papers by one more than the number of vacancies, and then adding one to the result (ignoring any remainder). For example, in the 2001 Senate half-election the quota for NSW was determined as shown in Table 7.1.

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21 *Commonwealth Electoral Act 1918*, sections 212 and 213.

22 AEC, *Counting the Votes: House of Representatives*, at: [http://www.aec.gov.au/\\_content/what/voting/count\\_hor.htm](http://www.aec.gov.au/_content/what/voting/count_hor.htm), accessed 14 April 2003.

**Table 7.1 Quota for election to the Senate for NSW, 2001 election.**

(a) Number of Senators to be elected:	6
(b) Number of formal ballot papers:	3 879 443
Quota determined by dividing (b) by [(a) + 1]; and then adding one:	$\frac{3\,879\,443}{6 + 1} = 554\,206$
Quota = 554 206 + 1	554 207 votes

Source AEC 2002, Electoral Pocketbook, Commonwealth of Australia 2002, p. 54.

7.22 Candidates who receive the quota, or more, of first preference votes are immediately elected. The surplus votes of candidates who receive more than the quota are transferred to second preference candidates. All the elected candidates' ballot papers are transferred at a reduced value. The transfer value of the elected candidate's ballot papers is worked out by dividing the number of surplus votes by the total number of the elected candidate's ballot papers. The AEC has provided a fictional example to demonstrate the system:

- Candidate A gains 1,000,000 votes;
- the required quota in her electorate is 500,000 votes, therefore the surplus is 500,000;
- the transfer value is calculated by dividing the candidate's number of surplus votes by the candidate's total number of votes: 500,000 divided by 1,000,000. Therefore the transfer value is 0.5;
- all of Candidate A's ballot papers are re-examined to count the number of votes allocated to second-preference candidates;
- Of the 1,000,000 votes for Candidate A, 900,000 recorded a second preference for Candidate B. These votes are transferred at 0.5 value, so 450,000 votes go to Candidate B (the remaining 100,000 second preferences are distributed to Candidates C, D, etc in a similar fashion). If Candidate B is now over the quota, she is elected and her surplus votes are transferred in the same way.<sup>23</sup>

7.23 As a result of this process of transferring surplus votes, other candidates may be elected. If, however, all surplus votes from elected candidates are transferred and there are still some unfilled positions, further counting is undertaken. This is done by excluding

23 AEC, *Electoral Pocketbook 2001*, Commonwealth of Australia, 2002, p. 54.

unsuccessful candidates, starting with the lowest scoring candidate. Their ballot papers are distributed to the remaining candidates to whom the voters have given their preferences. When a candidate gains a quota following the distribution, he or she is elected. The above process continues until all Senate positions are filled.<sup>24</sup>

- 7.24 Like the House of Representatives, the Senate employs a full preferential voting system. Electors must either vote for one party or group of candidates 'above the line', thereby endorsing that party's full list of preferences for other candidates, or must vote for all Senate candidates 'below the line'.<sup>25</sup>

### Proposals for change

- 7.25 Submissions raised a number of proposals for change to the current system of full preferential voting for the House of Representatives and the Senate. The term 'preferential' refers to an elector being required to indicate an order of preference for candidates on the ballot paper. Different types of preferential voting include:
- full preferential — the elector must show a preference for all candidates listed for the ballot paper to be formal (this system is used for the House of Representatives and the Senate);
  - partial preferential — the elector must show a minimum number of preferences — usually equal to the number of candidates to be elected; and

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24 AEC, *Counting the Votes: Senate*, at: [http://www.aec.gov.au/\\_content/what/voting/count\\_senate.htm](http://www.aec.gov.au/_content/what/voting/count_senate.htm), accessed 14 April 2003.

Electoral Council of Australia: *Electoral Systems - Voting Systems*, at: [http://www.eca.gov.au/systems/australia/by\\_category/voting\\_definitions.htm](http://www.eca.gov.au/systems/australia/by_category/voting_definitions.htm), accessed 14 April 2003.

Department of the Parliamentary Library, *Parliamentary Handbook: Elections*, at: <http://www.aph.gov.au/library/handbook/elections/index.htm>, accessed 14 April 2003.

25 Although paragraph 270(1)(b)(i) of the Electoral Act stipulates that where there are more than nine candidates, if 90 per cent or more of the squares are numbered in sequence (or close to sequence – less than four mistakes), then the ballot paper shall not be counted as informal.

- optional preferential —electors need only indicate a preference for the candidate of their first choice, and the allocation of any further preferences is optional.<sup>26</sup>

### Optional and partial preferential voting proposals

7.26 A number of submissions supported changing to optional preferential voting for House of Representatives and Senate elections.<sup>27</sup>

7.27 The Greens NSW supported optional preferential voting for the House of Representatives on the basis that voters should have the right to determine if, and to whom, they will give preferences:

It is a perfectly legitimate view, indeed it should be a right, for a voter to decide that they do not want to give preferences to a number of candidates. There is no ethical reason to deny voters the opportunity of making the point that they will not vote for particular candidates.<sup>28</sup>

7.28 The comments of Mr Ian Bowie summarise the arguments of the other submissions which supported optional preferential voting:

Voters are required to express preferences for what I term the 'least worst' candidates/platforms when many voters in reality have no preferences at all or have aversions for some or all candidates/platforms. This raises questions about the legitimacy of governments.<sup>29</sup>

7.29 Mr David McAlister suggested that an optional preferential system would also avoid unintentional errors in numbering which may render ballot papers invalid:

The Senate paper is a recipe for undue delay and likely resentment. To complete the numbers 1 to 65 [if voting below the line] without error is a virtual impossibility.<sup>30</sup>

7.30 Salt Shakers suggested that voters be required simply to mark the number of boxes corresponding to the number of vacancies (that is,

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26 Electoral Council of Australia: *Voting Systems*, at: [http://www.eca.gov.au/systems/australia/by\\_category/voting\\_definitions.htm](http://www.eca.gov.au/systems/australia/by_category/voting_definitions.htm), accessed 15 April 2003.

27 See submissions (Mrs J. Singleton no. 63; Mr I. Bowie no. 67; Rev. S. Slucki no. 72; DG Holmes no. 84; Mr B. Joy no. 107; Salt Shakers no. 135; Ms R. Gibbs no. 140.

28 Submission (Greens NSW, no. 158), p. 1.

29 Submission (Mr I. Bowie, no. 67), p. 2.

30 Submission (Mr D. McAlister, no. 141), p. 2.



six in the case of Senate half-elections). This would be a partial preferential system.<sup>31</sup>

### Changes to Senate above the line voting

- 7.31 The Senate ballot paper is split into two sections, allowing either 'above the line' (ATL) or 'below the line' voting. After nominations close, groups of Senate candidates (that is, parties or groups of independent candidates) may lodge with the AEC a 'voting ticket'. A voting ticket is a written statement setting out a preference order for all candidates in that particular State or Territory Senate election.<sup>32</sup> The sequence on the ballot paper of ungrouped candidates' names, and the names of grouped candidates who have not specified a particular order, is determined at random by the Australian Electoral Officer.<sup>33</sup>
- 7.32 The Senate ballot paper lists all the parties and grouped candidates in the section of the paper 'above the line'. Senate electors may vote either by placing the number '1' in one of the boxes above the line to indicate the group voting ticket they wish to endorse, or by numbering each candidate's box below the line to specify the order in which preferences are to be distributed.
- 7.33 ATL voting was introduced in 1984. The Electoral Act requires that group ticket preferences be registered with the AEC, and displayed at each polling booth in either poster or pamphlet format.<sup>34</sup> At the 2001 federal election, 95.2 per cent of voters chose to vote ATL.<sup>35</sup>
- 7.34 A number of submissions raised concerns about ATL voting in Senate elections.<sup>36</sup> These are outlined below.
- 7.35 The treatment of 'ungrouped' candidates on the Senate ballot paper was questioned. The Festival of Light and Salt Shakers submitted that ATL voting is flawed because 'ungrouped' candidates – that is,

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31 Submission (Salt Shakers, no. 135), p. 3.

32 AEC, *Behind the Scenes: the 2001 Election Report*, p. 12, available at: [http://www.aec.gov.au/\\_content/When/past/2001/bts/index.htm](http://www.aec.gov.au/_content/When/past/2001/bts/index.htm), accessed 19 March 2001. Each Senate Group may lodge up to three voting tickets; subsections 272(2) and 272(3) of the Electoral Act refer.

33 *Commonwealth Electoral Act 1918*, sections 210 and 213.

34 *Commonwealth Electoral Act 1918*, sections 211 and 216.

35 AEC, *Behind the Scenes: the 2001 Election Report*, p. 21, available at: [http://www.aec.gov.au/\\_content/When/past/2001/bts/index.htm](http://www.aec.gov.au/_content/When/past/2001/bts/index.htm), accessed 19 March 2001.

36 See submissions (Festival of Light, no. 71; Mr E. Lockett, Reclaim Your Parliament Movement, no. 98; Mr D. McAlister, no. 141; Salt Shakers, no. 135).

independent candidates who have not formed an alliance with other independents – do not appear above the line. As most people vote ATL, this means that ungrouped independents have a difficult task in attracting enough votes to get elected. The Festival of Light and Salt Shakers also argued that ATL voting constitutes a ‘blind’ vote as voters are usually unaware of parties’ preference distributions.<sup>37</sup> Mr Eric Lockett also supported this view, submitting:

To a very large extent, the preferences on which two thirds of Senators are elected no longer represent the rankings determined by the electors but those determined by a small number of party officials. No contest in which a vote for one candidate can be registered by marking a single box [ATL] whereas a vote for another candidate requires the sequential numbering of sixty-odd boxes [below-the-line] could ever be described as ‘fair’, even in the most primitive of democracies, much less a long-established one such as ours.<sup>38</sup>

- 7.36 The Festival of Light and Mr Lockett recommended that the Senate voting system be changed to require that voters indicate their preferences either for groups above the line (by numbering every box above the line rather than just placing a ‘1’ for their preferred group as is currently the case) or for individuals below the line. Preferences marked above the line would first flow to the candidates within the party in the order they are printed on the ballot paper, then in a similar way to candidates in other parties according to the party preference order indicated by the voter. Under this system, all ungrouped independent candidates would need to be listed both above and below the line:<sup>39</sup>

This would ensure that at least preferences for parties, if not preferences for individual candidates within parties, reflect the wishes of the electors rather than those of their first-choice party.<sup>40</sup>

- 7.37 Mr Lockett also suggested changing the format of the ballot paper to allow ‘left of the line’ voting (ticket voting for party groups, grouped independents and ungrouped independents) or ‘right of the line’

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37 Submissions (Festival of Light, no. 71, p. 4; Salt Shakers, no. 135, p. 3).

38 Submission (Mr E. Lockett, Reclaim Your Parliament movement, no. 98), p. 11.

39 Submission (Festival of Light, no. 71), p. 4. This recommendation was also supported by Mr E. Lockett, submission no. 98, p. 11.

40 Submission (Mr E. Lockett, no. 98), p. 11.

voting for each candidate.<sup>41</sup> A similar layout is currently used for Western Australian Legislative Council elections.<sup>42</sup>

- 7.38 Salt Shakers argued that Senate candidates should not be allowed to be members of a political party, thereby eliminating the possibility of ATL voting altogether. Salt Shakers did not elaborate on their reasons for banning party membership for Senate candidates.<sup>43</sup>
- 7.39 Mr Mark Hurd and Mr Ian Bowie suggested that ‘above the line preference flows for the Senate ballot paper, as submitted by the parties’ be displayed at all polling places.<sup>44</sup> The Committee notes that this is a requirement of the Electoral Act.<sup>45</sup> However, the submissions from Mr Hurd and Mr Bowie suggest that some voters are unaware of this provision, and have not seen the AEC’s displays of posters and voting ticket booklets at previous elections.<sup>46</sup>
- 7.40 The Committee notes that a different method of ATL voting has been adopted for New South Wales Legislative Council elections, in conjunction with partial preferential voting. A voter, when voting above the line, must record a preference for at least one group but may then record further ATL preferences as desired (unlike Senate elections). Preferences flow to candidates in the marked ATL group/s only, in the order the voter preferenced those groups<sup>47</sup> (alternatively, the voter must record a preference for at least 15 ungrouped candidates). The Committee will examine whether aspects of this system are applicable to federal elections at a later date.

#### Transfer value of preferences

- 7.41 The Electoral Reform Society of South Australia argued that the current system for calculating the ‘transfer value’ of second and subsequent Senate votes is flawed:

With the Senate count now computerised, the correct transfer values can be calculated. The current formula using

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41 Submission (Mr E. Lockett, no. 136).

42 Electoral Council of Australia, *Voting Systems: Western Australia*; at: [http://www.eca.gov.au/systems/australia/by\\_area/wa.htm](http://www.eca.gov.au/systems/australia/by_area/wa.htm), accessed 14 April 2003.

43 Submission (Salt Shakers, no. 135), p. 3.

44 Submission (Mr M. Hurd, no. 1).

45 *Commonwealth Electoral Act 1918*, sections 211 and 216.

46 See also submission (AEC, no. 199), p. 5.

47 As with Senate ATL voting, distribution of preferences within a group is done in accordance with a voting ticket lodged by that group.

averaging distorts the proportionality of the voting with some votes increasing in value.<sup>48</sup>

- 7.42 Three submissions also suggested alternative ‘weighting’ methods for the House of Representatives, so that second and subsequent preferences have less value than the primary vote. For example, Ms Pauline Chitty recommended that in a compulsory preferential system, the second and subsequent preferences should be weighted so that a second preference would carry 50 per cent of the value of the first preference, the third preference carries 33 per cent of the first preference, and so on.<sup>49</sup>

### Alternative voting systems

- 7.43 The Greens NSW argued that the House of Representatives voting system favours major parties, stating that while minor parties won over 15 per cent of the national vote in 2001, none won a House of Representatives seat.<sup>50</sup> According to the Greens NSW, this means that the House of Representatives as currently elected is ‘far from representative’. The Greens NSW advocated a proportional representation system for the House of Representatives, with multi-member electorates based on a Hare-Clark electoral system.<sup>51</sup>
- 7.44 The Electoral Reform Society of South Australia also supported a change to a Hare-Clark system for the House of Representatives, stating:

At the 1998 Federal Election, only 54 per cent of Australian voters found that their votes actually elected someone to the House of Representatives. In contrast to the House of Representatives... Senate elections give a much fairer result. Not only were Senators elected to represent their parties or supporters in proportion to the votes received, but also it is

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48 Submission (Electoral Reform Society of South Australia, no. 97), p. 2.

49 Submission (Ms P. Chitty, no. 46). Other submissions recommended similar weighting: see Mr D. Annear (no. 132); Mr K. Hayes (no. 56).

50 The Committee notes that the Australian Greens now hold the House of Representatives seat of Cunningham, following a by-election in October 2002.

51 The Hare-Clark system is a Single Transferable Vote (STV) proportional representation system used in multi-member electorates. Candidates are elected via a quota, with excess votes distributed to other candidates according to electors’ preferences. See Tasmanian Electoral Office: *What is Hare-Clark?* at:

<http://www.electoral.tas.gov.au/pages/electoral.htm>, accessed 16 April 2003.

Submission (Greens NSW, no. 158), p. 1.

estimated that [for the 2001 election] over 85 per cent of voters found their vote electing a Senator.<sup>52</sup>

7.45 Other submissions called for the following changes to the electoral system:

- introduction of a first-past-the-post system;<sup>53</sup>
- introduction of 'Robson Rotation' in order to negate any political benefit from the 'donkey' vote (whereby uninterested voters simply mark preferences '1,2,3,4...' straight down the ballot paper);<sup>54</sup>
- 'holding over' by-elections until the next general election, or filling House of Representative vacancies through a system similar to that used in the Senate to fill casual vacancies;<sup>55</sup> and
- filling Senate vacancies by 'countback' – that is, recounting the votes, excluding the departing Senator, instead of the current practice whereby a replacement from the same political party as the departing Senator (at the time of that Senator's election) is chosen by the relevant State or Territory Parliament.<sup>56</sup>

#### Committee comment

7.46 The Committee notes the views of those advocating changes to the current electoral system. The Committee does not support the broad changes suggested above. In particular, a move to optional preferential voting could lead to many voters casting one preference only, resulting in a *de facto* first-past-the-post system. The current full preferential voting required for both House of Representatives and Senate elections ensures that elected candidates have the support of the majority of their electorate, and thereby confers legitimacy on the composition of the Parliament and the government. The Committee is of the view that the single-member constituencies of the House of Representatives elected through full preferential voting, combined

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52 Submission (Electoral Reform Society of South Australia, no. 97), p. 2.

53 Submission (Ms P. Chitty, no. 46).

54 Submissions (Mr R. Munro, no. 50; Electoral Reform Society of South Australia, no. 97). Robson Rotation, introduced to the Tasmanian Parliament by Neil Robson MHA in 1977, is a process of rotating candidates' names within a column on the ballot paper, so favoured positions (i.e. top of the ballot paper) are shared equally between all candidates. The ACT adopted Robson Rotation for elections to the ACT Legislative Assembly in 1995.

55 Submissions (Mr D. Combe, no. 19, Mr S. McConnell, no. 32).

56 Submission (Electoral Reform Society of South Australia, no. 97).

with the Senate's system of proportional representation, provide a good balance in the Australian political system.

## The parliamentary term

7.47 The Committee received a number of submissions arguing that the parliamentary term should be changed to a fixed four-year term.<sup>57</sup> For example, the Greens NSW argued:

It is highly undemocratic for a Prime Minister to be able to determine the date of an election. As a candidate and member of a political party it is unlikely that the Prime Minister or Government of the day will be impartial when determining an election date. Politicians are almost certain to choose a date that will enhance the chances of retaining government. This will depend on political issues that are attracting media attention. This power provides an unfair election advantage to the government.<sup>58</sup>

7.48 The submissions argued that the advantages of fixed four-year terms would include:

- certainty and stability in the electoral cycle, which would have a positive effect on government planning and decision-making;
- avoiding a clash with major events and school holidays; and
- cost savings.<sup>59</sup>

7.49 The State Parliament of NSW is elected for a fixed four-year term, and the ACT Legislative Assembly has a three-year fixed term.<sup>60</sup> The Victorian Parliament recently passed legislation introducing fixed four-year terms for state elections.<sup>61</sup> A table comparing the electoral

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57 Submissions (Greens NSW, no. 158; Electoral Reform Society of South Australia, no. 97; Friends of the Earth, no. 32; Mr R. Munro, no. 50; Mr D. Combe, no. 19; Progressive Labour Party, no. 66).

58 Submission (Greens NSW, no. 158).

59 Submissions (Friends of the Earth, no. 32; Electoral Reform Society of South Australia, no. 97; and Mr D. Combe, no. 19).

60 Electoral Council of Australia, *Electoral Systems*, at: [http://www.eca.gov.au/systems/australia/by\\_category/terms\\_members.htm](http://www.eca.gov.au/systems/australia/by_category/terms_members.htm), accessed 13 May 2003.

61 *Parliamentary (Constitution Reform) Act 2003* (Victoria), at: [http://www.dms.dpc.vic.gov.au/sb/2003\\_Act/A01171.html](http://www.dms.dpc.vic.gov.au/sb/2003_Act/A01171.html), accessed 13 May 2003.

systems of the Commonwealth and State and Territory parliaments is at Appendix G.

- 7.50 Predecessors of this Committee have supported calls for a change to a four-year parliamentary term. The 1998 Committee recommended that the Constitution be amended to provide four-year parliamentary terms, ‘so as to facilitate better long-term planning by government and ensure consistency with state jurisdictions and cost savings’.<sup>62</sup> The Committee was silent on the question of related amendments to the six-year Senate term.

#### Committee comment

- 7.51 Predecessors of this Committee have endorsed four-year terms for the House of Representatives. This Committee also endorses this reform, and expresses the hope that the Government will progress it.

## Electronic voting

- 7.52 A number of submissions called for the introduction of electronic voting.<sup>63</sup> For example, Ms Gina Behrens wrote:

In a nation and world where even our finances are conducted via the computer, why do we still vote with the stub of a pencil?<sup>64</sup>

- 7.53 The term ‘electronic voting’ or ‘e-voting’ covers a wide range of technological applications, including the punch-card technology used in the US, computer terminals connected via a secure network, touch screen and audio technology, and the separate and distinct use of internet technology to lodge votes. A brief overview of electronic voting, and the main issues it raises, appears below.

### Advantages and disadvantages

- 7.54 The major claimed advantages of electronic voting, as identified by Australian electoral authorities, are:

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62 JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election, and matters related thereto*; Parliament of Australia, June 2000, p. 151.

63 Submissions (Mr D. Combe, no. 19; Ms G. Behrens, no. 45 ; Mr R. Munro, no. 50; Rev. S. Slucki, no. 72; Salt Shakers, no. 135; AEC, no. 147; SGC, no. 148).

64 Submission (Ms G. Behrens, no. 45).

- Secrecy for assisted voters - The use of e-voting can extend the secret ballot to those with visual impairment who otherwise require assisted voting to cast their vote. Similarly, e-voting can assist those with English language difficulties, eliminating the need for assisted voting and limiting the possibility of misunderstanding and voter error for those who do not ask for assistance;
- Convenience – electronic voting may facilitate easier voting for some sections of the public – for example, those who live in remote locations. In countries without compulsory voting, it may encourage some people to vote who would otherwise not have bothered, by making the process more convenient; and
- Counting – electronic voting (and therefore vote counting) may enable a faster count and declaration of election results (particularly in complicated electoral systems such as Hare-Clark).<sup>65</sup>

7.55 There are also a number of concerns surrounding any proposal to introduce electronic voting. These include:

- security – internet voting raises the most security concerns. According to an AEC evaluation of internet voting, the main problems are exposure of internet votes to outside attack; and voter authentication or fraud. Internet voting (and also other forms of electronic voting such as touch screen or secure network voting) would leave no paper trail, an important aspect of the accountable and transparent electoral system that exists in Australia;
- logistics – there are questions about the technical capacity to process the votes of a very large number of people within a very short period of time, that is, on election day; and
- cost - the cost of introducing electronic voting to parliamentary elections on anything but a very small scale would be prohibitive compared to the benefits associated with such a scheme. Thousands of computer terminals and technical staff, as well as

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65 Elections ACT, *The 2001 ACT Legislative Assembly Election: Electronic Voting and Counting System Review*, ACT Electoral Commission, June 2002; at: <http://www.elections.act.gov.au/adobe/2001ElectionReviewComputerVoting.pdf>, accessed 13 May 2003.



substantial amounts of expensive computer hardware, would be required to achieve the claimed advantages.<sup>66</sup>

### Electronic voting in other jurisdictions

- 7.56 In 2001 the ACT Legislative Assembly trialled the use of computer technology for the first time in an Australian parliamentary election. The Electronic Voting and Counting System (EVACS) trial was primarily aimed at speeding up the counting of votes and distribution of preferences under the ACT's complex Hare-Clark voting system, but also worked to assist the visually impaired and non-English speakers in casting their votes. Features of the EVACS system included:
- on-screen voting instructions in 12 different languages;
  - an audio facility and tactile keyboard, enabling visually impaired voters to navigate through the ballot 'paper' without assistance;
  - the use of a closed system (not internet-based) using special software linked to a server in each polling location; and
  - electronic voting for 12 days prior to the election at four pre-poll locations, and at eight polling booths on polling day.
- 7.57 Implementation of the EVACS system resulted in over 16,500 votes being cast electronically, out of a total 198,814 votes cast at the 2001 election.<sup>67</sup>
- 7.58 In its submission to this inquiry the AEC ruled out an ACT-style electronic voting system for federal elections, primarily due to cost factors. The AEC also commented that one of the main drivers for the ACT trial was the desire to obtain faster election results. There is an

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66 Colin Barry, et al, *Electronic Voting and Electronic Counting of Votes: A Status Report*, Electoral Council of Australia, March 2001; at: [http://www.eca.gov.au/reports/electronic\\_voting.pdf](http://www.eca.gov.au/reports/electronic_voting.pdf), accessed 13 May 2003. Elections ACT, *The 2001 ACT Legislative Assembly Election*, as above. Submission (AEC, no. 147), p. 27.

67 Elections ACT, *The 2001 ACT Legislative Assembly Election*, as above. Elections ACT, *2001 Election – First Preference Results*; at: <http://www.elections.act.gov.au/ResSum01.htm>, accessed 14 May 2003. ACT Elections has recently declared that the provision of full-scale electronic voting for ACT Legislative Assembly elections would be 'impossible' for reasons of expense and logistics. As noted by Frank Cassidy, 'electronic voting in next year's Assembly election would remain the same as for the 2001 federal election, with eight centres wired up on election day, and four in the pre-poll lead-up'. Frank Cassidy, 'ACT pulls plug on computer poll plan', *Canberra Times*, Wednesday 4 June 2003, p. 4.

absence of such a need at the federal level, as under the current federal voting system results can be obtained fairly quickly.<sup>68</sup>

7.59 Internet voting has been trialled in the US, at the 2000 Democratic Primary elections in Arizona and also for a small group of US overseas defence personnel in the 2000 general election. Voters were offered the choice of voting for their preferred nominee over the internet. All voters were mailed out a PIN to be used with other personal information to assist in verifying voter identification.<sup>69</sup> Several AEC officers observed the Arizona trial, and commented that the trial highlighted the following issues as important to the e-voting debate:

- security of the internet for elections;
- cost of providing internet voting services;
- exposure to fraud and widespread 'flooding' of the internet voting site;
- potential for discrimination against those who cannot access the internet or those who are not proficient in its use; and
- potential for coercion and intimidation when voting in an unsupervised setting.<sup>70</sup>

7.60 The AEC report on the Arizona trial found:

widespread internet voting assumes a secure infrastructure of voter terminals that simply does not exist. The average computer user is relatively untrained in defence procedures regarding viruses.<sup>71</sup>

7.61 The report also found that the current paper-based voting system provides considerable transparency in the entire electoral process, from voting through to counting and distribution of preferences. The ability of the internet to provide such transparency was questioned. In concluding its evaluation of internet voting, the AEC report found that there is insufficient maturity in the security of the internet to support its widespread use for government elections.

7.62 The UK Government has committed to an 'e-enabled' general election 'sometime after 2006', spending £30 million on trials over the next

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68 Submission (AEC, no. 147), p. 29.

69 Colin Barry, et al, *Electronic Voting and Electronic Counting of Votes*, as above.

70 Colin Barry, et al, *Electronic Voting and Electronic Counting of Votes*, as above.

71 Colin Barry, et al, *Electronic Voting and Electronic Counting of Votes*, as above, p. 14.

three years.<sup>72</sup> The UK Government envisages that electronic voting will be optional for the voter for the time being, rather than replacing existing polling methods. Electronic voting trials for local government elections in May 2003 have included internet, mobile phone text messaging, digital television, and touch-telephone voting.<sup>73</sup>

- 7.63 At its July 2002 general election, New Zealand introduced an internet service to voters who were overseas at the time of the election. Enrolled overseas electors could download a ballot paper and declaration certificate from a secure internet site by providing their name, address and date of birth. Electors were then required to print out the ballot paper, mark it, sign the declaration form and fax it back to the Electoral Office. The Electoral Office then enclosed the forms in a 'special vote' envelope and forwarded them to the relevant DRO. An AEC observer team reported that the service was used by 20,000 overseas electors, and that there were no instances of attempted breach of security.<sup>74</sup>

### **AEC view on electronic voting**

- 7.64 The AEC submitted that it has reached the view that electronic voting for federal elections should be offered as an alternative or addition to postal voting.<sup>75</sup> A wider system, for example one that provided electronic voting at each polling booth, is not considered cost-effective at this time. The AEC envisaged that a postal voting system with electronic voting options would provide greater convenience to a number of groups of electors, for example those who are:
- in remote locations, both in Australia and overseas, who do not have access to other voting facilities and do not have a reliable postal service;
  - from non-English speaking backgrounds, who may find it easier to vote using a multi-language internet site, or voice recognition technology;

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72 David Hencke, 'E-votes will push out ballot box by 2006', *The Guardian*, 17 July 2002, at: <http://www.guardian.co.uk/internetnews/story/0,7369,756668,00.html>, accessed 12 May 2003.

73 United Kingdom Cabinet Office: E-Democracy, at: <http://www.edemocracy.gov.uk>, accessed 13 May 2003.

74 Colin Barry, et al, *eVolution not revolution: Electronic Voting Status Report 2*; Electoral Council of Australia; September 2002; p. 17.

75 Submission (AEC, no. 147), p. 30.

- vision-impaired, who may be able to use screen-reader and speech synthesiser technology, allowing a private vote; or
- based in Antarctica, who at present are not compelled to vote because the secrecy of their vote cannot be guaranteed (completed ballot papers are sent via fax and phone to Tasmania).<sup>76</sup>

7.65 A 2002 AEC discussion paper on electronic voting further elaborated the proposal to introduce electronic voting as an addition to postal voting. Under the system:

- the elector would apply for their postal vote in the normal way, and the AEC would dispatch to the elector postal ballot materials, together with additional information about an internet address in case the elector wished to utilise internet voting, or a telephone number in case the elector wished to utilise touch phone voting. (Alternatively, electors could indicate at the time of applying for a postal vote which kind of vote they wished to utilise.);
- the elector would receive a PIN, to be used in conjunction with another piece of personal information to access the internet or telephone voting system; and
- enhancements would have to be made to the scrutiny system for declaration votes, to ensure that any elector who had access to multiple voting methods (postal vote, internet or telephone vote) would only have one vote admitted to the count.<sup>77</sup>

7.66 Under the current Electoral Act provisions, the AEC is unable to conduct pilots of electronic voting for the House of Representatives or the Senate. The AEC recommended that the Electoral Act and the Referendum Act be amended to allow such pilot trials to take place.

#### Committee comment

7.67 The Committee believes that while electronic voting may offer some potential benefits, there are also many risks involved. It does not support the AEC's recommendation to proceed with unspecified pilot trials of electronic voting, which have as-yet unexplored implications for the operation of the Electoral Act. Prior to any approval for pilot trials, the AEC should first provide to the Parliament, via this Committee, a detailed implementation plan, outlining:

- the scope and scale of the proposed trial;

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<sup>76</sup> Submission (AEC, no. 147), p. 30.

<sup>77</sup> Colin Barry, et al, *eVolution not revolution*, September 2002, as above, p. 19.

- the technology proposed, including a software development plan and compliance with independent standards;
- a detailed breakdown of costs;
- details on security measures;
- the impact on the operation of the Electoral Act and any amendments required;
- the perceived benefits of the proposed scheme; and
- an evaluation plan following any such trial.

## Public participation

- 7.68 A number of submissions made recommendations concerning public participation in the democratic process. These included:
- calls for the introduction of citizen-initiated referenda to determine major public policy issues;<sup>78</sup>
  - placement of ‘voting computers’ in central public places, such as libraries, to enable citizens to learn the background of proposed Bills and indicate their views, ‘thereby educating the public in the use of the democratic vote’;<sup>79</sup> and
  - convening of a Constitutional Convention or similar independent commission to discuss all matters related to the operation of the Federal Government and Parliament and the electoral system.<sup>80</sup>
- 7.69 The Committee notes the contribution of these submissions to the inquiry, and believes that these important issues should be subject to broad public debate.

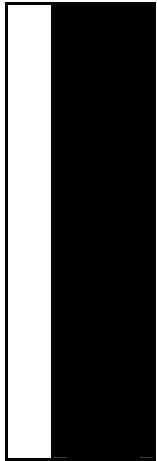
**Petro Georgiou, MP**  
**Chair**  
**June 2003**

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78 Submissions (Mr T. Dolling, no. 20; Dr V. Yule, no. 26).

79 Submission (Ms G. Behrens, no. 45).

80 Submissions (Friends of the Earth, no. 32; Mr E. Lockett, no. 98).



# **Report of the Inquiry into the conduct of the 2001 Federal Election and matters related thereto**

## **Supplementary Remarks—Senator Andrew Bartlett and Senator Andrew Murray**

### **1 Prologue**

These ‘Supplementary Remarks’ of ours are so titled because this is not a dissenting report. There is little we would disagree with in the Main Report. We consider it an important Report, whose recommendations if accepted would advance electoral law and the functioning of our Federal democracy.

Nevertheless, without diminishing its importance, the Main Report is a Report that focuses more on analytical technical administrative and functional matters, and eschews some of the more controversial topics on which Committee unanimity is less likely.

One highly controversial issue the Committee did take up productively and resolve unanimously in the Main Report is the voter identification issue.

By the nature of the Committee’s processes and remit, the Joint Standing Committee on Electoral Matters (JSCEM) reform agenda tends to be

incremental, and the Committee is careful of change that may affect the integrity of our system.

The topics covered in these Supplementary Remarks are coincidentally those of the greatest public interest and notoriety. Although the Report does include a section on funding and disclosure, it is not an issue considered in any real depth.

Prior to the 2001 election the JSCEM had been given a reference to examine political donations and disclosure and received many submissions. Hearings were held. After the 2001 election the Inquiry was not resurrected (against our wishes), and the topic has received low coverage in the Report.

In our view, there is no more appropriate place to address the spectrum of relevant electoral and political issues than in the JSCEM's triennial election review. Our Supplementary Remarks therefore intend to pick up on three contentious and topical areas neglected in the Main Report: Political Governance; Political Donations; and Constitutional Reform.

We make no apology for repeating some observations made by us in the JSCEM Reports on the 1996 and 1998 elections. However, space does not allow us to develop arguments as fully as we would like.

In the Democrats' Minority Reports on the JSCEM's Reports into the 1996 and 1998 elections, we drew attention to voter dissatisfaction with politics, politicians, and parliaments, expressed through polls and in the media.

While there appears to be little improvement regarding voter perceptions since then, with no significant advance in parliamentary or political standards, or party political governance, there have been considerable gains in accountability and reporting, particularly in the area of parliamentary entitlements.

Aspirations to higher standards may be idealistic but in our view higher political standards remain worthy and necessary goals.

The Australian Democrats remain largely unsuccessful in our quest for significant improvements in party political governance, a more representative political system, truth in political advertising, and full disclosure of all types of political party income.

## 2 An insufficiently representative HoR<sup>1</sup>

The Main Report has not addressed the issues of democratic representation at all, which is a great pity, because those issues go to the heart of democratic needs – the right to be represented.

The 2001 election again demonstrated the weakness that democratically speaking, large numbers of voters who gave their primary vote to minor political parties are not directly represented in the House of Representatives (HoR).

In 2001 Australia's only two major parties, the Liberal and Labor parties, secured 74.9% of the HoR vote, up from 74.5% in 1998. The Labor Party secured a primary vote of 37.8%, and the Liberal party 37.1%.

Of the minor parties, the National Party (13 members) and the (Northern Territory) Country Liberal Party (1 member), gained representation in the HoR, with 5.6% and 0.3% of the national vote respectively. Three Independents were successful.

Of the minor parties not represented in the HoR, the most notable were the Australian Democrats 5.4% and One Nation 4.3%.

Overall, over 18% of voters, nearly one in five, were not represented in the HoR at all, having given their primary votes to political parties and independents other than the Liberals, Labor or the Nationals.

Federal election after federal election shows that one quarter of all Australian voters are not major party voters. These voters largely remain unrepresented in the HoR.

This situation has led to campaigns to make the HoR more representative, with suggested reforms ranging from full proportional representation, to a 'top-up' party list system to adjust unequal outcomes.

The Australian Democrats have previously proposed that the present system be adjusted for the HoR with a form of 'mixed member proportional voting', which provides a compromise between the competing principles of local representation and fair representation.

There have been moves towards proportional voting systems in recent years in unicameral parliaments such as New Zealand, and the new parliaments of Scotland and Wales.

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1 For figures used in this section see the AEC 2001 Electoral Pocketbook.



Although nine<sup>2</sup> political parties are represented in the two Federal houses of Parliament, many commentators still focus on bipartisan not cross-party politics. Australia is still commonly described in two-party terms.

Australia is a multi party system, but its political discourse often exhibits a two-party mentality.

Typical of multi party democracies, the Australian Federal Government is comprised of a coalition of parties.<sup>3</sup> Like many democratic governments too, its power is disproportionate to its support.

57% of voters do not give their primary vote to the Government in the HoR. Conversely and disproportionately however, it holds 54.7% of the HoR seats.

The nearly proportional representation nature of the Senate (within<sup>4</sup> States and Territories) provides a useful and desirable democratic counter to the distorted nature of HoR representation.

This is reflected in the Government's share of votes and seats. In the Senate the Government had 41.8% of the national primary vote in 2001, and held 46.0% of the seats.

The role of the Senate as a brake on the excesses of an unrepresentative HoR continues to be the subject of attack. There are powerful organisations and individuals who still seek to make our parliamentary democracy less democratic, less accountable and less progressive, by making the Senate less proportionally representative and more subservient to the HoR.

It is the Senate, free of the dominance of the Executive, which preserves the essence of the separation of powers, not the HoR. It is the Senate that protects the sovereignty of the people, not the HoR, which is dominated by representatives of a minority of voters with a majority of seats.

After the 2001 election 95% of Australians were represented by their party of choice in the Senate. In contrast, over 18% of the HoR were not.

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2 The Liberal Party of Australia and the Northern Territory Country Liberal Party; the Australian Labor Party and the Country Labor Party; the National Party of Australia; the Australian Democrats; the Australian Greens; the Australian Progressive Alliance; and Pauline Hanson's One Nation Party.

3 The Liberal Party of Australia, the Northern Territory Country Liberal Party and the National Party of Australia.

4 As opposed to *between* States and Territories. The Federal Constitution allows for equal Senate representation of States, despite great disparities between State voting populations, (a Tasmanian's Senate vote has 13 x the value of a NSW Senate vote).

### 3 Political governance

Political governance needs to be focussed on as a reform priority.

Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture, and how transparent and accountable it is.

The natural inclination of political parties is towards self-regulation. Since political parties control the legislature, the consequence is that the regulation of political parties is relatively perfunctory, in marked contrast to the much stronger regulation for corporations or unions.

True, the registration of political parties is well managed, as a necessary part of election mechanics.

The conduct of political parties apart from election mechanics is often poor. Yet it is in the conduct of political parties that great public interest resides and where corrupted processes can result in real dangers. Corrupted processes are most evident in issues like branch-stacking, pre-selection rorts, and abuses of party political power.

Political parties by their role, function, importance and access to public funding are not private bodies but are of great public concern. The courts are catching up to that understanding.<sup>5</sup> Nevertheless, the common law has been of little assistance in providing the necessary safeguards.

To date the Courts have been reluctant to imply common law provisions (such as on membership or pre-selections) into political party constitutions, although they have determined that disputes within political parties are justiciable.

Political parties are fundamental to the Australian society and economy. They wield enormous influence over the life of every Australian. Political parties need the very proper and necessary safeguards and regulation that are there for corporations or unions – for the same reason - it is in the public interest.

The integrity of an organisation rests on solid and honest constitutional foundations. Corporations and Workplace Relations Law provide a model for

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5 Baldwin v Everingham (1993) 1 QLDR 10; Thornley & Heffernan CLS 1995 NSWSC EQ 150 and CLS 1995 NSWSC EQ 206; Sullivan V Della Bosca [1999] NSWSC 136; Clarke v Australian Labor Party (1999) 74 SASR 109 & Clarke v Australian Labor Party (SA Branch), Hurley & Ors and Brown [1999] SASC 365 and 415; Tucker v Herron and others (2001), Supreme Court QLD 6735 of 2001.

organisational regulation. The successful functioning of a company or a union is based on its constitution, which must conform to the legal code.

Political parties do not operate on the same foundational constructs.

What is surely indisputable is that the public interest has to be served. Political parties have to be more accountable because of the public funding and resources they enjoy, and because of their powerful public role.

The Democrats have argued for a set of reforms that would bring political parties under the type of regulatory regime that befits their role in our system of democracy and accountability.

The present *Commonwealth Electoral Act 1918* does not address the internal rules and procedures of political parties. The JSCEM's 1998 Report recommended (No.52) that political parties be required to lodge a constitution with the AEC that must contain certain minimal elements. Whilst we believe this recommendation is a significant one, we believe it does not go far enough.

The AEC deals with a number of these issues in Recommendations 13-16 in the AEC Funding and Disclosure Report Election 98. Recommendation 16 asks that the Act provide the AEC with the power to set standard, minimum rules which would apply to registered political parties where the parties own constitution is silent or unclear. This too is a significant recommendation, which should be given consideration.

We believe that the following reforms are necessary to make political parties open and accountable:

- The Commonwealth Electoral act should be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitution of companies;
- Party constitutions should be required to specify:
  - ⇒ The conditions and rules of membership of the party
  - ⇒ How office-bearers are preselected and elected
  - ⇒ How preselection of political candidates is to be conducted
  - ⇒ The processes that exist for resolution of disputes and conflicts of interest
  - ⇒ The processes that exist for changing the constitution
  - ⇒ The processes for administration and management.

The Party would be free to determine the content under each heading, subject in some cases to certain minimum standards being met.

- Political parties exercise public power, and the terms on which they do so must be open to public scrutiny. Party constitutions should be publicly available documents updated at least once every electoral cycle. (The JSCEM was once told by the AEC that a particular party constitution had not been updated in their records for 16 years!). The fact that most party constitutions are secret prevents proper public scrutiny of political parties;
- The AEC should be empowered to oversee all important ballots within political parties to ensure that proper electoral practices are adhered to. At the very least the law should permit them to do so at the request of a registered political party. The law should be proactive and should also cater for the future possibility of an American Primary type system;
- The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty.

Simply put, all political parties must be obliged to meet minimum standards of accountability and internal democracy. Given the public funding, the immense power of political parties (at least of some parties), and their vital role in our government and our democracy, it is proper to insist that such standards be met.

The increased regulation of political parties is not inconsistent with protecting the essential freedom of expression and the essential freedom from unjustified state interference, influence or control.

Greater regulation would offer political parties better protection from internal malpractice and corruption, and the public better protection from its consequences, and it would reduce the opportunity for public funds being used for improper purposes.

### **Recommendation 3.1**

**The following initiatives would bring political parties under the type of accountability regime that should go with their place in our system of government:**

- a) **The *Commonwealth Electoral Act* be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of Companies;**

- b) Party constitutions should be publicly available documents updated at least once every electoral cycle;**
- c) The key constitutional principles of political parties should at least include:**
  - **the conditions and rules of membership of a Party;**
  - **how office-bearers are preselected and elected;**
  - **how preselection of political candidates is to be conducted;**
  - **the processes that exist for the resolution of disputes and conflicts of interest;**
  - **the processes that exist for changing the constitution;**
  - **the processes for administration, management and financial management.**
- d) The relationship between the party machine and the party membership requires better and more standard regulatory, constitutional and selection systems and procedures, which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and the members. Specific regulatory oversight should include:**
  - **Scrutiny of the procedures for the preselection and election of candidates for public office and party officials in the constitutions of parties, to ensure they are democratic;**
  - **The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty;**
  - **All important ballot procedures within political parties should be overseen by the AEC to ensure proper electoral practices are adhered to, if a registered political party so requests. The law should be proactive and should also cater for the future possibility of an American Primary type system.**

The above recommendation may not go far enough in addressing the scourge of branch-stacking and pre-selection abuse that is widely reported to occur in many political parties, but it is a start.

A Member or Senator who has won their seat through branch stacking or pre-selection abuse can be seen as morally corrupt. A Member or Senator that is pre-selected as a result of financial, union or any other patronage is beholden.

That such parliamentarians can then rise to power in government or parliament is a concern.

Regrettably, no political party is safe from attempted branch stacking or pre-selection abuse. However, it is the energy and determination with which branch stacking is dealt with, that distinguishes the standards of the political parties concerned.

### **Recommendation 3.2**

#### **That the JSCEM and the AEC give closer scrutiny to branch stacking and pre-selection abuses in political parties.**

‘One vote one value’ is a fundamental democratic principle recognised by Article 25 of the International Covenant on Civil and Political Rights.

Since the 60’s the Labor Party has been particularly strong about the principle of ‘one vote one value’, first introducing legislation in the Federal Parliament in 1972/3. In recent years the ALP has taken the matter to the High Court with respect to the West Australian electoral system. They should therefore be expected to support ‘one vote one value’ as a principle within political parties.

The democratic principle of ‘one vote one value’ is well established, and widely supported. During the 70’s, 80’s, and 90’s the principle of ‘one vote one value’, with a practical and limited permissible variation, was introduced to all federal, state and territory electoral law in Australia, except Western Australia’s. As far back as February 1964 the US Supreme Court gave specific support to the principle.

It should also be a precondition for the receipt of public funding that the party comply with the one-vote one-value principle in its internal rules. At least one political party in Australia (the ALP) has internal voting systems that give some members greater voting power than other members, resulting in gerrymandered elections for conventions and various other ballots.

This power is reinforced by the exaggerated factional voting and bloc power of union officials. If more powerful votes are also directly linked to consequent political donations and power over party policies, then the dangers of corrupting influences are obvious.

If ‘one vote one value’ were translated into political parties’ rules, it would mean that no member’s vote would count more than another’s would, which would seem one way of doing away with undemocratic and manipulated pre-selections, delegate selections, or balloted matters.

We made a similar recommendation in our Minority Report on the JSCEM's Inquiry into the 1998 election. The JSCEM subsequently took this up as Recommendation 18 in its *User friendly, not abuser friendly* report.

### Recommendation 3.3

**That the *Commonwealth Electoral Act 1918* be amended to ensure that the principle of 'one vote one value' for internal party ballots be a prerequisite for the registration of political parties.**

Senator Murray and other Democrats have made a number of speeches in the Senate and elsewhere over the years concerning the accountability and governance of political parties. Democrat Issue Sheets have reflected these views, and Democrat traditions and perspectives support these views.

Among other things the proposition has been put that political parties, in addition to their overriding duty to the Australian public, must be responsible to their financial members and not to outside bodies (hence, 'one vote one value'). In Australia this is particularly relevant with respect to the ALP.

There are two legislative avenues that could be pursued in this regard - the Electoral and Workplace Relations (WRA) Acts. The JSCEM have taken the first step with its recommendation to introduce one vote one value in political parties, in its report on the integrity of the roll.

The WRA could be amended to insert provisions regulating the affiliation of registered employee and employer organisations to political parties.

These provisions would be contained in Chapter 7 of the Registration and Accountability of Organisations Schedule of the WRA (Schedule 1B), which relates to the democratic control of organisations by their members.

Such an approach might wish to

- Prohibit the affiliation, or maintenance of affiliation, of a federally or state registered employee or employer organisation with a political party unless a secret ballot of members authorising the affiliation has been held in the previous three years;
- Require a simple majority of members voting to approve affiliation to a political party, subject to a quorum requirement being met;

This proposition is popular with some ALP reformers who aim to make the process of Trade Union affiliation to political parties more transparent and democratic.

By way of background, the ALP is the only registered political party that allow unions to affiliate to it and to exercise a right to vote in internal party ballots, such as in the pre-selection of ALP candidates.

Unions affiliate on the basis of how many of their members their committee of management chooses to affiliate for. The more members a union affiliates for, the greater the number of delegates that union is entitled to send to an ALP state conference. Individual members of that union have no say as to whether they wish to be included in their unions affiliation numbers or not. Affiliation fees paid to the ALP by the union is derived from the union's consolidated revenue.

Some proposed amendments that could deal with the inherently undemocratic nature of the present system might be as follows:

- (a) Any delegate sent to a governing body of a political party by an affiliated union has to be elected directly by those members of the union who have expressly requested their union to count them for the purpose of affiliation. As an added protection, the Australian Electoral Commission could conduct such an election and the count would be by the proportional representation method.
- (b) Definitions would need to comprehensively cover any way a union may seek to affiliate to a political party e.g. by affiliating on the basis of the numbers of union members or how much money they may donate to a political party etc.
- (c) Any union delegates that attend any of the governing bodies of a political party that the union is affiliated to, must be elected in accordance with the Act.
- (d) Individual members of the union would need to give their permission in writing before the union can include them in their affiliation numbers to a political party. No person should be permitted to be both a voting party member in his or her own right, and also be part of the affiliation numbers of a union. Such people effectively exercise two votes, in contravention of the 'one vote one value' principle.

#### **Recommendation 3.4**

**That the *Commonwealth Electoral Act 1918* and the *Workplace Relations Act* be amended as appropriate to ensure democratic control remains vested in the members of political parties. Specifically with respect to registered organisations to:**

- **Require them to have secret ballot provisions in their rules;**



- **Prohibit the affiliation, or maintenance of affiliation, of a federally or State registered employee or employer organisation with a political party unless a secret ballot of members authorising the affiliation has been held at least once in a federal electoral cycle;**
- **Require a simple majority of members voting to approve affiliation to a political party, subject to a quorum requirement being met.**

## **4 Funding and disclosure**

The Australian Democrats have a long history of activism for greater accountability, transparency and disclosure in political finances.<sup>6</sup>

We also believe that democracy is best served by keeping the cost of political party management and campaigns at reasonable and affordable levels. Although in any democracy some political parties and candidates will always have more money than others, money and the exercise of influence should not be inevitably connected.

One step forward in setting a limit on expenditure is to set a limit on donations – to apply a cap, or ceiling.

Ultimately, to minimise or limit the public perception of corruptibility associated with political donations, a good donations policy should forbid a political party from receiving inordinately large donations.

We dealt with funding and disclosure issues at length in our Minority Reports on the JSCEM reports into the 1996 and 1998 elections. Progress in getting greater accountability in political funding and disclosure is slow, so we are obliged to repeat some of our previous themes.

It is essential that Australia has a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure.

The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in electing representatives, in the formulation or execution of public policy, and helping protect politicians from the undue influence of donors.

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6 A useful reference to our views is *the dangerous art of giving* Australian Quarterly June-July 2000 Senator Andrew Murray and Marilyn Rock.

Some political parties, in seeking to preserve the secrecy surrounding some of their funding, claim that confidentiality is essential for donors who do not wish to be publicly identified with a particular party. But the privacy considerations for donors, although in some cases perhaps understandable, must be made subordinate to the wider public interest of an open and accountable system of government.

Further, if donors have no intention of influencing policy directions of political parties, they would not be dissuaded by such a transparent scheme.

#### **Recommendation 4.1**

**No entity or individual may donate more than \$100 000 per annum (in cash or kind) to political parties, independents or candidates, or to any person or entity on the understanding that it will be passed on to political parties, independents or candidates.**

#### **Recommendation 4.2**

**Additional disclosure requirements to apply to Political Parties, Independents and Candidates:**

- a) any donation of over \$10 000 to a political party should be disclosed within a short period (at least quarterly) to the Electoral Commission who should publish it on their website so that it can be made public straight away, rather than leaving it until an annual return;**
- b) professional fundraising must be subject to the same disclosure rules that apply in the Act to donations.**

One of the key screening devices for hiding the true source of donations is the use of Trusts. The AEC<sup>7</sup> has dealt with some of these matters in Recommendations 6-8 concerning associated entities. The Labor Party<sup>8</sup> has given in-principle support to some of the AEC's recommendations, which the Democrats welcome.

The Democrats continue to recommend strong disclosure provisions for trusts.

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**Recommendation 4.3**

**Additional disclosure requirements to apply to Donors: Political parties that receive donations from Trusts or Foundations should be obliged to return the money unless the following is fully disclosed:**

- **a declaration of beneficial interests in and ultimate control of the trust estate or foundation, including the trustees;**
- **a declaration of the identities of the beneficiaries of the trust estate or foundation, including in the case of individuals, their countries of residence and, in the case of beneficiaries who are not individuals, their countries of incorporation or registration, as the case may be;**
- **details of any relationships with other entities;**
- **the percentage distribution of income within the trust or foundation;**
- **any changes during the donations year in relation to the information provided above.**

Another key screening device for hiding the true source of donations are certain 'clubs'. Such clubs are simply devices for aggregating large donations, so that the true identity of big donors is not disclosed to the public.

**Recommendation 4.4**

**Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor's identities are made.**

The Main Report does attend to the contentious issue regarding the question of political parties receiving large amounts of money from foreign sources – entities and individuals. It is neither necessary nor desirable to prevent individual Australians living overseas from donating to Australian political parties or candidates.

There is no case, and it is fraught with danger, for offshore based foundations, trusts or clubs to be able to donate funds, because those who are behind those

entities are hidden. Bodies with shareholders or members are more transparent.

However, none of these entities are capable of being audited by the AEC.

#### **Recommendation 4.5**

**Donations from overseas entities must be banned outright. Donations from Australian individuals living offshore should be permitted.**

In most cases, donors appear to make donations to political parties for broadly altruistic purposes, in that the donor supports the party and its policies, and is willing to donate to ensure the party's candidates and policies are represented in parliament. Nevertheless, there is a perception (and probably a reality), that some donors specifically tie large donations to the pursuit of specific policies they want achieved in their self-interest. This is corruption.

#### **Recommendation 4.6**

**The Act should specifically prohibit donations that have 'strings attached.'**

The practice of companies making political donations without shareholder approval and without disclosing donations in annual reports must end. So must the practice of unions making political donations without member approval. It is neither democratic nor right.

Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) should be given the right either to approve a political donations policy, to be carried out by the board or management body, or the right to approve political donations proposals at the annual general meeting.

This will require amendments to the relevant acts rather than to the Electoral Act.

#### **Recommendation 4.7**

**The Corporations, Workplace and other laws be amended so that either:**

- a) Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) must approve a political donations policy at least once every three years; or in the alternative**

- b) Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) must approve political donations proposals at the annual general meeting.**

Under the Registered Organisations schedule of the *Workplace Relations Act* elections are conducted under the auspices of the AEC.

It would seem self evident, in the public interest and for the same reasons - that the same provisions governing disclosure of donations for political organisations should apply to industrial or other organisations for whom the AEC conducts elections.

Controversy sometimes attends union elections. Trade Unions are an important institution in Australian society and union elections have become far more expensive to campaign in today than ever before.

Many people and organizations contribute to union election campaigns. As for political elections the public and members of those unions in particular should have the right to know the source of any campaign donations above a minimal amount.

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#### **Recommendation 4.8**

**Where the AEC conducts elections for registered and other organisations, the same provisions governing disclosure of donations for political organisations should apply.**

## **5 Constitutional and franchise matters**

There is not much disagreement in the community that the Australian constitution needs modernising and reform. The disagreement comes with the content and extent of any reform.

There is no Commonwealth body that is responsible for review of the Constitution. Even if there was, it is properly the responsibility of the Parliament.

By its nature and make-up, the JSCEM is suited for the task of Constitutional review and reviewing means of progressing our democracy. It has not ever taken up that full task, but it has attended to specific issues, such as four-year terms, fixed terms and Section 44 problems.

This Report is the proper place for putting at least a summarised case for some constitutional change.

The provisions in the Constitution were drafted at the turn of the century and must be modernised in order to accurately reflect the evolution of our country's policies and practices.

Although the Senate or the HoR can in theory put matters before the people of their own right, in practice initiating change to the Constitution via referendum has been the sole prerogative of the Prime Minister.

Section 128 of the Constitution provides that where a constitutional amendment is supported by only one House of Parliament, the Governor-General 'may' submit it to a referendum once the procedures set out in the section are satisfied. Of course, the Governor-General acts on the Government's advice in exercising this power, giving control of the process to the Prime Minister.

Even where there is Parliamentary unanimity on a case for reform over a long period (such as with s44), for political, practical and financial reasons there is generally little enthusiasm for the referendum process.

One answer to that barrier to action is to present a package of reforms in one hit. Nevertheless, without political unanimity, precedent shows that it is just as hard to get a package of reforms approved at referendum, as it is to get a single issue approved.

The Australian Democrats have campaigned for constitutional reform over the last 26 years. They have been at the forefront of the public debate.

That campaign remains as current now as then.

Democrats' Senator Macklin proposed a raft of Bills in 1987, which were effectively a package of legislative initiatives designed to remedy inadequacies in the Constitution:

- The *Constitution Alteration (Democratic Elections) Bill 1987* aimed to guarantee the right to vote and to guarantee that every citizen's vote will be treated equally ('one vote one value');
- The *Constitution Alteration (Fixed Term Parliaments) Bill 1987* provided for the present three-year term for the House of Representatives to be increased to four years and for the new four-year electoral cycle to be fixed;
- The *Constitution Alteration (Electors' Initiative) Bill 1987* sought to give citizens the right to initiate referenda upon gaining 5% in the electors petition;

- The *Constitution Alteration (Parliament) Bill 1987* sought to prevent a Constitutional crisis created by a deadlock in the Senate by breaking the nexus created by section 24 of the Commonwealth Constitution; and
- The *Constitution Alteration (Appropriations for the Ordinary Annual Services of Government) Bill 1987* sought to resolve the contentious issues of the Senate's power to block supply.

Current on the Senate Notice Paper are later generations of those Bills and other new Bills.

Senator Murray has introduced the following Bills affecting the Constitution:

- *Constitutional Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000*
- *State Elections (One Vote One Value) Bill 2001*; and

Senator Murray and Senator Stott Despoja have jointly introduced:

- *Constitutional Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001*

And Senator Stott Despoja has introduced the:

- *Republic (Consultation of the People) Bill 2002*.

Despite its topicality and public interest, we do not intend to dwell here on the community desire for greater input into the appointment of Australia's Governor General, or the bigger issue of the campaign for a Republic, except to say that the Parliament needs to keep the process alive and moving forward through its Committee processes.

Fixed and four year terms do however need a fuller discussion. Australian and some international practice is listed below. (These tables are additional to those helpful tables in the Main Report.)

Australia has nine legislatures and fifteen houses of parliament in its federal system.

Of the nine lower houses three (including the Commonwealth) have three-year terms and six have four-year terms. Four have fixed terms with pre-set election dates, and five do not have fixed terms with pre-set election dates.

Of the six upper houses, two have four-year terms, two (including the Commonwealth) have six-year terms, and two have eight-year terms. All have fixed terms but only four have pre-set election dates.

Looking at the terms of parliaments in 30 OECD countries, Australia is in the backward minority of four countries that have terms of less than three years for their lower houses. The vast majority have four-year terms, so giving their governments a reasonable period to implement their policy agenda, and for the people to judge their performance.

Although the USA in theory stands out as the odd man out, (with Congress elected every two years), in practice the *government* (namely the President), accords with international norms, being elected on a four-year fixed term with a pre-set election date.

We have not been able to get details in time for this Report on the question of fixed terms with pre-set election dates in international practice. One guide is provided in a (perhaps outdated) entry in the *Blackwell Encyclopaedia of Political Science* (1992) David Butler states:

In the majority of democracies there are no fixed dates for elections though parliaments often last for their full three-, four or five-year term. [Apart from the USA] ...Norway [September] and Switzerland [November] are the only democracies in Europe to have fixed-term parliaments with no provision for early dissolution; but several other states such as Portugal and Sweden have very limited facility for early dissolution.

Table 1 Australian Commonwealth and State Terms of Parliament

Legislature	Date
<b>Commonwealth (Bicameral)</b>	An election for the House of Representatives must be held on or before <b>16 April 2005</b> . The Commonwealth is a mixed system. The HoR does not have fixed terms and has three-year terms (in practice an election must be held within three years three months of the first day of sitting). The Senate has fixed six-year terms, and half the Senate is elected every three years (generally simultaneously with the HoR, but constitutionally there could be two separate elections), unless there is a double dissolution, when all the Senate is elected at the same time as the HoR members.
<b>New South Wales (Bicameral)</b>	Next election <b>24 March 2007</b> . NSW is a mixed system. The NSW Legislative Assembly has a fixed four-year term, and the NSW Legislative Council has a fixed eight-year term, with half the members being elected at every general election. Elections are held on the fourth Saturday in March every four years.
<b>Queensland (Unicameral)</b>	The next election must be held on or before <b>15 May 2004</b> . The Queensland Parliament has a three-year term, and the election date is not fixed.
<b>Victoria (Bicameral)</b>	The next election must be held on <b>25 November 2006</b> . Victoria



	enacted major electoral reform in March 2003. The Legislative Assembly and Council now both have fixed four-year terms. Elections are to be held on the last Saturday in November every four years, commencing in 2006.
<b>South Australia (Bicameral)</b>	The next election must be held by <b>18 March 2006</b> . The South Australian House of Assembly now has a fixed four-year term and the Legislative Council has a fixed eight-year term, with half of its members being elected at each general election. Elections are to be held on the third Saturday in March every four years, commencing in 2006.
<b>Western Australia (Bicameral)</b>	The next election must be held before mid <b>February 2005</b> . The Western Australian Legislative Assembly has a four-year term, while the Legislative Council has a fixed term of four years from the time members take their seats on the 22 May following the date of their election. The election date is not fixed.
<b>Tasmania (Bicameral)</b>	An election for the House of Assembly must be held on or before <b>23 September 2006</b> . The Tasmanian House of Assembly has a four-year term. The election date is not fixed. Legislative Council members have fixed six-year terms with an election for two or three of the 15 being held on the first Saturday every May, on a six-year periodic cycle.
<b>Australian Capital Territory (Unicameral)</b>	An election must be held on <b>16 October 2004</b> . The ACT Legislative Assembly has a fixed three-year term. Elections are held on the third Saturday in October every three years.
<b>Northern Territory (Unicameral)</b>	An election must be held on or before <b>15 October 2005</b> . The Northern Territory has a four-year term. The election date is not fixed.

Table 2 Terms of Parliaments in 30 OECD Countries

<b>Term (number of countries)</b>	<b>Countries</b>
<b>Five years (7)</b>	Canada, France, Ireland, Italy, Luxembourg, Turkey, United Kingdom
<b>Four years (19)</b>	Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Japan, Republic of Korea, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland
<b>Three years (3)</b>	Australia, Mexico, New Zealand
<b>Two years (1)</b>	United States of America

The Democrats have consistently argued that fixed terms are more important than longer terms, but they have equally consistently supported four-year terms as well.<sup>9</sup>

Fixed terms could be set by legislation. Four-year terms will require constitutional change by referendum.

Both internationally and in Australia, longer terms are strongly supported because they ensure enough time for a Government to fully implement its policy agenda.

There is political unanimity on four-year terms. If four-year terms were to become a reality, the HoR would join every state government in Australia bar Queensland, which also has a three year term.

The JSCEM has previously unanimously recommended four-year terms for the House of Representatives.

If a Referendum were to be held to determine whether the HoR should move to four-year terms, it would require a view to be taken on Senate Terms. (Presently the relationship is 3 years HoR/6 years Senate.)

A feasible alternative would be to move from 3/6 to 4/8. There is some concern at Senators having an eight-year term, because of the need to confirm popular support at more regular intervals. There are those who believe the relationship should be 4/4 or even 5/5.

Snap and early elections are called for personal and party advantage, arbitrarily, sometimes capriciously, and always on a partisan basis. Elections held on a pre-determined date ensure stability and responsibility by both Government and Opposition. If introduced for the Federal parliament it would allow for sound party and independent preparation and for fairer political competition.

It would also effectively increase the average life of Australian governments. Federal elections over the last century have been held on average about every 2 years 5 months.

Australia should not have held more than 32 elections at the most last century. Instead they had 38, which represents a significant additional election cost of between \$800m and \$1 b in today's money.

Fixed terms prevent the unnecessary waste of taxpayer's dollars from being spent on snap elections.

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9 Senator Macklin introduced the *Constitution Alteration (Fixed Term Parliaments) Bill* in 1987, followed up later by Senator Murray who tabled the *Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) Bill 2000*.

These issues were also canvassed in the Democrats' 1996 and 1998 JSCEM Federal election Minority Reports.

### **Recommendation 5.1**

- (a) That the dates of elections be fixed and preset by legislation;**
- (b) That four-year terms for the House of Representatives be put to the people as a Referendum question at the next federal election.**

If fixed dates for elections were to also become a reality, it would open up the possibility for simultaneous elections as well, although these could eventuate anyway, if they were not prohibited by the Act.

We recommended in our 1998 JSCEM Minority Report that subsection 394(1) of the Act be repealed.

The Democrats are of the opinion that simultaneous elections should not be banned outright – they should at least be at the discretion of the governments concerned. For instance why shouldn't a Federal by-election be able to be held simultaneously with State or local elections, at the discretion of a Government, or a State by-election during a Federal election?

Australians are in frequent election mode, with nine governments holding Federal, State and Territory elections, hundreds of local government elections, as well as referenda and plebiscites at all three levels of government. The issue is simply one of cost and convenience.

In the United States of America simultaneous elections are a long-standing, regular and unexceptional feature of their election system.

In 1922 the *Commonwealth Electoral Act 1918* was amended to prevent simultaneous Federal and State elections. The 1988 Constitutional commission recommended that this provision be repealed.

### **Recommendation 5.2**

**That subsection 394(1) of the *Commonwealth Electoral Act 1918* be repealed.**

Section 44(i) of the Constitution has provoked litigation in the past, the leading case being *Sykes v Cleary* (No.2) of 1992.

We dealt with the issue of section 44 in our 1996 and 1998 Minority Reports, as has the JSCEM itself (recommendation No.57.) There is unanimous support for change.

Section 44(i) says 'that a person could not seek election to the parliament if that person was a citizen of another country or owed an allegiance of some kind to another nation', be deleted.

We accept that this should be replaced with the simple requirement that all candidates for political office be Australian citizens.

This section was drawn up at a time when there was no concept of Australian citizenship, when Australian residents were either British subjects or aliens. It was designed to ensure the Parliament was free of aliens as so defined at that time.

The Senate Standing Committee on Constitutional and Legal Affairs in its 1981 Report: *The Constitutional Qualifications of Members of Parliament*, recommended that Australian Citizenship be the constitutional qualification for parliamentary membership, with questions of the various grades of foreign allegiance being relegated to the legislative sphere.

The Constitutional Commission, in its Final Report of 1988, recommended that s44(i) be deleted and that Australian citizenship instead be the requirement for candidacy, with the Parliament being empowered to make laws as to residency requirements.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Report of July 1997 recommended that s44(i) be replaced by a provision requiring that all candidates be Australian citizens, and it went further to suggest the new provision empower the Parliament to enact legislation determining the grounds for disqualification of members in relation to foreign allegiance.

This Report also recommended that subsection 44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions empowering the parliament to specify other offices which would be declared vacant should the office holder be elected to parliament.

Whilst some offices, such as those of a judicial nature, must be resigned prior to candidacy, no provision is made for other offices to be declared vacant upon a candidate being successfully elected. It would be absurd, of course, if public servants could retain their positions after having been elected to parliament. It is essential that a mechanism be put in place declaring vacant certain specified offices upon their holders being elected.

S44(iv) has its origins in the Succession to the Crown Act 1707 (UK). Its purpose there was essentially to do with the separation of powers, the idea being to prevent undue control of the House of Commons by members being employed by the Crown.

Obviously times have changed, even though the ancient struggle between executive and parliament continues to this day. Whilst this provision may have been appropriate centuries ago, the growth of the machinery of government has meant that its contemporary effect is to prevent the many thousands of citizens employed in the public sector from standing for election without any real justification.

The Australian Democrats have a long history of trying to rectify this part of the Constitution.

In February 1980 former Democrats Senator Colin Mason, moved a motion which resulted in the inquiry by the Standing Committee on Constitutional and Legal Affairs into the government's order that public servants resign before nomination for election.

Again, this section featured in the *Sykes v. Cleary (No.2)* litigation.

The 2000 Bill below proposes to delete subsection 44(iv) and substitute a requirement that only judicial officers must resign their positions prior to election, as well as empowering the parliament to legislate for other specified offices to be vacated.

We have sought to alter s44 (iv) four times through the:

- *The Constitution Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1985;*
- *The Constitution Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1989;*
- *The Constitution Alteration (Qualifications and Disqualifications of members of the Parliament) Bill 1992;* and
- *The Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000.*

The last paragraph of s44 should be deleted in its entirety. Indeed, the Standing Committee on Legal and Constitutional Affairs Report of July 1997 noted that if its recommendations concerning ss44(i) & (iv) were accepted, the last paragraph of s44 should be deleted. We concur with that view.

**Recommendation 5.3**

**That the following questions be put to the people as Referendum questions at the next federal election:**

- (a) That s44(i) of the Constitution be replaced by a requirement that all candidates be Australian citizens and meet any further requirements set by the Parliament.**
- (b) That s44(iv) of the Constitution be replaced by provisions preventing judicial officers only from nominating without resigning their posts, and giving Parliament power to specify other offices to be declared vacant should an office-holder be elected.**
- (c) That the last paragraph of s44 of the Constitution be deleted.**

Although there has been many a campaign for a Bill of Rights, there is stronger support for a legislated Charter of Political Rights and Freedoms. The ACT is the only Australian legislature to act on this front so far. It would be better if there were one Australian standard in this vital area.

Unlike a number of other countries, Australians do not have their rights and responsibilities reflected in the Constitution, nor (mostly) in legislation, which is why we have seen indigenous people, women and homosexual citizens compelled to seek international help in addressing unjust treatment and discrimination.

The Democrats saw this as an opportunity to establish a comprehensive human rights standard for Australia and introduced the *Parliamentary Charter of Rights and Freedoms Bill 2001*.

The Charter of Rights is an implementation of the International Covenant on Civil and Political Rights. It sets out certain fundamental rights and freedoms including the right to equal protection of the law, the right to a fair trial, freedom of expression and freedom of religion.

**Recommendation 5.4**

**That the Government review the potential for a Charter of rights and Responsibilities to be introduced in Australia.**

We recommended in our 1998 Minority Report that the Commonwealth Electoral Act be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.

It is important to understand that, although prisoners are deprived of their liberty whilst in detention, they are not deprived of their citizenry of this

nation. As part of their citizenship, convicted persons in detention should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court.

There is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In WA, for example, there is a scheme whereby fine defaulters lose their license rather than go to prison, yet this has not been introduced uniformly in Australia.

Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence lose the right to vote? This is inequitable and unacceptable.

Australia is a signatory to the International Covenant on Civil and Political Rights Article 25. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status.

The existing law discriminates against convicted persons in detention on the basis of their legal status. This clearly runs contrary to the letter and spirit of the Covenant.

A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.

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### **Recommendation 5.5**

**The Commonwealth Electoral Act be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.**

## **6 Other matters**

The concern about breaches of the caretaker conventions dealing with government advertising during election periods have escalated since into a general debate about the propriety of government advertising practices.

The Democrats believe that this whole area needs legislative correction or an appropriate restraining mechanism such as a Senate Order. Strong independent oversight is needed to oversee government publicity and advertising.

Principles<sup>10</sup> similar to these following should form the basis for determination of whether government publicity and advertising is genuine, or whether it has partisan and political content.

- Information campaigns should be directed at the provision of objective, factual and explanatory information. Information should be presented in an unbiased and equitable manner.
- Information should be based on accurate, verifiable facts, carefully and precisely expressed in conformity with those facts. No claim or statement should be made which cannot be substantiated.
- The recipient of the information should always be able to distinguish clearly and easily between the facts on the one hand, and comment, opinion and analysis on the other.
- When making a comparison, the material should not mislead the recipient about the situation with which the comparison is made and it should state explicitly the basis for the comparison.
- Information campaigns should not intentionally promote party-political interests, nor should they give rise to a reasonable perception that they promote any such interests. To this end:
  - ⇒ Material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
  - ⇒ Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups.
  - ⇒ Material should avoid party-political slogans or images.
- Campaigns should be supported by a statement of the campaign's objective.

The oversight body or committee would be entitled to consider whether this objective is legitimate, and whether the campaign is adapted to achieving the stated objective. Campaigns, which have little chance of success, should not be pursued.

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10 These principles are largely drawn from 'Taxation Reform Community Education and Information Programme' ANAO 1998



Any Committee would need to be empowered to order a public authority to do one or more of the following things:

- To immediately stop the dissemination of any government publicity that is for political purposes and that does not comply with the principles.
- To modify the content, style or method of dissemination of any such government publicity so that it will comply with the principles.
- To stop expenditure on any such government publicity or to limit expenditure so that the publicity will comply with the principles.

### **Recommendation 6.1**

**That mandatory standards be adopted in relation to government advertising, policed by an appropriate oversight body.**

How-to-vote provisions vary widely in the various electoral acts governing the elections for our nine parliaments. Political parties contesting elections at all levels of government would benefit significantly from consistent and common practices across the nine jurisdictions.

There is certainly enough experience to form a final view in each political party who contest elections across Australia, which should provide a basis for negotiation for state, territory and federal practices to be made as consistent as possible.

How-to-vote card regulation is an area badly in need of harmonisation and common practice.

In our Minority Report on the 1996 election we urged the JCSEM and the Parliament to address the need for better regulation. In the 1998 Report we urged the committee to initiate a cooperative inter-state parliamentary committee to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions.

We remain of the view that how-to-vote cards should be displayed in polling booths rather than handed out. We recognise that there is doubt as to the practical effects of such a system. The best way to find out is to trial the proposal. The advantages of the proposal are self evident, against the costs, aggravation and harassment of the present system.

The greatest loss from changing current practices would probably be the motivational effect and camaraderie associated with turning out for your candidate and promoting his or her how-to-vote.

## Recommendation 6.2

- (a) That the JCSEM initiate a cooperative inter-state consultation process to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions.**
- (b) That the AEC take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.**

The Australian Democrats have actively campaigned to introduce ‘truth in political advertising’ legislation in Australia since the early 1980’s. Our Minority Report on the 1996 election had an extensive section on this topic.

The Coalition parties, in their dissenting report to the JCSEM inquiry into the 1993 election supported the reinstatement of ‘truth in political advertising’. In Government they have resiled from that view.

Political advertising in Australia must be better controlled. Legislation should be enacted to impose penalties for failure to represent the truth in political advertisements. The enforcement of such legislation would advance political standards, promote fairness, improve accountability and restore trust in politicians and the political system.

The need for improved controls on political advertising in Australia is important because elections are one of the key accountability mechanisms in our system of government. Advertisements disseminated during an election campaign must be legally required to represent the truth. Advertisements purporting to represent ‘facts’ must be legally required to do so accurately. In this way politicians can be held accountable for election promises designed to win over the electorate.

In 1983 the Commonwealth Parliament introduced laws regulating political advertising (s392(2) of the Act), but these were repealed again prior to the 1984 election.

In 1985 the South Australian Parliament enacted the *Electoral Act 1985 (SA)*. Section 113 of the Act makes it an offence to authorise or publish an

advertisement purporting to be a statement of fact, when the statement is inaccurate and misleading to a material extent.

‘Electoral advertisement’ is defined to mean an advertisement containing electoral matter. ‘Electoral matters’ are matters calculated to affect the result of an election.

The legislation has been tested in the Supreme Court of South Australia, where it was held to be constitutionally valid. Further, it did not infringe the implied guarantee of free political communication found by the High Court to exist in the Commonwealth Constitution.

The Commonwealth Parliament has examined proposed legislation similar to the South Australian Act concerning truth in political advertising. In 1995 it considered amendments to the *Commonwealth Electoral Act 1918*.

Provision was to be made prohibiting persons, during an election, from printing, publishing, or distributing any electoral advertisement containing a statement that was untrue, or misleading or deceptive. However with the dissolution of the Commonwealth Parliament for the 1996 election, the amendments lapsed.

Experience teaches that when the competitive interests of political parties are at stake, only force of law will ensure that reasonable standards on truthfulness are upheld.

Following an Inquiry by the Senate Finance and Public Administration Committee into this matter, Senator Murray revised and reintroduced his *Electoral Amendment (Political Honesty) Bill 2003*, that legislates for truth in political advertising.

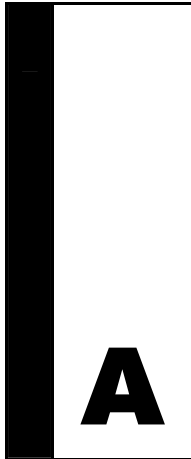
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### **Recommendation 6. 3**

**The *Commonwealth Electoral Act* should be amended to prohibit inaccurate or misleading statements of fact in political advertising, which are likely to deceive or mislead.**

**Senator Andrew Bartlett**

**Senator Andrew Murray**



## **Appendix A**

### **Submissions to the inquiry**

<b>No.</b>	<b>Received from</b>
1	Mr Mark Hurd
2	Ms Lauren Taylor
3	Mr Brian Bagnall
4	Mr Andrew Best
5	Mr Tom Brown
6	Mr James David Porteous
7	Mr Steve Leo
8	Mrs Deborah Foster
9	Mr Jeff Rogers
10	Mr Jason Caley
11	Mr Nicholas Evangelou
12	Mr Bantwal Baliga
13	Ms Judeth Tamar Newham
14	Mr and Mrs Peter & Renata Singer
15	Ms Pamela Gaye Clements

- 16 Ms Julie Dossey  
17 Mr Gary Schorel-Hlavka  
18 Mr Michael Williams  
19 Mr David Combe  
20 Mr Tom Dolling  
21 Ms Linda Reeb  
22 Ms Gaye Rochow  
23 Mr Alexander Donald Zielinski  
24 Mr Wlodek Kowalik  
25 Mr Peter Goss  
26 Dr Valerie Yule  
27 Mr Brian Gaensler  
28 Ms Susie LeBlanc  
29 Mr Senan John Whelan  
30 Mr Paul McLachlan  
31 Mr Michael Craig  
32 Mr Frank Miller  
33 Ms Rosemary Kniepp  
34 Ms Anne Maxwell High  
35 Mr Stan McConnell  
36 Mrs Lorna Jean Graham  
37 Mr Brendan Sheehy  
38 Mr Robert Bom  
39 Mr & Mrs G Wynn  
40 Mr Eero Laurila  
41 Mr David Findlay  
42 Mr Simon Yencken  
43 Mr Wayne Brabazon

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44	Mr Anthony Feo
45	Ms Gina Behrens
46	Ms Pauline Chitty
47	Mrs Pitman
48	Mrs Pamela Sved
49	Mr Adrian Bye
50	Mr Ron Munro
51	Mr John Ley
52	Ms Stephanie Helm
53	Mr Karl Anthony Phillips
54	Mr Leigh Dwyer
55	Dr J Paul Robinson
56	Mr Kenneth Hayes
57	Mr Alan Jeffrey
58	Mr Robert Hay
59	Australian New Zealand - American Chambers of Commerce
60	Ms Caroline Bissey
61	Dr Lucy Zinkiewicz
62	Mrs Meryl Meiklejohn
63	Mrs J Singleton
64	Mr Ian Moller
65	Ms Shannon Tobin
66	Progressive Labour Party
67	Mr Ian Bowie
68	Ms Antasia Azure
69	Ms Dawn Easton
70	Mr Alan Kindred
71	Festival of Light

- 72 Rev. Stefan Slucki
- 73 Emeritus Professor Colin Hughes
- 74 Mr Trevor Jacobs
- 75 Mr Henry Brookman and Mrs Sheena Brookman
- 76 Ms Michelle Kelleher
- 77 Mr Bruce Kirkpatrick
- 78 Mr Matthew Bye
- 79 Mr Jeff Gomes
- 80 Mr Peter Andren MP
- 81 Hon. Robert McClelland MP
- 82 Ms Kerrie Donlon
- 83 Mr Grant Marani
- 84 Mr DG Holmes
- 85 Ms Janet Magnin
- 86 Mr David Partlett
- 87 Ms Lisbeth Shelley
- 88 Ms Gail Gottwald
- 89 Mr David Hudson
- 90 Mr Brad Tyler-West
- 91 Ms Erin Johanson
- 92 Mr Cameron Bray
- 93 Mr Roger E Deshon
- 94 Ms Catherine Hautenaue
- 95 Ms Julia Irwin MP
- 96 Mr James Cattlin
- 97 The Electoral Reform Society of South Australia
- 98 Reclaim Your Parliament
- 99 Mr Ron Murray

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100	Ms Rosemarie Goonewardene
101	Mr David Bailin
102	Ms Denise Burns
103	Council for the National Interest (Western Australia)
104	Dr Ross Mair
105	Council to Homeless Persons
106	Mr John Rogers
107	Mr B Joy
108	Mr Barry Wakelin MP
109	Mr Warren Grizic
110	Ms Anne MacGregor
111	Mr John Wulff
112	Ms Robyn Stephenson
113	Ms Kim Austin
114	Mrs Merran Loewenthal
115	Mr Aaron Gray-Block
116	Mr Marcus Brown
117	C Dendrowskyj
118	Mr Stephen Blackney
119	Ms Angela Ryan
120	Mr Philip Lillingston
121	Ms Christine Cunningham
122	Ms Jacqueline Mowbray
123	Ms Leah Quinn
124	Ms. Anne Tischlinger
125	Ms Christine Drum
126	Mr. Geoff Field
127	Ms Patina Blakeney



128	Mr John MacGregor
129	Hon. Bob Katter MP
130	Ms Heather Small
131	Mr Neil Worrall
132	Mr Don Annear
133	Mr Peter Brun
134	Ms Leally Chen
135	Salt Shakers
136	Mr Eric Lockett
137	Ms Catherine Rawson
138	Ms Harriet O'Malley
139	Mr. John Griffin
140	Ms Ruth Gibbs
141	Mr David McAlister
142	Australian-New Zealand Chamber of Commerce (Philippines) Inc.
143	Ms. Margarite Frost
144	Mr Don Mitchell
145	Homeless Person's Legal Clinic
146	H.S. Chapman Society
147	Australian Electoral Commission
148	Southern Cross Group
149	Liberal Party of Australia
150	<i>The Big Issue</i> Australia
151	Mr Perry Ballard
152	Vancouver Denmark ALP Sub Branch
153	Australian Labor Party
154	Office of the Federal Privacy Commissioner

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155	Hope Party Australia
156	Mr AJ Beeney
157	Mr Jason Caley
158	The Greens NSW
159	Republican Party of Australia
160	Ms Helen Bourke
161	Mr Anthony Linden and Ms Janet Linden
162	Hon. Chris Gallus, MP
163	Mr Victor Lawther
164	Office of the Federal Privacy Commissioner (supplementary)
165	Australian Electoral Commission (supplementary)
166	Australian Electoral Commission (supplementary)
167	B'nai B'rith Anti-Defamation Commission Inc
168	Department of Foreign Affairs and Trade
169	Manly Council
170	H. S. Chapman Society (supplementary)
171	Mr Barry Wakelin MP (supplementary)
172	Office of the Federal Privacy Commissioner (supplementary)
173	Ms Heather Small
174	Australian Electoral Commission (supplementary)
175	Mr Scott Goodrick
176	NSW Ministry for Police
177	Mr G Whitfield
178	Liberal Party of Australia (supplementary)
179	Australian Labor Party (supplementary)
180	Citizens Electoral Council
181	Australian Electoral Commission (supplementary)
182	Australian Electoral Commission (supplementary)

- 183 Liberal Party of Australia (supplementary)
- 184 Alex MacFarlane
- 185 Mr John MacGregor
- 186 Australian Electoral Commission (supplementary)
- 187 Southern Cross Group (supplementary)
- 188 Department of Foreign Affairs and Trade (supplementary)
- 189 Liberal Party of Australia (supplementary)
- 190 Australian Electoral Commission (supplementary)
- 191 AIS Support Group Australia
- 192 Mr Simon Steer
- 193 Department of Foreign Affairs and Trade (supplementary)
- 194 Australian Taxation Office
- Australian Communications Authority
- 195 Law Enforcement Advisory Committee
- 196 Mr Jim South
- 197 Mr Gavin Stevenson
- 198 Australian Electoral Commission (supplementary)
- 199 Australian Electoral Commission (supplementary)
- 200 Australian Electoral Commission (supplementary)
- 201 Mr Peter Makeig
- 202 Southern Cross Group (supplementary)
- 203 Australian Electoral Commission (supplementary)



## **Appendix B**

### **List of Exhibits**

<b>No.</b>	<b>Description</b>
1	Paper presented by Mr John Rogers regarding electronic vote counting; public hearing 20 September 2002.
2	Office of the Federal Privacy Commissioner, <i>Privacy and the Community</i> , prepared by Roy Morgan Research, July 2001. Presented by the Federal Privacy Commissioner at public hearing 2 October 2002.
3	Dr Narelle Miragliotta, <i>Determining the result: Transferring Surplus Votes in the Western Australian Legislative Council</i> , Western Australian Electoral Commission, 2002. Presented by Electoral Reform Society of South Australia at public hearing 8 October 2002.





## **Appendix C**

### **List of Hearings and Witnesses**

**Monday, 12 August 2002 - Melbourne**

**Dr Valerie Yule**

**Salt Shakers**

Mr Peter Stokes, Executive Officer

**Mr Don Mitchell**

**Mr Gary Schorel-Hlavka**

**Council to Homeless Persons**

Ms Netty Horton, Chief Executive Officer

**Homeless Person's Legal Clinic**

Mr Philip Lynch, Coordinator

Ms Brianna Harrison, Solicitor

***The Big Issue Australia***

Ms Meg Mundell, Deputy Editor

**Friday, 16 August 2002 - Canberra****Australian Electoral Commission**

Mr Andy Becker, Electoral Commissioner

Mr Paul Dacey, Deputy Electoral Commissioner

Ms Barbara Davis, First Assistant Commissioner,  
Business Support

Mr Tim Evans, Director, Elections, System and Policy

Mr David Farrell, Australian Electoral Officer for NSW

Mr Brien Hallett, Assistant Commissioner, Information,  
Education and Research

Mr Andrew Moyes, Assistant Commissioner, Enrolment  
and Parliamentary Services

Mr Doug Orr, Assistant Commissioner, Elections

Mr Tim Pickering, First Assistant Commissioner,  
Electoral Operations

**Liberal Party of Australia**

Mr Lynton Crosby, Federal Director

Mr Bruce Edwards, Manager, Parliamentary and Policy

**Friday, 20 September 2002 - Canberra****Southern Cross Group**

Mr John MacGregor, Australian Coordinator

Mr John Rogers

Hon. Christine Gallus MP, Federal Member for Hindmarsh

**Australian Labor Party**

Mr Geoffrey Walsh, National Secretary

Mr Timothy Gartrell, Assistant National Secretary

**Wednesday, 2 October 2002 - Sydney****Office of the Federal Privacy Commissioner**

Mr Malcolm Crompton, Federal Privacy Commissioner

Mr Andrew Hayne, Policy Advisor

**H. S. Chapman Society**

Dr Amy McGrath OAM, President

**Progressive Labour Party**

Professor Klaas Woldring, Co-founder and Media Officer

**Emeritus Professor Colin Hughes****The Greens NSW**

Mr Geoff Ash, Convenor

**Tuesday, 8 October 2002 - Adelaide**

Mr Barry Wakelin MP, Federal Member for Grey

**Festival of Light**

Dr David Phillips, National President

Mr David D'Lima, Field Officer

**The Electoral Reform Society of South Australia**

Mr Deane Crabb, Secretary

**Monday, 11 November 2002 - Canberra**

Ms Julia Irwin MP, Federal Member for Fowler

Hon. Robert McClelland MP, Federal Member for Barton



**Monday, 2 December 2002 - Canberra****Department of Foreign Affairs and Trade**

Mr Ian Kemish, First Assistant Secretary, Public  
Diplomacy, Consular and Passports Division

Ms Sharon O'Rourke, Acting Manager, Consular  
Coordination Unit

**Monday, 9 December 2002 - Canberra****Australian Electoral Commission**

Mr Andy Becker, Electoral Commissioner

Ms Fiona Codd, Director, Financial Management

Mr Paul Dacey, Deputy Electoral Commissioner

Ms Barbara Davis, First Assistant Commissioner,  
Business Support

Mr David Farrell, Australian Electoral Officer for NSW

Mr Brien Hallett, Assistant Commissioner, Information,  
Education and Research

Mr Ken Hunter, Assistant Commissioner, Information  
Technology

Ms Kathy Mitchell, Director, Funding and Disclosure

Mr Andrew Moyes, Assistant Commissioner, Enrolment  
and Parliamentary Services

Mr Doug Orr, Assistant Commissioner, Elections

Mr Tim Pickering, First Assistant Commissioner,  
Electoral Operations



## Appendix D

### Schedules 4 and 5 to the Electoral and Referendum Amendment Regulations 2001 (No. 1)

The Regulations were disallowed in the Senate on 15 May 2002.

#### Schedule 4 Persons who can attest claims for enrolment (regulations 11, 12 and 13)

Item	Persons
401	Accountant who is a registered tax agent
402	Bank officer, except the manager of a bank travel centre
403	Building society officer
404	Chartered professional engineer
405	Clerk, sheriff or bailiff of a court
406	Commissioner for Affidavits of a State or Territory
407	Commissioner for Declarations of a State or Territory
408	Commissioner for Oaths of a State or Territory
409	Credit union officer
410	Diplomatic or consular officer, except an honorary consular officer, of an Australian embassy, high commission, or consulate
411	Employee of a community, ethnic or remote centre who counsels or assists clients as part of the employee's duties
412	Employee of a women's refuge, or of a crisis and counselling service, who counsels or assists victims of domestic violence, sexual assault or sexual abuse as part of the employee's duties
413	Fellow of the Association of Taxation and Management Accountants
414	Finance company officer

- 415 Full-time or permanent part-time employee of the Commonwealth, or a State or Territory, or a Commonwealth State or Territory authority
- 416 Full-time or permanent part-time teacher currently employed at a school or tertiary institution
- 417 Holder of a current liquor licence or his or her nominee
- 418 Holder of a current pilot's licence
- 419 Holder of a statutory office for which an annual salary is payable
- 420 Leader of an Aboriginal or Torres Strait Islander community
- 421 Licensed or registered real estate agent
- 422 Manager of a building society or credit union
- 423 Marriage celebrant within the meaning of the *Marriage Act 1961*
- 424 Marriage counsellor within the meaning of the *Family Law Act 1975*
- 425 Master of a merchant vessel
- 426 Member of an Aboriginal and Torres Strait Islander Community Council or Regional Council
- 427 Member of the Association of Consulting Engineers
- 428 Member of the Defence Force
- 429 Member of the ground staff of an airline that operates a regular passenger service
- 430 Member of the Institute of Company Secretaries of Australia
- 431 Member of the non-teaching or non-academic staff of a primary or secondary school or tertiary education institution
- 432 Member of the staff of a person who is a member of:  
    (a) the parliament of the Commonwealth or a State; or  
    (b) the legislature of a Territory; or  
    (c) a local government authority of a State or Territory
- 433 Member of the staff of a State or Territory electoral authority
- 434 Member of the staff of the Australian Electoral Commission
- 435 Minister of religion within the meaning of the *Marriage Act 1961*
- 436 Person employed as a remote resource centre visitor
- 437 Police aide
- 438 Postal manager or other permanent Australia Post employee
- 439 Prison officer
- 440 Registered nurse or enrolled nurse
- 441 A person who is not described in a preceding item in this Schedule who is authorised in writing by at least 3 persons described in items in the Schedule
- 442 A person who is not described in a preceding item in this Schedule before whom statutory declarations may be made under a law of the Commonwealth, a State or a Territory
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**Schedule 5 Original documents (regulation 12)**

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<b>Item</b>	<b>Original documents</b>
501	Australian birth certificate, or an extract of an Australian birth certificate, that is at least 5 years old
502	Australian Defence Force discharge document
503	Australian marriage certificate
504	Certificate of Australian citizenship
505	Current Australian driver's licence or learner driver's licence
506	Current Australian passport
507	Current Australian photographic student identification card
508	Current concession card issued by the Department of Veterans' Affairs
509	Current identity card showing the signature and photograph of the card holder, issued by his or her employer
510	Current pension concession card issued by the Department of Family and Community Services
511	Current proof of age card issued by a State or Territory authority
512	Decree <i>nisi</i> or a certificate of a decree absolute made or granted by the Family Court of Australia
513	Document of appointment as an Australian Justice of the Peace
514	A document that is not mentioned in a preceding item in this Schedule that is accepted by the Electoral Commission as evidence of the identity of a person

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## Appendix E

### Electronic vote counting at the 2001 ACT election

- 1.1 The Australian Capital Territory's Legislative Assembly election of October 2001 is understood to represent a watershed in the conduct of Australian elections. Not only was electronic voting introduced for the first time, but the counting of all votes was done electronically.<sup>1</sup>
- 1.2 The Elections ACT (the ACT Electoral Commission) review of the 2001 election recommended that 'electronic vote counting using the Electronic Voting and Counting System (EVACS) computer system be made standard practice at ACT elections'.<sup>2</sup>
- 1.3 According to the Elections ACT Report, this electronic counting system:
  - effectively limited errors such as incorrectly sorting or counting ballot papers;
  - increased the accuracy of the election count;
  - reduced the time needed to accurately count the votes and announce the election result; and

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1 Australian Capital Territory Elections. 2002. *The 2001 ACT Legislative Assembly Election: Electronic Voting and Counting System Review*, p. 1.

2 ACT Elections. 2002. *The 2001 ACT Legislative Assembly Election*, p. 4.

- increased the amount of information available about errors made on paper ballots by electors.<sup>3</sup>
- 1.4 Elections ACT acknowledged concerns were raised publicly about the accuracy of the electronic count, however was satisfied with the methodology. Post-election verification found that the concerns were unfounded.
- 1.5 Elections ACT considered the testing and auditing of the electronic vote counting system to be comprehensive. As indicated in the report the following steps were taken:
- Various testing methods of the software were employed including:
    - ⇒ Conducting structured test cases in controlled situations (used to ensure individual modules perform as expected);
    - ⇒ Conducting scrutines in parallel, using EVACS and manual counting of known sets of ballot papers, comparing the results obtained by EVACS and ACT Elections' Excel spreadsheet Hare-Clark program (used to ensure that EVACS was correctly applying the Hare-Clark system, using a variety of test election outcomes to test specific cases);
    - ⇒ 'Real user' testing, whereby large numbers of users cast electronic votes in a mock polling place and data-entry operators entered the results from paper ballots (used to test useability and to simulate realistic loads on the system);
    - ⇒ Load testing, where large quantities of ballot data was simulated and loaded into the counting system; and
    - ⇒ 'Whole of life' testing, where the entire process was simulated, taking test electronic votes from a polling place, loading it into the counting server, adding data-entered results from paper ballots, and using the counting system to generate a Hare-Clark result.
  - A software auditing firm, BMM International, was then contracted to audit the software code of the system (to ensure the software did not contain code that would affect the result of the election);
  - BMM International certified that the code for EVACS:
    - ⇒ appeared to neither gain nor lose votes;
    - ⇒ appeared to faithfully implement the Hare-Clark algorithm for vote counting provided to BMM by Elections ACT; and

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3 ACT Elections. 2002. *The 2001 ACT Legislative Assembly Election*, pp. 1-2.

- ⇒ was written in a consistent, structured and maintainable style.
- BMM International also checked the final version of the code containing the candidate information after the close of nominations that was used in the election, against the audited code, to ensure that any changes that had occurred in the interim would not affect the outcome of the election.
  - This was confirmed by BMM International.<sup>4</sup>

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4 Elections ACT. 2002. *The 2001 ACT Legislative Assembly Election*, pp. 7-8.







## **Appendix F**

**Table of technical amendments required to the  
*Commonwealth Electoral Act 1918* and/or the  
*Referendum (Machinery Provisions) Act 1984***

Subject	Electoral Act Section	Referendum Act Section	Amendment Required
1. Polling Places	80(3)(b)		Section 80(3)(b) provides that the AEC must publish details of those polling places which were in use at the last election but have been abolished since that time. This may lead to a situation that is potentially confusing when the last electoral event was in fact a referendum and not an election. The same confusion is not found in the Referendum Act. Amend section 80(3)(b) of the Electoral Act to reflect the wording of section 16(2)(b) of the Referendum Act.
2. Use of Information from Roll and Habitation Index	91A(3)		Section 91A(3) provides the meaning of the word election for the section. The AEC considers it would be appropriate to amend the section to also include those elections and ballots conducted under the <i>Workplace Relations Act 1996</i> .
3. Roll Reviews	92(1)		Section 92(1) provides that "all police, statistical, and electoral officers in the service of any State..." The AEC recommends that this section of the Electoral Act be amended to include officers in the service of a State or Territory.
4. Spouse	94A & 95		There are two sections of the electoral Act which provide for or include spouse. They are sections 94A and 95. Section 95(17) provides an inclusive definition for the purposes of section 95 but there is nothing for section 94A. The AEC believes it would be appropriate to move the definition of spouse from section 95 into section 4 of the Electoral Act, as this is the section that provides interpretations for the Electoral Act.
5. Child	95		Subsections 95(16) & (17) provide inclusive definitions for "Child". The AEC believes it would be appropriate to move the definition of child from section 95 into section 4 of the Electoral Act, as this is the section that provides interpretations for the Electoral Act.
6. Alteration of Rolls	105		Section 105 provides for the DRO to make alterations to the roll but makes no provision for electors who have been affected by those alterations to appeal them. This section should be amended to allow for decisions made by the DRO to be reviewable by the AEO and the AAT.
7. Withdrawal of Nomination	177(4)		Section 177(4) provides that where a candidate withdraws their nomination, and was one of a number of candidates nominated by the registered officer of a political party, that the withdrawal does not affect the nomination of the other candidates and that the registered officer may amend the nomination to substitute another candidate. Section 177(1) provides that the notice of withdrawal for House of Representatives candidates be made to the DRO. However, bulk nominations are lodged with the AEO in accordance with Section 167. Section 177(4) should be amended to allow the AEO to receive notices of withdrawal for candidates included in bulk nominations and section should be clarified to ensure that the amended nomination containing the name of the substitute candidate is made to the AEO.
8. Death of Candidate	178		Section 178 (3) of the Electoral Act provides that where a candidate dies the deposit is to be returned to the person who paid it or a person authorised in writing by the person who paid it. In all other cases the deposit must be returned to the personal representative of the candidate. There appears to be no formal mechanism for determining who would be the personal representative of the candidate in such circumstances. The AEC recommends that subsection 178(3) be amended to read "In all other cases, the deposit must be paid to the estate of the deceased candidate."

9.	Postal Voting Envelopes	188(1)		<p>Section 188 requires the DRO or ARO to issue a postal vote certificate, ballot paper, or papers, and an envelope (the outer envelope) addressed to the DRO or ARO. In practice the outer envelope is window faced, which means it is not "addressed" as such. It merely serves as a carrier for the postal vote certificate on which the address of the DRO or ARO is printed. This section requires amendment to remove the requirement for the outer envelope to be addressed to the DRO or ARO, whilst retaining the intent of the section. An amendment similar to the Referendum Act section 61 may be appropriate.</p>
10.	Postal Voting Envelopes	194(1)		<p>Section 194(1) provides for the elector to place completed ballot papers in the "envelope addressed to the appropriate DRO" which is the postal vote certificate referred to in section 188(1). This section should be amended to require the elector to place the ballot papers in the postal vote certificate and then place the postal vote certificate in an envelope (the envelope referred to in section 188(C)) and fasten the envelope.</p>
11.	Ballot Papers	209(5)		<ul style="list-style-type: none"> <li>• Section 209(5) of the Electoral Act is the counterpart provision to section 25(4) of the RPMA. Like section 25(4) of the RPMA, section 209(5) of the Electoral Act provides that a ballot-paper used for postal voting is to contain the following directions: "Fold the ballot-paper, place it in the envelope addressed to the Divisional Returning Officer and fasten the envelope".</li> <li>• As the envelope containing the address of the DRO is the postal vote certificate, the wording of the directions require amendment to eliminate confusion on the part of the elector.</li> <li>• Section 188 of the Electoral Act already allows in certain circumstances for a postal ballot-paper to be returned to a person other than a DRO. As a consequence, section 209(5) of the Electoral Act should also be amended so as to be consistent with the postal voting provisions of the Electoral Act.</li> </ul>
12.	The Polling	220©	29(1)©	<p>Section 220(C) of the Electoral Act and 29(1)(C) of the Referendum Act require amendment so that they are consistent in expression.</p>
13.	The Polling	220(d)	29(1)(d)	<p>Section 220(d) of the Electoral Act and 29(1)(d) of the Referendum Act require amendment so that they are consistent in expression.</p>
14.	Prison Mobile Voting	226A	49A	<p>Section 226A Electoral Act and 49A Referendum Act do not specify whether the provision of mobile polling is to be made available to the same classes of electors as sections 224, 225 and 227. That is electors entitled to vote in a by election, or an elector for the State or Territory in which the voting is being conducted. Section 226A should be amended to include similar wording to sections 224, 225 and 227 so as to ensure consistency of application.</p>
15.	Compulsory Voting	245(6)		<p>Section 245(3) provides for the DRO to "arrange for a penalty notice to be delivered by other means" to an elector who appears to have failed to vote. Subsection 245(6) provides "the DRO must send by post or deliver to the elector..." Section 245(6) should be amended to allow for the DRO to "arrange to be delivered by other means" a second penalty notice to the elector.</p>

16.	Printing and publication of electoral advertisements etc.	328		<p>Drafting errors have been identified in section 328(4) of the Electoral Act. These came about because section 328(4) was not consequentially amended following amendments to section 328(3). Section 328(3)(b) of the Electoral Act was the former provision relating to prescribing classes of articles. That provision was repealed by the <i>Electoral and Referendum Amendment Act 1998</i> and the classes of articles which were prescribed (in Regulation 87 of the Electoral and Referendum Regulations) under that provision were included in the Electoral Act as sub-sections 328(b) and 328(c). A new section 328(3)(d) was added in relation to prescribing classes of articles; section 328(3)(d) is in identical terms to the former section 328(3)(b).</p> <p>Amend section 328(4) of the Electoral Act so that the reference to paragraph 328(3)(a) is corrected to refer to paragraphs 328(3)(a)-(c), and the reference to paragraph 328(3)(b) is corrected to refer to paragraph 328(3)(d).</p>
17.	Service of Process by Mail	387A		<p>Section 387A requires amendment to allow for notices to be delivered to the "latest known address of the person" in order to be consistent with the wording of section 245(3).</p>
18.	No State Referendum or Vote to be held on polling day	394	443	<p><del>Section 394 of the Electoral Act provides that no election or referendum or vote of the electors of a State or part of a State shall be held under a law of the State on the day appointed as polling day for a Senate or General Election. Section 143 of the Referendum Act extends that same provision to include any Territory or part of a Territory. The AEC recommends that section 394 of the Electoral Act be amended to provide the same coverage as section 143 of the Referendum Act. This will eliminate confusion and clarify the coverage of section 394 in so far as Territories are concerned.</del></p>
19.	Forms	Schedule 1	Schedule 1	<p>There is inconsistency in the wording of forms (Writs) between the Electoral Act and the Referendum Act. Dates on forms require amendment to refer to the current century.</p>
20.	Preliminary Scrutiny	Schedule 3 Paragraph 13		<p>Paragraph 13(b) of the Schedule 3 of the Electoral Act refers to when "the error or mistake" occurred in relation to the omission of an elector's name from the roll. It is possible that an error or mistake was made prior to the relevant election but that action to remove the name from the roll was not taken until after the election (because of the operation of s118(5) which precludes removal of names from the roll between the close of roll and polling day). In such situations it may not be possible to determine when the error or mistake was made, however, it is possible to determine when the omission from the roll was made. This paragraph should be amended to remove the words "error or mistake" and insert the words "omission from the roll".</p>
21.	Ballot Paper/Ballot Paper	Various	Various	<p>The use of a hyphen to separate the words ballot and paper is inconsistently applied throughout the Electoral Act and the Referendum Act. Similarly the words ballot and papers, ballot and box etc. Consistent use should be maintained – ie. no hyphen.</p>

22.	Definition of authorised witness	193	3	<p>“Authorised witness” is defined in section 193 of the Electoral Act and section 3 of the RPMA. Inconsistencies have developed between the provisions in the two Acts, and the AEC recommends that these be addressed by standardising the definitions in such a way that the broadest coverage is retained. Compare:</p> <ul style="list-style-type: none"> <li>• Sub-paragraph (b)(iii) of the definition of “authorised witness” in the RPMA, which refers to one of the categories of an authorised witness outside Australia as being, among other things, “a person employed in the Public Service of a State or Territory or of a part of the Queen’s dominions”; and</li> <li>• Section 193(2)(c) of the Electoral Act, which refers to “a member of the civil or public service of a Territory or of a Commonwealth country”.</li> </ul> <p>For consistency, both Acts should refer to the “civil or public service” of a State or Territory – there is no reason to restrict authorised witnesses under the Electoral Act so that State public servants are not covered by this provision. Another inconsistency is in relation to medical practitioners and ministers of religion resident in a State being included in the Electoral Act provision but not in the RPMA provision (however, medical practitioners and ministers of religion resident in a Territory are included in both provisions).</p> <p>The AEC recommends that the definitions of “authorised witness” in the RPMA and Electoral Act be amended to standardise the definitions in such a way that the broadest coverage is retained.</p>
23.	Interpretation – Queen’s dominions		3	<p>For consistency both the Electoral Act and Referendum Act should also (as the Electoral Act does) refer to “a Commonwealth country” rather than “a part of the Queen’s dominions”. The phrase “a part of the Queen’s dominions” is used in sub-paragraph (b)(ii) and (b)(iv) of the definition of “authorised witness” in the RPMA. It should be noted that the <i>Electoral and Referendum Amendment Act 1998</i> attempted to amend this, however the amendment was misdescribed. The <i>Electoral and Referendum Amendment Act 1998</i> referred, in item 1 of Schedule 2, to omitting “another part of the Queen’s dominions” and replacing this with “a Commonwealth country”, however the RPMA does not use the words “another part of the Queen’s dominions” (it refers to “a part of the Queen’s dominions”) – thus the attempted amendment was ineffectual.</p> <p>The AEC recommends that the definition of “authorised witness” in the RPMA be amended to refer to “a Commonwealth country” rather than “a part of the Queen’s dominions”.</p>

24.	Australian Electoral Officer (AEO) for the Northern Territory.		5	<p>Section 20 of the Electoral Act provides that there shall be an AEO for each "State". Section 5A of the Electoral Act provides that "State" is read in section 20 as including the Northern Territory. Thus there is, under the Electoral Act, an AEO for the Northern Territory. However, section 5(1) of the Referendum Act refers to the AEC appointing an AEO for each "Territory" (defined in section 3 as the Australian Capital Territory and the Northern Territory) for each referendum. This would appear to be unnecessary in relation to the Northern Territory given the provisions of the Electoral Act referred to above.</p> <p>The AEC recommends that section 5 of the Referendum Act be amended to refer to "the Australian Capital Territory" rather than "a Territory", and consequential changes be made to ensure that the AEO for the Northern Territory is recognised.</p>
25.	Return of Writs		8-9	<p>Section 159 of the Electoral Act provides that the date fixed for the return of the writ in an election shall not be more than 100 days after the issue of the writ. In the 1999 Referendums, the writs were returned within 100 days of their issue, and in practice the AEC would return writs for a referendum within such a period. However, the AEC sees merit in the period for the return of a writ for a referendum being set in legislation, and therefore would recommend that the RPMA be amended to include an equivalent of section 159 of the Electoral Act.</p>
26.	Statutory Advertising Requirement		14(1)(b)	<p>Subsection 14(1)(b) of the RPMA requires that the particulars of the writ and a copy of the proposed law or statement attached to the writ be published in at least 2 newspapers circulating in the State or Territory. The comparable sections in the Electoral Act - sections 153(2)(b) and 154(4)(b) - were amended by the <i>Electoral and Referendum Amendment Act 1998</i> as a result of a JSCEM recommendation from the 1996 Report. An amendment to the RPMA was also included in this JSCEM recommendation, however the RPMA was never amended. The AEC believes that this was a legislative oversight that should be addressed.</p> <ul style="list-style-type: none"> <li>Amend section 14 of the RPMA to require the advertising of referendum writs in only one newspaper circulating in a State or Territory where there are not two newspapers in wide circulation.</li> </ul>
27.	Staffing of Polling Places		17(6)	<p>Subsection 17(6) of the Referendum Act places constraints on the flexibility of staffing arrangements in polling booths which mitigate against the AEC alleviating queuing problems in some polling places. An equivalent section of the Electoral Act - s. 203(6) - was repealed in 1992; therefore the AEC recommends repeal of subsection 17(6) of the Referendum Act.</p>
28.	Voting Outside Polling Place		36A(2)(b)	<p>This subsection provides for certain voters to vote outside the polling place but refers to "one scrutineer per candidate". There are no candidates in a referendum, therefore this subsection needs to be amended to remove any reference to "candidate" while retaining the intention that only one scrutineer per interest represented by a scrutineer may be present.</p>

29.	Compulsory Voting		45	<p>Section 45 of the Referendum Act requires amendment to be brought in line with section 245 of the Electoral Act so that, without limiting what constitutes a valid and sufficient reason for not voting, it shall be a valid and sufficient reason for not voting that an elector believes it part of his or her religious duty to abstain from voting.</p>
30.	Special Hospitals		49	<p>Section 49 of the Referendum Act requires amendment so as to be consistent with s. 80 of the Electoral Act in providing an explicit power for the abolition of special hospitals.</p>
31.	Special Hospitals		50(2A)	<ul style="list-style-type: none"> <li>• Section 50(2A) of the Referendum Act provides that a presiding officer or electoral visitor who visits a patient under section 48 or 49 of the Referendum Act (which relate to mobile booths at hospitals that are polling places, and at other hospitals) must advise the patient that literature relating to the referendum supplied by political parties is available, and give the patient any such literature that the patient requests.</li> <li>• The AEC is of the view that the wording of section 50(2A) of the Referendum Act is not technically adept to deal with the issue that it addresses, namely that patients should have access to literature relating to a referendum if they so desire it. Firstly, in several referendums (and the 1999 Referendums were examples of this) much literature in relation to a referendum would not be supplied by political parties, but by other persons. Also, the wording of the section would appear to impose a duty on the presiding officer or electoral visitor to give any literature that the patient requests, however it may be impossible, despite the best efforts of the presiding officer or electoral visitor, for this to be done.</li> <li>• Section 49A(8) of the Referendum Act, which relates to mobile booths at prisons, avoids both these technical drafting problems. Section 49A(8) provides that: "An electoral visitor who visits a prison may, at the request of an elector confined in the prison, give the elector literature relating to the referendum".</li> </ul> <p>The drafting of section 50(2A) of the Referendum Act requires amendment so as to reflect the drafting of section 49A(8) of the Referendum Act.</p>
32.	Postal voting – double enveloping		61	<p>The JSCEM considered section 61 of the RPMA along with the counterpart section of the Electoral Act (section 188) in its Report on the 1996 Election. The JSCEM made the following recommendation, so as to allow "double enveloping" of postal votes: (pages 56-57): that the postal voting provisions of the Electoral Act and the RPMA be amended to enable double enveloping, by deleting the requirement for the declaration certificate and the return address of the DRO to be printed on the envelope into which the postal ballot papers are placed. The Government supported this recommendation and stated in its response that the amendment is included in the <i>Electoral and Referendum Amendment Bill 1997</i>. However, this legislation, which was passed as the <i>Electoral and Referendum Amendment Act 1998</i>, in fact only amended the Electoral Act, leaving the RPMA unamended. The AEC considers that this is an oversight that should be addressed. Amend section 61 of the RPMA to enable double enveloping, by deleting the requirement for the declaration certificate and the return address of the DRO to be printed on the envelope into which the postal ballot-papers are placed.</p>



33.	Postal voting – return		61	<ul style="list-style-type: none"> <li>Section 61 of the RPMA has also diverged from section 188 of the Electoral Act in that section 61 of the RPMA only allows the address on the return envelope to be that of the DRO for the Division for which the applicant declares that he or she is enrolled. However, the Electoral Act provides that if the application is provided to an ARO outside Australia then the return envelope is to be addressed either to the ARO or to the DRO for the Division for which the applicant declares that he or she is enrolled. Making the same change to the RPMA would allow for more postal voters to have their votes counted, as delays in international post (which can lead to votes being returned too late to be counted) can be avoided by encouraging voters to return their votes to the ARO.</li> <li>Amend section 61 of the RPMA so that if the application is provided to an ARO outside Australia then the return envelope is to be addressed either to the ARO or to the DRO for the Division for which the applicant declares that he or she is enrolled.</li> <li>As a consequential amendment, should section 61 of the RPMA be amended, the directions in section 25(4) of the RPMA should be amended to be consistent with the new requirements.</li> </ul>
34.	Fresh Scrutiny of Referendum Ballot Papers	274 (7)	Part VI	<p>Section 274(7) of the Electoral Act provides for the conduct of a fresh scrutiny of ballot papers (for the House of Representatives) by the DRO after receipt of ballot papers from AROs. Practice has shown that errors do occur at counting centres and these errors are identified and corrected during the fresh scrutiny process. There is no provision in the Referendum Act that allows for the conduct of a fresh scrutiny of votes in a referendum. Therefore, there is no mechanism to allow for the checking of those ballot papers that have been counted to ensure the accuracy of the count.. Section 95 of the Referendum Act allows for a recount of votes in certain circumstances, however, such a recount must be requested. The AEC is of the opinion that a fresh scrutiny of referendum votes is desirable to ensure the accuracy of the referendum counts. The AEC recommends that a provision similar to section 274(7) of the Electoral Act be added to Part VI of the Referendum Act.</p>
35.	Misleading or deceptive publications etc.		122(3)	<p>Section 122(3) of the RPMA is a counterpart to the (now repealed) section 329(3) of the Electoral Act. The JSCEM recommended in its Report on the 1996 Election that section 329(3) of the Electoral Act be repealed. This recommendation was part of the response to "Langer-style" voting. The AEC believes that for consistency section 122(3) of the RPMA should also be repealed.</p>
36.	Evidence of authorship or authorisation of material		new	<p>The RPMA contains no equivalent to section 385A of the Electoral Act. 385A is an evidentiary provision which was added to the Electoral Act by the <i>Electoral and Referendum Amendment Act 1992</i>. The AEC recommends that there be added to the RPMA an equivalent section to section 385A of the Electoral Act.</p>
37.	Preliminary Scrutiny		Schedule 4 Paragraph 6(b)	<p>This provision refers incorrectly to the (now repealed) section 73G of the Referendum Act. The reference should be to section 73D. Paragraph 6(b) of Schedule 4 of the RPMA should therefore be amended to refer to section 73D of the Referendum Act.</p>

38.	ACT Self-Government (Consequential Provisions) Regulations		various	<p>The Australian Capital Territory (Consequential Provisions) Regulations made modifications to the Referendum Act in a number of respects concerning the Australian Capital Territory, so as to appropriately recognise that the ACT is self-governing, including: in relation to the appointment of scrutineers, and in relation to disputed returns. The AEC believes that this arrangement of modification by the Australian Capital Territory (Consequential Provisions) Regulations is potentially confusing to the readers of legislation, and undesirable from a policy point of view in that such significant changes to legislation should be done by statute rather than regulation.</p> <p>The AEC recommends that the alterations to the Referendum Act made as modifications by the ACT Self-Government (Consequential Provisions) Regulations should be moved into the Referendum Act itself by amending the Referendum Act.</p>
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## Appendix G

### Comparison of voting systems: Commonwealth and the States/Territories

Jurisdiction	Term	Fixed election dates?*	Full, partial or optional preferential	Proportional Representation?
<b>Commonwealth</b>				
House	3 yrs	no	full	no
Senate	6 yrs	no**	full	yes (each State/Territory a multi-member electorate)
<b>New South Wales</b>				
Legislative Assembly	4 yrs	yes (next election 24.3.07)	optional	no
Legislative Council	8 yrs	yes (24.3.07, for half the Council)	partial <sup>#</sup>	yes (the State is one multi-member electorate)
<b>Victoria<sup>##</sup></b>				
Legislative Assembly	4 yrs	yes (next election 25.11.06)	full	no
Legislative Council	4 yrs	yes (25.11.06)	partial <sup>#</sup>	yes (eight five-member provinces)
<b>Queensland</b>				
Legislative Assembly	3 yrs	no	optional	no
<b>Western Australia</b>				
Legislative Assembly	4 yrs	no	full	no
Legislative Council	4 yrs	no**	full	yes (six regions, two returning seven members and four returning five members)

<b>South Australia</b>				
Legislative Assembly	4 yrs	yes (next election 18.3.06)	full	no
Legislative Council	8 yrs	yes (18.3.06)	full	yes (the State is one multi-member electorate)
<b>Tasmania</b>				
Legislative Assembly	4 yrs	no	partial <sup>#</sup>	yes (five five-member electorates)
Legislative Council	6 yrs	yes	partial <sup>#</sup>	no
<b>ACT</b>				
Legislative Assembly	3 yrs	yes (next election 16.10.04)	partial <sup>#</sup>	yes (one seven-member electorate and two five-member electorates)
<b>Northern Territory</b>				
Legislative Assembly	4 yrs	no	full	no

*Note \** Jurisdictions providing for fixed election dates typically have mechanisms allowing for an earlier election in limited circumstances, eg a successful motion of no confidence in the government.

*Note \*\** While election dates are not fixed, representatives are elected for a set term commencing at a date subsequent to the date of election.

*Note #* A voter for the NSW Legislative Council must record a preference either for at least one voting group, with preferences flowing to candidates in the marked group/s, or must record a preference for at least 15 ungrouped candidates. A voter for the Victorian Legislative Council must record a preference either for one voting group only, with preferences flowing to all candidates for election according to the group's voting ticket/s, or must record a preference for at least five ungrouped candidates (equating to the number of vacancies to be filled for a Council province). A voter for the Tasmanian Legislative Assembly must record preferences for at least five candidates (equating to the number of vacancies to be filled for an Assembly division). A voter for the Tasmanian Legislative Council must record preferences for at least three candidates (where three or more candidates are standing). A voter for the ACT Legislative Assembly must record at least as many preferences as there are vacancies to be filled (either five or seven depending on the Assembly electorate).

*Note ##* The electoral system for Victoria listed in this table is as amended by the *Victorian Constitution (Parliamentary Reform) Act 2003*, assented to 8 April 2003.



## Appendix H

### Electoral legislation since the 1998 election report

Following the report by this Committee's predecessor on the 1998 federal election tabled in June 2000, the *Commonwealth Electoral Act 1918* has been amended by four amending Acts. The relevant Acts are as follows:

- The ***Commonwealth Electoral Amendment Act (No. 1) 2002*** amended the Electoral Act to provide that following elections, public funding for the Liberal Party is to be paid to the party's Federal Secretariat as agent of the Liberal Party of Australia, unless a notice has been lodged, prior to polling day, setting out the proportions to be paid to the State and Territory Divisions of the Liberal Party and the Federal Secretariat. Assent: 10 October 2002.
- The ***Electoral and Referendum Amendment Act (No. 1) 2001*** amended the Electoral Act and the Referendum (Machinery Provisions) Act in relation to: enrolment and voting processes; candidate nominations; voting ticket information; registration of political parties; provision of electronic lists of postal vote applicants to candidates, registered political parties, Members of the House of Representatives and Senators; and transitional provisions. Assent: 28/4/01; Act No. 34, 2001.
- The ***Commonwealth Electoral Amendment Act (No. 1) 2000*** amended the Electoral Act to enable the provision of: a wide range of elector information to Members, Senators and federally registered political parties; and age-range information for use in

approved medical research and public health screening programs and in relation to the registration of political parties. Assent: 26/10/00; Act No. 126, 2000.

- The ***Commonwealth Electoral Legislation (Provision of Information) Act 2000*** clarified the validity of past and future use of electronically supplied elector information by Commonwealth agencies and authorities; and admissibility of evidence in court which has been gathered relying on the use of such elector information. Assent: 26/10/00; Act No. 127, 2000.