

**AUSTRALIAN ELECTORAL COMMISSION**

**SUBMISSION TO THE  
HOUSE OF REPRESENTATIVES STANDING COMMITTEE  
ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**THE PRIVACY AMENDMENT (PRIVATE SECTOR) BILL 2000**

**Canberra**

**12 May 2000**

## 1. Preamble

1.1 This submission by the Australian Electoral Commission (AEC) is provided to the House of Representatives Standing Committee on Legal and Constitutional Affairs in response to the invitation on 20 April 2000 for the AEC to comment on the Privacy Amendment (Private Sector) Bill.

1.2 The AEC conducts federal elections and referendums under the provisions of the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act). The Electoral Act also empowers the AEC to conduct ATSIC elections under the *Aboriginal and Torres Strait Islander Commission Act 1989*, and industrial elections under the *Workplace Relations Act 1996*.

## 2. Compulsory Enrolment

2.1 Under section 101 of the Electoral Act, it is compulsory for all eligible persons in Australia to maintain continuous enrolment on the Commonwealth Electoral Roll for the purposes of federal elections and referendums, and under section 245 of the Electoral Act it is compulsory for all eligible electors to vote at federal elections. In order to vote at referendums a person must be enrolled to vote at federal elections.

2.2 Section 84 of the Electoral Act allows the Commonwealth to enter into Joint Roll Arrangements with the various States and the Territories to ensure that the Commonwealth Electoral Roll maintained by the AEC contains all relevant enrolment information provided to federal, State and Territory electoral offices under the compulsory enrolment provisions of the relevant federal/State/Territory electoral legislation. In return, the AEC, on behalf of the Commonwealth, provides the electoral offices in the States and Territories with enrolment information for the purposes of State and Territory elections (see, for example, section 91(9B)).

2.3 In order to enrol on the Commonwealth Electoral Roll, or to transfer enrolment, for federal/State/Territory electoral purposes, a joint Electoral Enrolment Form must be completed by the applicant and provided either to the AEC, at any one of the 148 Divisional offices across Australia, or to any of the relevant State/Territory electoral offices (see, for example, the joint Commonwealth/ACT Electoral Enrolment Form at **Attachment 1**).

2.4 Compulsory enrolment for federal electoral purposes requires the applicant to formally declare the following personal information on the Electoral Enrolment Form:

full name	date of birth
residential address	country of birth
phone number	citizenship
postal address	former enrolled address
former surname	

2.5 The name and address information, and other personal information provided by enrolment applicants, is securely maintained on the computerised AEC Roll Management System (RMANS) for official verification and cross-checking purposes by the AEC. However, as the Electoral Enrolment Form advises applicants, a range of listed Commonwealth government agencies, including Centrelink, the Australian Tax Office, and the Attorney-General's Department, have access to the name and address information, and the other personal information, for purposes permitted by the *Privacy Act 1988*.

2.6 The Electoral Enrolment Form also advises applicants that, in addition to name and address information, other personal information such as salutations, postal address, date of birth and gender, may be provided to Members of Parliament, registered political parties, those States and Territories that have Joint Roll Arrangements, and medical research and public health screening programs, for purposes permitted under the Electoral Act (see Attachment 1).

### **3. The Commonwealth Electoral Roll**

3.1 The names and addresses of all electors on the Commonwealth Electoral Roll are available for public inspection, and in some cases sale, in various formats specified under the Electoral Act (**Attachment 2**). For example, the AEC is required under section 89 of the Electoral Act to provide, for public access and sale, a hard-copy bound print of the Divisional rolls containing names and addresses at least once in the life of a Parliament, and to provide supplemental rolls (known as the "additional and deletions lists") as necessary. The printed rolls are made available for public inspection at public libraries, and for inspection and sale, at \$25 per hard-copy Divisional roll, at all AEC Divisional offices.

3.2 The public availability of the Commonwealth Electoral Roll plays an essential role in maintaining public confidence in the integrity of federal elections, by enabling electors to check the correctness of their own enrolment information; to check the correctness of the enrolment of other electors; and to investigate for themselves any suspicions of electoral fraud for Court of Disputed Returns petitions. Electors are entitled to object to any enrolled name and address on the payment of a \$2 deposit (**Attachment 3**).

3.3 However, because the printed rolls available for public inspection become rapidly out of date, because they are printed only once in the life of a Parliament, the AEC has recently submitted to the parliamentary Joint Standing Committee on Electoral Matters (JSCEM) that the Commonwealth Electoral Roll should be placed on the Internet on a secure, read-only basis, with monthly updates (**Attachment 4**). The JSCEM Report is expected to be tabled in Parliament some time after June 2000.

3.4 The Commonwealth Electoral Roll can never be 100% accurate at any one point in time because it is continuously maintained, and for this reason the Electoral Act prohibits any challenge to an election based on the accuracy of the Roll. However, the AEC ensures the Roll is as up-to-date as is possible, in readiness for a close of rolls for an electoral event, through Continuous Roll Update (CRU) action, including Roll Reviews (door-knocks); information received from Australia Post, State/Territory departments, utilities, and electoral offices; the enrolment objection process initiated by Divisional Returning Officers after every electoral event in response to undeliverable non-voter notices; and other event-related information.

3.5 There are no restrictions placed on the use of the name and address information publicly available in the hard-copy versions of the Commonwealth Electoral Roll. However, indications are that the name and address information from the Roll is being scanned, or keyed, by commercial organisations, and used for other than electoral purposes, such as mail-order lists for marketing purposes.

3.6 Despite the unease expressed by some about the commercial use of the name and address information from the Electoral Roll (and similarly from telephone books), it is unlikely that it could be effectively prevented or controlled. But in any event, the name and address information on the Commonwealth Electoral Roll must remain available for public inspection purposes, to serve the wider public interest in ensuring the integrity of elections.

#### **4. Provision of Enrolment Information to Political Parties and MPs**

4.1 Section 91 of the Electoral Act governs the provision of enrolment information to registered political parties and Members of Parliament (MPs), in print and electronic form. The AEC provides enrolment information electronically in CD-ROM format on a monthly basis to all registered political parties and MPs (**Attachment 5**). The information includes the names, addresses, salutations, postal address, date of birth and gender of electors. (The *Electoral and Referendum Amendment Act 1999* amended section 91 to add salutation and date of birth information to personal information already provided to registered political parties and MPs.)

4.2 Section 91A of the Electoral Act governs the permitted purposes to which enrolment information provided to political parties and MPs can be put (**Attachment 6**). Political parties and MPs cannot use enrolment information provided to them in electronic form, including name, address, postal address, salutations, date of birth and gender, for any purpose other than those permitted by the Electoral Act. Section 91B makes it an offence to misuse enrolment information obtained under section 91 for commercial purposes.

4.3 It is worth noting that, whilst registered political parties and MPs who receive enrolment information from the AEC cannot use or pass this information on for commercial purposes, it is still possible for a commercial (or any other) organisation to form itself into a registered political party and field candidates, with no real prospect of electoral success, but with the intention of obtaining personal elector information for later non-electoral purposes. The only drawback might be the rate at which the accuracy of such information decays over time.

4.4 Further, if the enrolment information provided by the AEC were to be repeatedly merged with personal information from other sources, there would come a point at which it might no longer be legally recognised as enrolment information, thereby avoiding the penalties in section 91B of the Electoral Act.

4.5 Registered political parties and MPs are now provided with convenient and regular access to a range of personal elector information that is not available to the average citizen. The significance of the provision of personal enrolment information to political parties on CD-ROM is the ease with which this information can now be manipulated by computer processing. The AEC understands that political parties merge this personal elector information provided by the AEC with other information databases to build detailed elector profiles for purposes such as electoral redistributions, election polling and focus groups, elector mail-outs, and the direct targeting of election campaigns. Whilst the Electoral Act makes it an offence for political parties or politicians to pass on this information to commercial organisations, it is clearly of considerable market value.

4.6 Other personal elector information used by political parties to build elector profiles includes the elector's temporary address and telephone number, and the witness's name and address information, provided on declaration envelopes for postal, absent, pre-poll and provisional voting. Whilst this information is available to party scrutineers after polling day for a short period, the assembling of such details, during the preliminary scrutiny of declaration votes, and through other inspection rights, is an inefficient and time-consuming task.

4.7 A more efficient method of harvesting up-to-date personal elector details from the declaration voting process has emerged over the past few years. The major political parties (the Liberal Party and the ALP) are now actively soliciting postal vote applications from electors during an electoral event, by "blanketing" Divisions with their own postal vote applications together with party political campaign material. The postal vote applications distributed by political parties are similar in all important respects to the official AEC postal vote applications, are consistent with Commonwealth copyright.

4.8 The pre-paid return envelope for these postal vote applications is addressed not to the AEC Divisional Office, but to the electorate office of the political party candidate in the Division, or to an office of the political party. The AEC understands that personal elector details are extracted from the postal vote applications, and merged with national/Divisional elector

databases belonging to the party, before the applications are sent onto the AEC for the issuance of postal vote materials.

4.9 The official AEC postal vote application form (**Attachment 7**) alerts the elector to the fact that the information provided will be available for public inspection from the third day after polling day until 40 days after the return of the writ. However, the postal vote applications distributed by the major political parties have not always included this advice, and do not advise that the elector's personal information may be retained and used by the political party.

4.10 Further, many applications distributed by the major political parties provide a return address which could be misunderstood as an official AEC address. For example, "Postal Vote Officer" at a PO Box number, or "Eden-Monaro Electorate Office" might appear to some to be the office of the AEC Divisional Returning Officer in that Division, when it is in fact the electorate office of a candidate.

4.11 This intervention in the postal voting process by the political parties not only has the potential to mislead electors about the use to which their personal information will be put, but it is also impacting on the franchise. The AEC is increasingly concerned that electors are being disfranchised because candidates and party workers fail to direct the postal vote applications to the AEC in time for the issuance of postal vote materials before polling day, or do not send on the applications at all.

4.12 The AEC has made its concerns known to the JSCEM in a recent submission which highlighted the 130 electors known to have been disenfranchised at the 1998 federal election because their postal vote applications, routed through political party offices, were received too late by the AEC to allow the issuance of postal voting materials (see paragraph 8.6.29 at **Attachment 8**).

4.13 The AEC is also concerned that the encouragement of postal voting by the major political parties may be gradually altering the nature of the federal electoral process in Australia, so that postal voting prior to polling day is increasingly seen as a preferred option, rather than an emergency measure available only to those electors unable to attend a polling booth on polling day.

4.14 As the AEC has submitted to the JSCEM, such a potentially major shift in the federal electoral process should not be allowed to develop by default through the self-interested activities of the major political parties, but only after appropriate consideration by the Parliament. The JSCEM Report is expected to be tabled in Parliament some time after June 2000.

4.15 The major political parties contend that their elector information databases make an important contribution to the democratic process, by allowing them to more precisely target their constituencies. The salutation and gender information now provided by the AEC, for example, enables letters to constituents to include appropriate address blocks, and the date of birth information enables specific age groups to be targeted for relevant campaign

material. The totality of the information collected on a single individual also allows that individual to be tracked geographically across Divisions as addresses are changed, and through time, as the individual ages and political preferences change.

4.16 However, the AEC remains concerned about the reach and impact of these private databases, based as they are on enrolment information provided by electors as a compulsory obligation under the Electoral Act, and personal information provided by electors, in many cases unknowingly, to political parties intervening in the postal voting process.

## **5. The Privacy Amendment (Private Sector) Bill 2000**

5.1 It is understood that clauses 39 and 42 of the Bill would amend the *Privacy Act 1988* to insert section 7(1)(ee) and section 7C so as to exempt political organisations from the privacy regulations that would apply more generally to the private sector. It is also understood that the new regime for the private sector will not apply to existing databases and will not come into force for another year.

5.2 Under the exemptions provided in the Bill, the elector information databases currently maintained by the major political parties would remain unregulated under the Privacy Act. The most significant consequence is that electors would have no statutory right to check their own information on these databases to ensure accuracy and to avoid misrepresentation. This will not contribute to public transparency and accountability in the electoral process, and could have a longer term impact on public confidence in the integrity of the electoral system.

5.3 It should be emphasised that whilst the Electoral Act prohibits the commercial or non-electoral use of personal elector information provided by the AEC to registered political parties and MPs, there remains a real risk that any person, such as an employee, party worker, or contractor, who is able to access the elector information databases from the electorate offices of MPs, for example, is in a position to use or pass on unexamined personal elector information for non-electoral purposes.

5.4 Access to discarded copies of the database supplied to MPs is also of major concern to the AEC. Although passwords are necessary to access roll details, programmers can circumvent these passwords.

## 6. Summary

- All eligible electors in Australia are required to provide personal information to the AEC under the compulsory enrolment provisions of the Electoral Act.
- Public access to name and address information on the Commonwealth Electoral Roll is a statutory right, and is essential for maintaining public confidence in the integrity of the electoral system.
- Registered political parties and Members of Parliament are provided, as a statutory right, with personal elector information, including name, address, postal address, salutations, date of birth and gender, in electronic form on a monthly basis.
- Personal elector information obtained by political parties from the AEC is merged with personal information obtained from other sources to build powerful electronic databases for electoral campaign purposes.
- The major political parties have intervened in the postal voting process, with the result that some electors are being disenfranchised, and some electors are not aware that the personal information on their postal vote applications will be added to political party electronic databases.
- The use of personal elector information for purposes other than those prescribed under the Electoral Act is prohibited, but a real risk remains that the information contained on the electronic databases of political parties could be misused without detection.
- Allowing political parties to continue to maintain electronic databases containing personal information on 12 million Australian electors, without allowing electors to check their own personal information, must be regarded as a serious privacy issue.



***AEC Electoral Enrolment Form (joint federal/ACT)***

See attached

***Extract from Commonwealth Electoral Act 1918***

**89 Printing of Rolls**

(1) Rolls shall be printed whenever the Electoral Commission so directs but so that the Rolls are printed at least once during the period of 2 years after the commencement of the first session of the Parliament after a general election.

(2) Supplemental Rolls, setting out additions since the latest print of the Rolls, shall be prepared and printed at such times as the Electoral Commission directs.

**90 Inspection etc. of Rolls**

(1) Copies of the latest print of the Roll for a Division and of the Supplemental Rolls (if any) relating to that Roll shall be available for public inspection without fee:

- (a) at the office of the Divisional Returning Officer for that Division;
- (b) if there is an Assistant Divisional Returning Officer for a Subdivision of that Division at the office of that Assistant Divisional Returning Officer; and
- (c) at such other places (if any) as the Electoral Commission determines;

and shall be available for purchase at that office or those offices, as the case requires, and at such other places (if any) as the Electoral Commission determines, on payment of such amounts as the Electoral Commission determines to be appropriate in relation to prints of Rolls of that kind.

(2) Each Roll kept by a Divisional Returning Officer or an Assistant Divisional Returning Officer shall be available for public inspection, without fee, at the office of the Divisional Returning Officer or of the Assistant Divisional Returning Officer, at any time during ordinary office hours.

(3) The Electoral Commission shall, at each capital city office of the Commission, keep available for inspection by members of the public, the latest microfiche of:

- (a) the Roll for each State and Territory; and
- (b) any other Roll specified in a direction given by the Electoral Commissioner for the purpose of this paragraph.

(4) The capital city offices of the Electoral Commission are:

- (a) the principal office of the Commission in Canberra;
- (b) the principal office of the Commission in the capital city of each State; and
- (c) the principal office of the Commission in Darwin.

(5) The Divisional Returning Officer for a Division shall keep available, at his or her office, for inspection by members of the public, the latest microfiche of:

- (a) the Roll for the Division; and
- (b) any other Roll specified in a direction given by the Electoral Commissioner for the purpose of this paragraph.

(6) A microfiche of a Roll shall be made whenever the Electoral Commissioner so directs.

(7) A microfiche referred to in subsection (3) or (5) shall be available for inspection during ordinary office hours without fee.

***AEC Objections to the Roll Form***

See attached

***Extract from AEC submission No 88 of 12 March 1999 to the JSCEM***

**4.7 Public Access to the Roll**

4.7.1 Recommendation 53 of the June 1997 JSCEM Report was:

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

4.7.2 An extensive legislative and policy review of these enrolment provisions of the Electoral Act is currently underway, and the AEC will provide a supplementary submission to this JSCEM as time permits.

4.7.3 In the meantime, this submission makes an early recommendation to facilitate the provision of the Commonwealth Electoral Roll on the AEC Internet site, in order to improve public access to enrolment information as soon as possible. Such an innovation would allow electors, wherever electronic communications are available in Australia, to check the correctness of their personal enrolment information; to check the correctness of the enrolment of other persons for objection purposes; and to investigate for themselves any suspicions of fraudulent enrolment for the purposes of a petition to the Court of Disputed Returns.

4.7.4 It is proposed that the inquirer should be able to search the Internet roll by name and address/locality, a similar form of public access to that already available in the printed rolls and telephone directories. A downloadable enrolment form is available on the AEC Internet site to allow anyone whose name cannot be found on the roll to print out the form, fill it in and deliver it (by other means) to the AEC. It would not be possible to print out, copy, or alter the Internet roll in any way.

4.7.5 The New Zealand Electoral Commission already has an Internet roll in operation, but requires the inquirer to provide a birth-date in addition to the name and address, thereby limiting public access to 'own' enrolment information (see Attachment 04). In the view of the AEC, the Internet roll in Australia should be more accessible than this, allowing the enrolment of other electors to be checked for objection and petition purposes. In this way, the Internet roll would serve the important democratic function of allowing citizens to confirm for themselves that the roll is as accurate as possible, in the same way as the printed roll already does, but in a less convenient way.

4.7.6 Over recent years, access to enrolment information by registered political parties and parliamentarians has been gradually increased through successive amendments to the Electoral Act, and through improvements in electronic data provision. For example, the Electoral Act now entitles registered political parties and parliamentarians to request at any time from the AEC a tape or disc containing the name, address and gender of all relevant enrolled electors. In practice, the AEC provides CD-ROMS containing a complete enrolment history on every relevant elector to all registered political parties and parliamentarians on a monthly basis, free of charge.

4.7.7 It is generally understood that parliamentarians and registered political parties gradually enhance their enrolment databases with other information on electors that

may come to their attention (see, for example, Part 8.6), so that these databases, held in the headquarters of political parties or in the electorate offices of parliamentarians, become very powerful tools for targeting political campaign activities, such as elector mail-outs. The Electoral and Referendum Amendment Bill 1998, currently before the Parliament, would require the AEC to additionally provide to all parliamentarians and registered political parties, date of birth and salutation information on each elector, so as to further refine the targeting of political campaign advertising.

4.7.8 By comparison, over recent years, the public at large has been less well serviced in relation to access to the rolls. The AEC is required under section 89 of the Electoral Act to provide, for public access and sale, a hard-copy bound print of the rolls at least once during the period of two years after the commencement of the first session of the Parliament after a general election, and to provide supplemental rolls as necessary. These printed rolls are made available for public access at AEC Divisional Offices and public libraries, where they have become an important part of the historical record.

4.7.9 However, because of population mobility and the rapid computerised processing by the AEC of new enrolments and transfers, the printed rolls are obsolete the moment they are printed. Although costs are recovered to some extent by the sale of these printed rolls at \$25/Divisional roll, it has long been recognised that the section 89 printed rolls represent an increasingly inefficient and ineffective means of providing public access to the rolls.

4.7.10 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 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.

4.7.11 This means that public access to roll information is presently a tiresome and difficult process, involving the comparison of hard-copy or microfiche roll information with the more recent information from the supplemental rolls held in Divisional Offices. Those who live in remoter areas of Australia, without ready access to a Divisional Office, are doubly disadvantaged.

4.7.12 The provision of the Commonwealth Electoral Roll on the Internet has already gained the nominal support of the Government. Recommendation 9 of the June 1997 JSCEM Report was: "That electoral rolls for a division or subdivision again be made available for inspection in local libraries and Post Offices." However, the cost of increasing the distribution of printed rolls as recommended was estimated to be in the order of \$396,000 per year. Accordingly, on 8 April 1998, the Government Response was: "Not supported. The Australian Electoral Commission to examine the cost and feasibility of placing electoral rolls on the Internet where they can be readily updated."

4.7.13 On 9 March 1998, the AEC made a submission to the previous JSCEM responding to the first recommendation of the June 1997 JSCEM Report, which 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....". Part 6 of the March 1998 AEC submission explored the provision of the Internet on the Roll.

4.7.14 On the basis of that submission, it is proposed in this submission that the AEC Internet site include the Commonwealth Electoral Roll with a name and address/locality search facility. Public libraries with Internet access would be able to link to the AEC Internet site, but where the Internet is not available, the AEC could provide a CD-ROM containing the electoral rolls for the relevant State/Territory, and with the same search facility.

4.7.15 The Attorney-General's Department has advised that this proposal would be legally permissible under the current terms of the Electoral Act, and that such provision would not conflict with the *Privacy Act 1988*, as the rolls are already a publicly available document. However, the Privacy Commissioner has commented that:

Serious consideration would also need to be given to how the roll will be updated if it is being made available in a large number of locations. It is important that there are procedures in place to update the Roll on a regular basis, particularly when changes are required because an individual has requested that their name be removed from the Roll because they believe that their personal safety, or that of their family, is at risk.

4.7.16 In the light of these comments by the Privacy Commissioner in relation to the necessity for regular updates of the information provided, it has been concluded that monthly updates of the Internet roll and the CD-ROMs to libraries would be in the public interest. This could be done in conjunction with the monthly update of the same information provided to the parliamentarians and registered political parties.

4.7.17 It is estimated that for monthly updates of the Internet roll the development costs would be \$120,000, the annual running costs would be \$40,000 and the maintenance costs would be \$42,000. It is proposed, however, that the frequency of updating not be expressly provided for in the Electoral Act, so as to allow for any technical problems or other contingencies that might arise from time to time.

Recommendation 1: That the publicly available Commonwealth Electoral Roll be provided on the AEC Internet site for name and address/locality search purposes, and that the Roll be provided in CD-ROM format with the same search facility to public libraries without Internet access, with regular updating.

***Extract from the Commonwealth Electoral Act 1918***

**91 Provision of Rolls and habitation indexes to political parties etc.**

(1) In this section:

*habitation index*, in relation to a Division, means a list of electors for the Division arranged, in a manner determined by the Electoral Commission, by reference to the respective places of living of the electors whose names are on the Roll for the Division.

*supplement* means, in relation to a Roll, a record of the changes to the Roll during a period of time.

(2) The Electoral Commission shall, after each general election:

- (a) provide to each registered political party a copy of the latest print of the Roll for each State and Territory;
- (b) provide to each Senator for a State or Territory 5 copies of the latest print of the Roll for that State or Territory;
- (c) provide to each member of the House of Representatives 5 copies of the latest print of the Roll for the Division for which the member was elected; and
- (d) provide to such other persons or organisations (if any) as the Electoral Commission determines are appropriate a copy of the latest print of such Rolls as the Electoral Commission considers appropriate.

(3) Instead of providing a copy or copies of the latest print of a Roll to a party or person referred to in paragraph (2)(a), (b) or (c), the Electoral Commission must, if the party or person so requests, provide a copy of the Roll on tape or disk.

(4) Instead of providing a copy of the latest print of a Roll to a person or organisation referred to in paragraph (2)(d), the Electoral Commission may, at its discretion, provide a copy of the Roll on tape or disk.

(4A) In addition to any tapes or disks provided under subsection (3) or (4), the Electoral Commission:

- (a) must, on request, and as far as practicable, provide to a registered political party a member of which is a Senator or a member of the House of Representatives a copy on tape or disk of any Roll or of any supplement to a Roll; and
- (b) must, on request, and as far as practicable, provide to any other registered political party a copy on tape or disk of any Roll or of any supplement to a Roll; and
- (c) must, on request, and as far as practicable, provide to a Senator for a State or Territory a copy on tape or disk of the Roll for any Division in that State or Territory or of any supplement to that Roll; and
- (d) must, on request, and as far as practicable, provide to a member of the House of Representatives a copy on tape or disk of the Roll for:
  - (i) the Division for which the member was elected; or



(ii) if the member was elected for a Division that has been affected by a redistribution - any Division that after the redistribution includes the Division, or a part of the Division, for which the member was elected; or of any supplement to that Roll or Rolls;

(e) may, on request, if it considers it appropriate, and subject to conditions (if any) determined by the Commission, provide to any person or organisation a copy on tape or disk of any Roll or of any supplement to a Roll.

(5) So far as practicable, the Electoral Commission shall, after each general election, provide to each registered political party a copy on tape or disk of the habitation index for each Division.

(5A) In addition to any tapes or disks provided under subsection (5), the Electoral Commission must, on request, and as far as practicable, provide to a registered political party a copy on tape or disk of any habitation index.

(6) A print, tape or disk provided to a party or person under subsection (2), (3), (4) or (5) shall be provided:

(a) without charge; and

(b) not later than 2 years after the commencement of the first session of the Parliament after the last general election.

(6A) A tape or disk provided to a party, Senator or member under paragraph (4A)(a), (c) or (d) is to be provided without charge.

(6B) If the Commission provides a tape or disk under paragraph (4A)(b) or (e) or subsection (5A), it may charge a fee that covers the cost to the Commission of providing the tape or disk.

(7) In spite of subsections (2), (4A), (5) and (5A), the Electoral Commission is not required by those subsections to provide a registered political party with:

(a) a copy of the latest print of the Roll for a State or Territory; or

(b) a copy on tape or disk of the Roll for a State or Territory; or

(c) a copy on tape or disk of the habitation index for a Division in a State or Territory;

unless a branch or division of the party is organised on the basis of that State or Territory.

(8) The Electoral Commission shall not include on a tape or disk of a habitation index provided under subsection (5) or (5A) the name of a person whose address has been excluded or deleted from a Roll under section 104.

(9) Except as otherwise provided by this Act, the Electoral Commission shall not provide any person with any information which discloses particulars of the occupations, sex or dates of birth of electors.

(9A) A tape or disk containing information that discloses particulars of the sex of electors may be provided by the Electoral Commission to:

(a) a person or organisation that conducts medical research; or

(b) a person or organisation that provides a health screening program; or

(c) a member of the House of Representatives or a Senator; or

(d) a registered political party.

(9B) If an arrangement under section 84 allows information to be provided to an electoral authority of a State or Territory, the Electoral Commission may also provide that electoral authority with information that discloses particulars of the sex or dates of birth of electors who are enrolled in another State or Territory. Information provided under this subsection may be provided:

- (a) on tape or disk; or
- (b) by any other means.

(9C) A tape or disk containing information that discloses particulars of the dates of birth, or salutations, of electors may be provided by the Electoral Commission to:

- (a) a member of the House of Representatives or a Senator; or
- (b) a registered political party.

(10) The Electoral Commission may provide a prescribed authority with a microfiche of a Roll or with information referred to in subsection (9) if the provision of the microfiche or information is authorised by the regulations.

(10A) Nothing in section 91C, 91D or 91E derogates from the requirement of the Electoral Commission to provide copies of the latest print of the Rolls under this section.

(11) In subsection (10), *prescribed authority* means:

- (a) the Agency Head of an Agency (within the meaning of the *Public Service Act 1999*) that is specified in the regulations for the purposes of this subsection; or
- (b) the chief executive officer of an authority of the Commonwealth that is so specified.

**Extract from Commonwealth Electoral Act 1918**

**91A Use of information from Roll and habitation index**

(1) If a tape or disk has been provided under subsection 91(3), (4), (4A), (5), (5A), (9A), (9B) or (9C), a person must not use information obtained by means of the tape or disk except for a purpose that is a permitted purpose in relation to the person or organisation to which the tape or disk was provided.

Penalty: 100 penalty units.

(1AA) If information has been provided under paragraph 91(9B)(b), a person must not use the information except for a purpose that is a permitted purpose in relation to the person or organisation to which the information was provided.

Penalty: 100 penalty units.

(1A) The permitted purposes in relation to a Senator or member of the House of Representatives are:

- (a) any purpose in connection with an election or referendum; and
- (aa) research regarding electoral matters; and
- (b) monitoring the accuracy of information contained in a Roll; and
- (c) the performance by the Senator or member of his or her functions as a Senator or member in relation to a person or persons enrolled for the Division, State or Territory to which the tape or disk relates.

(2) The permitted purposes in relation to a political party are:

- (a) any purpose in connection with an election or referendum; and
- (aa) research regarding electoral matters; and
- (b) monitoring the accuracy of information contained in a Roll; and
- (c) the performance by a senator or member of the House of Representatives who is a member of the party of his or her functions as a senator or member in relation to a person or persons enrolled for the Division, State or Territory to which the tape or disk relates.

(2A) The permitted purposes in relation to a person or organisation other than a Senator, member of the House of Representatives or political party are:

- (a) any purpose in connection with an election or referendum; and
- (b) monitoring the accuracy of information contained in a Roll; and
- (c) any other purpose that is prescribed.

(2B) For information provided under subsection 91(9B), the only permitted purposes in relation to an electoral authority of a State or Territory are:

- (a) any purpose in connection with an election or referendum; and
- (b) monitoring the accuracy of information contained in a Roll.

(3) In this section:

**election** means:

- (a) a Senate election;

- (b) a House of Representatives election;
- (c) a State election;
- (d) a Territory election; or
- (e) a local government election.

**referendum** means a referendum conducted under a law of the Commonwealth or of a State or Territory.

### **91B Prohibition of disclosure or commercial use of Roll or habitation index**

(1) For the purposes of this section, information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that:

- (a) the information has been obtained under paragraph 91(9B)(b); or
- (b) the information has been obtained by means of a tape or disk provided under section 91.

(2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 91A.

Penalty: 1,000 penalty units.

(3) A person shall not use protected information for a commercial purpose.

Penalty: 1,000 penalty units.

***Extract from AEC submission No 88 of 12 March 1999 to the JSCEM***

**8.6 Postal Vote Applications**

8.6.1 The AEC has expressed its concerns to the last two JSCEM inquiries about the increasing practice by the major political parties, since the 1993 federal election, of widely distributing postal vote applications across Divisions, in the absence of any requests for such a service by the electors themselves (see history at Attachment 19). These concerns are summarised as follows.

8.6.2 In the first place, it would appear that many electors who would ordinarily present at a polling booth on polling day are increasingly availing themselves of the postal voting facility. The AEC is not convinced that many of these postal vote applicants are strictly qualified to apply for a postal vote under section 183 and Schedule 2 of the Electoral Act. That is, instead of being a fall-back facility for those electors who might experience difficulty in attending a polling booth on polling day, postal voting may be evolving into the method of voting of first choice because of its undoubted convenience. This is not in accordance with the original intentions of the Electoral Act, which recognises ordinary voting at the polling booth on polling day as the standard method of voting at federal elections.

8.6.3 In the second place, the blanketing of Divisions with postal vote applications by those major political parties with the resources to do so, means that many electors are delivered with two or more postal vote applications. For some electors, this might suggest that they can avail themselves of more than one vote, and as a consequence more than one postal vote application from the same elector eventually arrives at the AEC for processing. This results in a significant increase in administrative workload for Divisional staff to ensure that they issue only one set of ballot papers and a declaration envelope to each postal vote applicant.

8.6.4 In the third place, electors may be misled into believing that their postal vote applications are sent directly to the AEC for processing, because it is not generally made clear on the return envelope that the address is actually for a political party office and not the AEC. Any elector who completes a postal vote application provided by a political party, and returns it to the party office address provided, is providing that political party with access to their personal details, and possibly, an indication of political support. The AEC believes that many postal vote applicants may be doing this unknowingly. This is despite the fact that attached to the applications, or enclosed with them, is political party campaign material directed at encouraging the elector to eventually vote for that particular party. Many electors in these circumstances may simply assume that, despite the attached/enclosed political campaign information, the address on the return envelope belongs to the AEC.

8.6.5 The AEC is not privy to the use made of the personal information on postal vote applications processed by the political parties, but it is a fair assumption that the political parties record the personal details of, and probable political support from, those individual electors. Further, it is a fair assumption that this personal information is then added to the enrolment databases and used to refine political campaign strategies, such as direct mailing. It would appear that this practice is increasingly becoming an integral part of the campaign machinery of the major political parties, that have the financial resources to organise the mass distribution of postal vote applications, particularly in marginal Divisions.

8.6.6 In the fourth place, in the time period allowed for the receipt of postal vote applications by the AEC, political parties tend to send bundles of applications through to AEC offices (not always the Divisional offices) in unpredictable pulses, so that rather than receiving a steady stream of applications that can be properly managed, Divisional Offices may receive many hundreds of postal vote applications on one day and none for the next week. The processing inefficiencies that result, and the strains placed on the management of the issuance of ballot papers and declaration envelopes should be obvious.

8.6.7 In the fifth place, despite the reassurances regularly received from political parties engaged in this practice, there is a real risk that political parties holding large numbers of postal vote applications may lose or misplace some or all of these, or send them to the AEC after the deadline for receipt of postal vote applications, 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 applicants. If a group of electors is disenfranchised because a political party has lost, or delayed sending to the AEC, their postal vote applications, then an election result could be subject to challenge in the Court of Disputed Returns.

8.6.8 In the sixth place and finally, a significant increase in postal votes cast at an election, particularly in marginal Divisions, will have the inevitable consequence of slowing down the processing of declaration votes and the final declaration of the result in a Division. Unlike ordinary votes, declaration votes are not counted on polling night, and where the result is close, it may be a number of weeks before a conclusion is reached. Those who are frustrated by the slowness of the count in marginal Divisions might conclude that in many cases this is not attributable to any inefficiencies in AEC procedures, but rather to the actions of the major political parties in widely promoting the postal voting facility.

8.6.9 The AEC reiterates these general concerns about postal vote applications distributed by political parties, in relation to the particular problems experienced at the 1998 federal election. The *Electoral and Referendum Amendment Act 1998* inserted into the Electoral Act the following provision, which was in operation for the 1998 federal election:

184AA Application form for postal votes

(1) An application form for a postal vote may be physically attached to, or form part of, other written material issued by any person or organisation.

(2) For the purposes of the Copyright Act 1968, if a person other than the owner of the copyright in the application form for a postal vote reproduces the application form, the person is not taken to have infringed the copyright in the application form.

8.6.10 This provision represents a recognition and acceptance by the Parliament that postal vote applications will be distributed by persons and organisations other than the AEC, which nevertheless holds the overall statutory responsibility for the proper conduct of postal voting. As an extension of this, it also represents a watering down of the Commonwealth's primary claim to copyright in the postal vote application form.

8.6.11 With respect to the 1998 federal election, it is not possible to separate out the impact of holding the election on a long weekend and school holidays in many States/Territories (with the expected increase in postal voting), and the impact

of the blanket distribution of postal vote applications across Divisions by both major political parties (with the expected increase in postal voting), on the significant overall increase in postal voting at the 1998 federal election.

8.6.12 However, the statistics are extraordinary. There were 606,991 postal vote applications processed for the 1998 federal election, compared to 414,163 postal vote applications processed for the 1996 federal election, which represents an increase of 47% over the 1996 federal election. Further, since the 1993 federal election there has been a 68% increase in postal vote applications processed (see Attachment 20). On the basis of these statistics, it is worth questioning whether all those who utilised the postal vote applications provided by the political parties were in fact entitled to cast a postal vote.

8.6.13 The postal vote application is an “approved” form under section 184(1) of the Electoral Act, and this is defined in section 4(1) of the Act as “approved by the Electoral Commission by notice published in the Gazette.” The approved postal vote application form as produced by the AEC has attached to it a considerable amount of relevant information, including the qualifications for applying for a postal vote. It is difficult for a potential applicant to avoid reading the attached information and this ensures that applicants are actually qualified to apply. (Attachment 21).

8.6.14 When the political parties reproduce the approved postal vote application form they are not required to have attached to it the relevant qualifications to guide the potential applicant, as these are not part of the AEC approved form. Instead the approved postal vote application form reproduced by a political party may only have attached to it political party campaign material encouraging the elector to support that party. This means that many electors who receive postal vote applications from the political parties may not appreciate that qualifications for postal voting do exist, and may simply assume that they are entitled to cast such a vote because they have been delivered with an unsolicited application form.

8.6.15 To ensure that potential postal vote applicants who utilise the political parties as a conduit to the AEC are consistently advised of the qualifications for postal voting, the AEC will be gazetting a postal vote application form that includes the relevant advisory information on postal vote qualifications. This will mean that the political parties will be required under the Electoral Act to reproduce not only the actual postal vote application form but also the information on qualifications.

8.6.16 Further, the AEC will consider making the “approved” postal vote application form similar to the postal vote application Form 13 approved by the NSW Electoral Commission for the purposes of NSW State elections (see Attachment 22). In the relevant part of the NSW approved form, the applicant must actually tick off the reason why the applicant requires a postal vote, from a list of the permitted reasons in the legislation. This would provide a further assurance that the applicant is indeed qualified for a postal vote for federal elections.

8.6.17 Not only did the number of postal vote applications processed at the 1998 federal election increase by 47% over the previous election, indicating a significant trend away from ordinary voting on polling day and towards declaration voting before polling day, but the blanketing of Divisions with postal vote applications from both major political parties resulted in considerable confusion in the electorate, with multiple postal vote applications from the same electors being received at Divisional Offices. These multiple postal vote applications were obviously processed through each of the major political parties, unbeknownst to each other, and each

political party forwarded their 'own' postal vote applications from the same elector through to the AEC.

8.6.18 On receipt of more than one postal vote application from the same elector, the Electoral Act does not explicitly allow Divisional staff to decide not to issue more than one set of voting materials to the same person. Any voter who sent in more than one postal vote application may have assumed on receipt of more than one set of voting materials from the AEC that they were somehow entitled to cast more than one vote. If multiple votes are returned to the AEC, the legislation dictates that those votes must enter the count, if they pass through the preliminary scrutiny. If there are sufficient numbers of multiple votes to exceed the winning margin in an election, then the AEC would consider a petition to the Court of Disputed Returns.

8.6.19 However, the AEC recognised this problem developing early in the postal voting period (from 31 August to 1 October), and took administrative steps to address the problem. On 9 September 1998, all staff were issued with an instruction to contact by telephone or in person any multiple postal vote applicant, and advise them of the law relating to multiple voting. The multiple applicant was then to be asked whether they wished to proceed with the multiple applications, or plump for one of them, so that they would then be issued with only a single set of voting materials. In those cases where the elector could not be contacted or did not understand or appreciate the approach from Divisional staff, multiple sets of voting materials were issued, accompanied by a letter warning about the penalties for multiple voting.

8.6.20 The AEC believes that this rapid response with an administrative solution to the problem of possible widespread multiple voting stimulated by the mass distribution of postal vote applications by the major political parties may have saved a number of marginal Divisions from a challenge in the Court of Disputed Returns. However, an amendment to the Electoral Act might now be considered to permit this administrative response at the 1998 federal election to be reflected in the legislation for future elections.

Recommendation 17: that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to require the Divisional Returning Officer to consult with multiple postal vote applicants, in order to avoid the issuance of multiple sets of postal voting materials.

8.6.21 A further amendment to the Electoral Act, to prevent the entry of any declaration vote into the count after the preliminary scrutiny, might also be considered. The 1997 election of delegates to the Constitutional Convention, which was conducted entirely by postal voting, provides a legislative model for disallowing at the preliminary scrutiny any further declaration certificate envelopes from the same voter, once the first received declaration certificate envelope has been processed.

8.6.22 Section 97(10) of the *Constitutional Convention (Election) Act 1997* provides as follows: "if two or more certificate envelopes have been received in the name of one elector, the DRO must decide which one (if any) of the envelopes should be accepted for further scrutiny. The DRO must exclude all those not accepted for further scrutiny." In effect, the first received declaration vote envelope from a voter will contain the only votes that will be entered into the count from that voter. For federal elections, this should apply not only to postal votes, but to other declaration votes, such as pre-polls, absents and provisionals.



Recommendation 18: that the relevant declaration voting provisions of the Electoral Act and the Referendum Act be amended to reflect the purpose of section 97(10) of the *Constitutional Convention (Election) Act 1997* in relation to the disallowance at the preliminary scrutiny of all but one of any multiple declaration certificate envelopes from the same voter.

8.6.23 By adopting this provision from the Constitutional Convention Act into the Electoral Act, and allowing the rejection of all but one of multiple declaration certificate envelopes at the preliminary scrutiny, the further effect might be that political parties will be encouraged to return 'their' postal vote applications as soon as possible to the AEC, to ensure that the voters concerned are issued with and return an 'early' vote to the AEC.

8.6.24 The detour of postal vote applications through political party offices is effected by the reply paid envelope provided to the applicant by the political party in the same package as the approved postal vote application form and any attached/enclosed party campaign material. The AEC sighted many examples of reply paid envelopes on which the return address was not distinguished as a political party office, and which appeared to suggest an 'official' destination, namely the AEC.

8.6.25 For example, otherwise unidentifiable reply paid envelopes provided for the return of postal vote applications were addressed as: "Reply Paid No 66, Postal Vote Applications, PO Box 66, Deakin West ACT 2600", or: "Reply Paid Post 490, Postal Vote Officer, Electorate of Eden-Monaro, PO Box 490, Queanbeyan 2620". To the uninitiated, such addresses might suggest at first glance that the postal vote applications were travelling directly back to a postal voting centre at the AEC, rather than to a political party office. In order to avoid any allegation of deliberate deception arising, it might be prudent for the return address on such envelopes to clearly state that the destination is to be a political party office.

8.6.26 It is noted that for the pending NSW State election, the postal vote application form reproduced for distribution by the political party at Attachment 8D, has the return address clearly identified as "Liberal Party NSW Division", rather than the ambiguous "Postal Vote Applications" or "Postal Vote Officer" used for the 1998 federal election in the examples provided above.

Recommendation 19: That the Electoral Act and the Referendum Act be amended to provide that reply paid envelopes provided to postal vote applicants by political parties be identified by the political party name printed on the face of the envelope as part of the return address.

8.6.27 Because the political parties ensured that their postal vote application forms were distinguishable from the official AEC postal vote application forms, it is possible to comment on the rate of return of postal vote applications from the political parties to the AEC, and the impact on AEC operations. The marginal seat of Eden-Monaro is often regarded as a litmus seat, and is used for the purposes of this analysis and comment.

8.6.28 The total number of official AEC postal vote application forms received by the Eden-Monaro Divisional Office was 1,567, and they were received at a steady rate over the period 31 August to 1 October. By contrast, the total number of political party application forms received by the Divisional Office was 3,872, and these were received in distinct surges over the same period. For example, from 31 August until 10 September, no political party application forms were delivered to the Divisional Office, but on a single day, 11 September, 1,380 political party application forms

were delivered. No further political party application forms were delivered until 16 September, when 1,159 were delivered. Thenceforth the rate of delivery was relatively stable, averaging around 120 per working day.

8.6.29 The AEC has evidence that, nationally, 130 electors were disenfranchised because their political party postal vote applications were received too late by the AEC to allow the issue of voting materials. Further, at least 44 electors have advised the AEC, through non-voter notices and direct complaints, that they filled out political party postal vote applications, but did not receive voting materials from the AEC, suggesting that those applications may not have been forwarded on to the AEC by the political parties.

8.6.30 Finally, there were numerous instances where it was necessary for Divisional officers to either liaise directly with staff at political party offices to ensure the prompt delivery of the postal vote applications, or alternatively for a Divisional officer to collect the applications from the political party office. There is a danger that this direct association between Divisional staff and political party office staff could be interpreted by some as compromising the neutrality of the AEC.

8.6.31 In summary, the AEC recognises that it is unlikely that the major political parties would agree to a reversion to the pre-1993 situation where postal voting was entirely managed by the AEC. However, the JSCEM is asked to recognise the fundamental changes to voter behaviour that may be occurring in response to the mass distribution of unsolicited postal vote applications; the significant risks of disenfranchisement that are developing; and the detrimental impacts on the efficiency of AEC operations, and to consider whether this is the direction in which the federal electoral system should be evolving.

***AEC Postal Vote Application Form***

See attached