

## 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 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.