



Electoral Commissioner

Mr Daryl Melham MP
Chair
Joint Standing Committee on Electoral Matters
Department of House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Melham

Please find enclosed the Australian Electoral Commission's (AEC) responses to two outstanding requests arising from public hearings, and to a number of requests for information made in our meeting with you on 19 January 2009 and by email from the JSCEM Secretariat on 3 February 2009.

On 30 October 2008, you wrote to the then Acting Electoral Commissioner, Mr Paul Dacey, requesting further information on how legislative changes since the 2001 federal election affected enrolment and objection processes and preliminary scrutiny of declaration votes and the AEC's views on the desirability of reinstating particular provisions. The AEC is presently considering legal advice we recently received on some aspects of your questions and we will provide a response as quickly as possible.

Yours sincerely



Ed Killesteyn
Electoral Commissioner

16 March 2009

AEC RESPONSES TO QUESTIONS ARISING FROM PUBLIC HEARINGS AND SUBSEQUENT MEETINGS AND CORRESPONDENCE

	Contents	Page
1	Roll review statistics	2
2	Impact of changed close of rolls rules	3
3	Multiple voting	4
4	Impact of the annual efficiency dividend for the AEC	7
5	Analysis of 17-24 year old enrolment 2001-2007	9
6	Broadening the forms of tier one proof of identity	11
7	Comparative data re British subjects on the Commonwealth electoral roll and Department of Immigration and Citizenship estimates	12
8	Enrolment card images for identity verification for provisional votes	13
9	Processes for disputed ballot-papers	15

AEC RESPONSES TO QUESTIONS ARISING FROM PUBLIC HEARINGS AND SUBSEQUENT MEETINGS AND CORRESPONDENCE

1. Roll review statistics

At the JSCEM public hearing on 17 October 2008, Mr Sullivan requested information concerning the number of people who cast a provisional vote and/or lodged an enrolment form at a polling booth, who were not on the roll and had previously been contacted by the AEC regarding their enrolment.

The AEC's IT systems do not readily provide such elector-centric data. Nevertheless, Mr Sullivan's request would seem to go to the success of the AEC's roll stimulation activities and integrity of the roll. In this respect, Sample Audit Fieldwork (SAF) conducted by the AEC in 2006 and 2007 shows that, on average, 48% of the households visited during SAF had been contacted in the preceding 12 months as part of the AEC's CRU program. For those committee members who may be unfamiliar with SAF, it is the means by which the AEC measures both the integrity of the electoral roll and the effectiveness of the CRU program.

2. Impact of changed close of rolls rules

At the public hearing in Melbourne on 11 August 2008, Senator Bob Brown requested further information about the impact of the changed close of rolls rules on enrolment of 17 and 18 year olds [EM 4]. The AEC provides the following response:

	17 year olds (who would turn 18 on or before polling day)	18 year olds
Enrolment forms received by the AEC in the period 18-24 October 2007 inclusive	31	4,068

NOTES:

1. The writ for the 2007 Federal Election was issued on 17 October 2007. All electors not currently enrolled had to lodge an enrolment form with the AEC by 8 pm that day in order to be included on the certified list of voters (the election version of the electoral roll).
2. In tabulating these figures, the AEC has included only those 17 and 18 year olds who were not currently enrolled and who met the age qualification for voting at the election.
3. Thus, these figures represent the number of enrolment forms received from 17 and 18 year olds whose names could not be added to the certified list of voters because they missed the deadline for new enrolments.

3. Multiple voting

The table below provides some key statistics on multiple voting for the past three federal elections:

	2007	2004	2001
Number of apparent multiple voters letters sent	20633	14402	16949
Number of responses indicating no further action required (% of letters sent)	18037 (87%)	12082 (84%)	14903 (88%)
Number of non-responses/return undelivered (% of letters sent)	1282 (6%)	913 (6%)	921 (5%)
Number of admissions of multiple voting	1167	1046	896
Of admissions: number due to confusion, poor comprehension, aged* (% of total admissions)	955 (82%)	835 (80%)	739 (82%)
Number referred to AFP	10	64**	138***
Number of prosecutions	0	0	0

*Of the admissions/aged category – 98% were 70 or over.

**Of the 64 cases referred, 25 were subsequently investigated by the AFP in a day of action approach. The AFP made referrals to the DPP, but no cases were prosecuted.

***Of these 5 were accepted for investigation.

The above table indicates that there has been no significant alteration in multiple voting patterns for the past 3 electoral events despite legislation passed during this period aimed at preventing electoral fraud.

While it may appear that there has been an increase in multiple voting at the 2007 federal election, the AEC considers that this may be explained in part by an increase in total enrolment (approximately 600,000 more electors at the 2007 federal election than at the 2004 federal election). Additionally, improvements to scanning of certified list processes may also have contributed to the apparent increase.

In relation to the 2007 federal election, ten cases (8 from NSW, 2 from VIC) of apparent multiple voting were referred to the Australian Federal Police (AFP) for investigation in 2008. However, the AFP advised that it did not have the resources to investigate these so no further action was taken.

The AEC has written to the AFP with a view to re-establishing a service agreement to promote a closer working relationship between the two organisations and increase the effectiveness of the multiple voter follow-up at future elections.

In late December 2008 and in mid-January 2009, the AEC sent follow-up letters to approximately 900 non-respondents.

As at 11 March 2009, approximately 300 replies had been received. While 16 responses contained admissions of multiple voting, the multiple voting was not intentional, but rather resulted from either confusion or poor comprehension on the part of the elector, with a number of these cases involving elderly electors and electors from non-English speaking backgrounds.

Of the remaining responses, approximately 125 have been recorded as official error (including matches with apparent non-voters), 40 letters were returned undelivered and the remaining approximately 120 responses fall into a variety of categories including elector denial and evidence inconclusive.

There are two separate offences for multiple voting. The penalty for voting more than once in the same election is 10 penalty units (\$1,100). The penalty for intentionally voting more than once in the same election is 60 penalty units (\$6,600) or twelve months imprisonment, or both.

No further prosecutions may now commence against apparent multiple voters unless the elector admits to intentional multiple voting. This is because for offences for which the penalty is less than 6 months imprisonment, prosecution action must be commenced within 12 months of the offence.

In taking stock of the post 2007 election follow-up processes, the AEC has recognised that although the initial non-voter and multiple voter follow-up processes commenced in a timely manner, the subsequent processes such as the follow-up of non-respondents and initiation of prosecution action did not proceed in a timely manner. The AEC is currently reviewing its non-voter and multiple voter follow-up processes in light of this with a view to ensuring a better and more timely approach following future events.

The Chair also asked for examples of reasons provided where a person may have voted more than once but the AEC took no further action. The common ones are listed below:

- Elector casts a pre-poll vote and an ordinary vote but stated that they had only cast an ordinary vote on polling day (frequently aged/CALD electors).
- Elector casts a postal vote following receipt of a political party PVA but appears to have no understanding that they have done so, then casts an ordinary vote on polling day (there were quite a few examples of this, particularly with CALD electors).
- Elector applies for and completes a postal vote and then thinks it has been misplaced so votes again but then discovers another family member had posted it.
- Elector from CALD background casts a declaration vote in a division outside their home division and then due to confusion or concern that their vote may be misplaced or they haven't complied with requirements properly, votes again in their home division.

- Elector is marked off as an ordinary voter at two polling places, denies voting more than once, and there is no match with an apparent non-voter.
- Elector demonstrates confusion with State/local govt events when replying.

4. Impact of the annual efficiency dividend for the AEC

The purpose of this is to provide background information to the JSCEM chair about the cumulative impact of the efficiency dividend on the AEC's annual appropriations.

Background

In its report 413: *The Efficiency Dividend: Size does matter*, the Joint Committee of Public Accounts and Audit (JCPAA) noted that:

'In conducting elections and managing the day-to-day operations of the electoral system, trade-offs need to be made between efficiency and effectiveness. The Parliament and its Joint Standing Committee on Electoral Matters have had significant input into these issues and these forums are the best places conducting these debates.'

The AEC submission was subsequently referred to the JSCEM and at a meeting with the chair, the AEC was asked to provide some more detailed background information.

The 2003-04 resourcing review

In the AEC's 2003-04 Annual Report, the Electoral Commissioner reported that 'The AEC finished the year with two major hurdles cleared. First, a long awaited injection of funds provided some relief from the strictures of our budgetary situation . . . '.

The budget supplementation was provided after a comprehensive resourcing review that was jointly conducted by the AEC and the Department of Finance.

With one exception, all of the review recommendations were jointly agreed. A key point of contention in negotiations related to the AEC request for further funding to staff its divisional offices with three full time equivalent staff (FTEs).

As part of negotiations, Finance agreed to costings for an additional 19.5 FTEs to ensure Divisional Offices would be staffed at three FTEs. This was based on a snapshot as at 30 June 2003, indicating that there were 19.5 positions vacant in Divisional Offices with no allowances for staff absences away from the office.

The AEC maintained that a more appropriate methodology to ensure staffing of offices by three persons at all times would be to base the staffing shortfall on the actual staffing average over the financial year 2002-03, which equated to 45 FTE (\$2.3 million pa) and to allow for absences including backfilling which would require an additional \$4.4 million pa (based on 75 FTE).

The final costings that went forward were based on agreed funding for 19.5 FTE. The AEC position remains that, in terms of one objective of the increased funding, being supplementation to provide for divisional offices to be staffed at 3 FTE, this represented an ongoing shortfall of between \$2.3 million (45 FTE) and \$4.4 million (75 FTE) pa.

Supplementation provided after the resourcing review

As a result of the resourcing review, supplementation of \$28.1 million was provided to the AEC over 5 years, made up of

2003-04	2004-05	2005-06	2006-07	2007-08
\$5.1 million	\$19.7 million	(\$8.0 million)	(\$4.1 million)	\$15.4 million

Supplementation of \$6.3 million (being \$1.4 million less than the jointly agreed costings – with the AEC to absorb the difference) was also provided to support roll integrity activities from 2004-05 to 2007-08. Supplementation was made up of

	2004-05	2005-06	2006-07	2007-08
	\$1.7 million	\$1.4 million	\$1.3 million	\$1.4 million

In each case, supplementation was subject to the annual efficiency dividend.

Annual efficiency dividends

Efficiency dividend rates for subsequent years are

2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
1%	1%	1%	1.25%	1.75%	3.25%	3.25%	3.25%	3.25%

The estimated impact on annual funding for the AEC is

2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
- \$0.9 million	- \$1.6 million	- \$0.9 million	- \$1.3 million	- \$3.0 million	- \$3.0 million	- \$3.2 million	- \$5.8 million	- \$3.2 million

Cumulative impact of the efficiency dividend on agency resourcing

Based on the above, it is anticipated that the cumulative effect of the efficiency dividend on the AEC's funding base, from its introduction to the 2011-12 year, is in the order of \$29.4 million, effectively negating the resources gained from the 2003-04 resourcing review.

Conclusion

The AEC's position remains as stated by the previous Electoral Commissioner in his submission to the JCPAA, that the ongoing efficiency dividend is compromising the AEC's ability both to perform core functions and to innovate.

5. Analysis of 17-24 year old enrolment 2001-2007

The following charts show the enrolment numbers for 17 year olds, 18-19 year olds and 20-24 year olds. These are the age cohorts commonly used in AEC reporting.

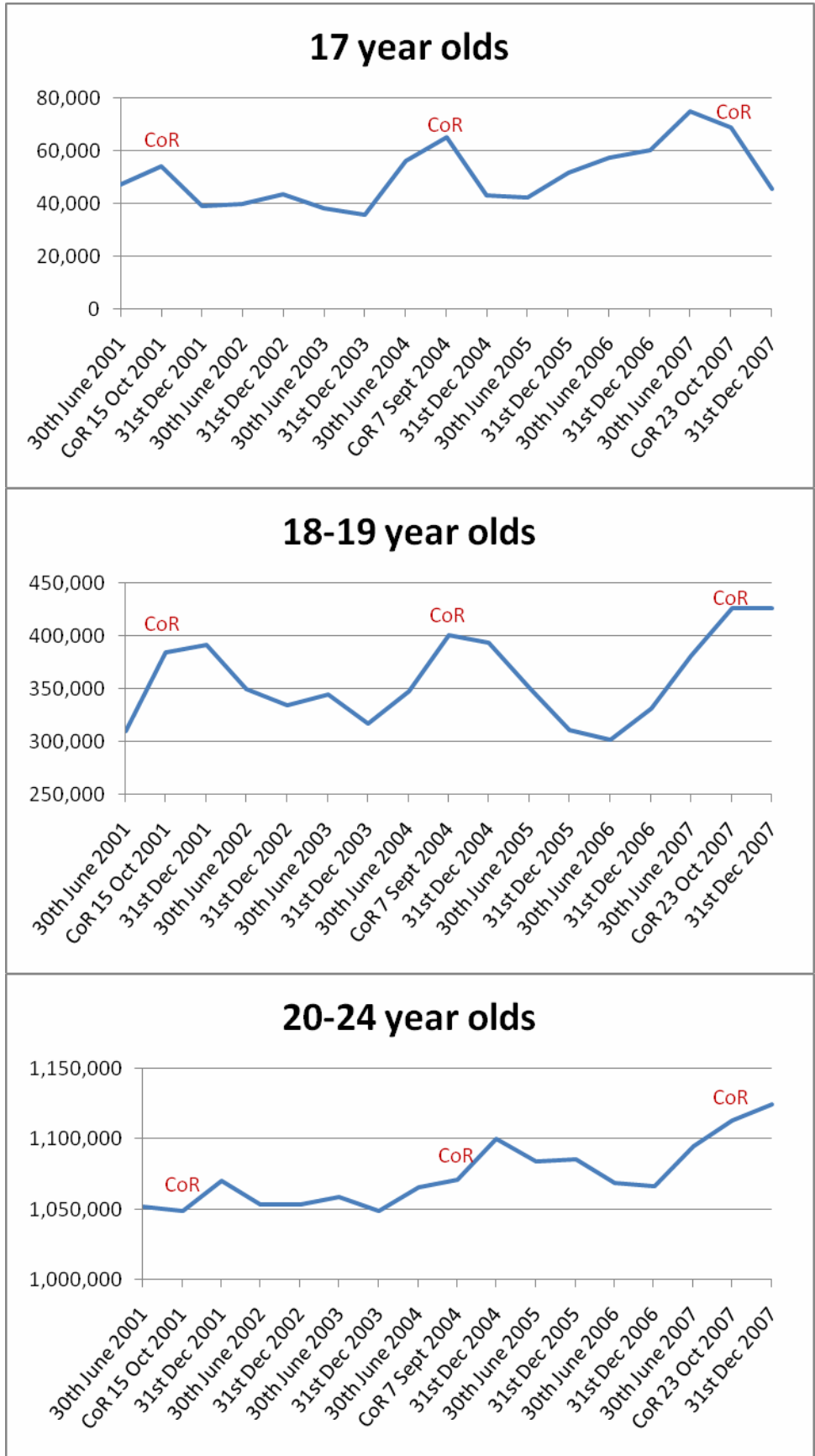
When considering this information it is useful to note that Australia's population growth is not even across all age cohorts. It should be noted that the scales of the three charts are different, as the charts refer to enrolments of a one year age cohort, two year age cohort and five year age cohort respectively.

As is the case in the general population, these charts show a tendency for youth enrolment to peak around an election. This is due in part to potential electors attempting to enrol after the close of rolls, and in part to enrolment forms filled in on polling day. Not only do numbers of 18-24 year olds enrolled peak around elections and wane in between, so do relative participation rates varying from a low of approximately 75% in June 2006 to high of 85% at the 2007 election.

Seventeen year olds are an exception to this general increase after an election, as they are more likely to enrol if they will turn 18 by polling day. It is notable that in mid 2006, when the roll was otherwise at a low point in terms of participation, 17 year old enrolment numbers were increasing.

In 2004-2005 NSW transport data became available for use in mail review, which targeted 17 year olds in NSW. The WAEC ran a birthday card program at the same time as the VEC's long running birthday card program. This significantly boosted 17 year old enrolments.

In the 20-24 age cohort chart, the close of rolls figure for 2001 was roughly equivalent to the enrolment level at 30 June 2001, but peaked significantly by 31 December 2001. This is the result of objection action undertaken in the lead up to the election. The mobility of the 20-24 age cohort means that their enrolments may not be up to date, and that they may not be readily contactable in order to re-enrol them. The number of 20-24 year olds enrolled after the close of rolls is due to the stimulus of the election (ie forms received on polling day, reinstatements etc).



Note: when reading the above graphs, dates are six months apart except where close of rolls dates have been inserted for the 2001, 2004 and 2007 federal elections

6. Broadening the forms of tier one proof of identity

To keep the enrolment process simple for the majority of electors, the AEC supports the retention of tier one evidence of identity. Currently, an Australian driver's licence is the form of ID generally required for tier one evidence of identity. Given that the majority of Australians are driver's licence holders, and that driver's licences are verifiable for all jurisdictions, the AEC recommends retaining the driver's licence as tier one evidence of identity.

The AEC has reviewed several forms of identity documents to determine whether the tier one scheme could be expanded to include other documents and which ones might be appropriate. Documents examined were mostly those which currently qualify as tier two documents. The AEC considered such matters as the initial application process, the availability of verification facilities, and national consistency.

The AEC suggests that tier one could be extended to include the provision of either a driver's licence number or Australian passport number for any applicant for enrolment (ie regardless of whether they are resident in Australia or overseas). The Australian passport application process requires a high standard of evidence and can be verified by the AEC under current arrangements. Under current legislation, Australian passports can be used as tier one documents if the potential elector is outside Australia.

Other documents may be worth considering for inclusion in tier one (for example, Defence Force ID, DVA Gold Card). These would need to be explored to determine whether they compare favourably with the integrity of the current tier one documents.

7. Comparative data re British subjects on the Commonwealth electoral roll and Department of Immigration and Citizenship (DIAC) estimates

As at 28 February 2009, there are 157,481 people recorded as British subjects on the Commonwealth electoral roll. The total number gradually reduces through attrition (eg due to death or as people take out Australian Citizenship and update their enrolment). This number represents only British subjects who have updated their enrolment since the AEC started recording British subject status against enrolment records. There are issues of both undercount and overcount:

- those who have not updated their enrolment since before the AEC started recording this notation will not be included in the number (the undercount); and
- any person recorded as a British subject who becomes an Australian citizen but does not update their enrolment will still be included in the number (the overcount).

To provide a definitive number of eligible British subjects enrolled, the AEC would need to individually examine the images of enrolment forms (some of which are held only on microfiche) for each of the remainder of the 13.8 million people enrolled, to establish place of birth, and then compare AEC records with DIAC citizenship data. The AEC does not have the resources to carry out such a manual task.

The AEC asked DIAC to provide the number of British subject permanent residents who were at least 18 years old and resident in Australia in January 1984 who are still resident but not Australian citizens today. DIAC have advised that they do not have the historical data to provide a specific answer. However, DIAC have advised that by using a combination of census and stock data sources, they estimate the count may be within 143-163,000 people. Given that there were a number of untested assumptions made in deriving this estimate, DIAC do not recommend relying on its accuracy.

Note: British subjects are eligible for enrolment if they were on the Commonwealth electoral roll on 25 January 1984

ANSWER TO QUESTIONS EMAILED FROM JSCEM ON 3 FEBRUARY 2009

8. Enrolment card images for identity verification for provisional votes

a. How would the AEC compare signatures?

The AEC would do signature comparison using the AEC imaging system. Based on the details on the declaration envelope, an officer would identify the elector on the Roll Management System and obtain a transaction number reflecting the last enrolment transaction for that elector. The transaction number would be entered into the AEC imaging system (a separate computer system providing a library of document images) to retrieve the image relevant to the transaction number. The officer could then compare the signature on the declaration envelope with the signature recorded on the image.

The imaging system is available to all divisional office staff. However, this system only holds images from 1979 at best (varies state to state). For enrolments prior to this, images are held on microfilm. These are held in state offices and are not readily available to divisional staff.

b. How long would each transaction take (roughly), in terms of the images of enrolment forms held by the AEC?

Where images are held on the imaging system, using current processes, and dependent on operator skill, it is estimated it could take up to an extra two minutes to process each provisional vote. Where the image is not held on the imaging system microfiche records stored in each state office would need to be accessed. This would require large volumes of declaration envelopes may to be moved from divisions to state offices and the relevant images retrieved from the microfiche. Overall this could be expected to add several days to the process due to moving material and an extra 10 minutes per transaction for retrieval.

c. Roughly how many images are held by the AEC?

The imaging system currently stores approximately 46 million images (note this comprises enrolment form images, as well as other records relating to bulk amendments and other activity from older enrolment business processes).

d. From what year does the AEC hold images?

This varies by state/territory as follows (commencement date in each year varies): ACT 1979; NT 1983; NSW 1984; QLD 1986; SA 1986; SA 1986; TAS 1988; VIC 1981; WA 1987.

e. Would the AEC be holding an image of the appropriate enrolment form or would the comparison need to be conducted against the original enrolment form?

For electors that have been on the roll at the same address from a time prior to the earliest date for images on the imaging system, the earlier microfiche records would be required to verify the signature. No original paper forms are retained by the AEC.

f. Does the AEC have a view about the feasibility of such a process as outlined above?

We are currently doing analysis to determine whether the proposal will cause significant delays to the processing of provisional votes. Once the analysis is concluded we will be in a better position to comment on the proposal.

g. The National Director of the Nationals questioned the validity of the figures in the tables supplied in the AEC submission of October 2008. Specifically, Mr Henderson questioned the figures provided for the Divisions of Flynn and Kennedy. Are the figures in fact correct when viewed in the context of the text at paragraph 3?

The 16 October submission detailed postal votes that had been rejected because they had been received, or cast, too late. When any declaration vote is rejected, the AEC is required to advise the voter accordingly. To facilitate this process, the AEC official is required to enter the details of the rejected declaration vote into an AEC system, including selecting the appropriate rejection code, with each separate rejection code being linked to a specific letter type. The statistics provided with the above submission were drawn from this system and only data for Flynn has been further analysed following a specific request lodged by the Queensland Nationals with the AEC as a result of an elector enquiry to the party's website earlier this year.

A further review of this data revealed that votes cast late should be 142 (not 2) and votes received late as 3 (not 144) for a total of 145 (not 146). This variation of one is due to the fact that one certificate was previously included in error in the wrong rejection code, (being in fact a signature match problem). It appears that in selecting the relevant codes a misunderstanding by the AEC officer took place.

The AEC recognises that this has highlighted an information/training issue for staff undertaking the data entry of rejected declaration votes. This issue will be addressed prior to the next election.

9. Processes for disputed ballot-papers

The Committee may recommend the replacement of the single decision-maker for dealing with reserved ballot-papers with a panel of three comprising the relevant AEO and two other AEC officers at the Senior Executive Service level or equivalent.

In brief, the AEC supports any measures that simplify the current processes, and provide all relevant parties with sufficient confidence that those processes are robust, fair and transparent. The AEC is still considering aspects of the report from Mr Alan Henderson PSM (the Henderson Report) which included in its terms of reference a range of matters that directly impact on the processes for the handling of disputed ballot-papers and questions of the publication and application of the formality rules as espoused by the Court of Disputed Returns (CDR) in the case of *Mitchell v Bailey (No. 2)* [2008] FCA 692.

The AEC has already commenced administrative action to implement several recommendations from the Henderson Report relating to training and information materials. It is anticipated that this action will address concerns about the AEC's handling of disputed ballot-papers. The CDR decision has provided the AEC and other observers with clear guidance on the application of the formality rules in the Electoral Act. Additionally, the AEC has now a wealth of examples and precedents of disputed ballot-papers that have been ruled upon by the CDR and which have been analysed and adapted to form the basis of new manuals, handbooks and training. The Henderson Report sets out the broad guidance given by the CDR on formality and recommends that a single comprehensive set of information on formality be developed.

The AEC is of the view that the development of such information and training of stakeholders on the formality rules flowing from the CDR decision and the Henderson Report, will provide greater transparency in the decision-making process by the AEO and will assist in both identifying those ballot-papers that are really in dispute and preventing unnecessary challenges. The JSCEM may form the view that these measures may prove to be sufficient to achieve a more streamlined and robust process.

The proposal regarding a 'panel', as AEC understands the issue, is whether additional senior AEC officers - who possess the necessary experience, skills and knowledge to determine the formality of disputed ballot-papers - should be tasked to make the decisions and "*value judgments*" on the formality of reserved ballot-papers. This could assist in ensuring that these decisions are made on a sound basis and do not merely represent the "*value judgements*" of an individual.

To enable a panel to be incorporated into the current decision process, amendments would need to be made to sections 279B, 280 and 281 of the *Commonwealth Electoral Act 1918* (Electoral Act). Additionally, there are two issues that are relevant to the JSCEM's deliberations, and these are listed below:

- a. **Transparency.** There are some issues that would need to be considered around the broad issue of transparency. Specifically, any arrangements would

need to ensure that the amended procedure isn't elevated to a court-like process. Consideration would also need to be given to ensuring that there is a system in place to resolve any minority views in front of scrutineers so that this process didn't, in itself, create additional points of argument.

- b. **Statement of Reasons.** Some consideration would also need to be given to the provision of a 'Statement of Reasons' to explain the panel's thought process. There would need to be a careful balance between the possible ramifications involving potential delays and legal challenges if formal, written reasons are provided, against the real need to provide parties with confidence in a transparent decision making process.