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# Official Committee Hansard

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

**Reference: Conduct of the 2001 federal election**

MONDAY, 2 DECEMBER 2002

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

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**JOINT COMMITTEE ON ELECTORAL MATTERS**

**Monday, 2 December 2002**

**Members:** Senator Georgiou (*Chair*), Mr Danby (*Deputy Chair*), Senators Bartlett, Brandis, Mason, Murray and Ray and Mr Forrest, Ms Ley and Mr Melham

**Senators and members in attendance:** Senators Mason, Murray and Ray and Mr Forrest, Mr Georgiou, Ms Ley and Mr Melham

**Terms of reference for the inquiry:**

To inquire into and report on:

All aspects of the conduct of the 2001 Federal Election and matters related thereto.

**WITNESSES**

**KEMISH, Mr Ian, Assistant Secretary, Consular Branch, Public Diplomacy, Consular and Passports Division, Department of Foreign Affairs and Trade .....279**

**O'ROURKE, Mrs Sharon, Acting Manager, Consular Coordination Unit, Department of Foreign Affairs and Trade.....279**



**Committee met at 7.21 p.m.**

**KEMISH, Mr Ian, Assistant Secretary, Consular Branch, Public Diplomacy, Consular and Passports Division, Department of Foreign Affairs and Trade**

**O'ROURKE, Mrs Sharon, Acting Manager, Consular Coordination Unit, Department of Foreign Affairs and Trade**

**CHAIR**—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2001 federal election. Since 1984, successive Commonwealth governments have referred similar inquiries to this committee's predecessors after each federal election with a view to improving the operation of Australia's electoral system. These committees have played a central role in developing the electoral system we now have.

The current inquiry into the 2001 federal election was referred to the committee by the Special Minister of State on 13 May 2002. To date, the inquiry has received 174 submissions from Australia and from Australians overseas, demonstrating a healthy interest by the community in ensuring that our electoral system is kept up to date. I remind witnesses that, although the committee does not require you to give evidence under oath, this hearing is a legal proceeding of parliament and warrants the same respect as proceedings of the parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by Hansard and will attract parliamentary privilege.

I welcome Mr Ian Kemish and Mrs Sharon O'Rourke from the Department of Foreign Affairs and Trade to today's hearing. The committee has received your submission. It has been numbered 168 and authorised for publication. Are there any corrections or amendments that you would like to make to the document?

**Mr Kemish**—No, I can offer additional commentary as required.

**CHAIR**—Do you wish to make a brief opening statement or summarise your submission for the committee?

**Mr Kemish**—I would very much like to do that, if that is acceptable.

**CHAIR**—It is.

**Mr Kemish**—Thank you. I should say that we welcome the invitation to appear before this committee. We do have some thoughts and ideas about how elections and the conduct thereof might be improved from the overseas perspective. Those thoughts are based on our own work and experience, particularly in terms of some of the difficulties that have arisen from time to time in the conduct of these elections.

I would like to make it clear that the Department of Foreign Affairs and Trade acts, effectively, as an agent for the Australian Electoral Commission by providing voting facilities at posts defined by the AEC. The AEC defines the posts, provides the guidance for our staff and provides ballot materials for use as appropriate. We are entirely dependent on them for that. We

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have no real, formal mandate and are not resourced in any substantial way at all for the delivery of these services overseas.

The Consular Branch within my division here in Canberra notifies our posts and relays information to them from the AEC as required. All diplomatic or consular missions overseas, excluding, importantly, offices run by honorary consuls, provide voting services for federal elections and referendums. While they are not funded, they can bid for funding for discrete activities if they are significant. In other words, significant additional, discrete, identifiable costs can be claimed back from the AEC by posts, but that is the extent of the resourcing, and it does not involve staff costs. Our work involves appointing an assistant returning officer at each post and establishing proper facilities. Instructions for staff are provided by the AEC and all inquiries about enrolment are directed to the AEC. They cannot be handled by our posts.

In the 2001 election, almost 50,000 pre-poll votes and about 13,000 postal vote applications were issued across the globe. As I am sure the committee knows, Australia House in London, which issued about 19,000 votes, is by far the largest Australian polling station. Last time around, our staff provided a quality of service which was greeted in very positive and fulsome terms by the Australian Electoral Commissioner. I have to say our staff had to work very hard to overcome some problems which arose from the delay in the delivery of ballot documentation. It involved DFAT intervention with DHL, the delivery agent that the AEC had appointed, and the AEC itself to accelerate the delivery of that material as a problem arose for each of our posts. Our staff had to be very inventive in circumstances that were quite difficult for them, but that were also—more importantly, I acknowledge—difficult for voters to deal with.

I will offer very quickly some thoughts from here. For our part, we have made a number of suggestions to the AEC, first of all about some of the problems we experienced. They include, for example, the notion of pre-positioning blank ballot papers at each post so that we do not have the problem we had with the late delivery of information and materials. They also include suggestions for them to make this documentation available to us electronically, at least using our own internal electronic communication systems. We welcome any suggestions that look more broadly at the delivery of voting systems electronically in dealing with the public direct. We would like to know more about that idea as it develops, but we think that in principle it is a very good idea.

Otherwise, we have taken the initiative in seeking to do a bit more training of our staff overseas in dealing with these issues. We independently identified this as a need after the last election. As I hope you appreciate, it can be a problem through the year, in any field of work, in a staff profile which is spread across the globe and involves thousands of locally engaged staff, to make sure that they are up with the latest in all fields. We have a rolling program of seminars for consular and passport staff overseas. It has been done very well for the last two years in particular. We took the initiative after the election last year, at the first seminar of this financial year, which happened to be in London, to provide some additional training on these issues for staff who are engaged in them. It is a real area of need and we need to do more of it.

The other thing I would say is that we think we can do more to actively ensure that those Australians who are registered with us overseas are notified at least about the fact of an election as it appears. There has been no standing requirement to date to actively push out information about this issue. Next time around, we can at least make sure that our posts use the various communication facilities available to them. In many posts, including in South-East Asia and the

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Pacific, that involves emailing bulletins to registered Australians. We can use that kind of system, where it makes sense around the world, to push information out about the election and to direct people to the appropriate sources of advice. I think we can do that better.

The last thing to mention is that, since the last election, we have initiated contact with the Southern Cross Group and we think there is probably more we can do with them. In the initial discussions that I had with the Canberra representative of that group, it was clear that they would like information of interest to the Australian expatriates—not just on electoral matters but also on other matters—in roughly one place on a web site, and there is a place on the DFAT web site where we can at least provide some hotlinks and a framework for this information. So we are already doing some things there. We want to be helpful about it. Obviously, it has to be within the constraints of law and resources. But, even accepting the situation as it is right now, we think there are some additional ways we can help.

**CHAIR**—Thank you very much for that presentation; it was very interesting. I have a couple of questions. With regard to wanting to be helpful, you seemed to say that it was not part of your function to offer advice and information on voting et cetera. How do you fit those two together?

**Mr Kemish**—I think they can fit. We act as an agent for the AEC. In the end, for example, we simply cannot respond—including by law—to issues such as deciding who is or is not eligible to vote. We think, however, there are ways in which we can better help the AEC, as their agent, including within the resource constraints and the legal constraints in which we operate, and they are the kinds of things I have mentioned. These are not subject to any legislative change or additional resources; these are things we think we can do.

**CHAIR**—How much guidance have you received? It seems to me that you have taken quite a lot of autonomous action in an attempt to meet the needs. Whether or not it has worked as you expected or whether or not you could do better is another issue, but how much guidance has the AEC given the department on the most effective ways for it to be doing what it should be doing?

**Mr Kemish**—With regard to guidance on the way we operate, we have not had substantial dialogue on those issues.

**CHAIR**—For instance, information about elections; how much do they expect you to put out or how much would they like you to put out? Have you had parameters put on you there?

**Mr Kemish**—There are indeed limits, and these are, to my mind, sensible limits imposed by the AEC. There are clear limits on our ability to provide advice about issues on which we simply have no expertise at all. The guidance and instructions, if you like, from the AEC are really limited to ensuring that voting facilities are available—that is, a context in which the public can walk in and make their vote using the AEC's material—and to appointing an assisting returning officer. The assisting returning officer's responsibilities are largely logistical. They are organisational, making sure that the information is out there and available. They do not involve providing advice about enrolment eligibility, for example. Australians cast their vote, we will submit their vote to the AEC and the AEC will decide whether the person concerned is eligible to vote. So there are clear limits there. The standing arrangement is that the AEC will provide us with material to be made available in our facility, and we do that. They

deliver the information and material to us—and, as I mentioned, last election there was a delay in that regard—but that is about the extent of it to date.

**Mr FORREST**—I will start off by providing you with a direct experience. I was in Canada two weeks ago and was able to vote at the High Commission in Quebec City. They had everything I needed. I am curious about this because the only way I will know that my vote actually got counted will be if I do not receive a fine. What is the process? I had to fill out a declaration. You are right; they take no responsibility at the diplomatic post. It comes back to the Electoral Commission. How do I know that my vote was valid and accepted? Do I get a confirmation?

**Mr Kemish**—I simply do not know because the AEC handles that side of things. The way the arrangement stands is that it goes back to the AEC and they handle it. It is a good question, but, with respect, I would put it to the AEC.

**Senator ROBERT RAY**—It is an AEC question.

**Mr FORREST**—I realise that. I did ask for a receipt and the only thing I got was the tear-off slip off the declaration part.

**Senator ROBERT RAY**—If you ring the RO for the electorate they will tell you whether you have been crossed off the master roll and whether your vote got back.

**Mr Kemish**—I believe that is right.

**Mr MELHAM**—Otherwise you would get a bluey.

**Senator ROBERT RAY**—You would have to put in a convenient excuse.

**Mr Kemish**—I think the dialogue helps identify the issues because, in the end, what you have outlined is precisely the situation. We are an agent that receives the information, almost like a post box, and passes it back to the AEC to deal with.

**Mr MELHAM**—But that is what you do. You send it back by diplomatic post.

**Mr Kemish**—Indeed.

**Senator ROBERT RAY**—Is it diplomatic post? You send it back commercially, don't you? That is how you lost the Rwanda votes.

**Mr Kemish**—I believe we use the diplomatic bag for all of this. I can check that for you.

**Mr FORREST**—If that is so, why do you say there was a delay because of the anthrax scare?

**Mr Kemish**—Delivering the blank material to posts was definitely arranged commercially through DHL. Quite apart from the additional delays in Washington attributed to anthrax scares, there were delays across the network in our posts receiving this material.



**Senator ROBERT RAY**—Who will be responsible in DFAT for the overall coordination of the 2004 election, providing we have an election then?

**Mr Kemish**—My division, in particular Consular Branch within my division.

**Senator ROBERT RAY**—You said you were not resourced. Surely, it is in your base vote that this is one of your duties. In their base vote, foreign affairs is given money to do 10 or 15 things. It is not identified, but a lot of other things aren't identified either. Isn't that in your base vote?

**Mr Kemish**—I do not believe it is identified within our base vote.

**Senator ROBERT RAY**—No, but at some stage it was put in your base vote, along with everything else that is currently not identified.

**Mr Kemish**—It is true that DFAT representation overseas takes a whole of government role for these sorts of issues. I was not seeking to be defensive in any way about us not being resourced for it.

**Senator ROBERT RAY**—With one exception, you do have the option to apply for extra resources. Have you done that with the AEC? If you have, what has been the response?

**Mr Kemish**—This is an issue that we need to take up with the AEC between now and the next election. We did have some discussion about it before the 2001 election. The result of that discussion was essentially something similar to the pre-existing arrangement that we would go to them for identifiable costs, particularly significant identifiable costs, usually incurred at our larger posts. But, in the situation as it evolves, I agree that we need to be discussing these matters further with the AEC.

**Senator ROBERT RAY**—When do you intend to do that?

**Mr Kemish**—We need to do that soon. Sharon O'Rourke's area of the department is already in discussion with the AEC about a range of follow-up issues from the federal election, including resources.

**Senator ROBERT RAY**—One of the big problems that I perceive in all of this—and you have identified the delay in ballot papers—is that I would not have thought it beyond their ability to email you 10 minutes after the close in nominations what we used to call 'bromides'. What is the modern expression, Chair?

**CHAIR**—I used to call them bromides when—

**Mr FORREST**—I still call them bromides.

**CHAIR**—It is essentially a shell.

**Senator ROBERT RAY**—You would have 150 House of Representative and eight Senate ballot papers that you could just run off on your machine on security paper or whatever else.

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The same amount of fraud could potentially occur with those ballot papers as could occur if they were sent in the post. This would mean that by the time you woke up in the morning—in most places it would be morning because their time is behind ours—they would have everything there.

**Mr Kemish**—We agree and we have made that suggestion.

**Senator ROBERT RAY**—What was their response?

**Mr Kemish**—We are still in discussion with them. There is no particular difficulty, we are just working through it with them.

**Senator ROBERT RAY**—I do not think that there is any alternative but to send them back through the tried and tested methods. They have kept us hanging around for 10 days after a result waiting for them to come in. You talked about more training: who does that training?

**Mr Kemish**—Either the head of Consular Branch or I lead for the department of foreign affairs in these training seminars which we conduct overseas. The way we organise these is that we gather together by region consular and passport staff who are locally engaged and Australia based. We try to provide training to every region at least once every 18 months. To date, the training has focused on the everyday, normal operation of these posts, which is to help Australians in difficulty overseas. This involves death cases, hospitalisation cases; essentially the standard fare of consular staff. The point needs to be made that it is the people doing this work who help to conduct elections overseas.

We consider amending or changing those training seminars each time we conduct one. I mentioned in my opening presentation that we identified a need to provide supplementary briefing, information and training on the conduct of electoral matters in the context of these seminars, which are about the best gathering that we have. We have done that for the first time and now we want to develop it further. The AEC is helping us by providing training materials for us to deliver. Next time, particularly when it involves a post of great electoral significance like London or Hong Kong, we should probably talk to the AEC about being present at the training. In any case, they are providing us with training information.

I would like to raise another matter in the context of training and guidance. As we have mentioned in our submission, the AEC is funding the development of a manual for consular staff. This would provide instructions on the conduct of elections overseas. That work is well advanced and has involved a lot of input, given their significant experience, from our posts in London and Hong Kong in particular.

**Senator ROBERT RAY**—Thank you. I know that in most cases it would not occur, but how do you handle how to vote cards in these situations? If I wanted to hand out how to vote cards in New York and voting is taking place on the 35th floor of the 42nd Street building, I cannot very well stand outside handing them out. Do you make provision within the building?

**Mr Kemish**—I believe that the practice varies from post to post. It depends on the physical circumstances of the relevant post. For example, I understand that in London people are in fact able to stand outside.

**Senator ROBERT RAY**—Yes, because there is one entrance for voting and there is a queue. With a lot of other places you are outside the building, with tens of thousands of people going by, and only one voter every hour.

**Mr Kemish**—I simply do not know exactly how it is conducted in each place.

**CHAIR**—You said that the booklet was well-developed. How long has it been in process?

**Mr Kemish**—Since late September this year.

**CHAIR**—Is it almost finished?

**Mr Kemish**—Yes.

**Mr FORREST**—Most of the complaints received have been in regard to people who have been overseas for an extended period of time and who are establishing their status on the electoral role. That is where the complaints are coming from. Obviously, it is hard if you are not given the information. Are you more comfortable with not taking the responsibility? I can see how difficult it would be.

**Mr Kemish**—It is deeply problematic when the Australian expatriate population is so mobile. I guess I would only repeat what I mentioned before: we have no authority or expertise in the matter. It is very difficult to envisage how we could take responsibility for those issues. My reading of the submissions and complaints is like yours. It is mostly about enrolment status. Our staff can sometimes sympathise with the Australians concerned, but there is not much they can do about it.

**CHAIR**—Usually people ring back every month and say, ‘Are we enrolled?’ We have to tell them yea or nay.

**Mr Kemish**—What our staff can do is put them in touch with the Australian Electoral Commission about those issues, and that is the standing practice. But it cannot be satisfactory for some Australians as they—

**Mr FORREST**—They can only tell them whether they are enrolled or not. If they are not, what can they do?

**Mr Kemish**—Again, it is really a question for the AEC.

**Senator ROBERT RAY**—Can you issue unenrolled votes? Is that one of the things you can do?

**Mr Kemish**—We will allow the Australian to vote regardless.

**Senator ROBERT RAY**—And the decision is made back here?

**Mr Kemish**—And the decision is simply made back here. That is simply it.

**Senator ROBERT RAY**—That would leave it to the local RO who can make the decision.

**Mr Kemish**—That is right.

**Senator MURRAY**—One of the things we have been looking at has been the issue of electronic voting. There is the start of experimentation in the ACT. Speaking for myself alone, but judging by the reaction of others, there would be some nervousness about introducing it Australia wide. One of the possibilities, I would have thought for the introduction of electronic voting, would be through consular posts. We would then get an instant response. It could be linked up in Australia. There is that potential. If ever it were considered to be a possible way to go, how would you see that? Would you see that as a more efficient way that is less paper orientated and in respect of which it is easier to train people, or does it make no difference to you?

**Mr Kemish**—Speaking personally, it just seems to make sense as a way for the future. The impact on us and the service we provide in other areas would very much depend on the way electronic voting facilities were made available. I have heard the notion of making it available direct to the public through the Net. On the face of it, without much more information, that certainly seems like an attractive proposition from our perspective because you would probably get better voter satisfaction and because it would be manageable within the resources we have as an organisation and the resources our posts have overseas.

**Mr MELHAM**—It might also impact on the secret nature of the vote, though, depending on how you conduct it.

**Mr Kemish**—I suppose so, but I have no expertise in the matter.

**Senator MURRAY**—I am not at all sure how it could be done, so take this as a loose question: if the committee were to see a way that it could be done, would DFAT be prepared to trial it in a significantly sized consulate?

**Mr Kemish**—Subject to the details, we are open to all ideas.

**Senator MURRAY**—There is not a kind of institutional resistance to it?

**Mr Kemish**—No.

**Senator ROBERT RAY**—Do you think you would be in a position about next May to write to the committee to tell us how you have gone on the manual and how you have gone on your negotiations about getting ballot papers over there by electronic means, just so that we are well-appraised long before the next federal election that there is progress?

**Mr Kemish**—We would welcome that.

**Senator MASON**—I have just a couple of issues, and Senator Ray has flagged the principle one. Mr Kemish, both in your written submission and your oral presentation, you said the problem was the delay in delivery of electoral documentation. Senator Ray is right—I would

have thought that email or something like that would do. The mechanics thereof I am not sure of, but I would have thought these days you could overcome that nearly instantly.

**Mr Kemish**—I would hope so too.

**Senator MASON**—Secondly, in this AEC document, *Overseas voting procedures*, it says:

Elections are held on a Saturday. Australians voting overseas must cast their votes by close of voting at your Post, which cannot be offered beyond 6:00 pm Western Australian time.

Mr Kemish, are the posts open on Saturdays?

**Mr Kemish**—Not normally, but the polling is done either on a prepoll basis or as a postal application, and this business is finalised prior to the day of the election.

**Senator MASON**—Could you lodge your vote by post or otherwise on that Saturday?

**Mr Kemish**—I believe you can by post.

**Mrs O'Rourke**—No, in some locations the posts are open on the Saturday. They are actually normal working hours on a Saturday—mostly Middle Eastern posts.

**Senator MASON**—So some are open on Saturday and some are not.

**Mr Kemish**—That is true as a matter of standard procedure. Some of our posts, particularly in the Middle East, work a different kind of weekend to suit the local circumstances including the local religious circumstances. Saturday is indeed, as Mrs O'Rourke points out, a working day for some of our posts—almost exclusively in the Middle Eastern region.

**Senator MASON**—If it were, say, London, that may be open. But suppose it was a small post in a Western country—

**Mr Kemish**—Not necessarily.

**Senator MASON**—Okay. So you have to cast your vote by COB Friday probably.

**Mr Kemish**—If there is an issue, our posts will be open.

**Senator MASON**—I was just wondering whether, as a matter of practice at the time of a general election, do you close at 6 p.m.? Do you open on a Saturday and, if so, until what time?

**Mr Kemish**—The answer is that to the best of my knowledge all the voting has been conducted at our overseas posts prior to the election day itself—

**Senator MASON**—That is not quite—

**Mr Kemish**—and therefore there is no need for the post to be open.

**Senator MASON**—What happens if someone wanted to cast their vote on Saturday?

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**Mr Kemish**—On the day? I will have to take that on notice—

**Senator ROBERT RAY**—If you are in London right now and there was an election, you would have to cast it by 7 a.m. Saturday morning because that is when the polls are closed here. Or are you going to take Western Standard Time? They have got all those difficulties.

**Senator MASON**—Sure. Do they take into account 6 p.m. Western Australian time? Is there any provision made in terms of closing in relation to a general election? That is the question.

**Mr Kemish**—I will check that for you and I will correct the record quickly if I am wrong. What I believe is that no arrangements are made for the day itself because the business has been conducted and the guidance that is provided and the information, in turn, provided to the public is all based on the approach overseas being one of either prepolling or postal applications.

**CHAIR**—I am more after intuition than a definitive answer. There are many hundreds of thousands of Australians resident or touring overseas. We ended up last federal election getting 65,000 votes back. Do you have any feel for the discrepancy?

**Mr Kemish**—My personal feeling on it is that the major part of the discrepancy is a lack of intention on the part of the Australian expatriate to vote. I believe our latest figures for Australian expatriates is in the region of 800,000. On top of that we know that 3.5 million trips are made—these are short-term trips—by Australians every year. That is not 3.5 million travellers; that is 3.5 million exits. I would caution, though, that that figure of 800,000 I mentioned before includes—in many parts of the world—enormously large dual national communities, some of which have little direct interest in or connection with Australia normally. For example, the Australian-Lebanese dual national community in Lebanon numbers about 45,000 but very few of them turned up to vote.

**CHAIR**—You are lucky that Mr Melham has gone, otherwise he would have challenged you on that.

**Mr Kemish**—There are other examples.

**CHAIR**—That was a joke!

**Mr Kemish**—I believe that that is the major factor. I would acknowledge that, with the systems we have, there is another factor which is that, in many cases, Australians do not know that there is an election.

**CHAIR**—Ms Ley, do you have any questions?

**Ms LEY**—No.

**CHAIR**—Senator Ray, do you have any questions?

**Senator ROBERT RAY**—No.

**CHAIR**—That was very interesting. On behalf of the committee I thank the witnesses who have given evidence today.

Resolved (on motion by **Mr Forrest**):

That this committee authorises publication, including publication on the parliamentary database of the proof transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 7.56 p.m.**