Minority Report—Mr Michael Danby MHR, Deputy Chair, Mr Alan Griffin MHR, Senator Kim Carr & Senator Michael Forshaw

In this Minority Report on the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, Opposition members of the Joint Standing Committee on Electoral Matters (JSCEM) identify and discuss recommendations of the Report of the Majority that the Opposition does not support.

The Majority Report does contain many recommendations that the Opposition supports. We acknowledge the contributions that all members of the Committee have made to this Inquiry and to the development of these recommendations.

Constraints placed upon JSCEM members in relation to the timing of the tabling of the Committee's report have limited this Minority Report to addressing only those Majority recommendations that, in our view, clearly compromise the effectiveness, fairness and integrity of the *Commonwealth Electoral Act 1918* (the Act).

Introduction

Australia has a long and proud history of progressive electoral reform, dating back to the introduction of the secret ballot in Victoria in 1856, votes for women in 1894 (in South Australia) and in 1902 (federally), preferential voting in 1918, compulsory voting in 1924, proportional representation for the Senate in 1949 and votes for 18-year-olds in 1973. Governments of all parties share credit for these reforms, which in Australia have usually enjoyed bipartisan support. As a result Australia has one of the most open, accessible and democratic electoral systems in the world. We reject any proposed changes to Australian electoral laws which seek to wind back any of these reforms.

We note in particular that Australia has had no history of electoral fraud. The high degree of confidence that Australians have in the integrity of our electoral system, including the electoral roll, is shown by the fact that Australia sees almost none of the claims that elections have been "rigged" or "stolen" that mark elections in many other countries. Even in circumstances such as the federal elections of 1990 and 1998, when parties which have won a majority of the two-party vote have failed to win enough seats to win government, Australians have accepted these results with complete calm. We reject any suggestion that regressive changes to Australia's electoral system can be justified under the pretext of "preventing electoral fraud".

It is therefore with alarm that we note a consistent pattern in some of the recommendations put forward by the Government Majority on the Committee. This is a tendency to make it more difficult for Australians to enrol and to vote. We note that the Government Majority wants to:

- Close the electoral roll on the day the writs are issued for an election, rather than allowing citizens a five-day period to enrol or to update their enrolment details (Recommendation 4);
- Make it more difficult for citizens to enrol, or change their enrolment details (Recommendation 3);
- Make voters produce photographic or documentary identification before they can cast a provisional vote (Recommendation 20); and
- Make it more difficult for voters to cast a formal vote for the Senate, by abolishing the simple method of "above the line" voting through the introduction of compulsory preferential voting "above the line" for the Senate (Recommendation 32).

These changes would undo many reforms to the Australian electoral system which the Hawke Government put in place in 1984, after decades of neglect by previous governments. They would disenfranchise hundreds of thousands of Australians, mainly the young, those with lower levels of education, indigenous Australians and Australians from non-English speaking backgrounds. They would make it more difficult for people to enrol, and to vote outside their own electorate. They would increase the rate of informal voting in the Senate, reintroducing abuses seen at Senate elections in the past.

No satisfactory justification has been produced by Government members of the Committee for these radical and regressive changes. The only pretext offered is the need to prevent electoral fraud, particularly fraudulent enrolment. No evidence has been produced in submissions to or in testimony before this Inquiry to show of any incidence of electoral fraud in Australia, either in enrolment or in the

casting of votes. The Government is undertaking these major changes in absence of any evidence of electoral fraud. The Committee Majority itself concedes that "to date the Committee has had no evidence to indicate there has been widespread electoral fraud" (refer Chapter 5, paragraph 142 of the Majority Report).

We can only conclude that the real motivation for these recommendations by the Government Majority is the belief that if implemented they will give the Government some partisan advantage at future elections. It is evident that Government members believe that the majority of those who will be deterred or prevented from enrolling, who will be unable to cast a provisional vote, or who will cast an informal vote for the Senate, as a result of these changes, will be Labor voters, and that the cumulative effect of these changes will be to give the Government an advantage.

These measures, in tandem with the Government Majority recommendations relating to the disclosure of political donations, represent a challenge to the clear and transparency operation of our federal electoral processes. This Opposition Minority Report details the objections of committee members to changes to the Act which would allow an alarming increase in the secret and private donations flowing to political parties.

The Opposition members of the Committee reject the extreme recommendations in Chapter 13, which if adopted by the Government would raise the disclosure threshold to make secret donations of $10,000 legal and make donations of $2,000 tax deductible. The case for hidden donations and tax-payer subsidised rebates has not been made by Majority members. Once again we can only assume that these recommendations are designed to deliver partisan advantage to the Liberal Party.

Chapter 2: Enrolment

Recommendation 3

The Committee recommends that the Commonwealth Electoral Act be amended to require all applicants for enrolment, re-enrolment or change of enrolment details to be required to verify their identity and address.

Regulations should be enacted as soon as possible to require persons applying to enrol or to change their enrolment details, to verify their identity and address to the AEC by:

- **showing or producing an acceptable identification document and a proof of address document to the AEC or a person who can attest a claim for enrolment, or,**
- **where such proof of identity documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the enrolee's identity and by supplying a proof of address document.**
    - ⇒ **Persons supplying references must have known the enrolee for at least one month and must show their own acceptable identification document or supply their drivers licence numbers to the AEC; and**
- **Enrolees should have the choice of providing the required documents in person to the AEC, or a person who can attest a claim for enrolment, or by posting or faxing the required documents or certified copies to the AEC with the enrolment form to which they relate.**
- **Where certified copies of acceptable documents are posted or faxed to the AEC, they must be certified by the enrolee to be true copies and witnessed by an elector enrolled on the electoral roll.**

Where the AEC or a person who can attest a claim for enrolment receives original documents from an enrolee, the AEC must return the documents to the enrolee by hand, registered mail or other means agreed to by the enrolee. We contend that this change to the Act will make it more difficult for people to enrol or to update their enrolment, and will have the effect of increasing the number of people who are unable to vote. Those least likely to be able to comply with these requirements will be seniors, non-English speaking people or people with poor English, indigenous Australians and young voters. We point out that in all states and territories between 10 and 20% of adults do not have a driver's licence, and that many of these will also lack other forms of documentation.

Such disadvantageous changes could only be justified if it were to be shown that the current system for enrolment and re-enrolment allowed a significant level of

false enrolments or other kinds of electoral fraud. No evidence in support of these claims was shown to the inquiry.

We also point out that this recommendation is in conflict with the Government's own recent legislation, the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures Act) 2004*. This Act requires:

> Applicants for enrolment must provide documentary evidence of their name and address by
>
> - providing their driver's licence number; or
> - where the applicant does not possess a driver's licence, the application must be countersigned by two persons on the electoral roll who can confirm the applicant's identity and current residential address. The counter-signatories must have known the applicant for at least one month or have sighted identification showing the applicant's name and address.

No evidence has been produced which would justify the Committee Majority's contention that this provision, enacted only last year and not yet put into operation, is now inadequate and must be replaced by a more stringent requirement.

We also point out that the extra time which would be required for the AEC to process applications substantiated with a range of verifying documentation would create a backlog of applications in the period prior to the closing of the rolls, particularly if the Majority recommendation to close the rolls on the day of the issuing of the writs were to be put into effect.

Recommendation 4

The Committee recommends that Section 155 of the Commonwealth Electoral Act be amended to provide that date and time fixed for the close of the Rolls be 8.00 P.M. on the day of the writs.

This is the most radical recommendation in the entire report. It will have the effect of disenfranchising anyone who has not enrolled by the time the writs for an election are issued, and potentially disenfranchising all voters who are not enrolled at their correct address by depriving them of an opportunity to correct their enrolment details.

This is surprising considering the submission of the Federal Secretariat of the Liberal Party, which suggested that existing enrolees should be able to change

their address details for up to three working days after the issue of the writs (Submission 219, Liberal Party of Australia).

The seven-day period for updating enrolment details was introduced as a result of the problems associated with elections up to 1983, when the roll closed at 5pm on the day the writ was issued. At the 1983 double dissolution election, approximately 90,000 voters were unable to vote when they arrived at the polling booth on election day. One witness, an AEC official who recalled the 1983 election and the lack of time before the close of rolls, said:

> It created a lot of confusion and a lot of provisional votes, and a lot of people go in to vote, find they are not on the roll and just walk out (evidence of Mr Ivan Freys, 12 August 2005).

At the 2004 election, about 280,000 people enrolled or changed their enrolment in a substantive way (to either enrol, re-enrol or change their details to vote in a different electorate) in the five working days between the issuing of the writs and the closure of the roll (See table below).

State	New enrolment	Reenrolment	Transfer within a state	Transfer between states	Total voters
ACT	2,279	2,038	636	1,690	6,643
NSW	23,706	24,645	29,464	7,244	85,059
NT	835	1,160	315	1,439	3,749
QLD	10,098	13,066	18,116	8,443	49,723
SA	9,163	5,337	8,630	1,984	25,114
TAS	2,136	1,890	1,376	1,288	6,690
VIC	15,863	19,456	23,101	5,902	64,322
WA	14,736	10,903	14,408	2,763	42,810
Australia	**78,816**	**78,495**	**96,046**	**30,753**	**284,110**

The pretext for this proposal is that enrolments during the five working days increase electoral fraud, because the AEC does not have time to verify the information given by the enrolees. No evidence in support of this contention was presented to the Inquiry nor has it been presented to previous Inquiries.

The AEC has never said that it cannot handle the volume of applications received during the seven-day period before the rolls close. In fact it has said that the seven-day period does not prevent it taking adequate measures to prevent fraudulent enrolment. The AEC continues its checks into the integrity of the roll in

the period following the closing of the rolls to ensure people are eligible to vote, and also after the rolls close (evidence of Mr Paul Dacey, 5 August 2005). The removal of the seven-day period would therefore have little qualitative impact on the integrity of the roll.

More broadly, there is no evidence that fraudulent enrolment exists on any measurable scale or has ever influenced the outcome of any federal election. No witness or submission to this Inquiry produced evidence of fraudulent enrolment.

The AEC has said:

> It has been concluded by every parliamentary and judicial inquiry into the conduct of federal elections, since the AEC was established as an independent statutory authority in 1984, that there has been no widespread or organised attempt to defraud the electoral system … and that the level of fraudulent enrolment and voting is not sufficient to have overturned the result in any Division in Australia. That is, there is no evidence to suggest that the overall outcomes of the 1984, 1987, 1990, 1993, 1996 and 1998 federal elections were affected by fraudulent enrolment and voting (*AEC Electoral Backgrounder 14: Electoral Fraud and Multiple Voting*, 24 October 2001).

We point out that this Committee conducted a thorough investigation into the integrity of the electoral roll in 2001. During that inquiry the AEC testified that it had compiled a list of all possible cases of enrolment fraud for the decade 1990-2001, a list which included 71 cases in total, or about one per 200,000 enrolments. The AEC noted that these false enrolments were carried out for a variety of reasons not connected with a desire to influence federal election results (Report of the Inquiry into the Integrity of the Electoral Roll, 15).

Between 1990 and 2001 there were five federal elections and a referendum, at each of which about 12 million people voted: a total of about 72 million votes. The 71 known cases of false enrolment thus amounted to less than one vote per million being cast by a person who had knowingly enrolled at a false address.

The entirely theoretical threat of election results being corrupted through fraudulent enrolment does not outweigh the harm caused by potentially disenfranchising several hundred thousand voters. In an advanced democracy, particularly one which aspires to universal voting, the Parliament should be doing everything possible to see that the franchise is as wide as possible.

During this Inquiry, the Committee heard evidence from an AEC employee appearing in a private capacity that the early closure of the rolls:

> would disenfranchise a lot of people. We would have had to go to a lot of expense and advertising to ensure that the rolls were as up-to-date as possible and do that on a continuing basis (evidence of Mr Ivan Freys, 12 August 2005).

The government has introduced legislation several times to implement this proposal, but each time it was rejected by the Senate, with minor party Senators joining the Opposition in voting against it. Neither Government Senators on those occasions, nor Government members of this Committee, have succeeded in producing any evidence of electoral fraud arising from enrolments after the announcement of an election.

In its submission to the 2001 JSCEM inquiry into the electoral roll, the AEC said:

> The AEC is firmly of the view that, in the absence of any evidence to suggest that the opportunity to enrol or correct enrolment details in the week prior to the close of the rolls is being significantly abused, the procedure introduced on the Committee's recommendation after the 1983 election must be judged a success. It has guaranteed the franchise to large numbers of people who might otherwise have missed out on their votes, and has ensured more accurate rolls by guaranteeing people the opportunity to correct their enrolment details. Its elimination would reopen the door to sudden roll closes such as that of 1983, which cause the retention on the roll of a large number of out-of-date enrolments, and tend to force a large number of people to vote for Divisions in which they no longer reside (AEC submission to the Inquiry into the integrity of the electoral roll, October 2000).

The Report into the 2001 Federal Election of this Committee (which had then, as it does now, a Government majority) recommended unequivocally that the existing seven-day period between the issue of writs and the close of rolls be retained.

A number of submissions to the Inquiry specifically highlighted that homeless people as being particularly disadvantaged by the proposed early closure of the rolls. This is because it will dramatically reduce the opportunities for homeless people to update their address details or registration as Itinerant Electors (Submission 131). This is further proof of how those in society least deserving of disenfranchisement will be severely affected by this recommendation.

This recommendation will also cause particular problems for electors in remote or regional Australia: for example, the Premier of Western Australia, Dr Geoff Gallop MLA, argued that voters in his state without immediate access to appropriate communication facilities would be particularly disadvantaged (Submission 60).

Since no evidence has been produced to demonstrate the necessity for this change, there is no justification for the potential disenfranchising of several hundred thousand Australian voters that would flow from its implementation.

Recommendation 5

The Committee recommends:

- **that the amendment to Section 155 of the Commonwealth Electoral Act to provide for the date and time of the close of the Rolls, occur as soon as possible in the life of the 41st Parliament;**
- **that the amendment to section 155 be given wide publicity by the Government and the AEC;**
- **that the AEC be required to undertake a comprehensive public information and education campaign to make electors aware of the changed close of rolls arrangements; in the lead up to the next Federal Election;**
- **that the AEC review, and where appropriate amend the wording of all enrolment related forms, letters, promotional material and advertising used for enrolment related activities to include a notification to electors that the rolls will close at issue of the writ for federal elections and referenda; and**
- **that appropriate funding be made available to the AEC in order that it may comply with these and other recommendations agreed to by the Government.**

This recommendation flows from Recommendation 4, and is the majority's response to the problem of disenfranchising hundreds of thousands of Australians by closing the rolls on the day the writs are issued. We are not opposed to efforts by the AEC to encourage Australians to enrol to vote and to maintain their enrolment at their correct address. But we reject the idea that such a campaign can be an acceptable substitute for the five-day enrolment period after the issuing of the writs for an election. Essentially, this recommendation fails to understand the behaviour of those voters who only decide to correct their enrolment when the intense media coverage around the announcement of an election prompts them to do so.

The recommendation rests on two assumptions:

- That it is always possible to know the date of an election far enough in advance to be able to prepare and mount an awareness campaign on the scale that the recommendation envisages; and

- That such a campaign will persuade most or all of those who currently enrol or change their enrolment after the announcement of an election to do so before the election is announced.

An awareness campaign would have to run for weeks, if not months, before a federal election is held if it were to have the effect of encouraging the maximum number of people to enrol to vote. The first of these assumptions is, therefore, clearly false.

Currently the Prime Minister has absolute discretion in deciding the date of a federal election. In Australia this will remain the case unless the Constitution is altered to provide for fixed terms. Prime Ministers can, and frequently do, call early elections for reasons of electoral advantage. In the postwar period Australia has had 23 federal elections, of which nine (39%) were called at least six months early: in 1951, 1955, 1963, 1974, 1975, 1977, 1983, 1984 and 1998. At none of these elections would it have been possible to prepare and mount an awareness campaign of sufficient length or intensity to influence enrolment behaviour.

Mr Antony Green, a well-respected election commentator, supports this view:

> If suddenly the election is called two or three months early, people will not have regularised their enrolment. You will cut young people off, as the numbers show, and you will also see a significant number of people who are currently re-enrolled at their correct address trying to vote with their old address by absents and postals. It just strikes me that you will actually see an increase in the number of people trying to vote absent and postal, and then there will be questioning about whether they live at an address or not (evidence of Mr Antony Green, 12 August 2005).

The veracity of the second assumption is more a matter of opinion, but there are strong arguments to suggest that such an awareness campaign would not have the desired outcome. It is striking that the Committee Majority, in another context, supported this view when they said:

> The Committee recognises the efforts of the AEC to target electorates with high percentages of constituents from non-English speaking backgrounds. However, it is evident that, by and large, the programs such as those in the ethnic media and the election information sessions did not have a significant effect on informal voting figures. (Chapter 6, paragraph 54)

People who enrol or who change their enrolments after the announcement of an election fall into four categories:

- People who have turned 18 since the last election;
- People who have become Australian citizens since the last election;
- People who have changed their address since the last election; and
- People who have returned to Australia after a period of absence during which their enrolment has lapsed.

All these people *should* have enrolled as soon as they become eligible, and *should* have kept their enrolment up to date. The fact that they did not do so suggests that they have a relatively low level of interest in politics and a relatively low level of engagement with the political system. They are, in other words, the people least likely to respond to awareness campaigns of the type proposed.

As research into many other awareness campaigns shows, it is people with lower levels of education, poor command of English, indigenous Australians, seniors and the very young who tend to be less responsive to awareness campaigns. It is these people who are the most likely to enrol only when an election is actually called.

As suggested above, an awareness campaign around enrolling to vote and maintaining correct enrolment details would have to be conducted in the months or weeks leading up to a federal election. This, however, would present serious problems. Over the last three elections the Howard Government has grossly abused public funds by running saturation television and print "awareness campaigns" promoting various Government policies in the run-up to the election campaign proper. No doubt it will do so again at the next election.

It is well known that the proliferation of awareness campaigns, both genuine and bogus, over recent years has reduced the effectiveness of all such campaigns. An awareness campaign on enrolment would be competing with so many other campaigns that people (particularly the target groups) would tend to ignore it.

Such an advertising campaign would also entail a very large expenditure of public funding to achieve the same outcome as is currently achieved by waiting seven days after the issuing of the writs. This is particularly concerning in light of the meagre justification for the removal of this seven-day period.

Getting more than 280,000 Australians back on the roll at their correct address before an election would not be such an issue if we had fixed terms for elections, because then it would be known in advance the date on which the rolls would close. Then an awareness campaign could give a more specific message and might be more successful.

Chapter 3: Voting in the Pre-election Period

Recommendation 10

The Committee recommends:

- **That the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended so that postal voters are required to confirm by signing on the postal vote certificate envelope a statement such as 'I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled';**

- **That the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to allow the date of the witness's signature, not the postmark, to be used to determine whether a postal vote was cast prior to close of polling.**

We have no objection to this recommendation, which relates particularly to rural voters who have posted their postal ballot at a late stage, and whose ballot has not been postmarked by Australia Post until after polling day. By relying on the voters truthfulness in terms of certifying that they have completed their vote prior to the close of the poll, the Committee is rightly giving such voters the benefit of the doubt.

We note, however, the marked contrast between the Committee Majority's attitude to the integrity of the electoral roll in this recommendation and the attitude displayed in the earlier recommendations, discussed above. In those recommendations the Majority sought to make it more difficult for citizens to enrol and vote, on the pretext of guarding against fraudulent enrolment. In this recommendation the Majority is suggesting that it be made less difficult for postal voters to cast their votes.

We note also that this recommendation was framed mainly in response to the justified complaints of voters in regional areas, particularly in western Queensland, about the breakdown in the postal voting system during the 2004 election. It seems that the Committee Majority is willing to take the word of country voters about the date on which they lodge their postal vote applications, but not willing to take the word of the mass of Australian voters about their identities when they enrol to vote or when they cast declaration votes. The inconsistent approach of the Majority Committee members should be pointed out.

Chapter 5: Election day

Recommendation 25

The Committee recommends that, at the next Federal election, those wishing to cast a provisional vote should produce photographic identification. Voters unable to do so at the polling booth on election day would be permitted to vote, but their ballots would not be included in the count unless they provided the necessary documentation to the DRO by close of business on the Friday following election day. In the case where it was impracticable for an elector to attend a DRO's office, a photocopy of the identification that was either faxed or mailed to the DRO would be acceptable.

Those who do not possess photographic identification should present one of the forms of identification acceptable to the AEC for enrolment.

The early closing of the rolls, as recommended by the Committee Majority, would have the inevitable consequence of causing more voters to cast provisional votes than ever before. This recommendation would require the voter to provide photographic identification because they did not have sufficient time either to enrol or to update their enrolment details between the calling of the election and the closing of the rolls on the days the writs are issued (usually the day after the announcement).

As with previous recommendations, this recommendation will place a further obstacle in the way of people casting their vote. At the 2004 election 180,878 Australians were issued with provisional votes and 853,598 were issued with absent votes (these two categories, together with pre-poll and postal votes, being classed as declaration votes), a total of 1,034,476 votes or 8.8% of all formal votes cast. Once again, no evidence was presented to the Inquiry of fraud in the casting of declaration votes, let alone a level of fraud which would justify such a drastic change. Once again, those least likely to be able to conform to these requirements would be the elderly, first-time voters, those with lower levels of education, indigenous Australians and Australians from non-English speaking backgrounds.

Recommendation 29

The Committee does not support the introduction of proof of identity requirements for general voters on polling day at the next election.

The Committee recommends that the AEC report to the JSCEM on international experience of the operation of proof of identity arrangements and on how such a system might operate on polling day in Australia.

Whilst the Opposition agrees with this recommendation, it has further comments to make about the potential for requiring voters to provide proof of identification to be able to vote on polling day.

Recommendation 30

The Committee recommends that, at the next Federal Election, the AEC encourage voters to voluntarily present photographic identification in the form of a driver's licence to assist in marking off the electoral roll.

The Opposition disagrees with this recommendation as it is yet further proof of the Government's desire to make casting a valid vote more difficult for ordinary voters.

Liberals for Forests

In Chapter 5 the Committee Majority makes a number of inflammatory allegations regarding the actions and impact of the Liberals for Forests (LFF) group in the Division of Richmond, although the relevant recommendation appears under Chapter 12, where we have further comments to make.

Most of these allegations are made by interested parties such as National Party sources and other candidates and officials, and most of them do not stand up to scrutiny.

For example, the Majority Report asserts that only 151 people needed to alter their preference to change the outcome in Richmond, and claims, on the basis of anecdotal evidence, that this was what occurred.

However, this would have required a massive 10.6% switch in preference flows, well in excess of the preference flows received by the Coalition in most of the seats contested by LFF in NSW.

The average preference flow across the seven seats contested by the LFF in NSW was 40.31% to the ALP. Labor received only 43.19% of preferences from LFF in

Richmond. This was only 3.61% higher than the preference flow to Labor in Page, and less than 3% more than the state average.

The preference flow required to the Nationals of 67.5% is higher than any preference flow by any minor party across NSW to the Coalition other than the Christian Democratic Party.

The Majority Report makes much of alleged confusion among Liberal voters regarding the layout of LFF's how-to-vote card, and in evidence the clear similarity of these how-to-vote cards with Liberal how-to-vote's in 2001 was emphasised. However, the Government members should know that there has not been a Liberal how-to-vote card handed out in Richmond since 1996, so Richmond voters have not been exposed to this how-to-vote card for almost a decade. Even at state elections, the overwhelming majority of voters in Richmond have only seen National Party how-to-vote cards from the coalition over the last ten years. To suggest confusion with earlier designs that have never been used in the region defies logic.

The Opposition also notes that Mr Larry Anthony chose not to appear before the Committee, and given the aggressive nature of both the behaviour of Coalition members at some hearings regarding this issue as well as the expected political conclusions reached it is quite understandable that Ms Elliott declined to appear.

All of the above makes it clear that the allegations made in the Majority Report are nothing more than a political stunt on behalf of the Coalition.

Chapter 7: Parliamentary terms

Recommendations 32, 33, 34 and 35

32. The Committee recommends that there be four-year terms for the House of Representatives.

33. The Committee recommends that the Government promote public discussion and advocacy for the case for four-year terms during the remainder of the current Federal Parliament.

34. The Committee recommends that, in the course of such public discussion, consideration be given to the application of consequential changes to the length of the Senate term, and in particular, options 1 and 2.

35. The Committee recommends that any proposals be put to the Australian public via a referendum at the time of the next Federal Election. If these proposals are successful, it is intended that they would come into effect at the commencement of the parliamentary term following the subsequent Federal Election.

We welcome the decision of the Committee Majority to recommend four-year terms for the House of Representatives. We note Australia has had more than 20 years of debate on this question, during which time all the states and territories except Queensland have moved from three-year to four-year terms. We believe that the case for four-year terms has been convincingly made many times, and we welcome a community debate on how this might be achieved.

Despite this consensus, the achievement of four-year terms for the House of Representatives has been prevented by a lack of agreement on the consequences of such a change for Senate terms. There is a clear public interest in maintaining simultaneous elections for the House of Representatives and the Senate. The Opposition believes that the best way to do this, as well as to reduce the frequency of elections and to bring more certainty to the political system generally, is to have fixed terms for both houses, so that the House of Representatives will run its full term unless the Government loses a vote of confidence in the House, or calls a double dissolution election as a result of a deadlock with the Senate.

The questions to be resolved are therefore the length of the Senate term if the House of Representatives term is to be extended to four years and whether the terms of the House of Representatives should be fixed or unfixed.

The Opposition members accept that the development of a proposal which can be supported in a bipartisan manner will require all parties to approach these issues with an open mind. While we note the particular options canvassed by the Majority Report regarding the way forward to achieve four year terms, we do not agree that the process should be limited to consideration of only these options. The process outlined under the recommendations should consider any potential change that could gain strong community support, and part of the process ought to be to examine all options.

While we continue to support the policy in Labor's platform, for fixed four-year terms for both houses, we are willing to work with all other parties to develop a proposal for four-year terms for the House of Representatives which can be put to a referendum.

It seems that the proposal most likely to gain bipartisan support is a Senate term of two House of Representatives terms. This would maintain the simultaneity of House of Representatives and Senate elections, retain the institution of the half-Senate election (thus preserving the continuing role of the Senate as a house of review with a mandate different to that of the House of Representatives), and keep the quota for election to the Senate at the current 14.3 percent.

This leaves the question of whether the terms of the two houses should be linked or unlinked.

Unfixed four-year terms for the House of Representatives and fixed eight-year terms for Senators ("Senate option 1" in the Majority Report), would maintain the independence of the Senate's election timetable, but create a risk of House of Representatives and Senate elections getting out of alignment if an early election was called for the House of Representatives (as happened most recently between 1963 and 1974), an outcome generally seen as undesirable for a variety of reasons. Linking Senate terms to House of Representatives terms – by making a Senate term equivalent to two House terms, regardless of how long that is ("Senate option 2" in the Majority Report), would keep the electoral timetables of the two houses in alignment.

Chapter 8: Voluntary and compulsory voting

Recommendation 36

The Committee recommends that the questions of voluntary and compulsory voting be the subject of a specific inquiry by the Joint Standing Committee on Electoral Matters in the future.

We believe that the introduction of preferential voting in 1918 and compulsory voting in 1924 were among the greatest achievements of Australia's tradition of progressive electoral reform. (We note in passing that both were introduced by non-Labor governments, and that preferential voting was introduced principally to accommodate the emerging Country Party, ancestor of today's Nationals, who have been its greatest long-term beneficiaries.)

We are aware that some senior members of the Government wish to abolish compulsory voting, and we commend those Government members of the Committee who have, it seems, again successfully prevented the adoption of such a radical and retrograde step. No doubt they, like us, can see that current trends in democratic politics, in Australia as elsewhere, are strengthening the case for compulsory voting.

There has been a clear tendency in the major democracies over the past 30 years for voter turnout to fall. The causes of this phenomenon are complex and not relevant to this discussion, but the risk is clear – presidents and governments elected without a clear mandate from the majority of eligible voters, and thus lacking democratic legitimacy. Three structural factors in electoral systems of various countries contribute to this problem – difficulty in enrolment (particularly in the United States), first-past-the-post voting (which in a three-party system such as the UK regularly allows parties to win on a minority vote), and the absence of any legal requirement to vote, which allows apathy and disengagement from democratic politics to spread unchecked, particularly among the young and the less well-educated.

By contrast, in Australia, almost every federal, state and territory election produces a government which is either the first choice or at least the preferred choice of a majority or near-majority of adult Australians (the exceptions to this, such as the 1998 federal election, are caused by the distorting effects of the system of single-member constituencies). The current federal government was elected in 2004 with 52.6 percent of the two-party vote on a 94.7 percent turnout. However much we may oppose their actions, no-one can claim that Australian governments lack democratic legitimacy.

The principal argument for the abolition of compulsory voting is philosophical – that the state has no right to compel citizens to vote if they do not wish to. But this principal is applied very selectively by advocates of voluntary voting. They do not argue that the state has no right to levy taxes or to require citizens to wear seat-belts. Their response to this is to argue that the use of compulsion in these cases is justified by a higher social good – requiring citizens to pay taxes enables government to function for the benefit of all, and requiring them to wear seat-belts helps prevent them killing themselves and others. No such compelling benefit, they argue, exists in the case of compulsory voting.

We disagree. Requiring citizens to participate in the process of choosing their own government serves the social good ensuring that all citizens share responsibility for providing good government. No citizen in Australia can complain that they did not have the opportunity to vote a government out of office or to elect the candidates of their choice. Compulsory voting helps prevent the emergence – now seen in most major western democracies – of a large population of alienated citizens who feel no responsibility for, or connection with, the processes of government, and who have a diminished sense of respect for laws they have had no part in enacting. The growing disengagement of many people, particularly young people, from the political process is a problem in Australia as elsewhere. We do not argue that compulsory voting on its own is the solution to this problem. We do argue that abolishing it would make the problem worse.

Australians are currently asked to take about an hour of their time once every three years to vote. If the recommendations of this Inquiry are accepted, it will be once every four years. This is hardly an onerous requirement, and is amply justified by the benefits that near-universal participation in the political process brings to a healthy democracy.

We note that the Majority Report recommends that the questions of voluntary and compulsory voting should be the subject of a specific inquiry by the JSCEM in the future. We do not believe that this ought to be a priority for the JSCEM, as no compelling case has been put to alter our current system. It is also clear that there is no support of a significant nature for such an inquiry. In fact, recent public polling continues to show overwhelming public support for compulsory voting.

Chapter 9: Voting systems

Recommendation 37

That compulsory preferential voting above-the-line be introduced for Senate elections, while retaining the option of voting below the line. Consequently, that the practice of allowing for the lodgement of Group Voting Tickets be abolished. This would involve amendments to the Commonwealth Electoral Act, in particular the repeal of ss.211, 211A, 216, 239(2) and 239(3).

The Opposition remains committed to discussion and bi-partisan cooperation around ways to increase integrity in the Senate voting system. The recommendations in Chapter 9 are once again not appropriately developed to allow the Minority members to support the Majority recommendation. A number of options for reform are canvassed in the Majority Report, including the optional preferential above-the-line voting system of NSW.

The Opposition members have strong concerns that the recommended change will reduce the ability of Australians to participate fully in the electoral system, by requiring full preferential voting for the Senate and the abolition of the current very simple method of voting. This proposal will have the effect of significantly increasing the number of informal votes cast in the Senate.

In 1983, the last election under the old system, the informal vote for the Senate in New South Wales reached 11.1% – more than one voter in ten failed to cast a valid vote for the Senate in that state. At the 1984 election, the first under the new system, the Senate informality rate fell to 5.6%, and by 2004 it had fallen to 3.5%, despite a steady increase in the number of candidates.

The inevitable effect of the introduction of compulsory preferential above-the-line voting for the Senate, as proposed, will be to push up the rate of informal voting in Senate elections, depriving a significant number of voters of the ability to cast a valid Senate vote. If the national Senate informality rate were to double from the 3.7% seen in 2004, that would deprive 466,000 Australians of a valid Senate vote. As with the other changes proposed by the Committee majority, those likely to be most effected are the elderly, first-time voters, those with lower levels of education, indigenous Australians and Australians from non-English speaking backgrounds. No doubt the Committee Majority assumes that these are mostly Labor voters.

Another consequence of the proposed reintroduction of compulsory preferential voting for the Senate will be the re-appearance of the practice of ballot flooding (running numerous bogus Senate tickets so as to create a huge ballot paper and confuse voters), which was largely stamped out by the 1984 reforms. Ballot

flooding was seen most dramatically at the 1974 double dissolution Senate election in New South Wales, when 73 candidates (57 of them grouped in 18 tickets plus 16 independents) competed for ten Senate seats. It was widely said at the time that most of these tickets, which polled derisory vote totals, had been organised by the New South Wales Liberal Party. As a result, there was an informality rate of 12.3%, and since the majority of these were intended Labor votes, Labor lost a Senate seat it would otherwise have won.

The Committee majority's proposal will not require voters to number their ballot paper from 1 to 73 as voters in New South Wales had to do in 1974, since voters will be voting above-the-line for tickets rather than for candidates. But they will still have to number each ticket on the ballot paper to cast a valid vote (and presumably independent candidates also). At the 2004 Senate election in New South Wales, there were 29 tickets and six independents. If this proposal were to be adopted, the number of tickets would certainly rise through ballot flooding, so voters might well have to number up to 40 squares in the correct order. We have no doubt that this would at least double the rate of informality, and significantly alter the outcomes of close Senate elections.

The proposed change would also oblige all the parties to produce much larger and more complex how-to-vote cards to accommodate voting recommendations for the Senate. As well as being very wasteful, this would confuse and discourage a substantial number of voters and thus increase both the abstention rate and the informality rate for the House of Representatives as well as the Senate.

Chapter 12: Campaigning in the New Millennium

Recommendation 48

The Committee recommends that the AEC review sections 340 and 348 of the Commonwealth Electoral Act with a view to addressing issues of "misleading conduct" on polling day.

Several electorates on polling day 2004 saw the distribution of how-to-vote cards which were clearly designed to mislead voters into voting for a party they did not intend to vote for. This was particularly obvious when the manner in which these cards were distributed is taken into account. The Government members of the Committee devoted a great deal of time to expounding their view that the Government candidate in the Division of Richmond was defeated as a result of a deceptive how-to-vote card distributed by the Liberals for Forests group. We do not believe that the Government members proved this to be the case, but we agree with those Government members who argued that the *manner* in which a card is distributed must be taken into account, not just the content of the card itself, as the Act currently provides.

Government members tried to have it both ways on this question, by condemning what they saw as the misleading distribution of the Liberals for Forests card in Richmond, while condoning a clearly well-orchestrated campaign by the Liberal Party to deceive Australian Greens voters in the Division of Melbourne Ports by the blatantly misleading distribution of a green-coloured how-to-vote card. It was probably not a good idea for the Liberal Party to organise this stunt in the electorate of the Deputy Chair of this Committee.

We support the recommendation that the AEC conduct a review of the relevant sections of the Act, which are clearly inadequate for the purpose of preventing the misuse of how-to-vote cards to deceive voters. We believe that the practice of some state electoral authorities, of requiring how-to-vote cards to be lodged and approved in advance, and prohibiting the distribution of any other cards to voters at polling places, should be considered.

Chapter 13: Funding and Disclosure

Recommendations 49, 50 and 51

49. That the threshold at which political donations to candidates, political parties and associated entities must be disclosed be raised to $10 000 for donors, candidates, political parties, and associated entities

50. That the threshold at which donors, candidates, Senate groups, political parties, and associated entities must disclose political donations be indexed to the Consumer Price Index.

51. That the *Income Tax Assessment Act 1997* be amended to increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed $2,000 per year.

The object of these recommendations is to make it easier for corporate donors to give money to the Liberal Party without having to disclose it. Since the State and Territory divisions of the Liberal Party are legally separate entities, this would mean that a person could make eight separate donations of $10,000 without having to disclose.

We are firmly opposed to any change in the current disclosure regime, and reject the weak arguments presented in the Majority Report for change. We reject as misleading the view of the Committee Majority that nearly 90% of donations would be disclosed if the threshold were raised to $10,000, as this is a measure of total donations not a measure of the amount of each donation. If the current donors in the last round of AEC disclosure contributed a similar amount to the Liberal Party of Australia, and its state branches, then millions would go undisclosed. Raising the disclosure threshold to $10,000 would allow large amounts of money to flow, without scrutiny, from the existing donor base of the Liberal Party.

The Minority members were surprised to see that in addition to the huge rise from $2,000 to $10,000 proposed for donations, that the Majority were also proposing to index the disclosure limit to the Consumer Price Index. This would see the amount increasing each at around 2-2.5% a year. This is a fundamental break with the traditional way the disclosure of political donations has been regulated, and an annual measure could lead to confusion from donors as to whether their donations falls within, or outside, the disclosure limit.

The Majority recommendation that tax deductibility for political donations be raised from $100 to $2,000 is an unjustified attempt to transfer private political

donations into a taxpayer subsidy. The Opposition supports public funding for the electoral process which is transparent and reflects the votes gained by political parties. We believe that a general tax-deductibility clause as outlined by the Majority will encourage individuals and other entities to make extensive political contributions, in secret, and at taxpayer expense. The potential to undermine the integrity of the political process under these changes is clear.

It is true that the disclosure threshold is lower in Australia than it is in some other countries. The Committee Majority approvingly quotes the Federal Director of the Liberal Party, Mr Brian Loughnane, to this effect. It is not surprising that Mr Loughnane should take such a view, since the Liberal Party would be the principal beneficiary of such a change. Our view is that in this and other matters of electoral law, Australia ought not to be unduly influenced by practices in other countries. As we noted at the outset, the Australian electoral system has many progressive features, some of them unique to Australia. This should be a source of pride, not of reproach.

It may be, as Mr Loughnane said, that it is not possible to influence government decisions with a donation of $10,000. (It may be more possible with a donation of $80,000.) But that is not the point. The point is that the public has a right to know, within reason, the sources of funding for political parties. We reject any change which makes it easier for individuals or corporations to make large donations to political parties in secret.

Mr Michael Danby MHR, Deputy Chair

Mr Alan Griffin MHR

Senator Kim Carr

Senator Michael Forshaw

October 2005