

**Electoral Commissioner**

Our Ref: mp0117-JSCEM 08/409-5

Mr Daryl Melham MP
Chair
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600



Dear Mr Melham

I am writing in response to comments made by Mr Brad Henderson, the Federal Director of the Nationals, regarding the issue of postmarking postal votes.

Appearing as a witness at the JSCEM public hearing on 3 February 2009, Mr Henderson raised the issue of the postmarking of postal vote envelopes and the inconsistency between Australia Post's mail services in some regional areas and the Australian Electoral Commission (AEC)'s deadline for the acceptance of postal votes. Mr Henderson questioned why the problem had not been addressed previously by Australia Post and the AEC.

The AEC has long recognised the decreasing reliability and comprehensiveness of postmarking and has liaised with Australia Post pre-election to facilitate the postmarking of as much electoral material as possible, including putting in place special procedures for rural and remote areas.

In addition, since 1993, the AEC has made several submissions to the JSCEM on this issue. The relevant extracts are at Attachment A. The AEC has consistently recommended that the date of the witness' signature should be the determining date for validity of a postal vote.

The JSCEM reports of June 1997, 2000 and 2004, supported by AEC submissions, have each recommended that the witness' signature be used to determine the admissibility of postal votes and that the relevant parts of the Electoral Act be amended accordingly. Extracts are at Attachment B.

The previous Government gave qualified support to this recommendation in 1998, but subsequently rejected it as the Government considered that such changes would weaken the integrity of Australia's electoral system.

Yours sincerely

Ed Killesteyn
Electoral Commissioner

6 March 2009

AUSTRALIAN ELECTORAL COMMISSION - SUBMISSIONS TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

THE CONDUCT OF THE 1996 FEDERAL ELECTION - 29 JULY 1996

7.5 Postal Vote Envelopes - Postmarking

7.5.1 The CEA requires a Divisional Returning Officer (DRO) to examine the postmark on a postal vote envelope during the preliminary scrutiny to determine whether the postal vote was cast before polling day. Because of the practical unreliability of this test, many voters are being unnecessarily disenfranchised.

7.5.2 Paragraph 6(e) of Schedule 3 to the CEA provides that if an envelope containing a postal ballot paper is to be accepted for further scrutiny, the Divisional Returning Officer (DRO) must be: "satisfied that ... the vote marked on the ballot paper was recorded prior to the close of the poll". Paragraph 7 of Schedule 3 to the CEA provides that where an envelope containing a postal ballot paper is postmarked later than polling day: "the vote marked on that ballot paper shall be taken not to have been recorded prior to the close of the poll".

7.5.3 In paragraph 8.2 of the AEC submission of 19 October 1993 (No 115) to the previous JSCEM, the AEC said the following:

The usefulness of postmarking as a guide to the date of postage appears to be decreasing. Mail pickups in metropolitan areas are increasingly taken directly to major mail exchanges for coding and sorting, rather than being postmarked at post offices. Mail received in bags by some post offices on Friday or Saturday from agencies in rural areas may not be postmarked, if at all, until the following Monday. The AEC understands that the Australian Postal Corporation in some areas may not postmark any mail in "postage paid" envelopes.

7.5.4 The AEC submission then analysed a (then) recent sample of postal vote envelopes in the Division of Chifley which indicated that 42% had no postmark and a further 5% had an illegible postmark. The AEC submission went on to say that:

As the decrease in the utility, reliability and comprehensiveness of postmarking is likely to continue, the AEC recommends repealing the provision relating to postmarking altogether, and instead relying on the date of the witness's signature for determining if the vote was cast prior to the close of the poll.

7.5.5 On page 100 of the Report on the conduct of the 1993 federal election, the previous JSCEM said that it considered a postmark to be a more reliable form of verification, and therefore believed that paragraph 7 of Schedule 3 should be retained while postmarks are still available on a substantial proportion of postal vote envelopes.

7.5.6 In preparation for the 1996 federal election, the AEC negotiated with Australia Post for the postmarking of the AEC's mail and particularly for the immediate postmarking of all mail received at post offices before 5 pm on the Friday before polling day, and for rural and remote mail contractors to endorse on AEC envelopes the date of collection. Australia Post General Instructions were amended accordingly.

7.5.7 Despite this much appreciated cooperation from Australia Post, it is evident that a number of postal votes were completed before the close of the poll, but not posted in time to be postmarked before the close of the poll. As a result eligible voters continue to be disenfranchised through no fault of their own. For example, in the Division of Chifley quoted by the AEC for the 1993 federal election, the percentage of postal votes not postmarked for the 1996 federal election was 59% and a further 20% had an illegible postmark.

7.5.8 In December 1995, the AEC received a letter from Senator Minchin enquiring about the procedures for acceptance of postal vote certificates, including the relationship to the postmark, and suggesting that the AEC "impress upon Australia Post the necessity for all mail to be postmarked to ensure that all valid postal votes at the next federal election are counted". In reply, the AEC advised Senator Minchin of the agreement with Australia Post and reminded him of the conclusion of the

previous JSCEM to the AEC recommendation in 1993. Senator Minchin then advised that he would look forward to the matter being raised with the next JSCEM as it should have been examined more closely the first time.

7.5.9 Where there is no postmark or the postmark is illegible, the DRO must be satisfied, in accordance with paragraph 6(e) of Schedule 3, that the vote marked on the ballot paper was recorded prior to the close of the poll. It is AEC policy in these circumstances to determine, unless there is some reason to believe otherwise, that the ballot paper was marked prior to the close of the poll if the date of witnessing is on or before polling day.

7.5.10 Clearly the lack of a postmark is not the problem. It is the existence of a postmark recorded after polling day, where, on the evidence of the witness date, the vote was recorded before polling day. For the reasons outlined above, it is the view of the AEC that the postmark is no longer a sufficiently reliable indicator of when the vote was actually recorded.

Recommendation No 18:

The AEC recommends that paragraph 7 of Schedule 3 of the CEA and paragraph 7 of Schedule 4 of the RMPA, with respect to the postmarking of postal vote envelopes, be repealed.

THE CONDUCT OF THE 1998 FEDERAL ELECTION - 12 MARCH 1999

9.10 Postmarking

9.10.1 Clause 7 of Schedule 3 to the Electoral Act requires that an envelope purporting to contain a postal ballot paper that bears a postmark after polling day be rejected at preliminary scrutiny. Recommendation 32 of the previous JSCEM was as follows:

that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

9.10.2 An amendment was made to paragraph 3 and paragraph 4 of the relevant schedules by the *Electoral and Referendum Amendment Act 1998*, but the effect of the amendment makes little difference to the pre-existing provision, other than to make explicit that the witness date can be used if there was no postmark – an administrative arrangement carried out by the AEC in any case.

9.10.3 Many electors receiving postal votes assume they cannot vote before polling day, and consequently post the envelope on polling day. However, Australia Post does not work on Saturdays or Sundays in most centres and the elector is disenfranchised although they have voted correctly. The reliance on the postmarking provision is archaic, dating back to when the then Post-Master General's department was open on a Saturday.

Recommendation 22: that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 4 of Schedule 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling.

THE CONDUCT OF THE 2001 FEDERAL ELECTION - 12 JULY 2002

6.2.22 **Postmarking of postal vote envelopes.** The AEC will develop a protocol to be distributed to all parties and candidates prior to an election clearly setting out the AEC's role in relation to postal voting and the responsibilities of parties and candidates if they distribute PVAs, which may be enforced by legal remedies.

6.2.23 Since the 1993 federal election the AEC has argued that a declaration certificate envelope purporting to contain a postal ballot paper should be admitted to further scrutiny if it is postmarked after polling day, but is signed and witnessed before polling day. Since that time amendments have been made to the Electoral Act (paragraph 7A of Schedule 3 of the Electoral Act) to allow the postal votes to be admitted to further scrutiny if the signature of the witness bears a date on or before polling day and there is no legible postmark.

6.2.24 The AEC liaised with Australia Post in the lead up to the 2001 federal election to facilitate the postmarking of as much electoral material as possible. In the case of remote areas special procedures are put in place for each electoral event. Even with these procedures in place it is not possible to guarantee that every piece of electoral material will be postmarked.

6.2.25 As the AEC has stated in previous submissions, many electors casting postal votes assume they cannot vote before polling day, and consequently post the declaration certificate envelope on polling day. It is now a matter of chance whether or not these elector's votes are included in the further scrutiny. If the envelope purporting to contain their declaration certificate envelope is postmarked after polling day it will not be admitted to further scrutiny; if it isn't postmarked or the postmark is unclear it will be included in the further scrutiny as the witness date is then relied upon. The AEC does not consider this situation to be fair to all electors and asks the Committee to reconsider this matter.

6.2.26 As an example of the extent of this issue the AEC reviewed postal vote certificates rejected in Western Australia at the 2001 federal election. Of the 2,428 postal votes rejected, 1,111 were rejected because they were received too late; and of those, 956 or 86% were signed and witnessed on or before polling day.

Recommendation 12: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is used to determine if a postal vote was cast before the close of polling.

**Joint Standing Committee on Electoral Matters
Inquiry into all aspects of the conduct of the 1996 federal election and matters related thereto**

Recommendation 32

That paragraph 7 of Schedule 3 of the Electoral Act and paragraph 7 of Schedule 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

Government response (Tabled on 8 April 1998)

33. Supported. However, the Government believes that this provision should only be used in the event of the postmark being illegible or non-existent.

**Joint Standing Committee on Electoral Matters
Inquiry into all aspects of the conduct of the 1998 federal election and matters related thereto**

Recommendation 27

That paragraph 7 of Schedule 3 of the *Commonwealth Electoral Act 1918* and paragraph 7 of Schedule 4 of the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling if there is no post mark or if the post mark is illegible. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

Government response (Tabled on 1 March 2001)

Not supported. The Government opposes this recommendation because it may lead to the electoral system being open to manipulation. The Australian Electoral Commission should investigate the feasibility of Australia Post being required to postmark every piece of electoral matter.

Joint Standing Committee on Electoral Matters Inquiry into the conduct of the 2004 federal election and matters related thereto

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.

Government response (Tabled on 31 August 2006)

Not supported. The Government considers that such changes would weaken the integrity of Australia's electoral system.

