

AUSTRALIAN ELECTORAL COMMISSION

**SUBMISSION TO THE JOINT STANDING COMMITTEE
ON ELECTORAL MATTERS**

THE CONDUCT OF THE 2001 FEDERAL ELECTION

Canberra

12 July 2002

CONTENTS

TOPIC	PAGE
1 INTRODUCTION	5
1.1 Preamble	5
1.2 Future major public review	5
1.3 AEC funding	5
1.4 Supplementary Submissions	8
1.5 Electoral Information	8
1.6 Electoral Integrity	8
1.7 Issue of the Writs	9
1.8 Preparation of the writs	9
1.9 Return of the writs	11
1.10 Significant features of the 2001 federal election	12
1.11 Appointment of Australian Electoral Officers	14
2 ELECTORAL LEGISLATION	16
2.1 Introduction	16
2.2 Technical amendments	16
3 PUBLIC AWARENESS	17
3.1 Introduction	17
3.2 Advertising, public relations & publications	17
3.3 National Telephone Enquiry Service (Call Centre)	18
3.4 Internet Site	19
4 ENROLMENT	20
4.1 Introduction	20
4.2 Inappropriate names	21
4.3 Section 89 to 92 Review	23
5 VOTING	25
5.1 Introduction	25
5.2 Informal voting	25
5.3 Access to Polling Places	25
5.4 Scanning/Certified Lists	26
5.5 Adjournment of polling	27
5.6 Electronic Voting	27
6 DECLARATION VOTING	31
6.1 Introduction	31
6.2 Distribution of Postal Vote Applications by political parties	32
6.3 Receipt of postal votes by DRO or ARO	36
6.4 Separate postal ballot papers	37
6.5 Pre-poll ordinary voting	38
6.6 Scrutineers in Pre-poll Voting Centres	38
6.7 Mobile polling issues	39
6.8 General Postal Voters – remote area workers	40

7	ELECTION RESULTS	42
7.1	Introduction	42
7.2	National Tally Room.....	42
7.3	Conduct of Recount	43
8	PARTY REGISTRATION, FUNDING AND DISCLOSURE.....	44
8.1	Introduction	44
8.2	Election funding.....	44
8.3	Receipt of returns.....	46
8.4	Outstanding FAD Recommendations	46
9	ELECTION LITIGATION.....	48
9.1	Introduction	48
9.2	Injunctions.....	48
9.3	Petitions to the Court of Disputed Returns.....	48
9.4	Prosecutions	49
10	REFERENDUM.....	50
10.1	Introduction	50
10.2	Separate ballot papers.....	50
10.3	The Yes/No Case Pamphlet	51
10.4	Appointment of scrutineers	56
10.5	Offences – printing and publication of advertisements, notices etc.....	58
10.6	Concordance of the Referendum and Electoral Acts.....	59
11	COSTS OF THE ELECTION	60
12	SUMMARY OF RECOMMENDATIONS.....	61

Attachment A	Acts of the 39 th Parliament amending the <i>Commonwealth Electoral Act 1918</i> and the <i>Referendum (Machinery Provisions) Act 1984</i>
Attachment B	Table of Technical Amendments required to the <i>Commonwealth Electoral Act 1918</i> (the Electoral Act) and/or the <i>Referendum (Machinery Provisions) Act 1984</i> (the Referendum Act)
Attachment C	AAT Decisions in the Nigel Freemarijuana and Tamara Tonite cases
Attachment D	Section 89-92 Review
Attachment E	Electronic Voting and Electronic Counting: A Status Report
Attachment F	Submission 15 to the JSCEM FAD inquiry
Attachment G	Submission 7 to the JSCEM FAD inquiry
Attachment H	Outstanding FAD recommendations
Attachment I	Election Litigation

Abbreviations

AAT	Administrative Appeals Tribunal
ABC	Australian Broadcasting Commission
AC	Assistant Commissioner
AD(JR) Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AG	Australian Greens
ALP	Australian Labor Party
APVIS	Automated Postal Vote Issue System
ARO	Assistant Returning Officer
AWA	Australian Workplace Agreement
CPI	Consumer Price Index
Cth	Commonwealth
DEM	Australian Democrats
DPID	Delivery Point Identifiers
DPP	Director of Public Prosecutions
DRO	Divisional Returning Officer
ELMS	Election Management System
EST	Eastern Standard Time
EVACS	Electronic voting system used at ACT election
FAC	First Assistant Commissioner
FAD	Funding and Disclosure
GPV	General Postal Voters
GST	Goods and Services Tax
HREOC	Human Rights and Equal Opportunity Commission
HTV	How To Vote
IEC	Independent Electoral Commission of South Africa
IVR	Interactive Voice Recognition
JSCEM	Joint Standing Committee on Electoral Matters
LP	Liberal Party of Australia
MP	Member of Parliament
NP	National Party
NTR	National Tally Room
OIC	Officers-in-Charge
OLD	Office of Legislative Drafting
PEO	Principal Executive Officers
PHON	Pauline Hanson's One Nation
PIN	Personal Identification Number
PM&C	Department of Prime Minister & Cabinet
PVA	Postal Vote Application
RMANS	Roll Management System
SBS	Special Broadcasting Service
UCMS	United Customer Management Solutions
UK	United Kingdom
USA	United States of America
VEC	Victorian Electoral Commission
VTR	Virtual Tally Room

1 INTRODUCTION

1.1 Preamble

1.1.1 This major submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its 'Inquiry into the conduct of the 2001 Federal Election', as advertised in the national press on 25 May 2002. The submission reports briefly on the overall conduct of the 2001 federal election and makes a number of recommendations for amendments to the *Commonwealth Electoral Act 1918* ('the Electoral Act') and the *Referendum (Machinery Provisions) Act 1984* ('the Referendum Act') in order to improve technical aspects of the conduct of federal elections and referendums.

1.1.2 The AEC is able to report to the JSCEM that the 2001 federal election was successfully conducted, to the overall satisfaction of major stakeholders.

1.2 Future major public review

1.2.1 The last major public review of the Electoral Act was in 1983. Whilst the Electoral Act has been modified and adjusted to cope with changing circumstances since then, these changes have been ad hoc and directed at overcoming specific obstacles. The result is an Electoral Act that is becoming unnecessarily cumbersome and a barrier to effective electoral administration.

1.2.2 The AEC believes that a new major review is warranted in the near future. Such a review might consider large scale systemic issues such as:

- how the Electoral Act can be modified to ensure it is flexible enough to cope with the changing social and technological environment;
- whether the Electoral Act and the Referendum Act should be merged; and
- whether the Electoral Act should be a principle driven document as opposed to the current process driven document.

1.2.3 The AEC will shortly be canvassing options as to how such a review could be conducted, and who might be appropriate to conduct it. The AEC would be keen to discuss this matter with the JSCEM.

1.3 AEC funding

1.3.1 The AEC would like to draw to the JSCEM's attention that it faces a very tight budget situation in all output areas including election funding and will seek to address this situation in the 2003-2004 Budget.

1.3.2 The AEC's funding for the provision of election services is spread over three financial years based on the standard 3-year electoral cycle. This spread was put in place to enable the AEC to do some preparation in the year leading up to an election, conduct the event and then undertake finalisation work and commence reviews in the year following the election. The base level of funding for

this model has not been reviewed for many years. The base funding is fixed apart from indexation movements and there is no link to workload factors, for example the number of eligible voters. In addition to influencing election costs these workload factors also drive costs in other outputs, the funding for which is also fixed. As a consequence, the AEC has been experiencing budget constraints in many areas and its capacity to continue to deliver quality services across all programs into the future is severely limited.

1.3.3 The funding model that the AEC considers would be more appropriate for the future will have a base element and provision for growth based on externally driven factors, such as enrolment numbers. The AEC has undertaken a preliminary internal review of expenditure and funding history and analysis of workload factors, and will conduct a more rigorous review over the next few months to further develop this model. It is then planned to take the model forward to seek additional funding for AEC operations.

1.3.4 Some key statistics from the analysis undertaken are set out below for reference. This analysis shows that the number of electors has increased by 29% over the last 18 years. This significant increase brings considerable workload to the AEC and influences costs in all areas, including enrolment and election resourcing such as polling services, ballot papers, information services and advertising. To absorb this workload the AEC has made productivity improvements through systems and processes. This efficiency is evidenced by the average cost per voter statistic which has fallen substantially over time. The AEC and the Australian community have benefited from the dedication of its staff across the nation in its divisional, state and central offices, to ensure that quality services have continued to be delivered whilst it has absorbed this additional workload. However, there is limited scope for further absorption.

1.3.5 Greater efficiencies can now only come from our use of newer and better technology, with the means of realising such efficiencies being a significant change in the way we deliver our services. The AEC has long held the view that our Divisional Office structure is an inefficient way of providing our services. Proposals to change this structure have not been acceptable to successive governments and therefore the only way of funding AEC services is to move to a funding model that appropriately reflects the increasing demands placed on the AEC. The environment in which the AEC operates is more sophisticated with greater scrutiny and expectations than were present in 1984. The current funding model based on these 1984 'fixed-cost' expectations is outdated and inappropriate for the modern electoral environment.

1.3.6 As a snapshot some key statistics are:

Number of people on the Roll	Increasing by an average of 4.2% per event. Total increase between 1984 and 2001 is 29%.
Cost per election	Real costs increase by about 13.4% per event but it should be noted that the biggest increases were in earlier years.
Cost per elector	Adjusted to same year prices 2001 is approximately \$1.19 (19%) better than 1984.
Cost of election as % of AEC expenditure over 3-year cycle	Averages 20% of expenditure.
Voter turnout	Averages 95% per event.
Vote informality	Averages 4.2% for House of Representatives elections and 3.6% for Senate elections.
Nature of services provided	More sophisticated, greater client expectation, greater reliance on technology to deliver expected service, legislative changes implemented during the last 18 years.
Funding	Broadly seems to keep pace with change in the dollar over the years but does not keep pace with workload. Funding not quite enough for this current event despite AEC's careful management which indicates there will be insufficient funds for 2004.

1.3.7 The AEC seeks the JSCEM's acknowledgment of its position and asks for support in addressing the financial position so that the AEC may continue to deliver quality services and improvements over the coming years.

1.3.8 In particular, the AEC asks that the JSCEM note:

- workload indicators, in particular the number of persons on the Electoral Roll, have increased substantially over the last 18 years however the AEC's funding base for the provision of electoral services has not been reviewed in that time;
- ongoing costs for enrolment, including information technology, communications, property and staffing have increased significantly;
- new measures for fraud control, data integrity and enrolment verification that the AEC has been asked to undertake are costly and unfunded; and
- retention of the divisional structure is expensive and the AEC has not received funding to match despite advice that its retention continues to put extraordinary pressure on the budgetary situation.

1.3.9 Workload increases have contributed significantly to the AEC's very tight funding position and require immediate review. The AEC will develop a proposal for additional funding. This proposal will include a new funding model that establishes a new base level and provides for growth in funding where workload is driven by external factors. The AEC will cover all aspects of the AEC's business in

developing this proposal and will examine the effect of increased enrolments on the AEC's running costs.

Recommendation 1: That the JSCEM notes that the AEC is facing a very tight funding position and supports and encourages the AEC to negotiate with the Department of Finance and Administration with a view to achieving an increased funding base for the provision of election services. That the JSCEM further notes that some workload indicators relevant to election services are also influencing other programs and services and therefore costs of the AEC.

1.4 Supplementary Submissions

1.4.1 The AEC would appreciate the opportunity to provide supplementary submissions in response to submissions from other organisations and individuals, and committee members, where important issues are raised that require AEC comment and analysis.

1.4.2 As has occurred at previous inquiries, the AEC expects to provide a late submission on dual and multiple voting, when the majority of prosecutions have passed through the courts. The AEC will also provide a supplementary submission on detected cases of possible enrolment fraud.

1.5 Electoral Information

1.5.1 The AEC has published a range of information on and for the 2001 federal election that can be accessed at the AEC website (www.aec.gov.au). The AEC expects to publish the official election statistics (including the 2001 federal election report, *Behind the Scenes*) by the end of November 2002. The AEC has not reproduced large amounts of basic election statistics and electoral information in this submission if they are already publicly available.

1.6 Electoral Integrity

1.6.1 For the 2001 federal election, the AEC detected no widespread or organised electoral fraud that could have affected the result in any Division.

1.6.2 The integrity of the electoral process is a fundamental and essential element in the conduct of free and fair elections. The AEC continues to enhance its enrolment and voting systems and procedures to ensure they are not compromised by electoral fraud and can be properly accessible to all citizens seeking to exercise their democratic rights and responsibilities.

1.6.3 Since the 1998 federal election there have been several inquiries into electoral integrity at various levels of government, with particular focus on the Commonwealth Electoral Roll. The AEC does not intend to revisit these issues in this submission. The inquiries included: the Queensland Criminal Justice Commission Shepherdson Inquiry, an inquiry by the Legislative Assembly of

Queensland's Legal, Constitutional and Administrative Review Committee, the JSCEM inquiry into the Integrity of the Electoral Roll and an audit conducted by the Australian National Audit Office examining the integrity of the Electoral Roll.

1.7 Issue of the Writs

1.7.1 The Prime Minister announced on Friday, 5 October 2001 that an election for half the Senate and the House of Representatives was to be held on Saturday, 10 November 2001.

1.7.2 The writs for the 2001 federal election were issued by the Governor-General and State Governors on 8 October 2001, following a request from the Prime Minister to dissolve the Parliament and cause an election to be held. The dates specified in the writs were as follows:

Close of Rolls	Monday, 15 October 2001
Close of Nominations	Thursday, 18 October 2001
Polling Day	Saturday, 10 November 2001
Return of Writ	Wednesday, 16 January 2002

1.8 Preparation of the writs

1.8.1 A writ is a formal legal document commanding an electoral officer to hold an election and contains dates for the close of rolls, close of nominations, polling day and the return of the writ. Sections 12 and 32 of the Constitution and Part XIII of the Electoral Act establish the legislative basis for the form, issue and return of the writs.

1.8.2 Writs for a general election of members of the House of Representatives are issued by the Governor-General to the Electoral Commissioner. A total of eight writs are issued – one for each State and Territory.

1.8.3 Writs for the election of Senators are issued by the Governor of each State to that State's Australian Electoral Officer (AEO); and the writs for the election of Territory Senators are issued by the Governor-General to each Territory's AEO. Again there are eight separate writs issued - one for the election of Senators in each State and Territory.

1.8.4 The Electoral Act does not stipulate who is responsible for preparing the original writs. For the State Senate writs the practice has been for the Prime Minister to write to the State Premiers advising them of the calling of the election and the relevant dates to enable the preparation of the State Senate writs and for the Governor-General to write to the State Governors seeking a simultaneous issue of writs for Senate elections for the States. The Department of Prime Minister and Cabinet (PM&C) prepares the letters for the Prime Minister and the Official Secretary to the Governor-General prepares the letters for the Governor-General. The State Senate writs are then prepared by the respective Premier's/Chief Minister's Departments in liaison with the relevant AEO, and they are issued the same day as those for the House of Representatives.

1.8.5 The remainder of the writs – the eight writs for the House of Representatives and the two Territory Senate writs – have traditionally been prepared by the AEC. Unlike the formal processes identified above, there has been no formal or consistent process advising the Electoral Commissioner of the calling of the election. Past practices have included informal phone calls from officers of PM&C to the Electoral Commissioner. Given that the AEC to date has prepared the writs for the Governor-General in Council, the process is far from satisfactory.

1.8.6 At the last election the Prime Minister announced on Friday, 5 October 2001 that an election was to be held on Saturday, 10 November 2001. The writs for the election were to be issued on Monday 8 October 2001.

1.8.7 On the Friday preceding the issue of the writs, 'Media Monitors' informed the AEC that the Prime Minister was on his way to Government House to request of the Governor-General an election on 10 November. Media reports around noon the same day confirmed that a press release to that effect had been issued. When, at the request of the Electoral Commissioner, an officer of the AEC contacted an officer in PM&C to ascertain if the AEC would get some formal advice of the election timing, a copy of the press release was faxed to the AEC. It was on the contents of that fax that the writs were prepared for the Governor-General.

1.8.8 Given that there is a formal procedure for advising State Premiers and State Governors, the AEC believes that there should be a formal procedure adopted for advising the Electoral Commissioner prior to, upon, or at the latest immediately after, the public announcement or media release, of the calling of the election. The formal notification should include the relevant dates. There is a greater imperative for this notice to be before the public announcement if it is expected that the AEC continue to prepare the House of Representatives and Territory Senate writs.

1.8.9 However, the AEC is of the view that it is not the appropriate organisation to prepare the writs and arrange associated documentation and meetings (eg. the AEC is currently responsible for arranging the Special Executive Council meeting for the signing of the writs and ensuring that the necessary two Ministers are present). A more appropriate organisation for the preparation of the writs might be the Office of Legislative Drafting (OLD), who are already responsible for the preparation of Proclamations, Regulations and other formal legal documents. OLD could receive instruction from PM&C, who are best placed to advise the relevant dates in a timely manner and to arrange for the Special Executive Council meeting.

1.8.10 In New South Wales, Queensland, Western Australia and South Australia the writs for the State elections are prepared by the Premier's Department (or equivalent) and in the Northern Territory the Cabinet Office. It is only in Victoria and Tasmania that the State electoral bodies prepare writs for the State elections.

Recommendation 2: That the AEC and PM&C develop appropriate formal procedures for notifying the Electoral Commissioner, immediately prior to a public announcement or media release, of the calling of the election and the relevant dates.

Recommendation 3: That the writs for State and Territory House of Representatives and Territory Senate elections be prepared by a more appropriate organisation, such as the Attorney-General's or Prime Minister's department.

1.9 Return of the writs

1.9.1 Sections 283 and 284 of the Electoral Act set out the provisions for the declaration of the poll and the return of the writs for the Senate and House of Representatives respectively.

1.9.2 Section 283 states that the AEO shall 'by a signed endorsement on the writ certify the names of the candidates elected, and return the writ to the Governor of the State'. Similarly, section 284 states that 'the Electoral Commissioner must certify in writing on the writ for the election the name of the candidate elected for the Division and return the writ to the Governor-General'.

1.9.3 In order to have the requisite information on the reverse side of the writ, the original writs must be processed through a printer or photocopier which involves the inherent risk of damaging or destroying a writ in that process. Any error made during this process cannot be corrected as it is an original writ .

1.9.4 To alleviate any risk of damage or destruction of a writ the AEC seeks the option of having the list of successful candidates and their respective Divisions included as an attachment to the writs. Prior to the 2001 federal election the AEC received legal advice to the effect that the Electoral Act would have to be amended if it were desired that the names of successful candidates and their respective Divisions be provided on an annexure to a writ. The legal opinion notes that an obligation to certify 'on' a writ is not satisfied by certifying on an annexure.

Recommendation 4: That the *Commonwealth Electoral Act 1918* be amended to enable the name of each elected candidate to be printed on or listed in an attachment to the writ.

1.9.5 Following the 2001 federal election, the eight writs for the House of Representatives were returned to the Governor-General on 6 December 2001. The writs for the Senate were returned to the Governors of the States and the Governor-General respectively, in the following order:

Tasmania	3 December 2001
Western Australia	4 December 2001
South Australia	5 December 2001
New South Wales	6 December 2001
Queensland	6 December 2001
Australian Capital Territory	6 December 2001

1.9.6 The 40-day period for lodging a petition with the Court of Disputed Returns disputing the result of an election commences from the date that the writ is returned.

1.10 Significant features of the 2001 federal election

1.10.1 **Enrolment.** At the close of rolls for the 2001 election there were 12,636,631 electors enrolled to vote at the federal election, including 9,403 17-year-olds who would have turned 18 on or before polling day.

1.10.2 **Nominations.** At the close of nominations at 12 noon on Thursday, 18 October 2001, a total of 1,324 candidates had nominated for the 2001 federal election: 285 candidates for the Senate and 1,039 candidates for the House of Representatives. There were 943 male candidates and 381 female candidates.

1.10.3 **Voter Turnout.** At the 2001 federal election 95.20% of eligible electors voted. This is slightly less than the 95.34% who voted in 1998, but is in keeping with the broad trend of a turnout rate higher than 90% since compulsory voting was introduced in 1924.

1.10.4 **Call Centre.** At the 2001 election the AEC outsourced its national call centre for the first time. The call centre answered a total of 513,347 calls, which was 82.6% of the total 620,944 calls made to the service; an improvement in capacity compared to the 1998 election. However, the close of rolls day had the highest number of calls delayed or unanswered due to congestion and only 50% of calls were handled on this day (68,365 calls answered out of 136,077 presented). The AEC will continue to examine solutions to this recurrent issue.

1.10.5 **AEC Internet Site.** The AEC internet site again proved an essential element of the public information campaign in providing electors with greater access to electoral information and results. On election night alone, the Virtual Tally Room received over 5.6 million hits with the average visit lasting just over 33 minutes.

1.10.6 **Automated Postal Vote Issue System (APVIS).** At the 2001 federal election APVIS was used for the first time at an election (the system was first used at the 1999 Referendums). The system used leading edge technology to automate a previously time consuming manual process. Using the system resulted in significant increases in the efficiency of issuing postal votes and a better allocation of AEC resources.

1.10.7 The issuing of postal ballot-papers under APVIS included the following stages:

- the preparation of declaration envelopes, and the packaging and dispatch of postal voting materials was undertaken by a private company contracted to the AEC (Besley & Pike Pty Ltd (a division of Spicers Paper Ltd), which in turn sub-contracted some of its work to another private company, QM Technologies); and

- the delivery of postal voting materials to electors (which was undertaken by Australia Post).

1.10.8 APVIS differed from the system that had applied at previous federal elections in that the preparation of declaration envelopes, and the packaging and dispatch of postal materials were outsourced to a private company, instead of being done by temporary staff in Divisional Offices. An AEC staff member supervised all activities of the contractor and sub-contractor.

1.10.9 As was expected when APVIS was introduced, the new system alleviated much of the manual workload on staff in Divisions, and achieved significant cost savings, as well as resulting in time savings in the dispatch of postal vote materials to electors. APVIS was accountable and transparent in that it provided a national, computerised reporting system on the dispatch of postal voting materials. This reporting system could be accessed and monitored on demand by all Divisional Returning Officers (DROs). APVIS also improved client service by enabling electors to telephone the AEC to obtain immediate information on the status of their postal voting materials.

1.10.10 ***International Visitor Program.*** For the 2001 federal election, 86 guests from 19 countries in Asia, Europe, North America, the Pacific and Africa participated in the largest election visitor program ever organised by the AEC. Included in these numbers were 29 staff of the Independent Electoral Commission of East Timor. A number of very senior staff from electoral administrations of other countries took part, including the Chief Election Commissioner of India, the Electoral Commissioner of Papua New Guinea, the Secretary-General of the Election Commission of Thailand, two Electoral Commissioners from Nigeria, two Electoral Commissioners from Indonesia, the Chief Executive of the UK Electoral Commission, and all four Electoral Commissioners from Fiji, as well as the Supervisor of Elections.

1.10.11 The visitor program consisted of two concurrent programs. The first was a study program of 11 days in duration while the second was a shorter polling program of 4 days duration. In addition to these programs, special programs were organised in Melbourne, Darwin and Alice Springs for a number of the East Timorese guests.

1.10.12 The study program covered all aspects of the AEC's administration and conduct of elections. This program was based in Canberra, and included sessions on the legislative framework for conducting elections, election management, voter education, information technology, voter registration systems and the training of polling staff. The participants also travelled interstate to observe field operations at an AEC Head Office and several Divisional Offices.

1.10.13 The polling program concentrated on the events of polling day and the initial stages of the counting, and included detailed information sessions on the conduct of the poll and the preliminary counts.

1.11 Appointment of Australian Electoral Officers

1.11.1 Division 3 of Part II of the Electoral Act provides for the appointment of electoral officers being: the Electoral Commissioner; a Deputy Electoral Commissioner; and AEOs for each State and the Northern Territory:

- Section 20 provides for AEOs to be the principal electoral officer in each State with power, subject to any directions of the Electoral Commissioner, to give written directions to officers with respect to the performance of their functions and the exercise of their powers under the Act in, or in relation to, the State;
- Section 21 provides that each electoral officer is appointed by the Governor-General and holds office for a period not exceeding seven years on such terms and conditions as are determined by the Governor-General; and
- Section 22 provides that each electoral officer is to be paid such remuneration as is determined by the Remuneration Tribunal.

1.11.2 AEOs were Holders of Public Office until they were transferred into the Principal Executive Officers (PEOs) structure on 1 April 2001. Their conditions of service therefore are based on the Remuneration Tribunal's Determinations for PEOs.

1.11.3 The Electoral Act specifies that an AEO can hold office for up to seven years. The practice has been that AEOs have been appointed for terms ranging from three to five years. When appointing an AEO, the practice has been for the Minister to initially request that the AEC undertake a merit based recruitment process. The AEC then compiles an interview report which is forwarded to the Minister in the first instance. The Governor-General in Council effects the appointment following consideration by both the Prime Minister and Cabinet.

1.11.4 The Electoral Act also allows for the appointment by the Electoral Commissioner of other senior executives under section 35(1)(b). The Electoral Commission has used this provision to appoint two First Assistant Commissioners (FACs) and five Assistant Commissioners (ACs) in its Central Office in Canberra and a Deputy AEO in New South Wales and Victoria. A merit based recruitment process, managed by the AEC, is used to fill these positions. These senior executives are employed on Australian Workplace Agreements (AWAs) and their terms and conditions are benchmarked against the Australian Public Service Senior Executive Service Bands. The AEC has its own salary band ranges and determines the conditions autonomously. Conditions comprise a Total Remuneration Package similar to PEOs.

1.11.5 AEOs are effectively State or Regional Managers administering operations of the AEC in a State or Territory. State managers of other organisations, for example, the Australian Taxation Office, Customs, and the Australian Bureau of Statistics, are not generally statutory appointments but are appointed by the senior management of that organisation.

1.11.6 The AEC believes that a similar arrangement would be far more beneficial for the most effective operation of agency business.

1.11.7 Whilst there is a requirement for the AEO to exercise independent decision making with respect to key electoral issues, this is only one function of the AEO position. The others of necessity, have a strong management focus.

1.11.8 The AEOs, FACs, and the ACs are the AEC's senior executives tasked with assisting the Electoral Commissioner in the performance of functions required by the Electoral Act, the Public Service Act and other Acts and instruments.

1.11.9 At the moment there is an inconsistency in the way AEO's are appointed compared with the other senior executive officers appointed under section 35 of the Electoral Act even though most of accountabilities of all of the senior executive level positions within the AEC are similar. In fact, selection processes for AEOs, as well as for persons engaged under section 35 of the CEA, are based on the same selection criteria – that is, the core criteria for SES positions under the Public Service Act. Increasingly there has been a requirement for the responsibilities of AEOs, as state managers, to focus on corporate governance issues within their state and across the nation. The flexibility available to successive Electoral Commissioners to most appropriately organise senior staffing arrangements has been limited because of the requirement for such state managers to be statutory appointees

1.11.10 The AEC considers, for example, its inability to move senior staff to locations and positions across the agency as priorities change, as extremely limiting and archaic in comparison with other staffing models operating across the APS. The current arrangements severely restrict the AEC's ability to source particular skills that incumbent AEOs may hold, to progress critical projects. The arrangements also inflexibly restrict the opportunities for development of both appointees and potential appointees to AEO positions of staff within the organisation.

1.11.11 The AEC does not have concerns that by giving the Commission the authority to appoint AEOs, the independence of the position would be at all compromised. The occupant of the position would still have independent statutory functions to exercise - as is the case with Divisional Returning Officers or indeed the Australian Electoral Officer for the ACT who is appointed on a temporary basis for the period of a particular electoral event.

Recommendation 5: That the *Commonwealth Electoral Act 1918* be amended to enable the appointment of Australian Electoral Officers by the Electoral Commission.

2 ELECTORAL LEGISLATION

2.1 Introduction

2.1.1 Since the 1998 federal election, a series of amendments have been made to the Electoral Act. These amendments were made by the following Acts:

- *Electoral and Referendum Amendment Act (No. 1) 1999;*
- *Public Employment (Consequential and Transitional) Amendment Act 1999;*
- *Commonwealth Electoral Amendment Act (No. 1) 2000;*
- *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000;*
- *Electoral and Referendum Amendment Act (No.1) 2001;*
- *Corporations (Repeals, Consequentials and Transitionals) Act 2001;*
- *Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001; and*
- *Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001.*

A summary of the provisions contained in these Acts can be found at **Attachment A**.

2.1.2 The *Electoral and Referendum Amendment Act (No. 1) 1999* and *Electoral and Referendum Amendment Act (No.1) 2001* stem from various recommendations made by the JSCEM at previous inquiries. A summary of these amendments can also be found in *Electoral Newsfile No. 98, October 2001* (available on the AEC website at www.aec.gov.au).

2.1.3 The following Bills are currently before the Parliament:

- *Commonwealth Electoral Amendment Bill (No. 1) 2002* (this Bill relates to the payment of public funding to the Liberal Party after an election);
- *Electoral and Referendum (Roll Integrity and Other Measures) Amendment Bill 2002* (this Bill contains amendments of a reform nature arising from the Government-supported recommendations of the JSCEM's inquiry into the 1998 Federal Election).

2.2 Technical amendments

2.2.1 There are a number of technical amendments that the AEC has identified as being required to the Electoral and Referendum Acts that have not made it into legislation over several years as they are of a relatively minor nature. The AEC has included all of these in a table (**Attachment B**) which identifies the section requiring amendment and provides a brief description of why the amendment is necessary.

Recommendation 6: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to incorporate all the technical amendments outlined at Attachment B.

3 PUBLIC AWARENESS

3.1 Introduction

3.1.1 The AEC followed its normal procedure at the 2001 federal election and conducted an extensive public information campaign to increase public understanding of, and participation in, the electoral process.

3.1.2 The aims of the campaign were to ensure all eligible electors were informed and understood what was required of them to fully participate in the election and the range of services to which they had access. The major messages conveyed in the campaign were:

- how, when, and where to enrol;
- when and where to vote using services such as pre-poll and postal voting; and
- how to correctly complete the two ballot papers.

3.1.3 The AEC used a number of integrated strategies to communicate to electors including national and local advertising, public relations activities, a national call centre, internet sites including the Virtual Tally Room on election night, email enquiries and publications, including the elector leaflet distributed to over 7.5 million households.

3.2 Advertising, public relations & publications

3.2.1 The public information campaign was targeted at all eligible electors, that is, all Australian citizens aged 18 years or over. Particular elements of the campaign were directed at the specific information needs of electors from non-English speaking backgrounds, electors with a print disability, Aboriginal and Torres Strait Islander electors, electors living in remote areas, and young electors.

3.2.2 The activities directed at the special target groups included advertising in 18 ethnic and 19 indigenous languages, advertising and public relations messages in youth and disability media, a 15-language interpreting telephone service, and community education programs.

3.2.3 The campaign was divided into five phases: pre-election, enrolment, voting services, formality, and post-election, broadly following the election timetable. The total cost of the campaign was just over \$17 million, including just over \$10.4 million for advertising, \$3.6 million for the call centre and \$1.7 million for the elector leaflet.

3.2.4 Internal reviews and external research undertaken to evaluate the performance of the public information campaign consistently demonstrated that the campaign was successful in meeting its overall aims.

3.2.5 Research undertaken specifically on the AEC's national advertising campaign found that it was effective in achieving a high reach among all electors, an improvement achieved despite a lower campaign budget than the 1998

campaign. This research also found that more than 93% of electors surveyed felt informed about how to vote and how to make their vote count.

3.3 National Telephone Enquiry Service (Call Centre)

3.3.1 At the 2001 election the AEC operated a national call centre to provide the Australian public with an accessible, accurate and timely electoral information service. At this election the call centre was outsourced for the first time following a competitive tender process. The company United Customer Management Solutions (UCMS) was contracted to provide the call centre service and following extensive testing the service commenced operations on 2 October 2001.

3.3.2 The centre operated at two sites, one in Canberra and the other in Melbourne, from 8am to 8pm (for all time zones), seven days a week. The Melbourne site ceased operations on polling day while the Canberra site provided post-election services until 16 November 2001. The Melbourne site handled 63.05% of calls and the Canberra site handled 36.95%.

3.3.3 Anticipating the demands of the election, a total of 1,600 call centre operators were trained by AEC officers who then worked as supervisors at the two sites. The AEC supported the operators with high quality technology including an easy-to-use interactive computer-based information desktop and up-to-date roll data. The AEC developed the training, IT support and monitoring systems to enhance the operators' ability to answer each inquiry as promptly, accurately and consistently as possible.

3.3.4 The call centre answered a total of 513,347 calls, which was 82.6% of the total 620,944 calls made to the service; an improvement in capacity compared to the 1998 election. As at previous elections, the close of rolls day had the heaviest volume of traffic with approximately 8,000 calls presenting each half-hour.

3.3.5 The AEC paid \$2.4 million to UCMS for the services it provided for the 2001 election call centre. The total cost of operating the call centre was \$3.6million.

3.3.6 The AEC's call centre service has undergone tremendous growth in the past decade and outsourcing for the first time presented many operational challenges for the AEC. Managing these challenges did, however, result in the development of a number of strategies and processes which will also provide benefits to other areas of AEC operations, such as improvements to the secure provision of data to external sites.

3.3.7 A number of internal and independent reviews on the centre's performance were undertaken after the 2001 election and these have provided important recommendations to consider in the operation of future call centres. The AEC is currently considering options so that an improved solution can be in place before the next federal election.

3.4 Internet Site

3.4.1 The AEC internet site was significantly enhanced to meet the anticipated communication needs of a diverse range of customers for the 2001 federal election. In particular a more robust infrastructure was developed to accommodate the increased demand on the internet site. This included the creation of two host sites located in geographically separate locations and an alternating process which transparently balanced the load between the two sites on election night.

3.4.2 A specific site was developed for the 2001 election within the AEC's ongoing website which included access to:

- the elector leaflet in 16 languages and appropriate communication alternatives for people with special needs;
- the election timetable;
- search facilities for electors to identify their enrolled Divisions and nearest polling places;
- enrolment and postal voting application forms;
- lists of political parties and candidates; and
- voting arrangements.

3.4.3 Within the internet site was the Virtual Tally Room (VTR). This was the third electoral event in which the AEC made available an on-line results facility that provided access to election results on polling night and for three weeks in the post election period.

3.4.4 Since the 1998 election the VTR application underwent code review and enhancements which improved the performance and flexibility of the application. The internet site operated efficiently on election night and throughout the election period. On election night alone the site handled more than 5.6 million hits, with 100% success rate and response times of less than one second. This represented in excess of 800,000 page views, an average visitor length of just over 33 minutes with overseas visitors representing approximately 25% of the total number of people accessing the site.

3.4.5 The cost for the website hosting and enhancements, including the VTR, was \$883,000.

3.4.6 The AEC is reviewing the various facilities provided at the 2001 election to provide results and is developing a better means of providing Senate results on its website, particularly in the post election period. It is expected that this enhanced facility will be available for the next election. The interface for the AEC's computerised Election Night Management System and the VTR will be re-developed to better integrate these two systems.

4 ENROLMENT

4.1 Introduction

4.1.1 The rolls for the 2001 federal election closed on Monday 15 October 2001, as specified in the writs. Between the issue of the writs on 8 October and the close of rolls on 15 October the AEC processed 369,966 enrolments, up 5% on the number of enrolments processed during the close of the rolls period for the 1998 election. The forms received included new enrolments, re-enrolments, and transfers of enrolment. Enrolments were processed for 83,027 people who had not previously been on the roll. Additionally, 19,866 electors were deleted from the roll during this period due to death, or as a result of objection action or being duplicate entries .

4.1.2 At close of rolls for the 2001 election there were 12,636,631 electors enrolled to vote at the federal election. This represents an increase in enrolment over the 3 years since the 1998 federal election of approximately 580,000 persons or 4.81%. There were approximately one million first time voters enrolled for the 2001 election. The AEC Enrolment Section estimates that the participation rate has increased from 94.5% of the eligible population in 1998 to 96% in 2001.

4.1.3 The number of electors enrolled and eligible to vote by State/Territory for the 2001 federal election as at the Close of Rolls was as follows:

State/Territory	8pm, 15 October 2001
New South Wales	4,204,383
Victoria	3,218,746
Queensland	2,319,481
Western Australia	1,200,438
South Australia	1,034,377
Tasmania	328,829
Australian Capital Territory	219,876
Northern Territory	110,501
National total	12,636,631

4.1.4 The increase in the number of electors at the close of rolls for the past four elections is as follows:

Election	Number of electors	Increase since previous election (%)
2001 election	12,636,631	4.7
1998 election	12,056,625	3.4
1996 election	11,655,190	2.7
1993 election	11,348,967	

4.1.5 Enrolment by Division at the close of rolls for the 2001 federal election was published in *Electoral Newsfile, No. 100 October 2001* (available on the AEC website at www.aec.gov.au).

4.2 Inappropriate names

4.2.1 The issue of 'inappropriate names' appearing on the electoral roll and on ballot papers was initially raised by the AEC in its submissions to the JSCEM's inquiry into the conduct of the 1996 federal election. The subsequent JSCEM report stated that the JSCEM believed 'that the AEC's concerns were overstated' and made no recommendation on the matter.

4.2.2 In the lead up to the 1998 federal election, a number of electors enrolled, and subsequently nominated as candidates, under names which were considered 'inappropriate'. Following submissions on this matter from the AEC and others, the JSCEM recommended, in its report on the 1998 federal election, that the Electoral Act be amended to 'exclude from enrolment any name that is invalid, and that the criteria for determining an invalid name be developed by the AEC in consultation with the Office of Parliamentary Counsel' and 'that the Attorney-General appeal to his or her respective state and territory counterparts through the Standing Committee of Attorneys'-General (SCAG) that there is a need for each state or territory Registrar of Births, Deaths and Marriages to tighten their criteria in relation to the registration of legal names.'

4.2.3 The AEC is not aware that the issue has been raised at SCAG to date.

4.2.4 The *Electoral and Referendum Amendment Act (No. 1) 2001*, which came into effect in July 2001, contained provisions that gave DROs and AEOs the power to refuse to include 'inappropriate names' on the Roll. This Act also contained transitional provisions allowing DROs and AEOs to review potentially 'inappropriate names' already included on the Roll. The Act also provided that decisions made by DROs and AEOs under the new provisions were subject to appeal in the same manner as most other enrolment decisions (ie. the decisions of DROs may be appealed to the relevant State or Territory AEO and the decisions of AEOs may be appealed to the Administrative Appeals Tribunal (AAT)).

4.2.5 To date, fifteen names have been refused under these provisions, and seven names already on the roll were removed.

4.2.6 There have been two cases, both in Queensland, where the AEO's decisions, made under the transitional provisions, to remove the 'inappropriate' enrolled name of the elector and replace it with the elector's 'appropriate' previously enrolled name, were appealed to the AAT. The names of the electors in these cases were Nigel Freemarijuana and Tamara Tonite.

4.2.7 In the Nigel Freemarijuana case, the elector had been enrolled under that name for a number of years. On 7 September 2001, the AEO Queensland determined that the name 'Nigel Freemarijuana' was 'contrary to the public interest' and restored the elector's previously enrolled name 'Nigel David Quinlan' to the roll.

4.2.8 Nigel Freemarijuana then applied to the AAT for an urgent hearing on the matter as the close of rolls for the 2001 federal election was 15 October, followed by the close of nominations on 18 October.

4.2.9 The AAT heard the matter on 11 October 2001 and issued an order that the operation/implementation of the decision under review be stayed until the AAT delivers its decision. Accordingly, the AEC immediately reinstated the name Nigel Freemarijuana to the roll (the elector subsequently nominated as a candidate in the 2001 Queensland half-Senate Election.)

4.2.10 In its decision of 6 November 2001, the AAT stated that 'the public interest exclusion should be confined to the most extraordinary and exceptional circumstances and exercised with extreme caution.'

4.2.11 The AAT went on to say that 'In our view the overall policy of the Act is to require eligible persons to be enrolled in the division in which they reside. Inherent in that policy is that those persons be enrolled under their correct name. We would suggest that an alias would not be a correct name. Nor, in our view, would a name that has been abandoned both legally and by common usage be a correct name on the roll ... The balance is, in our view, in favour of the correct name being on the roll and that is the name at law which is adopted for daily usage ... To require a person to be enrolled under a name by which they are not known could distort the electoral process. In our view, there is a strong public interest in the applicant being enrolled in his legal name – the name he is generally known by.'

4.2.12 Ultimately, the AAT's decision in this case was to set aside the decision under review, and require that the AEO reinstate the name Nigel Freemarijuana to the roll (although that had already occurred as a result of the stay order).

4.2.13 The 'Tamara Tonite' AAT case was heard on 5 June 2002. The decision under review in this case was the AEO Queensland's decision to remove the name 'Tamara Tonite' from the roll and replace it with the elector's previously enrolled name 'Roderick Peter Paterson'. This followed a hearing on 12 October 2001 in which the AAT ordered that the operation/implementation of the decision under review be stayed until the AAT delivers its decision.

4.2.14 On 29 June 2002, the AAT upheld the AEC's original decision. 'Tamara Tonite's' case relied to a significant degree on issues raised in the Nigel Freemarijuana case and the subsequent AAT decision. However, the AAT found that 'Tamara Tonite' was not the name used by Mr Paterson for undertaking transactions as a citizen, as the evidence indicated that Mr Paterson's house lease, car registration, electricity account, driver's licence and passport were all in the name of Roderick Paterson.

4.2.15 The AAT did not follow the decision in *Re Freemarijuana and the Australian Electoral Officer for Queensland* because Mr Freemarijuana did not demonstrate any ambivalence about which name he was known by whereas Mr Paterson (Tamara Tonite) used either name according to which name he deemed to be more appropriate for the specific circumstances. It is probable that if

'Tamara Tonite' had been able to produce evidence of everyday use of that name, the AAT decision may have been the same as for Nigel Freemarijuana.

4.2.16 The AEC is of the view that if the legislation itself defined or provided greater guidance on the definitions of 'frivolous' and 'fictitious' it may be easier to interpret and implement. However, it now appears that, based on the AAT decisions, that a name cannot be rejected as 'frivolous' or 'fictitious' if it is the person's legal name used for everyday purposes.

4.2.17 When the provisions were initially introduced into the Parliament, the Explanatory Memorandum gave some guidance on how it was intended that the provisions should be interpreted. However, in its decision in the Nigel Freemarijuana case, the AAT stated that the provisions as expressed in the Act were quite clear and that it was not necessary to refer to such extrinsic materials for assistance in interpretation. If the AAT continues to rule against the AEC on the basis of legal name used for everyday purposes, it will be difficult to continue to implement the Parliament's intention that such names do not appear on the Roll or on ballot papers.

4.2.18 The AEC notes that there have been no problems encountered to date in applying the provisions to refuse names on the basis that they are 'offensive' or 'obscene'.

4.2.19 A copy of both AAT decisions is at **Attachment C**.

4.2.20 Two further issues that have been identified by the AEC are that the new provisions do not allow for the removal or review of potentially 'inappropriate names' added to the Roll **after** the commencement of the provisions. If an 'inappropriate name' were to 'slip through the net' and be added to the Roll, the AEC currently has no mechanism to review or subsequently reject the names.

Recommendation 7: That the *Commonwealth Electoral Act 1918* be amended to include a definition of 'frivolous' and 'fictitious'.

Recommendation 8: That the *Commonwealth Electoral Act 1918* be amended to include a provision that allows for review of potentially 'inappropriate' names added to the Roll after the commencement of the 'inappropriate names' provisions.

4.3 Section 89 to 92 Review

4.3.1 The JSCEM has twice recommended that the AEC review sections 89 to 92 of the Electoral Act. The first time was in its report of the Inquiry into the 1996 federal election where the Committee recommended that sections 89 to 92 of the Electoral Act, concerning improper use of roll information, be reviewed to take account of developments in computer technology. The Government supported this recommendation. The second was in its report of the Inquiry into the Integrity of the Electoral Roll where the Committee recommended that the AEC complete its review of sections 89 to 92 in sufficient time for the committee to consider this matter during the next federal election inquiry. Again, the Government supported

this recommendation. This matter was also raised in the JSCEM's 1998 election report in the context of an AEC internet issues paper.

4.3.2 Although the AEC commenced this review following the 1996 report it was unable to complete its review before now because of resource issues and workload commitments. A report of the review is at **Attachment D** for the consideration of the Committee. This review contains responses to recommendations 9 and 53 of the 1996 Federal Election Inquiry report, recommendation 11 of the 1998 Federal Election Inquiry report, and recommendations 5 and 7 of the Roll Integrity Inquiry report.

5 VOTING

5.1 Introduction

5.1.1 At the 2001 federal election, 95.20% of enrolled electors voted. This is slightly less than the 95.34% who voted in 1998, but is in keeping with the broad trend of a turnout rate of around 95% since compulsory voting was introduced in 1924.

5.2 Informal voting

5.2.1 At the 2001 federal election a total of 580,590 informal votes (4.82%) were recorded on House of Representatives ballot papers. This represented a rise of 1.04% from the 1998 federal election. Following the election the AEC conducted an Informal Ballot Paper survey and examined all 580,590 ballot papers. The informal votes were aggregated from polling places into Divisional and State summaries.

5.2.2 Every election has some degree of informal voting and there is no single factor that influences informality. The AEC has analysed the results of the Informal Ballot Paper Survey and prepared a research paper that identifies probable causes of the informal votes. The amount of informality is influenced by a large number of factors. In the Australian context these factors include differences between the voting systems of the States and the Commonwealth, compulsory voting, the number of candidates contesting, and sociological factors such as the number of electors who speak English as a second language. While not verifiable without further research, the number of electors who deliberately vote informally is also a factor.

5.2.3 The main categories of informal votes were ballot papers left totally blank and the use of a first preference only. The latter was especially true in New South Wales and Queensland where optional preferential systems are used in State elections. The highest informal vote recorded was 12.75% in the Division of Fowler (NSW).

5.2.4 The AEC will use the results of this research paper to target its public education and information programs in areas of highest informality.

5.2.5 The results of the House of Representatives Informal Ballot Paper survey are available on the AEC website (<http://www.aec.gov.au/voting/survey/index.htm>). The AEC is currently undertaking a survey of informal ballot papers cast for the Senate at the 2001 election and will publish the results of this survey on the AEC website when available.

5.3 Access to Polling Places

5.3.1 During recent federal elections the Human Rights and Equal Opportunity Commission (HREOC) received a small number of formal complaints in regard to wheelchair access to polling places. For the 2001 federal election, HREOC had received two complaints at 17 June 2002.

5.3.2 In addition, about forty other complaints of an access nature were received. These complaints were mainly made by telephone to the AEC's call centre just prior to or just after polling day.

5.3.3 The situation in regard to wheelchair access to polling places has steadily improved over recent electoral events. This has been as a result of both continuing efforts by the AEC to locate and use suitable premises and also the fact that State Government instrumentalities such as Education Departments have gradually been upgrading access levels to their premises.

5.3.4 The AEC has also had a number of meetings during the last 10 years with the Commonwealth Disability Discrimination Commissioner. The current access category levels for polling places, and the symbols used in polling place advertising, are as a result of suggestions made at these meetings.

5.3.5 At the 2001 federal election the AEC had the highest ever level of wheelchair access to polling places. The AEC utilised 2,625 polling places with full wheelchair access (compared with 1,387 at the 1999 Referendums), 3,110 with assisted wheelchair access (3,011 in 1999) and 1,967 with no wheelchair access (3,377 in 1999).

5.3.6 At the 1993 election 40% of polling places had full or partial wheelchair access, this had increased to approximately 75% for the 2001 election.

5.3.7 While this increase represents a substantial improvement the AEC aims to further improve access levels. The major barriers in this regard are the lack of suitable buildings in some areas and the fact that the short notice provided when federal elections are called results in many otherwise suitable buildings being unavailable to the AEC on polling day.

5.3.8 This latter point is a cause for frustration with some disability organisations and groups as, after consulting with such groups at the local level to obtain their views on suitable premises, the AEC is then unable to use the recommended premises as they have prior bookings.

5.3.9 While there are services available to persons with disabilities, such as postal and pre-poll voting, and the ability to vote immediately outside a polling place, these do not in any way remove the obligation on the AEC to continue as far as possible to provide equal access to its services. The AEC understands that many people with a disability want to vote in person on polling day in the same manner as other voters and, as stated earlier, the AEC aims to continue improving access to polling places.

5.4 Scanning/Certified Lists

5.4.1 Sections 208 and 232 of the Electoral Act deal with the preparation and use of certified lists of electors that are used in polling places to mark voters' names off the roll. Legal advice obtained by the AEC indicates that in their current form, these sections restrict the AEC to the use of paper to produce these certified lists. The AEC believes that the format of these lists should not be specified in the

Electoral Act. This will enable the AEC to produce these lists in a format that best serves the use to which they are being put.

5.4.2 Certified lists are also provided to candidates, members of the House of Representatives and Senators under sections 91C, 91D and 91E of the Electoral Act. The AEC believes that, to prevent these lists from being used for purposes other than those intended by the Electoral Act, certified lists produced under these sections should continue to be restricted to paper form.

Recommendation 9: That sections 208 and 232 of the *Commonwealth Electoral Act 1918* be amended to remove any restrictions on the format in which certified lists can be produced.

5.5 Adjournment of polling

5.5.1 Section 241 of the Electoral Act deals with the adjournment of polling to another day if polling is interrupted by (a) riot or open violence; or (b) storm, tempest, flood or an occurrence of a like kind. Section 242 provides for a polling place not to be opened at all on polling day. In both cases, polling is adjourned to another day.

5.5.2 Section 241 does not currently provide for polling to be adjourned at an opened polling place on account of other incidents that might occur. For example: a bomb threat; health hazard (eg white powder incidents or dangerous animals), fire, or the setting-off of fire alarms and/or sprinklers. These, and some of the situations covered in section 241, may only warrant suspension of polling for part of polling day.

5.5.3 The AEC believes an amendment is required to section 241 to allow the DRO or OIC to adjourn or temporarily suspend polling where polling is incapable of being continued for physical or safety reasons. Currently section 241 requires polling to be adjourned to another day even though resumption on the same day might be a practical approach.

Recommendation 10: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical or safety reasons.

5.5.4 A consequential amendment may be required to section 243 of the Electoral Act to ensure that eligible electors affected by the adjournment or temporary suspension of polling are entitled to vote when the polling place reopens or at the adjourned polling place.

5.6 Electronic Voting

5.6.1 The possibility of mechanised voting at federal elections has been of periodic interest since the beginning of federation. In 1904 the Minister for Home Affairs commissioned an inquiry into voting machines for federal elections. In recent years the AEC has been closely monitoring the development of new

technologies that might allow for the introduction of electronic or internet voting by keeping a watching brief on electronic voting options used overseas and in other Australian jurisdictions.

5.6.2 The last substantial submission from the AEC on this matter was part 3.23 of submission No 90 of 20 September 1996. Further comment on computerised or electronic voting was provided to the 1998 JSCEM inquiry (paragraph 4.13 of submission No 210 of 23 July 1999 and in paragraphs 29.1 to 29.2 of submission No 210 of 23 July 1999) and the Roll Integrity Inquiry (part 4 of No 76 of 28 February 2001). These submissions are available on the AEC website at www.aec.gov.au.

5.6.3 ***Electronic Voting and Electronic Counting of Votes.*** In 2000 a small delegation of representatives from the AEC and the Victorian Electoral Commission (VEC) visited the USA to observe first hand developments in the use of electronic voting and electronic vote counting at the Presidential elections. Discussions were held with representatives of electoral administrations, commercial vendors and groups who were concerned about the integrity of electronic voting. The delegation's findings were published in 2001 in a report entitled *Electronic Voting and Electronic Vote Counting – A Status Report*. This document is provided at **Attachment E** and can also be accessed at the Electoral Council of Australia's website (http://www.eca.gov.au/reports/electronic_voting.pdf).

5.6.4 The report noted that Australia's systems of exhaustive preferential voting and proportional representative voting presented challenges for electronic voting systems, as these systems had been designed for the USA system of first past the post voting. The report also observed that security of the internet as a vehicle for voting remained an issue, with two aspects that need to be addressed. The first is to ensure that the system is not exposed to attack that would interfere with the elector's vote. The second is to provide a level of confidence as to the identification of the elector at the time of voting. These observations would apply equally to phone voting systems.

5.6.5 The report identified a number of possible next steps for electronic voting in Australia. These included internet voting for Antarctic electors, internet voting for overseas postal voters who apply in advance, touch screen voting in pre-poll voting centres as a service for non-English speaking voters and sight impaired voters, and overseas postal voting on a computer in an Australian overseas mission.

5.6.6 ***Electronic voting trials in the UK.*** The decision by the UK government to pilot several different systems - electronic voting, electronic vote recording and electronic vote counting - at the May 2002 local government elections in England, was a significant step towards modernising an electoral system, by building public confidence in new systems and testing their technical robustness. A pilot of electronic vote recording and electronic vote counting was also being prepared for the general election in Ireland. With this in mind, a small delegation of representatives of the AEC and the VEC visited the UK and Ireland to observe these developments first hand. This visit provided an opportunity to see whether there had been significant steps towards the resolution of security issues associated with electronic voting. It also provided an opportunity to see whether

any of the pilots could be used to implement possible next steps for electronic voting in Australia.

5.6.7 The report of this visit, *eVolution not Revolution*, is currently being finalised and will be provided to the JSCEM under separate cover in August 2002.

5.6.8 ***Electronic voting trial at 2001 ACT Legislative Assembly Election.*** Computer voting and vote counting was used for the first time at the 20 October 2001 ACT Legislative Assembly election. Electronic voting (EVACS) was made available for voters unable to get to a polling place at four pre-poll voting centres in the two weeks leading up to election day and at eight polling places throughout Canberra on election day.

5.6.9 When a voter arrived at a polling place with EVACS, they were first identified and marked off the electoral roll as per usual practice. They were then given a choice between electronic voting or voting on paper. If they chose to vote electronically, they were issued with a bar-coded token instead of a ballot paper. The token was used to activate the voting machine. The elector viewed the ballot paper on the voting machine and selected preferences by navigating the screen. Once the preferences were entered the voter pressed the 'FINISH' button to cast their vote. The voter was given an opportunity to check and confirm their vote, and the vote and the barcode were then stored in separate databases. The token could not be reused.

5.6.10 EVACS allowed blind and sight-impaired people to vote without assistance and in secret through the use of headphones and recorded voice instructions. EVACS also provided on-screen voting instructions in 12 different languages. A total of 16,559 electronic votes were recorded.

5.6.11 The ACT Electoral Commission's report on the trial of computer voting and vote counting was tabled in the ACT Legislative Assembly on 27 June 2002 and is available from the Commission's website at www.elections.act.gov.au/adobe/2001ElectionRevireComputerVoting.pdf

5.6.12 The AEC watched the ACT trial with interest. At this time the AEC does not wish to follow a similar path as it is cost prohibitive to provide computer voting facilities at every polling place in Australia. One of the drivers for the ACT trial was to obtain faster election results due to the nature of the Hare-Clark voting system. This is not an issue for the AEC with election results generally being available from 7pm on polling night.

5.6.13 ***Proposed Electronic voting pilot.*** As well as issues of security and integrity other key drivers for the AEC in introducing any form of electronic voting are greater convenience for electors and efficiencies in election processes which result in overall cost-savings. The AEC therefore intends to pilot an internet-based voting system at a small commercial election later in 2002. Whilst this pilot will allow the AEC to test the security and integrity aspects of an internet voting system it will remain necessary to test how such a system can be used for preferential voting in the House of Representatives and proportional representation in the Senate.

5.6.14 Since the study trip in 2000 the AEC has reached the view that to introduce internet voting for federal elections it should be offered as an alternative or addition to postal voting. In the AEC's view such a system should not replace current postal voting methods but should provide the elector with several e-voting alternatives for returning their vote.

5.6.15 A postal voting system with e-voting options would provide greater convenience to a number of different groups of voters, for example:

- voters in remote locations, both in Australia and overseas, who do not have access to other voting facilities and do not have a reliable postal service;
- voters from non-English speaking backgrounds who might find it easier to vote using multi-language options on an internet site or interactive voice recognition (IVR) script;
- voters experiencing vision impairment who might find it easier to vote on an internet site with suitable screen-reader and speech synthesiser technology or with an IVR script. Voters experiencing vision impairment often have to rely on someone else to assist them to cast their vote – an internet or IVR option would offer these voters the opportunity to cast their vote without assistance for the first time;
- voters in the Antarctic. At the moment the only way for voters living at Australian Antarctic research bases to vote is by having ballot papers faxed to those bases. After the close of polls the Assistant Returning Officer (ARO) for each base phones the votes through to the AEO for Tasmania. Voting is not compulsory for Antarctic electors because the secrecy of the vote cannot be assured due to the process used to transmit the results. Under an internet-based system these electors would have the right to a secret ballot restored to them.

5.6.16 Under the current provisions of the Electoral Act the AEC is not able to conduct pilots of electronic voting for House of Representatives or Senate elections.

Recommendation 11: That the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* be amended to provide that regulations be made to allow for a pilot of electronic voting

6 DECLARATION VOTING

6.1 Introduction

6.1.1 Of the total 12,098,490 votes counted at the 2001 federal election, 1,925,873 or 15.92% were declaration votes. Of these 451,900 or 3.74% were postal votes, 585,616 or 4.84% were pre-poll votes, 780,961 or 6.46% were absent votes, and 107,396 or 0.89% were provisional votes.

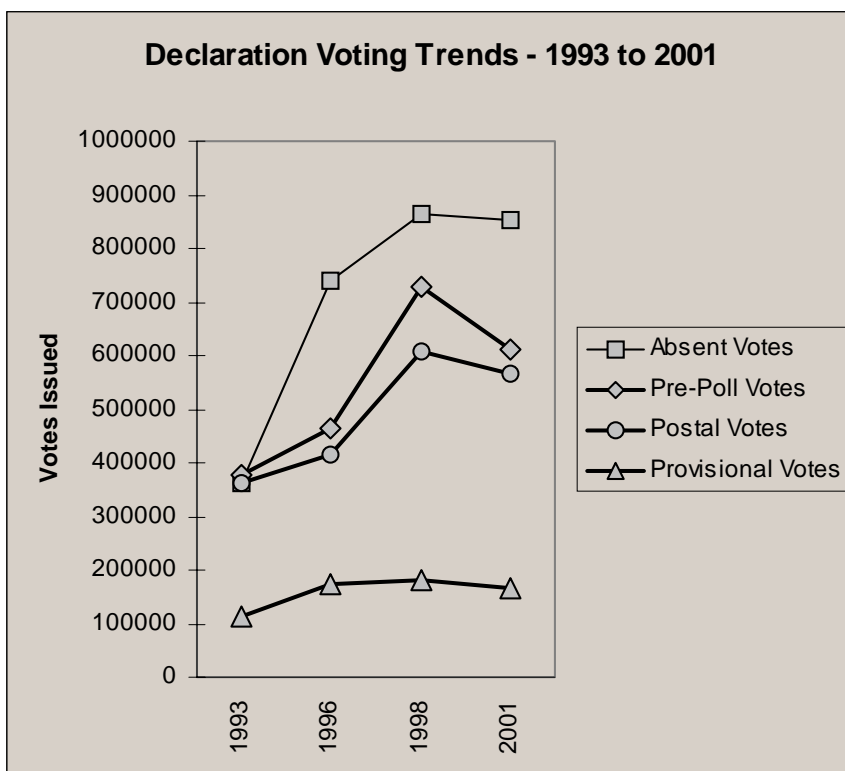
6.1.2 Basic information on the different types of votes can be found in *Electoral Newsfile, No. 102 November 2001, The votes and the count* (available on the AEC website at www.aec.gov.au).

6.1.3 Detailed below is a profile of declaration votes since the 1996 federal election. The figures show that more people appear to be taking advantage of facilities (pre-poll and postal voting) that enable them to vote prior to polling day rather than having to vote at a polling place on election day.

	1996 federal election		1998 federal election		2001 federal election	
Declaration Votes:	<i>votes</i>	<i>%</i>	<i>votes</i>	<i>%</i>	<i>votes</i>	<i>%</i>
Absent votes	657,539	5.82	776,859	6.70	780,961	6.46
Provisional votes	105,091	0.93	116,158	1.00	107,396	0.89
Pre-poll votes	434,841	3.85	692,377	5.98	585,616	4.84
Postal Votes	359,604	3.18	488,671	4.22	451,900	3.74
Sub-Total	1,557,075	13.79	2,074,065	17.90	1,925,873	15.92
Ordinary votes	9,737,404	86.21	9,513,300	82.10	10,172,617	84.08
Total Votes	11,294,479	100.00	11,587,365	100.00	12,098,490	100.00

Note: Senate figures used in this table.

6.1.4 Given that both major political parties widely distributed postal vote applications across Divisions at both the 1998 and 2001 federal elections, the AEC would speculate that the decrease in declaration votes in 2001 was probably because the 1998 election was held on a long weekend during a school holiday period. In response to recommendation 20 of the JSCEM's report on the 1998 election, the AEC is preparing a detailed analysis of declaration voting trends that will be provided to the JSCEM in due course. The chart below shows the trend of declaration voting at the last four federal elections:



6.2 Distribution of Postal Vote Applications by political parties

6.2.1 The AEC has expressed its concerns to the last three JSC EM election inquiries about the increasing practice by the major political parties of wide, or blanket distribution of PVAs across Divisions, in the absence of any requests for such a service by the electors themselves. The AEC's concerns have been summarised in previous submissions (refer AEC submission no 88 of 12 March 1999 to the Inquiry into the 1998 federal election, section 8.6 and Attachment 19 available from the AEC website at www.aec.gov.au).

6.2.2 **Timeliness of forwarding PVAs to the AEC.** The AEC again expresses its concern to the JSC EM in relation to the timeliness of forwarding postal vote applications to the AEC. There is a real risk that political parties or candidates holding large numbers of PVAs may lose or misplace some or all of these, or send them to the AEC after the deadline for receipt and thus disenfranchise some voters. Political parties may also deliver them so close to the deadline that the AEC is unable to process them in time and provide ballot materials to the applicant.

6.2.3 In the table below are two examples of bundles of PVAs received by political parties in the Division of Page (NSW) at the 2001 federal election. The cut-off date for PVAs at the 2001 election was 8 November 2001.

61 PVAs received from National Party on 30 October 2001. The dates on the applications were:	16 PVAs received from ALP on 5 November 2001. The dates on the applications were:
11 October – 3	20 October - 2
12 October – 1	24 October - 1
14 October – 1	26 October - 1
16 October – 4	30 October - 4
17 October – 3	31 October - 4
22 October – 3	1 November - 1
23 October – 3	3 November - 1
24 October – 8	4 November - 2
25 October – 10	
26 October – 13	
27 October – 6	
28 October – 1	
29 October – 5	

6.2.4 It would appear from the dates on the applications that the parties did not forward the PVAs directly to the AEC, and it seems that in some cases the delay was over two weeks.

6.2.5 In the Division of Hume (NSW) the majority of Liberal Party PVAs were given to the Division 7 to 8 days after the date of the applicant's signature.

6.2.6 It is essential that PVAs are delivered to the AEC as soon as they are received by the political party or candidate to ensure timely delivery of ballot material to electors. It should be noted that section 197 of the Electoral Act states that 'A person to whom an elector entrusts: (a) an application for a postal vote; or (b) an envelope apparently containing a postal ballot paper; for posting or delivery to an officer shall post or deliver the application or envelope, as the case may be, as soon as practicable. Penalty: \$1,000.'

6.2.7 There were numerous instances where it was necessary for Divisional staff to regularly liaise directly with staff at political party or campaign offices to ensure the prompt delivery of PVAs. This should not be necessary as PVAs should not be delayed in party offices.

6.2.8 **Incomplete PVAs.** During the course of the 2001 federal election it came to the attention of the AEC that some parties were returning PVA forms to applicants where the party was of the view that the application did not meet the requirements of the Electoral Act. For example, where the applicant or the witness had not signed the PVA, or the witness had not provided name/address details.

6.2.9 The Deputy Electoral Commissioner, Mr Paul Dacey, wrote to these parties on 31 October 2001, expressing concern at this practice. The letter pointed out that the provisions of section 188 of the Electoral Act require a DRO or ARO

who receives a properly made PVA to dispatch postal voting material to the applicant and it is, therefore, clearly the province of the DRO to determine whether a PVA meets the requirements of the Act.

6.2.10 The letter requested that, in accordance with section 197 of the Act, the parties cease returning potentially defective PVA forms to electors and pass them on expeditiously to the AEC, given the AEC's well established procedures for dealing with such application forms as quickly and effectively as possible. It was requested that these parties ensure that all other party workers dealing with these PVAs were urgently made aware of the AEC's request.

6.2.11 ***Elector complaints & confusion.*** The AEC received numerous complaints from electors in relation to the distribution of PVAs by political parties. Many of the complaints were in relation to the fact that some PVAs were sent out in envelopes marked 'Important Voting Information' and the envelopes bore the Commonwealth Coat of Arms. The letters were from incumbent members. While this did not contravene the Electoral Act, there was clear community concern about the use of parliamentary letterheads and mailing entitlements which the AEC referred directly and appropriately to the Ministerial and Parliamentary Services Group of the Department of Finance and Administration. This issue was also extensively discussed in the media.

6.2.12 The mass distribution of political party PVAs also caused elector confusion, particularly for General Postal Voters (GPVs). During the election some Divisions received large numbers of PVAs from electors already registered as GPVs. Overall, 4.0% of PVAs received were from electors already registered as GPVs. This phenomenon was particularly prevalent in Tasmania (9.4%), Queensland (6.1%) and New South Wales (4.7%). At the Divisional level, rates of up to 27% (Bowman (QLD)) were encountered.

6.2.13 Elector confusion was also heightened by letters containing incorrect postal voting advice being sent by candidates in some Divisions. For example, the AEC became aware during the election period that a candidate for a Division in Queensland, had distributed a letter to electors advising them that as they were registered postal voters they would 'shortly be receiving your ballot papers from the Australian Electoral Commission'. Some of the electors concerned were not, in fact GPVs but may have voted by post at previous elections. As they were not GPVs, ballot papers would not be sent to them by the AEC.

6.2.14 The Deputy Electoral Commissioner, Mr Paul Dacey, wrote to the party concerned on 20 October 2001 expressing the AEC's concern and requesting a remedy. Whilst the matter did not appear to be an issue within section 329 of the Electoral Act, the AEC was very concerned that electors who incorrectly received the letter would be confused, and may in fact expect ballot paper material to be automatically sent to them. Some of the electors concerned rang the Divisional Office to check whether the AEC had their correct details.

6.2.15 Given the nature of the error, the AEC requested that the correct remedy would be for the candidate to immediately write to electors who were incorrectly included in the mailout, bringing the candidate's error to their attention.

Furthermore, the AEC sought the party's assistance in ensuring that any mailout distributed by its candidates contained accurate targeting data.

6.2.16 Similar incidents occurred in a Division in New South Wales and in another Queensland Division. In each case the AEC contacted the relevant person and sought the same remedy as outlined above.

6.2.17 The AEC also received a verbal complaint from an elector in a Division in Victoria who had received a letter from a candidate stating that she 'recently applied for a postal vote through my campaign office.' The elector was very annoyed as she had not applied for a postal vote through a political party as she was a registered GPV.

6.2.18 These incidents highlight that great care needs to be taken when using elector data for political party campaign mailouts.

6.2.19 ***Blurring between the political and the electoral.*** The production and distribution of PVAs, which are part of the mechanics of voting, are tasks of the AEC, along with providing pre-poll voting centres and mobile polling facilities. Campaigning and the distribution of material about candidates is, quite rightly, a matter for the parties and candidates. The AEC is concerned that there is an undesirable blurring between the political and the electoral in the eyes of the elector.

6.2.20 The AEC again expresses its strong concerns to this inquiry about the increasing practice of widespread distribution of party PVAs, particularly the procedure adopted by parties of having completed postal vote application forms returned via their offices, the delays in passing on these application forms to the AEC and the potential this practice has for disenfranchising electors. The AEC concedes that political parties are unlikely to desist from the practice of the widespread distribution of PVAs. The AEC also acknowledges that it is not in the interest of political parties to delay the on-forwarding of material. However, it is also clear that the delays occur.

6.2.21 If delays continue to occur, the AEC will in the interests of the voter have no option but to pursue action under section 197 of the Electoral Act.

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.

6.3 Receipt of postal votes by DRO or ARO

6.3.1 Section 228(5A) of the Electoral Act provides that a postal vote is received in sufficient time to be admitted to the scrutiny if:

- it is received by the DRO for the home Division within 13 days after the close of the poll; or
- it is received by the DRO from another DRO, ARO outside Australia or presiding officer within 13 days after the close of the poll, unless extended by direction of the Electoral Commissioner, and it bears evidence that it was *received* by that other officer prior to the close of the poll.

6.3.2 Under subparagraph 228(5A)(b)(ii) of the Electoral Act postal votes received by an ARO or a DRO, other than the DRO for the elector's home Division, after the close of the poll shall be excluded from the scrutiny even if they were posted before polling day.

6.3.3 The AEC believes that this provision has the unintended affect of disenfranchising electors simply because they are unaware that postal votes should be returned to a specific Divisional Office rather than to any AEC office or polling facility. Disenfranchisement could also occur through postal missorting.

6.3.4 At the 2001 general election, over 5,000 postal votes were excluded from the scrutiny under the provisions of sub-section 228(5A) of the Electoral Act. In some cases, especially for postal votes cast overseas, this was because the votes were received at an embassy or trade mission on the Monday or Tuesday after polling day, even though the votes were posted before polling day. Within Australia, the potential for exclusion also exists where the voter posts the vote to the wrong Division and it arrives there after polling day.

6.3.5 The AEC takes the view that if a postal vote, bearing evidence that it was posted before polling day, is received by an ARO or another DRO, or AEO, and it is delivered to the relevant DRO within the 13-day timeframe, it should be included in the scrutiny.

Recommendation 13: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow postal votes, cast on or before polling day, received by an AEO, ARO or another DRO, other than the DRO for the elector's home Division, after the close of the poll, to be included in the scrutiny if it is subsequently received by the home DRO, within 13 days after the close of poll.

6.4 Separate postal ballot papers

6.4.1 The AEC recommended to the JSCEM inquiry into the 1998 election that the requirement for the production of separate postal ballot papers should be deleted so that the same ballot paper is used for all forms of voting.

6.4.2 Under the provisions of the Electoral Act and the Referendum Act, ballot papers used for postal voting are required to be separately identified and overprinted with the words 'postal ballot paper'. The AEC is therefore required to estimate in advance the demand for postal voting, and to produce two separate quantities of ballot papers: postal and ordinary (for all other purposes).

6.4.3 The original reason for distinguishing ballot papers in this way (and absent ballot papers were also distinguished in earlier times) was to ensure proper reconciliation of all ballot materials. However, strict procedures are in force for the issue of postal vote materials and for the accounting of all postal ballot papers during production, issue and receipt, so that the actual identification of such ballot papers is now unnecessary.

6.4.4 The AEC believes that administrative and cost efficiencies could be gained by the production of only one type of ballot paper for all types of votes.

6.4.5 In its 1998 report the then JSCEM supported the AEC's recommendation as the Committee agreed that this will improve the efficiency of the conduct of elections. However, the Government did not support the recommendation 'at the present time.' It stated:

The Government is taking action to strengthen electoral integrity and this should take precedence over administrative and cost efficiencies.

6.4.6 The AEC does not believe that having separate postal and ordinary ballot papers enhances the integrity of the electoral system as stringent procedures are in place for the accounting of all ballot papers during production, voting and scrutiny. The AEC asks that the JSCEM consider this issue again.

Recommendation 14: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow the same ballot paper to be used for all forms of voting.

6.5 Pre-poll ordinary voting

6.5.1 Since 1993 the AEC has recommended to the JSCEM that the Electoral Act be amended to allow those voters who qualify for a pre-poll vote to be able to cast an ordinary vote instead of a declaration vote if they are able to attend a pre-poll centre in their home Division. This would mean that such voters would be immediately marked off the Certified List of Voters for their home Division, and the consequence would be a reduction in the time delay associated with the processing of declaration votes through the preliminary scrutiny to verify eligibility; a reduction in the administrative load and the costs associated with the issuing, sorting, and collating of declaration votes, and faster election results. Pre-poll ordinary voting for the home Division is already in operation for Victorian State elections and ACT Legislative Assembly elections.

6.5.2 In rejecting the AEC recommendation for pre-poll ordinary voting for the home Division in 1993, the then JSCEM commented that pre-poll ordinary voting would encourage and endorse the trend towards an ever-increasing proportion of the vote being cast before polling day. In rejecting the same AEC recommendation in 1996, the then JSCEM accepted that pre-poll ordinary voting for the home Division would be more efficient for both the AEC and the voter, but concluded that, as a matter of principle, an ordinary vote should only be available when voting in the home Division on polling day. In rejecting the same recommendation in 1998 the then JSCEM commented that allowing such a change would be contradictory to its overall strategy of discouraging the increasing use of declaration voting.

6.5.3 The AEC would again ask the Committee to reconsider this issue given the administrative simplification for the AEC and the elector, and time and cost efficiencies, particularly in relation to the finalisation of the scrutiny.

Recommendation 15: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow a pre-poll vote cast in the elector's home Division to be cast as an ordinary vote.

6.6 Scrutineers in Pre-poll Voting Centres

6.6.1 The Referendum Act allows for scrutineers to be present at pre-poll voting centres, as such centres are places 'where voting is being conducted' within the meaning of section 27 of the Referendum Act. This is in contrast to the

Electoral Act, which is silent on the attendance of scrutineers at pre-poll voting centres. The AEC has legal advice which confirms that the Electoral Act confers no rights of scrutineers in respect of pre-poll voting centres. Scrutineers are, however, able to be present at ordinary polling and at mobile polling under both Acts.

Recommendation 16: That the *Commonwealth Electoral Act 1918* be amended to allow scrutineers to attend at pre-poll voting centres.

6.7 Mobile polling issues

6.7.1 Currently sections 184A(2), 224, 225, and 226 of the Electoral Act do not adequately cover the voting needs of all persons resident in establishments gazetted as special hospitals. There are two major issues:

- residents of 'self-care' parts of facilities are not eligible to vote at the mobile polling facility that visits the establishment; and
- residents of special hospitals are not eligible to register as General Postal Voters (GPVs).

6.7.2 ***Special hospitals - 'self-care' facilities.*** Sections 224, 225, and 226 of the Electoral Act relate to voting by an elector at a hospital or by a patient at a special hospital. The definitions of 'hospital' and 'nursing home' in section 4 currently cause difficulties for the AEC, as does the interpretation of 'continuing nursing care', which is part of the definition of 'nursing home'.

6.7.3 The mobile polling team is only permitted to visit those parts of the institution that have been gazetted as a special hospital, and therefore should only take votes from patients in that gazetted part. This can cause frustration and resentment from residents in 'self-care' and 'retirement village' parts of an establishment when they are advised that the mobile polling facility is only available to 'patients' requiring 'continuing nursing care'. It is possible that one person is eligible to vote as a patient in a gazetted part of an establishment while the spouse of that person is not eligible to vote as a resident in another part of the establishment.

6.7.4 Where the entire establishment is gazetted as a special hospital, only 'patients' are able to vote. 'How-to-vote' material is available to these patients from the mobile polling team. If the Electoral Act is changed to allow voting by all residents at an establishment, then voting material would be available from the mobile team and from the general office of the establishment.

Recommendation 17: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to remove the requirement that the mobile polling facility is only available to 'patients' under 'continuing nursing care' and to limit access to the general public (ie. these establishments are not to become ordinary polling places). The mobile polling facility should be restricted to residents and on-duty staff of the gazetted establishment.

6.7.5 **General Postal Voters – special hospitals.** Section 184A(2) of the Electoral Act sets out the grounds on which an elector may apply to register as a GPV. In summary a person may apply to become a GPV if they:

- live more than 20km from the nearest polling booth (including a place to be visited by a remote mobile polling team);
- are in hospital (other than a special hospital or a hospital that is a polling place), are seriously ill or infirm and unable to travel;
- are so physically incapacitated as to be incapable of signing their own name;
- are serving a prison sentence or are under lawful custody or detention and are entitled to vote;
- have silent enrolment; and
- are unable to attend a polling place because of religious beliefs.

6.7.6 Currently a person cannot be a GPV if they reside in a special hospital. This has caused a range of practical implementation problems because of the need to cancel GPV status for a number of electors if their residence becomes a 'special hospital' or if they move into a 'special hospital' after having been a registered GPV.

6.7.7 There are also issues associated with physically handicapped people in special hospitals whose voting requirements might be better served through GPV registration rather than provision of mobile voting facilities.

Recommendation 18: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow residents of special hospitals to be registered as General Postal Voters.

6.8 General Postal Voters – remote area workers

6.8.1 In the Northern Territory, at every election in recent years, the AEC receives non-voter responses from workers on remote stations who miss the small window of opportunity to vote when the remote mobile team calls to their area, because they have been called away (often at short notice) to fix fences, drive cattle, etc. Under the current provisions of the Electoral Act, these electors cannot register as GPVs. Prior to the establishment of remote mobile polling, station workers in remote areas were eligible for a postal vote and this was often the most convenient and most appropriate means for many of them to vote. Whilst the introduction of remote mobile polling has clearly benefited the vast majority of remote electors by providing more appropriate and better services to electors, it

could be argued that voting for some station workers has been made more problematic.

6.8.2 The NT Electoral Office allows station workers to register as GPVs for Territory elections and this has the potential to add to the confusion for these electors at federal elections. The Northern Territory legislation provides a criterion relating to work commitments (which is the equivalent of criteria 11 in Schedule 2 of the Electoral Act) as grounds to apply for both a postal vote and register as a GPV.

Recommendation 19: That the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* be amended to extend the criteria for registration as a General Postal Voter to include those remote area workers whose occupation has the potential to preclude their capacity to vote at a remote mobile polling booth.

7 ELECTION RESULTS

7.1 Introduction

7.1.1 The AEC's computerised election night results system collected and transmitted progressive voting information to members of the media and others in the National Tally Room (NTR) on election night. The system also provided data feeds to the major television networks and Australian Associated Press, as well as providing terminals for the Prime Minister and the Leader of the Opposition. The election night system also fed results to the AEC's Virtual Tally Room on the AEC website. The VTR also published post-election results updates in the weeks following polling day.

7.1.2 The official election statistics (hardcopy volumes and CD-ROM) are expected to be published by the end of November 2002.

7.2 National Tally Room

7.2.1 At the 2001 federal election the NTR was held at the normal venue, Exhibition Park in Canberra.

7.2.2 Television media interest in the NTR remains very high with an increased participation by the television networks – on this occasion Sky News also required a set for providing live crosses. The major networks, including SBS, provided a similar level of coverage to that of previous elections.

7.2.3 Radio and print media interest also remains very high. The numbers of organisations represented was consistent with recent elections although a few print media organisations had slightly less staff present.

7.2.4 Given the proximity of September 11, an increased level of security was provided. An unfortunate outcome of this was that the numbers of public admitted at any one time was reduced. This resulted in a long queue with members of the public waiting for over an hour to gain admittance. This was further compounded by members of the public remaining inside the NTR for longer than normal – in particular Roy and HG fans that congregated below the Network 7 set area. This issue will be addressed for the next NTR.

7.2.5 There were no other problems experienced on election night and the Election Night computer system operated flawlessly.

7.2.6 Prior to the election the AEC investigated alternative means of presenting results within the NTR and also how to speed up the presentation of results on the Tally Board. In regard to the former, various projection technologies were trialed without success – a particular problem being the high light levels required by the television networks. The AEC will continue its investigations in this area. The AEC was successful in keeping the results on the Tally Board far more up to date. This was achieved by utilising high-speed A3 printers to produce results sheets for each Divisional update. These sheets were then hung directly onto the Tally Board, rather than hanging individual numbers on each panel.

7.2.7 In the event of a serious computer problem, facilities were in place and tested to enable manual transmission and display of results.

7.2.8 Many of the overseas electoral visitors were most impressed by the operation of the NTR and, generally, the concept of a national results/media centre. It should be noted that the South African Independent Electoral Commission (IEC) has loosely modelled its national elections results centre, following a visit by IEC staff to Australia to observe a previous election, on the Australian NTR.

7.3 Conduct of Recount

7.3.1 Section 279B of the Electoral Act provides for the conduct of a re-count of House of Representatives ballot-papers, including requirements for sending ballot papers reserved for decision to the AEO. The provision currently provides for ballot papers to be sent in a parcel by hand, registered post, or courier service but there is no provision to enable ballot papers for review by the AEO to be faxed or sent by other electronic means. It is possible that in some cases the time taken to dispatch and return disputed ballot papers could delay the progress of the result for a Division by a number of days, particularly if the Division is a remote country Division.

7.3.2 Although there are many cases where an AEO would need to physically examine the actual ballot paper to make an informed decision, there are also cases where examination of a faxed or electronically transmitted copy would be sufficient. Also, if the AEO was able to return ballot papers to the DRO by fax in the first instance, endorsed with the AEO's decision, the DRO would be able to proceed further with the scrutiny of votes, without the need to wait for the return of the actual ballot papers.

7.3.3 The AEC does not believe that the current operation of section 279B of the Electoral Act facilitates a swift decision on disputed ballot papers in a re-count situation.

Recommendation 20: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to enable ballot papers for review by the AEO at a recount to be faxed, transmitted electronically, or forwarded by whatever practicable means between the DRO and the AEO.

8 PARTY REGISTRATION, FUNDING AND DISCLOSURE

8.1 Introduction

8.1.1 Political parties may register with the AEC for federal elections. Parties which register must then fulfil legislative requirements under the funding and disclosure provisions of the Electoral Act and are able to have party names appear on the ballot paper next to their candidate's names.

8.1.2 For federal elections the register closes the day before the writ is issued. For the 2001 election the register closed on 7 October 2001, at this time 64 parties were registered (see list below).

8.1.3 List of parties registered for the 2001 federal election:

Advance Australia Party	Liberal Party of Australia - Queensland Division
Australia First Party	Liberal Party of Australia - Tasmanian Division
Australian Democrats	Liberal Party of Australia, NSW Division
Australian Greens	Lower Excise Fuel and Beer Party
Australian Labor Party (ACT Branch)	National Party of Australia
Australian Labor Party (ALP)	National Party of Australia (Queensland)
Australian Labor Party (N.S.W. Branch)	National Party of Australia (SA) Inc
Australian Labor Party (Northern Territory) Branch	National Party of Australia (WA) Inc
Australian Labor Party (South Australian Branch)	National Party of Australia - N.S.W.
Australian Labor Party (State of Queensland)	National Party of Australia - Victoria
Australian Labor Party (Tasmanian Branch)	No Goods and Services Tax Party
Australian Labor Party (Victorian Branch)	Non-Custodial Parents Party
Australian Labor Party (Western Australian Branch)	Northern Territory Country Liberal Party
Australian Reform Party	Nuclear Disarmament Party of Australia
Australians Against Further Immigration	Outdoor Recreation Party
Australian Shooters Party	Pauline Hanson's One Nation
Australian Women's Party	Peter Breen - Reform the Legal System
Christian Democratic Party (Fred Nile Group)	Phil Cleary – Independent Australia
Citizens Electoral Council of Australia	Progressive Labour Party
City Country Alliance	Queensland Greens
Country Labor Party	Republican Party of Australia
Curtin Labor Alliance	Save the ADI Site Party
Democratic Labor Party (DLP) of Australia	Socialist Equality Party
Helen Caldicott's - Our Common Future Party	Tasmania First Party
Help End Marijuana Prohibition	Tasmanian Independent Senator Brian Harradine Group
Hope Party Australia	Taxi Operators Political Service (Oceania)
liberals for forests	The Fishing Party
Liberal Party of Australia	The Greens NSW
Liberal Party (W.A. Division) Inc.	The Greens (WA) Inc
Liberal Party of Australia (S.A. Division)	The Australian Greens - Victoria
Liberal Party of Australia (Victorian Division)	Unity – Say No To Hanson
Liberal Party of Australia - ACT Division	Young National Party of Australia

8.2 Election funding

8.2.1 A candidate or Senate group is eligible for election funding if they receive at least four per cent of the formal first preference vote in the Division or the State or Territory they contested. The amount to be paid is calculated by multiplying the number of votes received by the current election funding rate. The funding rate for the 2001 federal election was 179.026 cents per House of

Representatives or Senate vote. This rate is indexed every six months to increases in the Consumer Price Index.

8.2.2 **Payment procedures.** The AEC is required to calculate the amount of funding candidates and Senate groups are entitled to based on the number of votes counted as at the 20th day after polling day and arrange payment by cheque of a minimum of 95 per cent of that amount as soon as possible. A second payment covering the remainder of the amount payable is made once vote counting is finalised. The total election funding paid at the 2001 federal election was \$38,559,409.33 (see breakdown below).

8.2.3 Total election funding payments for the 2001 federal election:

Payee	Amount (\$)
Australian Labor Party (ALP) (including Country Labor Party (CLP))	14,917,024.57
Liberal Party of Australia (LP)	14,492,349.83
National Party of Australia (NP)	2,845,193.98
Australian Democrats (DEM)	2,411,689.69
Australian Greens (AG)	1,370,734.04
Pauline Hanson's One Nation (PHON)	1,709,752.00
No Goods and Services Tax Party	5,488.94
Northern Territory Country Liberal Party	138,997.58
Christian Democratic Party NSW (Fred Nile Group)	7,647.99
The Greens WA - Inc	223,129.05
liberals for forests	14,332.82
Progressive Labour Party	7,327.53
Unity - Say No To Hanson	17,689.55
ANDREN Peter James- Calare NSW	73,017.54
AUSTIN Pauline Maisie - Solomon NT	4,257.24
BOWN Conway - Herbert QLD	11,588.35
COCHRAN Peter Lachlan – Eden-Monaro NSW	11,522.11
COOPER Thomas James - Page NSW	9,814.21
DALGLEISH David Bruce - Wide Bay QLD	5,714.51
DOUGLASS Ross Thomas - Mallee VIC	6,631.12
HAIGH Bruce Douglas - Gwydir NSW	8,301.44
HOURIGAN Rosalind - Fisher QLD	10,745.14
KATTER B Robert Karl - Kennedy QLD	63,652.69
KESSELS Colin James - Dickson QLD	9,314.72
MacDONALD Peter Alexander - Warringah NSW	38,472.69
MCINTOSH Nelson Douglas - Indi VIC	9,459.73
MELVILLE Peter Lloyd - Hinkler QLD	12,794.99
MOTT William Trevor - Cunningham NSW	7,581.75
PAULGER S Shane Peter - Fairfax QLD	13,460.96
STEGLEY Kristin - Goldstein VIC	8,605.78
THEOPHANOUS Andrew Charles - Calwell VIC	15,023.86
TREASURE Douglas Harry - Gippsland VIC	7,606.81
WICKS Graeme Francis - Wide Bay QLD	6,051.08
WINDSOR C Antony Harold - New England NSW	64,435.04
TOTAL	38,559,409.33

8.3 Receipt of returns

8.3.1 Following an election, key participants in the electoral process are required to lodge with the AEC various returns disclosing election campaign transactions. A summary table of the returns is presented below:

Participant	Type of return	Time frame	Due date
Candidates	donations received and electoral expenditure	within 15 weeks after polling day	25 February 2002
Senate groups	donations received and electoral expenditure	within 15 weeks after polling day	25 February 2002
Third parties	details of electoral expenditure, certain donations received, and donations made to candidates and others	within 15 weeks after polling day	25 February 2002
Broadcasters	electoral advertisements broadcast	within 8 weeks after polling day	7 January 2002
Publishers	electoral advertisements published	within 8 weeks after polling day	7 January 2002

8.3.2 All the returns which had been received were available for public inspection 24 weeks after polling day, that is from Monday, 29 April 2002. For the first time the AEC published the returns for Candidates and Senate Groups and Third Parties on its website.

8.4 Outstanding FAD Recommendations

8.4.1 Section 17(2) of the Electoral Act requires the AEC to provide a report on the operation of Part XX of the Act, relating to funding and disclosure, at each federal election. The Funding and Disclosure Report for the 2001 federal election is expected to be furnished to the Special Minister of State for tabling in Parliament later this year.

8.4.2 The reference for the JSCEM's 2001 Electoral Funding and Disclosure Inquiry (FAD Inquiry) lapsed when the Committee ceased to exist at the dissolution of the House of Representatives on 8 October 2001. The AEC had made two submissions to the FAD Inquiry detailing problems associated with administering the disclosure provisions of the Electoral Act, emphasising the need for in depth consideration of these provisions and the need for clear guidance from the JSCEM as to precisely what the provisions should be achieving. Given the importance of these issues to the overall integrity of the electoral process and the fact that the FAD Inquiry was not concluded, the AEC has attached the copies of its two submissions to that Inquiry for consideration by this Inquiry (**Attachments F and G**).

Recommendation 21: That the JSCEM consider the AEC's funding and disclosure submissions at Attachments F and G.

8.4.3 There are also a number of recommendations made by the AEC in previous Funding and Disclosure Reports (1993, 1996 and 1998) that have yet to be reported on by the JSCEM. At **Attachment H** is a table setting out all the recommendations made by the AEC since the 1993 election – the table highlights the status of all recommendations and seeks the JSCEM's consideration of those items that have not been addressed previously.

Recommendation 22: That the JSCEM consider all outstanding funding and disclosure recommendations outlined at Attachment H.

8.4.4 Please note that the AEC has made additional recommendations in relation to recommendations 15, 20, and 21 of the FAD 1993 Post Election Report.

8.4.5 Recommendation 15 stated: 'that consideration be given to repealing the remainder of section 305A (as amended by *Commonwealth Electoral Amendment Act 1995*).' In the time that has passed since this recommendation was made it has become clear that there is a public expectation that this level of disclosure be retained. However, it is still the case that there are issues relating to the administration and interpretation of the section that need to be clarified. The AEC therefore now makes the following recommendation.

Recommendation 23: That section 305A of the *Commonwealth Electoral Act 1918* be revised to clarify who is meant to be captured by paragraph 305A(1)(c), extend the due date for lodgement of returns and clarify where donations to endorsed candidates should be reported.

8.4.6 Recommendation 20 stated: 'that consideration be given to the most appropriate agency for undertaking investigations of apparent offences against Part XX and to provision of the resources required'. The AEC now suggests that consideration be given to the AEC being able to apply an 'administrative' penalty (as it can in relation to failure to vote under section 245).

Recommendation 24: That Part XX of the *Commonwealth Electoral Act 1918* be amended to enable the AEC to apply an administrative penalty.

9 ELECTION LITIGATION

9.1 Introduction

9.1.1 For the 2001 federal election, the overall level of litigation, including injunctions, petitions and prosecutions, was less than that which occurred at the last two federal elections. A brief summary of all electoral litigation arising at the 2001 federal election is given below. A full description of the litigation is provided at **Attachment I**.

9.2 Injunctions

9.2.1 During an election period, injunction applications are normally made under section 383 of the Electoral Act. This section allows either the Electoral Commissioner or a candidate at the federal election to apply to the Federal Court of Australia for an injunction to stop potential breaches of the Electoral Act being committed.

9.2.2 During the election period, and up to the close of polling, four applications were filed for injunctions. However, of the four applications, only two applications for injunctions were made to the Federal Court under section 383 of the Electoral Act. One was made to the High Court under section 75 of the Constitution, and one was made to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977 (AD(JR) Act)*. In one case, the AEC sought an injunction against a candidate. In the three other cases, candidates or people who had intended to nominate as candidates sought injunctions against the AEC.

9.2.3 The four cases were:

- Mr Ned Kelly's (Terry Sharples) application on late candidate nomination;
- The Ponnuswamy Nadar application on incomplete candidate nomination;
- The AEC application in relation to One Nation How to Vote cards; and
- The Schorel-Hlavka application on the calculation of the election timetable.

9.3 Petitions to the Court of Disputed Returns

9.3.1 Petitions to the Court of Disputed Returns must be filed within 40 days of the return of the writ for the relevant State/Territory/Division election. Four petitions to the Court of Disputed Returns under Part XXII of the Electoral Act were filed in the High Court Registry before the end of the relevant 40-day period. The petitions were:

- Mr Richard S Gunter's petition on gold currency and issue of writs;
- Mr Ned Kelly's petition against the half-Senate election for New South Wales;
- Mr Ditchburn's petition challenging above the line voting for the Senate; and
- Mr Ditchburn's petition challenging preferential voting in House of Representatives elections.

9.4 Prosecutions

9.4.1 As at 17 June 2002, no major prosecutions against the offence provisions of the Electoral Act had been initiated, although a small number of investigations remain in progress.

10 REFERENDUM

10.1 Introduction

10.1.1 Between the 1998 and 2001 federal elections the AEC undertook another major electoral event – the 1999 Referendums.

10.1.2 On 6 November 1999, referendums were held on two proposed Constitutional changes. The first question was whether Australian voters approved the proposal to establish Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament; the second question was whether to alter the Constitution to insert a preamble.

10.1.3 Neither of the questions were approved by a 'double majority' of electors and therefore the proposals for Constitutional change were not carried.

10.1.4 In late-2000 the AEC published *Referendum 1999 Report and Statistics* which outlines the background to the referendum, the conduct of the referendum and the statistical results. This report can be accessed at the AEC website at http://www.aec.gov.au/_content/what/publications/electoral_events/referendum99/index.htm. At this time the AEC also published a CD-ROM entitled, *The Australian Referendums 1906-1999*, which provides results and information on every Commonwealth Referendum held since 1906.

10.1.5 An inquiry into this referendum was not held by the JSCEM, however there are a number of amendments that the AEC believes need to be made to the Referendum Act before another referendum is held. The AEC has therefore included these recommendations in this submission.

10.2 Separate ballot papers

10.2.1 The Referendum Act was amended prior to the 1999 Referendums to allow for ballot papers to be printed on separate pieces of paper. Prior to this amendment, section 25 of the Referendum Act required that where two or more referendums were to be held on the same day then the ballot papers would be 'printed on one piece of paper'. Section 25 now allows the Minister, by notice in writing given at least 28 days before the issue of writs for the referendums, to require that the ballot papers be printed 'on separate pieces of paper'. These ballot papers are to be of different colours, to be chosen by the Electoral Commissioner. However, if the Minister does not give such a notice, then the ballot papers for the different referendums are printed on the one piece of paper.

10.2.2 There is one technical point concerning the amended section 25 of the Referendum Act that should be noted. Section 25(3A) of the Referendum Act provides that if the Minister gives a written notice then 'the ballot papers for each referendum held on the referendum day must be printed on separate pieces of paper'. This means that it is not legally permitted to print separate ballot papers on one piece of paper that is perforated so as to allow for the detachment of the

separate ballot papers. This is an option that the AEC considers would be desirable.

10.2.3 It should be possible to print ballot papers with separate colours by printing the separate ballot papers on a single, perforated, piece of paper. White paper could be 'washed' with different colours, so that one part could be one colour and the other another colour – and the distinct ballot papers could then be detached. This would achieve cost savings and assist accounting for ballot papers. Therefore, the AEC believes that if the present provisions allowing for separate ballot papers are to be retained, then section 25(3A) of the Referendum Act should be amended so as to refer to ballot papers being either on separate pieces of paper or detachable, rather than the ballot papers being printed on separate pieces of paper. This would allow the ballot papers to be dispatched to postal voters while they are still joined together (ie without being detached along the perforation), which would allow for easier insertion of the ballot papers into the envelopes addressed to electors.

Recommendation 25: That the *Referendum (Machinery Provisions) Act 1984* be amended to refer to ballot papers being able to be distinguishable by colour.

10.2.4 The above recommendation is purposely broad to ensure that the AEC is not restricted to a specific printing method. A broader amendment would allow for technological advances and the possibility of e-voting.

10.3 The Yes/No Case Pamphlet

10.3.1 One of the major logistical challenges of the 1999 Referendums was the production and delivery of an individually addressed multi-page pamphlet to every Australian elector. Section 11 of the Referendum Act requires the AEC to print and post to each elector, no later than 14 days before polling day, a pamphlet which sets out the arguments for and against any proposed alteration to the Constitution (the Yes/No cases), together with a statement showing the proposed textual alterations and additions to the Constitution.

10.3.2 A total of 12.9 million Yes/No Case Pamphlets were produced for the 1999 Referendums. At the time there was anecdotal evidence to suggest that this was the largest single print job and the largest single mailout ever undertaken in Australia. A complex and tight production schedule was required to print, plastic wrap, individually address and deliver the pamphlets within the legislative timeframe.

10.3.3 Under section 11 of the Referendum Act, the arguments to be included in the Yes/No Case Pamphlet for and against the proposed alteration to the Constitution must each be no more than 2,000 words. Where there is more than one referendum question, an argument in favour or against one particular proposed law may exceed 2,000 words if the average of the arguments in favour or against all the proposed laws is not more than 2,000 words each. The arguments are provided to the Electoral Commissioner by members of the Parliament who voted for and against the proposed alteration, as provided by the Referendum Act.

Neither the Electoral Commissioner nor the AEC are involved in the drafting of the arguments.

10.3.4 Under section 11 of the Referendum Act, the arguments are also required to be given to the Electoral Commissioner within four weeks of the parliamentary passage of the proposed law. Both proposed laws were passed on 12 August 1999. The Electoral Commissioner received the Yes/No cases for the 1999 Referendums on Thursday 9 September 1999. Under the Referendum Act the Yes/No Case Pamphlet was required to be posted no later than 14 days before polling day. Polling day for the 1999 Referendums was Saturday 6 November, making the critical day Friday 22 October 1999.

10.3.5 The *Referendum Legislation Amendment Act 1999* amended section 11 of the Referendum Act to allow for a wider distribution of the Yes/No Case Pamphlet by allowing the AEC to expend money in relation to the printing, publication and distribution of the Yes/No Case Pamphlets by means other than post and to persons other than electors. Section 11 of the Referendum Act still requires the Electoral Commissioner 'to cause to be printed and to be posted to each elector, as nearly as practicable' the Yes/No Case Pamphlet, however other means of distribution (such as the internet) were made possible by the *Referendum Legislation Amendment Act 1999*.

10.3.6 The Referendum Act requires the pamphlet to include those parts of the Constitution that would be amended if the proposed laws received agreement. Due to the large number of proposed amendments, the full text of the Constitution was included in the 1999 pamphlet to avoid any confusion.

10.3.7 Delivery of the pamphlets commenced on 27 September 1999 and was completed by 22 October 1999. This gave electors at least a fortnight in which to consider the various arguments before polling day.

10.3.8 Key information in the elector pamphlet was also provided on audio cassette, ASCII computer disc, Braille and large print to assist electors with a print disability. The Yes/No cases were also available from 20 September 1999 on the AEC's website in English and in 14 community languages, however the Constitution was not translated.

10.3.9 The total cost of the production and distribution of the Yes/No Case Pamphlet was over \$16.35 million.

10.3.10 ***Guidelines for the preparation of Yes/No cases.*** At the 1988 Referendums there was considerable public controversy about the different formats that were chosen by the presenters of the Yes/No cases for the pamphlet. For the 1988 Referendums, the then Electoral Commissioner, Dr Colin Hughes, decided, with the agreement of both the Yes and No cases, to allow the different sides to have control of the presentation for their cases, which were submitted as camera ready copy. (Refer to the AEC's submission No 32(d) of 23 September 1988 to the JSCEM.) However, there was strong criticism that the different presentations could have favoured one case.

10.3.11 With the experience of the 1988 Referendums in mind, in 1999 the Electoral Commissioner prepared '*Guidelines for Members of Parliament preparing the Arguments to be sent to electors*'. The Guidelines contained definitive rules on font and point size for text, and advised that body copy text would be 'justified' (ie presented in the 'justified' text alignment), that each argument must contain only words, how words would be counted, and so forth. The format of the Yes/No Case Pamphlet was designed to ensure that no argument was seen to gain an advantage by virtue of different typeface or typestyle.

10.3.12 The only variation in format was colour coding of the pages on which the different cases appeared: green for the 'Yes' pages, red for the 'No' pages. However, the AEC does not believe that this variation, which enhanced the readability of the document by making it easy to differentiate the cases, led to either of the arguments being seen to gain an advantage.

10.3.13 The AEC believes that the Guidelines for the 1999 Referendums worked as an administrative solution to the question of the format of the Yes/No Case Pamphlet. However, if (as had been the case in 1988) the Yes and No cases had wanted the opportunity to present arguments with different formats, then the situation might have been quite different. Given the potential for controversy about the format of Yes/No cases, the AEC believes that the issue of the format of the Yes/No cases should be dealt with by the Referendum Act itself.

Recommendation 26: That the *Referendum (Machinery Provisions) Act 1984* be amended so as to include provisions that:

- the Electoral Commissioner be given the power to adjudicate disputes relating to the format of the Yes/No case statements;
- if a dispute arises about the counting of numbers of words for the purposes of this section, the number is to be worked out by a method determined by the Electoral Commissioner;
- if a statement exceeds the word limit, that so much of the statement may be printed as does not exceed the limit;
- statements must be in English;
- statements must not contain anything other than punctuation marks, words and numbers;
- statements must be printed in type that is uniform (as between statements) in size and style; and
- if there is not an accepted statement, that at the point where the statement would otherwise have appeared, that there must be a statement that there is no statement.

10.3.14 ***Personalisation of the Yes/No Case Pamphlet.*** As noted above, section 11 of the Referendum Act requires the AEC to print and post to each elector a pamphlet which sets out the arguments for and against any proposed alteration to the Constitution (the Yes/No cases). Although this project was successfully accomplished, the AEC believes that the same objective of providing the electorate with a written exposition of Yes/No arguments could be achieved by a more efficient method.

10.3.15 The Yes/No Case Pamphlet was produced and distributed for the 1999 Referendums as follows. The tender for the Yes/No Case Pamphlet project was awarded to two companies, due to the large size of the task. Those companies were Hannanprint and PMP Communications. Both printers subcontracted to Salmat for personalisation and plastic wrapping. In addition, PMP Communications used their own wrapping machines in Sydney and Melbourne to ensure that the work kept to schedule. The Yes/No Case Pamphlets were delivered by Australia Post.

10.3.16 In order to personally address the Yes/No Case Pamphlet to each elector, a flysheet (or mailing sheet) was printed with each elector's name and address details. The following data was required on the flysheet:

- the name and address of each elector printed in upper case, the name was the person's first name, initial and surname;
- elector ID barcode and number;
- delivery point indicator (DPID) barcode; and
- Australia Post numeric (delivery centre postcode, round number and bundle number).

10.3.17 The inserting of the flysheet and plastic wrapping were the major challenges for the AEC and its contractors in relation to the Yes/No Case Pamphlet.

10.3.18 To ensure that the pamphlets would be able to be delivered within the required legislative time frame there were three extracts of enrolment data from the AEC's computerised Roll Management System (RMANS). The first extract was the major extract. The second extract picked up any RMANS changes since the first extract and the third extract picked up RMANS changes since the second extract (this included close of rolls week enrolment processing).

10.3.19 The cost of the 1999 Yes/No Case Pamphlet (of which some 12.9 million were produced) was as follows:

Activity	Cost (\$)
Design and artwork (advertising agency)	26,677.54
Production (printing, personalising and wrapping)	7,310,185.68
Distribution (postage)	8,918,477.67
Alternative formats	49,004.83
Yes/No case translations	37,195.00
Project management	10,901.14
Total	16,352,441.86

10.3.20 The cost of the 1999 Yes/No Case Pamphlet can be compared with the cost of *Your guide to the 1998 federal election* (the 1998 Elector Leaflet). The 1998 Elector Leaflet was a multi-page election information leaflet, which was distributed to households throughout Australia (over seven million households) in the weeks before polling day. A different version of the leaflet was produced for each State and Territory. The leaflet contained information on how and when to vote, how votes are counted, and AEC contact details. The Queensland, Western Australian

and Australian Capital Territory leaflets included maps showing the Divisional boundaries following redistributions. The leaflet also included key information in 14 community languages and listed the 15 language specific numbers of the national telephone interpreting service.

10.3.21 The cost of the 1998 Elector Leaflet (of which some 7.5 million were produced) was as follows:

Activity	Cost (\$)
Design and artwork (advertising agency)	49,222.00
Production (printing and distribution)	1,391,441.93
Alternative formats (vision impaired)	13,566.64
Total	1,454,230.57

10.3.22 In comparing the costs of the 1999 Yes/No Case Pamphlet and the 1998 Elector Leaflet, it should be noted that: more alternative format and non-English language work was done for the 1999 Yes/No Case Pamphlet; and that the 1999 Yes/No Case Pamphlet was significantly larger in size. Nevertheless, it is apparent that the main driver in the price differential, of slightly under \$14.9 million, is the legislative requirement to post the Yes/No Case Pamphlet to each **individual** elector within a specified timeframe, as opposed to providing an elector leaflet to each household.

10.3.23 An Elector Leaflet was also produced for the 2001 federal election (over 7.5 million leaflets at a total cost of \$1.7 million).

10.3.24 If the alternative distribution method, used for federal election Elector Leaflets, of delivery (not necessarily by post) to every household in Australia were to be used for the Yes/No Case Pamphlet, then a saving in the order of \$14.5 million may be expected. It would still be necessary for the Yes/No Case Pamphlet to be distributed to individual electors outside Australia, where we have contact addresses. It would also be necessary to have advertising explaining how additional copies of the Yes/No Case Pamphlet could be obtained, thus catering for households where there is a demand for more than one copy of the pamphlet. The availability of additional copies should address any concern that in a large household the provision of one pamphlet may not allow all household members the opportunity to read the pamphlet at leisure.

Recommendation 27: That the *Referendum (Machinery Provisions) Act 1984* be amended so as to allow the delivery (not necessarily by post) of the Yes/No Case Pamphlet to, as nearly as practicable, every household in Australia – replacing the current requirement to post the pamphlet to each elector, as nearly as practicable.

10.3.25 ***Referendum Timetable.*** The Electoral Commissioner received the Yes/No cases for the 1999 Referendums on Thursday 9 September 1999. Under the Referendum Act the Yes/No Case Pamphlet was required to be posted no later than 14 days before polling day. Polling day for the 1999 Referendums was Saturday 6 November, making the critical day Friday 22 October 1999. This is a very short timetable for a task as complex as posting the Yes/No Case Pamphlet

individually to each elector. Although the task is achievable within the timeframe, as was demonstrated in 1999, the AEC is concerned that there is no room for error and that, in future referendums, events beyond the AEC's control may seriously disrupt delivery within the deadline.

10.3.26 As noted above, the AEC is recommending that the Referendum Act be amended so as to allow the delivery of the Yes/No Case Pamphlet to households rather than individual electors. This approach would considerably simplify the distribution task, and remove the AEC's concern about the shortness of the current timeframe. Additional copies would also be provided if necessary.

10.3.27 On the other hand, if the present provisions requiring the posting of the Yes/No Case Pamphlet individually to each elector are to be retained, in order to provide for a more suitable production timetable, the AEC believes that there needs to be an extra week in the referendum timetable.

10.3.28 Under section 9 of the Referendum Act the date fixed for the taking of votes at a referendum must be not less than 33 days and not more than 58 days after the issue of the writ. The AEC would recommend that the minimum period be extended to not less than 40 days.

Recommendation 28: That if the present provisions requiring the posting of the Yes/No Case Pamphlet individually to each elector are to be retained, then the *Referendum (Machinery Provisions) Act 1984* be amended so that the date fixed for taking the votes of electors at a referendum shall be not less than 40 days and not more than 58 days after the issue of the writ.

10.3.29 ***What is the role of the Yes/No Case Pamphlet?*** As the AEC stated in its submission No 32(d) of 23 September 1988 to the JSCEM: 'In an age of rapid electronic communication and recognition of the educational power of television/video material, the distribution of arguments via a Yes/No Cases pamphlet may be regarded as antiquated'. This statement has become more apposite now than it was then. However, if the Parliament wishes to consider the role of the Yes/No Case Pamphlet, it is important that it not be seen in isolation, but along with other government funded advertising at referendums.

Recommendation 29: That the JSCEM agree to the AEC preparing a paper setting out options/alternatives to the Yes/No Case Pamphlet as a communication tool.

10.4 Appointment of scrutineers

10.4.1 A scrutineer is not able to begin the performance of his or her duties unless they sign an undertaking in the approved form (required under section 16A(3) of the Referendum Act). However, the Referendum Act does not explicitly require that scrutineers be appointed in writing. This is in contrast to the Electoral Act, which does require that appointments be in writing or by telegram (sections 217 and 264 of the Electoral Act). The AEC believes that it would provide clarity in

the administration of the Referendum and Electoral Acts, and be of assistance to scrutineers and the persons who appoint them, if appointments were legally required to be in writing on an approved form.

Recommendation 30: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to require that scrutineers be appointed in writing on an approved form.

10.4.2 Section 27 of the Referendum Act currently requires that scrutineers be appointed by the Governor-General, State Governor, Administrator of the Northern Territory or the registered officer of a political party. This situation presented practical problems at the 1999 Referendums for citizens who wished to act as scrutineers and approached various Government Houses or political parties. In fact, the AEC understands that some Governors may have felt it inappropriate to become involved in the process by appointing scrutineers and refrained from doing so. In addition, as the questions posed were not necessarily supported or opposed along party lines, the AEC understands that not all registered political parties were able to appoint scrutineers.

10.4.3 As scrutineers play an important role in the electoral process, the AEC recommends that the JSCEM consider alternative methods of appointment of scrutineers for referendums.

Recommendation 31: That the JSCEM consider alternatives to the current requirements for the appointment of scrutineers for referendums.

10.4.4 Presently there is no limitation in the Referendum Act on the number of scrutineers appointed by registered political parties who may attend at pre-poll voting. There is, however, a limitation of one person in respect of scrutineers appointed by the other persons who may appoint scrutineers. The AEC has received legal advice from the Australian Government Solicitor that the limitation in section 27(4) – 'but not more than one scrutineer for each party shall be allowed at each polling booth' – only applies to polling booths, not places where pre-poll voting is conducted. The AEC believes that it would be sensible for operational reasons for there to be a similar limitation on the number of scrutineers who may attend at pre-poll voting centres.

Recommendation 32: That the *Referendum (Machinery Provisions) Act 1984* be amended so that not more than one scrutineer appointed by any one person may be in the interior of a pre-poll voting centre at any one time. If the *Commonwealth Electoral Act 1918* is amended to allow scrutineers to attend at pre-poll voting centres, then a similar amendment should be made to the *Commonwealth Electoral Act 1918* in relation to scrutineer numbers.

10.4.5 The Referendum Act has no equivalent of section 218(2) of the Electoral Act which provides, in relation to observation of polling, that during a scrutineer's absence from a polling booth a relieving scrutineer may act during the scrutineer's absence. In relation to scrutineers of registered political parties at a referendum

there is catering for absence of scrutineers in that a number of persons may be appointed as scrutineers for the one polling booth. However, the AEC believes that it would be more appropriate to have a specific provision in relation to relieving appointments of scrutineers generally.

Recommendation 33: That the *Referendum (Machinery Provisions) Act 1984* be amended to include provisions for the appointment of relieving scrutineers in relation to observation of polling and counting.

10.5 Offences – printing and publication of advertisements, notices etc.

10.5.1 Section 121 of the Referendum Act now differs from its counterpart in the Electoral Act (section 328) in that car stickers are not subject to the requirements to state the name and address of the authoriser and printer. Section 328 of the Electoral Act was amended by the *Electoral and Referendum Act 1998* so that the exception for car stickers was removed. This amendment was a response to the fact that 'car stickers' were being used more broadly than simply being applied to motor vehicles. There is no apparent reason for treating car stickers differently under the Referendum Act as compared with the Electoral Act.

Recommendation 34: That section 121 of the *Referendum (Machinery Provisions) Act 1984* be amended so as to omit 'a car sticker'.

10.5.2 The AEC notes that during the 1998 federal election period the AEC received a number of queries in relation to section 328 of the Electoral Act, as to whether the address of the authoriser as required on electoral advertisements by section 328 refers to a residential address only, and whether an office or electorate address would comply. Others queried whether a street name and suburb was sufficient, or whether the street number was required as well as the street and suburb name. The AEC took the view that section 328 could include an electorate office, for example, as well as a residential address, but that in any case it does require the full address, including the street number. The same issues arise in relation to section 121 of the Referendum Act. The AEC believes, as it stated in its submission No 88 of 12 March 1999 to the JSCEM that these issues should be clarified in the legislation with a definition of 'address'.

10.5.3 The AEC notes that its concerns have been largely accepted by the JSCEM in its report on the 1998 federal election, which recommended (no. 18) 'that the *Commonwealth Electoral Act 1918* be amended so the full address clearly identifying a physical location is given for authorisation purposes'.

10.5.4 Recasting section 121(3) of the Referendum Act so as to reflect the drafting of section 328(3) of the Electoral Act would address the current discrepancy that letters relating to a referendum are required to state the name and address of the authoriser and (where applicable) the printer, whereas letters relating to an election are exempt from such requirements. It should be noted, however, that this discrepancy did not present major problems in practice at the 1999 Referendums as the AEC decided not to refer to the Director of Public Prosecutions letters which failed to strictly comply with the Referendum Act but

nevertheless clearly indicated the identity of the person responsible (for example, letters on letterhead from members of Parliament to their constituents).

Recommendation 35: That the drafting of section 121(3) of the *Referendum (Machinery Provisions) Act 1984* be amended so as to be consistent with section 328(3) of the Electoral Act, and that the necessary consequential amendments be made to the references, in section 121(4) of the *Referendum (Machinery Provisions) Act 1984*, to paragraphs of section 121(3).

10.6 Concordance of the Referendum and Electoral Acts

10.6.1 During the conduct of the 1999 Referendums, it became clear that the Referendum Act has suffered significant decay over the past decade (since the last referendums in 1988), as legislative amendments made to the Electoral Act over that period have not been carried over consistently into the Referendum Act. This resulted in some considerable operational problems at the 1999 Referendums that were dealt with at the time through administrative flexibility. However, legislative repair work to the Referendum Act is still necessary.

10.6.2 The AEC believes consistency between the Referendum Act and Electoral Act is desirable as a matter of principle – so as to avoid unnecessary confusion to administrators and so as to minimise the risk of unintended drafting consequences from the use of divergent language.

Recommendation 36: That, as far as practicable, the *Referendum (Machinery Provisions) Act 1984* and the *Commonwealth Electoral Act 1918* be expressed in the same terms when describing the same processes.

10.6.3 Specific recommendations have been included in the table of technical amendments at **Attachment B**.

11 COSTS OF THE ELECTION

11.1.1 As at 28 February 2002 the expenditure on the 2001 federal election was \$67,270,628 excluding \$38,559,409 for public funding. Based on the adjusted Close of Rolls figure, the cost per elector was \$5.32 (excluding public funding). These costs include GST.

11.1.2 Expenditure to 28 February 2002:

Activity	\$
Advertising	10,408,504
Audits	1,364
Automated Postal Voting System (APVIS)	845,759
Ballot Paper Production	2,492,908
Cardboard Equipment Production	2,055,393
Certified Lists	1,165,950
Computer Support Services	485,003
Divisional Offices	28,439,907
Education & Information Service	245,324
Election Management	9,697,710
Election Report	32,631
Election Leaflet	1,712,340
Enquiry Services	3,670,873
Forms & Equipment	1,741,170
Funding & Disclosure	15,397
Internet	38,646
Litigation	86,276
Media and Result Centre	16,729
National Tally Room	615,270
Newsfile	49,687
Overseas Postal Voting	359,042
Pocket Book	17,349
Prosecutions	89
Public Relations	264,460
Research & Surveys	239,843
Roll Products & Services	1,212
Scanning	362,361
Senate Scrutiny	559,511
Storage & Distribution	587,776
Training	1,062,144
Sub-Total (GST inclusive)#	67,270,628
Public Funding	38,559,409
Total	105,830,037

#The GST exclusive sub-total is \$64,308,223

11.1.3 Comparative figures for previous elections:

	1990	1993	1996	1998	2001#
(NB: all costs are GST exclusive)	\$	\$	\$	\$	\$
Average Cost per elector (Actual Cost)	4.02	4.11	5.08	5.21	5.09
Constant Prices (Sep/Dec 1984 Base)	2.68	2.54	2.87	2.89	2.54
Constant Prices (Sep/Dec 2001 Base)	5.37	5.09	5.76	5.79	5.09

GST inclusive costs for 2001 election – (1) Actual Cost \$5.32, (2) 1984 Base \$2.65, (3) 2001 Base \$5.32.

12 SUMMARY OF RECOMMENDATIONS

12.1.1 The recommendations listed below are contained within the body of this submission. Please note that there are further recommendations contained in the following attachments that are not included in this summary of recommendations:

- B Table of Technical Amendments required to electoral legislation
- D Review of sections 89-92 of the Electoral Act
- F FAD submission – No. 7 of 17 October 2000
- G FAD submission – No. 15 of 2 August 2001
- H Summary of outstanding FAD recommendations

Recommendation 1: That the JSCEM notes that the AEC is facing a very tight funding position and supports and encourages the AEC to negotiate with the Department of Finance and Administration with a view to achieving an increased funding base for the provision of election services. That the JSCEM further notes that some workload indicators relevant to election services are also influencing other programs and services and therefore costs of the AEC.

Recommendation 2: That the AEC and PM&C develop appropriate formal procedures for notifying the Electoral Commissioner, immediately prior to a public announcement or media release, of the calling of the election and the relevant dates.

Recommendation 3: That the writs for State and Territory House of Representatives and Territory Senate elections be prepared by a more appropriate organisation, such as the Attorney-General's or Prime Minister's department.

Recommendation 4: That the *Commonwealth Electoral Act 1918* be amended to enable the name of each elected candidate to be printed on or listed in an attachment to the writ.

Recommendation 5: That the *Commonwealth Electoral Act 1918* be amended to enable the appointment of Australian Electoral Officers by the Electoral Commission.

Recommendation 6: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to incorporate all the technical amendments outlined at Attachment B.

Recommendation 7: That the *Commonwealth Electoral Act 1918* be amended to include a definition of 'frivolous' and 'fictitious'.

Recommendation 8: That the *Commonwealth Electoral Act 1918* be amended to include a provision that allows for review of potentially 'inappropriate' names added to the Roll after the commencement of the 'inappropriate names' provisions.

Recommendation 9: That sections 208 and 232 of the *Commonwealth Electoral Act 1918* be amended to remove any restrictions on the format in which certified lists can be produced.

Recommendation 10: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical or safety reasons.

Recommendation 11: That the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* be amended to provide that regulations be made to allow for a pilot of electronic voting

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.

Recommendation 13: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow postal votes, cast on or before polling day, received by an AEO, ARO or another DRO, other than the DRO for the elector's home Division, after the close of the poll, to be included in the scrutiny if it is subsequently received by the home DRO, within 13 days after the close of poll.

Recommendation 14: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow the same ballot paper to be used for all forms of voting.

Recommendation 15: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow a pre-poll vote cast in the elector's home Division to be cast as an ordinary vote.

Recommendation 16: That the *Commonwealth Electoral Act 1918* be amended to allow scrutineers to attend at pre-poll voting centres.

Recommendation 17: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to remove the requirement that the mobile polling facility is only available to 'patients' under 'continuing nursing care' and to limit access to the general public (ie. these establishments are not to become ordinary polling places). The mobile polling facility should be restricted to residents and on-duty staff of the gazetted establishment.

Recommendation 18: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow residents of special hospitals to be registered as General Postal Voters.

Recommendation 19: That the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* be amended to extend the criteria for registration as a General Postal Voter to include those remote area workers whose occupation has the potential to preclude their capacity to vote at a remote mobile polling booth.

Recommendation 20: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to enable ballot papers for review by the AEO at a recount to be faxed, transmitted electronically, or forwarded by whatever practicable means between the DRO and the AEO.

Recommendation 21: That the JSCEM consider the AEC's funding and disclosure submissions at Attachments F and G.

Recommendation 22: That the JSCEM consider all outstanding funding and disclosure recommendations outlined at Attachment H.

Recommendation 23: That section 305A of the *Commonwealth Electoral Act 1918* be revised to clarify who is meant to be captured by paragraph 305A(1)(c), extend the due date for lodgement of returns and clarify where donations to endorsed candidates should be reported.

Recommendation 24: That Part XX of the *Commonwealth Electoral Act 1918* be amended to enable the AEC to apply an administrative penalty.

Recommendation 25: That the *Referendum (Machinery Provisions) Act 1984* be amended to refer to ballot papers being able to be distinguishable by colour.

Recommendation 26: That the *Referendum (Machinery Provisions) Act 1984* be amended so as to include provisions that:

- the Electoral Commissioner be given the power to adjudicate disputes relating to the format of the Yes/No case statements;
- if a dispute arises about the counting of numbers of words for the purposes of this section, the number is to be worked out by a method determined by the Electoral Commissioner;
- if a statement exceeds the word limit, that so much of the statement may be printed as does not exceed the limit;
- statements must be in English;
- statements must not contain anything other than punctuation marks, words and numbers;
- statements must be printed in type that is uniform (as between statements) in size and style; and
- if there is not an accepted statement, that at the point where the statement would otherwise have appeared, that there must be a statement that there is no statement.

Recommendation 27: That the *Referendum (Machinery Provisions) Act 1984* be amended so as to allow the delivery (not necessarily by post) of the Yes/No Case Pamphlet to, as nearly as practicable, every household in Australia – replacing the current requirement to post the pamphlet to each elector, as nearly as practicable.

Recommendation 28: That if the present provisions requiring the posting of the Yes/No Case Pamphlet individually to each elector are to be retained, then the *Referendum (Machinery Provisions) Act 1984* be amended so that the date fixed for taking the votes of electors at a referendum shall be not less than 40 days and not more than 58 days after the issue of the writ.

Recommendation 29: That the JSCEM agree to the AEC preparing a paper setting out options/alternatives to the Yes/No Case Pamphlet as a communication tool.

Recommendation 30: That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to require that scrutineers be appointed in writing on an approved form.

Recommendation 31: That the JSCEM consider alternatives to the current requirements for the appointment of scrutineers for referendums.

Recommendation 32: That the *Referendum (Machinery Provisions) Act 1984* be amended so that not more than one scrutineer appointed by any one person may be in the interior of a pre-poll voting centre at any one time. If the *Commonwealth Electoral Act 1918* is amended to allow scrutineers to attend at pre-poll voting centres, then a similar amendment should be made to the *Commonwealth Electoral Act 1918* in relation to scrutineer numbers.

Recommendation 33: That the *Referendum (Machinery Provisions) Act 1984* be amended to include provisions for the appointment of relieving scrutineers in relation to observation of polling and counting.

Recommendation 34: That section 121 of the *Referendum (Machinery Provisions) Act 1984* be amended so as to omit 'a car sticker'.

Recommendation 35: That the drafting of section 121(3) of the *Referendum (Machinery Provisions) Act 1984* be amended so as to be consistent with section 328(3) of the Electoral Act, and that the necessary consequential amendments be made to the references, in section 121(4) of the *Referendum (Machinery Provisions) Act 1984*, to paragraphs of section 121(3).

Recommendation 36: That, as far as practicable, the *Referendum (Machinery Provisions) Act 1984* and the *Commonwealth Electoral Act 1918* be expressed in the same terms when describing the same processes.