

## Registration of political parties

- 4.1 This chapter examines the current arrangements for the registration of political parties, problems evident in the current system, and makes a series of recommendations for reform.

### Current political party registration arrangements

- 4.2 Part XI of the CEA contains the provisions that permit eligible political parties to be registered. Section 123, provides that an eligible political party is a political party that is either a parliamentary party or has at least 500 members, and is established on the basis of a written constitution (however described) that sets out the aims of the party.
- 4.3 A parliamentary party is defined as a political party, which has at least one member who is a member of the Parliament of the Commonwealth.<sup>1</sup>
- 4.4 Applications for registration are made to the AEC and must, amongst other information, set out the proposed name of the party and any proposed abbreviation. An application will be refused where the party name:
- is more than six words;

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<sup>1</sup> CEA, section 123.

- is obscene;
- is the name, abbreviation or acronym of another unrelated party or so nearly resembles the name, abbreviation or acronym of an unrelated party that it is likely to be confused with or mistaken for that party; and
- suggests a connection or relationship exists with a registered party when it does not; and
- comprises words:
  - ⇒ 'independent party';
  - ⇒ 'independent' plus the name, abbreviation or acronym of a recognised political party; or
  - ⇒ 'independent' plus a name that so nearly resembles the name, abbreviation or acronym of a recognised political party that it is likely to be confused with or mistaken for it.<sup>2</sup>

4.5 The intention behind these legislative amendments, which were introduced in 2004,<sup>3</sup> is to address public concerns that the political party registration provisions in the CEA may be open to exploitation by parties seeking to confuse voters by registering a name that is similar to another well-known political party. The tests currently included in section 129 are to ensure that a party cannot be registered if its name suggests to a reasonable person that a relationship or connection with a registered political party that does not exist.<sup>4</sup> This test is administered by the AEC.

4.6 The AEC will cancel a party's registration where a parent party has successfully objected to the continued use of a similar party name by a second party and the second party is not related to the parent party and has not satisfactorily changed its name within one month.<sup>5</sup>

4.7 The effect of the 2004 amendments is that parties can no longer register names that are too similar to that of a recognised or registered party.

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2 CEA, section 129.

3 *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*

4 Explanatory Memorandum, *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004*. [scaleplus.law.gov.au/html/ems/0/2004/0/2004040208.htm](http://scaleplus.law.gov.au/html/ems/0/2004/0/2004040208.htm)

5 Submission No 216, (AEC), Attachment C, p. 1.

## Problems with current registration processes

### Minimum number of members and application fees

4.8 The CEA requires a political party to have at least 500 members before it can be registered under the Act. There is a view that this should be retained, if not extended to 1,000 to better reflect the size of the Australian voting public.<sup>6</sup> Incidentally, the Nationals believe that the number of Members of Parliament required for registering a party should be increased from one to two.<sup>7</sup>

It is the case now that it is easier to register a political party for a federal election than it is to register a political party for certain state elections. We believe that the Electoral Act must ensure that political parties are properly constituted organisations and do not act in a manner which is deceptive to voters.<sup>8</sup>

4.9 There are those, however, that feel that no minimum is required: the Democratic Labor Party, for example, feels that the recognition of a party is a matter for the members of the party.<sup>9</sup> They submit that there should instead be a minimum number of electors, rather than members.

4.10 Mr Antony Green is of the view that the CEA requires amendment to include a definition of “membership” of political parties, and to provide the AEC with an oversight power to decide disputes about internal party ballots (in light of previous JSCEM consideration of whether false enrolment by political parties has been used to manipulate internal party ballots) of disputes instead of resorting to the courts. This is an important issue as there have been disputes over whether a party has the 500 members required under the Act, so a widening of the powers of the AEC could result in the swifter resolution of any such disputes.<sup>10</sup>

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6 See, for example, Submission No 125, (Festival of Light), p. 3; Submission No 92, (The Nationals).

7 Submission No. 92, (The Nationals); Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, p. 58.

8 Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, p. 57.

9 Mr John Mulholland, Democratic Labor Party, *Evidence*, Monday, 25 July 2005, p. 93.

10 Submission No. 73, (Mr A Green), pp. 1-2.

- 4.11 As noted above, non-parliamentary parties must provide a list of 500 members with their application for registration. One of the most obvious ways for the AEC to check the bona fides of the names provided on such lists is to check them against the electoral roll.
- 4.12 Given that section 123(3) of the CEA requires only that members of parties be entitled to enrolment, not actually enrolled, the AEC is unable to reject an application for registration if this check of the membership list against the electoral roll shows a large number of discrepancies (that is, members not enrolled or not correctly enrolled).

#### **The Committee's view**

- 4.13 The Committee is of the opinion that the minimum number of members required for registration should remain at 500 and the fee for registration remain at the present level.
- 4.14 However, given that enrolment is compulsory for eligible persons, it is not unreasonable to expect that the 500 members on which a political party relies in order to seek or retain registration, actually be enrolled, instead of being entitled to enrol.
- 4.15 This should not be taken to suggest that persons who are not Australian citizens should be precluded from being members of political parties. It merely makes the point that the 500 members that the party relies on for registration and continued registration are to be enrolled.
- 4.16 There must also be a degree of rigour applied to the requirement that a party is established on the basis of a written constitution.
- 4.17 It is only proper to expect that an organisation that has the election of one of its members to the Commonwealth Parliament as one of its aims, to exhibit a good degree of organisational ability and responsible management, such as is already required of other types of organisations that represent or provide advocacy on behalf of members.
- 4.18 A party should be able to demonstrate, to the satisfaction of its members and relevant authorities, the process by which it is managed in respect of its administration, management and financial management. It is essential that these elements be included in the written constitution.
- 4.19 Moreover, to ensure an appropriate level of transparency, the constitution should be publicly available on the AEC website from the

time a party makes application for registration, and following this, whilst ever the party remains registered.

- 4.20 Registered clubs, for example, are required to have a constitution that among other things sets out the requirements for gaining, maintaining and ceasing membership. Clubs must also maintain membership registers. These registers are required to be up to date and be available for inspection by the relevant authority.
- 4.21 Members of clubs are required to demonstrate a commitment to the club. This commitment is usually demonstrated by remaining a financial member of the club and by adopting and maintaining the standards of dress and behaviour set down in the club constitution or rules.
- 4.22 It is not unreasonable, therefore, to expect that political parties would, or should, be organised along similar lines. Parliamentary parties are already organised in this manner, as are trade unions and clubs.
- 4.23 A political party should have a reasonable constitution in place. It should, at the very least:
- clearly indicate that it is a political party;
  - indicate that it intends to participate in the federal election process;
  - contain certain minimum requirements in relation to its operations, specifically that it:
    - ⇒ be written;
    - ⇒ include the aims of the party, one of which must be the endorsement of candidates to contest Federal Elections;
    - ⇒ set out requirements for becoming a member, maintaining membership and ceasing to be a member;
    - ⇒ outline the process for the election of office holders (including, but not limited to, the registered officer, the Executive and any committees);
    - ⇒ detail the party structure;
    - ⇒ detail the procedure for amending the constitution; and
    - ⇒ detail the procedures for winding up the party.
- 4.24 The central element of the party constitutional requirements is the definition of a 'party member' as this can have far reaching implications on the registration of parties.

- 4.25 Political parties should be able to show that the memberships on which they rely for registration or for the maintenance of registration are demonstrable. They should be able to demonstrate that their members are committed to the aims of the party by maintaining financial membership.
- 4.26 The CEA should, therefore, be amended to expand the definition of an eligible political party.

### **Recommendation 18**

- 4.27 **The Committee recommends that the Commonwealth Electoral Act be amended to expand the definition of an eligible political party so that:**

*Eligible political party* means a political party that is either:

- a parliamentary party; or
- a political party that has at least 500 financial members who are currently enrolled on the electoral roll; and
- is established on the basis of a written constitution that incorporates the minimum requirements for the constitution of a registered political party contained in the Commonwealth Electoral Act and complies with the State or Territory legislation to the extent that it applies.

### **Recommendation 19**

- 4.28 **The Committee recommends that the Commonwealth Electoral Act be amended to provide minimum requirements for the constitution of a registered political party.**

**Potential minimum requirements would include:**

- a clear indication that it is a political party;
- a statement that it intends to participate in the Federal Election process;
- certain minimum requirements in relation to its operations, specifically that it:

- ⇒ **be written;**
  - ⇒ **include the aims of the party, one of which must be the endorsement of candidates to contest Federal Elections;**
  - ⇒ **include the process by which the party is managed in respect of its administration, management and financial management;**
  - ⇒ **set out requirements for becoming a member, maintaining membership and ceasing to be a member;**
  - ⇒ **outline the process for the election of office holders (including, but not limited to, the registered officer, the Executive and any committees);**
  - ⇒ **detail the party structure;**
  - ⇒ **detail the procedure for amending the constitution; and**
  - ⇒ **detail the procedures for winding up the party.**
- **the constitution of all parties registered with the AEC be made publicly available on the AEC's website.**

## Confusion over party names

4.29 The amendments to section 129 of the CEA in 2004 had the effect of preventing applicant parties from registering names that are too similar to that of a recognised or registered party. Since that time, any parties attempting to register a name have been prevented from doing so if the name:

is one that a reasonable person would think suggests that a connection or relationship exists between the party and a registered party if that connection or relationship does not in fact exist'.<sup>11</sup>

4.30 Confusion still arises, however, because parties that registered names prior to the 2004 amendments are still permitted to use those names. This has created the situation where the previous system directly contradicts the current party registration system.

While the Electoral Act now prevents the registration of unaffiliated parties using names of other parties in their

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11 CEA, subsection 129(da).

names, it still does nothing to address those that were registered before that time. ... [a]llowing parties that are not affiliated to use parts of another party's name is distorting, inappropriately affects voters when they vote ... or at the very least makes it unnecessarily confusing for any voter.<sup>12</sup>

the name of [liberals for forests] is potentially confusing and can mislead voters into believing that liberals for forests has some connection to the Liberal Party or gives its preferences to the Liberal Party. While we welcome the improvement to the Commonwealth Electoral Act passed by Parliament last year to clarify the provisions governing registration of party names for new parties applying for registration, there remains an issue about confusion caused by the name of liberals for forests which is already registered.<sup>13</sup>

- 4.31 This was raised as a particular issue in the 2004 Federal Election in the case of Liberals for Forests (see detailed discussion about the problems surrounding Liberals for Forests in Chapter 5, *Election day*).<sup>14</sup> The Nationals have also previously complained about the New Country Party, which it felt had a historical association with the National Party. The complaint about the New Country Party was rejected by the AEC, so the potential for confusion between these two parties, and for The Nationals to be deprived of votes that rightfully belong to them, remains.<sup>15</sup>
- 4.32 Liberals for Forests was registered as a political party in 2001 after a decision by the Administrative Appeals Tribunal, which overturned an AEC decision to refuse registration.<sup>16</sup> Even though the CEA now contains requirements preventing the registration of similar names, this provision does not apply retrospectively to parties already registered prior to the amendments coming into force. So, as Liberals for Forests is a registered political party, it was entitled to use its party name in political advertising.
- 4.33 The Committee heard strong evidence that the design of the Liberals for Forests how-to-vote cards led to voters being confused as to where
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12 Mr A Sochacki, Chairman, Richmond Electorate, The Nationals, *Evidence*, Thursday, 7 July 2005, p. 3.

13 Submission No. 95, (Liberal Party of Australia)

14 Under *Richmond Electorate: Liberals for Forests HTVs*.

15 Submission No. 92, (The Nationals).

16 *Woollard and Australian Electoral Commission and Liberal Party of Australia (WA Division) Inc* [2001] AATA 166, cited in Submission No. 166, (Liberals for Forests), p. 1.



their vote would flow.<sup>17</sup> The layout and colour of the Liberals for Forests How-to-Vote card were felt to be very similar to that used by the Liberal Party,<sup>18</sup> even though the AEC determined the card conformed to the relevant provisions of the CEA:<sup>19</sup>

Following the election, a reasonable number of people called either our campaign office or the then sitting member's office to say that they were confused when they voted: they thought they were voting for the Liberals when, if you follow the preference ticket, their vote ended up with Labor.<sup>20</sup>

- 4.34 This point was emphasised by evidence from Mrs Bronwyn Smith, who responded to a question about whether she had been misled by the Liberals for Forest actions by saying

I thought that they were an environmentally based Liberal group that were going to suddenly start protecting the environment. I thought, 'That's good', and that naturally it would go to Larry.<sup>21</sup>

- 4.35 These issues are canvassed in greater detail in Chapter 5, *Election Day*.

### **The Committee's view**

- 4.36 Although the CEA now contains provisions that were designed to avoid confusion, the Committee has heard and received clear evidence that these mechanisms have not reduced confusion for electors. This is particularly the case regarding political parties that have similar names. It is essential, in the Committee's opinion, that this confusion be removed.

## **Privacy of political party members**

- 4.37 The Democratic Labor Party also raised concerns about the privacy of the names of members of political parties because there is no

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17 Submission No. 92, (The Nationals); Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, pp. 28-29.

18 Submission No. 92, (The Nationals).

19 See Submission No. 172, (AEC), pp. 8-9 and Attachment B.

20 Mr A Sochacki, Chairman, Richmond Electorate, The Nationals, *Evidence*, Thursday, 7 July 2005, p. 3; Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, pp. 58-59.

21 Ie The Hon Larry Anthony MP, the Nationals' sitting member. Ms B Smith, *Evidence*, Thursday, 7 July 2005, p. 27.

guarantee that the lists of party members will not be made public.<sup>22</sup> The converse of this view, however, is that parties should be required to provide proof that they actually do have members (who are not relied on by any other party for the purposes of registration), and the only way of doing so is by identifying them by name and address.<sup>23</sup>

### **The Committee's view**

- 4.38 The Committee acknowledges that some parties have concerns that membership lists may be made public; however, the Committee notes the AEC's advice that membership lists are used only for the purposes of establishing a party's eligibility for registration or continuing registration and are not made public by the AEC.
- 4.39 The Committee believes that the public benefit is best served by requiring political parties to provide the names of such members to the AEC as proof for party registration purposes as required under the CEA.

## **An option for reform**

### **De-registration and re-registration of political parties**

- 4.40 As outlined above, the CEA was amended in 2004 to impose stricter requirements on the naming of political parties. For these amendments to have their desired impact, and reduce voter confusion in this area, these requirements must apply to all political parties operating in the Australian federal political system.
- 4.41 The amended section 129 cannot apply retrospectively, so a means of making all existing political parties subject to these requirements must be found.
- 4.42 A solution would be to amend the CEA to deregister all registered parties, with the exception of parliamentary parties (as defined in section 123 of the CEA) and those parties currently registered in accordance with part XI of the CEA that have, in the past, been represented in the Federal Parliament.

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22 Mr J Mulholland, Democratic Labor Party, *Evidence*, Monday, 25 July 2005, pp. 93-97; see also Submission No. 121, (Democratic Labor Party).

23 Senator Michael Forshaw, *Transcript of Evidence*, Monday, 25 July 2005, p. 95.

- 4.43 Whilst parliamentary parties and those with past representation would retain their registration, they would be under an obligation to prove to the AEC that they meet the requirements for being a parliamentary party contained in the CEA, unless they had already provided such proof in the life of the 41<sup>st</sup> Parliament.
- 4.44 All other parties would be de-registered and be removed from the Register of Political Parties. They would be required to re-apply for registration, and be required to comply with the amended registration requirements contained in the CEA, including the naming provisions in section 129.
- 4.45 This, in effect, means that where a political party applies for registration, the application will be tested against the provisions of the CEA, as they currently apply to new registrations, as well as any amended registration provisions arising from recommendations made by this Committee.
- 4.46 Where an application for registration does not meet the requirements of the CEA, the AEC will be required to write to the Registered Officer of the applicant party in accordance with section 131 of the CEA and give the applicant party an opportunity to vary the application. If the applicant party fails to do so, the applicant party will not be registered.
- 4.47 Further, the more stringent registration requirements in the CEA must also apply to parties that register, or are currently registered under an acceptable name, and which then seeks to change its name after registration.
- 4.48 Any change of name proposed by a registered party must also conform to the naming requirements in the CEA.
- 4.49 This option would remove the opportunity for non-related political parties to use elements of the name of registered or recognised parties for deceptive and misleading political ends, thus reducing voter confusion. It would also ensure consistency in the registration and naming requirements for all parliamentary and non-parliamentary parties.
- 4.50 There should be no exceptions (other than parliamentary parties and those parties who have had past representation in the Federal Parliament) to the requirement to face the re-registration requirements of the CEA, even if that party is registered for State or

Territory elections under relevant State or Territory electoral legislation,<sup>24</sup> or has a member in any State or Territory Parliament.

- 4.51 In any case, that party or those parties would still be required to register or re-register under the CEA in order to stand candidates in a federal election.

## **Recommendation 20**

- 4.52 **The Committee recommends that the Commonwealth Electoral Act be amended to provide for the:**

- **Deregistration of all political parties that are not parliamentary parties (as defined in section 123 of the Commonwealth Electoral Act) or are parties that have had past representation in the Federal Parliament; and that:**
- **all existing parliamentary parties and those with past representation remain registered, but be required (where appropriate) to prove that they meet the requirements for a parliamentary party:**
  - ⇒ **where a parliamentary party has proven that it meets the relevant requirements during the life of the 41<sup>st</sup> Parliament, it will not be required to provide further proof;**
  - ⇒ **where a parliamentary party has not proven its status as a parliamentary party during the 41<sup>st</sup> Parliament, it will be required to prove this by indicating which sitting member it relies on for its status;**
  - ⇒ **where a party claims that it has past representation in the federal Parliament, it will be required to prove this by indicating which past member it relies on for its status.**
- **all other parties would have to apply for re-registration, at which point they must comply with the amended registration requirements in the CEA, including the existing naming provisions contained in section 129;**
- **where a political party applies for registration using a name which does not conform with the requirements of section 129 of**

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24 See *Parliamentary Electorates and Elections Act 1912 (NSW)*, *Electoral Act 2002 (VIC)*, *Electoral Act 1992 (Qld)*, *Electoral Act 1907 (WA)*, *Electoral Act 1985 (SA)*, *Electoral Act 2004 (Tas)*, *Electoral Act 1992 (ACT)* and *Electoral Act 2004 (NT)*.

**the CEA, the Electoral Commission shall refuse such registration;**

- **where the AEC refuses such application for registration, it must notify the applicant party that it is bound to refuse the registration and give the applicant party an opportunity to vary the original application;**
- **if the applicant party fails to vary the application the AEC shall refuse the registration; and**
- **all amended registration requirements must also be met in any case where a registered political party applies to change its registered name; or its registration is reviewed by the AEC in accordance with section 138A of the CEA.**

## **Registration of individual candidates**

4.53 As outlined in Chapter 6, *Counting the votes*, below, one of the causes of a rise in informal voting is the increasing number of candidates contesting elections. This is an issue on both House of Representatives and Senate ballot papers.

4.54 Mr Antony Green believes that changes should be made to the registration process to limit the burgeoning number of candidates. He suggests:

- applying a fee to the registration and supervision of political parties;
- requiring local endorsement for parties nominating candidates using the central list nomination procedure; and
- reviewing deposit fees, and perhaps introducing a special deposit fee for Senate Group Ticket Votes.<sup>25</sup>

4.55 Further, there is the view that the deposits for individual candidates should be increased to better discourage candidates who are not seriously running in the election.<sup>26</sup> The Festival of Light claims that:

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25 Submission No. 73, (Mr A Green), pp. 4-5.

26 Submission No. 125, (Festival of Light), p. 4.

the deposit for an individual candidate should be increased to \$500 and the deposit for a Senate candidate should be increased to \$1,000. Particularly, we believe that an individual who wishes to stand should be endorsed by 200 signatures of electors. We do not think that taxpayer funding of elections is appropriate and we would like to see an end to that practice.<sup>27</sup>

## **Extended powers for the AEC**

- 4.56 The Nationals are of the view that the CEA requires amendment to extend the current laws on misleading or deceptive publications, to also include misleading conduct. The Nationals lodged official complaints with the AEC on polling day about the behaviour of the Liberals for Forests campaign workers, and whilst these complaints were investigated, they were dismissed because the CEA covers only written material.<sup>28</sup>
- 4.57 There may, therefore, be a need for stricter controls on the conduct of campaign workers (including casual booth workers), where this conduct can confuse or mislead voters.<sup>29</sup>
- 4.58 Further, even where damaging or misleading materials are produced and distributed on polling day, the AEC can do very little about the circulation of these materials at that time. This is because the process for removing such materials is a legal process which can take some time to reach a conclusion.<sup>30</sup> The Nationals, therefore, believe the AEC should be given power to remove materials on polling day that are determined as being misleading or confusing for voters.<sup>31</sup>

### **The Committee's view**

- 4.59 Whilst the Committee recognises that there are problems associated with misleading conduct on polling day, changes to the CEA to allow the AEC to act on such conduct raise further, more significant problems. Such a change would require the AEC to exercise subjective judgements, which may ultimately be subsequently challenged through the legal system, thus potentially calling the result of an election into doubt.

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27 Dr D Phillips, Festival of Light, *Evidence*, Tuesday, 26 July 2005, p. 13.

28 Submission No. 92, (The Nationals)

29 Submission No. 92, (The Nationals)

30 Submission No. 92, (The Nationals).

31 Submission No. 92, (The Nationals).

## Other issues

### List of designated words for use in party names

- 4.60 Effective enforcement of the naming provisions contained in section 129 of the CEA will require the creation of two lists of words: one to specify which words are words forming parts of names of registered parties. Words appearing on this list or their plural forms may not be contained in the names of applicant parties seeking registration.
- 4.61 The other list should contain words that must not be included on the first list, for example, the words Australia, Australian and Australians must be available for use by all, as must the words party, alliance and group.

### Increased workload for the AEC

- 4.62 The introduction of the deregistration and re-registration regime outlined above would involve a significant increase in the workload of the AEC, during the deregistration and re-registration processes and a moderate increase in workload in the ongoing checking of existing registrations and re-registrations. As such, additional funding would be required to ensure the efficient processing of applications for re-registration.

### Recommendation 21

- 4.63 **The Committee recommends that the AEC be given appropriate funding to meet the additional obligations associated with de-registration and re-registration.**

## Nominations

- 4.64 People wishing to be nominated as candidates in Federal Elections must be Australian citizens who are over the age of 18. They must be either enrolled, or entitled to be enrolled, to vote. People wishing to

nominate cannot make multiple nominations, and persons are disqualified if they fail to meet certain criteria.<sup>32</sup>

4.65 A candidate may be nominated by 50 persons entitled to vote in the election or by the registered officer of a registered political party that has endorsed the candidate. A person who is a sitting member may be nominated by a single signature from a person entitled to vote in the election.<sup>33</sup>

4.66 The Committee received little evidence regarding the nomination of candidates for the Federal Election, and only the following issues were raised:

- A suggestion that all candidates be required to have local nominators (rather than a central nominations process) to limit the number of candidates and political parties in each electorate to only those genuinely interested in running;<sup>34</sup>
- A suggestion that all candidates be required to submit a nomination form to the AEC with 200 signatures of registered electors from the electorate for which the candidate is nominating. An elector may nominate only one candidate in their electorate;<sup>35</sup>
- A proposed amendment to the qualification for nomination provisions of the CEA to require, amongst other new requirements, that a candidate must have been on the electoral roll of the electorate they wish to stand in for a minimum of twelve calendar months prior to an election being called;<sup>36</sup> and
- An error on the version of House of Representatives Single Nomination – “Independent” Candidate form posted on the Internet was identified. Line 21 was missing, so if a nominator completed the available lines on the form, they would have provided only 49 signatures.<sup>37</sup> This problem was rectified by the AEC as soon as possible after it was discovered.

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32 Submission No. 165, (AEC), p.13.

33 See sections 163, 166, CEA.

34 Submission No. 73, (Mr Green), Part 2, p. 10; Mr A Green, *Evidence*, Friday, 12 August 2005, p. 65.

35 Submission No. 125, (Festival of Light), pp. 4–5.

36 Submission No. 34, (Mr John Clarkson).

37 Submission No. 134, (Mr Ivan Freys).



**The Committee's view**

As very few problems were raised about the nominations process, the current arrangements appear to be working in a satisfactory manner. The Committee, therefore, does not make any recommendations regarding nominations.



