



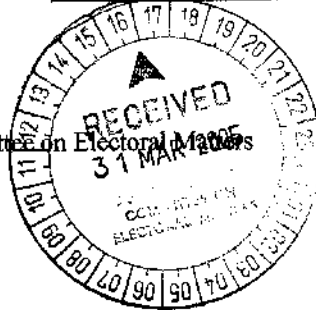
Electoral Commissioner

Joint Standing Committee on Electoral Matters
Submission No. <u>74</u>
Date Received <u>31-3-05</u>
Secretary

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Mr Tony Smith MP
Chair, Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600



Dear Mr Smith

Please find enclosed the Australian Electoral Commission's (AEC's) first submission to the Joint Standing Committee on Electoral Matters' (JSCEM's) inquiry into the 2004 federal election and matters related thereto.

This is the first of three proposed submissions. This submission discusses: the delay in the distribution of some postal votes at the 2004 federal election; the privacy of personal information on the postal vote certificate envelope; and the completion of postal vote applications before the announcement of the 2004 federal election. The submission also contains information on the AEC's proposed approach to this inquiry.

The AEC would like to request that the JSCEM agree to authorise two of the three attachments to the submission, attachments A and B, as confidential.

Attachment A is the Minter Ellison report on postal voting at the 2004 federal election. The report contains commercial-in-confidence material and material that may damage the reputation of one or more private entities if made public.

Attachment B is the AEC contract for the production of postal voting material. This contract contains commercial-in-confidence material that the AEC would prefer was not publicly available.

Should you wish to discuss these requests or any of the material in the submission, please call Mr Kevin Bodel on 02 6271 4511.

Yours sincerely

Andy Becker

3 / March 2005

AUSTRALIAN ELECTORAL COMMISSION

**FIRST SUBMISSION TO THE JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS' INQUIRY INTO
THE 2004 FEDERAL ELECTION AND MATTERS
RELATED THERETO**

31 MARCH 2005

FIRST SUBMISSION TO 2004 FEDERAL ELECTION INQUIRY

Introduction

This is the first submission by the Australian Electoral Commission (AEC) to the Joint Standing Committee on Electoral Matters' (JSCEM's) inquiry into the conduct of the 2004 federal election. This is the first of three initial submissions by the AEC at this stage.

This submission is primarily concerned with the key issues arising from the 2004 federal election, but also contains a description of the AEC's approach to the inquiry, which has changed from the AEC's approach to previous election inquiries.

The most significant issue arising during the election related to contract management and the delay in the processing of some postal votes and related problems. The issue received extensive media coverage during the election and is likely to be the key issue for the inquiry.

Following the election, the AEC engaged Minter Ellison, Lawyers, to undertake an independent inquiry into various aspects of the postal voting process. This submission contains the Minter Ellison report, which discusses the postal voting issue in depth, the AEC's response to Minter Ellison's recommendations, and a series of recommendations for the JSCEM arising out the AEC's response.

There were two other issues relating to postal voting that attracted the attention of the media during the federal election and about which the AEC received a number of complaints:

- the lack of privacy for elector information contained on the postal voting declaration envelope; and
- the large number of postal vote applications rejected because they were completed before the announcement of the election.

These issues will also be addressed as part of this submission.

AEC approach to inquiry

The JSCEM and its predecessors have undertaken inquiries into each federal election since 1983.

For some time now, the AEC's approach to these inquiries has been to make a large first submission detailing the conduct of the election and making a series of recommendations for both significant policy change and minor administrative change.

The AEC is proposing to change its approach for the inquiry into the 2004 federal election to focus on the key issues of the election and key policy issues for the forthcoming parliamentary term.

As a consequence, the AEC is proposing to make three initial submissions:

- a first submission focussed on the major issues arising out of the federal election (summarised above);

- a second submission providing a statistical and factual overview of the election; and
- a third submission focussing on key policy issues over the next three years.

A further submission may be made which follows from the recommendation of the JSCEM's report into the 2001 election, relating to the AEC's proposal for a review of the *Commonwealth Electoral Act 1918*.

Once these submissions have been made, the AEC will provide further submissions as requested by the JSCEM.

Postal voting at the 2004 federal election

The postal voting provisions in the *Commonwealth Electoral Act 1918* (the Electoral Act) date back to Federation. The provisions have been significantly amended over time, but the principles involved remain the same. Postal voting is one of two mechanisms to enable electors who cannot attend a polling place on polling day to fulfil their voting obligations under the Electoral Act.¹ Over 700,000 postal voting packages were issued at the 2004 federal election.

There are two mechanisms for obtaining a postal vote. The first is to complete a postal vote application (referred to as a PVA) after an election has been announced or the writs for the election have been issued, whichever is first. The second is to apply to become a general postal voter (referred to as a GPV). An application to become a general postal voter can be made at any time, and, once registered, the elector will then be sent a postal voting package automatically at each election.

In each case, an elector must have grounds for making the application. Generally, the grounds are that the applicant is unable to attend a polling place on polling day.²

During an election, postal voting packages are sent to electors who apply for a postal vote and electors who are general postal voters. The packages generally contain the ballot papers, a postal voting certificate (referred to as a PVC) envelope, and some information on how to complete the postal vote.

Postal voters must fill in the ballot papers, seal the ballot papers in the postal vote certificate envelope, and complete the declaration on the postal vote certificate envelope on or before polling day. The elector must then return the completed package to the AEC, where the appropriate Divisional Returning Officer must receive it within 13 days after polling day.

The most significant electoral administration issue arising out of the 2004 federal election was the delay in the production and distribution of some postal voting packages and associated issues. The associated issues include: the dispatch of 558 of postal voting packages to the wrong address; the failure to produce 1832 postal voting packages for electors in Queensland; and the inclusion of some NSW Senate ballot papers in postal

¹ The other mechanism that enables electors who cannot attend a polling place on polling day to vote is pre poll voting.

² For a full list of the grounds for applying for a postal vote, see Schedule 2 of the Electoral Act. For a full list of the grounds for applying to become a general postal voter, see subsection 184A(2) of the Electoral Act.

voting packages in Queensland which resulted in 12 NSW Senate ballot papers being completed and returned to the AEC.

A total of 3.9% of postal vote applicants failed to vote at the 2004 federal election. This represents an increase of 63% over the number of postal vote applicants who failed to vote at the 2001 federal election.

The Minter Ellison Inquiry

On 29 October 2004, the AEC contracted Minter Ellison to conduct an inquiry into postal voting at the 2004 federal election. The terms of reference for the inquiry were as follows:

To investigate the problems encountered in certain aspects of postal voting at the 2004 federal elections and to provide a report on the following key matters:

- What went wrong with postal voting processing;
- How the AEC dealt with issues as they arose;
- An examination of the context and process failures and successes;
- Recommendations for any changes that should be made for the future.

Specifically, the inquiry is asked to address the following non-inclusive list of issues:

- the initial deluge of postal vote applications;
- delays in delivery;
- the 568 postal vote certificates sent to incorrect addresses;
- the delayed regeneration of 68 ACT and 2,043 Queensland spoilt postal vote certificate envelopes;
- the 1,832 spoilt postal vote certificate envelopes from a central print batch lodged on 20 September 2004 that were not regenerated;
- the inclusion of New South Wales Senate ballot papers in some mailouts of postal voting material for Queensland.

The inquiry is also asked to consider:

- whether APVIS is the optimum method of preparing and distributing postal voting materials; and
- whether risks to servicing voters in country and remote parts of Australia might be reduced by alternative methods.

Minter Ellison delivered its report on 20 December 2004. A copy of the report, which discusses the postal voting issue in detail, is at **Attachment A**.

A copy of the contract for the production of postal voting packages is at **Attachment B**.

The Minter Ellison report made 27 recommendations related to the following issues:

- providing greater certainty and effectiveness in the process by which postal votes are processed through to the preliminary scrutiny ('clarifying the rules');
- ensuring that the process under which postal voting material is produced and distributed to electors operates in a timely and efficient way ('planning for the next election'); and
- ensuring that the AEC is in a position to keep stakeholders informed on postal voting matters ('keeping electors and stakeholders informed').

The AEC has prepared a detailed response to the Minter Ellison recommendations. A copy of the response is at **Attachment C**.

In the response, the AEC has indicated that it supports 23 of the Minter Ellison recommendations (recommendations 1, 2, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27), notes two of the Minter Ellison recommendations (recommendations 6 and 9); and does not support two of the Minter Ellison recommendations (recommendations 3 and 5).

A number of the Minter Ellison recommendations require legislative change, and will therefore need the support of the JSCEM. These are discussed briefly below along with relevant recommendations for the JSCEM. These recommendations should be read in conjunction with the AEC's response to the Minter Ellison recommendations in order to come to a comprehensive understanding of the proposed changes.

Minter Ellison recommendation 1

Minter Ellison recommendation 1 states:

The exemption for PVAs from s.9 of the *Electronic Transactions Act 1999* be removed so as to allow applicants for a postal vote to lodge the completed PVA electronically.

The *Electronic Transactions Act 1999* (ETA) permits all transactions carried out with the Australian Government to be undertaken electronically unless exempted by regulation.

A number of parts of the Electoral Act are exempt from the application of the ETA, including Part XV – postal voting.³ This means that electors wishing to apply for a postal vote or to apply to become a general postal voter can only do so in writing or by fax.⁴

The exemption is required because, before a postal vote is admitted to the scrutiny, the Divisional Returning Officer must compare the elector's signature on the application for a postal vote or application to become a general postal voter, with the elector's signature on the postal vote certificate envelope. In other words, the application must contain a legible signature so that it can be compared with the signature on the postal vote certificate envelope. The signature check prevents fraud by impersonation.⁵

Changes in technology since the introduction of the ETA mean that mechanisms for electronically submitting an application with a legible signature are now widely available to electors. In particular, it may now be easier for electors to scan a signed application and e-mail it to the AEC than to fax a signed application.

Allowing electors to scan and e-mail signed applications will assist in speeding up the production and distribution of postal voting material by reducing the time between the completion of the application and production and dispatch of the postal voting package. However it should be noted that no postal voting material is distributed to electors until ballot papers have been produced, usually three days after the declaration of nominations. The AEC would expect an improvement in postal vote application delivery times of one

³ For a full list of exempt parts of the Electoral Act, see Schedule 1 of the *Electronic Transactions Regulations 2000*.

⁴ Applications for a postal vote are made under section 184 of the Electoral Act. Application to become a general postal voter is made under section 184A of the Electoral Act.

⁵ See Schedule 3, paragraphs 3 and 3A of the Electoral Act.

day or more using this method over applications made in writing, depending on the elector's location. Electors in rural and remote areas and overseas could experience an improvement in delivery time of up to a week using this mechanism.

Scanned and e-mailed applications would present no greater fraud risk than a standard written application because, once received by the AEC, exactly the same checks will be applied to written and e-mailed applications.

There would be some cost involved in increasing the capacity of the AEC's communications systems to handle a substantial increase in email traffic with large graphical attachments in order to ensure that the communications system is not overloaded during periods of intense postal vote application activity.

Recommendation:

That the JSCEM recommend that the Electronic Transaction Regulations 2000 be amended to permit electors to submit an application for a postal vote or an application to become a general postal voter by scanning and e-mailing the appropriate form.

Minter Ellison recommendation 2

Minter Ellison recommendation 2 states:

Australian electors overseas have the same opportunity to register as GPs as those in Australia.

As indicated above, general postal voters are electors who are automatically sent postal votes at an election because they meet certain grounds and they have applied to become a general postal voter.⁶

The grounds for becoming a general postal voter include that the elector does not live within 20 kilometres of a polling place or location visited by a remote mobile polling team.

Polling overseas takes place either by post or through Australian missions. Australian missions are not gazetted as polling places.⁷ In addition, remote mobile polling can only take place in remote divisions, in other words, inside specific divisions in Australia.⁸

This means that electors who are eligible to become overseas electors (that is, they have ceased to reside in Australia and have an intention to return not later than 6 years after leaving Australia)⁹ are currently eligible to apply to become general postal voters. However, this is not made specifically clear in the Electoral Act.

⁶ Applications to become a general postal voter are made under section 184A of the Electoral Act.

⁷ The full legislative basis for voting overseas is contained in sections 33, 184(3), 184(3A), and 200C(1) of the Electoral Act.

⁸ Remote mobile polling is governed by section 227 of the Electoral Act.

⁹ See sections 94, 94A and 95 of the Electoral Act.

If electors who meet the criteria to become an overseas elector apply to become general postal voters, the time taken to send postal voting material to these electors would be significantly reduced.

In addition to electors who meet the criteria to become overseas electors, the AEC believes there would be an advantage in Australian defence force personnel serving overseas, or about to be posted overseas, being eligible to become general postal voters.

Because of the nature of their work, Australian defence force personnel serving overseas are the hardest electors to reach during an election. If each member of the defence force serving overseas completed a general postal voter application before leaving Australia, they would automatically be sent postal voting material, greatly improving the chances they will be able to vote.

Recommendation:

That the JSCEM recommend that the Commonwealth Electoral Act 1918 be amended to specifically permit eligible overseas electors and Australian defence force personnel serving overseas to become general postal voters.

It should be noted that in its third submission, the AEC will be recommending an electronic voting trial for Australian defence force personnel serving overseas. This recommendation and the recommendation in the third submission are complementary. This recommendation is concerned with how Australian defence force personnel serving overseas go about obtaining a postal vote, and the recommendation in the third submission is concerned with how Australian defence force personnel serving overseas cast their votes.

Minter Ellison recommendation 8

Minter Ellison recommendation 8 states:

The rules about the receipt of PVAs from electors be changed so that a postal vote should be regarded as not having been made if it reaches the DRO after 6pm on the Thursday before polling day but the DRO should be required, if it is received after 6pm on the Thursday, but before 6pm on the Friday, to take reasonable steps to inform the applicant that the PVA has not been accepted.

Section 188 of the Electoral Act requires that the Divisional Returning Officer (referred to as a DRO) who receives a properly completed postal vote application shall post or arrange to deliver postal voting material to the applicant. The only restriction on this requirement is that, if the application is received after the last mail on the Thursday before polling day, the postal voting material must not be posted back to the applicant.

These arrangements bear little relation to the practicalities of the postal delivery system.

The amount of time needed to deliver postal voting material by mail is dependent on the location of the sender and the location of the receiver. Australia Post has recently advised the AEC that the last mailing day on which it is confident that there is an equal chance of delivery to all addresses in Australia in sufficient time for the recipient to cast a vote before polling day is the Friday eight days before polling day.

Consequently, the AEC believes that the Electoral Act should be amended to require that, where an application for a postal vote is received up to the Friday eight days before polling

day, the AEC must post the postal voting material to the applicant unless the applicant requests another practicable means of delivery.

The treatment of applications received after the Friday eight days before polling day should be based on an assessment of the likelihood that the applicant will receive their postal voting material in time to complete the postal vote before polling day.

The AEC believes that, for applications received between the Friday eight days before polling day and the Wednesday before polling day, postal voting materials should be delivered by the most practical means. In the majority of cases, delivery will still be by post, but where the AEC makes a judgement, exercised on advice from Australia Post, that posted material will not reach the elector in time, other means will be used.

Finally, after consultation with Australia Post, the AEC believes that it cannot guarantee the timely delivery of postal voting materials to any elector if their application is received after the last mail on the Wednesday before polling day, regardless of the means of delivery (as opposed to the Thursday recommended by Minter Ellison).

Consequently, the AEC believes that an application received after the last mail on the Wednesday before polling day should not be accepted because the timely delivery of the postal voting materials cannot be guaranteed. The AEC would take all reasonable steps to contact those electors whose applications are received after the last mail on the Wednesday to advise them of the need to vote by another means.

For the 2004 federal election, 7670 postal vote applications were received after the last mail delivery on the Wednesday before polling day and up to the last mail delivery on the Thursday before polling day. Provided their application was accepted, these electors were sent postal voting packages.

Of packages sent to these electors, 2881 were never returned and 1253 were rejected at the preliminary scrutiny because the electors had not cast their votes before the close of polls on polling day.

A total of 2608 postal vote applications were received after the last mail on the Thursday before polling day. As discussed above, the Electoral Act does not permit postal vote packages to be mailed if the postal vote applications are received after the last mail on the Thursday before polling day.

Recommendation:

That the JSCEM recommend that the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 be amended to require that:

- for postal vote applications received up to and including the last mail on the Friday eight days before polling day, the AEC be required to deliver the postal voting material to the applicant by post unless otherwise specified by the applicant;***
- for postal vote applications received after the last mail on the Friday eight days before polling day and up to and including the last mail on the Wednesday before polling day, the AEC be required to post or otherwise deliver the postal voting material by the best means possible; and***
- for postal vote applications received after the last mail on the Wednesday before polling day, the applications be rejected on the grounds that delivery of postal***

voting material cannot be guaranteed, and that reasonable efforts be made to contact the applicants to advise them of the need to vote by other means.

Minter Ellison recommendation 11

Minter Ellison recommendation 11 states:

The rules are changed so that:

- electors can, prior to the close of the polls, return their completed PVCs, envelope and ballot papers into the possession of the AEC by any convenient means, or post the material (provided that if posted, it is received within 13 days of polling day)
- the AEC is then responsible for ensuring it is delivered to the appropriate DRO in time for it to be included in the preliminary scrutiny.

Section 194 of the Electoral Act provides that postal votes can only be returned to designated officers in the AEC. A postal vote must be completed by close of polling on polling day, and can then be returned:

- by post to the appropriate Divisional Returning Officer within 13 days of polling day;
- by post to another Divisional Returning Officer or an Assistant Returning Officer overseas;
- by hand to a pre-poll voting officer; and
- by hand to a polling place presiding officer before the close of polling on polling day.

If the postal vote is returned to another Divisional Returning Officer, an Assistant Returning Officer overseas, a pre-poll voting officer or a presiding officer, they must make every effort to deliver the postal vote to the appropriate Divisional Returning Officer within the 13 day time limit.

Because postal votes can only be returned to designated officers in the AEC, electors cannot return postal votes to some of the more obvious places, such as the AEC Head Offices or AEC Central Office.

The AEC can see no valid reason to maintain such a restriction. Electors should be able to return their postal votes to the AEC by any convenient means, and the AEC will then ensure that it is delivered to the appropriate Divisional Returning Officer.

Recommendation:

That the JSCEM recommend that the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 be amended to allow electors to return their postal votes to any employee of the AEC by any convenient means and the AEC then deliver the postal vote to the appropriate Divisional Returning Officer within 13 days after polling day.

Minter Ellison recommendation 12

Minter Ellison recommendation 12 states:

- The rules for admitting PVC envelopes into the preliminary scrutiny are changed to say that, where the PVC envelope is not in the possession of the AEC before the close of the poll:

- it should only be accepted into the preliminary scrutiny where it is received through the post within 13 days after the close of the poll and the witness signature is dated with a day or date on or before polling day
- if there is no signature date, then irrespective of whether or not there is a legible postmark, the envelope should be rejected.

Postal votes must be completed by the close of polling on polling day. The test to determine whether this has occurred is contained in paragraphs 7 and 7A of Schedule 3 of the Electoral Act. The test requires that if a postal vote certificate envelope is postmarked after polling day, the enclosed vote is not counted. If there is no legible postmark and the signature of the witness on the postal voting certificate envelope bears a date on or before polling day, then the envelope is considered to have passed this test.

Unfortunately, there are a number of barriers to this test working effectively.

The first is that Australia Post does not collect mail posted after the last clearance on Friday until Sunday, and then postmarks the mail for Sunday. In some locations, Australia Post may not postmark the last mail on Friday until Sunday. This means that postal votes correctly completed and posted on, and in some cases before, polling day will always fail the test if the postmark is legible.

The second barrier is that the definition of a postmark is read very narrowly to be the 'official postmark', which is the stamp that cancels postage and marks the date on which Australia Post received the article. Australia Post has advised the AEC that the postmark is not the only means used by Australia Post to endorse mail.

Standard size envelopes, which include postal vote certificate envelopes, could bear either a postmark or a processing imprint. A processing imprint is not the 'official postmark' and cannot be used in the test described above. For envelopes marked with a processing imprint, the AEC must use the witness date as the test.

Finally, in rural and remote areas, Australia Post uses contractors to deliver and collect the mail. While these contractors may indicate on the envelope the date on which the mail was collected, this cannot be used for the above test. If the postal voting certificate envelope is collected before polling day, but is not postmarked until after polling day, it will fail the test if the postmark is legible.

Minter Ellison's recommendation would effectively mean that the postmark is no longer used in the test to determine whether a postal vote was cast before the close of polling on polling day. The only test would be the witness date.

It should be noted that the AEC has proposed such a recommendation on a number of occasions in the past. On each occasion, the JSCEM has rejected the recommendation on the grounds that an elector could cast a vote after polling day if the witness backdates their signature.¹⁰

Another approach suggested by the AEC in the AEC's response to the Minter Ellison recommendation would be for the elector to confirm by signing on the postal vote

¹⁰ See for example JSCEM, *Report of the Inquiry into the 2001 Federal Election and Matters Related Thereto*, June 2003, paragraph 4.20.

certificate envelope a statement such as 'I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled.' This would place the onus of proof that the elector has voted prior to the close of polling onto the elector.

Recommendation:

That the JSCEM recommend that the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 be amended so that postal voters are required to confirm by signing on the postal vote certificate envelope a statement such as 'I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled.'

Minter Ellison recommendation 24

Minter Ellison recommendation 24 states:

The AEC, with a view to increasing its availability, undertake a comprehensive review of pre-polling which would consider the following matters:

- its advantages over postal voting (eg security, immediate inclusion of the vote in scrutiny etc)
- whether it provides a genuine alternative to postal voting
- its capacity to respond as demand requires
- whether it is resourced appropriately
- whether it is advertised appropriately
- whether the CEA should be amended to remove the necessity for gazettal of the opening hours (and possibly of the place proposed to be used as a pre-poll place), provided the AEC takes appropriate steps to ensure they are appropriately advertised (including on web site etc).

Pre-poll voting can take place in one of three places: The Divisional Returning Officer's office; a pre-poll voting office; or the office of an Assistant Returning Officer.¹¹

In the main, pre-poll voting in Australia takes place at pre-poll voting offices. The Assistant Returning Officer provisions are generally used for voting overseas.

To establish a pre-poll voting office, the AEC must gazette both the location and the times of operation of the pre-poll voting office.

Minter Ellison has identified pre-poll voting as one of the mechanisms that the AEC could use to respond rapidly to voting problems such as the delay in the delivery of postal voting packages. However, the requirement to gazette the location and the times of operation of pre-poll voting offices is a barrier to using pre-poll voting in this way.

While the Gazette office is accommodating in relation to urgent matters, there will still be some time delay between the AEC's decision to open a pre-poll voting office and the gazettal. While it is possible for a gazette to have retrospective effect, this is not desirable.

¹¹ See section 200D of the Electoral Act.

Votes collected at a pre-poll voting office that is subject to retrospective gazettal will not be validly cast until the gazette is made.

The purpose of the gazettal process is to publicise the location and time of pre-poll voting. The Gazette is not widely read, and the AEC believes it is possible to allow greater flexibility in the establishment of pre-poll voting centres by replacing the requirement to gazette with a requirement to publicise the locations and times of operation of pre-poll voting offices. Such a change will mean that advertising the locations and times of operation of pre-poll voting will be on a similar footing to advertising the locations and times of operation of remote mobile polling, with similar flexibilities.

It should be noted that the full review of pre-polling recommended by Minter Ellison will be conducted. However, the AEC believes the advantages of this suggestion by Minter Ellison are obvious enough for the AEC to proceed with a recommendation to the JSCEM at this point.

Recommendation:

That the JSCEM recommend that the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 be amended to replace the requirement to gazette the location and time of operation of pre-poll voting offices with a requirement to publicise the location and time of operation of pre-poll voting offices.

Privacy and postal voting

The second significant issue at the 2004 federal election was the privacy of electors' personal information contained on the postal vote certificate envelope.

The Electoral Act requires that, when completing a postal vote, an elector must complete a postal vote certificate that contains enough information to allow the AEC to determine if the elector's vote should be included in the count.

The information required of an elector includes: their name; their enrolled address; their date of birth; their former name if their name has changed; their former address and the date on which they moved if their current address is not the same as their enrolled address; and a dated signature. The certificate also requires a dated signature from a witness.

Up to 1993, electors returned their postal votes to the AEC using a single envelope with the postal vote certificate clearly visible on the outside of the envelope. Before the 1993 federal election, and in response to privacy complaints, the AEC developed a postal vote envelope with a 'privacy flap'. The privacy flap covered the postal vote certificate printed on the envelope and, in the absence of legislation to permit double enveloping (that is, an inner envelope containing the ballot papers on which the postal vote certificate is printed, and an outer envelope, which contains only the AEC's return address), was considered the best solution to concerns about the privacy of voter details and the secrecy of the postal ballot.

However this design solution was not entirely successful. Some postal vote certificate envelopes were returned with the ballot papers inserted between the privacy flap and the envelope itself, thus invalidating the vote. In addition, at the 1996 election, Australia Post

reported instances where postal vote certificate envelopes had split, disgorging the contents and invalidating the votes, while being processed through Australia Post mail sorting machines. The privacy flap may have been in some measure responsible for this.

In the *Report of the Inquiry into the 1996 Federal Election and Matters Related Thereto*, the JSCEM recommended that the Electoral Act and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) be amended to allow double enveloping of postal votes.¹²

The Government response supported this recommendation and the Electoral Act and Referendum Act were amended accordingly by the *Electoral and Referendum Amendment Act 1998*.

At the 1998 federal election it became apparent that the double envelope was causing a significant number of ballot papers to be discarded, which would not have occurred with the single envelope. In submission 88 to the JSCEM's inquiry into the 1998 federal election, the AEC reported that over 5% of Senate postal ballot papers and 2% of House of Representatives postal ballot papers were returned outside the postal vote certificate envelope but within the outer envelope addressed to the relevant Divisional Returning Officer. As required by the Electoral Act, these ballot papers were discarded and were not entered into the count.¹³

A similar double envelope arrangement was used at the 2001 federal election. For this election, the number of discarded postal votes as a result of ballot papers being returned outside the postal vote certificate envelope increased to around 10%.

The matter of discarded postal votes as a result of double enveloping was not raised at the 2001 federal election inquiry. However, the AEC did recommend, as part of the technical amendments, that the Electoral Act be amended to allow the AEC to use window face envelopes because it is more efficient to print both the certificate and the return address on one envelope than to print the certificate on one envelope and the return address on another.

During the drafting stage for the *Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Act 2004*, the AEC decided it would be more useful to amend the Electoral Act and the Referendum Act to allow the AEC discretion in how it packaged postal voting materials.

Based on this amendment, the AEC made a decision to use a single envelope for the 2004 federal election, but to include instructions for the use of a second outer envelope if electors were concerned about their privacy. The AEC's intent in this approach was to reduce as far as possible the number of discarded postal votes associated with double enveloping, while providing electors with a mechanism to protect their privacy if they wished.

¹² JSCEM, *Report of the Inquiry into the 1996 Federal Election and Matters Related Thereto*, June 1997, paragraphs 5.16-5.21.

¹³ AEC, *Submission 88 to the JSCEM inquiry into the 1998 federal election*, March 1999, paragraphs 8.4.4 – 8.4.9.

Despite the option provided to electors to return their postal vote certificate envelopes in an outer envelope, the AEC received a number of complaints about the privacy of the personal information recorded on the postal vote certificate envelope, and the AEC understands that this is an issue constituents have also been raising with members of the JSCEM.

Within the framework of the approach adopted by the Parliament over the last ten years on this issue, the debate about double enveloping comes down to two alternatives: a single envelope, which eliminates the problem of discarded postal votes associated with double enveloping, or a double envelope, which protects the privacy of the elector.

An alternative approach, previously raised by the AEC during the inquiry into the 1998 federal election, but not taken up the JSCEM, would be to amend the Electoral Act and the Referendum Act to allow ballot papers returned to the AEC outside the postal vote certificate envelope but inside the outer envelope to be included in the count. This would effectively 'save' the 10% of postal votes that would have been discarded, while allowing for the privacy protection of double enveloping.

The disadvantage of this approach would be a reduction in the protection of the secret ballot for those electors who return their ballot papers outside the postal vote certificate envelope. However, if the JSCEM is concerned about this issue, and given the deadlock between privacy and discarded ballot papers on this issue, the AEC believes this approach is worth reconsidering.

Recommendation:

That the JSCEM recommend that the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 be amended to make ballot papers returned to the AEC outside the postal vote certificate envelope but inside the return envelope admissible to further scrutiny.

Postal vote applications made prior to the announcement of the election.

Subsection 184(4) of the Electoral Act states that an application for a postal vote cannot be made until after the issue of the writ for an election or after the public announcement of an election, whichever comes first.

Applications for postal votes are available from a number of sources. The AEC provides applications on request, on the internet, and from AEC offices. The AEC also provides postal vote applications to: Australia Post post offices; some Australia Post agencies; Department of Foreign Affairs and Trade and Austrade posts; and Senators and Members of Parliament.

In addition, the AEC provides electronic copies of the postal vote application to candidates and political parties for inclusion in other material produced by the candidate or political party. The distribution of postal vote applications with other material by candidates and political parties has become a ubiquitous campaign tool.

While the AEC will not make postal vote applications available to the public until after the announcement of the election or the issue of the writ, candidates and political parties are

increasingly including the postal vote application in material distributed to electors prior to the announcement of the election.

At the 2004 federal election, this became a problem as electors applied for a postal vote before the election had been announced. As indicated above, postal vote applications made before the announcement of the election or before the issue of the writs, whichever comes first, cannot be accepted.

Figure 1 below details the extent of the problem.

Fig. 1: Number of Postal Vote Applications Received by the AEC and Number Rejected as a Result of Being Dated Before the Announcement of the Election – 2004 Federal Election

STATE	DIVISION	TOTAL RECEIVED	REJECTED - DATED BEFORE ELECTION ANNOUNCED
ACT	CANBERRA	5133	41
	FRASER	5694	0
ACT Total		10827	41
NSW	BANKS	4974	12
	BARTON	4682	8
	BENNELONG	5721	11
	BEROWRA	5195	10
	BLAXLAND	4092	11
	BRADFIELD	6214	4
	CALARE	3862	23
	CHARLTON	5592	36
	CHIFLEY	3362	19
	COOK	4787	7
	COWPER	3936	10
	CUNNINGHAM	6047	5
	DOBELL	5146	35
	EDEN-MONARO	6147	37
	FARRER	5471	17
	FOWLER	3225	13
	GILMORE	4759	8
	GRAYNDLER	4446	15
	GREENWAY	4497	2
	GWYDIR	4540	15
	HUGHES	4357	19
	HUME	4805	12
	HUNTER	4377	34
	KINGSFORD SMITH	4809	1
	LINDSAY	3833	10
	LOWE	5639	15
	LYNE	3921	18
	MACARTHUR	3339	7
	MACKELLAR	4772	16
	MACQUARIE	4868	9
NSW Total		244148	758
NT	LINGIARI	2083	1
	SOLOMON	2172	0
NT Total		4255	1
QLD	BLAIR	6097	1
	BONNER	6103	36
	BOWMAN	5083	24
	BRISBANE	6106	7
	CAPRICORNIA	7257	0
	DAWSON	5078	1
	DICKSON	4638	3
	FADDEN	4637	7
	FAIRFAX	4262	7
	FISHER	5141	20
	FORDE	5399	3
	GRIFFITH	6476	27
	GROOM	5644	0
	HERBERT	4742	15
	HINKLER	7355	8
	KENNEDY	6460	2
LEICHHARDT	4325	7	

	LILLEY	6953	16
	LONGMAN	5215	29
	MARANOVA	11917	31
	MCPHERSON	4815	0
	MONCRIEFF	4881	5
	MORETON	6176	16
	OXLEY	5277	0
	PETRIE	6241	1
	RANKIN	5720	7
	RYAN	5289	29
	WIDE BAY	6356	1
QLD	Total	163643	303
SA	ADELAIDE	5974	17
	BARKER	4704	10
	BONYTHON		
	BOOTHBY	5157	21
	GREY	5222	8
	HINDMARSH	5579	12
	KINGSTON	5018	14
	MAKIN	4412	5
	MAYO	4861	16
	PORT ADELAIDE	4533	0
	STURT	5302	4
	WAKEFIELD	4281	11
SA	Total	55043	118
TAS	BASS	4072	3
	BRADDON	3256	12
	DENTSON	4101	12
	FRANKLIN	3653	14
	LYONS	3590	18
TAS	Total	18672	59
VIC	ASTON	5910	2
	BALLARAT	5772	0
	BATMAN	5592	0
	BENDIGO	5552	32
	BRUCE	5550	2
	CALWELL	3691	7
	CASEY	5622	7
	CHISHOLM	6480	11
	CORANGAMITE	6404	12
	CORIO	5126	20
	DEAKIN	7808	4
	DUNKLEY	6058	4

	FLINDERS	6018	24
	GELLIBRAND	4622	8
	GIPPSLAND	5850	8
	GOLDSTEIN	6116	1
	GORTON	3879	16
	HIGGINS	6729	18
	HOLT	4764	15
	HOTHAM	5419	0
	INDI	5368	14
	ISAACS	5842	7
	JAGAJAGA	6492	15
	KOOYONG	5737	15
	LA TROBE	6514	9
	LALOR	3513	1
	MALLEE	4881	3
	MARIBYRNONG	4654	0
	MCEWEN	8094	3
	MCMILLAN	5405	27
	MELBOURNE	4270	6
	MELBOURNE PORTS	9222	34
	MENZIES	5465	2
	MURRAY	3907	8
	SCULLIN	4341	14
	WANNON	5910	0
	WILLS	5551	16
VIC	Total	208128	365
WA	BRAND	3527	1
	CANNING	3435	3
	COWAN	3195	15
	CURTIN	4659	6
	FORREST	3047	0
	FREMANTLE	3400	9
	HASLUCK	3317	0
	KALGOORLIE	3491	0
	MOORE	3194	4
	O'CONNOR	3565	5
	PEARCE	3715	21
	PERTH	3869	0
	STIRLING	4233	13
	SWAN	4017	1
	TANGNEY	3613	0
WA	Total	54277	78
Australia	total	758993	1723

While the number of applications dated before the announcement of the election was not large in most divisions, there were over 40 in Canberra and Richmond, and over 35 in Charlton, Dobell, Eden-Monaro, and Bonner.

In each instance, the AEC contacted the elector and informed them that their application could not be accepted because it was dated prior to the announcement of the election, giving the elector the opportunity to submit another application or to make other arrangements to vote. However, the AEC cannot guarantee that all electors who make an

early application can be reached in sufficient time for them to make other voting arrangements.

The AEC will be taking measures at the next federal election to inform candidates and political parties that it is inadvisable to distribute postal vote applications prior to the announcement of the election.