The Parliament of the Commonwealth of Australia

Report on the conduct of the 2007 federal election and matters related thereto

Joint Standing Committee on Electoral Matters

June 2009
Canberra

ISBN 978-0-642-79156-6 (Printed version)

ISBN 978-0-642-79157-3 (HTML version)

Chair's foreword

The publication of this report into the conduct of the 2007 federal election marks 25 years since the implementation of major reforms to the *Commonwealth Electoral Act 1918* which were implemented by the *Commonwealth Electoral Legislation Act 1983* and came into effect for the 1984 federal election. These reforms included changes to redistribution processes, the implementation of public funding of election campaigns and the establishment of the Australian Electoral Commission (AEC).

This report continues the tradition of examining and reporting on the conduct of federal elections and relevant legislation which has been carried out by the Joint Standing Committee on Electoral Matters and its predecessor, the Joint Select Committee on Electoral Reform.

Federal elections in Australia are remarkably complex logistical events. The 2007 election was the largest electoral event undertaken in Australia's history, with 13,646,539 electors on the electoral roll, to whom 13,364,359 sets of ballot papers were issued, with some 12,930,814 actually being counted in House of Representatives Elections.

Australian citizens enjoy a fundamental right to vote which has its basis in sections 7 and 24 of the Constitution. It is evident, however, that at least 466,794 electors were unable to exercise the franchise correctly at the 2007 election, either because they were not on the electoral roll, or they were on the roll with incomplete or incorrect details. Much of this disenfranchisement results from changes to the *Commonwealth Electoral Act 1918* made following the 2004 election.

The 2007 election was notable also because it demonstrated clearly that Australians have increasing expectations that electoral services and information should be provided in a convenient fashion that reflects and responds to increasingly busy lifestyles.

This was reflected by a significant increase in early and declaration voting, increases in the number of enrolment forms sourced from the Internet and a

growing reluctance on the part of electors to interact with the AEC using the paper-based and physical mail systems mandated by the Commonwealth Electoral Act. The downward trend in enrolment participation evident between June 2005 and June 2007 required the AEC to undertake unprecedented and costly enrolment stimulation activities, including the expenditure of some $24 million in advertising costs, to arrest the decline in the lead up to the 2007 election.

Measures aimed at modernising the means of communication between electors and the AEC feature prominently in this report. Many recommendations are aimed at ensuring enrolment and voting processes are modernised so that they meet the expectations of the community both now and into the future.

Where modernisation has been recommended, the committee has sought to ensure that the integrity of the electoral systems and processes is maintained. Such is the case with home division pre-poll votes, which the committee recommends should be cast as ordinary votes wherever practicable. This will have the effect of meeting community expectations for convenience with the added benefit that more votes will be counted by the AEC on election night.

The committee looked closely at many aspects of existing electoral legislation, including amendments to the Commonwealth Electoral Act made in the lead up to the 1998 election and especially those made following the 2004 election — with a view to determining if they have had the effect of limiting or restricting the franchise.

Where evidence has shown this to be the case, recommendations aimed at restoring safety net provisions that had been repealed or amended by the previous government, have been made. Such measures seek to restore and protect the franchise. This is demonstrated by the first recommendation: that the traditional 7 day close of rolls period be reinstated.

Changes to formality rules made after the 1996 election, to address 'Langer style voting' caused a significant rise in the number of ballot papers ruled informal — particularly those with genuine numbering errors, cast by elderly and confused electors which had previously been saved. Some 91,354 votes were ruled informal at the 2007 election due to non-sequential numbering errors. Too many genuine electors are being disenfranchised in order to address Langer style voting. Whilst the rate of informality is lower in 2007 than in 2004, it is still significantly higher than in 1996. This report recommends returning to the previous safety net, whilst continuing to advocate retention of full preferential voting.

The years leading up to the 2007 election saw the creation and perpetuation of the mythical 'straw man' of electoral fraud. The straw man has been used to create and perpetuate an erroneous view that electoral fraud is commonplace and to overstate its potential effects. It is worth quoting from the AEC's first submission to the inquiry in which the AEC stated categorically: 'Turning first to entitlement,

it can be clearly stated, in relation to false identities, that there has never been any evidence of widespread or organised enrolment fraud in Australia'.

The committee formed the view that amendments to enrolment and voting processes made by the former government on the back of this straw man, made no difference to electoral integrity, but had the effect of disenfranchising many thousands of otherwise eligible voters at the 2007 election.

Provisional voters were required to show proof of identity at the time of voting or within 5 working days following the election. This amendment, implemented under the guise of eliminating non existent electoral fraud, effectively disenfranchised some 27,529 electors whose provisional votes were rejected out of hand as a result. It must be kept in mind that only 64 cases of multiple voting were referred to the Australian Federal Police following the 2004 election and 10 in 2007. It is obvious that the amendment to provisional voting was heavy handed and unnecessary, especially when the elector signature on the provisional vote envelope could have easily been compared to the signature on the original enrolment forms held by the AEC to confirm the identity of the voter.

Census data reveals that Australians are increasingly mobile. In 2006, almost 7.5 million people (43.1 per cent) lived at a different address than five years earlier. Prior to the 2007 elections the former government removed a long-standing safety net, which protected the franchise of electors removed from the roll in error by the AEC, by reinstating them to the roll where they subsequently lodged a declaration vote for the same electorate, or in some limited circumstances in the same state or territory from which they had been removed.

At the 2004 election some 77,231 electors were added to the electoral roll after the close of rolls. This was down from a high of 97,425 electors in 1998, and was made up mainly of electors reinstated to the roll after having been removed in error by the AEC in circumstances like those outlined above. In contrast, at the 2007 election the roll grew by only 1,466 electors because of these amendments.

The fundamental right of Australian citizens to participate in free and fair elections to choose the government of their choice has been eroded by such amendments. Many of the recommendations contained in this report seek to reform electoral legislation so that it facilitates and protects enrolment and voting, instead of placing obstacles in the way of those who seek to exercise the franchise.

Methods of communication are changing rapidly, with society relying more on electronic interactions than in the past.

Electoral legislation is, however, overly prescriptive and reflective of the paper-based age in which it was created. As a result, methods and processes prescribed in the legislation are becoming increasingly ineffective in achieving

acceptable rates of enrolment between elections. Paper-based enrolment processes appear to discourage electors, especially those who are highly mobile, from maintaining up-to-date enrolment and they prevent the AEC from being innovative and creative in response.

The Commonwealth Electoral Act requires amendment to allow the AEC to become innovative and devise modern day strategies to increase enrolment and electoral participation. These strategies must permit electronic communications and must allow flexibility in the design, delivery and receipt of electoral forms to suit the differing needs of electors. It is important that the Commonwealth Electoral Act provide flexibility so that the AEC may develop modern strategies to encourage electoral participation amongst younger Australians.

A number of recommendations are aimed at achieving these ends. These include: allowing the AEC to receive information from electors via an enrolment website, allowing postal vote applications to be lodged electronically, lowering the provisional enrolment age from 17 to 16 years, and encouraging schools and other education providers to participate in the enrolment process by receiving a small bounty for each valid enrolment form they receive and forward to the AEC.

The evidence and submissions received by the committee provide a wealth of information and will no doubt provide interested people with much statistical and empirical evidence to assist their further research into electoral matters.

This report contains election data from a number of elections and from a variety of sources. That data is used in order to show the effects of changes to electoral legislation made by the former government.

Much of the data used for this comparison may also be of use to others. These selected data can be found at Appendix C to the report.

I express thanks to former Electoral Commissioner Mr Ian Campbell, new Electoral Commissioner Mr Ed Killesteyn and the staff of the Australian Electoral Commission, who met information requests in a professional and timely manner.

I thank the Members and Senators of the committee for their work and contribution to this report, in particular the Deputy Chair Mr Scott Morrison and the leader of the Greens Senator Bob Brown.

Finally I would also like to thank the committee secretariat for their work in preparing this report.

Daryl Melham MP
Chair

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Chair	Mr Daryl Melham MP	
Deputy Chair	Mr Scott Morrison MP	
Members	Mr Michael Danby MP	Senator Simon Birmingham
	Hon Bruce Scott MP	Senator Bob Brown
	Mr Jon Sullivan MP	Senator Carol Brown
		Senator Steve Hutchins
		Senator the Hon Michael Ronaldson

Committee Secretariat

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Terms of reference

On 27 February 2008, the Special Minister of State requested the Committee to conduct an inquiry with the following terms of reference:

> That the Joint Standing Committee on Electoral Matters inquire into and report on the conduct of the 2007 election and matters related thereto.

On 12 March 2008, the Senate agreed to the following resolution:

1. That the following matters be referred to the Joint Standing Committee on Electoral Matters for inquiry and report:

   All aspects of the 2007 Federal election and matters related thereto, with particular reference to:

   a. the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;

   b. the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;

   c. the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;

   d. the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;

   e. the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;

f. the availability and efficacy of `free time' provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;

g. the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;

h. the relationship between public funding and campaign expenditure; and

i. the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.

2. That in conducting the review the committee undertake hearings in all capital cities and major regional centres and call for submissions.

On 14 May 2008 the Senate agreed to the following resolution:

That the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008 be referred to the Joint Standing Committee on Electoral Matters as a particular part of its inquiry into all aspects of the 2007 Federal Election for inquiry and report not before June 2009.

List of abbreviations

ABS	Australian Bureau of Statistics
ADF	Australian Defence Force
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFP	Australian Federal Police
AML/CTF Act	*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
ARO	Assistant Returning Officer
APVIS	Automated Postal Vote Issuing System
ATSIEIS	Aboriginal & Torres Strait Islander Electoral Information Services
CDPP	Commonwealth Director of Public Prosecutions
CEA	Community Electoral Assistants
CEIO	Community Education and Information Officer
CDR	Court of Disputed Returns
CRU	Continuous roll update
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DRE	Direct recording electronic [voting machine]

DRO	Divisional Returning Officer
ECA	Electoral Council of Australia
EOE	Eligible overseas elector
EVM	Electronic voting machine
FCA	Federal Court of Australia
FTE	Full time equivalent
FTR Act	*Financial Transaction Reports Act 1988*
GPV	General postal voter
GVT	Group voting tickets
Hanover	Hanover Welfare Services
JCPAA	Joint Standing Committee on Public Accounts and Audit
JSCEM	Joint Standing Committee on Electoral Matters
NACARAS	Northern and Central Australia Remote Area Strategy
NTR	National Tally Room
PDA	Personal Data Assistant
PILCH	Public Interest Law Clearing House
POI	Proof of identity
PPIPA	*Privacy and Personal Information Protection Act 1998*
PVA	Postal vote application
PVP	Postal voting pack
SAAP	Supported Accommodation Assistance Program
TEC	Tasmanian Electoral Commission
TES	Targeted enrolment stimulation

Summary and recommendations

3 Enabling the franchise

Under the current legislation, the electoral roll closes for new enrolments on the day that the writ is issued. If a future election was to be announced on the same day as the writs are issued, there would merely be hours during which new enrolments could be accepted by the Australian Electoral Commission.

The committee can see no valid reason why it should be necessary to continue with close of rolls arrangements that serve to disenfranchise electors and that require unsustainable levels of funding to be expended in order to partly mitigate their effect.

There is no evidence that fraudulent activity was reduced as a result of the amendments to the close of rolls. On the contrary, there is no evidence available that indicates systemic fraudulent activity exists.

Recommendation 1 (paragraph 3.61)

> The committee recommends that Section 155 of the *Commonwealth Electoral Act 1918* be repealed and replaced by a new section which provides that the date fixed for the close of the rolls shall be 7 days after the date of the writ.

There is a need to ensure integrity in elections and electoral enrolment. A number of changes to the Commonwealth Electoral Act were instituted by the previous government on the pretext of enhancing electoral integrity.

It is not accepted that it is desirable nor necessary to disenfranchise otherwise eligible electors in order to enhance integrity, especially as there is no credible evidence to suggest that measures like proof of identity for provisional voting have increased that integrity.

A simple comparison of the signature of the voter against the signature of the elector on a previous enrolment form is all that is required. The Australian Electoral Commission has advised it has the ability to do such checks and the Commission should carry out such a check wherever doubt exists in the mind of the Divisional Returning Officer as to the bona fides of the elector who casts a provisional or other declaration vote.

Recommendation 2 (paragraph 3.114)

The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 that require provisional voters to provide proof of identity:

- be repealed; and
- that the *Commonwealth Electoral Act 1918* be amended so that where doubt exists in the mind of the Divisional Returning Officer as to the bona fides of an elector who casts a declaration vote, that the Divisional Returning Officer is to compare the signature of the elector on the declaration envelope to the signature of the elector on a previously lodged enrolment record before making the decision to admit or reject the vote.

At federal elections from 1984 to 2004, the Commonwealth Electoral Act provided for electors who had been removed from the roll on the grounds of alleged non residence, who cast declaration votes for an address in the same electoral division from which they had been removed, to have their House of Representatives and Senate votes admitted to the count. Similarly, where such electors claimed to be enrolled at an address in the same state or territory, but in a different electoral division to that from which their names had been removed, their Senate votes were admitted but their House of Representatives votes were not.

The tradition of providing safety nets, such as allowing the reinstatement of electors in the circumstances outlined above, is consistent with the aim of ensuring electoral legislation does not create unreasonable barriers for those who qualify for enrolment and voting and who, rightfully, expect to be able to exercise their franchise at elections and referenda.

Recommendation 3 (paragraph 3.127)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who has lodged a declaration vote at an election has been removed from the roll by objection action on the ground of non-residence and

(a) the omission occurred after the election prior to the election to which the scrutiny relates, or

(b) where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the omission from the roll was made before the last such redistribution, then:

- if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but
- if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.

In preference to undertaking follow up enrolment action to seek a completed enrolment form, the Commission should amend its declaration envelopes to include a field on which electors may provide their driver's licence number at the time of voting. The provision of such information should be voluntary and its provision should not be deemed necessary in order to determine any elector's eligibility to cast a vote.

In cases where electors voluntarily provide their driver's licence or Australian passport number, or where that elector has previously met the proof of identity provisions for enrolment, the Australian Electoral Commission should be empowered to update the enrolment details of the elector on the basis of the information supplied on the declaration envelope at the time of casting the declaration vote. Similarly, provision of the driver's licence or Australian passport number should be sufficient to classify any elector as having met the proof of identity provisions for enrolment without the necessity to also fill in a new proof of identity compliant enrolment form.

Recommendation 4 (paragraph 3.129)

The committee recommends that the Australian Electoral Commission amend declaration vote envelopes to include fields in which electors may enter their driver's licence or Australian passport number, and:

- in those cases where electors provide a driver's licence or Australian passport number, or the elector has previously met the proof of identity requirements for enrolment, and the information provided on the envelope at the time of voting is sufficient to allow update of the electoral roll, the Australian Electoral Commission should update the roll on the basis of the information provided on the declaration envelopes; and
- in other cases the Australian Electoral Commission undertake appropriate follow up action to encourage the elector to enrol through the normal enrolment process.

Current postal voting arrangements can lead to delays in the delivery and processing of postal vote applications and postal votes. The situation is that some electors are clearly disenfranchised because of postal delivery issues, despite them meeting all obligations in relation to correct lodgement of postal votes. Detailed evidence gathered by the committee has demonstrated how such electors, who post valid postal votes before polling day can be disenfranchised, should their postal vote be one of the less than 10 per cent of mail items that is postmarked by Australia Post. This situation, while generally acknowledged to be an issue in rural and remote areas, applies equally to mail posted at one of the 15,000 post boxes across the country, including those in metropolitan areas.

However, the use of the postmark as a determinant of timeliness remains an independent verification that postal votes have been cast before the close of the poll, notwithstanding the number of postal votes which are ruled ineligible because of Australia Post's administrative arrangements.

There are a number of possible alternatives to the present timeframes and cut-off, including the provision of special election services by Australia Post to validate postal votes posted prior to polling day. On balance, the only solution to this problem that is presently available is to determine the validity of postal votes based on the witness date.

Recommendation 5 (paragraph 3.159)

The government consider amending the *Commonwealth Electoral Act 1918* to:

- allow the date of the witness signature on the postal vote certificate to be the determining date for validity of postal votes; and
- to require postal voters and witnesses to confirm that the required voting actions were completed prior to the close of poll in the state/territory in which the electoral division for which the voter is enrolled, is located.

The requirement to provide both the signature of an applicant and a signature of a witness on postal vote applications can lead to delays where electors make errors in filling out a postal vote application form. There appears to be no strengthening of integrity associated with the provision of witness and applicant signatures on postal vote applications.

There were some 50,000 postal voting applications lodged at the 2007 election which required rectification and it was necessary to write to the electors concerned and request them to resubmit compliant applications. Such practices are clearly time consuming and costly, with no apparent benefit to the integrity of the system arising.

Removing the need for signatures on postal vote applications will allow postal vote applications to be made electronically, significantly reduce the lodgement of defective postal vote applications, provide both savings in time and cost and have no adverse effect on the integrity of postal voting.

Recommendation 6 (paragraph 3.185)

The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to remove the requirement that postal vote applications be signed by an applicant and a witness, in order to facilitate the lodgement of postal vote applications online, electronically, or in written form, to reduce the incidence of postal vote applications being deemed defective, thus leading to delays in the delivery of postal voting packs to electors.

4 Maintaining an effective electoral roll

Overall, the proof of identity changes for enrolment have served to restrict the franchise. However, all electors, not just first time enrolees, should be required to prove their identity, but, once they have complied with the proof of identity requirements on the first occasion, that fact should be recorded on the electoral roll and they should not have to meet those requirements again, except when changing name.

The current arrangements for tiers 2 and 3 of the proof of identity scheme are burdensome and they disadvantage some Australians. Further, the current hierarchical arrangement for proof of identity, which sees different weightings applied to the various tiers, is unnecessary and overly complicated.

Recommendation 7 (paragraph 4.54)

The committee recommends that that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 which provide that proof of identity for enrolment purposes be required, be amended to:

- require that proof of identity be required for each elector once only; and
- that proof of identity may be established by the provision of a drivers licence number, Australian passport number, or the signature of another person on the Commonwealth electoral roll who shall witness and attest to the identity of the applicant. Any one of these are to be considered as acceptable forms of proof of identity for electors enrolling within Australia.

A further effect of the proof of identity measures was to require that all changes to the electoral roll initiated by electors required them to submit a fully proof of identity compliant enrolment form. The repeal of section 105(1)(ba) of the Commonwealth Electoral Act has severely restricted the ability of the Australian Electoral Commission to act on information provided by electors. Prior to repeal of this section, the Commission was able to update the electoral roll on the basis of information provided by electors on declaration envelopes and elector information reports lodged with the Commission or other electoral authorities at the time of voting.

There is no need to impose barriers or to make electors jump a series of hurdles in order to exercise the franchise which should be freely available to those who are entitled to exercise it. Section 105(1)(ba) should be reinstated to the Commonwealth Electoral Act in a form that will allow the Australian Electoral

Commission to alter the address details of enrolled electors who have previously satisfied the proof of identity measures for enrolment, on the basis of information provided by electors in written form.

Recommendation 8 (paragraph 4.62)

> The committee recommends that the *Commonwealth Electoral Act 1918* be amended to reinstate section 105 (1)(ba) in a form that will allow the Australian Electoral Commission to alter the address details for enrolled electors who have previously satisfied the proof of identity measures for enrolment, on the basis of information provided by electors in written form to the Australian Electoral Commission.

There is a history of enrolment decline between elections, and there is substance to the theory that an impending election is one of the best catalysts for electors to take enrolment action. Increased efforts must be made in between elections to continue growth.

A mix of strategies is required to arrest the decline in enrolment and to bring the roll up to a level that reflects the proportion of the population eligible to be electors. The mix must include some newer, more streamlined ways to facilitate and encourage interactions between electors and the Australian Electoral Commission.

The enrolment website concept proposed by the Australian Electoral Commission is a move in the right direction and presents opportunities for more timely, direct interaction between electors and the Commission. Under the Commission's proposal, no unauthorised person will be permitted to access elector records for the purposes of updating the roll. Electors who have satisfied proof of identity integrity checks will be permitted to transmit data by that facility to the Commission, who in turn will carry out the same level of data integrity checking as is currently performed on hard copy enrolment forms received.

The Australian Electoral Commission is confident that the existing integrity processes for enrolment update are sufficient to support online receipt of updated enrolment information from electors.

Recommendation 9 (paragraph 4.143)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for the creation, implementation and maintenance of an enrolment website designed to facilitate the receipt and use of information provided electronically by enrolled electors, in order to update the electoral roll.

Such a facility should only be provided for use by currently enrolled electors, who must be required to provide sufficient information to satisfy the Australian Electoral Commission that they are in fact the elector to whom the information relates, in the absence of a signature from the elector.

The facility must not allow any unauthorised access to the electoral roll and must not permit information contained on the electoral roll to be accessed or amended directly by any person other than an appropriately authorised Australian Electoral Commission officer.

Information provided through the facility must only be used by authorised Australian Electoral Commission officers to update the electoral roll, where that information has been subjected to and satisfies the same data integrity checks as is performed on information received through the submission of signed enrolment form.

Some electors expect information provided to one government agency will be used to update the electoral roll, or at least, that they hold an expectation that such updates are possible. Electors who provide information to government agencies like Centrelink, which have stringent proof of identity processes of their own, should be permitted to allow the agency to provide data to the Australian Electoral Commission for the purposes of directly updating the electoral roll.

There are two elements to such a process which are necessary to ensure that the process has the required degree of integrity. The first is that the elector must provide their proactive and specific consent to opt in for the data to be used to update the electoral roll. The second is that there must be surety that the proof of identity processes used by the respective government agencies have sufficient integrity to maintain the confidence of stakeholders. It is appropriate that the Minister approve the agencies from which the Australian Electoral Commission receive data for the purposes of effecting direct update to the electoral roll.

Recommendation 10 (paragraph 4.150)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the Australian Electoral Commission to receive and use information for the purposes of directly updating the electoral roll, where that information has been:

- provided by an elector or electors to an agency approved by the Minister as an agency which performs adequate proof of identity checks; and
- the elector or electors have indicated their proactive and specific consent to opt in for the information to be used for the purposes of directly updating the electoral roll, and
- the data has been provided by that agency to the Australian Electoral Commission for the purposes of updating the electoral roll.

Whilst there have been calls for enrolment to be granted automatically to those entitled to exercise the franchise, there are concerns that the dynamic nature of the roll, combined with the requirement that an elector must reside at an address for a specified period before being entitled to enrol in respect of that address work against moving to an automatic enrolment model.

However, the proof of identity processes required to establish a person's eligibility to become an Australian citizen are sufficiently rigorous to enable applicants to be admitted to the roll, firstly on a provisional basis, as is currently the case, with the voting franchise granted once the applicant has become an Australian citizen and they provide their proactive and specific consent to opt in.

Recommendation 11 (paragraph 4.159)

The committee recommends that in order to facilitate the enrolment of new citizens, that:

- section 99A be amended to allow that a person who makes an application to become an Australian citizen in accordance with the *Australian Citizenship Act 2007*, be provisionally enrolled on the Commonwealth electoral roll at the time of making the application for citizenship, where they provide proactive and specific consent to opt in, with voting entitlement gained automatically once Australian citizenship has been granted; and
- section 99B of the *Commonwealth Electoral Act 1918*, which provides that applicants for citizenship may apply for provisional enrolment in an election period, should be repealed as the amended section 99A will render it unnecessary.

There is merit in lowering the provisional enrolment age to 16 years of age, especially given that the rate of 16 year olds in full time study is significantly greater than the rate of 17 and 18 year olds.

Encouraging electoral involvement whilst the majority of younger Australians are in schools will have a twofold effect. Firstly, potential electors will be identified and encouraged to enrol at an earlier age, thus assisting the Australian Electoral Commission to engage with them at the optimum age to encourage continued involvement in the electoral process. Secondly, the Commission will be able to utilise the 'school bounty scheme' (discussed in chapter 5) as an incentive for education providers to encourage younger Australians to maintain up to date enrolment details, whilst such involvement might also encourage education providers to discuss the electoral process with young people on a more regular basis.

Recommendation 12 (paragraph 4.172)

> The committee recommends that the *Commonwealth Electoral Act 1918* be amended to change the minimum age for provisional enrolment from 17 to 16 years.

The committee has recommended a number of changes to the enrolment provisions of the Commonwealth Electoral Act in order to encourage greater participation and to remove some of the barriers to enrolment which currently exist.

There are benefits to be gained from achieving a much higher degree of harmonisation between the different systems and the Commonwealth government should enter into discussions with state and territory governments with a view to achieving a greater degree of harmonisation.

Recommendation 13 (paragraph 4.177)

> The committee recommends that the Australian Government enter into discussions with the State and Territory governments with a view to achieving a harmonised enrolment regime which leads to the use of a single enrolment form or enrolment process for the purposes of Commonwealth and state/territory enrolment.

5 Election and enrolment — State and Territory issues

One area where an additional program can be delivered at a state and territory level at relatively minor cost is to introduce a 'bounty' scheme to schools and other educational institutions in order to encourage the promotion of enrolment amongst students. Such a bounty should be paid on a $ per enrolment form collected by each school.

The introduction of such a scheme nationwide would complement other changes suggested by the committee in this report, including provisional enrolment for 16 year olds and online enrolment update (see chapter 4). Both of these changes are designed to facilitate greater participation in the electoral process especially by young Australians.

Recommendation 14 (paragraph 5.62)

The committee recommends that, in order to encourage the enrolment of young Australians, the Australian Electoral Commission introduce a national 'Schools Bounty Scheme' under which government and non-government schools, universities and technical colleges and the like would receive a specified amount for valid enrolment forms collected and forwarded to the Australian Electoral Commission.

It is important that the Australian Electoral Commission national office and state and territory offices work closely together to improve enrolment participation by determining:

- what strategies work best at a national level
- whether successful state-based strategies might also be effective in other jurisdictions; and
- whether any particular strategies are indeed only relevant to a single jurisdiction.

The committee encourages the Australian Electoral Commission to examine these issues closely, with a view to ensuring national consistency wherever possible in the state/territory-based activities and strategies undertaken to facilitate roll management activities.

Recommendation 15 (paragraph 5.71)

The committee recommends that the Australian Electoral Commission ensure national consistency wherever possible in the state/territory-based activities and strategies undertaken to facilitate roll management activities.

There is merit in developing state and territory-based enrolment targets that reflect each jurisdiction's contribution to the current national target of having 95 per cent of potential electors enrolled. Such targets should be part of the Australian Electoral Commission's internal performance management framework to underpin the national target and be reported in the agency's annual report.

Recommendation 16 (paragraph 5.73)

The committee recommends that the Australian Electoral Commission develop state and territory-based enrolment targets that reflect the contribution that is expected by each state and territory to the national enrolment target. Such targets should take account of the particular challenges faced in each state and territory and be reported annually in the Australian Electoral Commission's annual report.

6 Increasing the participation of Indigenous and homeless electors

While many of the factors that reduce participation by Indigenous electors are not directly within the Australian Electoral Commission's control, efforts by the Commission to engage Indigenous electors and provide flexible voting services will, nevertheless, make a difference to lifting Indigenous participation.

The re-introduction of an ongoing program to engage Indigenous electors is an essential element for enabling greater participation by Indigenous electors. The proposal put forward by the Australian Electoral Commission should form the basis for such a program. The costs of establishing such a program and providing for its continued operation are significant and the committee welcomes the Australian Government's commitment in the 2009-10 Budget to allocate $13 million to such a program over the next four years.

Additional flexibility for mobile polling at town camps would complement the establishment of such a program.

Recommendation 17 (paragraph 6.47)

The committee recommends that the Australian Government provide ongoing and appropriate funding for the Australian Electoral Commission to establish, deliver and maintain a program similar in purpose to the former Aboriginal and Torres Strait Islander Electoral Information Service program to provide ongoing engagement with Indigenous electors.

Recommendation 18 (paragraph 6.48)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the provision of remote mobile polling at town camps, such as in Darwin and Alice Springs.

The itinerant voting provisions of the Commonwealth Electoral Act do not provide sufficient flexibility to facilitate the enrolment of many homeless electors. The incorporation of a definition of homelessness within the Act, as adopted in Victorian electoral legislation, will facilitate the enrolment of electors who

otherwise find it difficult to enrol and maintain their enrolment under the itinerant enrolment provisions.

Recommendation 19 (paragraph 6.99)

The committee recommends the *Commonwealth Electoral Act 1918* be amended to incorporate a definition of homelessness modelled on those in the Victorian *Electoral Act 2002* to facilitate enrolment or continued enrolment of homeless persons. This definition should include persons living in:

- crisis accommodation; or
- transitional accommodation; or
- any other accommodation provided under the *Supported Accommodation Assistance Act 1994*.

The limited flexibility of the mobile polling provisions under the Commonwealth Electoral Act do not provide for the provision of targeted voting services to homeless people.

Recommendation 20 (paragraph 6.102)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow mobile polling and/or pre-poll facilities to be provided at such locations and at such times as the Australian Electoral Commission deems necessary for the purposes of facilitating voting.

For example, mobile polling or pre-poll facilities should be able to be provided where there is likely to be sufficient demand for such facilities by homeless and itinerant electors, or in such other circumstances as warrant their use.

Where electors seek assistance from electoral officials, it is important that electoral officials treat each elector with respect and understanding. Client-specific training should be part of the training package for all polling officials where appropriate.

Recommendation 21 (paragraph 6.104)

The committee recommends that the Australian Electoral Commission ensure that staff engaged in providing advice or services to electors with special needs (eg homelessness, sight impaired) be provided with appropriate training on how to communicate effectively and with sensitivity to the needs of such electors.

7 Responding to the increased demand for early voting

At the 2007 federal election, more than 2 million of the 13.3 million votes issued were early votes. The trend to early voting now sees almost one in five electors casting their vote before polling day.

A significant implication of the trend to increased numbers of early and declaration votes is the extra time taken for the election result to become clear as the Australian Electoral Commission undertakes the additional scrutiny processes required. The Commission's proposal to ameliorate these effects by issuing home division pre-poll votes —which account for around 60 per cent of all pre-poll votes — as ordinary votes, is supported. This would allow a significant number of extra votes to be counted on election night.

Electors who cast such votes should be required to sign a declaration that can be kept for evidentiary purposes — in a similar manner to the standards of integrity that are applied to declaration votes.

Recommendation 22 (paragraph 7.74)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow pre-poll votes cast at a pre-poll voting centre in an elector's home division prior to polling day to be cast as ordinary votes, wherever practicable.

Recommendation 23 (paragraph 7.75)

The committee recommends that, in order to ensure a continuing high standard of integrity applies to votes cast as home division pre-poll votes, electors who cast ordinary votes at pre-poll voting centres should still be required to sign a declaration at the time of voting, indicating that they are entitled to a pre-poll vote. A record of such declarations is to be kept by the Australian Electoral Commission for evidentiary purposes.

Recommendation 24 (paragraph 7.76)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require pre-poll votes cast as ordinary votes in an elector's home division prior to polling day to be counted on polling night in the same manner as ordinary votes cast in polling places on polling day, wherever practicable.

A complementary change would be to broaden eligibility for an early vote to include an elector being absent from their home division on election day. With thousands of absent votes being cast in divisions adjoining an elector's home division, such a change is likely to lead to a lower number of absent votes as

electors who are unable to vote within their division on polling day, take up the opportunity to vote in a pre-poll centre.

The effect of such a change would be that votes previously cast as absent votes could be issued as ordinary home division pre-poll votes. There would be no change to the high standard of integrity that applies to these votes, with the committee recommending earlier that a signed declaration continue to be required.

Recommendation 25 (paragraph 7.79)

> The committee recommends that schedule 2 of the *Commonwealth Electoral Act 1918* be amended to provide that being absent or expecting to be absent from an elector's home division on polling day be a valid ground of application for postal or pre-poll voting.

Eligibility for an early vote should be broadened to allow electors who fear for their personal safety to be given a wider range of opportunities to cast their vote.

Recommendation 26 (paragraph 7.80)

> The committee recommends that schedule 2 of the *Commonwealth Electoral Act 1918* be amended to allow fear for personal safety to be a ground for applying for pre-poll or postal votes.

Wherever possible, the Australian Electoral Commission should conduct as much of the preliminary scrutiny of pre-poll and postal votes received in home divisions before polling day as possible, prior to polling day, in order to increase the number of early votes counted in a timely manner following the close of the polls. Such a move should facilitate earlier counts for these votes and provide more timely information about the election result.

Recommendation 27 (paragraph 7.86)

> The committee recommends that, where possible, the Australian Electoral Commission should, prior to polling day, conduct as much of the preliminary scrutiny of pre-poll and postal votes on hand in home divisions as is possible, in order to increase the number of early votes counted in a timely manner following the close of the polls.

Additional flexibility should be introduced into mobile polling arrangements to allow the Australian Electoral Commission to provide better services to electors in certain circumstances. The committee's recommendation in relation to how mobile polling can be applied to homeless and Indigenous electors (see chapter 6), is equally applicable to special hospital mobile polling as well as instances where the Commission considers that mobile polling is an appropriate strategy to service voting needs, such as at major sporting and other social events that coincide with an election period.

In relation to mobile polling and other polling services targeting mine workers, the committee endorses a range of improvements to provide better services to these electors.

Recommendation 28 (paragraph 7.106)

The committee recommends that the Australian Electoral Commission implement its proposed mobile polling and other election services to cater for mine workers in Western Australia for future elections. Such arrangements should also be provided in other states with a large number of mine workers such as Queensland and South Australia.

In relation to special hospital mobile polling services, additional flexibility should be provided, including amending the definition of 'hospital' and 'special hospital' to reflect the types of facilities covered by section 41-3 of the *Aged Care Act 1997*. In addition, the time period for conducting mobile polling at special hospitals should be extended from five days before polling day to twelve days before polling day.

Staff working in residential aged care facilities should also be able to cast a vote at the mobile polling facility.

Recommendation 29 (paragraph 7.109)

The committee recommends that the definition of 'hospital' and 'special hospital' in the *Commonwealth Electoral Act 1918* be amended to reflect the current definitions of aged care under the *Aged Care Act 1997*, and that any person residing or working in a residential aged care facility, including staff, should be able to vote at the mobile polling facility.

Recommendation 30 (paragraph 7.110)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to extend the period during which special hospital mobile polling may be conducted, to 12 days before polling day.

Of those electors who had admitted to multiple voting at the 2007 election, 82 per cent cited confusion, poor comprehension or were aged — of those in the aged category, 98 per cent were aged 70 or over. In order to reduce confusion about whether an elector has already voted at an election and to reduce the number of instances where electors vote more than once, the presiding officer of a mobile polling team should provide patients or residents of hospitals or special hospitals who have voted with that mobile polling team with a receipt or letter, to indicate that they have, on that date, cast a vote with that mobile polling team.

Recommendation 31 (paragraph 7.112)

> In order to mitigate against possible accidental multiple voting, the committee recommends that the presiding officer of a mobile polling team be required to provide patients and residents of hospitals or special hospitals who vote with that mobile polling team, with a receipt or letter to indicate that they have, on that date, cast a vote with that mobile polling team.

While the Australian Electoral Commission can face limited choices about the siting of pre-poll voting centres, every effort should be made to ensure that political parties and candidates have the opportunity to provide relevant information to electors. Where possible, the Commission should engage in discussions with shopping centre management aimed at facilitating campaign activity around pre-poll voting centres located within shopping centres and seek to formalise these arrangements before an election is announced so that political parties and candidates are aware of what activity will be permitted.

For a range of reasons, not all pre-poll facilities will be able to provide unlimited access for campaign workers. Where such access is not possible, the Australian Electoral Commission should work with the political parties and candidates to find other solutions, such as providing a dedicated space at the entrance to such facilities where campaign workers may offer how to vote material or, alternately arrange for the provision of a table or counter where such material can be made available to electors.

Recommendation 32 (paragraph 7.122)

> The committee recommends that where a pre-poll voting centre (which may be a Divisional Returning Office) is to be located within a shopping centre, the Australian Electoral Commission work with shopping centre management to arrange appropriate access by campaign workers during the times where voting is possible, including where appropriate, specifying a requirement as part of its lease arrangements, that provides full access for parties and candidates to conduct their how to vote activities. Where such an arrangement is not feasible, the Australian Electoral Commission should ensure that political parties and candidates are advised of the alternative arrangements to be put in place to allow how to vote material to be made available in these centres.

Decisions about the relative complexity of the postal vote application form essentially involve judgements about the level of material that is considered necessary or essential and what content, if any, is of less importance. Legal advice received by the Australian Electoral Commission indicates that the provision of information in relation to an elector's eligibility to cast an early vote is an essential

part of the application. Other elements of the application, however, might be simplified, or even excluded entirely, depending on judgements made by the Commission and advice provided by other stakeholders.

On balance, the postal vote application should be changed to a more user friendly style and that only that section of the form requiring completion by an applicant for a postal vote be gazetted as the approved form. Such an approach will be complementary to the committee's recommendation regarding the removing requirement for a applicant and witness signatures on the application in order to facilitate lodgement online, electronically or in printed form (see recommendation 6).

Recommendation 33 (paragraph 7.148)

The committee recommends that, in conjunction with the recommendation removing the requirement for applicant and witness signatures, the postal voting application form:

- be made simpler and more user-friendly;
- be gazetted at least 3 months prior to the expected date of an election where practicable; and
- only that section of the form requiring completion by an applicant for a postal vote be gazetted as the approved form.

8 Formality issues

The reduction of informality recorded at the 2007 election compared to the 2004 elections is welcomed. While the decline in the overall informality rate is a positive outcome, concerns remain about the persistently high levels of informality recorded in some divisions, particularly in south western Sydney.

Although harmonisation of voting systems appears to provide some opportunity to reduce informality, it is not necessary to harmonise this aspect of electoral arrangements — decisions about what voting system is appropriate for each jurisdiction should be left to each respective parliament to determine.

With the drivers of higher informality generally well understood, it is important that the Australian Electoral Commission continue its efforts to address informality, particularly in areas that consistently record relatively high levels of informality.

Recommendation 34 (paragraph 8.38)

The committee recommends that the Australian Electoral Commission increase efforts to improve electors' understanding of the federal voting systems and take appropriate measures to reduce the rate of informal voting, especially in electorates with a high percentage of electors from non-English speaking backgrounds.

Full preferential voting for House of Representatives elections is supported. That said, it is important that where an elector expresses a clear preference but makes a mistake when completing the ballot paper, the vote should be included in the count up to the point where the mistake is made.

The savings provisions that existed in the Commonwealth Electoral Act between the 1984 and 1996 elections, to include those ballot papers where there are non consecutive numbering errors in the count up to the point at which the numbering errors began, should be reinstated.

While the Australian Electoral Commission has noted the potential re-emergence of campaigns advocating for optional preferential voting, this does not justify the exclusion of up to 90,000 votes where electors have expressed clear preferences for a number of candidates but may have made mistakes in numbering their ballot paper.

The reinstatement of such a provision would need to be accompanied by an appropriate penalty provision to deter the advocacy of a vote other than in accordance with full preferential voting

Recommendation 35 (paragraph 8.73)

The committee recommends that:

- Section 240 (2) of the *Commonwealth Electoral Act 1918*, which provides that the numbers on House of Representatives elections ballot papers are to be consecutive numbers, without the repetition of any number, be repealed, and
- the savings provision contained in paragraph 270 (2), repealed in 1998, which provided that in a House of Representatives election in which there were more than three candidates, and where a full set of preferences was expressed on the ballot paper, but there were non-consecutive numbering errors, the preferences would be counted up to the point at which the numbering errors began, at which point the preferences were taken to have 'exhausted', be reinstated to the *Commonwealth Electoral Act 1918*, and

- the Government amend the *Commonwealth Electoral Act 1918* to provide a penalty provision sufficient to deter the advocacy of 'Langer style voting'.

The closeness of the result in the division of McEwen and the resulting Court of Disputed Returns petition was a relatively rare event in the context of federal elections. That said, the reversal of almost one-quarter of the Australian Electoral Officer's decisions in respect of the 643 reserved ballot papers is of concern and may be seen as putting community confidence in election results at risk. There is also the possibility of increased disputation, as candidates in tight election contests may be encouraged to take their chances by having the results of elections reviewed by a different decision maker.

The review process adopted by the Australian Electoral Commission following the decision by the Court of Disputed Returns on the McEwen petition is supported and the proposed response by the Commission in implementing the recommendations of the review should provide for a greater understanding by electoral officials and scrutineers about rulings on formality.

Recommendation 36 (paragraph 8.112)

The committee recommends that the Australian Electoral Commission adopt all recommendations contained in the report entitled Review of Ballot-Paper Formality Guidelines and Recount Policy prepared for the Australian Electoral Commission by Mr Alan Henderson, except for recommendation A(v) which is the subject of recommendation 37.

It is of concern that those ballot papers which were considered formal by the Divisional Returning Officer, even though they did not contain the initials of an issuing officer nor a watermark, were not annotated by the Officer in such a way as to reflect the requirements of section 268(2) of the Commonwealth Electoral Act. Section 268(2) should be amended to require a Divisional Returning Officer who rules a ballot paper to be formal despite the ballot paper not containing either the initials of a issuing officer or the official mark, to annotate the ballot paper with the words 'I am satisfied that this is an authentic ballot paper'.

This would be complementary to the Australian Electoral Commission's suggestion to amend the wording of section 209A in order to allow for ballot papers to be printed with a 'feature approved by the Electoral Commission'. In combination, these amendments will serve to eliminate confusion about ballot paper formality.

Recommendation 37 (paragraph 8.113)

The committee recommends that section 268(2) of the *Commonwealth Electoral Act 1918* be amended to provide that in those cases where the Divisional Returning Officer responsible for considering the question of the formality of a ballot paper, is satisfied that the ballot paper is not informal, because the Divisional Returning Officer is satisfied that it is an authentic ballot paper on which a voter has marked a vote, the Divisional Returning Officer be required to annotate the ballot paper with the words 'I am satisfied that this is an authentic ballot paper'.

Recommendation 38 (paragraph 8.118)

The committee recommends that paragraph 209A(b) of the *Commonwealth Electoral Act 1918* and paragraph 25A(b) of the *Referendum (Machinery Provisions) Act 1984* be repealed, and replaced with the words 'a feature approved by the Electoral Commission'.

9 Modernisation and sustainability of electoral administration

The Australian Electoral Commission, like many public sector organisations, faces significant cost pressures in the delivery of its services and the need to find savings to meet savings targets imposed by a whole of government efficiency dividend. As a public sector agency, the Commission should not be immune from the overall objectives of such a policy, which encourages agencies to innovate and become more efficient in the delivery of services.

The 2009-10 Budget did not address the issue of the application of the efficiency dividend to small agencies, as examined in 2008 by the Joint Standing Committee on Public Accounts and Audit. Further, the 2009-10 Budget included an additional $6 million of savings over four years from a range of activities, including electoral education services in several capital cities.

Recommendation 39 (paragraph 9.27)

The committee recommends that the Australian Electoral Commission be resourced appropriately in order that it continue to provide high quality electoral services to the Australian population and to do so in a manner that does not compromise the integrity of the electoral system.

The National Tally Room plays an important part in elections and should be provided by the AEC at future elections. For a voting population that includes persons from every element of Australia's diverse population and who are, for that one night, focussed on the electoral process more intently than at any other point in time, the National Tally room represents a transparent and accessible

symbol of actual participation in the most inclusive electoral process in the world, one which determines the future of the nation.

Recommendation 40 (paragraph 9.44)

The committee recommends that the Australian Electoral Commission be required to continue with staging the National Tally Room at future elections.

The Australian Electoral Commission's proposals that more flexible arrangements be established for the authorisation of approved forms are supported. Such an approach will allow the Commission to design forms that are targeted at different groups of electors and initiatives and facilitate the design of forms for the types of electronic transactions that the committee has supported in this report relating to updating enrolment details and applying for postal votes (see chapters 3 and 4).

Recommendation 41 (paragraph 9.50)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide a flexible regime for the authorisation by the Australian Electoral Commission of approved forms, which will:

- allow for a number of versions of an approved form;
- enable forms to be tailored to the needs of specific target groups; and
- facilitate online transactions.

Giving the Australian Electoral Commission additional flexibility to share workloads across its divisional offices within a state or territory will lead to a more effective use of resources within the Commission.

That said, the divisional office structure, which gives the Australian Electoral Commission a physical presence in almost all of the 150 divisions across the country, is a significant asset to the Commission. The physical presence of a Commission office and dedicated staff in a division give the Commission a capacity to draw on local knowledge and experience when conducting roll maintenance activities and delivering electoral education. The administrative and electoral capacity, or the importance of maintaining divisional offices, should not be reduced.

Recommendation 42 (paragraph 9.58)

> The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the Australian Electoral Commission to manage its workloads in non-election periods by allowing enrolment transactions to be processed outside the division for which the person is enrolling, provided that those transactions are processed by a division that is within the same state or territory. This will permit workloads to be managed in the same manner as is currently permitted during election periods.

At recent elections in their jurisdictions, the ACT, Western Australian, Queensland and Victorian Electoral Commissions have used electronic means to mark electors' names from the roll before providing them with ballot papers, either on polling day at some or all polling places, or at some, or all, pre-poll voting centres. At the ACT Legislative Assembly election in 2008, no hardcopy certified lists were used at all — total reliance was placed on personal data assistant devices as the storage medium for the lists of voters, and the hardcopy lists (one per polling place) which were provided as an emergency backup did not have to be used.

There are considerable benefits for the Australian Electoral Commission in being able to use electronic certified lists in some situations. It is important that if such lists are to be used, appropriate security measures be put in place, such as those used by the ACT Electoral Commission for the 2008 ACT election, to protect the security of the equipment and data.

Recommendation 43 (paragraph 9.66)

> The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to enable the use of electronic certified lists in polling places and pre-poll voting centres, with appropriate measures implemented to ensure the security of the equipment and data.

The Australian Electoral Commission have outlined a number of 'technical' and 'operational' amendments to the Commonwealth Electoral Act that the Commission considers necessary to update and modernise sections of legislation.

The changes suggested by the Commission to make electoral legislation clearer (in the case of technical changes), or work more efficiently (in the case of operational amendments) are supported.

Recommendation 44 (paragraph 9.72)

The committee recommends that the technical and operational changes proposed by the Australian Electoral Commission in submission 169, Annex 10, with the exception of those relating to photographing and photocopying of the roll (s 90A), (see recommendation 52) and prisoner voting (ss 93(8AA), 208(2)(c) and 221(3)) (see recommendation 47), be incorporated into the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* when other amendments to these Acts are progressed.

Throughout the report a number of changes have been recommended relating to the Commonwealth Electoral Act. Wherever appropriate, consequential changes should also be made to the Referendum (Machinery Provisions) Act.

Recommendation 45 (paragraph 9.74)

The committee recommends that any recommendations in this report that propose amending the *Commonwealth Electoral Act 1918* should, where also appropriate, be incorporated into the *Referendum (Machinery Provisions) Act 1984*, to ensure consistency between the provisions applying to elections and referenda.

10 Modernising regulatory arrangements

Penalties imposed by the Commonwealth Electoral Act are, in some cases, significant. For example, electoral bribery is subject to a penalty of $5,000 or imprisonment for two years, or both.

While the committee intends to examine in detail the events in the division of Lindsay once court proceedings are concluded, the court judgements in several of the cases relating to the events in the division of Lindsay, where fines of less than $1,000 were imposed, have clearly demonstrated that the penalties imposed under the Commonwealth Electoral Act for the distribution of unauthorised material are inadequate.

Recommendation 46 (paragraph 10.23)

The committee recommends that the penalties imposed under s 328 of the *Commonwealth Electoral Act 1918* ($1,000 for a natural person and $5,000 for a body corporate) be revised to ensure that they provide a greater deterrent.

11 Other issues

The decision of the High Court of Australia in *Roach v Electoral Commissioner* has implications for the application of the current provisions in the Commonwealth Electoral Act in relation to the voting rights of prisoners.

It is necessary to amend the Commonwealth Electoral Act to repeal those provisions found to be unconstitutional by the High Court of Australia. The previous three-year disqualification is appropriate.

Recommendation 47 (paragraph 11.12)

> The committee recommends that the Government amend the *Commonwealth Electoral Act 1918* to reinstate the previous three-year disqualification for prisoners removed from s 93(8)(b) in 2006, to reflect the High Court of Australia's judgement in *Roach v Australian Electoral Commissioner* that s 93(8AA) and s 208(2)(c) are constitutionally invalid.

Electors who are travelling overseas with an intention to take up residence in another country are required to notify the Australian Electoral Commission and take appropriate steps to maintain their enrolment. The taking of actions such as these are valid indicators of electors' actual and continuing interest in Australian electoral politics and their preparedness to act on their franchise.

Requirements for eligible overseas electors to regularly update their enrolment and vote in Australian elections are appropriate and form a valid method of measuring whether a continuing interest in Australian political affairs exists. The existing eligibility provisions relating to eligible overseas electors in the Commonwealth Electoral Act are supported.

Recommendation 48 (paragraph 11.39)

> The committee recommends that current provisions of the *Commonwealth Electoral Act 1918* regarding the eligibility of overseas electors to enrol and vote at elections be retained.

A previous recommendation, in a separate report on electronic voting by the committee for the discontinuation of electronically assisted voting as conducted at the 2007 election, has not closed the door on electronic voting. Changed circumstances, including improvements in technology and higher levels of demand may lead to electronic voting or other alternatives being reconsidered at some time in the future.

The Australian Electoral Commission's continued efforts to examine alternative approaches for assisted voting for electors who are blind or have low vision are welcomed. The Commission's efforts to develop alternative arrangements that will

provide secret and independent voting for electors who are blind or have low vision that are viable and that will be sustainable over the longer term are supported.

Recommendation 49 (paragraph 11.44)

The committee recommends that the Australian Electoral Commission continue to work with organisations representing electors who are blind or have low vision to investigate the viability and sustainability of assisted voting arrangements aimed at providing secret and independent voting for electors who are blind or have low vision.

A table in section 90B of the Commonwealth Electoral Act sets out the persons and organisations to whom the Australian Electoral Commission must give information in relation to the rolls and certified lists of voters, and specifies the information to be given and the circumstances in which it is to be given. Items 7 to 10, 11 to 14, and 15 in the table specify information to be given to Senators and Members of the House of Representatives; all of those items refer to the supply of 'a copy' or 'copies' of either certified lists or rolls, and thereby require the supply of hardcopy documents.

The Australian Electoral Commission's proposal that the Commonwealth Electoral Act be amended to provide for the supply of a copy of a roll or certified list in electronic format, rather than just a hard copy format, where a Senator of Member of the House of Representatives elects to do so, is supported.

Recommendation 50 (paragraph 11.48)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended so that:

- where an item in the table in s 90B of the Act entitles a Senator or Member to receive one copy of a roll or certified list, that item be amended to permit the Senator or Member to opt for the relevant copy to be supplied in electronic rather than hardcopy form; and
- where an item in the table in s 90B of the Act entitles a Senator or Member to receive three copies of a roll or certified list, that item be amended to permit the Senator or Member to opt to receive one of the copies in electronic rather than hardcopy form, and to receive either zero, one or two hardcopies.

There is not necessarily a single 'correct' system by which surplus votes for Senate candidates are transferred when a candidate is elected or eliminated from the count. The existence of anomalies, such as that which lead to a change in counting system from the inclusive Gregory method to the weighted inclusive Gregory

method for upper house elections in Western Australia, does not reduce the legitimacy of a voting system.

Proposed changes in segmentation arrangements to a 'reiterative' approach are not supported. Although counting under the current system is conducted by computer, the committee considers that one of its strengths is that it can be conducted manually if necessary, thereby providing greater transparency and redundancy than a counting system that may only be conducted by computer. There appears to be no benefit in moving to a new counting system when the system that is currently used has general acceptance and legitimacy.

Recommendation 51 (paragraph 11.77)

The committee recommends that the current counting system used for Senate elections be retained.

Companies providing proof of identity services for the financial sector are provided with limited information (name and address only) from the electoral roll. The use for which this roll information may be used is strictly limited to identity verification for the purposes of the *Financial Transaction Reports Act 1988* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. The roll information must not be used for any other purpose. Subsection 90B(4) of the Commonwealth Electoral Act does not permit the Australian Electoral Commission to provide date of birth information for these purposes.

A very high value is placed on ensuring that, wherever possible, elector information should remain private and that there be no wider secondary use of such information. Such an approach is required to ensure that potential electors are not dissuaded from enrolling because they hold a perception that their information will be shared across a number of spheres for non-electoral related purposes.

The current arrangements relating to the provision of electoral roll information to prescribed organisations for the purposes of identity verification under the *Financial Transaction Reports Act 1988,* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006,* should be retained.

Recommendation 52 (paragraph 11.93)

The committee recommends that the current arrangements relating to the provision of electoral roll information to prescribed organisations for the purposes of identity verification under the *Financial Transaction Reports Act 1988* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* be retained.

On a related matter, s 90A of the Commonwealth Electoral Act does not explicitly prohibit the photographing and photocopying of the roll that is available for public inspection. The Australian Electoral Commission suggested that if the recording of the roll by electronic device is not stopped, it will allow for the recording of electoral roll information on a large scale and potentially result in inappropriate use of electoral roll information.

Given the pace of technological developments, it is important to specify that making a copy or copies of the electoral roll that is available for public inspection should be prohibited, whilst recognising also that it may still be necessary for authorised persons to copy the information for legitimate purposes.

Recommendation 53 (paragraph 11.96)

The committee recommends that the current provisions of the *Commonwealth Electoral Act 1918* relating to the inspection of electoral rolls be amended to explicitly prohibit the unauthorised photographing or photocopying of any roll that is made available for public inspection.

1

Introduction

Committee role

1.1 A joint committee of the parliament, now known as the Joint Standing Committee on Electoral Matters, has examined the conduct of every federal election and related matters for the past 25 years.

1.2 The Joint Standing Committee on Electoral Matters of the 42nd parliament is continuing this practice with its review of the 2007 election and related matters.

1.3 The committee's reference to undertake the election inquiry is drawn from a formal request by the Special Minister of State, Senator the Hon John Faulkner to 'inquire into and report on all aspects of the 2007 federal election and matters related thereto'.

1.4 This reference has been supplemented by two Senate resolutions requiring the committee to examine, as part of the 2007 election inquiry, specific issues relating to election funding and disclosure arrangements and the method used to vote for Senate elections as proposed by the *Commonwealth Electoral (Above the Line Voting) Amendment Bill 2008*.[1]

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1 Senate, *Journals of the Senate*, No 12, 14 May 2008, p 390; No 5, 12 March 2008, pp 210–211.

Scope

1.5 This report is the committee's second report for the 2007 election inquiry. The first report, which concentrated on the electronic voting trials, was tabled in the parliament in March 2009.[2]

1.6 As noted above, part of the committee's terms of reference from the Senate require an examination of funding and disclosure issues. The committee has elected to defer reporting on these issues until a separate consultation process, in the form of a government green paper, is finalised.

1.7 The committee has produced a separate report on the Senate reference in relation to the system of voting for Senate elections proposed by the *Commonwealth Electoral (Above the Line Voting) Amendment Bill 2008*.

1.8 The bulk of this report is therefore devoted to the conduct of the election, including the administration of the electoral roll, nature of campaigning, voting and counting. Several more immediate issues relating to electoral roll maintenance and a number of longer term issues relating to the administration of the Australian Electoral Commission (AEC) and the design of regulatory arrangements are also canvassed.

1.9 The committee has sought to specifically address all of the 19 recommendations made by the AEC in its first submission (number 169), and any further areas for changes proposed by the AEC during the course of the inquiry.[3]

1.10 The committee has not addressed the detailed issues associated with the distribution of unauthorised election material in the division of Lindsay on the eve of the 2007 election in this report. Further investigation has been deferred until the court processes have been finalised. The committee does, however, note the inadequacy of the penalties handed down to those who were convicted of breaching the *Commonwealth Electoral Act 1918* (chapter 10).

1.11 Election inquiries conducted by former Joint Standing Committees on Electoral Matters have generally covered a range of issues that are related to broader debates about the nature of our democratic system. These include issues such as four year or fixed terms for the House of Representatives, the adoption of optional preferential voting systems for

2 Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia.

3 Australian Electoral Commission, submission 169, pp 82–85.

House of Representatives elections, and the compulsory nature of enrolment and voting.[4]

1.12 In contrast to previous election inquiries, the committee did not receive a large number of submissions that related to these issues.[5] The committee notes that the government's green paper process is proposing to examine these broader issues in the proposed second part of the green paper to be released later in 2009.[6] As a result, the committee has not seen the need to address these particular issues in this report.

Conduct

1.13 The inquiry was advertised nationally in *The Australian* newspaper on 2 April 2008 and members of the public were invited to make submissions.

1.14 The committee also wrote to all Members and Senators and Senators-elect; state premiers and chief ministers, the Australian Electoral Commission, state and territory electoral commissions, registered major political parties and selected academics.

1.15 The committee received submissions to the inquiry from 198 individuals and organisations (appendix A). The committee held a number of public hearings in the major capital cities (Sydney, Melbourne, Adelaide, Perth and Canberra), including several roundtables to discuss specific issues (appendix B).

1.16 The submissions and transcripts of evidence from the public hearings are available from the committee's website www.aph.gov.au/em.

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4 See for example, Joint Standing Committee on Electoral Matters, *The 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, pp 157–204; *The 1998 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2000), Commonwealth of Australia, pp 150–151.

5 See for example, Australian Democrats, submission 56, pp 4–7; NSW Greens, submission 64, p 4; Kilcullen J, submission 85, p 6; Public Interest Advocacy Centre, submission 103, p 25; Getup, submission 155, pp 15–16; Doyle M, submission 46, p 2; Festival of Light, submission 67, p 7; Willis D, submission 126, pp 2–5.

6 Australian Government, *Electoral Reform Green Paper: Donations, funding and expenditure* (2008), p 3.

2

2007 election overview and key issues

Background

2.1 The 2007 federal election was announced by the Prime Minister the Hon John Howard MP on Sunday 14 October 2007. Writs for the election were issued on Wednesday 17 October for the House of Representatives election and a half-Senate election.[1]

2.2 Once the writs are issued, a timetable is specified in the *Commonwealth Electoral Act 1918* for a range of tasks and events including the close of the electoral rolls, the nomination of candidates, the declaration of nominations and polling day. The date of other events associated with the election, including the return of the writs, flow on from these events (table 2.1).

2.3 Following amendments to the Commonwealth Electoral Act in 2006, the close of rolls period changed from seven days after the issue of the writ to 8pm on the day the writs for the election are issued for a person enrolling for the first time or re-enrolling after having been removed from the roll.

2.4 The close of roll amendments also provided for a period of three 'working days' after the writs are issued for people to complete and submit a proof of identity compliant enrolment form in limited circumstances:

- if a person is 17 years of age, but will turn 18 between the day after the issue of the writs and election day (inclusive);
- if a person will become an Australian citizen between the day after the issue of the writs and the day before election day (inclusive); or

1 Australian Electoral Commission, submission 169, p 5.

- if a person is on the roll, but with an out of date address or name details.[2]

2.5 As a public holiday fell on Friday 19 October 2007 (Show Day on Flinders Island, Tasmania), that day was not a 'working day' within the meaning of the Commonwealth Electoral Act, extending the close of rolls deadline to Tuesday 23 October 2007 for those people meeting the circumstances as outlined above.[3]

Table 2.1 2007 federal election timetable

Event	Date
Election announced	Sunday 14 October 2007
Issue of writ	6pm Wednesday 17 October 2007
Close of rolls	
Deadline for new enrolments	8pm Wednesday 17 October 2007
Deadline for changes to enrolments	8pm Tuesday 23 October 2007
Close of nominations	12pm Thursday 1 November
Declaration of nominations	12pm Friday 2 November
Polling day	Saturday 24 November 2007
Return of writs	
Senate writ for Tasmania	Friday 14 December 2007
Senate writ for NSW	Wednesday 19 December 2007
Senate writ for Queensland	Wednesday 19 December 2007
Senate writ for WA	Wednesday 19 December 2007
Senate writ for SA	Thursday 20 December 2007
Senate writ for Victoria	Friday 21 December 2007
Senate writs for the ACT and NT	Friday 21 December 2007
House of Representative writs for all States and Territories	Friday 21 December 2007
Closing date for the lodgement of petitions to the Court of Disputed Returns	Wednesday 30 January 2008

Source *Australian Electoral Commission, submission 169, p 5.*

2.6 At the close of nominations on Thursday 1 November, 1,054 candidates were nominated to contest the 150 House of Representatives seats and 367 candidates had nominated for the 40 vacant seats in the half-Senate election.[4]

2 Australian Electoral Commission, *Changes to the Commonwealth Electoral Act 1918 since the 2004 election* (2007), Electoral Newsfile, p 2.

3 Australian Electoral Commission, submission 169, p 5.

4 Australian Electoral Commission, *Electoral pocketbook: election 2007 (2009)*, p 52.

2.7 Polling day, which must be held on a Saturday and at least 33 days after the issue of the writs, was held on Saturday 24 November 2007.[5] The time between the issue of the writs and polling day was 39 days, slightly longer than most Federal elections since 1993 but one day less than the 2004 election (table 2.2).

Table 2.2 Time between the issue of the writs and polling day, 1993 to 2007 elections

	1993	1996	1998	2001	2004	2007
Issue of writs	8 Feb	29 Jan	31 Aug	8 Oct	31 Aug	17 Oct
Polling day	13 Mar	2 Mar	3 Oct	10 Nov	9 Oct	24 Nov
Total days	**34 days**	**34 days**	**34 days**	**33 days**	**40 days**	**39 days**

Source *Australian Electoral Commission, submission 169, p. 5; Joint Standing Committee on Electoral Matters, Report on the 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto (2005), Commonwealth of Australia, p 2.*

Administration of the 2007 election

2.8 Aside from necessary changes arising from legislative adjustments, the Australian Electoral Commission (AEC) implemented a number of administrative changes for the 2007 election. Some of these arose from issues raised in the former Joint Standing Committee on Electoral Matters' review of the 2004 election and the AEC's own internal review of the conduct of the 2004 election. Feedback provided to the committee by major political parties during the inquiry indicated that they were generally satisfied with the administration of the election by the AEC.

2004 election issues

Postal voting improvements

2.9 At the 2004 federal election there were significant problems experienced with the administration of postal voting, particularly in regional Queensland. Major issues caused by, or related to, the use of the AEC's automated postal vote issuing system (APVIS) included:

- non-receipt or the delayed receipt of postal votes by those who had lodged postal vote applications or were registered as general postal voters (GPVs);

5 *Commonwealth Electoral Act 1918*, ss 157 and 158.

- receipt of postal votes by one member of a family but not another, when those postal vote applications (PVAs) had been submitted together at the same time;
- inadequate and inconsistent responses by the AEC to electors, Members of Parliament and their staff, who were enquiring about the whereabouts of postal votes;
- lack of timely and accurate advice to stakeholders about postal voting problems;
- incorrect ballot papers sent to some postal voters;
- incorrect postal voting material sent to some postal voters;
- inadequate awareness of geography and distance issues by AEC call centre staff when dealing with electors' enquiries relating to postal voting;
- inadequate contractual arrangements for the provision of postal voting services;
- inadequate planning and project management of the postal voting process by the AEC, in the lead up to and during the election period;
- inadequate quality assurance procedures for the production and regeneration of postal voting material; and
- inadequate tracking and reporting mechanisms for postal vote production.

2.10 So acute were these problems that the Governor-General issued a proclamation the day before the election to extend the time during which affected postal voters could vote and return their ballot papers to the AEC.[6]

2.11 Following the 2004 election, postal voting arrangements were placed under the microscope by the then Joint Standing Committee on Electoral Matters and by consultants Minter Ellison, and a number of administrative changes were made to ensure that there would be no repeat of these experiences. Action taken by the AEC involved:

- a new tender process was initiated, resulting in the selection of a new postal vote production contractor for the 2007 election;

6 Joint Standing Committee on Electoral Matters, *The 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, p 52.

- there was an increased focus on detailed functional requirement specifications in the contract;
- considerable emphasis was placed on contract management processes to ensure the timely and effective delivery of postal voting services;
- three separate trial production runs were undertaken in the lead-up to the 2007 election to test and improve processes;
- the AEC and Australia Post entered into a Memorandum of Understanding related to postal voting delivery arrangements;
- the AEC engaged the services of mail house experts to assist with the tender evaluation, quality assurance during trial productions, and live production;
- a range of enhancements were made to APVIS to ensure best use of Australia Post delivery data; and
- the PVA was revised in a number of ways. Important elements of this revision included providing applicants with information about alternative early voting options, obtaining the applicant's contact information in circumstances where an elector required postal voting materials by a specific date, and obtaining information from the elector about preferred alternative delivery methods (where post was not viable).[7]

2.12 The AEC told the committee that the major issues from 2004 in relation to the performance of the postal voting central production contractor were 'predominantly attributable to slow production exacerbated by management problems and slow correction of errors in the production process'.[8] In order to remedy this, the contract for the production of the 2007 election postal voting pack (PVP) contained specific production requirements, including the production of up to 500,000 PVPs by 6 November 2007, and up to 100,000 PVPs each working day after 6 November 2007.

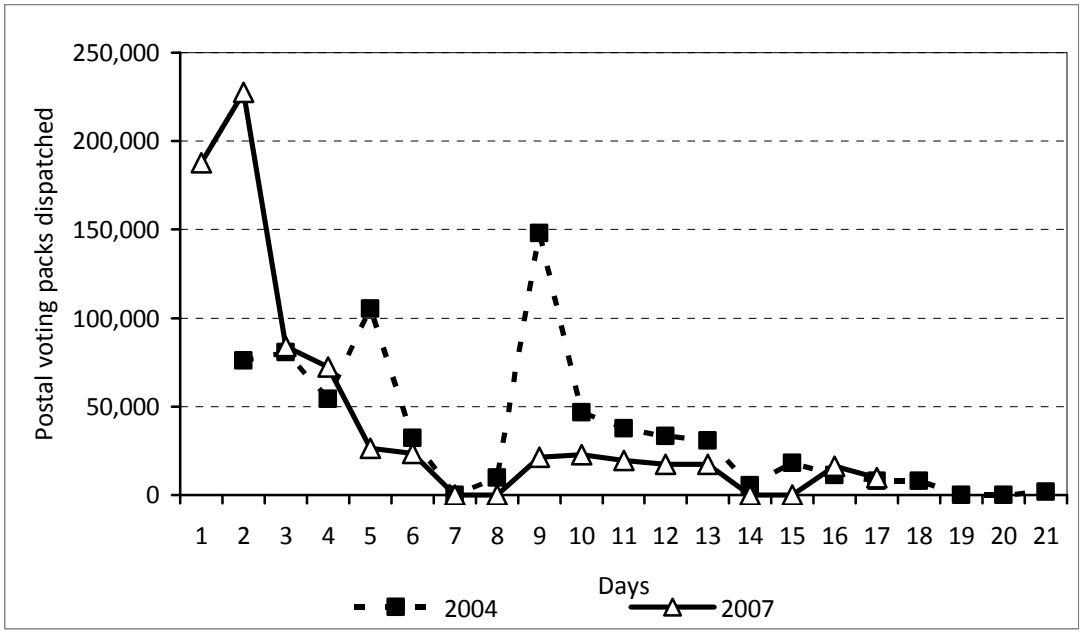
2.13 The AEC advised that the specified production arrangements were met on every occasion for the 2007 election. This resulted in a marked improvement in the production output of PVPs when compared to the 2004 election, with significantly higher numbers of PVPs lodged earlier in the election period at the 2007 election (figure 2.1). In relation to the quality of the production process, the AEC specified a service level

7 Australian Electoral Commission, submission 169, p 32.

8 Australian Electoral Commission, submission 169, p 32.

standard for PVPs damaged in the production process (0.004 per cent of all production), which was met on all occasions.[9]

Figure 2.1 Postal voting pack lodgement, 2004 and 2007 federal elections



Source *Australian Electoral Commission, submission 169, p 33.*

2.14 In addition to these improvements in the production system for PVPs, the AEC noted that the 2007 election also saw the introduction of Australia Post delivery information into the postal voting management system, which was used to determine the method of production that would ensure the best possible chance of a PVP reaching the applicant in time to complete and return his or her vote.[10] The AEC outlined how this system worked to improve the likelihood a PVP would be dispatched and received as quickly as possible using the postal voting management system (APVIS):

> In 2007, the AEC used three postal vote production methods: central print, local print and hybrid print. Central printing takes place at the premises of the APVIS contractor which could be in a different state to the elector; local printing takes place at the AEC divisional office in which the details of the application are entered into the system; and hybrid printing takes place at another AEC office. APVIS guides the person inputting the PVA details as to which is the most appropriate production method, taking into

9 Australian Electoral Commission, submission 169, p 32.

10 Australian Electoral Commission, submission 169, p 32.

account the postal vote delivery destination and the proximity to polling day, based on Australia Post mail delivery information.

The initial batches of postal votes were produced by central print and were produced and dispatched by the AEC contractor, SEMAGROUP, in Melbourne. Central print is the default method for producing postal votes when delivery times are sufficient to allow timely delivery by Australia Post's published delivery standards.

For local print, the PVP was produced and dispatched by the divisional office that received the PVA. Initially this occurred where the postal vote was destined for an overseas address or where the applicant had indicated urgent delivery or delivery by particular means other than Australia Post. In the later stage of the postal voting period, after the date on which Australia Post delivery standards could ensure delivery from the central print site in Melbourne to around Australia, local print became the default.

Where the postcode area of the PVA destination was listed by Australia Post as having irregular mail deliveries (i.e. one or two deliveries per week), special consideration was given to the most reasonable and practical means of delivery. In these cases, hybrid print was often used. This meant that APVIS directed production of the postal vote to the AEC divisional office best placed to arrange the most reasonable and practicable delivery of the postal vote (not necessarily the PVA's 'home' division).[11]

2.15 The committee recognises the work of the AEC to improve the receipt and dispatch processes for postal vote applications.

2.16 That said, there remain areas of concern around the timely return of postal votes that are beyond the control of the AEC which resulted in around 3,000 votes that were signed and posted before polling day being excluded from the count because they were postmarked after polling day.[12] This issue is examined in detail in chapter 3.

Greater access to pre-poll facilities

2.17 In its 2004 election report, the then Joint Standing Committee on Electoral Matters expressed concern about the location of pre-poll facilities,

11 Australian Electoral Commission, submission 169, p 32.

12 Australian Electoral Commission, submission169.5, p 6.

especially given the difficulties experienced in administering postal voting in regional Queensland. That committee recommended that the AEC should review its pre-polling arrangements with a view to ensuring that, wherever practical, pre-poll centres are located at appropriate Commonwealth, State or Territory government, or local government, agencies in regional areas.[13]

2.18 The then government supported the recommendation, indicating that for the next election, the AEC would trial the use of state government agencies to issue pre-poll votes in rural and regional areas of Queensland.

2.19 As a result, there were over 100 additional pre-poll voting centres in Queensland at the 2007 election, with the AEC utilising courthouses, Queensland Government Agencies and other locations throughout rural and regional Queensland.[14]

2.20 There is likely to be continued pressure on the AEC to meet the rising demand and expectation of convenient access to early voting. This issue is examined in chapter 7.

Electronic voting trials

2.21 Two trials of electronic voting methods were conducted at the election. The first trial provided electronically assisted voting for electors who are blind or have low vision at 29 metropolitan and regional pre-poll voting centres. The second trial provided for defence personnel in four locations overseas to cast a remote electronic vote using the Department of Defence's secure intranet.

2.22 An earlier separate report by the committee on the electronic voting trials recommended that they be discontinued. The committee recognised the work of the AEC and its partners in delivering the trials, including the Department of Defence and non-government organisations representing or providing services to people who are blind or have low vision. The committee also recognised the sustained effort over a relatively short period to develop solutions to a number of technical, logistical, administrative and legislative issues.[15]

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13 Joint Standing Committee on Electoral Matters, *The 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, p 86.

14 Australian Electoral Commission, submission 169, p 30.

15 Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia, p 1.

2.23 The trial of assisted electronic voting for electors who are blind or vision impaired saw a lower-than-expected 850 votes cast across 29 metropolitan and regional locations. The average cost per vote cast was $2,597. This compares to an average cost per elector of $8.36 at the 2007 federal election.[16]

2.24 The committee concluded that the high cost of improving the quality of the voting experience for a limited number of voters was unsustainable given the low number of votes cast and limited opportunities to lift participation. In coming to this conclusion, the committee was mindful that these electors will not be disenfranchised by discontinuing electronically assisted voting, with existing provisions in the Commonwealth Electoral Act facilitating assisted voting where required.[17]

2.25 The trial of remote electronic voting for selected Australian Defence Force personnel serving overseas saw 2,012 personnel registered to participate in four areas of operation — Afghanistan, Iraq, the Solomon Islands and Timor-Leste. Of these, 1,511 personnel cast their votes electronically at an average cost of $1,159.[18]

2.26 The committee noted that while defence force personnel should be provided with every possible opportunity to vote at federal elections, remote electronic voting imposed a significant additional burden on personnel in operational areas. In its place, the committee considered that an alternative model, jointly endorsed by the Department of Defence and the AEC, and involving AEC-trained defence personnel issuing pre-poll and postal votes, should be used at future federal elections. [19]

2.27 In making these recommendations the committee does not consider it has closed the door on electronic voting. Changed circumstances including, improvements in technology and higher levels of demand may lead to electronic voting or other alternatives being reconsidered at some time in

16 Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia, p 63.

17 Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia, p 63.

18 Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia, p 35.

19 Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia, p 42.

the future. A subsequent proposal raised by the AEC is discussed in chapter 11.

Comments on the conduct of the 2007 election

2.28 Overall, feedback received by the committee from inquiry participants recognised the good job that the AEC had done in managing the 2007 election. With over 13 million electors and over 1,421 candidates participating in the election the committee recognises that the AEC will be unable to satisfy all of the demands placed on it to everyone's satisfaction.

2.29 Some of the issues raised by participants where there was a perception that the conduct of the AEC and/or election officials did not meet expectations (rather than policy-related issues that were outside the AEC's control) included:

- the conduct of assisted voting and distribution of how-to-vote material in remote South Australia;[20]
- counting procedures used by a polling official at the Epping West booth in the division of Bennelong;[21] and
- the opening times and polling arrangements at Australia House in London and the need for greater promotion of overseas voting arrangements by the AEC prior to departure in Australia.[22]

2.30 The committee does not see its role as examining each individual instance where inquiry participants raise concerns about the conduct and management of the election by the AEC. Unless an issue appears to point to systemic problems — such as the problems experienced by postal voters in regional Queensland at the 2004 election — the committee does not examine each issue presented to it. That said, it is important that these issues are raised with the committee so that the AEC is made aware of concerns in a transparent way so that the AEC can investigate these matters and respond appropriately.

2.31 In relation to the conduct of assisted voting in remote South Australia, the AEC advised the committee that the comments made in the submission by Mr Rowan Ramsay MP did not refer to AEC staff.[23]

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20 Mr Rowan Ramsay MP, Member for Grey, submission 27, p 1.

21 Stewart L, submission 98, pp 3–4.

22 ALP Abroad, submission 1, pp 5–7.

23 Drury C, Australian Electoral Commission, transcript, 20 August 2008, pp 6-7.

2.32 Feedback from the major political parties suggests that overall the election was well managed by the AEC. The Liberal Party of Australia told the committee that:

> The Liberal Party commends the AEC on its administration of the 2007 election. While we have a number of comments and suggestions to make, it is our view that overall the operation of the election was well managed.
>
> It clearly built on the experience and feedback of previous campaigns. We are particularly pleased with the increased liaison between the AEC and key stakeholders including, in particular, the political parties since the 2004 election. It is clear this feedback led directly to improvements in the administration of the election and we commend the Commission for its approach and willingness to engage with the Parties.[24]

2.33 The Federal Director of The Nationals, Mr Brad Henderson also commented positively on the AEC's conduct of the election:

> I would first like to record the Nationals' appreciation of the efforts of the AEC in administering the 2007 federal election. I would like to recognise gains made in addressing some of the problems that the Nationals identified in our submission to this committee's inquiry into the 2004 federal election. We have also appreciated the very active efforts made by the AEC under the former commissioner, Mr Campbell, to engage in active consultation regarding continuous improvement in the administration of federal elections.[25]

2.34 As always, it is important that the AEC review and improve on its processes to ensure that the next election is also well managed. The committee has noted that there may be a number of issues to be addressed regarding the funding position of the AEC and whether the business model adopted by the AEC, which is largely driven by processes imposed by the Commonwealth Electoral Act, needs some attention (chapter 9).

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24 Liberal Party of Australia, submission 156, p 1.

25 Henderson B, Federal Director, The Nationals, transcript, 3 February 2009, p 1.

The multiple voting myth

2.35 Unsurprisingly, allegations of multiple voting and enrolment fraud were again raised with the committee during the course of its inquiry.[26]

2.36 Allegations of multiple voting at federal elections are not new and have been used over the years as something of a 'bogeyman' to support the supposed need for a significant tightening of laws covering enrolment and voting processes. Recent amendments to the Commonwealth Electoral Act, discussed later in this chapter, were largely based on the premise that action needed to be taken to address the 'integrity' of the electoral roll. Introducing amendments to the Act in 2004, the then Parliamentary Secretary to the Minister for Finance and Administration stated that:

> The government remains committed to preserving and enhancing the integrity of the electoral roll and believes the introduction of new arrangements for proof of identity and address at the point of enrolment will significantly enhance roll integrity and reduce electoral fraud.[27]

2.37 It is noteworthy that when the Court of Disputed Returns was considering its decision in relation to the division of McEwen, much was made by the media and others of eight cases of apparent multiple voting and the possible implications of this on the election outcome, including the possibility that the result could be declared void and a fresh election required.[28]

2.38 When the Hon Fran Bailey MP, the Member for McEwen, appeared before the committee in November 2008, the eight cases of apparent multiple voting and another case of alleged multiple voting were raised.[29] Ms Bailey told the committee that a constituent, Reverend Ivor Jones, had voted at a pre-poll centre in the division of McEwen and yet his name and address had been provided at five different places throughout the electorate.[30] Ms Bailey contended that the eight instances of apparent

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26 *See* Hon Peter Lindsay MP, Member for Herbert, submission 57, p 3; Kirkpatrick B, submission 84; Stewart L, submission 98, p 5.

27 Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, House of Representatives Debates, 1 April 2004, p 27,931.

28 *See* Economou N, media interview, 'McEwen electoral dispute heads to court', The World Today, ABC Radio, 3 March 2008, viewed on 17 April 2009 at http://www.abc.net.au/worldtoday/content/2008/s2178127.htm

29 Hon Fran Bailey MP, Member for McEwen, transcript, 25 November 2008, p 6.

30 Hon Fran Bailey MP, Member for McEwen, transcript, 25 November 2008, p 6.

multiple voting and this additional case supported the need to adopt a system to check a voter's identity at a polling place.[31]

2.39 In October 2008, the AEC had already been able, through its review processes to determine that the eight cases of apparent multiple voting in the division of McEwen were almost all the result of confusion on the part of electors, telling a Senate estimates committee that:

> In relation to McEwen, in the court case eight dual voters were mentioned. Those eight were referred to the Australian electoral officer. I have reviewed them, and we have one of those where there is some evidence to support a matter, is likely that it will not be sent to the AFP and the person will be issued with a warning letter. The other matters were either people who were confused or people who were aged and their families et cetera had assisted them in voting.[32]

2.40 In relation to the allegations concerning Reverend Ivor Jones, the AEC conducted an investigation that did not find any evidence to support the claims made by Ms Bailey:

> AEC records indicate that no electors in the division of McEwen voted more than twice. The AEC can confirm that a letter was sent to Reverend Jones indicating that according to AEC records, it appeared he may have voted twice, and seeking his clarification on the matter. Reverend Jones' response made it clear that he had voted only once, through an early declaration vote.
>
> At around the same time, the AEC sent a letter to the elector appearing immediately above Reverend Jones on the certified list, indicating that according to AEC records that elector had not voted, and seeking clarification on the matter. The response from the elector indicated that the person had cast a vote at the same polling booth where AEC records indicated Reverend Jones had voted. The responses of both Reverend Jones and the elector immediately above Reverend Jones on the certified list led the Divisional Returning Officer for McEwen to conclude that a polling official error had ocurred. No further action was taken in either case.[33]

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31 Hon Fran Bailey MP, Member for McEwen, transcript, 25 November 2008, p 6.

32 Pirani P, Australian Electoral Commission, Senate Standing Committee on Public Finance and Administration, Supplementary budget estimates, transcript, 10 October 2008, p 10.

33 Australian Electoral Commission, submission 169.12, p 1.

2.41 Information from the AEC shows that the number of incidents investigated by the AEC is relatively small and although the initial number of apparent multiple voters starts out at a relatively high number, on further detailed investigation by the AEC, relatively few cases are found to reflect deliberate attempts to vote on multiple occasions and are referred to the Australian Federal Police (table 2.3).

Table 2.3 Multiple voting statistics, 1998 to 2007 elections

	1998	2001	2004	2007
Number of apparent multiple voters letters sent	na	16,949	14,402	20,633
Number of responses indicating no further action required (% of letters sent)	na	14,903 (88%)	12,082 (84%)	18,037 (87%)
Number of non-responses/return undelivered (% of letters sent)	na	921 (5%)	913 (6%)	1,282 (6%)
Number of admissions of multiple voting	na	896	1,046	1,167
Of admissions: number due to confusion, poor comprehension, aged (a) (% of total admissions)	na	739 (82%)	835 (80%)	955 (82%)
Number referred to AFP	263	138 (c)	64 (b)	10
Number of prosecutions	0	0	0	0

Note *na Not available. (a) Of the admissions/aged category 98 per cent were 70 or over. (b) Of the 64 cases referred, 25 were subsequently investigated by the AFP in a day of action approach. The AFP made referrals to the DPP, but no cases were prosecuted. (c) Of these 130 referrals, five were accepted for investigation.*

Source *Australian Electoral Commission, submission 169.15, p 5; submission 203 to the Joint Standing Committee on Electoral Matters Inquiry into the 2001 election, p 5.*

2.42 Expressed as a proportion of electors on the electoral roll, apparent multiple voting, admissions of multiple voting and referrals to the AFP are extremely small (table 2.4). There has been no clear upward or downward trend in apparent multiple voting rates at the past three elections, except for a continuing increase in admissions due to confusion, poor comprehension and age.

Table 2.4 Multiple voting rates, 2001 to 2007 elections (per cent)

	2001	2004	2007
Number of apparent multiple voters letters sent as a proportion of total electors (%)	0.1334	0.1100	0.1512
Number of responses indicating no further action required as a proportion of total electors (%)	0.1173	0.0922	0.1322
Number of admissions of multiple voting as a proportion of total electors (%)	0.0071	0.0080	0.0086
No of admissions due to confusion, poor comprehension, aged as a proportion of total electors (%)	0.0058	0.0064	0.0070
Number referred to AFP as a proportion of total electors (%)	0.0011	0.0005	0.0001

Source *Australian Electoral Commission, submission 169.15, p 5; 2007 Electoral pocketbook: election 2007 (2009), p 46.*

2.43 Electoral authorities need to be vigilant to ensure that multiple voting is discouraged and, if detected, that those responsible are identified and appropriate action taken. There are two separate offences for multiple voting. The penalty for voting more than once in the same election is 10 penalty units ($1,100). The penalty for intentionally voting more than once in the same election is 60 penalty units ($6,600) or 12 months imprisonment, or both.[34]

2.44 The AEC employs a number of approaches to detect multiple voting including scanning certified lists following an election to identify electors who have been marked more than once, and investigating allegations of multiple voting arising from incident reports reported by AEC election officials and those reported in the media and/or parliament on a case by case basis.

2.45 Investigation by the AEC is a multi-stage process that can take up to two years to complete following an election. The process involves a check of the scanned certified lists from polling places and sorting through the scanned lists to detect accidental contamination of the lists and polling official errors. The AEC then examines the apparent cases of multiple voting that remain after the administrative eliminations and writes to each elector against whose name more than one mark is shown, or no mark at all is shown, to seek details from the elector of whether, when and where they voted.[35]

34 *Commonwealth Electoral Act 1918*, s 339(1C).

35 Australian Electoral Commission, *Compulsory voting* (2007), Electoral backgrounder no 14.

2.46 After the 2007 election, the AEC sent 20,633 letters to electors who, based on AEC records, appeared to have voted more than once. Of these, the AEC indicated that no further action was required, due to either an admission of multiple voting (1,167) or the response indicated that no further action was required (18,037). Common examples given by the AEC where a person may have voted more than once but the AEC took no further action include where the:

- elector casts a pre-poll vote and an ordinary vote but stated that they had only cast an ordinary vote on polling day (frequently aged/culturally and linguistically diverse electors);
- elector casts a postal vote following receipt of a political party PVA but appears to have no understanding that they have done so, then casts an ordinary vote on polling day (there were quite a few examples of this, particularly with culturally and linguistically diverse electors);
- elector applies for and completes a postal vote and then thinks it has been misplaced so votes again but then discovers another family member had posted it;
- elector from culturally and linguistically diverse background casts a declaration vote in a division outside their home division and then due to confusion or concern that their vote may be misplaced or they have not complied with requirements properly, votes again in their home division;
- elector is marked off as an ordinary voter at two polling places, denies voting more than once, and there is no match with an apparent non-voter; and
- elector demonstrates confusion with State/local government events when replying.

2.47 It is revealing that of those electors who had admitted to multiple voting, 82 per cent cited confusion, poor comprehension or were aged — of those in the aged category 98 per cent were aged 70 or over.[36]

2.48 Of those who had not responded to the AEC or where letters had been returned as undelivered (1,282), the AEC conducted a follow up involving approximately 900 electors in late December 2008 and mid-January 2009. The AEC advised the committee that as at 11 March 2009, approximately 300 replies had been received. While 16 responses contained admissions of multiple voting, the multiple voting was not intentional, but rather

36 Australian Electoral Commission, sub 169.15, p 4.

resulted from either confusion or poor comprehension on the part of the elector, with a number of these cases involving elderly electors and electors from non-English speaking backgrounds.[37]

2.49 Of the remaining responses, approximately 125 have been recorded as polling official error (including matches with apparent non-voters), 40 letters were returned undelivered and the remaining approximately 120 responses fall into a variety of categories including elector denial and evidence inconclusive.[38]

2.50 Of the 10 cases of apparent multiple voting referred to the AFP, eight cases were from NSW and two were from Victoria. The AEC told the committee that it has been advised by the AFP that it did not have the resources to investigate these, therefore no further action was taken.[39]

2.51 The AEC advised the committee that it wrote to the AFP in February 2009 to explore a replacement service agreement but that it was 'satisfied that the current process enables it to identify the possibility of any potential serious multiple voting issues in relation to close seats in sufficient time to lodge a petition with the Court of Disputed Returns, should it be deemed necessary'.[40]

2.52 The committee noted that the AEC intends to conduct an internal review of non-voter (and multiple voter) legislation, policy and procedures in the near future with a view to identifying any gaps or deficiencies in current processes.[41] The AEC indicated that when the review was finalised that it would report to the committee on the outcomes, including any recommendations for legislative change.[42]

Committee conclusion

2.53 There is no evidence that the outcome of the 2007 election, or previous federal elections, suffered from or are associated with systemic multiple voting problems.

2.54 Alleged cases of multiple voting raised following the 2007 election are illustrative of an unfounded fear of the effects of multiple voting that are

37 Australian Electoral Commission, sub 169.15, p 4.
38 Australian Electoral Commission, sub 169.15, p 4.
39 Australian Electoral Commission, sub 169.15, p 4.
40 Australian Electoral Commission, submission 169.19, p 13.
41 Australian Electoral Commission, submission 169.19, p 7.
42 Australian Electoral Commission, submission 169.19, p 7.

inevitably raised following an election but, when subject to close examination, do not stand up to scrutiny.

2.55 It is surprising that, despite the recent legislative changes being imposed for reasons of 'integrity', there was an overall increase in apparent multiple voting rates at the 2007 election, as evidenced by the statistics reported to the committee by the AEC.

2.56 It is important that the AEC continue to improve its processes to follow up on allegations of multiple voting and its administrative arrangements to identify instances of apparent multiple voting. The AEC have identified that they will further review arrangements to improve multiple voter follow up processes.

2.57 That said, it needs to be more widely recognised that fears about the effects of multiple voting are, and have been, overstated and should not be used to deny eligible electors the opportunity to meaningfully participate in the democratic process.

2.58 The restriction of the franchise prior to the 2007 election, largely through the introduction of a proof of identity regime for enrolment and provisional voting, was largely based on a view that such changes would 'strengthen' integrity. The AEC's evidence on multiple voting does not support any claim of systemic and organised voting fraud at the 2007 election, nor previous federal elections.

2.59 The simple effect of these changes was to disenfranchise hundreds of thousands of eligible electors without any noticeable improvement in integrity.

Election context and major issues

2.60 Every election is a unique event, influenced by a range of specific factors as well as underlying changes in our society, culture and technology. Preceding the 2007 election were a number of legislative changes that significantly affected processes for applying to be on the electoral roll, updating enrolment details and voting. Some of the major issues examined by the committee are related to these legislative changes. Other important issues include fallout from the court challenge over the election result in the division of McEwen and strategies to deal with underlying changes in our democratic system. The committee has identified a number of questions that it has sought to answer in relation to these issues.

Enfranchisement of eligible electors

2.61 The Commonwealth Electoral Act imposes obligations on all eligible electors to maintain the currency of their enrolment and vote at federal elections and referenda.[43]

2.62 Despite this obligation, there are large numbers of eligible electors who, for a number of reasons, are not able to have their say on who they would like to represent them in the federal parliament and form government. This includes eligible electors who:

- are not on the electoral roll;
- participate in an election but find that they are not enrolled when they turn up to vote on polling day; and
- cast a vote only to have their vote excluded from the count because their vote was recorded as being too late to accept into the count or they were unable, or found it inconvenient, to prove their identity after casting their vote on polling day.

2.63 A key consideration for the committee is the extent of disenfranchisement and whether some of the barriers to disenfranchisement can be addressed. Participation in the electoral system by some groups of people in the community is lower than that of the population generally. The committee examines participation by Indigenous electors and homeless electors in chapter 6.

2.64 There are a number of different markers of the extent of under participation in the electoral system across the general population. The committee has noted a number of outcomes relating to the 2007 election and some that have become evident following the election that it intends to examine throughout this report including:

- the estimated 1.2 million eligible electors as at March 2009 who are not on the electoral roll and therefore unable to exercise the franchise (chapters 3 and 4);[44]
- the estimated 1.1 million eligible electors who were not on the electoral roll for the 2007 election (chapters 3 and 4);[45]

43 *Commonwealth Electoral Act 1918*, ss 101 and 245.

44 Killesteyn E, Australian Electoral Commission,

45 Australian Electoral Commission, *Annual Report 2007-08*, p 35; *Electoral pocketbook: election 2007* (2009), p 47.

- the 198,742 electors, other than provisional electors, whose declaration votes were rejected from the count because the elector was not on the roll (chapter 4);[46]
- the 100,370 electors who missed out on the close of rolls and could not, as a result, enrol or update their enrolment details (chapter 4);[47]
- the 143,470 electors who cast a provisional vote but had their vote rejected at the preliminary scrutiny compared to the 90,366 electors whose votes were rejected at the 2004 election,[48] including
  - ⇒ 27,529 electors at the 2007 election who did not satisfy the proof of identity requirements that they present identification at the time of voting or at an AEC office by the Friday following polling day in order to have their vote included in the count (chapter 3);[49]
- the 23,600 electors who applied for a postal vote but did not vote by post or other means (chapter 3);[50] and
- the 91,354 electors who appeared to make a genuine attempt to vote in the House of Representatives election but whose votes were ruled informal because they made a mistake in numbering the ballot paper (chapter 8).[51]

Legislative changes between the 2004 and 2007 federal elections

2.65 A number of significant changes were made to the Commonwealth Electoral Act and the *Referendum (Machinery Provisions) Act 1984* between the 2004 and 2007 federal elections, including altered enrolment requirements for new enrolees and those updating their enrolment details, and the introduction of identity requirements for electors casting provisional votes.

2.66 The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* made a number of significant amendments to the Commonwealth Electoral Act commencing on 22 June 2006, including:

- Introduction of proof of identity for enrolment — From 16 April 2007, people were required to provide evidence of identity when enrolling or

46 Appendix C, table C.5.

47 Australian Electoral Commission, submission 169, p 30.

48 Appendix C, table C.5.

49 Australian Electoral Commission, submission 169, p 48.

50 Campbell I, Australian Electoral Commission, transcript, 1 September 2008, p 10.

51 Australian Electoral Commission, *Analysis of Informality during House of Representatives 2004 Election* (2005), Research report number 7, p 10.

updating their enrolment. People enrolling or updating their enrolment from within Australia are required to provide their driver's licence number on their enrolment application. If people do not have a driver's licence, then they are required to show a specified type of document, for example an Australian passport or birth certificate, to an elector in a specified class, for example an accountant or medical practitioner. If they do not have a driver's licence or do not possess one of the prescribed documents, they are required to have their application countersigned by two electors who have known the applicant for at least one month and who can confirm the applicant's name.

- Reduced close of rolls period — The close of rolls period changed from a period seven days after the issue of the writ to close at 8 pm on the third working day after the date of the writ. There are two different deadlines for enrolling:
  - ⇒ The deadline for the AEC to receive a correctly completed proof of identity compliant enrolment form is 8 pm on the same day the writs for the election are issued if a person is enrolling for the first time or is re-enrolling to get back on the roll after having been removed for any reason;
  - ⇒ The deadline for the AEC to receive a correctly completed proof of identity compliant enrolment form is 8 pm three working days after the day the writs are issued if a person is 17 years of age, but will turn 18 between the day after the issue of the writs and election day (inclusive); or will become an Australian citizen between the day after the issue of the writs and the day before election day (inclusive); or is on the roll, but with an out-of-date address or name details.
- Provisional voting — Voters casting a provisional vote were required to provide evidence of identity at the time of casting the vote or to the AEC by the following Friday;
- Removal from the roll by objection on the grounds of non-residence — Prior to this amendment, if an elector was mistakenly removed from the electoral roll by objection on the ground of non-residence, his or her declaration vote would be admitted to the count.
- Funding and disclosure arrangements:
  - ⇒ All disclosure thresholds for political donations and receipts were increased to amounts above $10,000, and are adjusted annually for inflation ($10,900 for the period 1 July 2008 to 30 June 2009);
  - ⇒ Third parties (persons other than parties, candidates and groups, members of Parliament and Commonwealth departments and

agencies) that incur expenditure for a political purpose in excess of the disclosure threshold, or if they receive gifts that are used for such expenditure, are now required to complete annual disclosure returns. Previously, they were required to do so only for election periods;

⇒ The definition of 'associated entity' was extended to include entities with financial membership of, or voting rights in, a registered political party, and entities on whose behalf a person exercises such membership or voting rights; and

⇒ Broadcasters and publishers are no longer required to lodge disclosure returns on electoral advertisements broadcast or published during election periods.

2.67 Further amendments to the Commonwealth Electoral Act were made by the *Electoral and Referendum Legislation Amendment Act 2007* commencing on 15 March 2007 including:

- General postal voting status for certain electors — Members of the Australian Defence Force and Australian Federal Police personnel serving outside of Australia, and persons registered as eligible overseas electors, may apply for registration as general postal voters;
- Postal voting arrangements — A number of amendments relating to the receipt of applications for a postal vote and the dispatch of postal vote certificates including:
  - ⇒ The deadline for receipt of postal vote applications is 6 pm on the Thursday two days prior to election day. While not required to post or deliver postal voting material to those electors whose postal vote applications are received after this time, the AEC is to make reasonable efforts to contact applicants whose postal vote applications are received after the deadline to advise them of the need to vote by other means.
  - ⇒ Postal vote applications received by the AEC up to and including 6 pm on the Friday eight days before election day will be delivered to the applicant by post or other appropriate means (not being electronic means). For applications received within this time, the applicant may also request on the application form that a means of delivery other than post (not being electronic means) be used. If the alternative means is considered to be reasonable and practicable, then the AEC will deliver the postal voting material by that means.
  - ⇒ For postal vote applications received after 6 pm on the Friday eight days before election day and up to and including 6 pm on the

Thursday two days before election day, the AEC will deliver the postal voting material to the applicant by the most reasonable and practicable means (not being electronic means).

⇒ If a completed postal vote certificate (if posted or delivered before the close of the poll) would be unlikely to reach the appropriate Divisional Returning Officer (DRO) within 13 days after election day, the range of AEC officers who can receive such an envelope (on or before the close of the poll) has been expanded to include electoral visitors at hospitals and prisons, mobile team leaders, certain office holders and on-going employees at the AEC's capital city offices.

2.68 A key consideration for the committee in this report is to examine the impact of these legislative changes on the 2007 election.

2.69 Where possible, the committee has sought to determine the direct and indirect impact of these changes and has made appropriate recommendations regarding their continuing operation. The impact of legislative changes on the electoral roll is examined in chapters 3 and 4.

McEwen recount and Henderson review

2.70 Following the election, a petition was filed with the Court of Disputed Returns on 25 January 2008, relating to the conduct of the recount in the division of McEwen.

2.71 The initial count in the division of McEwen had found that candidate Mr Rob Mitchell (Australian Labor Party) had won the election by a margin of six votes. Following a recount, candidate Ms Fran Bailey (Liberal Party of Australia) was found to have won the election by a margin of 12 votes.[52]

2.72 The basis of the petition before the court was that at least 40 of the 643 reserved ballot-papers had been wrongly rejected by the Australian Electoral Officer and that those ballot-papers each indicated a preference, by the elector, for the petitioner ahead of the first respondent. In one instance it was alleged that a ballot-paper which recorded a preference for the first respondent ahead of the petitioner had been wrongly admitted to the count.[53]

52 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 3.

53 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 3.

2.73 The final decision by the court was made on 2 July 2008, with the court ruling that the final margin in favour of Ms Fran Bailey was 27 votes.[54]

2.74 In coming to this view, the court conducted a review of 643 reserved ballot papers that had been set aside during the initial count when scrutineers challenged the decision of the Divisional Returning Officer. As a result of the court's review of these ballot papers, the Court reversed 154 of the decisions made by the Australian Electoral Officer during the recount in respect of the 463 ballot papers on which it ruled.[55]

2.75 The court also made a number of important observations in respect of the issues associated with ruling on the formality of ballot papers and developed a set of 'principles' (the first two 'cardinal' principles and the second three 'subordinate' principles) that reflected past AEC practice in ruling on formality and various judgements by courts on these matters:

- That the ballot, being a means of protecting the franchise, should not be made an instrument to defeat it;
- Doubtful questions of form should be resolved in favour of the franchise where there is no doubt as to the real intention of the voter;
- When seeking to determine the voter's intention resort must be had, exclusively, to what the voter has written on the ballot paper;
- The ballot paper should be read and construed as a whole; and
- A voter's intention will not be expressed with the necessary clarity unless the intention is unmistakeable and can be ascertained with certainty.[56]

2.76 Following the court's decision, the AEC commissioned a recently retired senior public servant, Mr Alan Henderson PSM, to examine the implications of the decision by the Court of Disputed Returns on disputed ballot papers. The terms of reference for the review stated that:

> The review is to identify action that should be taken by the AEC to ensure that processes and procedures are in place for future elections to address the matters identified in the Court's decision. The review will culminate in the provision of a report to the Electoral Commissioner that sets out findings and recommendations and presents a way forward on dealing with these matters.

54 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 84.

55 *Mitchell v Bailey (No 2) [2008] FCA 692*, Schedule.

56 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 52.

In conducting the review, the reviewer will:

- consider the specific ballot-papers and the Court's decision in Mitchell and any implications in the way in which electoral officials are supported by AEC policies, guidelines, procedures, manuals, and training in making decisions about the formality of ballot-papers;
- consult with key stakeholders about the impact of the Court's decision on the scrutiny process for electoral events;
- identify measures to improve the quality, consistency, transparency and accountability of decision-making by electoral officials on the formality of ballot-papers; and
- identify any necessary changes to the existing policies, guidelines, procedures, manuals and training produced by the AEC on the formality of ballot-papers.[57]

2.77 The Court of Disputed Returns' decision on the McEwen petition, the findings of the Henderson review and the AEC's proposed response has im` portant implications for the conduct of future elections, including interpretation of formality by electoral officials.

2.78 Some of the key formality issues addressed by the committee include:

- What changes, if any, are required in legislation, policy and practice as a result of the court's judgement and the Henderson review? (chapter 8)
- Should there be a change in the process for recount procedures so that more than one individual is responsible for deciding on the formality of ballot papers? (chapter 8)
- What are the major factors that contribute to informality at federal elections? (chapter 8)
- What measures, if any, can be taken to include votes in the election count where a clear preference has been expressed but a genuine mistake has been made in completing the ballot paper? (chapter 8)

Electoral roll

2.79 To be eligible to vote, electors who have changed their address for which they are enrolled or are not enrolled, must be proactive in completing a proof of identity compliant enrolment form prior to the close of rolls. At the close of rolls on 23 October 2007 (or 17 October for new enrolments),

57 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), attachment 1, p 39 (exhibit 4).

13,645,073 people were enrolled, an increase of 623,843 electors (4.8 per cent) compared to the 2004 election (table 2.5).

Table 2.5 Electors enrolled at close of rolls, by jurisdiction, 1998 to 2007 elections

Jurisdiction	1998	2001	2004	2007	2004–2007 % change
NSW	4,031,749	4,204,383	4,302,122	4,495,336	4.49
VIC	3,056,887	3,218,746	3,292,409	3,442,096	4.55
QLD	2,177,556	2,319,481	2,463,402	2,612,300	6.04
WA	1,140,845	1,200,438	1,237,349	1,312,942	6.11
SA	1,006,398	1,034,377	1,049,814	1,075,968	2.49
TAS	329,751	328,829	339,589	349,788	3.00
ACT	208,684	219,876	224,896	238,742	6.16
NT	104,755	110,501	111,649	117,901	5.60
Australia	12,056,625	12,636,631	13,021,230	13,645,073	4.79

Source *Australian Electoral Commission, submission 169, p 7.*

2.80 Differences in population growth and the effectiveness of efforts to get people on the electoral roll influence the growth of the electoral roll across jurisdictions. The Australian Electoral Commission estimated that at the close of rolls for the 2007 election, 92.3 per cent of eligible electors were enrolled to vote. This was an increase of 0.8 percentage points compared to the close of rolls at the 2004 election.[58]

2.81 Since the election, the number of electors on the roll has dropped alarmingly. The AEC recently told the committee that an estimated 1.2 million electors were not on the electoral roll, and that to achieve the 2007 election participation rate of 92.3 per cent, an additional 300,000 electors would need to be placed on the electoral roll.[59]

2.82 It is important to maintain the integrity of the electoral roll and ensure that it remains as accurate as possible but also that there are no unreasonable barriers to enrolling and maintaining enrolment. Some of the key issues relating to the electoral roll considered by the committee include:

- How did the legislative changes enacted between the 2004 and 2007 election affect eligible electors' ability to maintain their enrolment, or get on the roll, and successfully record a vote at the 2007 election? (chapters 3 and 4)

58 Australian Electoral Commission, submission 169, p 9.

59 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 2.

- What was the effectiveness of strategies used by the AEC to ensure that eligible electors were on the roll both before and following the election? (chapter 4)
- What changes, if any, could be made to make it easier for electors to update and maintain their enrolment whilst not reducing the integrity of the electoral roll? (chapters 3 and 4)

Voter turnout and votes issued

2.83 A total of 13,364,359 people sought to cast a vote at the 2007 federal election. Voter turnout, calculated as the number of votes counted divided by the total number of electors on the roll for the election varied across jurisdictions and for the House of Representatives and the Senate (table 2.6).

Table 2.6 Voter turnout, House of Representatives and Senate, by jurisdiction, 2007 election (per cent)

Jurisdiction	House of Representatives		Senate	
	Turnout 2007 election (%)	*2004-2007 percentage point change*	*Turnout 2007 election (%)*	*2004-2007 percentage point change*
New South Wales	94.99	+0.29	95.40	+0.29
Victoria	95.17	+0.30	95.60	+0.17
Queensland	94.41	+0.67	94.81	+0.68
Western Australia	93.26	+0.47	93.86	+0.20
South Australia	95.42	+0.63	95.83	+0.47
Tasmania	95.76	+0.11	95.98	+0.08
Australian Capital Territory	95.85	+0.90	96.00	+0.79
Northern Territory	86.53	+2.28	86.88	+2.47
Australia	94.76	+0.44	95.17	+0.35

Source *Australian Electoral Commission, Virtual Tally Room, accessed on 3 September 2008 at http://results.aec.gov.au/13745/Website/HouseTurnoutByState-13745.htm and http://results.aec.gov.au/13745/Website/SenateTurnoutByState-13745.htm.*

2.84 Around 4 in 5 people nationally casting a vote at the 2007 Federal election did so in person, attending one of the 7,723 polling places operating on election day (table 2.7). The upward trend towards an increase in people seeking to utilise 'early voting' (pre-poll and postal voting) continued, with more than 1.1 million electors (8.3 per cent) casting a pre-poll vote at one of the 426 centres operating over the three weeks to polling day and more than 833 000 voters (6.2 per cent) casting a postal vote.[60]

60 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 54.

Table 2.7 Votes counted by type, Senate, by jurisdiction, 1998 to 2007 elections

	1998		2001		2004		2007	
	Number	%	Number	%	Number	%	Number	%
Ordinary	9,513,300	82.1	10,172,617	84.1	10,195,459	82.1	10,396,694	80.0
Provisional	116,158	1.9	107,396	0.9	112,560	0.9	42,162	0.3
Absent	776,859	6.7	780,961	6.5	771,332	6.2	771,065	5.9
Pre-poll	692,377	6.0	585,616	4.8	726,797	5.9	1,073,330	8.3
Postal	488,671	4.2	451,900	3.7	613,871	4.9	704,563	5.4
Total	11,587,365	100	12,098,490	100	12,420,019	100	12,987,814	100

Source *Appendix C, table C.2.*

2.85 Of those votes issued, not all are necessarily included in the election count, with some votes rejected on the basis of an elector being ineligible to vote. At the 2007 election there was a marked decline in the proportion of provisional votes admitted to the count, with less than 15 per cent of provisional votes for the House of Representatives being admitted to the count, compared to an average of nearly 50 per cent over the previous five federal elections.[61]

2.86 While early voting is clearly an important service provided to many electors, administration of early voting places a higher workload on the AEC than ordinary voting and can have the effect of slowing down the counting of votes. Early voting also has implications for the way that the AEC administers the election and the campaign activities of political parties.

2.87 The reliance on the postal network for a timely return of postal votes is an issue for many electors, particularly those in rural and remote areas. At the 2007 election, some of the difference between the number of postal votes issued (833,178) and postal votes received (749,566) may reflect an inability of electors to meet the timelines for the return of postal votes, despite their best efforts to do so.

2.88 It is important that the act of voting is as accessible as possible whilst maintaining the integrity of the election count. Some of the key issues addressed by the committee include:

- How did the legislative changes enacted between the 2004 and 2007 election affect the likelihood of provisional and other declaration votes being included in the election count? (chapter 4)

61 See Appendix C, table C.1.

- What groups of electors, if any, are disadvantaged by current arrangements? What can be done to encourage greater participation by these groups in the electoral system? (chapter 6)
- What is the impact of the longer-term trend to more people voting before polling day through postal voting and pre-poll voting? What changes, if any, should be made in response to this trend? (chapter 7)
- How can postal voting arrangements be improved to better facilitate participation by electors, particularly those living in rural and remote areas? (chapter 3)

Informal voting

2.89 A small minority of people apparently intentionally seek to make an informal vote. However, the AEC and other researchers have found that the reason why many votes are ruled informal reflects a number of factors including low levels of literacy, English language competence and the complexity arising from different voting systems, rather than a lack of political interest.[62] Statistical studies of informality at previous federal elections have linked informality rates with levels of eduction and proficiency in English, the number of candidates on the ballot paper, proximity to other election events and different voting systems for state and territory elections.[63]

2.90 The rate of informal voting at the 2007 Federal election declined across all jurisdictions for both the House of Representatives and the Senate compared to the 2004 election (table 2.8). This was the first decline in the national rate of informal voting since the 1993 election.[64]

62 Young S, submission 77, p. 2; Australian Electoral Commission, *Analysis of Informality during House of Representatives 2004 Election* (2005), Research report number 7, pp 2-3.

63 Australian Electoral Commission, *Informal Vote Survey House of Representatives 2001 Election* (2003), Research Report Number 1; *Analysis of Informality during House of Representatives 2004 Election* (2005), Research report number 7.

64 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 2.

Table 2.8 Informal voting, House of Representatives and Senate, by jurisdiction, 2004 and 2007 elections (per cent)

Jurisdiction	House of Representatives		Senate	
	Informal votes (%)	*2004–2007 percentage point change*	*Informal votes (%)*	*2004–2007 percentage point change*
New South Wales	4.95	-1.17	2.24	-1.23
Victoria	3.26	-0.84	3.28	-1.85
Queensland	3.56	-1.60	2.34	-0.45
Western Australia	3.85	-1.47	2.42	-1.12
South Australia	3.78	-1.78	2.38	-1.15
Tasmania	2.92	-0.67	2.63	-0.74
Australian Capital Territory	2.31	-1.13	1.70	-0.76
Northern Territory	3.85	-0.60	1.94	-1.18
National	3.95	-1.23	2.55	-1.20

Source *Australian Electoral Commission, submission 169, pp 62–63.*

2.91 Analysis of informal ballot papers by the AEC revealed that almost three quarters of the decline in informality at a national level for the House of Representatives was due to a reduction of almost 46,000 ballot papers that were marked with a '1 only' and a 26,000 reduction in the number of 'blank' ballot papers.[65]

2.92 Some of the key findings of the AEC's analysis of informal ballot papers were that:

- divisions with the highest percentage of informal votes in 2004 continued to have the highest levels in 2007;
- the ten divisions with the highest percentage of informal votes were all located in Western Sydney. They were: Blaxland, Watson, Chifley, Prospect, Fowler, Reid, Parramatta, Banks, Werriwa and Bennelong;
- in 2007 five of the top six divisions with the highest rates of informality were also the five electorates with the highest proportion of people from a non-English speaking background;
- the decrease in informal voting across the past two federal elections coincided with a decrease in the average number of candidates (7.27 in 2004 to 6.66 in 2007);
- NSW and QLD state electoral legislation provides for optional preferential voting at state elections. Both states continue to record the

65 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 10.

highest proportion of informal votes in federal elections due to electors casting number '1 only' and 'incomplete' ballots.[66]

2.93 It is important that where voters go to the effort of casting an informed and valid vote that their intentions are reflected in the way a formal vote is interpreted and counted. Some of the key issues relating to informal voting examined by the committee include:

- What were the factors that contributed to the improved overall informality result for both the Senate and House of Representatives? (chapter 8)
- What groups of electors and electorates, if any, are more likely to record an informal vote? What strategies should be pursued to improve an elector's ability to cast a valid vote? (chapter 8)
- What are the options for counting systems to be 'inclusive' and for the elector's intent to be determined thereby keeping votes otherwise ruled informal in the count for as long as possible? (chapter 8)

Election costs

2.94 The AEC estimate that the cost of the 2007 federal election was $113 million (excluding $49 million in public funding provided to election candidates), with most of the election related to staffing costs, although advertising and promotion expenses were also significant.[67]

2.95 A key additional cost for the 2007 election was a $24.4 million advertising campaign, consisting of $14.9 million for pre-election enrolment advertising leading up to the announcement of the election and $9.5 million for advertising after the announcement of the election.[68] The cost of advertising for the 2007 election was $29.5 million in total, up from $10.2 million for the 2004 election.[69]

2.96 The cost of running elections has been steadily rising. In real terms, the cost per elector (excluding public funding) has risen by 22 per cent since 1996, with all of the increase occurring between the 2004 and 2007 elections (figure 2.2).

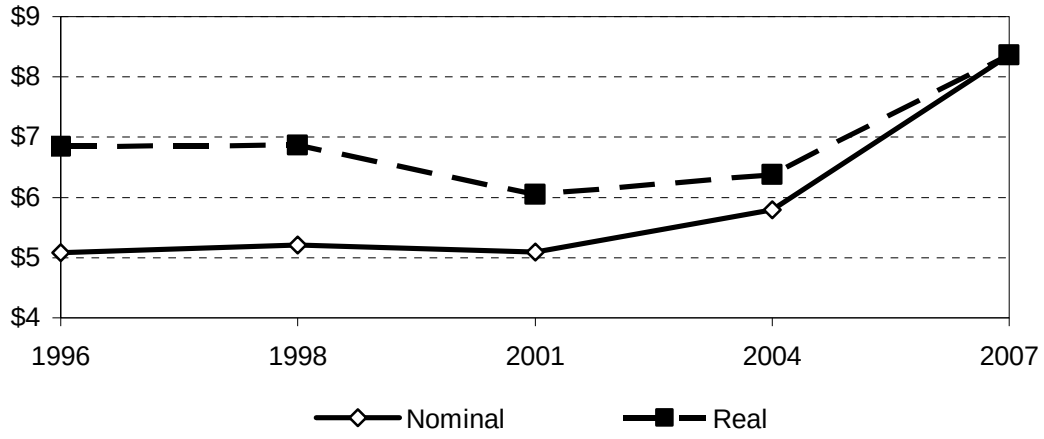
66 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 4.

67 Australian Electoral Commission, submission 169, p 79.

68 Australian Electoral Commission, submission 169, p 22.

69 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 73; *Electoral pocketbook: election 2004* (2005), p 91.

Figure 2.2 Election costs, 1996 to 2007 elections ($ per elector)



Source *Australian Electoral Commission, Electoral pocketbook: election 2007 (2009), p 73.*

2.97 A key driver of the higher cost of the 2007 election was the increased spending on advertising. The committee calculates that if the additional $19.3 million spend on advertising was excluded, the cost per elector for the 2007 election would have been around $6.95, representing an 8.9 per cent real increase in the cost of the 2007 election compared to the 2004 election. The AEC was required to fund this increased advertising expenditure by drawing on its accumulated cash reserves, running operating losses over the financial years 2006-07 and 2007-08.[70] Such a strategy to lift enrolment is obviously unsustainable over the longer term.

2.98 The AEC have pointed to a range of cost pressures, the implementation of an additional efficiency dividend and structural rigidities in some of their organisational areas, as creating a situation that may not allow future operations to continue on a sustainable basis.

2.99 It is important that the AEC is appropriately funded and managed so that it can conduct the essential operations required for the conduct of elections. Some of the key issued addressed by the committee include:

- What was the relative effectiveness and sustainability of the cost of advertising for the 2007 election? (chapter 4)
- What is the impact on the AEC of external budget factors and cost pressures in its areas of operation? (chapter 9)
- To what extent does the Commonwealth Electoral Act impose specific operational requirements and structures on the AEC? (chapter 9)

70 Australian Electoral Commission, submission 169, p 79.

- Is the current business model of the AEC sustainable, and, does it encourage innovation given technological developments and the demands of electors? (chapter 9)

3

Enabling the franchise

3.1 Australia has a proud history of ensuring access to the franchise for those who are entitled to have their names included on the electoral rolls for federal, state and local government elections.

3.2 It is incumbent upon all governments to continue this tradition, to both welcome new electors and to ensure that electoral legislation does not create unreasonable barriers for those who qualify for enrolment and voting and who, rightfully, expect to be able to exercise their franchise at elections and referenda.

3.3 With these traditions and aims firmly in mind, the committee sought to examine how the enrolment provisions of the *Commonwealth Electoral Act 1918* applied at the 2007 election, to examine whether the appropriate balance existed between enabling the franchise for those who are qualified to exercise it, and ensuring the continued integrity of the electoral roll.

3.4 In doing so, the threshold issue for consideration by the committee is whether changes to enrolment and voting provisions of the Commonwealth Electoral Act have had the effect of enabling or restricting the franchise, and if they were found to be restrictive, whether those restrictions were more than offset by the achievement of greater electoral 'integrity' in the lead up to and at the 2007 election.

3.5 To ensure that the changes were viewed in an appropriate context, the committee compared the 2007 election experience in so far as it related to enrolment and voting to federal elections held since 1993.

3.6 The committee considered another important issue relating to enfranchisement, which, despite electors carrying out all of the requirements required by the Commonwealth Electoral Act, results in the postal votes lodged by certain electors being excluded from the count.

3.7 The particular circumstances relating to these postal votes have been considered by former Joint Standing Committees on Electoral Matters election inquiries, with most recently, the 2004 inquiry recommending that changes be made to enhance the franchise for these electors.

Background

3.8 Australia's inclusive entitlement to the franchise has been a feature of federal elections since 18 June 1962, when all Aboriginal people became entitled to enrol and vote at federal elections and referenda.[1] At this time Aboriginal people were able to take up the franchise alongside those eligible British subjects who were aged 21 years or more.

3.9 In 1973 the qualifying age for enrolment, voting and candidature dropped from 21 years to 18 years. The 18 years of age qualification for enrolment and voting has remained unchanged since that time.

3.10 Between 1973 and 1983, British Subjects resident in Australia for six months or more, who were 18 years of age or more were entitled to enrol.

3.11 In 1984, Australian citizenship became the qualification for enrolment and voting. Those British subjects who were on the roll immediately before 26 January 1984 retain an entitlement to enrolment and voting to this day.[2]

3.12 The enrolment franchise was extended in 1983 when the concept of provisional enrolment was introduced into the Commonwealth Electoral Act. Provisional enrolment allowed for persons who had reached 17 years of age and who would be otherwise entitled to enrolment if they were 18 years of age, to have their names placed on the electoral roll, with the voting franchise not granted until they reached 18.[3]

3.13 A further extension in 1992 saw applicants for Australian citizenship also gain an entitlement to provisional enrolment. Provisional enrolment for applicants for citizenship allowed those persons who had made an application to become Australian citizens, who would otherwise be entitled to enrolment, to have their names added to the electoral roll, with the voting franchise granted when they received a certificate of Australian citizenship.

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1 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 30.

2 *Commonwealth Electoral Act 1918*, s 93.

3 *Commonwealth Electoral Act 1918*, s 100.

3.14 Other amendments to the Commonwealth Electoral Act in 1992 saw the enrolment and voting franchise extended to qualified Norfolk Islanders. Those Norfolk Islanders who were one of the people of a State for the purposes of sections 7 and 24 of the Constitution, who resided in Norfolk Island and would be qualified for enrolment if they lived in a subdivision in Australia, became entitled to enrolment.[4] Those Norfolk Islanders, who were not people of a state for the purposes of sections 7 and 24 of the Constitution, became eligible to enrol in a subdivision of a one-Territory Division.[5]

3.15 With some minor exceptions including provisions relating to Norfolk Island electors and itinerant electors, enrolment for the purposes of House of Representatives elections is generally granted on the basis that an otherwise qualified elector has resided at an address within a Commonwealth electoral division for one month, and, in respect of Senate elections, that address is located within a particular state or territory.

3.16 In general terms the franchise has not been extended to Australian citizens residing overseas unless they have an intention to return to live in Australia within a specified time. Despite representations by Australian citizens and advocacy group representing citizens living permanently overseas, Parliament has historically considered Australian residence as an important precondition for enrolment and voting.

3.17 However, enrolled voters, who leave Australia, may register as 'eligible overseas electors' providing they intend to return within a period (currently six years) provided for in the Commonwealth Electoral Act. Eligible overseas electors are entitled to remain enrolled and vote in respect of the address at which they were enrolled prior to leaving Australia.[6]

3.18 Persons who have ceased to reside in Australia, but who are not enrolled may also apply for enrolment from overseas providing they have the intention to return to reside in Australia within six years.[7]

3.19 Persons resident in Australia, who do not qualify for enrolment because they do not reside at any particular address long enough to become eligible for enrolment, are able to enrol as itinerant electors. Itinerant electors retain an entitlement for the electoral division for which they were

4 *Commonwealth Electoral Act 1918*, s 95AA.

5 Those Norfolk Islanders may enrol in either the division of Canberra (ACT) or Solomon (NT).

6 *Commonwealth Electoral Act 1918*, s 94.

7 *Commonwealth Electoral Act 1918*, ss 94A and 95.

last enrolled or are granted entitlement for another electoral division if they have never been enrolled.[8]

3.20 The Australian Electoral Commission (AEC) maintains the electoral rolls for Commonwealth elections and referenda, and in line with 'Joint Rolls Agreements' maintains rolls for many state, territory and local government elections.

3.21 Electors who are entitled to be enrolled for any subdivision[9] or who change address must notify the AEC once they become so entitled in order that the electoral rolls may be updated to reflect the changes.[10]

3.22 It has historically been the case that some electors neglect to update their electoral roll details in a timely manner. Over time, combinations of different approaches have been used to facilitate updating the electoral roll. These have included:

- habitation reviews - during which the AEC visits residences to update enrolment details;
- mail reviews - where the AEC writes to residents and addresses seeking updated electoral roll information; and
- advertising – which is designed to raise awareness of the need to update enrolment details.

3.23 For all elections and referenda from 1984 to 2004, electors who were not enrolled, and those who were enrolled but who had since changed address, were provided with a seven day period of grace following the issue of the writs for an election. This seven day period has been traditionally known as the 'close of rolls' period.

3.24 Additions to the roll and enrolment transfers notified during the close of rolls period were actioned by the AEC and those changes were reflected in the electoral rolls used at the subsequent election.

3.25 In June 2006 the Commonwealth Electoral Act was amended to provide that the roll would close for new enrolments at 8.00 pm on the day that the writ was issued for an election, with a further three working days provided for the notification of changes to existing enrolments.

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8 *Commonwealth Electoral Act 1918*, s 96.

9 *Commonwealth Electoral Act 1918, s79* – Note that an electoral division may be divided into subdivisions and where that is the case, s 82 provides that there shall be a separate Roll for each subdivision.

10 *Commonwealth Electoral Act 1918*, s 101.

3.26 Collectively, the various extensions of the enrolment franchise outlined above, along with attempts by the AEC to encourage enrolment and participation by eligible electors have led to high levels of ongoing enrolment.

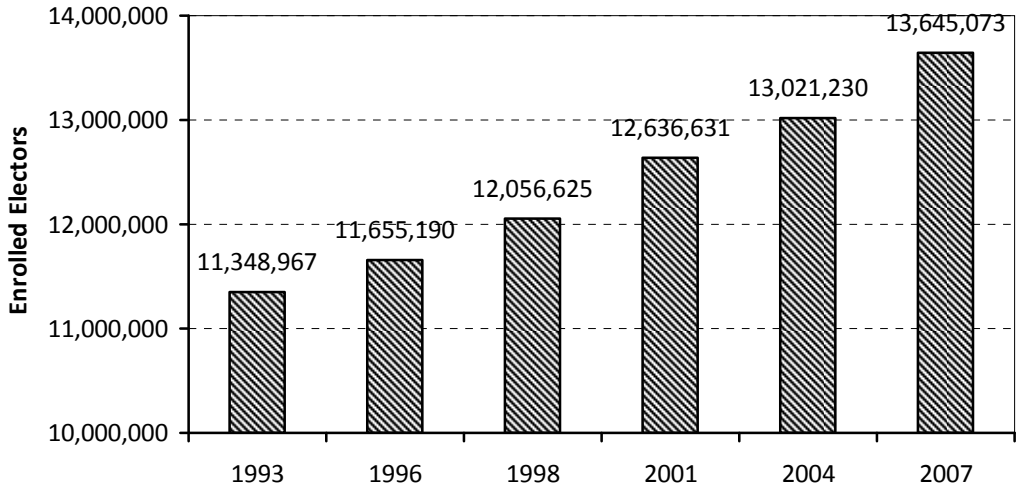
3.27 Notwithstanding these factors, an imminent election has historically proved to be the best and most effective catalyst for encouraging electors to notify changes to electoral enrolment. This has traditionally resulted in enrolment transactions increasing dramatically in the lead up to an election.

Close of rolls enrolment

3.28 The electoral roll continues to grow for each election as is evident in figure 3.1 which shows the close of rolls enrolment for each election since 1993.

3.29 As noted in chapter 2, changed close of rolls arrangements applied for the 2007 election as a result of amendments to the Commonwealth Electoral Act recommended by the then Joint Standing Committee on Electoral Matters following the 2004 federal election and adopted by the government of the day.[11]

Figure 3.1 Election and close of rolls enrolment, by jurisdiction, 1993 to 2007 elections



Source *Appendix C, table C.8.*

11 Joint Standing Committee on Electoral Matters, *The 2004 election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, p 36.

3.30 These changes, along with a number of other changes to enrolment and voting provisions came into effect following the passage of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006,* which received royal assent on 22 June 2006.

3.31 Prior to those amendments, section 155 of the Commonwealth Electoral Act provided that the date for the close of the rolls was seven days after the date of the writ.

3.32 Following the 2006 amendments section 155 provides:

> (1) The date fixed for the close of the Rolls is the third working day after the date of the writ.
>
> Note: However, generally names are not added to or removed from the Rolls after the date of the writ.
>
> (2) In this section:
>
> *working day* means any day except:
>
> (a) a Saturday or a Sunday; or
>
> (b) a day that is a public holiday in any State or Territory.

3.33 The amendments now make it possible for the electoral roll to close on the day of issue of the writ for an election in respect of new enrolments, whereas no further changes to enrolment details for electors already on the electoral roll would be permitted after the third working day after the issue of the writ.

3.34 Two matters are especially relevant when considering the changes made to shorten the close of rolls period; firstly, there is no fixed term for the House of Representatives or the Senate. Elections can be, and sometimes are announced unexpectedly, thereby negating any beneficial or mitigating effects which might be gained where electors know the likely date of an election and update their enrolment details in a timely manner accordingly.

3.35 Secondly, there has been no suggestion that the AEC is unable to process any enrolment transactions received during lengthier close of rolls periods in the past, and the Commonwealth makes special provisions allowing for the cross-divisional processing of enrolments in order to allow it to do so

3.36 The AEC noted that 'there are now two deadlines relevant to the close of rolls process'[12] and provided the following information relating to the close of rolls at the 2007 election:

12 Australian Electoral Commission, submission 169, p 6.

> The writs for the 2007 election were issued on Wednesday 17 October 2007, with the electoral roll closing at 8p.m. on Tuesday 23 October 2007. The CEA specifies the close of rolls deadline as being on the third 'working day' after the date of the issue of the writs. As a public holiday (Show Day on Flinders Island in Tasmania) fell on Friday 19 October 2007, that day was not a 'working day' within the meaning of the CEA, and consequently the close of rolls deadline was Tuesday 23 October 2007 rather than Monday 22 October 2007. For the 2007 election, the close of rolls deadlines were therefore:
>
> - 8p.m. on Wednesday 17 October 2007 for those who were enrolling for the first time or re-enrolling after a period of non-enrolment; and
> - 8p.m. on Tuesday 23 October 2007 for those people covered by the longer deadline, namely:
>   - ⇒ people already on the roll whose details needed to be updated;
>   - ⇒ eligible persons who are not enrolled but who will turn 18 years old between the issue of the writs and the end of polling day; and
>   - ⇒ eligible persons who are not enrolled but who will be granted Australian citizenship between the issue of the writs and polling day.[13]

3.37 The AEC commented on the timing of close of rolls for the 2004 and 2007 elections, submitting that:

> First, it needs to be noted that in 2004 the election date was announced on Sunday 29 August 2004 with the rolls closing nine days later, on Tuesday 7 September 2004. In 2007 the election was announced on Sunday 14 October 2007 with enrolment deadlines … of Wednesday 17 October 2007 and Tuesday 23 October 2007. The period between the announcement of the election date and the deadline for updating existing enrolment details was therefore the same in 2004 and 2007. [14]

3.38 The delay between announcement of the election and the issue of the writ in 2007 effectively gave new enrolees a period of grace of some four days in which to enrol. Such a period would not be provided if the announcement of an election occurred on the same day as the writ is issued.

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13 Australian Electoral Commission, submission 169, pp 6-7.

14 Australian Electoral Commission, submission 169, p 8.

3.39 Some inquiry participants argued that the changed close of rolls arrangements worked well.

3.40 The Festival of Light Australia noted that the advertising and publicity given to the changes assisted to increase the enrolment of 18 year olds and recommended that the changed close of rolls arrangements be retained:

> It appears as if the advertising campaign conducted by the AEC, as well as the publicity about the closure of the rolls on the day the writs were issued generated by community groups, including those opposed to this change, resulted in a more successful enrolment of 18 year olds than the old system with its seven day grace period for enrolments after the writs were issued.[15]

3.41 The Liberal Party of Australia argued for retention of the new arrangements suggesting that the changes enhanced the integrity of the roll:

> The improvements made to close of roll arrangements by legislation in the last Parliament (so that new enrolees have until the day of the issue of the writ to enrol and current enrolees have until three working days later to change their details) were an important change to assist in enhancing the integrity of the electoral roll. We believe that these changes worked well in 2007 and that there is no reason to change the timings of the close of roll.[16]

3.42 On the other hand, some participants were critical of the changes. The Human Rights and Equal Opportunity Commissioner, Mr Graeme Innes noted that:

> The commission is concerned that early closure of the electoral rolls may lead to the disenfranchisement of many Australians—particularly those who are marginalised, such as young people, new Australian citizens, those in rural and remote areas, homeless and itinerant people, Indigenous people and people with a mental illness or an intellectual disability—due to access difficulties. Thus, the commission recommends that the 2007 amendments which shortened the close of rolls period be repealed and the period between the date of the writ and close of rolls be extended to seven days to allow enrolment activity during this time.[17]

15 Festival of Light Australia, submission 67, p 7.

16 Liberal Party of Australia, submission 156, p 3.

17 Innes G, Human Rights and Disability Discrimination Commissioner, Human Rights and Equal Opportunities Commission, transcript, 23 July 2008, pp 27–28.

3.43 RMIT University academic, Dr Kathy Edwards questioned the rationale upon which the changes to the close of roll were based, noting in part:

> Chapter Two of the Report of the JSCEM Inquiry following the 2004 Federal Election highlights the integrity of the Commonwealth of Australia Electoral Roll as an issue of prime importance. The abovementioned recommendations and resultant legislative changes were made on the basis of concerns regarding the potential for electors to subvert democratic processes by enrolling strategically in marginal seats after the calling of an election. These concerns were voiced primarily by the Liberal Party of Australia, The Nationals and The Festival of Light. Of particular concern to these organizations, and to the Committee, was the high volume of new enrolments and changes of address that the AEC was required to deal with during this period. The Committee considered that this, combined with the available window of opportunity for (re)enrolment, might harm the integrity of the electoral roll by preventing the normally rigorous attention paid by the AEC to the veracity of enrolment forms.
>
> Early closing of the Electoral Roll was opposed by a range of community groups representing disadvantaged and rural Australians. It was argued that early closing would result in the disenfranchisement of many Australians, including rural and disadvantaged electors. In Submission Number 205 to the Inquiry the AEC also assured of its ability to meet the high volume of enrolments made during the seven day close of rolls period in a fashion that protected against fraud and insured the integrity of the Electoral Roll. This Submission was not referred to or quoted in that part of the JSCEM Report that dealt with this particular issue.
>
> It is important to emphasise that concerns regarding this matter do not come from the body charged with the responsibility of administering Australia's electoral processes, i.e. the AEC, and, in fact this body is confident of its ability to meet its statutory requirements in this respect.[18]

3.44 Dr Edwards then went on to say:

> Put another way the recommendations of the JSCEM in 2005 were made on the basis of speculations and possibilities, not on evidence that any fraudulent activity had, in fact, occurred, and

18 Dr Kathy Edwards, submission 87, p 4.

> without due consideration of human rights implications. 'Integrity', or its lack, thus became a speculative issue, but the possibility that this could hypothetically occur was deemed more important than evidence that disadvantage to particular groups within Australian society was likely to occur should the rolls be closed early.[19]

3.45 The Australian Labor Party National secretariat considered that the changed close of rolls arrangements had restricted the vote.[20] The Australian Labor Party National secretariat noted that:

> The ALP opposed these moves when they were introduced, citing the disengagement of many voters from the political process and the benefits for roll integrity of having the roll left open for a period after the calling of an election. The actions by the ALP and others in publicising the actions of the government no doubt served to boost enrolment numbers, however the systemic flaws in the current system must now be addressed.[21]

3.46 The AEC noted 'the need to approach with caution the interpretation of statistics regarding the number of people who enrol between the announcement of an election and the close of the rolls'.[22] In urging caution about the interpretation of the statistics the AEC noted:

> During the period from 14 to 23 October 2007, 279,469 people enrolled or changed their enrolment in time for the election, compared with 423,993 who enrolled or changed their enrolment details during the corresponding period (29 August to 7 September 2004) at the 2004 Federal election.
>
> In 2007, however, 100,370 people missed the close of rolls deadline for enrolling or changing their enrolment details (by providing an enrolment form between close of rolls and polling day, too late for the election), compared to 168,394 people who missed the deadline in 2004. Given that in 2007 the gap between the announcement of the election and the deadline for new enrolments was 3 days, and that the gap between the announcement of the election and the deadline for updating existing enrolments was 9 days, it is arguable that the lower number of transactions in 2007 flowed from the AEC's extensive efforts to stimulate enrolment activity

19 Dr Kathy Edwards, submission 87, p 5.

20 Australian Labor Party National Secretariat, submission 159, pp 2

21 Australian Labor Party National Secretariat, submission 159, pp 2–3.

22 Australian Electoral Commission, submission 169, p 8.

> earlier in 2007… It is also worth comparing the total enrolment transaction (new enrolments, reenrolments and change of enrolments) for the year leading to the close of roll for the 2007 and 2004 elections, namely 2,519,917 and 2,200,117 respectively…[23]

Committee conclusion

3.47 The committee notes that the announcement of the 2007 federal election was made on Sunday 14 October 2007 that the rolls closed for new enrolments on Wednesday 17 October 2007 and for changes to existing enrolment details on Tuesday 23 October 2007.

3.48 The committee considers that the close of rolls experience in 2007 is not representative of circumstances that would exist should a future election be announced on the same day as the issue of the writs.

3.49 In fact, some fortuitous circumstances existed in 2007 which masked the potential effect of the changed close of rolls arrangements.

3.50 Firstly, the election was announced some three days prior to the writs being issued. This would not have been the case if the election had been announced on the same day that the writs were issued, as the current legislation permits. The earlier announcement in 2007 allowed for new enrolments to be accepted for three further days, however, this timeframe falls well short of the seven day period which existed prior to 2007.

3.51 Secondly, electors were able to make changes to existing enrolment details for a similar period as they were in previous elections, but were able to do so only because Friday 19 October 2007 was a public holiday on Flinders Island in Tasmania and was deemed not to be a working day in accordance with the Commonwealth Electoral Act. This extended the time allowed for such changes to the electoral rolls to Tuesday 23 October 2007.

3.52 Under the current legislation, the electoral roll closes for new enrolments on the day that the writ is issued. If a future election was to be announced on the same day as the writs are issued, there would merely be hours during which new enrolments could be accepted by the AEC. This factor needs to be considered when making judgements about the adequacy of the current legislation.

23 Australian Electoral Commission, submission 169, p 8.

3.53 The AEC advised that if the rolls had closed on Monday 15 October 2007 only 17,208 of the 279,469 enrolment transactions actioned during the close of rolls would have been made.[24]

3.54 If the writs were to be issued on a Monday or Tuesday, and there were no public holidays in any jurisdiction, the roll would close for changes to enrolment details on the Thursday or Friday of the same week. Given the mail delivery problems already evident in some regional and rural areas, this tight timeframe might have a deleterious impact on the ability of residents in those areas to update their enrolment details.[25]

3.55 The committee is concerned that despite the intense and costly advertising campaign and the enrolment stimulation activities undertaken by the AEC, the number of electors who missed the close of rolls deadlines for enrolments only declined from 168,394 in 2004 to 100,370 in 2007.[26]

3.56 Whilst it might be argued that a reduction of 68,024 in the number of people who missed out in 2007 when compared with the number in 2004 is a pleasing result, when viewed in the context of a $30 million campaign targeted toward facilitating that very enrolment in the lead up to a federal election, it appears to be a disappointing result.

3.57 Of particular concern to the committee is that 31 seventeen year olds who would have turned eighteen on or before polling day and 4,068 eighteen year olds who would have exercised their franchise for the first time at the 2007 election were also denied the opportunity to do so because of the changed close of rolls arrangements.[27]

3.58 The committee can see no valid reason why it should be necessary to continue with close of rolls arrangements that serve to disenfranchise electors and that require unsustainable levels of funding to be expended in order to partly mitigate their effect.

3.59 The committee has received no evidence that fraudulent activity was reduced as a result of the amendments to the close of rolls. On the contrary, there is no evidence available that indicates systemic fraudulent activity exists.

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24 Australian Electoral Commission, sub 169.1, p 9.

25 *see* Joint Standing Committee on Electoral Matters, *The 2004 election: Report of the inquiry into the 2004 election and matters related thereto* (2005), pp 241–242.

26 Australian Electoral Commission, submission 169, p 8.

27 Australian Electoral Commission, submission 169.15, p 3.

3.60 Accordingly the committee recommends that the close of rolls arrangements revert back to those that existed up to and including the 2004 federal election.

Recommendation 1

3.61 **The committee recommends that Section 155 of the *Commonwealth Electoral Act 1918* be repealed and replaced by a new section which provides that the date fixed for the close of the rolls shall be 7 days after the date of the writ.**

Exercising the franchise

3.62 Exercising the franchise has been subject to protections at elections and referenda. These protections or savings provisions took two main forms.

3.63 The first involved reinstatement to the electoral roll at an election and is discussed here. The second involved savings provisions which apply to ballot papers and are discussed in Chapter 8.

3.64 All electors who attend polling places in their own electoral division on polling day and whose names can be found on the electoral roll for the election are issued with, and cast, ordinary votes. These ballot papers are placed directly into ballot boxes by the elector.

3.65 Electors who attend polling places in their own electoral division but whose names cannot be found on the electoral roll, those who attend a polling place in another electoral division, those who vote at pre-poll voting centres and those who vote by postal vote, all cast declaration votes in which the ballot papers are enclosed in declaration envelopes before being placed in the ballot box.

3.66 Declaration votes are subject to a preliminary scrutiny in which electoral officials determine the eligibility of the elector to vote in the relevant electoral division. The votes of those electors deemed to be eligible to vote are counted. The votes of those deemed ineligible are not. Specific issues relating to the receipt of postal votes are discussed later in this chapter.

3.67 At all elections and referenda conducted between 1984 and 2004, electors who cast declaration votes, but whose names were not on the roll, were reinstated to the roll where the AEC determined during the preliminary scrutiny that they had been previously enrolled for the relevant electoral

division, and that there was no evidence of a further enrolment in a different electoral division.

3.68 In such situations it was deemed that those electors' names had been removed from the roll in error by the AEC. As a result, the relevant House of Representatives and Senate ballot papers were included in the relevant counts and those electors were able to exercise the franchise.

3.69 Likewise, electors who claimed to be enrolled in an electoral division, but were found to be enrolled in a different electoral division in the same state or territory, had their Senate ballot papers included in the count, but the House of Representatives ballot papers were set aside. As a result, their franchise was ensured for the Senate election.

2007 election electoral roll

3.70 Two separate enrolment figures are instructive when considering enrolment at federal elections. The first is the close of rolls enrolment figure discussed earlier, which is indicative of the number of electors actually on the electoral roll at the date the roll closed.

3.71 The second is election enrolment, which indicates the number of electors who were deemed eligible to exercise the voting franchise at that election.

3.72 Election enrolment is arrived at as a result of the AEC making permitted adjustments to the electoral roll following the close of rolls. It includes:

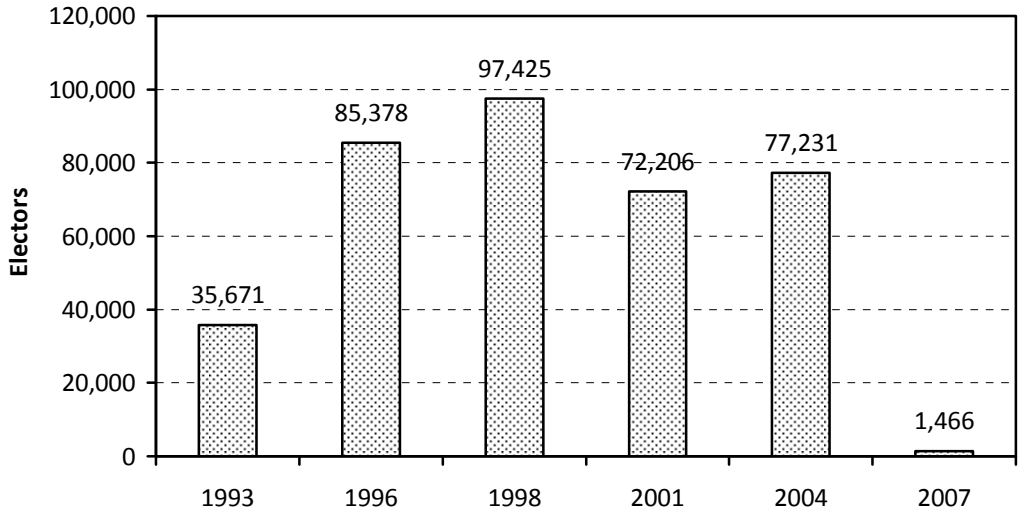
- additions to the roll, primarily as a result of processing enrolment forms received prior to the close of roll but not processed due to time constraints (1,562 instances at the 2007 election),
- deletions from the roll, primarily the removal of deceased electors (7,710 at the 2007 election), and
- the reinstatement of electors who were not enrolled, but who were eligible to have their votes counted and had been removed from the roll in error by the AEC, (7,614 at the 2007 election).[28]

3.73 It is common in federal elections for election enrolment to be higher than close of rolls enrolment. This is mainly due to the reinstatement of electors who were otherwise eligible to have their vote counted but who had been removed from the roll by the AEC.

28 Australian Electoral Commission, submission 169, p 7.

3.74 At the 2007 election, election enrolment at 13,646,539 saw an increase of just 1,466 electors over the close of rolls enrolment of 13,645,073 (figure 3.2).

Figure 3.2 Difference in close of rolls enrolment and election enrolment, 1993 to 2007 elections



Source *Appendix C, table C.8.*

3.75 When viewed in the context of elections since 1990, this is an extremely low increase compared to the high of 97,425 electors added to the roll in 1998, and the previous low of 35,671 electors added in 1993.

3.76 The significant decline from 77,231 in 2004 to 1,466 in 2007, is a product of two key legislative changes which were made between the 2004 and 2007 elections. These changes are discussed below.

3.77 The first change affected provisional votes, requiring all electors, bar silent electors, who lodge provisional votes to provide proof of identity (POI) at the time of voting, or by the first Friday following polling day. This change was recommended by the former Joint Standing Committee on Electoral Matters following the 2004 federal election.[29]

3.78 Provisional voters who failed to provide the required proof of identity had their provisional votes rejected, irrespective of the reasons which led to them requiring a provisional vote.

3.79 The AEC advised the committee that over 27,000 votes were rejected because proof of identity was not provided:

29 Joint Standing Committee on Electoral Matters, *Report on the 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, recommendation 25 p 79.

> At the 2007 election, approximately 167,500 provisional votes were cast. Approximately 75 per cent of provisional voters showed evidence of identity when voting. Of those that did not provide evidence of identity when voting on polling day, approximately 20 per cent provided it by the cut-off of close of business on the first Friday following polling day (30 November 2007). Approximately 80 per cent, of voters who did not provide POI when voting on polling day did not provide it at all. The result is that over 27,000 votes were rejected at preliminary scrutiny because an elector did not provide proof of identity.[30]

3.80 The AEC went on to state that the admission rate for Senate provisional votes fell from 62.23 per cent in 2004 to 25.14 in 2007:

> At the 2007 Senate election, there were 42,162 Senate votes counted nationwide from provisional votes admitted at preliminary scrutiny, out of a total of 167,682 provisional vote envelopes processed, an admission rate of 25.14 per cent. These figures may be compared with those from the 2004 Senate election, at which there were 112,560 Senate votes counted nationwide from provisional votes admitted at preliminary scrutiny, out of a total of 180,878 provisional vote envelopes processed, an admission rate of 62.23 per cent. Had the 2004 admission rate prevailed in 2007, an additional 62,186 votes would have been counted. The AEC is concerned that, in comparison to 2004, there was a significant increase in the number of provisional votes excluded at provisional scrutiny.[31]

3.81 It is important to note the differences which exist between the percentage of provisional votes which were admitted to the Senate counts (25.14 per cent) and those that were admitted to the House of Representatives counts (14.44 per cent). The difference exists because some electors have their votes counted for the Senate elections because they are currently enrolled in the respective state or territory, but not their House of Representatives votes because they are enrolled in a different division for that which they attempted to vote.

3.82 Some inquiry participants believe the changes to provisional voting were worthwhile and that the integrity of the electoral roll had been enhanced as a result of their adoption.

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30 Australian Electoral Commission, submission 169, p 47.

31 Australian Electoral Commission, submission 169, p 49.

3.83 The Liberal Party of Australia considered that the provisional voting changes were both desirable and effective:

> A requirement for proof of identity for provisional voting was introduced into the Act in the last Parliament. In previous submissions we have expressed concerns about abuse of the provisional voting system. The changes in the number of provisional votes admitted to the count in 2007 reinforce us in the view that there had previously been problems that the POI requirement has helped to address. The change made by the last Parliament was clearly a desirable reform which has enhanced the integrity of our electoral system. No evidence has been produced to support the need for further change or reversion to the previous standard. In fact, the operation of the new standard in 2007 clearly showed the importance of the new standard.[32]

3.84 The Festival of Light Australia supported proof of identity requirements for electors and recommended extending proof of identity requirements to all electors at the time of casting votes. Such an approach was also supported by The Nationals and the Hon Fran Bailey MP. [33]

3.85 On the other hand, some believe the changes to provisional voting were unwelcome and should be repealed.

3.86 GetUp! submitted that the committee should ensure that provisional voting does not disenfranchise eligible electors:

> Their impact on election results aside, provisional voters include many Australians we should be making a concerted effort to include in the democratic process. Indigenous, young, migrant and poorer Australians are all overrepresented among provisional voters.[34]

3.87 The ALP National Secretariat was concerned by the large drop in provisional votes admitted to the count in 2007:

> The ALP is also extremely concerned about the drop in the number of provisional votes which survived the initial count. In 2004, almost half of the attempted provisional votes were accepted and counted, in line with what occurred in previous elections. In

32 Liberal Party Of Australia, submission 156, p 3.

33 Festival Of Light Australia, submission 67, p 10; The Nationals, submission 145, p 2, Hon Fran Bailey MP, Member for McEwen, submission 179.

34 GetUp!, submission 155, pp 14–15.

> 2007, however, 86 per cent of provisional votes were rejected and only 14 per cent were accepted.[35]

3.88 NSW Young Labor was also critical of the changes, noting that young people were disproportionately affected by the amendments :

> Making it harder for young people, often students juggling considerable study and work commitments to support those studies, and often regularly changing their addresses, was the consequence of the above legislative changes. In part, it contributed to the escalating increases in the number of provisional votes, and more specifically, in the noticeable increase in the number of provisional votes subsequently excluded by the relevant DROs. Widely available AEC figures demonstrate the growing problem of high numbers of provisional votes, and more specifically the ever-increasing number of exclusions…[36]

3.89 During the inquiry much discussion centred on the fact that provisional votes were actually signed by the elector and that the signature contained on the declaration envelope in which the votes were contained could be compared with the signature of the elector which appeared on the original or subsequent enrolment forms which were held by the AEC.

3.90 Former Electoral Commissioner, Mr Ian Campbell noted that provisional votes were in fact signed by the elector:

> CHAIR—The proof of identity argument is a nonsense argument on provisional voters. Let me tell you why: they fill out an envelope with their signature on it.
>
> Mr Campbell—Exactly.
>
> CHAIR—You then go back through the process and check the signature that was on their application for enrolment that was lodged with you. There is your proof of identity: it is a comparison of signatures. You do not need a licence to get reinstatement; you have signatures.[37]

3.91 Mr Campbell went on to tell the committee that provisional voters, even those who were on the electoral roll, were ruled out of the count because of the POI provisions:

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35 ALP National Secretariat, submission 159, p 4.

36 NSW Young Labor, submission 182, p 2.

37 Campbell I, Australian Electoral Commission, transcript, 27 June 2008, p 21.

> Can I make one other point, because I think this is one of the issues that caused some difficulty for a small number of voters in 2007, in addition to what I have been saying. The way the legislation is worded, if a person comes in and the issuing officer cannot find them on the certified list, they get issued with a provisional vote. We had people in this category. They then have six days, or five working days till the following Friday, to give us POI. If they do not give us POI then the process goes no further, including for those who are on the certified list but the issuing officer made a mistake.[38]

3.92 When asked whether the AEC had the capacity to compare the signature on a provisional vote with the actual enrolment form lodged by the elector at the time of original or subsequent enrolment forms Mr Paul Dacey, Deputy Electoral Commissioner agreed that the AEC could do so and that it had been done so previously:

> CHAIR—And the truth is that there was a signature on every one of those declaration forms that could have been compared to a signature of the elector that the Australian Electoral Commission already had, and it could have acted as proof of identity and allowed those votes to be included in the count.
>
> Mr Dacey—That could have been done.
>
> CHAIR—Previously that was what was done in prior elections.
>
> Mr Dacey—It was one of the processes that we undertook previously.[39]

3.93 Another change to the legislation, which, when combined with the change to provisional voting outlined above, reduced the number of electors able to exercise the voting franchise. An amendment to paragraph 12 of schedule 3 to the Commonwealth Electoral Act effectively prevented electors who had been removed from the electoral roll by objection action on the grounds of non residence at a particular address, from being reinstated to the roll as a result of lodging declaration votes of any form, not just provisional votes.

3.94 The AEC advised the committee that the amendment to schedule 3 affected all declaration vote types:

> In relation to the removal of persons from the electoral roll by objection based on non-residence, Item 96 of Schedule 1 to the

38 Campbell I, Australian Electoral Commission, transcript, 27 June 2008, p 21.

39 Dacey P, Australian Electoral Commission, transcript, 17 March 2009, p 22.

> *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* amended paragraph 12 of Schedule 3 to the CEA, adding the following word and sub-paragraph:
>
> "; and (iii) that the omission was not attributable to subsection 118(4A).".
>
> The effect of that amendment was that if a person had been removed from the roll by objection action on the ground of non-residence at a particular address, a declaration vote (provisional, absent, postal or pre-poll) subsequently cast by the person would be rejected at preliminary scrutiny. The amendment was not one which had been recommended by the JSCEM in its 2004 Election Report.[40]

3.95 In effect, schedule 3 to the Commonwealth Electoral Act provides the rules which govern the conduct of preliminary scrutinies of declaration votes. Amongst other things, the decisions made by the Divisional Returning Officer about the eligibility of an elector and their inclusion on or exclusion from the electoral roll for the election, are determined in accordance with these prescriptive rules.

3.96 Prior to these amendments, where an elector cast a declaration vote and claimed to be resident at an address for which they had been removed from the roll, the Divisional Returning Officer would check the elector's enrolment history to determine their last enrolled address. In cases where the last enrolled address was the same as that on the declaration envelope, it was accepted that an error had been made by the AEC in taking the elector off the electoral roll. On that basis the electors was reinstated to that address.

3.97 Now, in that same situation, the elector is not reinstated to the electoral roll, and their vote is not counted in the elections.

3.98 The AEC further suggested that it is important, when considering the policy questions which arise from this amendment, to focus on a number of key considerations:

- The right to vote is a fundamental one, which has a basis in sections 7 and 24 of the Constitution. The extent and nature of the basis of that right is touched upon by the High Court of Australia in the 2007 case of *Roach v. Electoral Commissioner and Another (2007) 239 ALR 1.*

40 Australian Electoral Commission, submission 169, p 50.

- Notwithstanding the centrality of the roll to the modern electoral process, the roll is not an end in itself, but rather one of a number of tools devised to be used by electoral officials as an efficient and effective way of deciding who should and should not be entitled to record a vote.
- The very existence of provisional voting constitutes a recognition that the absence of a person's name from the roll cannot provide a final and definitive answer to the question of whether that person should be permitted to vote.[41]

3.99 Together, the combined effect of these two amendments – the requirement for proof of identity for provisional voting, and the amendment to schedule 3 preventing declaration voters being reinstated to the roll, served to reduce the number of electors who, had those amendments not been made, would have been added back onto the roll at the 2007 federal election.

Committee conclusion

3.100 The committee notes with concern that the relatively small increase in electors from close of rolls enrolment to election enrolment at the 2007 election does not compare favourably to previous elections.

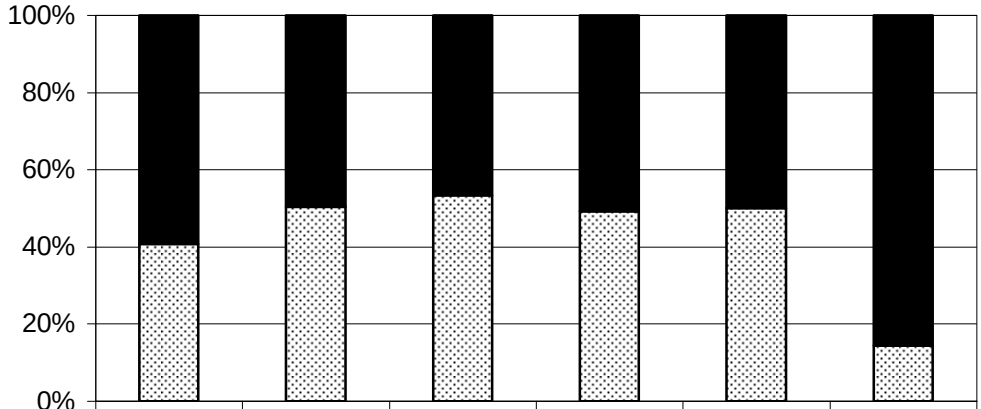
3.101 The committee is of the view that whilst the legislative changes which required proof of identity for provisional voters were noted and commented upon by inquiry participants, the machinery changes to schedule 3 to the Commonwealth Electoral Act were commented on by very few, with the exception of the AEC, which highlighted the effect of those changes to the committee.

3.102 Notwithstanding the fact that the deleterious effect of the changes were only obvious to those who designed them and those who were subsequently directly involved in the preliminary scrutiny process, it is clearly unjust to firstly remove people from the roll on the basis that the AEC does not think they live where they claim to live, and secondly, reject any attempts by those electors to vote in accordance with the franchise that they are actually entitled to exercise.

3.103 At a national level the effect of the requirement to provide proof of identity is clearly evident in figure 3.3 which shows the dramatic increase in provisional votes rejected from the House or Representatives counts in 2007 (85.5 per cent) when compared to previous elections.

41 Australian Electoral Commission, submission 169, p 50.

Figure 3.3 Provisional votes, 1993 to 2007 elections (per cent)



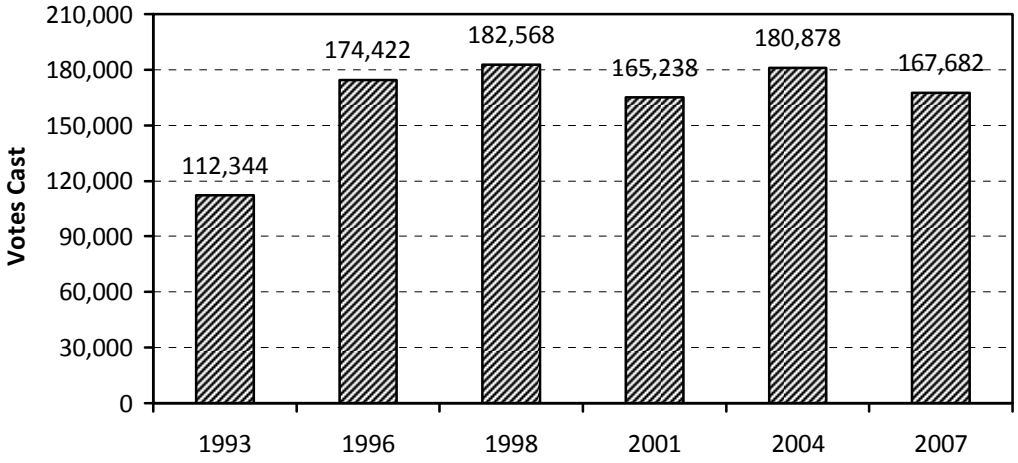
	1993	1996	1998	2001	2004	2007
Rejected	66,458	86,588	85,010	83,972	90,366	143,470
Admitted	45,886	87,834	97,558	81,266	90,512	24,212

Source *Appendix C, table C.5.*

3.104 The committee is aware that some may argue that fewer provisional votes were in fact required in 2007 as a result of the increased 'integrity' that resulted from the changes to the close of rolls, the advertising campaign and the increased number of electors on the roll. However, such arguments would only be valid if the number of provisional votes cast was significantly less than in previous elections.

3.105 The committee notes that a comparison of provisional votes cast in elections since 1993, shows no significant decrease in the number of provisional votes cast in 2007 when compared to previous elections as seen in figure 3.4.

Figure 3.4 Provisional votes cast, 1993 to 2007 elections



Source *Appendix C, table C.3.*

3.106 The committee believes, therefore, that the changes to the close of rolls and provisional voting had no beneficial effects at all, rather they had the effect of limiting the franchise and have had a particular effect on those most marginalised in the community.

3.107 In this respect, the committee agrees with the comments of the Hon Warren Snowdon MP, who noted the effect on electors in Lingiari in his submission:

> Changes to the Electoral Act requiring voters to produce identification to secure a provisional or declaration vote has resulted in a significant decrease in the number of voters lodging these types of votes. In 2004 in Lingiari 480 voters lodged declaration votes that were found to be valid. However in 2007 this group had shrunk to 129.
>
> Evidence seems to suggest that where AEC officials asked voters to produce identification very few had such identification on their persons. Many voters were instructed to return with valid identification. It is apparent that in the main they did not. Where local community members were used as interpreters they generally provided evidence of the valid identification of voters claiming a provisional or declaration vote.[42]

42 Hon Warren Snowdon MP, submission 162, p 3.

3.108 The committee accepts there is a need to ensure integrity in elections and electoral enrolment, and notes that a number of changes to the Commonwealth Electoral Act were instituted by the previous government on the pretext of enhancing electoral integrity.

3.109 The committee does not, however, accept that it is desirable nor necessary to disenfranchise otherwise eligible electors in order to do so, especially as there is no credible evidence to suggest that measures like proof of identity for provisional voting have increased that integrity (see chapter 2).

3.110 This is especially the case in respect of provisional votes where an entirely effective, alternative remedy has been used in the past by the AEC to satisfy doubt as to the identity of a person who casts a declaration vote.

3.111 A simple comparison of the signature of the voter against the signature of the elector on a previous enrolment form is all that is required.

3.112 The committee notes that the AEC has advised it has the ability to do such checks and believes that the AEC should carry out such a check wherever doubt exists in the mind of the Divisional Returning Officer as to the bona fides of the elector who casts a provisional or other declaration vote.

3.113 Accordingly, the committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the *Electoral and Referendum Regulations 1940* that require provisional voters to provide proof of identity be repealed.

Recommendation 2

3.114 **The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 that require provisional voters to provide proof of identity**

- **be repealed; and**
- **that the *Commonwealth Electoral Act 1918* be amended so that where doubt exists in the mind of the Divisional Returning Officer as to the bona fides of an elector who casts a declaration vote, that the Divisional Returning Officer is to compare the signature of the elector on the declaration envelope to the signature of the elector on a previously lodged enrolment record before making the decision to admit or reject the vote.**

3.115 The amendments to schedule 3 to the Commonwealth Electoral Act escaped the notice of many inquiry participants, however, the committee views the use of the roll as a tool to disenfranchise electors as a matter of grave concern.

3.116 The committee notes that at federal elections from 1984 to 2004, the Commonwealth Electoral Act provided for electors who had been removed from the roll on the grounds of alleged non residence, who cast declaration votes for an address in the same electoral division from which they had been removed, to have their House of Representatives and Senate votes admitted to the count.

3.117 Similarly, where such electors claimed to be enrolled at an address in the same state or territory, but in a different electoral division to that from which their names had been removed, their Senate votes were admitted but their House of Representatives votes were not.

3.118 The committee believes that the tradition of providing safety nets, such as allowing the reinstatement of electors in the circumstances outlined above, is consistent with the aim of ensuring electoral legislation does not create unreasonable barriers for those who qualify for enrolment and voting and who, rightfully, expect to be able to exercise their franchise at elections and referenda. The effectiveness of the safety nets is starkly represented in figure 3.3 above where the effects of its removal show a reduction of over 75,000 electors exercising the franchise in 2007 when compared to 2004.

3.119 The changes to paragraph 12 of schedule 3 to the Commonwealth Electoral Act, which prevented such reinstatements at the 2007 election were not, in the committee's view, consistent with this long held aim. Rather they served to restrict the franchise, and, when coupled with the requirement for provisional voters to provide proof of identity, actively disqualified electors who would otherwise be eligible from voting.

3.120 The committee accepts the position put by the AEC that the amendments preventing reinstatement should be repealed.[43]

3.121 The AEC also suggests that electors, whose votes would be included in the count because they are reinstated to the roll for the election, should then have to apply for re-enrolment through the subsequent lodgement of an enrolment form. [44]

3.122 The committee, however, believes that wherever electors provide the AEC with information which could be used to update the electoral roll, the AEC should firstly be empowered to use that information, and secondly it should use it in a manner that ensures some efficiency is gained from its provision.

3.123 In preference to undertaking follow up enrolment action to seek a completed enrolment form, as suggested by the AEC, the committee believes that the AEC should amend its declaration envelopes to include a field on which electors may provide their driver's licence or Australian passport number at the time of voting. The provision of such information should be voluntary and its provision should not be deemed necessary in order to determine any elector's eligibility to cast a vote.

3.124 In cases where electors voluntarily provide the driver's licence or Australian passport number, or where that elector had previously met the proof of identity provisions for enrolment, the AEC should be empowered to update the enrolment details of the elector on the basis of the information supplied on the declaration envelope at the time of casting the declaration vote. Similarly, provision of the driver's licence or Australian passport number should be sufficient to classify any elector as having met the proof of identity provisions for enrolment without the necessity to also fill in a new proof of identity compliant enrolment form.

3.125 The committee considers that the AEC should only need to implement follow up enrolment action in those cases where electors do not supply a driver's licence or Australian passport number on a declaration envelope

43 Australian Electoral Commission, submission 169, p 51.

44 Australian Electoral Commission, submission 169, p 51.

and the elector has not previously met the proof of identity requirements for enrolment, or where insufficient information is provided on the envelope to allow the roll to be updated.

3.126 Accordingly, the committee recommends that the Commonwealth Electoral Act should be amended to provide that where an elector who has lodged a declaration vote at an election had been removed from the roll by objection action on the ground of non-residence and the relevant action has occurred since the previous federal election, then:

- if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but
- if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.

Recommendation 3

3.127 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who has lodged a declaration vote at an election has been removed from the roll by objection action on the ground of non-residence and**

(a) the omission occurred after the election prior to the election to which the scrutiny relates, or

(b) where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the omission from the roll was made before the last such redistribution, then:

- **if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but**
- **if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.**

3.128 Further, the committee recommends that the AEC should amend declaration vote envelopes to include a field on which electors may enter driver's licence numbers, and:

- in those cases where electors provide a driver's licence or Australian passport number on a declaration envelope, or the elector has previously met the proof of identity requirements for enrolment, and the information provided on the envelope at the time of voting is sufficient to allow update of the electoral roll, the AEC should update the roll on the basis of the information provided on the declaration envelopes; but
- in other cases, the AEC undertake appropriate follow up action to encourage the elector to enrol through the normal enrolment process.

Recommendation 4

3.129 **The committee recommends that the Australian Electoral Commission amend declaration vote envelopes to include fields in which electors may enter their driver's licence or Australian passport number, and:**

- **in those cases where electors provide a driver's licence or Australian passport number, or the elector has previously met the proof of identity requirements for enrolment, and the information provided on the envelope at the time of voting is sufficient to allow update of the electoral roll, the Australian Electoral Commission should update the roll on the basis of the information provided on the declaration envelopes; and**
- **in other cases the Australian Electoral Commission undertake appropriate follow up action to encourage the elector to enrol through the normal enrolment process.**

Enfranchising postal voters

3.130 Under current arrangements for postal voting, the Commonwealth Electoral Act requires that postal votes must be received by the relevant Divisional Returning Officer within 13 days of polling day.[45] However, where the envelope containing the ballot paper bears a postmark that includes a date after polling day, the vote is excluded from the count.[46]

3.131 Votes will be excluded even if the elector and witness date on the postal voting certificate is before polling day and the envelope has been placed in an Australia Post mail box before polling day.

3.132 Where the envelope bears no postmark the votes will be admitted to the count.

3.133 The AEC has had longstanding concerns with this situation and have generally supported utilising the witnessing date, rather than any post mark, to establish whether a vote should be included in the count.[47]

3.134 Previous Joint Standing Committees on Electoral Matters have also examined this issue and have recommended on a number of occasions

45 *Commonwealth Electoral Act 1918*, s 228 (5A).

46 *Commonwealth Electoral Act 1918*, Schedule 3, s 7.

47 Australian Electoral Commission, submission 169.14, p 1.

that the Commonwealth Electoral Act be amended to provide for postal votes to be included on the basis of the witnessing date on the postal voting certificate.[48] Following the 2004 election inquiry report, the then government did not support this view, considering that 'such changes would weaken the integrity of Australia's electoral system'.[49]

3.135 The Nationals noted that there is an inconsistency regarding the AEC's requirement for lodgement, receipt and acceptance of a valid postal vote with the capacity of mail services to achieve these requirements and suggested that the guiding objective in designing appropriate postal voting arrangements should be to ensure maximum opportunity is provided to voters for the casting of a valid postal vote.[50] The Federal Director of the Nationals noted that:

> Clearly the system is not working. We have set up the system and created a public expectation that, if people lodge their postal votes until election day, they will be counted, but the logistics of the system are not allowing that to happen. I think we have to look creatively at other ways of allowing those votes to be counted, particularly in close contests. I note that last time you recommended relying on the word of the voter in terms of the date they signed it and dated it. We are not averse to looking at that, but I think you need to look at that in the context of ensuring that that is not open for abuse as well and that we are continuing to improve the integrity of the process.[51]

3.136 The committee has closely examined this issue once more, bringing together officials from Australia Post and the AEC for a roundtable discussion. Following this roundtable additional information was provided by Australia Post and the AEC to assist the committee in considering this issue.

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48 Joint Standing Committee on Electoral Matters, *The 1996 federal election*: *Report of the inquiry into the conduct of the 1996 federal election and matters related thereto* (1997), Commonwealth of Australia, p 58; *The 1998 federal election*: *Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2000), Commonwealth of Australia, p 55; *The 2001 federal election*: *Report of the inquiry into the conduct of the 2001 federal election and matters related thereto* (2003), Commonwealth of Australia, p 150; *The 2004 federal election*: *Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia p 75.

49 Australian Government, response to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2004 election and maters related thereto, p 9, viewed on 22 May 2009 at www.aph.gov.au/house/committee/em/elect04/Report/govres.pdf.

50 The Nationals, submission 145, p 5.

51 Henderson B, The Nationals, transcript, 3 February 2009, p 8.

Background

3.137 The AEC provided a range of information that demonstrates the extent to which the postal system can lead to some votes being excluded from the count:

- 23,600 electors were sent postal vote certificates but did not vote by post or other means;[52]
- 8,041 postal votes were rejected for the following reasons relating to being cast or received late:
  - ⇒ The voter declaration was signed after polling day; or
  - ⇒ The envelope was received 13 days after polling day.[53]

3.138 It is not possible to determine the actual number of postal votes which were lodged prior to polling day but postmarked by Australia Post after polling day, nor the number which were actually signed after polling day, because of the way the data was collected by the AEC, with the AEC noting that:

> Postal votes rejected because the envelope was postmarked after polling day will, for the most part, be included in the total for postal votes rejected because the voter declaration was signed after polling day (i.e. votes cast late).[54]

3.139 An example of how current arrangements had impact on the division of Flynn was provided by the Nationals:

> In some areas, mail collected by Australia Post on that Friday is not actually processed and postmarked until the following week, rendering any such postal votes invalid. In tight contests this anomaly could certainly affect the final result.
>
> For example, in the seat of Flynn, a total of 7,727 postal votes were returned with 370 (or 4.8%) rejected during the preliminary scrutiny process. Of these postal vote certificates, 146 (or 1.9% of the total number of postal votes returned) were rejected on the grounds of being received 'too late' ie. postmarked after polling day, 24 November 2007. The AEC has identified that the majority of these postal votes were sourced from small rural centres. Labor won the seat by a margin of just 253 votes.

52 Campbell I, Australian Electoral Commission, transcript, 1 September 2008, p 10.

53 Australian Electoral Commission, submission 169.5, pp 1–6; submission 169.14, p 1.

54 Australian Electoral Commission, submission 169.5, pp 1–6; submission 169.14, p 1.

> The example is borne out by the case of a couple from Wandoan, which the AEC investigated at The Nationals request. AEC examination of both voters' postal vote certificates reveals that each certificate is signed and includes a date of Friday 23 November 2007. These voters confirmed that their votes were posted on Friday, yet the AEC investigation revealed both postal vote certificate envelopes depicted a Taroom Post Office stamp dated Monday 26 November 2007 ie. a postmark after polling day. The voters apparently received a letter from the AEC in the week commencing 18 February stating their votes were not counted in the Federal election because their postal votes didn't arrive until 2 weeks after election day.
>
> Clearly, there is an inconsistency regarding the AEC's requirement for lodgement, receipt and acceptance of a valid postal vote with the capacity of mail services to achieve these requirements. There is a corresponding inconsistency with regard to voter expectations surrounding these requirements.[55]

3.140 The practice of postmarking mail, whereby a date stamp is placed on an envelope, has declined significantly for mail processed by Australia Post, with only about 7.5 per cent of mail posted having stamps and requiring cancellation.[56] Australia Post told the committee that:

> That proportion varies dramatically depending on where you are. For example, that percentage would be more typical of a metropolitan area. In more remote areas, because there is not so much bulk post locally, that percentage would be higher. I am just saying that postmarking is something that is going out over time. Even when we were postmarking large quantities of mail there were some articles that were posted through street posting boxes or over the counter that did not require postmarking. It is the same today when we postmark. Business reply paid is one of those categories, along with mail being returned to the sender.[57]

3.141 Nevertheless, Australia Post practice, even for a business reply article, was to mark an article wherever possible.[58] Australia Post noted that:

> When postmarking was done by hand, the postmark would traditionally be on the back. To this day we still replicate that

55 The Nationals, submission 145, pp 4–5.

56 Newman D, Australia Post, transcript, 1 September 2008, p 11.

57 Newman D, Australia Post, transcript, 1 September 2008, pp 11-12.

58 Newman D, Australia Post, transcript, 1 September 2008, p 12.

> process with our machines. Wherever an article goes through a machine, whether it has a stamp or not, we put a processing mark on that envelope. The reason we can do that is that we have high-speed inkjet printers attached to our processing machines that spray on a mark. We do that as much as we can and in as many places as we can. In the case of Jundah, we would only be looking at cancelling the locally posted mail because that is distributed. It would be much more cost-effective to send the rest to a larger centre which has some machine assistance to do that.[59]

3.142 For those items that are postmarked, postmarking may not necessarily occur on the day mail is processed, as mail moves from local post offices and outlets through larger distribution centres. Australia Post provided examples of how mail is moved around in regional Queensland to demonstrate how and when mail processing would occur depending on when mail was posted.[60]

3.143 Information provided by Australia Post gives an indication of how rural and remote postal voters may be affected when mail is moved from rural and remote offices for processing, with 262 rural or remote offices accepting, consolidating and dispatching mailings to another postal processing point within Australia on less than a daily basis.[61] Of these, due to resourcing and time constraints only 57 offices are able to append a postmark to mail upon lodgement and before dispatch — leaving 205 offices where mail is not postmarked at point of lodgement.[62] On a state by state basis:

- Queensland has 64 offices that despatch less than daily, 51 of which do not append a postmark;
- South Australia has 92 offices that despatch less than daily with no office postmarking upon lodgement;
- New South Wales has 28 offices that despatch less than daily, 18 of which do not append a postmark;
- Western Australia has 46 offices that despatch less than daily, 12 of which do not append a postmark;
- The Northern Territory has 31 offices that despatch less than daily. with no office appending a postmark upon lodgement; and

59 Newman D, Australia Post, transcript, 1 September 2008, pp 11-12.

60 Australia Post, exhibit 5.

61 Australia Post, submission 192, p 1.

62 Australia Post, submission 192, p 1.

- Tasmania has 1 office that despatches less than daily and it does not append a postmark.

3.144 While almost half of these 262 rural and remote offices have a dispatch frequency of three days per week and a further third have a dispatch frequency of twice a week, not all dispatches necessarily occur on the same day or days at these post offices.[63] Australia Post also noted that dispatch times vary and dispatch may not even occur after close of business on these days:

> The majority of offices that have three day a week despatches have Monday, Wednesday and Friday despatch times. However, not all despatch times are after close of business hours. A number of despatches on a Friday occur as early as 10am. The 35 offices that have one despatch per week have despatches ranging from Tuesday to Sunday. Thus in an extreme example, a postal vote return correctly lodged on Saturday morning but not despatched until Friday the following week would be postmarked or process imprinted on the following Monday, eight days after polling day.[64]

3.145 The delay between posting and Australia Post postmarking mail may not always be confined to a single day. Australia Post noted that:

> In extreme instances it can take up to eight days for an item that is lodged in the network in one of these rural or remote offices to have a postmark or processing imprint placed on it. Even in situations where there are daily clearances any mail piece lodged in a Street Posting Box after it is cleared on a Friday night will not be postmarked until Sunday at the earliest - which in the context of a Postal vote for a federal election would render the vote invalid.[65]

3.146 While delays in collecting and processing mail in rural and remote areas can be significant, even mail posted in Australia Post's 15,000 street postal boxes on the Friday before polling day, including those in metropolitan areas, will not be processed until the following Sunday or Monday.[66] Therefore, if this mail is postmarked, the postmark will be dated either for the Sunday or Monday as the case may be, resulting in those postal votes being excluded from the count.

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63 Australia Post, submission 192, p 4.

64 Australia Post, submission 192, p 4.

65 Australia Post, submission 192, p 1.

66 Franzi B, Australia Post, transcript, 1 September 2009, pp 8–9.

3.147 In summing up to the committee, Australia Post considered that not all postal votes posted before polling day would necessarily be included in the election count.[67] Australia Post noted that:

> Due to operational constraints, geographic spread and cost impacts Australia Post cannot guarantee postmarking of all Postal Votes will occur prior to or on the day of the Federal Election.[68]

Proposed changes

3.148 Following the roundtable discussion and the additional information provided by Australia Post and the AEC, the Federal Director of the Nationals considered that the problem was clearly a serious one, with many Australians being denied their right to have their vote counted despite having fulfilled all of their responsibilities regarding the exercise of that right.[69] The Federal Director noted that:

> Our party appreciates the candour now shown by officials from both agencies regarding this issue, but we regret that it is only now, after the election and after the Nationals and their volunteer members spent many, many unpaid hours investigating a glaring shortcoming in the system, that the lid has been lifted on that shortcoming. It is fair enough to ask why this problem was not earlier identified by the agencies in question themselves, and I think it also underlines the importance of the role this committee plays that through its processes we have been able to expose this problem.
>
> There is a real possibility that this shortcoming may have affected the result in at least one seat at the 2007 election; of course, we will never know now. We cited just one example in our written submission of a couple in the division of Flynn who voted legitimately by post but whose votes were not counted by the AEC because of the mail delivery constraints within Australia Post, but our scrutineers are aware of many more.[70]

3.149 The Nationals suggested that a 'multipronged' approach was required to rectify this issue. That should include both, improving the logistical processes within Australia Post and revisiting the possibility that postal

67 Australia Post, submission 192, p 5.

68 Australia Post, submission 192, p 5.

69 Henderson B, The Nationals, transcript, 3 February 2009, p 4.

70 Henderson B, The Nationals, transcript, 3 February 2009, p 4.

votes be accepted on the basis of the date of the witness signature rather than the current method of reliance on an envelope's postmarked date.[71]

3.150 Some of the other options to address this situation examined by the committee included:

- Lengthening the timeframe for the receipt of postal votes beyond the 13 days currently provided for;[72]
- Encouraging more people in rural and remote areas to be registered as general postal voters;[73]
- Promoting awareness, particularly for electors living in rural and remote areas, that a postal vote can be completed before polling day, thereby promoting a more timely return of postal votes;[74] and
- Conducting a special clearance and processing by Australia Post (as is done during the lead up to Christmas) on the Friday before polling day or on the evening of polling day so that these postal votes will be included in the count.[75]

3.151 The committee notes that the cut-off period for accepting postal votes varies for state and territory elections. For example, in South Australia electors have seven days to return their postal vote, in Victoria electors have nine days and in New South Wales electors have until close of business on the 4th day after polling to return their postal vote.[76]

3.152 The AEC canvassed the potential impact of some of these responses in a confidential submission to the committee, which covered the practices of some other jurisdictions and some of the risks involved in adopting different courses of action.

Committee conclusion

3.153 It is clear to the committee that current postal voting arrangements can lead to delays in the delivery and processing of postal vote applications and postal votes. The situation is that some electors are clearly disenfranchised because of postal delivery issues, despite them meeting all

71 Henderson B, The Nationals, transcript, 3 February 2009, p 4.

72 Henderson B, The Nationals, transcript, 3 February 2009, p 11.

73 Campbell I, Australian Electoral Commission, transcript, 1 September 2008, p 2; Gordon M, submission 32, p 3.

74 Campbell I, Australian Electoral Commission, transcript, 1 September 2008, p 2.

75 Newman D, Australia Post, transcript, 1 September 2008, p 9.

76 Australian Electoral Commission, submission 169.1, Annex 5, pp 76–78.

obligations in relation to correct lodgement of postal votes. Detailed evidence gathered by the committee has demonstrated how such electors, who post valid postal votes before polling day can be disenfranchised, should their postal vote be one of the less than 10 per cent of mail items that is postmarked by Australia Post. This situation, while generally acknowledged to be an issue in rural and remote areas, applies equally to mail posted at one of the 15,000 post boxes across the country, including those in metropolitan areas.

3.154 However, the use of the postmark as a determinant of timeliness remains an independent verification that postal votes have been cast before the close of the poll, notwithstanding the number of postal votes which are ruled ineligible because of Australia Posts' administrative arrangements.

3.155 The committee considers that it is ultimately desirable to ensure that all election mail is postmarked appropriately, especially postal votes; however, it understands that there are practical difficulties in achieving this outcome.

3.156 There are a number of possible alternatives to the present timeframes and cut-off, including the provision of special election services by Australia Post to validate postal votes posted prior to polling day.

3.157 The committee considers that on balance, the only solution to this problem that is presently available is to determine the validity of postal votes based on the witness date.

3.158 Accordingly, the committee is of the view that the government consider amending the Commonwealth Electoral Act to allow the date of the witness signature on the postal vote certificate to be the determining date for validity of postal votes; and to require postal voters and witnesses to confirm that the required voting actions were completed prior to the close of poll in the state/territory in which the electoral division for which the voter is enrolled, is located.

Recommendation 5

3.159 **The government consider amending the *Commonwealth Electoral Act 1918* to:**

- **allow the date of the witness signature on the postal vote certificate to be the determining date for validity of postal votes; and**
- **to require postal voters and witnesses to confirm that the required voting actions were completed prior to the close of poll in the state/territory in which the electoral division for which the voter is enrolled, is located.**

Modernising postal vote applications

3.160 In examining issues related to postal voting, the committee has been made aware of other issues relating to the formality of postal vote applications (PVAs) that result in delays to postal votes being issued and may act as disincentives for electors to make application or to follow through and lodge a postal vote after having lodged a postal vote application.

3.161 The AEC told the committee that it sees considerable benefit to be gained by giving electors the option of applying for a postal vote online. In order to give effect to this proposal the AEC suggests it would be necessary to remove the requirement for PVAs to be signed by both applicants and witnesses.[77]

3.162 The grounds upon which an elector must rely in order to apply and receive a postal vote are set out in schedule 2 to the Commonwealth Electoral Act. The provisions relating to PVAs are found in Part XV of the Commonwealth Electoral Act and specifically in sections 184 and 188.

3.163 Section 184 provides amongst other things that PVAs:

- shall be in writing in the approved form (s.184);
- must be made to a Divisional Returning Officer (DRO) or Assistant Returning Officer (ARO);

77 Australian Electoral Commission, submission 169.18, p 4.

- must be made after the issue of the writ or the public announcement of an election; and
- must be received by the DRO or ARO prior to 6 PM on the Thursday that is two days before polling day.

3.164 Section 187 provides for the duties of a witness to a PVA and specifies that a witness must:

- be satisfied of the identity of the elector;
- have seen the elector sign the application;
- know that the statements are true or;
- be satisfied on the basis of inquiries of the elector that the statements on the application are true.

3.165 Section 188 provides that PVAs must be properly signed and witnessed, before the DRO or ARO must send postal voting papers to the applicant.

3.166 The AEC told the committee that some 50,000 defective PVAs were received at the 2007 election. The AEC was required to write to each of the electors who submitted a defective PVA and the electors were required to fill out and submit a fresh PVA to the AEC.[78]

3.167 When questioned about the major reasons why PVAs were considered to be defective, the AEC advised the committee:

> Approximately 70 per cent of those defective applications were because of problems with witnessing. There were about 35,000 postal vote applications that had to be returned because there were problems with witnessing, there was no signature or the date of the witness's signature was different to the date of the signature of the elector. Of course, returning defective applications in this way adds several more days to the postal voting process.[79]

3.168 The committee examined the issue of signatures on PVAs in order to determine whether they were in fact necessary to the postal voting process and what value, if any, was obtained by retaining the signature requirements.

78 Australian Electoral Commission, submission169.18, p 5.

79 Dacey P, Australian Electoral Commission, transcript 11 May 2009, p 3.

3.169 The committee closely questioned Mr Paul Dacey, acting Electoral Commissioner, who has some 25 years of experience as an electoral administrator, about postal vote application processes.[80]

3.170 Mr Dacey told the committee that the 35,000 defective PVAs comprised:

- 2,580 PVAs with no witness signature at all;
- 7,158 witnessed but not dated by the witness; and
- 24,636 PVAs where there was a difference between the date of witness and the date of signature of the elector.[81]

3.171 Mr Dacey told the committee that there are no checks made of the witness signature, and that even though the signature of an elector was presently captured on both the PVA and the subsequently lodged postal vote certificate, the only time the AEC would check the elector signature against an original enrolment record was where the vote was subject to challenge.[82]

3.172 Despite concerns to the contrary being expressed during the hearing, Mr Dacey advised that there would be no lack of integrity in the postal voting process, as the AEC was only suggesting removal of the applicant and witness signatures from the postal vote application. The postal vote certificate in which the ballot papers were lodged when the vote was received by the AEC would still bear the signature of both an elector and a witness.[83]

3.173 Mr Dacey advised that it is important to have the signatures of the elector and witness on the postal vote certificate containing the ballot papers, and agreed that they add to the integrity of postal voting. Mr Dacey told the committee, however, that the AEC believed no requirement existed under the Commonwealth Electoral Act for the AEC to check the bona fides of any witnessing that occurs, but that where a challenge to the legitimacy of any postal vote occurred, the AEC still had the ability to go back to the original signature on an enrolment form for comparison.[84]

3.174 Whilst certain that there would be no integrity issues with removal of applicant and witness signatures from PVAs, Mr Dacey was, however, unable to advise the committee why it was considered necessary for those

80 Dacey P, Australian Electoral Commission, transcript 11 May 2009, p 3.
81 Dacey P, Australian Electoral Commission, transcript 11 May 2009, p 5.
82 Dacey P, Australian Electoral Commission, transcript ,11 May 2009, p 5.
83 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, p 5.
84 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, pp 5-8.

signatures to appear on a PVA at the time the requirement was originally introduced into the Commonwealth Electoral Act.[85]

Committee conclusion

3.175 The committee accepts that the requirement to provide both the signature of an applicant and a signature of a witness on postal vote applications can lead to delays where electors make errors in filling out a postal vote application form. The committee considers that there appears to be no strengthening of integrity associated with the provision of witness and applicant signatures on PVAs.

3.176 Similarly, the committee accepts that there would, indeed, be a lack of integrity if the postal vote certificate which actually contains the ballot papers was not signed or witnessed. However, there is no suggestion that signatures ought to be removed from the certificate containing the ballot papers.

3.177 The committee agrees that removing the requirement to provide applicant and witness signatures on PVAs will allow for the submission of postal vote applications electronically.

3.178 Such a move aligns with the committees desire to remove restrictions which force the AEC and electors to operate in a paper-based environment when it is clear that there is a growing public expectation that such interactions should be conducted electronically wherever possible.

3.179 It is clear that there were some 50,000 PVAs lodged at the 2007 election which required rectification. The AEC has informed the committee that it was necessary to write to the electors concerned and request them to resubmit compliant applications. Such practices are clearly time consuming and costly, with no apparent benefit to the integrity of the system arising.

3.180 The committee notes that postal vote certificate envelopes will still be signed by the elector and the witness. It is this aspect of the postal voting process where the need to ensure integrity resides.

3.181 The committee is aware that all applicants for enrolment provide a signature at the time of enrolling and that the AEC holds a record of those signatures. Similarly, electors who qualify to become general postal voters and lodge applications accordingly provide their signature to the AEC on those applications.

85 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, pp 8-9.

3.182 It is evident to the committee that enrolment records and general postal voter applications also provide ready sources of elector signatures which can be used for comparison against the signature contained on postal votes.

3.183 Removing the need for signatures on PVAs will allow postal vote applications to be made electronically, significantly reduce the lodgement of defective PVAs, provide both savings in time and cost and have no adverse effect on the integrity of postal voting.

3.184 Accordingly, the committee recommends removal of the requirement that postal vote applications be signed by an applicant and witness.

Recommendation 6

3.185 **The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to remove the requirement that postal vote applications be signed by an applicant and a witness, in order to facilitate the lodgement of postal vote applications online, electronically, or in written form, to reduce the incidence of postal vote applications being deemed defective, thus leading to delays in the delivery of postal voting packs to electors.**

4

Maintaining an effective electoral roll

4.1 One of the most disturbing pieces of evidence received by the committee during the inquiry into the 2007 election was delivered by the new Electoral Commissioner, Mr Ed Killesteyn at the public hearing in Canberra on 17 March 2009.

4.2 Mr Killesteyn told the committee that an estimated 1.2 million electors were not on the electoral roll:

> At the 2007 federal election an estimated 92.3 per cent of the total number of eligible voters were on the electoral roll. This represented an increase of 0.8 per cent on the estimated participation rate at the 2004 federal election. The enrolment participation rate has now dropped to a level of 91.63 per cent in spite of the increase in the number of electors currently on the electoral roll. Discussion of the participation rate in percentage terms, however, masks the true extent of the disenfranchisement that exists in the Australian community. We estimate there are about 1.2 million eligible voters currently not on the electoral roll, and who are therefore not able to exercise their franchise.[1]

4.3 In looking at enrolment trends in the lead up to, and post the 2007 election, it is evident that the electoral roll is very dynamic, that it requires updating on an ongoing basis and that it requires a combination of positive actions on the part of the Australian Electoral Commission (AEC) and electors in order for it to be kept as up to date as possible.

4.4 The AEC faces many challenges in managing the electoral roll, not least is in keeping it up to date to be used for federal, state, territory and local government elections:

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1 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 2.

> One of the biggest challenges currently facing the AEC is to ensure that Australian citizens get the chance to exercise their key democratic right—their franchise. One critical aspect of this is the need for the electoral roll to be as accurate and complete as is possible at all times, including between federal elections, reflecting the fact that the roll is also used for state, territory and local government elections.
>
> In this respect I note that during 2008 there were 82 roll closures. The need for the roll to be up to date, and to be kept up to date, is self-evident. This demonstrates that the debate should be about how we can do that at all times, not just at the time of a federal election.[2]

4.5 In reviewing the relative effectiveness of current roll maintenance activities and considering the efficacy of others, the committee is mindful that:

- Australia has a system of compulsory enrolment which requires electors to enrol once eligible to do so, and to notify the AEC of changes to enrolment details in a timely manner;
- different jurisdictions have differing enrolment processes and requirements relating to enrolment and transfers;
- ultimately, whilst able to recommend changes aimed at improving the Commonwealth electoral roll, the committee is not in a position to influence the respective states and territory governments to adopt similar changes; but that
- ongoing dialogue between the Commonwealth and the various state and territory governments is also necessary and is the key to achieving harmonisation of enrolment requirements and processes.

4.6 It is necessary to be aware of and examine factors that create barriers to achieving greater enrolment participation at the commonwealth level and to find ways to mitigate their impact on the electors and potential electors in order to increase enrolment participation levels.

4.7 Some of the barriers to effective roll maintenance evident to the committee include:

- elector awareness of the compulsory enrolment provisions and the ease or difficulty with which information provided by electors, can be sent to, received by, or accessed by the AEC and subsequently acted upon;

2 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 2.

- the prescriptive and restrictive nature of enrolment legislation;
- proof of identity (POI) requirements for enrolment and the need to satisfy these requirements by submitting fully POI compliant enrolment forms in order to notify any changes to enrolment details;
- the complexity of enrolment forms and enrolment processes (both Commonwealth and state) when compared to the relative ease with which electors transact business with other government and non-government agencies;
- the under-representation of young people on the electoral roll, especially when viewed in light of their willingness to participate in other obligatory activities, for example getting a driver's licence in order to legally drive a motor vehicle; and
- the growing public expectation that matters of importance can be conducted in a way which is both simple and convenient in a society which is becoming more familiar and adept at the use of emerging technologies.

Enrolment awareness and participation

4.8 Australia is regarded as a highly inclusive and representative democracy. Universal adult suffrage was achieved for most Australians several generations ago while enrolling to vote has been compulsory for all Australians, excluding indigenous Australians, since 1911. Compulsory voting was introduced in 1924 and has since become an accepted part of Australia's political landscape. Reforms to extend the same franchise rights enjoyed by the majority of Australians to indigenous Australians occurred in 1983 and since this time Australia has worked to operate an open electoral system with minimal hurdles to both enrolling and voting.[3]

4.9 The compulsory enrolment provisions of the *Commonwealth Electoral Act 1918* have typically ensured a high level of enrolment, with enrolment participation rates normally found to be above 90 per cent of the eligible population.

4.10 Such results have largely been driven by the efforts of electoral authorities, with cooperation between the AEC and state and territory counterparts serving to promote and increase awareness during and between elections.

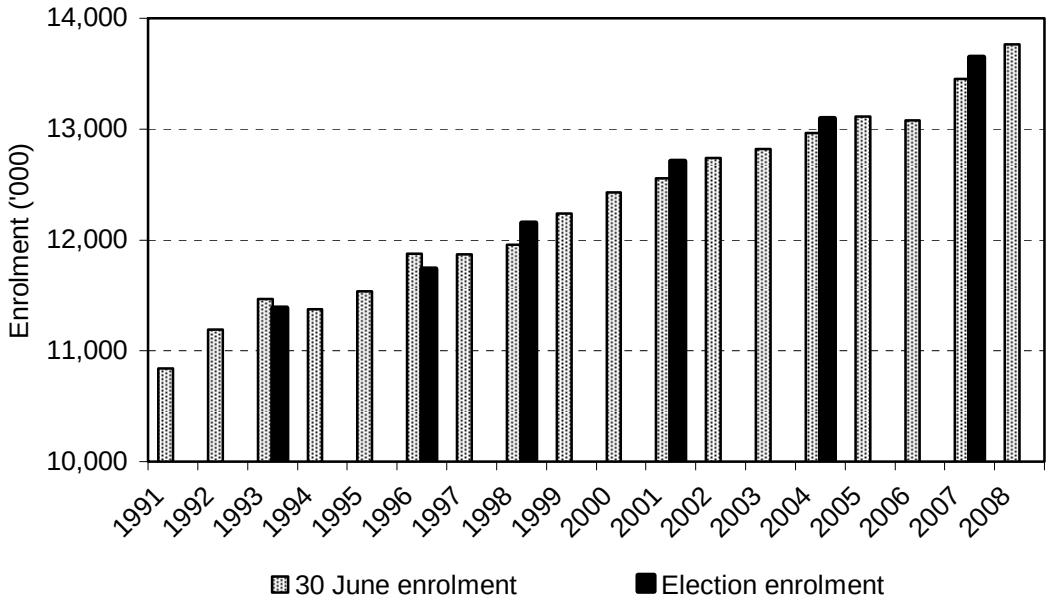
3 Australian Electoral Commission, *Electorally Engaging the Homeless* (2005), Research report number 6, p 4.

4.11 However, the Electoral Commissioner has stated that an estimated 1.2 million eligible people are not currently on the electoral roll.[4]

4.12 This indicates that despite the efforts of electoral authorities and others, factors are at play which limit the effectiveness of campaigns designed to raise awareness of the compulsory enrolment provisions of the Commonwealth Electoral Act.

4.13 The drop in enrolment and the recovery in 2007 can be seen in figure 4.1, which compares the 30 June enrolment figures for each year since 1991 with the close of rolls figures for each election since 1993.

Figure 4.1 Annual enrolment and election enrolment, 1991 to 2008



Source *Appendix C, table C.6 and C.8.*

4.14 The significant drop in the level of enrolment in 2005-06, which was only overcome by intense and costly efforts on the part of the AEC during 2007 in the lead up to the election, is evidence that such factors exist, and that they influence the level of enrolment.

4.15 Similarly, the recovery which occurred in 2007 suggests that intensive efforts along with the approach of impending elections can mitigate the effects of such drops in the levels of enrolment.

4.16 The 1993 and 1996 elections were conducted on 13 March and 2 March respectively, with enrolment data for those taken in June. Consequently,

4 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 2.

for those years, the 30 June enrolment is greater than the election enrolment, suggesting that enrolments continue to rise for some time following an election.

4.17 All elections after the 1996 election have been conducted in either October or November. It is noticeable that election enrolment is significantly higher than the enrolment at 30 June for those years, indicating that enrolment grows as elections approach.

4.18 The electoral roll is dynamic, with changes occurring on a daily basis. It has been suggested that the AEC's ability to remove electors from the roll is greater than its ability to put electors on the roll.

4.19 The Democratic Audit of Australia noted that:

> While the AEC is mandated to remove from the roll those who are not eligible – and by mining data bases such as Centrelink and Australia Post it does so very efficiently automatic deletion is not mirrored by automatic enrolment. Put bluntly, the AEC is getting much better at taking people off the roll, but not at putting them on.[5]

4.20 Objection processes, which effectively remove people from the electoral roll on the basis that their entitlement to remain on the roll has ceased, obviously have an effect on participation rates. Significant declines in enrolment are noticeable when large numbers of objections are processed and electors removed from the roll. Importantly, it takes the roll a long time to recover from large drops resulting from objections. The roll suffers from decline during such periods, indicating that the processing of objections is not matched as efficiently by the re-enrolment of electors.

4.21 The AEC noted the effects of objections on the participation rate and told the committee that it had changed the way it managed objection processes between January and April 2007 with a view to taking positive actions to encourage enrolment amongst those who were marked for objection action:

> The temporary decline in enrolment numbers in June and September 2007 was due to a number of objections being processed those months. Between January and April 2007, objection action was rescheduled pending fieldwork and processing of collected enrolment forms. The aim was to avoid removing people from the roll where there was a real prospect of identifying their new addresses and encouraging them to update

5 Democratic Audit of Australia, submission 45, p 2.

> their existing enrolments. Roll accuracy has to be balanced by ensuring that eligible electors are encouraged to enrol (or update their enrolment) whilst ensuring that electors no longer entitled to be enrolled (at a particular address) are 'objected' off the roll as determined by the legislation.[6]

Committee conclusion

4.22 The committee believes that there is a significant relationship between awareness of enrolment obligations and the participation rate.

4.23 Enrolment participation fluctuates over time with noticeable increases and declines. It may be argued that, in addition to the lowering of enrolment numbers as a result of large numbers of objections being processed, other movements reflect increases and decreases in the level of awareness of electoral obligations on the part of electors as the election cycle ebbs and flows.

4.24 This view is supported by noticeable increases in enrolment as elections approach and was noted by the AEC, who implemented a national advertising campaign and a targeted enrolment stimulation (TES) program in order to raise elector awareness and increase enrolment participation between April and November 2007 in the lead up to the election.[7]

4.25 However, the committee agrees with the AEC that relying on a peak of activity when an election is expected or has been announced is both an inadequate and inappropriate way of maintaining the roll.[8]

4.26 That being said, however, the AEC and others should not rely on substantial levels of funding being available to facilitate the implementation of significant advertising campaigns designed to raise awareness and stimulate enrolment. Such spending is clearly unsustainable.

4.27 Rather, the AEC and its state and territory counterparts should work together and be proactive and innovative, devising and implementing strategies aimed at raising awareness and encouraging enrolment at all times, not just in the lead up to elections.

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6 Australian Electoral Commission, submission 169, p 13.

7 Australian Electoral Commission, submission 169, p 22.

8 Australian Electoral Commission, submission 169, p 22.

4.28 Whilst the committee accepts that both awareness and participation will continue to fluctuate, it has an expectation that the AEC will increase its efforts to minimise the declines in enrolment, whilst acting positively to increase both enrolment numbers and the level of participation as a proportion of the eligible population.

4.29 The AEC should also pay closer attention to maximising the number of electors who might be retained on the roll, by targeting those electors earmarked for objection action during the period before action is taken to remove them from the roll, with a view to encouraging them to update their enrolment details. This is the strategy used by the AEC in early 2007 with the TES program.[9] Such action will reduce the likelihood that they will be removed from the roll unnecessarily, especially where the AEC is able, through its data matching and mining activities, to ascertain their whereabouts and encourage their enrolment at a new address.

4.30 The committee accepts, however, that there are some limitations imposed by the current legislation and that there are some measures which should be taken to make enrolment more accessible to those eligible to enrol, or remain on the electoral roll. These limitations and measures are discussed below.

Proof of identity for enrolment

4.31 In chapter 3, the committee discussed the proof of identity measures for enrolment, which came into effect at the same time as those for provisional voting in 2006.

4.32 Prior to the introduction of proof of identity requirements for enrolment, electors were required to have their enrolment forms witnessed by a person eligible to be on the Commonwealth electoral roll.[10]

4.33 The enrolment proof of identity provisions now require electors within Australia who wish to enrol or change enrolment details, to:

- provide an Australian driver's licence number to prove their identity (referred to herein as tier 1);

9 Australian Electoral Commission, submission 169, p 12.

10 Australian Electoral Commission, submission 169, p 14.

- or, if they do not possess a driver's licence they must show to a prescribed document to an elector who is one of a prescribed class of electors (referred to herein as tier 2); or
- if this is not possible they must have their application for enrolment or transfer countersigned by two electors who:
  - ⇒ can confirm the applicant's name; and
  - ⇒ have known the applicant for at least one month (referred to herein as tier 3).

4.34 Similar provisions apply to applications for enrolment received from electors outside Australia who seek enrolment under the provisions of sections 94A and 95 of the Commonwealth Electoral Act; however such electors may provide an Australian passport number in place of a driver's licence number.[11]

4.35 The AEC has advised that over 90 per cent of electors provide either a driver's licence number, or in the case of electors overseas, a passport number, 8.5 per cent of electors show a prescribed document to a prescribed class of elector and the remaining electors have their identities confirmed by two enrolled persons who know them.[12]

4.36 The AEC was unable to provide the committee with an estimate of the number of electors who had enrolment applications rejected due to proof of identity provisions not being met.

4.37 Whilst noting that it was difficult in the environment that existed in the lead up to the 2007 election to determine if the proof of identity measures served to restrict the franchise, the AEC went on to say that in most circumstances the proof of identity measures appear to have worked well.[13]

4.38 The AEC favours retention of tier 1 of the POI scheme for first time enrolees and has also recommended that Australian passports should be included in tier 1 for electors within Australia, not just electors outside of Australia.[14]

4.39 Similarly, the AEC recommends that other documents might also be worthy of consideration, including Defence Force ID and Department of Veterans' Affairs Gold Cards, but notes that these need to be explored to

11 *Commonwealth Electoral Act 1918*, s 98AA.

12 Australian Electoral Commission, submission 169, p 14.

13 Australian Electoral Commission, submission 169, p 17.

14 Australian Electoral Commission, submission 169.15, p 11.

determine if they compare favourably with the integrity of driver's licences and Australian passports.[15]

4.40 In relation to tiers 2 and 3, however, the AEC also notes that a strong case exists for examining tiers 2 and 3 of the POI requirements, which at the moment, in the view of the AEC:

- are intrinsically discriminatory against people who do not possess a driver's licence, forcing them to go through a more complex process in order to enrol;
- run the risk of impacting disproportionately on the poor, and on people in remote and indigenous communities; and
- are still capable of being circumvented by persons truly determined to do so.[16]

4.41 Some inquiry participants believed that introduction of the POI scheme was unnecessary. Uniting Justice Australia submitted:

> The changes in proof of identity requirements were unnecessary. It should be noted that an Australian Electoral Committee audit of South Australian voting following the 2001 election found no evidence of fraud, in a roll of over one million people. They were overly burdensome and a discouragement for those enrolling or changing their enrolment, particularly people with disabilities, the homeless, Indigenous Australians and older Australians.[17]

4.42 The Human Rights and Equal Opportunity Commission told the committee that 'many homeless people have difficulty meeting proof of identity requirements because they do not have and cannot afford to obtain the necessary documents'.[18]

4.43 The PILCH Homeless Persons Legal Clinic submitted 'that these amendments significantly impair the ability of people experiencing homelessness (among other disadvantaged groups) to participate in the electoral process'.[19]

4.44 On the other hand, other participants believed the POI requirements worked and should be retained.

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15 Australian Electoral Commission, submission 169, p 17.
16 Australian Electoral Commission, submission 169, p 17.
17 Uniting Justice Australia, submission 86, p 3.
18 Human Rights and Equal Opportunity Commission, submission 97, p 11.
19 PILCH Homeless Person's Legal Clinic, submission 135, p 22.

4.45 The Festival of Light Australia recommended that 'the current provisions for proof of identity when enrolling should be maintained.'[20]

4.46 The Nationals told the committee that '[a] number of the problems experienced in the 2004 Federal election and cited by the Nationals in its submission to the Committee's 2005 inquiry appear to have been resolved with the adoption of proof of identity requirements for enrolment…'[21]

4.47 The Liberal Party of Australia agreed, telling the committee:

> Another important reform made by the last Parliament was the introduction of Proof of Identity requirements for enrolment. Correct enrolment is at the heart of the integrity of our electoral system. Appropriate proof of identity for enrolment is an elementary standard to maintain confidence in the electoral roll. The change made by the last Parliament corrected an anomaly and has worked smoothly. It is important for public confidence in our electoral system that this reform continues and is not ended or watered down.[22]

Committee conclusion

4.48 The committee believes that overall, the POI changes for enrolment have served to restrict the franchise.

4.49 The committee believes that the requirement to provide POI for every enrolment transaction, even where POI has previously been provided by the elector, is overly burdensome and does nothing to further roll integrity.

4.50 The committee agrees however, that all electors, not just first time enrolees, should be required to prove their identity, but, once they have complied with the POI requirements on the first occasion, that fact should be recorded on the electoral roll and they should not have to meet those requirements again, except when changing name.

4.51 The committee sees merit in adding Australian passports as an acceptable identity document for electors resident in Australia as well as for Australian citizens overseas.

4.52 The committee believes that the current arrangements for tiers 2 and 3 of the POI scheme are burdensome and agrees with the AEC and other

20 Festival of Light Australia, submission 67, p 7.

21 The Nationals, submission 145, p 1.

22 Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 3.

inquiry participants that they disadvantage some Australians. Further, the committee believes the current hierarchical arrangement for POI which sees different weightings applied to the various tiers is unnecessary and overly complicated.

4.53 The committee believes that the requirements of tiers 2 and 3 of the POI requirements should be repealed. It should be sufficient for an elector to prove their identity for the purposes of enrolment by providing any one of the following forms of POI, all of which should be deemed to carry equal weight:

- Australian drivers licence number; or
- Australian passport number; or
- the signature of another person on the Commonwealth electoral roll who witnesses the application for enrolment and attests to the identity of the applicant.

Recommendation 7

4.54 **The committee recommends that that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 which provide that proof of identity for enrolment purposes be required, be amended to:**

- **require that proof of identity be required for each elector once only; and**
- **that proof of identity may be established by the provision of a drivers licence number, Australian passport number, or the signature of another person on the Commonwealth electoral roll who shall witness and attest to the identity of the applicant. Any one of these are to be considered as acceptable forms of proof of identity for electors enrolling within Australia.**

4.55 A further effect of the proof of identity measures was to require that all changes to the electoral roll initiated by electors required them to submit a fully POI compliant enrolment form.

4.56 The committee notes, however, that the section 101(5) of the Commonwealth Electoral Act requires electors who have changed address

to notify the AEC of changes of address within 21 days after they have lived at the new address for one month.[23] It is not stated in the relevant provision that such changes require electors to submit an enrolment form, indicating that it was not intended that they would be required to do so.

4.57 The committee believes the requirement that all such transactions be made by the submission of an enrolment form is clearly in contradiction to the intent of this provision. The committee has been unable to ascertain exactly how many electors have been disenfranchised because they did not comply with the contradictory requirement to submit enrolment forms for such changes of address. An indication that the number may be significant is that there was a considerable reduction from around 45,000 electors in 2004 and 2005 who had notified the AEC of their new enrolment details through written advice to 17,000 electors in 2006 and only 706 electors in 2007 (table 4.1).

Table 4.1 Changes to the roll as a result of written advice from electors, 2003 to 2008

Year	2003	2004	2005	2006	2007	2008
Change	37,115	44,261	44,916	17,088	706	1,044

Source *Australian Electoral Commission, submission 169.20, p 7.*

4.58 The committee also believes that the repeal of section 105(1)(ba) of the Commonwealth Electoral Act has severely restricted the ability of the AEC to act on information provided by electors. Prior to repeal of this section, the AEC was able to update the electoral roll on the basis of information provided by electors on declaration envelopes and elector information reports lodged with the AEC or other electoral authorities at the time of voting.

4.59 The committee accepts the AEC's advice that the repeal of this section was consistent with the policy position of the government of the day which sought to require all changes to the roll to require a fully POI compliant enrolment form:

> The clear intention of the Government at the time of the 2006 amendments to the CEA was that a complete 'claim for enrolment' which included POI was required by the AEC for any changes to the electoral roll.[24]

23 *Commonwealth Electoral Act 1918*, s 101.

24 Australian Electoral Commission, submission 169.20, p 3.

4.60 However, the committee does not accept the need to impose barriers or to make electors jump a series of hurdles in order to exercise the franchise which should be freely available to those who are entitled to exercise it.

4.61 The committee therefore recommends that section 105(1)(ba) be reinstated to the Commonwealth Electoral Act in a form that will allow the AEC to alter the address details of enrolled electors who have previously satisfied the proof of identity measures for enrolment, on the basis of information provided by electors in written form.

Recommendation 8

4.62 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to reinstate section 105 (1)(ba) in a form that will allow the Australian Electoral Commission to alter the address details for enrolled electors who have previously satisfied the proof of identity measures for enrolment, on the basis of information provided by electors in written form to the Australian Electoral Commission.**

Maintaining the currency of the electoral roll

4.63 As noted in chapter 3 enrolment has grown at each election since 1993, with the number of electors enrolled at close of rolls for the 2007 election almost 2.3 million more than at the 1993 election.

4.64 When viewed as a unique set of data, consecutive close of rolls figures give the impression that the roll grows consistently between elections.

4.65 However, as pointed out by the AEC, there appears to be a surge in roll growth as a result of an impending election:

> Some of the anecdotal information, though, is that the preparedness or the propensity to enrol or change details tends to increase if there is an electoral event, so the proximity of state elections with federal elections is one of the factors that we have identified that will contribute to growth in the roll, for example.[25]

4.66 Growth occurring in the lead up to an election, as against being spread over the years between elections was particularly evident in the case of Western Australian and Tasmania, as noted in chapter 5.

25 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 6.

4.67 In Western Australia, the roll grew from 1,237,349 at close of rolls for the 2004 election to 1,312,942 at the close of rolls for the 2007 election a growth of 75,593 electors. Notably, almost 57,000 electors were added to the roll in the period leading up to the 2007 election, between 31 January 2007 and 17 October 2007.[26]

4.68 In Tasmania, the roll grew by 10,199 electors over the same period; from 339,589 in 2004 to 349,788 in 2007, however, all this growth bar 200 electors, occurred in 2007 in the lead up to the 2007 election.

4.69 The above figures represent close of rolls 2004, to close of rolls 2007 growth, but, as pointed out in chapter 3, election enrolment (which is the number of electors entitled to cast votes at an election) is traditionally higher than close of rolls enrolment, because it also includes a number of electors reinstated to the roll at an election.

4.70 When the growth to the roll at the 2004 election is taken into account, the actual enrolment growth which occurred after the 2004 election and up to the 2007 close of rolls is not quite as flattering, as can be seen in table 4.2 below.

Table 4.2 Close of rolls growth, by jurisdiction, 2004 to 2007 elections

State/territory	2004 Close of rolls enrolment	2004 election enrolment	Growth (electors)	2007 Close of rolls enrolment	Growth (electors)
New South Wales	4,302,122	4,329,115	26,993	4,495,336	166,231
Victoria	3,292,409	3,309,800	17,391	3,442,096	132,296
Queensland	2,463,402	2,475,611	12,209	2,612,300	136,689
Western Australia	1,237,349	1,248,732	11,383	1,312,942	64,210
South Australia	1,049,814	1,051,923	2,109	1,075,968	24,045
Tasmania	339,589	342,809	3,220	349,788	6,979
Australian Capital Territory	224,896	227,541	2,645	238,742	11,201
Northern Territory	111,649	112,930	1,281	117,901	4,971
Total	13,021,230	13,098,461	77,231	13,645,073	546,622

Source *Appendix C, table C.8.*

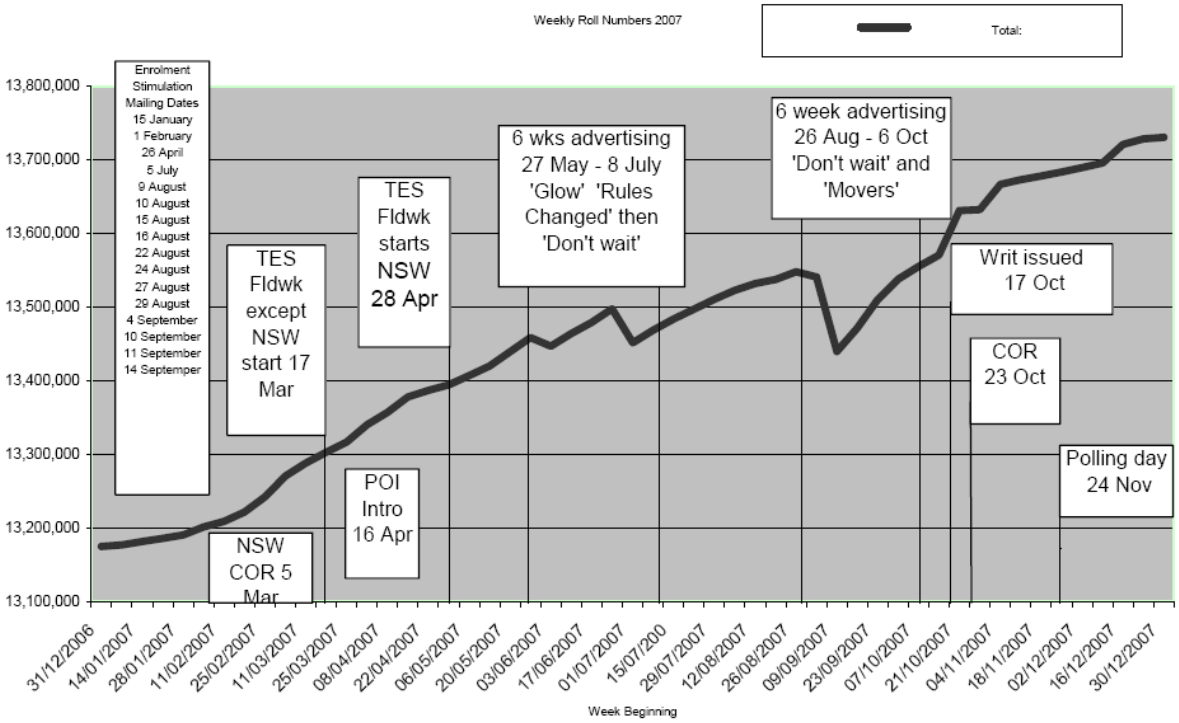
26 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 3.

4.71 Whilst significant enrolment growth was evident during 2007, this came about because of the extraordinary measures the AEC implemented in order to arrest the decline in enrolment evident in 2005 and 2006, including significant expenditure on advertising and the introduction of its TES program in 2007. The AEC noted that:

> Due to the change to the close of rolls period, in 2007 the AEC placed an increased focus on ensuring that as many eligible electors as possible were enrolled prior to the issue of the writs. With this in mind, and in response to the declining 2005 and 2006 enrolment numbers, a national enrolment drive commenced in March 2007. This involved targeted mail outs (to potential electors identified through data matching with agencies such as Centrelink), phone follow-up and door-knocking to approximately 1 million householders whom the AEC believed were not enrolled or needed to update their enrolment.[27]

4.72 The AEC detailed the growth to the roll and the timing of various enrolment stimulation activities during 2007 in its first submission, using the graph reproduced at figure 4.2.

Figure 4.2 Enrolment growth and major enrolment promotion activities, 31 December 2006 to 30 December 2007



Source *Australian Electoral Commission, submission 169, p 14.*

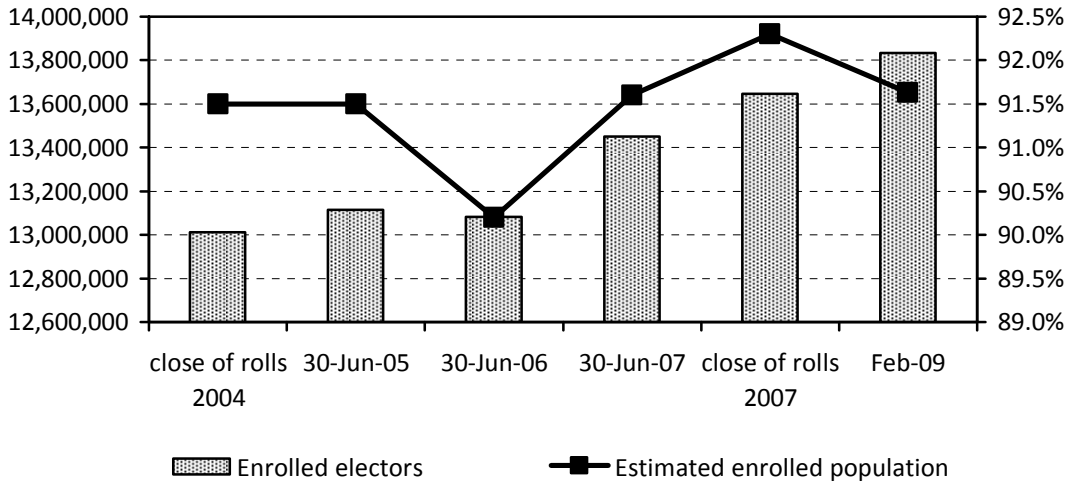
27 Australian Electoral Commission, submission 169, p 12.

4.73 Growth increased sharply in February 2007 in the lead up to the close of rolls for the New South Wales state election and continued to increase, recovering from falls where electors were removed from the roll by objection action in June, July and September, through to the issue of the writ on 17 October 2007.

4.74 Significantly, roll growth stopped during the close of roll period, increasing again directly following the close of roll, and continuing to increase through to the end of December 2007.

4.75 The AEC informed that committee that the number of electors on the roll is only one indicator of roll completeness and drew attention to the number of enrolled electors as percentage of the AEC's estimate of the population eligible to be enrolled, which, at the close of rolls was 92.3 per cent, up from a low of 90.2 per cent at 30 June 2006 as evidenced in figure 4.3. [28]

Figure 4.3 Number of enrolled electors and estimated eligible enrolled population, close of rolls 2004 to February 2009



Source *Australian Electoral Commission, submission 169, p 9; Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 3.*

Committee conclusion

4.76 The threshold issue for the committee in considering roll maintenance in modern Australia is to ensure that enrolment and roll update processes be made as accessible as possible in order to enable the franchise, whilst not

28 Australian Electoral Commission, submission 169, pp 8–9.

compromising the integrity of the electoral roll and subsequently the electoral system, including elections and referenda.

4.77 However, as discussed in chapter 2 the committee considers that a predisposition to emphasise integrity at any cost — as exemplified by the recent changes to enrolment and voting provisions which have served to disenfranchise otherwise eligible electors, with no evident effect on the integrity of the electoral roll or elections except to disqualify electors — has done more harm than good.

4.78 Therefore, when considering the issues related to enrolment the committee has started from the position that no realistic evidence exists to suggest that the 2007 election, or previous federal elections, suffered from or were associated with systemic multiple voting or systemic enrolment fraud, rather that a small number of isolated instances of both have and do occur.

4.79 The committee notes with some concern the continuing trend which sees enrolment decline between federal elections.

4.80 It is evident to the committee that the actions of the AEC in implementing the TES program, along with the other ongoing roll maintenance strategies, was responsible for arresting the decline in the roll evident during 2005 and 2006 and achieving a high level of growth in the lead up to the 2007 election.

4.81 It is also evident that the significant increase to the roll in 2007 assisted in the AEC producing an electoral roll that was available for use when required and one which has not resulted in any noteworthy or demonstrable claims that it lacked integrity.

4.82 However, whilst the efforts of the AEC and others delivered such a roll for the election, there are a number of indicators which confirm that at the time of the election there were also a significant numbers of electors who believed that they were correctly enrolled but were not, or were not enrolled at all. These indicators include:

- The number of provisional votes cast at the election which did not decrease significantly from 2007 despite the intense efforts undertaken to stimulate enrolment in the lead up to the election (167,682);[29]
- The number of electors who missed out on the close of rolls and could not, as a result, enrol or update their enrolment details (100,370)[30]; and

29 Australian Electoral Commission, submission 169, p 30.

30 Australian Electoral Commission, submission 169, p 8.

- The number of declaration votes other than provisional votes, rejected from scrutiny because the elector was not on the roll, resulting in them casting invalid votes (198,742).[31]

4.83 It is evident to the committee that at least 466,794 electors were unable to exercise the franchise correctly at the 2007 election, either because they were not on the electoral roll, or they were on the roll with incomplete or incorrect details.

4.84 The committee is concerned by the level of disenfranchisement that existed at the election, and notes that disenfranchisement continues to exist, as evidenced by a decline in the percentage of eligible persons on the electoral roll in February 2009.

4.85 Similarly, the trend which sees actual enrolment numbers decline between elections is cause for concern. The committee is keen to examine if the processes mandated by the Commonwealth Electoral Act may be simplified or improved, and whether the Australian Electoral Commission is doing all that it can in order to stimulate enrolment in the period between federal elections. The committee notes that the AEC and others have suggested that a number of changes to enrolment procedures are necessary to arrest the decline in enrolment participation. These are examined below.

Roll maintenance strategies and activities

4.86 The AEC utilises a number of strategies aimed at providing electors and potential electors with opportunities to enrol or update electoral enrolment details.

4.87 For example, enrolment forms are made available at AEC offices, Post Offices, Rural Transaction Centres and various Commonwealth agencies such as in Centrelink, Medicare and Australian Taxation Office shopfronts.[32]

4.88 Similarly, enrolment forms are available for download from the AEC website, with electors required to print them before sending them on to the AEC for processing.

31 Appendix C, table C.5.

32 Australian Electoral Commission, submission 169, p 30.

4.89 Continuous Roll Update (CRU) is a primary strategy for interaction with electors and potential electors. As part of the CRU suite of measures the AEC uses a number of internal and external datasets to identify electors who are either not currently enrolled or who are enrolled for addresses which are different to those contained in external datasets.

4.90 Letters are mailed to electors and addresses identified as requiring update action, with the responses and enrolment forms received as a result serving to inform changes to the rolls.

4.91 Additionally, the AEC conducts targeted fieldwork activities during which face to face contact is made with electors in their homes in situations where no response has been received despite mailing to those addresses, or where the AEC has identified particular high turnover areas where it believes that enrolments are likely.[33]

4.92 The AEC also conducts promotional activities at venues including shopping centres, malls, schools and colleges, staff also attend major events such as shows and sporting events in order to raise awareness of, and facilitate enrolment.

4.93 In addition, the AEC regularly attends citizenship ceremonies and collects completed enrolment forms from new citizens, conducts a national enrol to vote week in order to facilitate enrolment amongst senior secondary students, interacts with state and territory electoral commissions and receives enrolment forms following activities conducted by those commissions, and conducts advertising and awareness campaigns aimed at encouraging electors to enrol or update enrolment details.

Source of enrolment forms

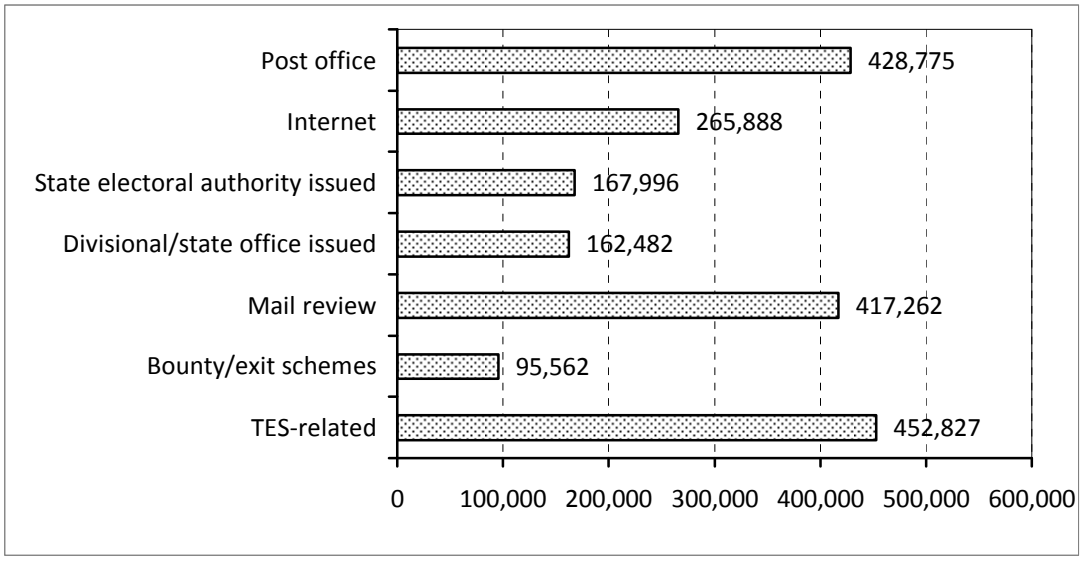
4.94 In the period 1 January to 23 October 2007 the AEC received 2,529,429 enrolment forms through a combination of the above methods.[34]

4.95 An analysis of the sources from which enrolment forms originated reveals that the greatest number were sourced from TES-related activities (452,827), followed in descending order by Post Offices (428,775), mail review (417,262) and the Internet (265,888), as demonstrated in figure 4.4.

33 Australian Electoral Commission, submission 169, p 12.

34 Australian Electoral Commission, submission 169, p 10.

Figure 4.4 Major sources of enrolment forms, January to October 2007



Source *Australian Electoral Commission, submission 169.2, Annex 2(a) pp 9-30.*

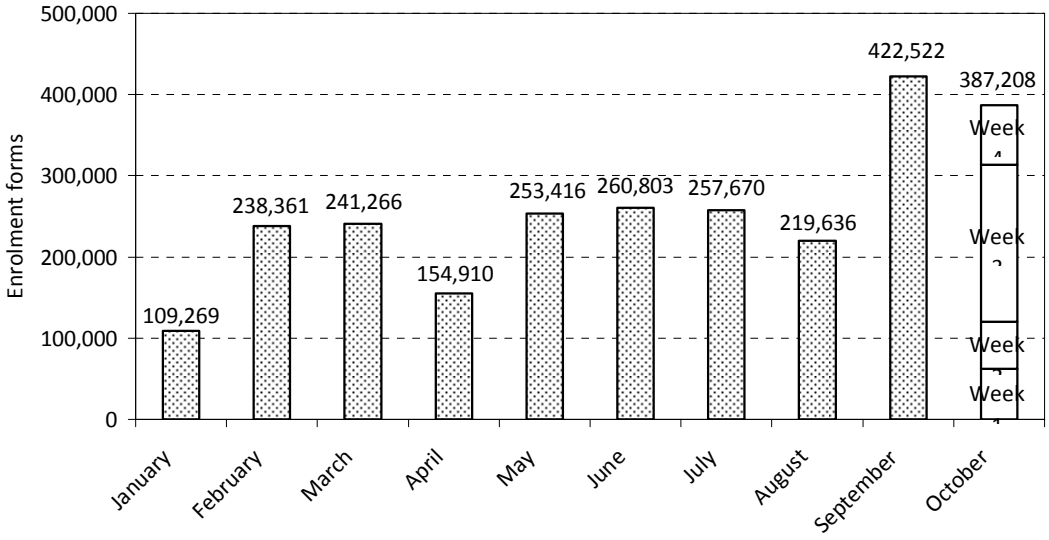
4.96 Enrolment form data also reveals that TES-related activities played a significant roll in growing the roll in the lead up to the 2007 election. However, it is worthy of note that in addition to forms sourced from Post Offices and mail review activities, the Internet rated as the fourth highest source of enrolment forms, indicating that the delivery of forms via that medium is increasing as a preferred source, with some 265,888 forms received during 2007.

4.97 The AEC indicated that 'during October 2007 (the close of rolls period), over one quarter of enrolment forms received by the AEC were sourced from the internet.'[35]

4.98 Further analysis of the enrolment form data provided by the AEC reveals that there was a high level of activity throughout 2007, with activity peaking in September 2007. This reinforces the view that an impending election is a major catalyst for enrolment, encouraging many electors to take action, resulting in some 422,522 enrolment forms being received in September, as demonstrated in figure 4.5.

35 Australian Electoral Commission, submission 169,p 9.

Figure 4.5 Monthly enrolment forms received, January to October 2007



Source *Australian Electoral Commission, submission 169.2, Annex 2(a) pp 9-30.*

4.99 The next highest level of activity occurred in October 2007, in the weeks leading up to the close of rolls. In the first week of October, 61,943 enrolment forms were processed, 58,459 in the second week, a peak of 193,246 forms in the third week and some73,560 in the fourth week.

4.100 The first close of roll, for new enrolments occurred on the Wednesday of the third week (17 October), with the roll closing for all enrolment transactions on the Tuesday of the fourth week (23 October).

4.101 The AEC advised that during September 2007, 41 per cent of enrolment transactions were sourced from TES-related activities and mail review, 24 per cent from post offices, and 14 per cent from the Internet.[36]

4.102 On the basis of data provided by the AEC for the 2007 calendar year it appears that fieldwork, post offices, mail review, and the Internet, consistently provide the greatest amount of enrolment forms, with other sources also proving important, but substantially less forms. Of these, divisional/state office issues, and enrolment forms sourced from state and territory electoral authorities appear to yield relatively high proportions of forms with 162,482 and 167,996 enrolment forms respectively.

4.103 On a smaller, but still significant scale, bounty/exit schemes provided 95,562 enrolment forms. Collectively, the activities outlined above contributed around 77 per cent of all enrolment forms collected, with other activities including citizenship ceremonies, electoral education

36 Australian Electoral Commission, submission 169.2, Annex 2(a), p 17.

centres, MPs and political parties, Rock Enrol and O Week contributing to the other 23 per cent of forms collected.

4.104 The AEC noted that a number of administrative arrangements which yield significant numbers of enrolment forms would cease as other government agencies moved away from paper-based processes.[37] The AEC noted that:

> Up until 2002 the ACT government provided a single paper-based form to allow ACT residents to update their address for all government services. An enrolment form was included in this 'whole of government' change of address form. During its existence, over 30 per cent of all enrolment transactions in the ACT came from this source.
>
> In 2002 the ACT 'whole of government' change of address form was abolished and replaced by an on-line service (Canberra Connect). Consequently, the AEC lost this valuable paper-based source for receipt of enrolment updates.
>
> Additionally, the AEC currently leverages off the paper-based change of address advice sent to licence holders in Queensland who change their address. This scheme is the second highest source of enrolment updates in Queensland. The scheme will come to an end in 2009 as the Queensland Transport Authority is moving from their existing paper-based process to an electronic system.[38]

4.105 The AEC considered that while it is restricted to paper-based processes for enrolment update, accessibility for electors will continue to reduce.[39]

Facilitating electronic interactions

4.106 Despite all of the activities undertaken by the AEC during 2007, the proportion of eligible Australians on the electoral roll continues to decline.

4.107 The AEC and others have requested the committee to consider measures aimed at modernising the electoral system, including facilitating electronic interactions between electors and the AEC, in order to achieve efficiencies in enrolment and to reflect the changing community attitudes.

4.108 In discussing the relative effectiveness of mail review activities, the AEC told the committee that it achieved a response rate of some 22.9 per cent

37 Australian Electoral Commission, submission 169.21, p 1.

38 Australian Electoral Commission, submission 169.21, p 1.

39 Australian Electoral Commission, submission 169.21, p 1.

from mail posted in 2007-08, but indicated that it held concerns about the effectiveness of using 'snail mail' into the future. The AEC noted that:

> Continued use of snail mail to reach people whom we believe need to get on the roll or update their enrolments is not delivering a sufficient response to achieving higher participation rates. In 2007-08 the AEC wrote to more than three million people as part of our roll review and roll stimulation activities and received back only slightly more than 700,000 completed enrolment application forms. Community attitudes towards and responses to hard copy direct mail have been undergoing change in response to growing volumes of junk mail and the switching of many daily personal and business communications to electronic alternatives, such as email and SMS.[40]

4.109 The AEC believes that moving toward electronic interaction with electors is necessary if it is to rise to the challenge of meeting changing community expectations, noting that many electors already interact conveniently with other government and non-government agencies and they expect services to be available 24 hours a day seven days a week. The AEC noted that:

> The requirement to fill in a paper application form to update enrolment is seen by many to be outdated compared with the electronic channels they use to interact with businesses and many other government agencies…
>
> Enabling electors to update their electoral enrolment details electronically would help to bring AEC enrolment services more in line with contemporary community expectations regarding services. For example, if we focus on those already registered voters who merely update their enrolment as a consequence of a change of address or name, over one million of the 1.3 million enrolment transactions that the AEC did last year could have been done electronically, hence would represent a major advance in modernisation of the AEC's enrolment service. Australian consumers, particularly younger Australians, expect that service providers, business and government will make available relevant services and products they want at the time they need them. They also expect that providers will make their products and services easy to access, preferably 24-7, and conveniently from their own home.

40 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 4.

> Electors are visiting the AEC website in increasing numbers both for information and to find various electoral forms. During October 2007 alone—that is, the election close of rolls period—more than one-quarter of enrolment forms received were obtained from the AEC website. Two point six million people went onto the AEC's Internet site before the last federal election to confirm their enrolment details. This is key evidence that rapidly growing numbers of electors prefer to manage their enrolment online with the AEC.[41]

4.110 Other inquiry participants told the committee that changes are required with the Democratic Audit of Australia preferring a system of automatic enrolment but also believing online update was important for young citizens.

4.111 University of Melbourne academic Dr Sally Young considered that outdated methods are causing our electoral rolls to fall behind and urged the use of technology to facilitate an inclusive franchise. Dr Young noted that:

> Our electoral rolls are falling behind because they are based on paper and pen methods. Using new technology to help more people vote is crucial for a modern democracy and to ensure an inclusive franchise. The removal of onerous identification requirements and early closure of rolls are important but other options to improve the present system are:
>
> - Introduce online and automatic enrolment from databases such as motor vehicle registries and school records
> - Introduce automatic re-enrolment for those who change address
> - Allow online voter registration
> - Simplify the enrolment form
> - Use SMS and email to communicate with voters – especially younger voters.[42]

4.112 Whilst preferring a system of automatic enrolment which would see Australians who turn 18 and new citizens automatically added to the electoral roll, GetUp! suggested that most Australians would support moves aimed at making it easier to enrol:

> Measures to streamline enrolment will have the support of the Australian public. A Roy Morgan poll commissioned by GetUp in

41 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 4.

42 Young S, submission 77, p 2.

> August 2007 found that only 3 per cent of Australians think it should be harder to enrol.[43]

4.113 The ALP National Secretariat also favoured automatic enrolment measures, suggesting that the committee should investigate the potential for a system of automatic enrolment, noting that:

> The ALP believes that improving levels of enrolment and the accuracy of enrolment data must be a priority for government and the AEC before the next election.
>
> As a result, the ALP suggests that JSCEM investigate the potential for a system of automatic enrolment to commence before the next election. This move would complement existing roll verification activities conducted by the AEC and enhance them. Rather than simply using electricity, gas and other utilities databases to verify that someone no longer lives at an address, the AEC could use the data to update the voters' details automatically, thereby reducing the need for a variation to enrolment to be lodged, and preserving the voter's franchise.[44]

4.114 Online enrolment and update was supported by Mr Stephen Paul who told the committee that it should be easier to stay on the electoral roll:

> It is clear that people in our society have become more mobile and if our form of representative democracy is going to continue to represent the people in the Parliament, we should be ensuring that it is easier for people to stay registered on our electoral rolls rather than harder.
>
> I believe we should engage with the computer age and enrol on line and be able to update on line. The nonsense of putting people through hoops by making a person go to Post offices and show they have certain levels of identity just so they can stay enrolled, but at a new address, is simply a way of disenfranchising people. It discriminates against the itinerant as well as the homeless.[45]

4.115 The current reliance on paper-based arrangements in relation to updating enrolment details may contribute to under-representation of young people on the electoral roll. Dr Edwards noted statistics reported by the AEC that whereas 95 per cent of the eligible voting age population is enrolled to

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43 GetUp!, submission 155, p 9.

44 Australian Labor Party National Secretariat, submission 159, p 1.

45 Paul S, submission 182, p 2.

vote, this figure drops to around 80 per cent for young Australians aged between 18-25.[46]

4.116 Data sourced from external agencies is currently used by the AEC to identify electors and potential electors who are then subsequently targeted through CRU activities including sending letters, making telephone calls or visiting the homes of electors in order to encourage enrolment updates.

4.117 Such activities are undertaken in order to source enrolment forms containing signatures of electors on the basis that the Commonwealth Electoral Act requires that a POI-compliant enrolment form, containing a physical signature is submitted by an elector, before changes may be made to relevant electoral details contained on the electoral roll.

4.118 Census data from the Australian Bureau of Statistics reveals that a significant proportion of the population moves residence regularly. In 2006, almost 7.5 million people (43.1 per cent) were living at a different address than five years earlier. These relatively high rates of mobility have been sustained for a number of years. Data from previous Censuses in 1991, 1996 and 2001 indicates that nationally, around 45 per cent of persons lived at a different address five years prior to the census year.[47] Queensland, Western Australia have remained higher mobility states, with South Australia and Victoria continuing to exhibit lower mobility.[48]

4.119 It is evident that some electors expect that data sharing is already widespread amongst agencies and that change of address details already in the hands of agencies should be used to update the electoral roll. This is demonstrated by the following email which was received by the AEC in response to one of its CRU letters:

> "I refer to a letter I received informing me that I must enrol. To start with, I am already enrolled. I would like someone to explain to me why I have to fill out a completely redundant piece or archaic bureaucratic red tape designed to keep some waste of space in employment. Join me as I guide you through your deluded and idiotic process.
>
> 1 Person changes their address details on their driver's license.

46 Edwards K, submission 87, p 5.

47 Australian Bureau of Statistics, 2006 Census, Basic community profile, table B36; 2001 Census, Basic community profile, tables B01 and B22; 1996 Census, Basic community profile, table B01; 1991 Census, Basic community profile, table B03.

48 Australian Bureau of Statistics, 2006 Census, Basic community profile, table B36; 2001 Census, Basic community profile, tables B01 and B22; 1996 Census, Basic community profile, table B01; 1991 Census, Basic community profile, table B03.

> 2 Said license details are provided BY ONE GOVERNMENT DEPARTMENT TO ANOTHER GOVERNMENT DEPARTMENT
>
> 3 The Government department that received the UPDATED INFORMATION then wastes paper, time and money sending documents out to the person who updated their information on the driver's license.
>
> 4 The person who has already updated their information with a GOVERNMENT DEPARTMENT is then expected to provide personal details.
>
> 5 To prove the validity of said details the person is expected to provide, wait for it, their driver's license. Now where did I see a driver's license, um, um, um, oh that's right, it's at step number 1. To make things even more ridiculous, the person being subjected to an inconvenience and waste of their time is then not required to show it to anyone, but simply write the number on the form and put some squiggle representing their signature and post the whole monstrosity off in the envelope provided.
>
> Are you starting to see how much this process looks like something out of F-Troop? Surely with all of your ultra high tech whiz bang golly gee that's super equipment you can get your act together, or can you?……
>
> So in closing, I look forward to you updating your processes so that changing your address on the electoral roll is automatically done when you change your details on your license. Failing that provide an online option. ……..”
>
> I look forward to a response.
>
> P.S How's the weather in Narnia today?[49]

4.120 The AEC suggested that one way to modernise the enrolment system was to use electronic data, sourced directly from electors via an online enrolment website or by using data from trusted agencies to make changes to the roll. The AEC noted that:

> These electronic models would apply predominantly to changes to enrolment rather than first time enrolment, with the possible exception of new citizens where an alternative option of direct enrolment based on DIAC processes and procedures for citizenship checking might be able to be explored.

49 Australian Electoral Commission, submission 169.17, p 2.

> With any model, be it paper-based or electronic, the AEC needs personal data with sufficient integrity that will allow it to confidently amend the correct enrolment record.[50]

4.121 The AEC noted that with the proposed electronic models, as with the current paper model, the same data would be received in relation to an enrolment and the same checks would be performed on that data. With paper-based enrolment forms, certain checks and validations are performed on each of the data items received in the enrolment process. These same checks would be performed on data received in an electronic format, whether it be via a website where data is entered, the receipt of scanned/imaged enrolment forms, or data received from external agencies which could be used to update the enrolment details directly where changes to address have occurred.[51]

4.122 The only difference the AEC noted for data received via an enrolment website, or from a data source providing information that could be used to automatically update an enrolment, is that a physical signature would not be provided at the time of the request to change enrolment. Given that a signature was obtained when the elector first enrolled, a signature would exist within the AEC's records and is readily accessible to the AEC staff processing the enrolment.[52]

4.123 Noting that the integrity of the electoral roll is a concern that needs to be appropriately managed, the AEC suggested that the absence of a signature might be mitigated by other means, including that data would only be used where there was considerable certainty about the integrity of the data. The AEC noted that:

> In the electronic environment, however, there are ways to manage electoral roll integrity without a physical signature, should this be considered a concern. For example, with receipt of data, such as that received from Centrelink, there is considerable certainty and integrity in the data being received. In order to receive benefits and services from Centrelink, an applicant must complete a Centrelink 'proof of identity' form. This form requires supporting documentation, and is at two levels – 'commencement' and 'use' of identity. Commencement of identity relates to documentation that establishes that person's identity through birth certificates or a

50 Australian Electoral Commission, submission 169.17, p 3.

51 Australian Electoral Commission, submission 169.17, p 3.

52 Australian Electoral Commission, submission 169.17, p 3.

range of other documents, and use of identity documents seek to establish that that identity is used in the community.

Given this process, any data received from Centrelink and used by the AEC to update someone's enrolment details, would be considered of high integrity. The fact that no signature accompanies the data should also not be of immediate concern, as that signature would have been obtained by Centrelink at the time of the completion of the forms. Even where a person changes their details with Centrelink, for example using Centrelink's web services options, the person is required to have a registered ID and password, ensuring integrity in their own change processes.

The AEC would explore further with Centrelink, and other agencies, Commonwealth and state/territory, what their internal verification and identity establishment processes are before making a determination that a data source could be used for automatic roll update for changes of address and or name. What the AEC proposes, therefore, is only a change in the means of receipt of data, not the actual data items themselves or their processing and verification upon receipt.

4.124 The AEC's proposal for electronic update of enrolment details would require electors to provide all of the information that is currently required on a paper enrolment form. This includes:

- current full name;
- former name (if applicable);
- date of birth;
- current residential address;
- former residential address;
- country of birth;
- town of birth for those born in Australia;
- citizenship number for those not born in Australia; and
- driver licence number (if applicable).[53]

4.125 In changing enrolment details, the AEC noted that it will match the elector's existing enrolment record with the information provided in the electronic request and that all information provided must be an exact

53 Australian Electoral Commission, submission 169.21, p 2.

match with the AEC's existing records before the AEC will proceed to update the roll'.[54] In addition, the AEC noted that the new residential address would have to have been confirmed by the AEC to be a legitimate residential address for enrolment purposes.[55]

4.126 Where any of the above information does not match exactly with the AEC's existing records and the relevant data from external authorities, the AEC would not be process the enrolment claim. The AEC noted that in these cases it would investigate the matter, including making direct contact with the elector to clarify or obtain necessary information.[56]

4.127 The AEC noted that it would also continue its current practice of mailing an enrolment acknowledgement letter to every elector who updates their enrolment.[57] The AEC considered that this contact serves as an effective secondary mechanism for confirming that the enrolment update was instigated by the elector.[58]

4.128 The AEC also suggested that in limited circumstances automatic enrolment might be possible and nominated new citizens as likely candidates for automatic enrolment. Automatic enrolment would be actioned based on data sourced directly from the Department of Immigration and Citizenship (DIAC):

> a fourth model,… might involve a third party (again a government agency), who conducts an acceptable proof of identity process for its own purposes, assisting AEC either by enrolling the person as an agent of the AEC, or by passing to the AEC such data about the individual that would enable the AEC to directly create their enrolment, with acceptable levels of certainty about who that person is. Likely candidates for this approach would be new citizen enrolment based on data sourced directly from the Department of Immigration and Citizenship (DIAC). Given the rigour applied to the new citizenship process by DIAC, the AEC might be able to leverage this process, receive data from DIAC, and create an enrolment record automatically. A process to obtain a copy of a relevant signature for the AEC's records could be established as necessary.[59]

54 Australian Electoral Commission, submission 169.21, p 3.
55 Australian Electoral Commission, submission 169.21, p 3.
56 Australian Electoral Commission, submission 169.21, p 3.
57 Australian Electoral Commission, submission 169.21, p 3.
58 Australian Electoral Commission, submission 169.21, p 3.
59 Australian Electoral Commission, submission 169.17, p 5.

Committee conclusion

4.129 As noted earlier, the committee is concerned to ensure that enrolment does not decline between elections, or that at the very least, the decline is arrested to the greatest degree possible. The committee agrees with the AEC that the roll must be as up to date as possible at all times, not just for federal elections.

4.130 It is evident that there is a history of enrolment decline between elections, and that there is substance to the theory that an impending election is one of the best catalysts for electors to take enrolment action.

4.131 That being said, however, the committee asserts again, that increased efforts must be made in between elections to continue growth, with the growth experienced in the lead up to an election not being relied upon as a means of bringing the roll up to date.

4.132 More than just increasing its own efforts to bring the roll up to date, the AEC must continue to build on the productive relationships with state and territory electoral commissions, as they too, have a direct interest in ensuring that enrolment participation grows in line with population growth.

4.133 The committee accepts that a mix of strategies is required to arrest the decline in enrolment and to bring the roll up to a level that reflects the proportion of the population eligible to be electors.

4.134 The mix must include some newer, more streamlined ways to facilitate and encourage interactions between electors and the AEC.

4.135 The committee believes that the enrolment website concept proposed by the AEC is a move in the right direction and agrees that it presents opportunities for more timely, direct interaction between electors and the AEC.

4.136 The committee is concerned to ensure, however, that the integrity of the electoral roll is not compromised by such a move, nor is any opportunity presented which would allow unauthorised access to, or update of, the electoral roll.

4.137 The committee believes that suitably trained AEC staff should be the only persons able to access and update elector records for the purposes of maintaining the electoral roll.

4.138 The committee is reassured, therefore, that under the AEC's proposal, no unauthorised person will be permitted to access elector records for the purposes of updating the roll. Electors who have satisfied proof of identity

integrity checks will be permitted to transmit data by that facility to the AEC, who in turn will carry out the same level of data integrity checking as is currently performed on hard copy enrolment forms received.

4.139 The committee is similarly reassured by the level of data integrity checks that will be carried out prior to any update to the electoral roll being effected. These checks are no different to those currently being undertaken under the paper-based system used at present.

4.140 The committee noted the AEC is confident that the existing integrity processes for enrolment update are sufficient to support online receipt of updated enrolment information from electors.[60] The AEC nominated some other options that could be investigated for additional evidence of identity verification, including a national database on drivers' licences and Medicare, but that the availability of this data for use in this manner would have to be specifically provided for in legislation.[61]

4.141 It is an essential element of the committee's agreement to recommend this change, that the AEC ensures updates are not carried out automatically by systems on the basis of the data presented, but that any update reflects a decision making process along the lines of that which currently occurs, whereby an AEC staff member is satisfied as to the bona fides of the transaction.

4.142 Where an appropriate level of satisfaction is not achieved, the record must not be updated on the basis of the data presented, rather, the AEC is to take alternative means of achieving a level of satisfaction necessary to allow update of the roll.

60 Australian Electoral Commission, submission 169.21, p 3.

61 Australian Electoral Commission, submission 169.21, p 3.

Recommendation 9

4.143 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for the creation, implementation and maintenance of an enrolment website designed to facilitate the receipt and use of information provided electronically by enrolled electors, in order to update the electoral roll.**

Such a facility should only be provided for use by currently enrolled electors, who must be required to provide sufficient information to satisfy the Australian Electoral Commission that they are in fact the elector to whom the information relates, in the absence of a signature from the elector.

The facility must not allow any unauthorised access to the electoral roll and must not permit information contained on the electoral roll to be accessed or amended directly by any person other than an appropriately authorised Australian Electoral Commission officer.

Information provided through the facility must only be used by authorised Australian Electoral Commission officers to update the electoral roll, where that information has been subjected to and satisfies the same data integrity checks as is performed on information received through the submission of signed enrolment form.

4.144 The committee agrees with the AEC and others who suggest that some electors expect information provided to one government agency will be used to update the electoral roll, or at least, that they hold an expectation that such updates are possible.

4.145 The committee is attracted to the idea that electors who provide information to government agencies like Centrelink, which have stringent POI processes of their own, should be permitted to allow the agency to provide data to the AEC for the purposes of directly updating the electoral roll.

4.146 There are, however, two elements to such a process which the committee believes are necessary to ensure that the process has the required degree of integrity.

4.147 The first is that the elector must provide their proactive and specific consent to opt in for the data to be used to update the electoral roll.

4.148 The second is that there must be surety that the POI processes used by the respective government agencies have sufficient integrity to maintain the confidence of stakeholders.

4.149 To achieve this, the committee believes that it is appropriate that the Minister approve the agencies from which the AEC receive data for the purposes of effecting direct update to the electoral roll.

Recommendation 10

4.150 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the Australian Electoral Commission to receive and use information for the purposes of directly updating the electoral roll, where that information has been:**

- **provided by an elector or electors to an agency approved by the Minister as an agency which performs adequate proof of identity checks; and**
- **the elector or electors have indicated their proactive and specific consent to opt in for the information to be used for the purposes of directly updating the electoral roll, and**
- **the data has been provided by that agency to the Australian Electoral Commission for the purposes of updating the electoral roll.**

4.151 Whilst there have been calls for enrolment to be granted automatically to those entitled to exercise the franchise, the committee is concerned that the dynamic nature of the roll, combined with the requirement that an elector must reside at an address for a specified period before being entitled to enrol in respect of that address work against moving to an automatic enrolment model.

4.152 However, the committee agrees with the AEC that there is an opportunity to allow automatic enrolment in limited circumstances, such as for persons who apply for Australian citizenship.[62]

4.153 The committee is satisfied that the proof of identity processes required to establish a person's eligibility to become an Australian citizen are sufficiently rigorous to enable applicants to be admitted to the roll, firstly

62 Australian Electoral Commission, submission 169.17,p 5.

on a provisional basis, as is currently the case, with the voting franchise granted once the applicant has become an Australian citizen.

4.154 Sections 99A and 99B of the Commonwealth Electoral Act currently enable applicants for Australian citizenship who otherwise qualify for enrolment to be provisionally enrolled, with the voting franchise being granted once Australian citizenship is conferred on the applicant.

4.155 Enrolment and voting are compulsory for Australian citizens aged 18 or over. The committee believes, therefore, that, so long as the application for Australian citizenship contains sufficient information to enable the AEC to effect the provisional enrolment of applicants, it should be used for that purpose if applicants give their proactive and specific consent to opt in. Alternatively, if it does not contain sufficient information to effect provisional enrolment, the committee suggests that the form could be amended to enable its use for that purpose.

4.156 This would enable the AEC to provisionally enrol otherwise eligible applicants for Australian citizenship, with full enrolment being granted once citizenship has been bestowed on the applicant.

4.157 Automatic enrolment of those applicants provisionally enrolled could be effected by the AEC once information was received from the Department of Immigration and Citizenship that citizenship had been granted.

4.158 The committee believes that automatic enrolment in such circumstances should be allowed and recommends accordingly.

Recommendation 11

4.159 **The committee recommends that in order to facilitate the enrolment of new citizens, that:**

- **section 99A be amended to allow that a person who makes an application to become an Australian citizen in accordance with the *Australian Citizenship Act 2007*, be provisionally enrolled on the Commonwealth electoral roll at the time of making the application for citizenship, where they provide proactive and specific consent to opt in, with voting entitlement gained automatically once Australian citizenship has been granted; and**
- **section 99B of the *Commonwealth Electoral Act 1918*, which provides that applicants for citizenship may apply for provisional enrolment in an election period, should be repealed as the amended section 99A will render it unnecessary.**

Encouraging young Australians to enrol

4.160 In examining enrolment trends, it is evident that there is a concern about the lack of engagement of young Australians in the electoral process. This issue has been examined by past committees, however, there have been no noticeable improvements in the trend to indicate that any of the measures taken so far have successfully addressed the issue.

4.161 In preceding sections of this report the committee has examined and made recommendations in respect of measures aimed at improving the ability of electors to interact with the AEC in order to remove some of the barriers which serve to discourage enrolment.

4.162 However, apart from the committee's recommendation that the AEC implement a school bounty scheme (discussed in chapter 5), by which the committee seeks to involve secondary schools and other eduction providers in the enrolment process by providing a bounty to encourage the enrolment of students, there are limited opportunities to raise awareness of enrolment and participation amongst younger Australians.

4.163 The Australian Electoral Officer for Queensland, Ms Anne Bright, told the committee:

> I was just going to make the observation that this is something the AEC should look at. The other part to it is that the age of students in their final year in Queensland is 17. Basically, they are 12 months behind other students in, say, New South Wales and Victoria…
>
> Once they are on the roll you can imagine that someone aged 20 or 21 might take a year out to go overseas and then come back and go to university. There is also the point of maintaining their enrolment. The statistics for Queensland reveal that the mobility of the Queensland population is about 22 per cent. So 22 per cent of our population moves each year, and that is about 4 per cent more than the national average.[63]

4.164 Ms Bright also told the committee that the AEC may also collect data from education institutions in order to assist in maintaining the electoral roll, especially as it relates to younger Australians:

> I know that my colleague in Victoria has great success in obtaining information from TAFE, for example, which is good at targeting the younger members of the Australian population. Recently I made a phone call to deputy director general of the Department of Employment, Education and Training. I will be formally writing to them and seeking their cooperation to obtain such data as we obtain from the Queensland Studies Authority.[64]

4.165 The AEC addressed the issue of lowering the provisional enrolment age in a supplementary submission, noting that 82.9 per cent of 16 year olds were in full time secondary study, 62.7 per cent of 17 year olds, with a significant decrease to 14.5 per cent of 18 year olds in full time study.[65]

4.166 The AEC noted the potential which exists for getting higher numbers of young people into the system and considered lowering the age to be a relatively straightforward process. The AEC noted that:

> These figures highlight the potential which exists to get more young people 'into the system' by lowering the age of eligibility for provisional enrolment: there are simply more 16 year olds in school than 17 year olds. Once the AEC has enrolled an elector it is

63 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 45.

64 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 43.

65 Australian Electoral Commission, submission 169.18, p 6.

> easier to match them against other agencies' records, and to contact them seeking an update of their enrolment as required.
>
> The current processes for enrolling 17 year olds could easily be extended to include 16 year olds. Early involvement in the political process in Australia, facilitated by such provisional enrolment for 16 year olds, may encourage people to enrol and to keep their enrolment up to date.[66]

Committee conclusion

4.167 The committee considers there is merit in lowering the provisional enrolment age to 16 years of age, especially given that the rate of 16 year olds in full time study is significantly greater than the rate of 17 and 18 year olds.

4.168 The committee believes that such a move may encourage earlier participation in the electoral process.

4.169 However, encouraging electoral involvement whilst the majority of younger Australians are in schools will have a twofold effect. Firstly potential electors will be identified and encouraged to enrol at an earlier age, thus assisting the AEC to engage with them at the optimum age to encourage continued involvement in the electoral process.

4.170 Secondly the AEC will be able to utilise the 'school bounty scheme'(discussed in chapter 5) as an incentive for education providers to encourage younger Australians to maintain up to date enrolment details, whilst such involvement might also encourage education providers to discuss the electoral process with young people on a more regular basis.

4.171 Accordingly the committee recommends amending the Commonwealth Electoral Act to change the minimum age for provisional enrolment from 17 to 16 years.

Recommendation 12

4.172 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to change the minimum age for provisional enrolment from 17 to 16 years.**

66 Australian Electoral Commission, submission 169.18, p 6.

4.173 The committee has recommended a number of changes to the enrolment provisions of the Commonwealth Electoral Act in order to encourage greater participation and to removes some of the barriers to enrolment which currently exist.

4.174 In doing so, the committee is aware that some of these improvements will also be of benefit to state and territory electoral processes, but that some changes will also result in some disparity between the Commonwealth and state/territory legislation.

4.175 That being the case, and mindful that there are benefits to be gained from achieving a much higher degree of harmonisation between the different systems, the committee urges the Commonwealth government to enter into discussions with state and territory governments with a view to achieving a greater degree of harmonisation.

4.176 Whilst the committee accepts the need for harmonisation on a much greater range of matters than enrolment, it is appropriate that enrolment be one of the first areas to receive attention, particularly as enrolment is one of the major areas of cooperation between the AEC and state and territory electoral commissions through their joint rolls arrangements.

Recommendation 13

4.177 **The committee recommends that the Australian Government enter into discussions with the State and Territory governments with a view to achieving a harmonised enrolment regime which leads to the use of a single enrolment form or enrolment process for the purposes of Commonwealth and state/territory enrolment.**

5

Election and enrolment — State and Territory issues

5.1 The structure of the Australian Electoral Commission (AEC) includes a national office, seven state and territory offices (responsible for managing AEC activities within each state and territory), and 135 divisional offices (some operating as co-located or amalgamated offices) providing services to electors in 150 divisions.

5.2 This chapter examines some of the activities in state offices at the 2007 election and how electoral roll stimulation activities in each state and territory contributed to the national growth in the electoral roll before the 2007 election.

Reports by Australian Electoral Commission state managers

5.3 As part of its public hearings, the committee heard from all of the AEC's state and territory managers (who also hold a statutory role as the 'Australian Electoral Officer' (AEO) for their respective jurisdiction) to examine a range of jurisdiction-specific issues. The Australian Capital Territory is managed by the NSW state manager except through an election period, during which time an AEO for the ACT is appointed.

5.4 The following section concentrates mainly on some of the activities undertaken in each jurisdiction in relation to maintaining the electoral roll. However, where state-specific issues relating to other matters have been identified, comments relevant to those matters are included.

New South Wales

5.5 At the close of rolls for the 2007 election, there were around 4.3 million electors on the electoral roll for NSW, 193,214 (4.5 per cent) more than the close of rolls for the 2004 election.[1]

5.6 The New South Wales state manager reported to the committee that 'the NSW aspects of the election proceeded smoothly, administrative arrangements worked well, and electors enjoyed a relatively trouble free day'.[2]

5.7 The state manager highlighted some of the enrolment initiatives targeted at young people, culturally and linguistically diverse Australians and Indigenous Australians. These included:

- youth — In addition to national activities and with access to TAFE data for the first time, the AEC conducted a direct mail campaign to approximately 18,000 17 and 18 year old TAFE students just prior to the announcement of the federal election. Student data from the Board of Studies was also utilised in direct mail campaigns throughout the year to encourage eligible 17 and 18 year olds to enrol to vote;
- culturally and linguistically diverse Australians — Staff attended five multicultural festivals in metropolitan Sydney with the SBS outside broadcast van to promote enrolment at these events in the lead up to the 2007 federal election. These events were held at locations including Auburn, Cabramatta, Darling Harbour, Fairfield and Lakemba; and
- Indigenous Australians — Three community electoral information officers were employed and based in Sydney, the far north coast and the central/far west. They visited close to 100 indigenous organisations to raise awareness of the federal election and distribute information on enrolment and voting. Their activities also included attending Indigenous events such as the Annual Aboriginal Rugby League Knockout, the Indigenous Employment Expo, the National Indigenous Tertiary Education Student Games and the Croc Festival in Kempsey.[3]

5.8 A number of opportunities taken by the NSW office to promote awareness about the election and voting opportunities through the media were also discussed by the state manager. Some examples of these included:

1 Australian Electoral Commission, submission 169.15, p 3.
2 Australian Electoral Commission, submission 169.15, p 1.
3 Australian Electoral Commission, submission 169.15, pp 1–2.

- radio news releases to target areas of the state – Specifically those radio stations broadcasting in divisions with high numbers of candidates in the lead up to election day with messages about formality; and
- live to air radio interviews were 'particularly successful' in communicating the AEC's key election messages. Interviews that included talkback to assist callers with their enrolment and voting problems received positive feedback from radio listeners:
  - ⇒ For example, during one interview, a caller to talkback radio was embarking on a cruise before election day and was unsure of how to vote. NSW staff followed up to check the cruise details and identified six cruises in total that would be departing Australian ports either on or before election day, affecting over 9,000 passengers. Cruise passengers were then provided with information on their voting options based on their cruise itinerary through various means including letters, emergency notification to travel agents, 'pillow letters' on the cruise and, in a first, a voice trial was made to 1,089 passengers departing on a cruise providing them with brief details on their voting options in a recorded message to their phone.[4]

5.9 As part of the national targeted enrolment stimulation (TES) program (discussed in chapter 4), the state manager for NSW noted that approximately half a million people at 374,000 addresses were targeted by fieldwork, which was supported by advertising, media and public awareness activities. As at 7 September 2007, staff had visited 374,299 addresses in person and collected 89,750 enrolment forms at the time of the visit (a response rate of 24 per cent of addresses visited). Overall, 111,555 enrolment forms were received from this program (a response rate of 29.8 per cent of addresses visited). Of this total, 13 per cent were new enrolments, 18 per cent were re-enrolments and 69 per cent were changes of enrolment.[5]

5.10 One area of concern in NSW arising from previous elections is the high level of informality relative to other jurisdictions, with NSW consistently having a higher informality rate for House of Representatives elections (see chapter 2). The NSW state manager outlined several strategies implemented for the 2007 election in NSW to reduce levels of informality, including:

4 Australian Electoral Commission, submission 169.15, pp 1–2.

5 Australian Electoral Commission, submission 169.15, p 2.

- an attempt to employ language-appropriate staff for selected polling place;
- some polling places played a DVD of translated formality television advertisements;
- the questions issuing officers are required to ask of electors were translated into 21 languages;
- how-to-vote guides were translated into 21 languages; and
- polling staff in divisions with the highest 2004 informality levels were provided with extra training.[6]

5.11 The NSW state manager told the committee that the AEC 'intends to continue to research and analyse the informal voting figures from the 2007 election to understand which mix of the strategies listed above may have had the greatest impact in working to reduce the informality levels at the 2007 federal election'.[7]

Victoria

5.12 At the close of rolls for the 2007 election, there were around 3.44 million electors on the Victorian electoral roll, 149,687 (4.6 per cent) more than the close of rolls for the 2004 election.[8]

5.13 The Victorian state manager noted that efforts to stimulate roll growth over 2007 comprised of a range of strategies including:

- fieldwork and door knocking over a three-month period at the beginning of the year — targeting 59,000 addresses where there had been no response to AEC mailouts. A further 148,000 addresses were doorknocked to engage with electors not on the roll or re-engage those who were not currently on the roll. Combined, these activities resulted in the return of over 50,000 enrolment forms;
- sample audit fieldwork — used to measure the accuracy of the roll and effectiveness of mail activities. Between February and March 5,200 addresses were contacted by doorknocking, telephoning or writing to electors, resulting in a further 426 enrolment forms;
- National enrol to vote week — 435 schools registered to participate by conducting an enrolment activity for their senior secondary students.

6 Australian Electoral Commission, submission 169.15, p 3.

7 Australian Electoral Commission, submission 169.15, p 3.

8 Australian Electoral Commission, submission 169, p 7.

This resulted in over 9,000 enrolment forms, including 8,500 aged 17 and 18;

- continuous roll update mail-outs — From January to September 2007 a total of six mail-outs were undertaken. A total of 475,000 letters were sent and around 100,000 enrolment forms were returned.
- new citizenship ceremonies — Over 20,000 enrolment forms were collected from new citizens at ceremonies held between January and September 2007.[9]

5.14 Arrangements relating to the sourcing of some state agency data in Victoria are somewhat different to some other jurisdictions. The state manager for Victoria noted that:

> With the roll in Victoria, being a joint roll, the state runs its own arrangements. That is in WA and Victoria, but Victoria clearly has its own roll and therefore it uses its state's departments and agencies to inform its roll and then its roll is merged with ours, if you like. Most of the state agencies deal directly with the state roll, which then has the computer matching done with our roll. We do not have a direct relationship with the state as a number of other AEC states have. However, we do have, as I mentioned, arrangements with the Office of Apprenticeships and Trainees, Births, Deaths and Marriages, and with the prisons service.[10]

5.15 Using data sourced through the state Office of Training and Tertiary Education, 13,000 apprentices aged between 17 and 25 were mailed enrolment forms, with 2,200 forms returned, including 1,700 from 17 and 18 year olds.[11]

Queensland

5.16 At the close of rolls for the 2007 election, there were around 2.61 million electors on the Queensland electoral roll, 148,898 (6.0 per cent) more than the close of rolls for the 2004 election.[12]

5.17 As part of the national TES program, the Queensland state manager noted that AEC staff across Queensland reviewed around 338,000 addresses throughout the state from March to July 2007. This contributed to

9 Wight D, Australian Electoral Commission, transcript, 11 August 2008, pp 1–2.
10 Wight D, Australian Electoral Commission, transcript, 11 August 2008, p 15.
11 Wight D, Australian Electoral Commission, transcript, 11 August 2008, p 2.
12 Australian Electoral Commission, submission 169, p 7.

51,000 new and re-enrolments for Queensland and around 74,000 electors updating their enrolment details.[13]

5.18 A feature of the 2007 election in Queensland was the use of Queensland Government offices and courthouses as pre-poll centres. The Queensland state manager told the committee that:

> A memorandum of understanding was entered into with the Queensland departments of Justice and the Attorney General, and Smart Service Queensland, to facilitate the issue of pre-poll votes at 22 courthouses and 17 Queensland government agency program offices. This service operated from 14 November up to and including election day. A total of 171,000 pre-poll votes were issued to electors throughout Queensland, and these 35 centres alone issued a total of some 10,800 pre-poll votes to electors. This represented approximately 6 per cent of the total number of pre-poll votes.[14]

5.19 Staff at the Queensland state office undertook a range of local school and community programs across Queensland to complement national initiatives. These included:

- youth — Activities for young people; attending tertiary orientations; market days and career expos; the Triple J AWOL concert in Innisfail; displays at school constitutional convention events in Mackay, Toowoomba, Townsville and Wide Bay, as well as Youth Week in Brisbane. In partnership with the Surfers Paradise management, a media and public relations campaign was also conducted to advise all year 12 students enjoying Schoolies how and where to vote;
- new citizens — Attendance at citizenship ceremonies to assist with the completion and collection of enrolment forms;
- Indigenous Australians — displays at NAIDOC events, the sports and cultural festival on election day, and the Brisbane Indigenous Jobs Market. Staff from the division of Leichhardt also presented information at the Croc Festival on Thursday Island. Information about enrolment voting and the program was posted to some 870 Indigenous organisations throughout Queensland; and
- general community activities — All community electoral information officers were employed in the lead-up to the election and they were based in Brisbane, Cairns, Mount Isa and Dalby. These officers

13 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 37.

14 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 38.

undertook a program of visits to inform electors of the importance of participating in electoral events and to collect enrolment forms.[15]

5.20 A state initiative that appeared to be an effective strategy to grow the roll in Queensland was an arrangement with the Queensland Department of Transport that includes a reminder on change of address labels for drivers licences that people need to update their enrolment details when they move.[16] This arrangement had resulted in the return of 55,000 enrolment forms in the previous year.[17] The Queensland state manager told the committee:

> We have an arrangement whereby people come in to them or contact them by phone or on the Internet to update their licence. The Department of Transport will send out relevant material to facilitate the person updating their licence, but they will also include an enrolment form and a business reply paid envelope on our behalf. If a person physically comes into their agency to update their enrolment they will be advised that they can obtain an enrolment form and update their details at the same time.[18]

Western Australia

5.21 At the close of rolls for the 2007 election, there were around 1.3 million electors on the Western Australian electoral roll, an increase of 75,593 electors (6.1 per cent) compared to the close of rolls for the 2004 election.[19] Almost 57,000 of these new electors were added to the roll during 2007 in the lead up to the election.[20]

5.22 The Western Australian state manager noted that efforts to stimulate roll growth over 2007 comprised of a range of strategies including:

- fieldwork and door knocking over a three-month period between March and July— 110,615 addresses throughout Western Australia were reviewed between March and July, resulting in 43,066 enrolment forms being collected (a response rate of 39 per cent);
- mail review activities —222,467 letters were sent and almost 50,000 enrolment forms returned (a response rate of 22 per cent);

15 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 38.
16 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 40.
17 Bright A, Australian Electoral Commission, transcript, 6 August 2008, p 43.
18 Bright A, Australian Electoral Commission, transcript, 6 August 2008, pp 42–43.
19 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 3.
20 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 3.

- National enrol to vote week — 158 (61 per cent) of Western Australian high schools participated. Around 16,300 enrolment forms were distributed and 2,218 enrolment forms were returned (a response rate of 14 per cent);
- birthday cards — In conjunction with the Western Australian Electoral Commission, birthday cards and enrolment forms were mailed to people turning 17 years of age, using data from the Department of Education and Training. In the period July to October, 6,207 enrolment forms were mailed, resulting in 372 enrolment forms being received (a response rate of 6 per cent); and
- citizenship ceremonies — AEC staff continued to attend citizenship ceremonies and achieved a return rate of enrolment forms of better than 93 per cent from all participants.[21]

5.23 The State office also conducted a range of community education and awareness activities targeting Indigenous electors including:

- a letter promoting the electoral process and a supply of enrolment forms was mailed to the chairpersons of 104 Indigenous communities. The letter sought the chairperson's assistance in ensuring that community members were correctly enrolled.
- Commencing in October, four community electoral information officers were employed to promote the electoral process and enrolment in rural and remote areas in the lead-up to the election. Those officers visited over 100 Indigenous communities in a period of eight weeks.[22]

5.24 The Western Australian state manager also noted that staff from the AEC in Western Australia attended a range of major community events across the state and university orientation days at the major campuses of all universities in the state.[23] Remote and rural areas were also targeted, with 34,000 letters with enrolment forms sent in September to every private and roadside delivery point throughout rural and remote Western Australia.[24]

South Australia

5.25 At the close of rolls for the 2007 election, there were around 1.1 million electors on the South Australian electoral roll, an increase of

21 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, pp 2–3.
22 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 3.
23 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 2.
24 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 3.

26,154 electors (2.5 per cent) compared to the close of rolls for the 2004 election.[25]

5.26 Targeted fieldwork was conducted in South Australia between March and July 2007, with over 72,400 homes visited and 18,000 enrolment forms collected.[26]

5.27 South Australia was one of the few jurisdictions involved in a 'bounty' scheme that rewarded schools with $1.70 for every enrolment form returned.[27] The South Australian state manager noted that:

> At the moment it is on hold because our enrolment people in Canberra are developing a policy to try to roll this out, I believe, across the country. About a year ago, some state electoral authorities were implementing the program and the AEC was implementing it in other states. So, to assess the effectiveness of the program and to ensure consistency, our people in Canberra are reviewing that and developing a policy right now. But we used to provide, prior to being requested by the Electoral Commissioner to hold that program back until the review had been completed, bounties with what we called our Youth Outreach Initiative, where our divisional staff would make an appointment for at least 10 minutes or so. It is quite difficult sometimes to get into final-year classes; they are really very busy in terms of their programs. But if we could just find a time, after assembly sometimes, to get in there and to get the enrolment message to them and to get them at that point to fill out enrolment forms, the schools got bounties for those enrolment forms.[28]

5.28 Between July and September 2007, the state office community electoral information officer program was delivered in South Australia. The program is designed to promote enrolment and electoral awareness amongst Indigenous communities in South Australia and is delivered by officers, all of whom were Indigenous, visiting people living in the APY Lands, West Coast, Yorke Peninsula, Riverland and the south-east of the state.[29]

25 Australian Electoral Commission, submission 169, p 7.
26 Drury C, Australian Electoral Commission, transcript, 20 August 2008, p 4.
27 Drury C, Australian Electoral Commission, transcript, 20 August 2008, p 15.
28 Drury C, Australian Electoral Commission, transcript, 20 August 2008, p 15.
29 Drury C, Australian Electoral Commission, transcript, 20 August 2008, p 1.

Tasmania

5.29 At the close of rolls for the 2007 election, there were almost 350,000 electors on the Tasmania electoral roll, 10,199 (3.0 per cent) more than the close of rolls for the 2004 election.[30] All but 200 of these electors were added to the roll during 2007.[31]

5.30 As part of its targeted fieldwork program, 25,000 houses across the state were visited between February and April, resulting in the return of 8,000 enrolment forms.[32]

5.31 In Tasmania, the AEC and the Tasmanian Electoral Commission (TEC) have entered into a memorandum of understanding on a program of joint roll activities, which is agreed by the Tasmanian state manager and the Tasmanian Electoral Commissioner.[33]

5.32 The AEC noted a number of activities undertaken under the memorandum of understanding including:

> The principal method for maintaining electoral rolls is the Continuous Roll Update (CRU) program. In this regard, the TEC facilitated access to Tasmanian motor registry data which is a component of the national CRU dataset.
>
> Information about newly sentenced and released prisoners is now regularly provided by the Tasmanian prisons authority, as are details of deaths recorded by the Tasmanian Registry of Births Deaths and Marriages. Access to each of those datasets was originally facilitated by the TEC.
>
> The TEC has also facilitated access to Tasmanian schools data and change of address data obtained from Service Tasmania shopfronts. This data is actioned by divisional staff to contact electors who may need to update their enrolment details. More recently the TEC has obtained TAFE student data which will again be actioned by divisional staff as part of their ongoing roll management responsibilities.
>
> Ongoing dialogue occurs with the TEC to investigate new sources of roll update information.[34]

30 Australian Electoral Commission, submission 169, p 7.
31 Neilson M, Australian Electoral Commission, transcript, 12 August 2008, p 22.
32 Nielson M, Australian Electoral Commission, transcript, 12 August 2008, p 22.
33 Australian Electoral Commission, submission 169.1, p 44.
34 Australian Electoral Commission, submission 169.1, pp 44–45.

Northern Territory

5.33 At the close of rolls for the 2007 election, there were around 118,000 electors enrolled in the Northern Territory, 6,252 (5.6 per cent) more than the close of rolls for the 2004 election.[35]

5.34 Throughout 2007, the Northern Territory office processed close to 39,000 enrolment forms in a jurisdiction of only 118,000 electors.[36] Under the targeted fieldwork program, AEC staff in the Northern Territory doorknocked 5,579 addresses.

5.35 In addition, staff visited 83 Indigenous communities and collected 912 enrolment forms, of which 325 were new, and confirmed the elector status of a further 11,154 electors. Indigenous media was also targeted by the AEC:

> In terms of public awareness, a number of electoral ads were translated into seven main Indigenous languages for press and radio. For the first time, TV ads were run in remote areas to inform remote electors that remote mobile polling had begun. The total expenditure for media placement of Indigenous pre-enrolment and election advertising in 2007 was $404,000. As previously discussed, a DVD was translated into 12 Indigenous languages plus a simple English version. This resource was utilised by undertaking electoral awareness sessions with Indigenous organisations and communities. It was used to emphasise the formality message.[37]

5.36 The Northern Territory state manager also highlighted a number of other activities undertaken in the Territory to target remote and Indigenous electors. These are discussed in chapter 6.

Relationships with state and territory electoral authorities

5.37 The AEC has formal relationships with state and territory electoral authorities through joint rolls agreements with each jurisdiction. These are supplemented by separate memorandums of understanding on joint rolls maintenance activities.

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35 Australian Electoral Commission, submission 169, p 7.

36 Loganathan I, Australian Electoral Commission, transcript, 17 October 2008, p 36.

37 Loganathan I, Australian Electoral Commission, transcript, 17 October 2008, p 38.

5.38 The AEC and state electoral authorities have formed a consultative body, the Electoral Council of Australia (ECA), to consider issues relating to the development and maintenance of the electoral roll for elections and matters of electoral administration.[38] Membership of the ECA comprises the Australian Electoral Commissioner and four senior AEC staff members and state and territory electoral commissioners.[39] The stated mission of the ECA is twofold:

- First, through consultation to facilitate the management of the electoral rolls prepared for Federal, State, Territory and, where appropriate, Local Government elections, so as to:
  - ⇒ Maximise their accuracy and ensure their integrity; and
  - ⇒ Ensure that efficient and effective roll methodologies are implemented; and
- Second, to consult on matters which will facilitate or improve Australian electoral administration.

5.39 In addition to these formal arrangements, the AEC's state and territory offices and state and territory electoral authorities have cooperative arrangements in place. In relation to arrangements in Victoria, the AEC's Victorian state manager noted that:

> There is a fair bit of cooperation between the two bodies. I can talk from my Victorian experience, where there is cooperation for state, local government and federal electoral events between the two bodies, and staff have been seconded to each agency to help out at various times. There is a fair degree of practical and operational … back office stuff between the two agencies. In terms of some of our agendas, they are quite similar as well. We are all trying to alert people to the provisions of the act, to get people on the roll and to encourage voting. We have produced a joint booklet in Victoria, the Guide to enrolling and voting, and there is co-branding and so forth.[40]

5.40 The committee notes the AEC's concerns that with different eligibility criteria applying across jurisdictions, there were risks that some potential electors may be discouraged from enrolling.[41] The AEC noted that:

38 Electoral Council of Australia, 'About the ECA: Mission statement', viewed on 1 May 2009 at http://www.eca.gov.au/about/mission_state.htm.

39 Electoral Council of Australia, 'About the ECA: Members', viewed on 1 May 2009 at http://www.eca.gov.au/about/members.htm..

40 Wight D, Australian Electoral Commission, transcript, 11 August 2008, p 10.

41 Australian Electoral Commission, submission 169, p 19.

> The AEC is concerned that the different enrolment criteria between federal and some state jurisdictions are unnecessarily complicating the enrolment process, and thereby potentially impacting upon the franchise of eligible electors at both federal and state levels. Electors often do not distinguish between state and federal electoral authorities, and there is a risk that confusion and frustration with bureaucracy may discourage 'state-only' and 'federal-only' electors from enrolling again to meet both requirements.
>
> For joint roll arrangements to be fully efficient and effective:
>
> - the AEC believes there should be one enrolment form nationwide, rather than different forms for each state and territory;
> - the lodging of such a form should suffice to effect the elector's enrolment for federal, state, territory and local government elections, without any need for further interaction to resolve 'federal-only' or 'state-only' status; and
> - all jurisdictions should work together towards achieving these objectives.[42]

Committee conclusion

5.41 Cooperation and coordination with state and territory electoral authorities is important to deliver electoral services in a cost effective manner, with the AEC and state and territory electoral authorities all sharing the benefits of formal and informal working arrangements.

5.42 In order to maximise the benefits for all electoral authorities, it is important that, wherever possible, differences between eligibility for enrolment are minimised.

5.43 The committee recognises that ultimately, decisions about eligibility at a state and territory level are a matter for their respective parliaments. That said, there are clear benefits to electoral administration and reducing elector confusion by harmonising eligibility provisions wherever possible. The committee therefore encourages the Australian Government to work with state and territory governments to identify those areas where agreement can be reached, and then set about amending eligibility provisions to achieve greater harmonisation.

5.44 At a practical level, the committee encourages the AEC to continue to work cooperatively with state and territory electoral authorities. The

42 Australian Electoral Commission, submission 169, p 19.

committee notes that, when reviewing the ECA's website, there does not appear to have been a consistent range of activities reported on, with research papers published dating back to 2004 and the most recent published continuous roll activity update report published relating to 2004-05.[43] That said, the website has been updated to recognise the appointment of a new Australian Electoral Commissioner in January 2009.[44]

5.45 The committee encourages the AEC to continue to work proactively within the ECA framework and within its other formal arrangements with state and territory electoral authorities to maximise opportunities to work cooperatively wherever possible.

Contributions to growing the electoral roll

5.46 The AEC has a national target that 95 per cent of eligible electors should be on the electoral roll.[45] While this provides some guide to evaluating AEC performance at a national level, it is difficult to assess performance at a state office level. In part, this will reflect the different nature of the populations within each jurisdiction and the extent to which 'national' operations can be an effective way of persuading electors to update their electoral roll details.

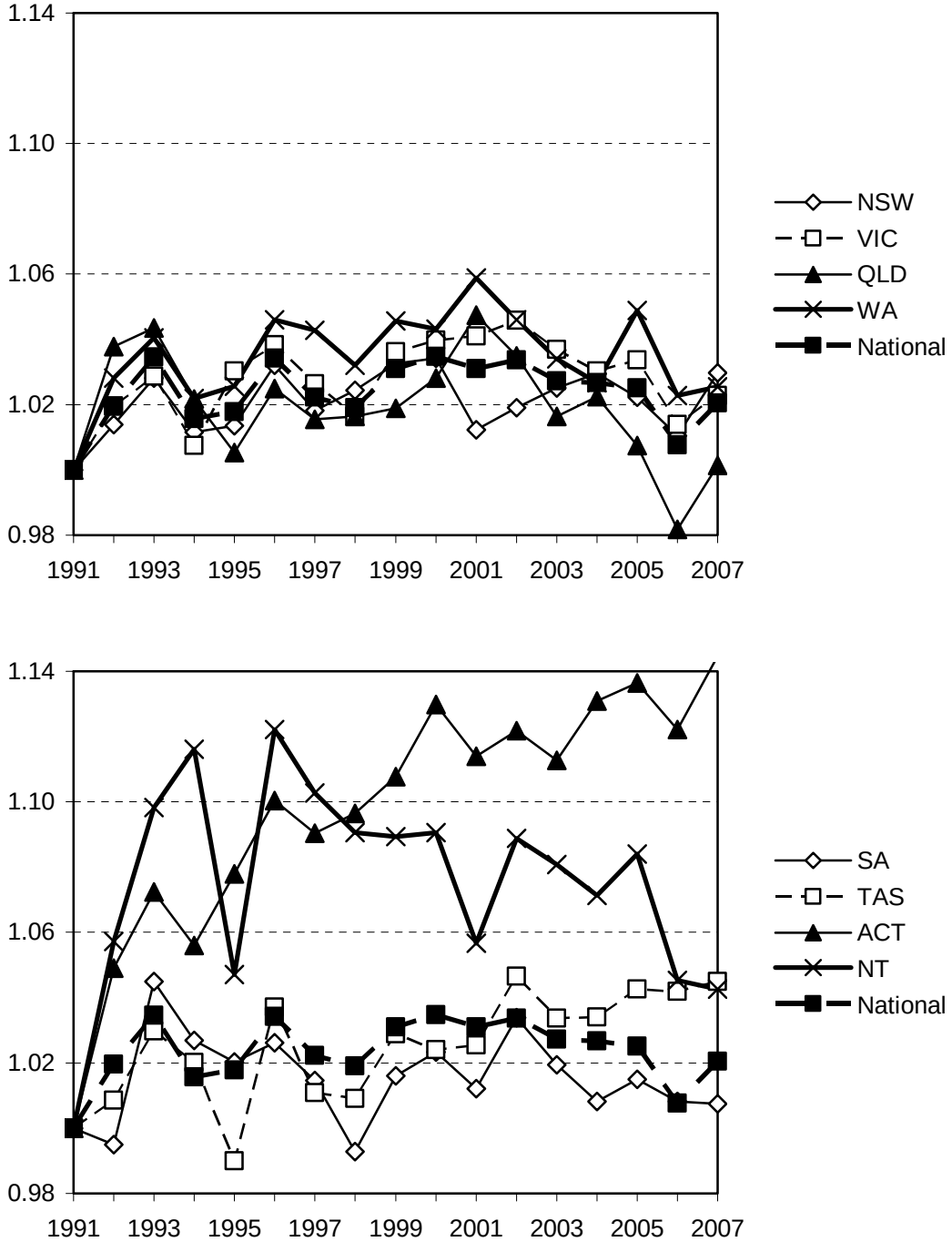
5.47 Since 1993, the rate of growth to the electoral roll has varied across jurisdictions relative to the population growth (figure 5.1).

43 Electoral Council of Australia, 'Reports' viewed on 1 May 2009 at http://www.eca.gov.au/reports/index.htm; 'Electoral Research', viewed on 1 May 2009 at http://www.eca.gov.au/research/index.htm.

44 Electoral Council of Australia, ''About the ECA: Members', viewed on 1 May 2009 at http://www.eca.gov.au/about/members.htm.

45 Department of Finance and Deregulation, Portfolio budget statements 2008-09, Budget related paper No 1.8, p 68.

Figure 5.1 Electoral roll growth relative to population growth, by jurisdiction, as at 30 June 1991 to 2007 (base year 1991)



Source *Appendix C, tables C.6 and C.7.*

5.48 To some extent, all states and territories have a different population mix and can face different challenges over time in providing services to electors sometimes complicated by a range of factors including geography, mobility, migration and age (table 5.1).

Table 5.1 Selected characteristics of potential electors, by jurisdiction

	Persons who speak English not well or not well at all	Net interstate migration	Population density	Persons aged 65+	Persons who lived at a different address 5 years ago	
	No. persons	*No. persons*	*Persons per square km*	*No. persons*	*No. persons*	*% pop.*
NSW	194,790	-22,400	8.2	905,765	2,322,149	40.8
Vic	151,460	-2,400	21.7	674,899	1,696,553	39.2
Qld	35,678	22,700	2.3	482,906	1,735,217	51.3
WA	26,846	5,600	0.8	233,138	814,274	48.2
SA	26,477	-4,700	1.5	235,567	516,431	38.4
Tas	1,562	450	7.0	71,122	171,527	40.7
ACT	4,387	-290	134.1	31,573	126,398	44.0
NT	2,003	1,100	0.1	9,399	75,637	47.9
National	443,203	60	2.6	2,664,369	7,458,202	43.1

Source *Parliamentary Library, 'Electoral division rankings: Census 2006 second release',* Research paper no 23 2007-08, *p 132; Australian Bureau of Statistics, Australian Demographic Statistics September 2008 (2009), cat no 3101.0, p 8; 2006 Census, Basic community profile, table B36.*

5.49 As an example of the extent of some of these differences between jurisdictions, the mobility of the population in Queensland in 2006, when measured as the proportion of the state population who lived at a different address five years ago, was 51.3 per cent. This compares to South Australia, the state with the lowest mobility, where 38.4 per cent of the population lived at a different address five years earlier.[46]

5.50 These relatively high rates of mobility have been sustained for a number of years. Data from previous Censuses in 1991, 1996 and 2001 indicates that nationally, around 45 per cent of persons lived at a different address five years prior to the census year.[47] Queensland and Western Australia have remained higher mobility states, with South Australia and Victoria continuing to exhibit lower mobility.[48]

5.51 Election turnout may be an indicator of the efforts of the AEC in each jurisdiction to maximise participation at an election. Based on this

46 Parliamentary Library, 'Electoral division rankings: Census 2006 second release', *Research paper no 23 2007-08*, p 132.

47 Australian Bureau of Statistics, 2006 Census, Basic community profile, table B36; 2001 Census, Basic community profile, tables B01 and B22; 1996 Census, Basic community profile, table B01; 1991 Census, Basic community profile, table B03.

48 Australian Bureau of Statistics, 2006 Census, Basic community profile, table B36; 2001 Census, Basic community profile, tables B01 and B22; 1996 Census, Basic community profile, table B01; 1991 Census, Basic community profile, table B03.

indicator, it is clear that there are significant differences between jurisdictions (table 5.2). There are clear reasons for these differences in some jurisdictions. Perhaps the best example, discussed in chapter 6, is the difficulties encountered in the Northern Territory in providing electoral services to the high proportion of Indigenous electors throughout the Territory.

Table 5.2 Voter turnout, Senate, by jurisdiction, 1993 to 2007 elections (per cent)

Jurisdiction	1993	1996	1998	2001	2004	2007
NSW	96.5	96.7	95.3	95.2	95.1	95.4
VIC	96.6	96.5	95.9	95.6	95.4	95.6
QLD	95.8	95.1	94.5	94.8	94.1	94.8
WA	95.9	95.6	95.1	95.0	93.7	93.9
SA	95.5	96.4	96.1	96.0	95.4	95.8
TAS	96.6	96.9	96.4	96.2	95.9	96.0
ACT	97.1	96.9	95.9	95.1	95.2	96.0
NT	89.0	89.2	90.3	86.2	84.4	86.9

Source *Appendix C, table C.12.*

5.52 Given some of the diversity across the states and territories, it is expected that the various strategies employed at national office level and within state offices activities to maintain the roll should be flexible enough to be tailored to the characteristics of electors within each jurisdiction.

5.53 In light of the difficulties in measuring the performance of state offices within the AEC's national network, the committee has examined a number of areas where there are significant differences between states and territories in how effective they are in enrolling electors aged 17 and 18, and how the various strategies used at national and state and territory level can influence the source of enrolment forms received.

Youth enrolment activities

5.54 It is widely recognised that young electors are less likely than older electors to be on the electoral roll. The AEC noted that relative participation by young people is generally below that of other electors and that participation rates do peak around an election for young voters.[49] The AEC noted that:

> [there is] a tendency for youth enrolment to peak around an election. This is due in part to potential electors attempting to

49 Australian Electoral Commission, submission 169.15, p 9.

> enrol after the close of rolls, and in part to enrolment forms filled in on polling day. Not only do numbers of 18-24 year olds enrolled peak around elections and wane in between, so do relative participation rates varying from a low of approximately 75 per cent in June 2006 to high of 85 per cent at the 2007 election.[50]

5.55 In the lead up to the 2004 election, an additional 87,650 electors aged 17 or 18 were added to the electoral roll from February 2004 to the close of rolls on 7 September 2004. The corresponding figure for the lead up to the 2007 election, including an additional month up to the close of rolls on 23 October 2007 was 64,187. It should be noted that although lower, the growth in 2007 was coming off a higher base of 213,600 electors compared to 169,000 in 2004.

5.56 The committee has previously noted its concern about the impact of the changed close of roll arrangements on young electors, with 4,068 eighteen year olds who would have exercised their franchise for the first time at the 2007 election denied the opportunity to do so.[51]

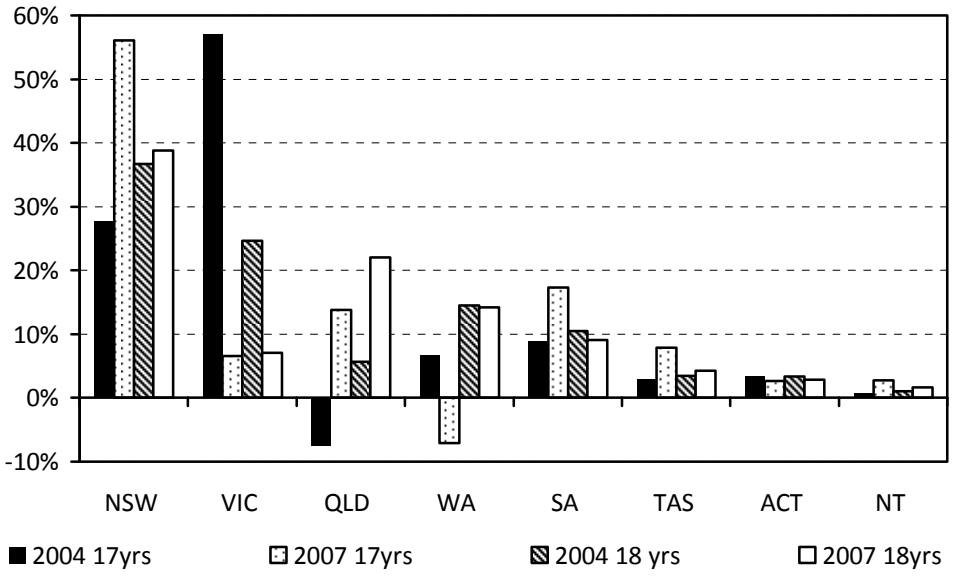
5.57 While most of the smaller states and territories contributed in relatively similar terms to overall growth among 17 and 18 years olds in the election year, the larger states demonstrated significantly different contributions between election years (figure 5.2). The negative contribution to growth in the 2004 election year reported for 17 year olds in Queensland and at the 2007 election for 17 year olds in Western Australia reflects the fact that enrolment of 17 year olds actually declined by 2,516 and 739 respectively.[52]

50 Australian Electoral Commission, submission 169.15, p 9.

51 Australian Electoral Commission, submission 169.15, p 2.

52 Australian Electoral Commission, submission 169.1, Annex 1, pp 3–8.

Figure 5.2 Contribution to total 17 and 18 year old enrolment growth, by jurisdiction, 31 January to close of rolls for the 2004 and 2007 election years (per cent)



Source *Australian Electoral Commission, submission 169.1, Annex 1, pp 3–8; Australian Bureau of Statistics, Population by Age and Sex, Australian States and Territories, Jun 2008 (2008), cat no 3201.0, http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202008?OpenDocument.*

5.58 For example, NSW contributed a larger share of the total number of 17 and 18 year olds enrolled nationally (56 per cent and 39 per cent respectively) compared to its relative population share of 32 per cent of 17 and 18 year olds.[53] Victoria contributed a smaller share of the total number of 17 and 18 year olds enrolled nationally (both 7 per cent), compared to its relative population share of 24 per cent of 17 and 18 year olds.[54]

Committee conclusion

5.59 There are many factors that may explain these differences. The committee does not suggest that the results demonstrate the relative effectiveness of the AEC's efforts to enrol young electors in an election year. That said, the committee considers that differences in outcomes between jurisdictions should be examined closely by the AEC and mitigated wherever possible.

53 Australian Bureau of Statistics, *Population by Age and Sex, Australian States and Territories, Jun 2008* (2008), cat no 3201.0, www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202008?OpenDocument.

54 Australian Bureau of Statistics, *Population by Age and Sex, Australian States and Territories, Jun 2008* (2008), cat no 3201.0, www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202008?OpenDocument.

5.60 One area where the committee considers that an additional program can be delivered at a state and territory level at relatively minor cost is to introduce a 'bounty' scheme to schools and other educational institutions in order to encourage the promotion of enrolment amongst students. Such a bounty should be paid on a $ per enrolment form collected by each school.

5.61 The committee understands that such bounty schemes have operated for a number of years in some jurisdictions, including South Australia. The committee considers that the introduction of such a scheme nationwide would complement other changes suggested by the committee in this report, including provisional enrolment for 16 year olds and online enrolment update (chapter 4). Both of these changes are designed to facilitate greater participation in the electoral process especially by young Australians.

Recommendation 14

5.62 **The committee recommends that, in order to encourage the enrolment of young Australians, the Australian Electoral Commission introduce a national 'Schools Bounty Scheme' under which government and non-government schools, universities and technical colleges and the like would receive a specified amount for valid enrolment forms collected and forwarded to the Australian Electoral Commission.**

Source of enrolment forms

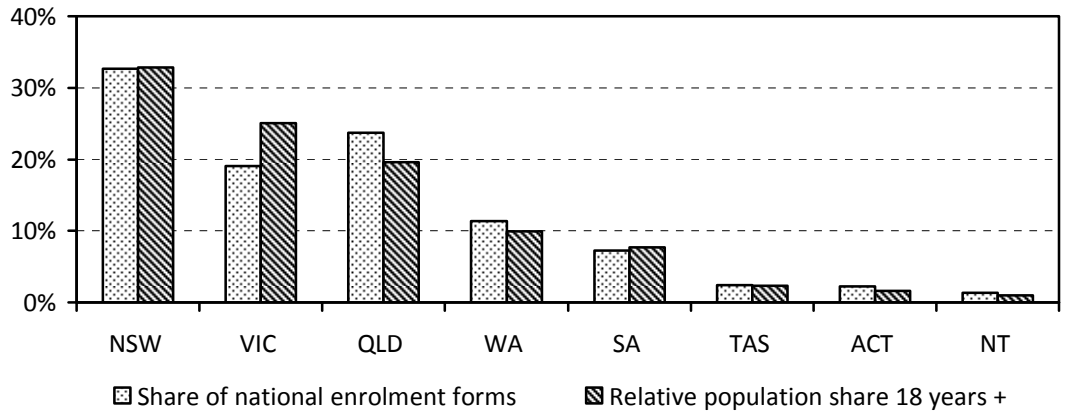
5.63 Data provided by the AEC revealed that over the first nine months of 2007 in the lead up to the election prior to the close of rolls more than 2.5 million enrolment forms were received from various sources. Forms sourced through post offices (17 per cent), AEC mail reviews (16.5 per cent), and state electoral authorities (6.6 per cent), the Internet (10.5 per cent) and AEC fieldwork (18.1 per cent) accounted for 70 per cent of enrolment forms received.[55]

5.64 An analysis of this data at a state and territory level reveals that there are significant differences between jurisdictions in the sources of enrolment forms. While the share of total forms collected in each state and territory is

55 Australian Electoral Commission, submission 169.1, Annex 2A, p 9.

broadly in line with each jurisdiction's relative population share for persons aged 18+, Victoria and Queensland have significantly different results (figure 5.3).

Figure 5.3 Relative share of enrolment forms collected compared to relative population share of persons aged 18+, by jurisdiction (per cent)



Source *Australian Electoral Commission, submission 169.1, Annex 1, pp 3–8; Australian Bureau of Statistics, Population by Age and Sex, Australian States and Territories, Jun 2008 (2008), cat no 3201.0, http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202008?OpenDocument.*

5.65 Further analysis of the source of enrolment forms in Victorian and Queensland reveals that both jurisdictions have broadly similar patterns of sourcing enrolment forms. It is simply the case that Queensland collected a significantly higher number of forms (604,447) than Victoria (484,738) relative to their respective population shares for persons aged 18+ (20 per cent and 25 per cent respectively).[56]

5.66 While some of this may be explained by the relatively higher mobility of Queenslanders generally, there may be other factors that warrant further examination, with the AEC developing appropriate strategies to accommodate these factors.

5.67 When the different sources of enrolment forms are compared across states and territories, it is clear that there are significant differences between jurisdictions, reflecting how the actions taken by the AEC's national and state and territory offices influence the manner by which forms are sourced by electors and returned to the AEC (table 5.3).

56 Australian Electoral Commission, submission 169.1, Annex 1, pp 3–8; Australian Bureau of Statistics, *Population by Age and Sex, Australian States and Territories, Jun 2008* (2008), cat no 3201.0, www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202008?OpenDocument.

Table 5.3 Selected sources of total enrolment forms collected, by jurisdiction, January 2007 to October 2007(per cent)

Source	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Mail review	12.5%	15.0%	13.7%	16.8%	15.9%	15.7%	16.6%	10.7%
Bounty/exit schemes	1.7%	5.3%	6.7%	6.3%	6.5%	8.0%	4.3%	2.4%
Post Office	21.2%	14.8%	15.3%	13.5%	15.6%	11.2%	14.1%	16.6%
School/community visits	0.3%	0.6%	2.1%	0.5%	0.9%	3.4%	0.2%	0.2%
Transport authorities	1.0%	1.4%	5.3%	0.6%	1.3%	0.1%	0.5%	0.5%
Birthday cards	2.7%	1.9%	0.8%	1.4%	1.5%	0.8%	0.7%	0.6%

Source *Australian Electoral Commission, submission 169.1, Annex 2A, p 9.*

5.68 For example, Queensland is a standout jurisdiction in terms of the proportion of forms sourced from transport authorities, possibly reflecting its unique arrangement with the Queensland Department of Transport discussed earlier. Another example is the contribution from bounty and exit schemes in Queensland (6.7 per cent), Western Australia (6.3 per cent), South Australia (6.5 per cent) and Tasmania (8 per cent) compared to a low of 1.7 per cent in New South Wales.[57]

Committee conclusion

5.69 The committee does not suggest that the strategies used in each of the jurisdictions are not effective. That said, it is important that the AEC national office and state and territory offices work closely together to improve enrolment participation by determining:

- what strategies work best at a national level
- whether successful state-based strategies might also be effective in other jurisdictions; and
- whether any particular strategies are indeed only relevant to a single jurisdiction.

5.70 The committee encourages the AEC to examine these issues closely, with a view to ensuring national consistency wherever possible in the state/territory-based activities and strategies undertaken to facilitate roll management activities.

57 Australian Electoral Commission, submission 169.1, Annex 2A, p 9.

Recommendation 15

5.71 **The committee recommends that the Australian Electoral Commission ensure national consistency wherever possible in the state/territory-based activities and strategies undertaken to facilitate roll management activities.**

5.72 The committee also considers that there is merit in developing state and territory-based enrolment targets that reflect each jurisdiction's contribution to the current national target of having 95 per cent of potential electors enrolled. Such targets should be part of the AEC's internal performance management framework to underpin the national target and be reported in the agency's annual report.

Recommendation 16

5.73 **The committee recommends that the Australian Electoral Commission develop state and territory-based enrolment targets that reflect the contribution that is expected by each state and territory to the national enrolment target. Such targets should take account of the particular challenges faced in each state and territory and be reported annually in the Australian Electoral Commission's annual report.**

6

Increasing the participation of Indigenous and homeless electors

6.1 Some Indigenous and homeless electors face particular challenges in engaging with the electoral system. This chapter examines the extent of under participation by these groups and assesses a range of proposals to encourage and facilitate their participation in the electoral system.

Indigenous electors

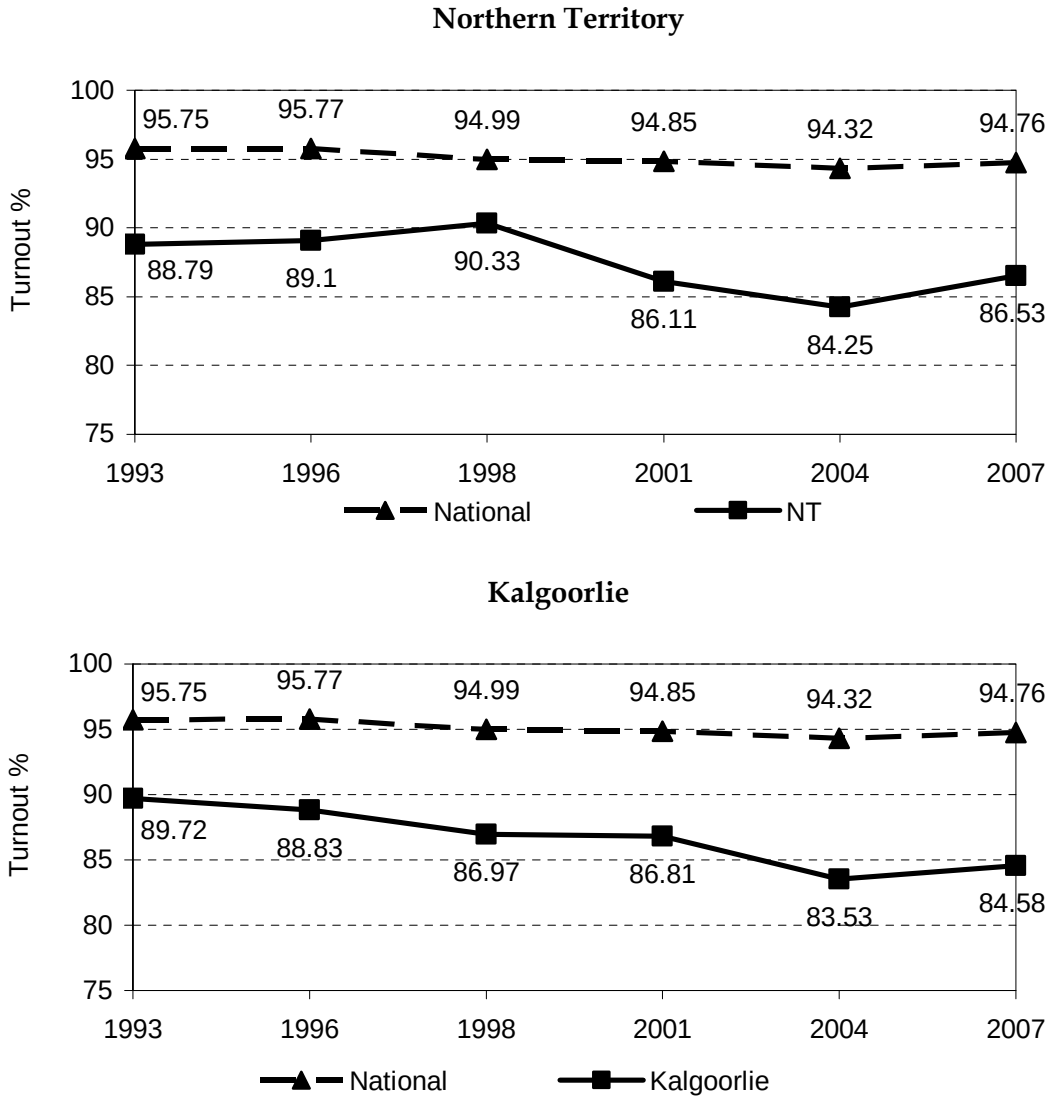
6.2 Since 1962, Indigenous Australians have been granted access to the enrolment and voting franchise; with legislative reforms in 1984 extending compulsory enrolment and voting requirements to Indigenous Australians, granting them the same enrolment and voting rights enjoyed by the majority of Australians.

6.3 Data from the 2007 federal election relating to those electoral divisions, in which a significant number of Indigenous Australians live, indicates that they are also under-represented in terms of voting participation.

6.4 Nowhere is this under-representation more obvious than in the division of Kalgoorlie in Western Australia and in the divisions of Lingiari and Solomon in the Northern Territory.

6.5 When turnout in House of Representatives elections from 1993 to 2007 in those divisions is compared to the national average for the relevant election, the level of under-representation in these divisions can be seen to be significant. A comparison showing turnout in the Division of Kalgoorlie compared to the national average and for the Northern Territory is provided at figure 6.1.

Figure 6.1 Voter turnout, House of Representatives, Kalgoorlie and Northern Territory, 1993 to 2007 elections



Source *Appendix C, table C.1.*

6.6 The Northern Territory was a single electoral division prior to the redistribution of 2001, during which it was distributed into the electoral divisions of Lingiari and Solomon. For the purposes of the comparison shown above, the data for Lingiari and Solomon has been combined to provide continuity over the period 1993 to 2007.

6.7 Prior to 1996, the AEC undertook specific strategies including providing a program known as the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) in an attempt to address the relatively lower levels of participation by Indigenous Australians evident at that time.

6.8 Since the abolition of the program in 1996, the participation of Indigenous Australians in elections appears to have decreased.

Indigenous participation

6.9 Indigenous electors are not formally identified on the electoral roll. Therefore, participation by Indigenous electors is generally assessed by examining enrolment and voting statistics in those divisions where Indigenous people make up a significant share of the population. The 10 divisions at the 2007 election with the highest proportion of people (as measured by the 2006 census) who are of Indigenous origin is shown in table 6.1.

Table 6.1 Divisions with the highest proportion of Indigenous population, 2006

Division (Jurisdiction)	Type	Indigenous population (per cent)
Lingiari (NT)	Rural	43.5
Kalgoorlie (WA)	Rural	18.3
Leichhardt (Qld)	Rural	15.8
Kennedy (Qld)	Rural	12.5
Parkes (NSW)	Rural	11.3
Solomon (NT)	Inner metropolitan	10.3
Calare (NSW)	Rural	8.2
Herbert (Qld)	Provincial	6.9
New England (NSW)	Rural	6.5
Grey (SA)	Rural	6.4

Source *Parliamentary Library, 'Electoral division rankings: Census 2006 second release', Research paper no 23 2007-08, p 132.*

6.10 Indigenous disadvantage and lower levels of electoral participation are unlikely to be confined to the largely rural divisions highlighted above.

6.11 The extent of the difference in these 10 divisions for key indicators of participation, such as turnout, and number of provisional votes cast is shown in table 6.2. While there are likely to be a number of factors that influence the outcomes for these indicators, it is clear that some divisions where a significant share of the population is Indigenous generally exhibit poorer participation in the electoral system, particularly in terms of turnout. Similarly, the number of provisional votes cast expressed as a percentage of close of rolls enrolment, indicates that the currency of the electoral roll in those divisions is lower when compared to the national average.

Table 6.2 Indicators of electoral participation at the 2007 election in divisions with the highest proportion of Indigenous population

Division (Jurisdiction)	Turnout (Senate)	Number of Provisional votes cast (Senate)	Provisional votes cast as percentage of close of rolls enrolment
Lingiari (NT)	81.6%	939	1.55%
Kalgoorlie (WA)	85.3%	1842	2.28%
Leichhardt (Qld)	93.0%	2450	2.60%
Kennedy (Qld)	93.9%	1983	2.16%
Parkes (NSW)	96.1%	1215	1.35%
Solomon (NT)	92.4%	1236	2.14%
Calare (NSW)	96.1%	996	1.12%
Herbert (Qld)	94.3%	1686	1.86%
New England (NSW)	96.2%	939	1.03%
Grey (SA)	95.3%	1439	1.47%
National average	**95.2%**	**1118**	**1.23%**

Source *Australian Electoral Commission, 'Virtual Tally Room, Senate turnout by division', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/SenateTurnoutByDivision-13745-NAT.htm; 'Virtual Tally Room, General, declaration votes issued by division', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/GeneralDecVotesIssuedByDivision-13745-NAT.htm; 'Virtual Tally Room, General information, enrolment by division, viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/GeneralEnrolmentByDivision-13745-NAT.htm.*

6.12 The AEC estimate that voter turnout in remote areas of Australia was around 77 per cent, compared to 95 per cent voter turnout across Australia.[1] The AEC's state manager for the Northern Territory highlighted the significant challenge faced by the AEC in the Northern Territory in its efforts to engage with Indigenous electors:

> Elector participation in remote parts of the Territory can be summarised generally by this statement: if you live in a remote part of Northern Territory, you are almost half as likely to vote as an elector living in an urban area, and if you do vote, you are twice as likely to vote informally.[2]

6.13 There are a number of barriers to participation in the electoral system by Indigenous electors. These include literacy and numeracy levels, cultural activities, school retention rates, health and social conditions, as well as the general remoteness of Indigenous communities and the transient nature of their inhabitants.[3]

1 Australian Electoral Commission, submission 169, Annex 5, p 55.

2 Loganathan I, Australian Electoral Commission, transcript, 17 October 2008, p 37.

3 Joint Standing Committee on Electoral Matters, *Civics and Electoral Education* (2007), Commonwealth of Australia, p 88.

6.14 The committee notes the government's commitment and positive efforts to reduce disadvantage in a range of areas including life expectancy, education and employment.[4]

Efforts to engage with Indigenous electors

6.15 While the AEC's mainstream press and radio enrolment and election advertising were adapted (and translated into six languages for radio) for Indigenous media, the AEC undertook a range of activities targeting Indigenous electors in rural and remote communities.

6.16 The AEC noted that the Northern and Central Australia Remote Area Strategy (NACARAS) and the Community Education and Information Officers (CEIO) program were important components in its efforts to reach Indigenous electors.[5]

6.17 NACARAS was implemented in 2006 and was designed to ensure consistent electoral services and service standards are applied across regional and remote areas of northern and central Australia. At Indigenous communities, local assistants who speak the relevant Indigenous languages and have a good understanding of the community were employed by the AEC to provide linguistic services and advice on cultural matters. As with all polling staff, local assistants were required to sign a political neutrality form.[6]

6.18 The AEC identified remote mobile polling, and cross-border cooperation as some of the key issues for consideration under NACARAS.[7]

6.19 The CEIO program was an integral part of NACARAS, and was designed to encourage participation for electors in remote areas in the lead up to and during the 2007 election. Given the demographics of these regions, a primary focus of the program was to service Indigenous electors. The CEIO program commenced on 1 July 2007 and operated in remote and rural parts of the Northern Territory, Western Australia, Queensland, South Australia and New South Wales. The CEIO program also visited Indigenous electors in urban areas.[8]

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4 Australian Government, *Closing the gap on Indigenous disadvantage: The challenge for Australia* (2009), p 5.

5 Australian Electoral Commission, submission 169, Annex 5, p 54.

6 Australian Electoral Commission, submission 169, Annex 5, p 54.

7 Australian Electoral Commission, submission 169, Annex 5, p 54.

8 Australian Electoral Commission, submission 169, Annex 5, p 54.

6.20 In the lead up to the 2007 election CEIOs visited over 800 communities (a number of communities had multiple visits) and organisations (the vast majority being Indigenous). Indigenous staff with valuable contacts, language skills, and who held knowledge of the communities to be visited were recruited as CEIOs.

6.21 The CEIOs made contact with community councils, Indigenous organisations, schools, resource centres, Indigenous sporting and other organisations. They also provided targeted AEC publications and pamphlets, enrolment forms, and postal vote applications.[9]

6.22 Field visits were conducted to raise awareness of the electoral process, to generate enrolment, and to encourage greater participation in the 2007 election. CEIOs collected 1,409 enrolment forms and confirmed the enrolment status of a further 14,500 remote electors. Total expenditure on the 2007 CEIO program was $466,994.[10]

6.23 Some of the difficulties the AEC encountered in providing electoral services to Indigenous electors in the Northern Territory were demonstrated by reference to the community of Wadeye. The AEC's state manager for the Northern Territory noted that:

> Wadeye is the sixth largest town in the Territory. It has a population of 2,500, of whom 1,044 are on the electoral roll. Wadeye is made up of 20 tribal groups living on the traditional lands of one clan group. In the 2001 election, we collected 424 enrolment forms out of a roll of 800. After the election we met with the council to discuss why the turnout was low. Part of the response we got back was that we polled in one location, at the school, which is on the traditional land of that one clan. Other clan members were reluctant to go into that land as they were uncomfortable in doing it. In speaking to the community and to the elders, we came up with a regime, rather than just polling at the school, of polling at seven locations around that one community. We did that in 2004 and we had a marginal increase of 507 electors.
>
> … In 2007, there were 1,044 electors on the roll, and we changed our program after meeting with the council to polling at these seven community areas, and what they were telling us was that a lot of the electors were around or moving and they missed out on voting. So what we needed to do was travel around the

9 Australian Electoral Commission, submission 169, Annex 5, p 54.

10 Australian Electoral Commission, submission 169, Annex 5, p 54.

communities and still provide another service at the council office once that was done. This was trialled in 2007 and we collected 770 votes.[11]

Aboriginal and Torres Strait Islander Electoral Information Service program

6.24 The Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) program was conducted by the AEC between 1984 and 1996. This program evolved from the Aboriginal Electoral Education Program which had been established in the late 1970s.[12]

6.25 According to the AEC, the objectives of the ATSIES program were to:

- conduct an effective national electoral education and information program that meets the needs of Aboriginal and Torres Strait Islander people;
- establish, promote and support where practical, an information resource network of local Aboriginal and Torres Strait Islander people as Community Electoral Assistants (CEAs);
- provide electoral information other than through the CEA networks to Aboriginal and Torres Strait Islander people;
- undertake electoral education activities in educational institutions with a significant Aboriginal or Torres Strait Islander student population;
- promote an awareness of and participation in the electoral process through the electronic and print media; and
- enrol Aboriginal and Torres Strait Islander electors and check existing enrolment during visits to relevant communities and groups.[13]

6.26 In 1995-96 the ATSIES program was managed centrally and consisted of three Canberra-based staff to coordinate and develop curriculum resources, 17 field staff mostly of Indigenous background and a further network of Indigenous CEAs.[14]

6.27 AEC field officers, who were all permanent staff, were responsible for an ongoing program of community visits, providing electoral education/information sessions also updating and verifying enrolments in

11 Loganathan I, Australian Electoral Commission, transcript, 17 October 2008, pp 38–39.
12 Australian Electoral Commission, submission 169.4, p 3.
13 Australian Electoral Commission, submission 169.4, p 3.
14 Australian Electoral Commission, submission 169.4, p 3.

those communities. Field staff were also responsible for identifying (through community consultation) appropriate people in each community who could be trained and then act as CEAs. These positions, which were not permanent or AEC staff, were essentially a community resource that people could go to for electoral information. CEAs were paid to attend AEC training and assisted field staff update enrolment within the community. Many electoral assistants were deployed during election periods to undertake remote mobile polling.[15]

6.28 Funding of $2 million per annum was discontinued for the ATSIEIS program in the 1996-97 federal budget. Following the abolition of the program, the AEC noted that it had funded an information officer position in all states, other than Tasmania, and in the Northern Territory. These officers ensured that Indigenous clients were kept informed of electoral matters, undertook field work in conjunction with electoral events (when additional funding would be available) and undertook other duties of an informational/educational nature.[16]

Future efforts to increase participation by Indigenous electors

6.29 The AEC considered that an ongoing program of regular visits is required to better engage Indigenous electors. The AEC noted that:

> Whilst the CEIO program was beneficial in improving roll accuracy and encouraging voter participation for the federal election, an ongoing program of regular visits to remote communities is required as part of a long term strategy to improve roll accuracy, reduce informal voting rates and increase voter participation in remote and rural areas.[17]

6.30 The committee requested that the AEC provide the committee with an outline of a future possible program to provide ongoing services to better address Indigenous participation in rural and remote areas. The AEC's response, detailed in submission 169.4, noted that the diversity of the Indigenous population meant that a flexible program would be required.[18] The AEC noted that:

> There are many challenges to improving the enrolment and electoral engagement of the Indigenous population. Indigenous people are not one homogenous community but rather a variety of

15 Australian Electoral Commission, submission 169.4, p 4.
16 Australian Electoral Commission, submission 169.4, p 4.
17 Australian Electoral Commission, submission 169, Annex 5, p 55.
18 Australian Electoral Commission, submission 169.4, p 6.

> people from sophisticated, educated urban dwellers, to people living in remote areas for whom English is a second or third language. This means that the type and delivery of electoral information cannot be a 'one size fits all'.[19]

6.31 While the AEC acknowledged a future program would first require extensive consultation with Indigenous communities and organisations as well as government agencies providing services to Indigenous people, a future program would seek to:

- improve the AEC's capacity and capability for communication and engagement with Indigenous Australians including establishment of more formal national, state and local consultation processes;
- undertake dedicated research to gain a better evidence base to improve targeting of Indigenous communication and identify enrolment and voting issues for Indigenous people;
- develop a tailored new curriculum involving Indigenous Australians for delivery through CEIO and school based electoral education programs;
- conduct an expanded ongoing CEIO program engaging Indigenous staff, with regular visits to regional and remote and urban communities, not just in the lead up to an election;
- develop a bank of communication products and resources specifically for Indigenous audiences;
- develop and maintain an information system to support, plan and monitor the effectiveness of electoral services and education particularly in regional and remote communities;
- build partnerships with Indigenous organisations and networks, including Indigenous Co-ordination Centres, and other agencies to further promote enrolment and electoral education (this could involve trialling new initiatives or establishing joint service delivery arrangements);
- undertake more public awareness and advertising for Indigenous audiences, including through use of newer communication channels such as the Koori Network, WARU website, and other Indigenous radio and television, and internet network; and

19 Australian Electoral Commission, submission 169.4, p 6.

- engage more local Indigenous people to work in remote mobile polling teams and as polling officials, including in regional and urban areas.[20]

6.32 The AEC also recommended that that the priority of any expanded activity should continue to be on Indigenous Australians residing in remote and regional communities where enrolment and voter turnout is lower and where informality appears to be higher. Activities should also be undertaken to better understand and address the gaps in electoral participation and engagement of Indigenous Australians in urban areas.[21]

6.33 The costs of such a program were estimated by the AEC to be in the order of $5 million in the start up year and $3.5 million thereafter. Major costs would be for:

- engagement of some additional permanent and temporary staff to plan and deliver electoral education and enrolment drives to Indigenous communities across Australia - this would include undertaking consultation processes building partnerships with other agencies and groups who deliver services to Indigenous Australians;
- travel costs including provision of equipment and vehicles to support field staff visits;
- staff training;
- strategic research to inform program targeting, priorities and assess program effectiveness;
- development and production of appropriate electoral information and education materials;
- development and media buy of appropriate supporting Indigenous communications -(eg advertising of upcoming field visits, Koori communications channels); and
- IT costs for development and maintenance of a system to capture program activity and local information to monitor program performance.[22]

6.34 At a practical level, one area highlighted by the AEC where access could be improved is the provision of polling services to Indigenous electors at town camps.[23] The AEC noted that:

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20 Australian Electoral Commission, submission 169.4, pp 6–7.

21 Australian Electoral Commission, submission 169.4, p 7.

22 Australian Electoral Commission, submission 169.4, p 7.

23 Australian Electoral Commission, submission 169, p 54.

> Town camps in Darwin and Alice Springs provide temporary refuge for remote based Indigenous electors who are visiting urban centres. Under the Commonwealth Electoral Act, the AEC has not been able to provide town camps with remote mobile polling services, due to their geographic proximity to static polling booths. By its very nature 'remote' mobile polling takes place outside urban areas.[24]

6.35 The AEC suggested that the provision of mobile polling in town camps would provide remote Indigenous electors with the opportunity to cast their vote in a familiar setting with the provision of an electoral service identical to that provided at remote communities. In doing so, the AEC considered that it would increase the opportunity for the residents of Indigenous town camps to cast their vote.[25]

6.36 In the absence of an ongoing program to engage with Indigenous electors, there has been a decline in voter participation in some of the divisions with a significant share of the population of Indigenous origin since the 1996 election, with the exception of Leichhardt, Parkes, Herbert and Grey (table 6.3).

Table 6.3 Voter turnout, selected divisions, House of Representatives, 1993 to 2007 elections (per cent)

Division (Jurisdiction)	1993	1996	1998	2001	2004	2007
Kalgoorlie	89.7	88.8	87.0	86.8	83.5	84.6
Leichhardt	93.4	92.3	92.0	92.1	91.2	92.6
Kennedy	93.9	93.7	93.2	93.4	92.6	93.4
Parkes	95.6	95.9	94.9	95.6	95.7	95.9
Calare	96.9	96.8	96.2	96.2	95.7	95.8
Herbert	95.6	94.1	94.7	95.2	93.8	94.1
New England	96.6	96.1	95.2	96.0	95.4	95.9
Grey	94.6	95.0	94.6	94.6	94.2	95.0
NT (Lingiari and Solomon 2001 onwards)	88.8	89.1	90.3	86.1	84.3	86.5
National average	**95.8**	**95.8**	**95.0**	**94.9**	**94.3**	**94.8**

Source Appendix C, table C.1.

6.37 Notably, the gap between national turnout and turnout in the Northern Territory (which was a separate division prior up to the 1998 election and includes the divisions of Solomon and Lingiari thereafter) and the Kalgoorlie has widened significantly — increasing from 6.7 percentage

24 Australian Electoral Commission, submission 169, p 54.

25 Australian Electoral Commission, submission 169, p 54.

points in 1996 to 8.2 percentage points in 2007 in the Northern Territory, and from 6.9 percentage points in 1996 to 10.2 percentage points in 2007 in Kalgoorlie.

6.38 The committee notes that in the 2009-10 Budget, the Australian Government will provide $13.0 million over the next four years to the AEC to close the gap in areas of Indigenous disadvantage by improving the electoral enrolment and participation of Indigenous Australians.[26]

6.39 According to the Minister, the initiative 'will improve electoral knowledge in Indigenous communities including such specifics as how and when to enrol and how to vote formally in elections'.[27]

6.40 The committee notes that under the initiative, enrolment, turnout and informality will be addressed through a continuous program of electoral education and additional promotion of enrolment and voting tailored to the needs of Indigenous communities in remote, regional and urban areas. The Minister also indicated that consultation with Indigenous communities will be undertaken will full commencement in July 2010.[28]

Committee conclusion

6.41 While many of the factors that reduce participation by Indigenous electors are not directly within the AEC's control, efforts by the AEC to engage Indigenous electors and provide flexible voting services will, nevertheless, make a difference to lifting Indigenous participation.

6.42 The committee is concerned by the relatively lower levels of participation in divisions where a significant share of the population is of Indigenous origin. The abolition of the former ATSIEIS program in 1996 has not helped to improve levels of participation in a number of those divisions where Indigenous people make up a significant share of the population; indeed, the level of participation has fallen.

6.43 The committee considers that the re-introduction of an ongoing program to engage Indigenous electors is an essential element of enabling greater participation by Indigenous electors.

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26 Senator the Hon John Faulkner, Special Minister of State, '$13.0 million to help improve Indigenous electoral participation', media release, 12 May 2009.

27 Senator the Hon John Faulkner, Special Minister of State, '$13.0 million to help improve Indigenous electoral participation', media release, 12 May 2009.

28 Senator the Hon John Faulkner, Special Minister of State, '$13.0 million to help improve Indigenous electoral participation', media release, 12 May 2009.

6.44 The proposal put forward by the AEC should form the basis for such a program. The committee notes that the costs of establishing such a program and providing for its continued operation are significant. The committee considers that the government, as part of its broader social inclusion agenda for Indigenous Australians, should provide appropriate funding for an ongoing program to better engage Indigenous Australians with the electoral system and lift participation.

6.45 The committee considers that the AEC's proposals seeking additional flexibilities for mobile polling would complement the establishment of such a program.

6.46 The committee welcomes the Australian Government's commitment in the 2009-10 Budget to allocate $13 million to such a program over the next four years.

Recommendation 17

6.47 **The committee recommends that the Australian Government provide ongoing and appropriate funding for the Australian Electoral Commission to establish, deliver and maintain a program similar in purpose to the former Aboriginal and Torres Strait Islander Electoral Information Service program to provide ongoing engagement with Indigenous electors.**

Recommendation 18

6.48 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the provision of remote mobile polling at town camps, such as in Darwin and Alice Springs.**

Homeless electors

6.49 The reasons for homelessness are many and varied — domestic violence, a shortage of affordable housing, unemployment, mental illness, family breakdown and drug and alcohol abuse all contribute to the level of homelessness in Australia.[29]

6.50 In delivering its White Paper on Homelessness in December 2008, the Australian Government has set an ambitious target to halve homelessness by 2020 and offer supported accommodation to all rough sleepers who need it.[30] The White Paper noted that 'the Joint Standing Committee on Electoral Matters, through its Inquiry into the 2007 Federal Election, has received submissions and heard evidence about the barriers for voters who are homeless and itinerant and will consider this issue in its report.[31]

6.51 Three categories of homeless people have been identified by the Australian Bureau of Statistics (ABS):

- Primary homelessness —People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter;
- Secondary homelessness — People who move frequently from one form of temporary shelter to another. It covers: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own); and those using boarding houses on an occasional or intermittent basis; and
- Tertiary homelessness — People who live in boarding houses on a medium to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen

29 Australian Government, *The Road Home: A national approach to reducing homelessness, White Paper on Homelessness* (2008), p iii.

30 Australian Government, *The Road Home: A national approach to reducing homelessness, White Paper on Homelessness* (2008), p iii.

31 Australian Government, *The Road Home: A national approach to reducing homelessness, White Paper on Homelessness* (2008), p 55.

and bathroom facilities of their own; their accommodation is not self-contained; they do not have security of tenure provided by a lease. [32]

6.52 In 2006, the ABS found that 105,000 Australians were homeless on Census night, an increase of 4.8 per cent since 2001 (table 6.4).[33] The Council to Homeless Persons considers that marginal residents in caravan parks should be included in statistics for the recorded homeless population, adding another 18,000 people to those that could be categorised as homeless.[34]

Table 6.4 Persons experiencing homelessness, living circumstances, 2001 and 2006

	2001	2006	% Change 2001-2006
SAAP accommodation	14,251	19,849	+39.3
Sleeping out, improvised dwellings	14,158	16,375	+15.7
Friends and relatives	48,614	46,856	-3.6
Boarding houses	22,877	21,596	-5.6
Caravan parks	22,868	17,496	-23.5
Total	**122,768**	**122,172**	**-0.5**

Source *Council to Homeless Persons, Counting the Homeless 2006: Information Paper (2008), p 2.*

6.53 Single adults and adult couples (aged 19+ years) form the largest group within the recorded homeless population, accounting for almost 60 per cent of the homeless population, with young people aged 18 or less accounting for around 20 per cent of the homeless population (table 6.5).

Table 6.5 Changes in broad household groups within the homeless population, 2001 and 2006

	2001	2006	% Change 2001-2006
Families with children	22,944	26,790	16.8
Adults (singles and couples only)	54,356	59,995	10.4
Youth aged 12-18	22,600	17,891	-20.8

Source *Council to Homeless Persons, Counting the Homeless 2006: Information Paper (2008), p 4.*

32 Chamberlain C, *Counting the Homeless: Implications for Policy Development* (1999), pp 1, 9-11, 13, 49.

33 Mission Australia, *Latest homeless figures reflect 'wasted years of inaction'*, viewed as: http://www.missionaustralia.com.au/news/media-releases/708-latest-homless-figures, viewed 19 March 2009.

34 Council to Homeless Persons, *Counting the Homeless 2006: Information Paper*, September 2008, p 2.

6.54 Indigenous people are over-represented amongst the homeless population, with 10,363 Indigenous people (approximately 10 per cent of the total homeless population) recorded as homeless in the 2006 Census.[35]

6.55 The Australian Government, with state and territory governments, assists people who are homeless, or at risk, primarily under the *Supported Accommodation Assistance Act 1994* - the SAAP V program.[36] The overall aim of SAAP is to provide transitional supported accommodation and related support services to help people who are homeless or at imminent risk of homelessness achieve the maximum possible degree of self-reliance and independence.[37]

6.56 In 2007-08, some 125,600 people had accessed the Supported Accommodation Assistance Program (SAAP) homelessness services.[38] Of closed support periods (a service provided to a client with a defined beginning and end) that lasted 1 day or longer, accommodation lasted for one week or less in 42 per cent of cases, for between 1 week and 1 month in 24 per cent of cases and from 1 to 3 months in 20 per cent. In 7 per cent of cases the accommodation lasted for between 3 and 6 months, and in another 7 per cent it lasted longer than 6 months. The median length of accommodation nationally was 12 days.[39]

Engaging homeless electors

6.57 Homeless electors face particular barriers in enrolling to vote and maintaining their enrolment as they move between accommodation service providers or other places of residence. Once enrolled, homeless electors also typically find it difficult to vote on or before polling day.

6.58 Despite these barriers, Homelessness Australia considered that engagement in the electoral system was an important element of social inclusion. Homelessness Australia noted that:

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35 Council to Homeless Persons, *Counting the Homeless 2006: Information Paper*, September 2008, p 5.

36 Australian Institute of Health and Welfare, *Demand from SAAP accommodation by homeless people 2006-07: A report from the SAAP National Data Collection*, SAAP NDCA Report Series 12, October 2008, p 1.

37 Australian Institute of Health and Welfare, *Demand from SAAP accommodation by homeless people 2006-07: A report from the SAAP National Data Collection*, SAAP NDCA Report Series 12, October 2008, p 1.

38 Australian Institute of Health and Welfare, *Homeless People in SAAP: National Data Collection Annual Report 2007-08* (2009), p 14.

39 Australian Institute of Health and Welfare, *Homeless People in SAAP: National Data Collection Annual Report 2007-08* (2009), p 40.

> It is understandable that voting may not be seen as a priority given the issues involved in being homeless. These can include lacking safety and security, being disconnected from one's support and social network and finding it extremely difficult to participate in the community, including employment. However, participating in the electoral process can help a person become connected with mainstream society.[40]

6.59 Taking into account the previous Census statistics, the Public Interest Law Clearing House (PILCH) estimated that some '64,000 people experiencing homelessness who were eligible to vote did not do so in the 2007 federal election'.[41]

6.60 Hanover Welfare Services (Hanover) assessed the number of clients who were not voting to be as large as a whole federal electorate.[42]

6.61 Following the 2007 election, Hanover undertook a census of 148 of its clients, who were in a range of accommodation services such as transitional housing, crisis accommodation and living with families.[43] Of these clients:

- 89 per cent (132) were eligible to vote;
- of the 89 per cent who were eligible to vote, just over half (57 per cent) actually voted; and
- more women (65 per cent) exercised their democratic right to vote, while only 45 per cent of men did so.[44]

6.62 Hanover research showed that the most common reason for not voting was that clients were not enrolled (60 per cent). For some, there were 'too many other issues to deal with' (32 per cent), and some reported that they were 'not interested in the election' (19 per cent).[45]

6.63 There can be complex reasons for the lack of electoral engagement by homeless electors, with the priority of homeless people often the very basic of needs — food, shelter and safety on any one day, including

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40 Homeless Australia, submission 34, p 2.

41 PILCH Homeless Persons' Legal Clinic, transcript, 11 August 2008, p 67.

42 Keenan T, Hanover Welfare Services, transcript, 11 August 2008, p 81.

43 Hanover Welfare Services, submission 109, p 5.

44 Hanover Welfare Services, submission 109, p 4.

45 Hanover Welfare Services, submission 109, p 7; Keenan T, Hanover Welfare Services, transcript, 11 August 2008, p 81; Kolar V, Hanover Welfare Services, transcript, 11 August 2008, p 84.

election day.[46] PILCH considered that often it is the homeless people who are in the most dire of circumstances — dealing with one or more 'issues on a daily basis, in addition to homelessness, such as mental illness, unemployment, drug and/or alcohol additions, family breakdown and trauma'. [47]

6.64 Research by PILCH revealed that at least 54 per cent of homeless people would like to enrol to vote at federal elections, notwithstanding that they confront many other significant issues and concerns in their daily lives to ensure they have stable accommodation, adequate food and access to health and other services[48].

6.65 PILCH also noted that some homeless people have concerns about personal safety issues which might be realised if their name and address details appeared on the electoral roll — with 32 per cent of homeless people having some connection with domestic violence or family dysfunction and 25 per cent of PILCH clients the subject of unexecuted arrest warrants.[49] Homelessness Australia considered that homeless persons might be unwilling to attend polling places due to the risks associated with their being identified if they attend a polling booth to vote. This was of particular concern where electors have little or no choice about voting locations.[50]

6.66 Research undertaken by the Institute for Social Research at Swinburne University together with the AEC in 2004 revealed some of the voting behaviours of the homeless as a group. Some 50 per cent had never voted, or indicated they did not ever intend voting.[51] The research noted that some of the impediments to engagement included:

- the provisions of the Commonwealth Electoral Act are generally difficult to comply with or understand including those relating to enrolment, itinerant enrolment and silent enrolment;
- transportation – lack of access to, or location of, polling stations;
- publicised lists – fear of becoming visible to government agencies;
- faithless – lack of belief in the political system; and

46 Homelessness NSW, submission 131, pp 1, 3.

47 PILCH Homeless Persons' Legal Clinic, submission 135, p 13.

48 PILCH Homeless Persons' Legal Clinic, submission 135, p 13.

49 PILCH Homeless Persons' Legal Clinic, submission 135, p 25.

50 Homelessness Australia, submission 34, p 5.

51 *Bringing Democracy Home – Enfranchising Australia's Homeless*, Swinburne University and Australian Electoral Commission, 2004, pp 5-6.

- fear – fines because of failing to enrol, or vote, when eligible. [52]

Enrolment and voting provisions relating to homeless electors

6.67 Many homeless electors are unlikely to satisfy the general requirements for enrolment which require an elector to live in a residence for a minimum of one month. Should an elector move, they then need to re-enrol at a new address, after waiting a further month.[53]

6.68 To cater for electors who do not have a fixed address, the Commonwealth Electoral Act includes 'itinerant' (also referred to as 'no fixed address') voter provisions.[54] These provisions are not available to people who have a permanent home address but who are temporarily living elsewhere. For example, itinerant workers living away from home for periods of time, or persons travelling round Australia on extended holidays, but who have a permanent home to which they intend to return, do not qualify.[55]

6.69 Under the itinerant voter provisions, persons with no fixed address must enrol in the division in which they were last entitled to enrolment. If they have not previously been entitled to enrolment they can enrol for the division in which their next of kin is enrolled, or, if there is no next of kin, the division in which they were born. Electors not born in Australia may enrol in the division with which they have the closest connection.[56]

6.70 Voting is not compulsory for itinerant electors in federal elections, nor New South Wales or the Australian Capital Territory elections.[57] However, if an itinerant elector does not vote at an election their name is removed from the electoral roll.[58]

6.71 The number of itinerant electors is relatively small. For example, at the end of August 2008, there were a total of 927 itinerant electors enrolled in Victoria, accounting for only 0.027 per cent of total enrolment in Victoria.[59]

6.72 Homelessness Australia considered that the itinerant elector provisions were 'overly stringent and unrealistic' and suggested that changes should

52 Australian Electoral Commission, *Research Report Number 6*, February 2005, p 6.

53 *Commonwealth Electoral Act 1918*, s 101.

54 *Commonwealth Electoral Act 1918*, s 96.

55 *Commonwealth Electoral Act 1918*, s 96.

56 *Commonwealth Electoral Act 1918*, s 96.

57 Australian Electoral Commission, submission 169.1, pp 57- 59.

58 *Commonwealth Electoral Act 1918*, s 96.

59 Australian Electoral Commission, submission 169.1, p 50; 'Gazetted enrolment as at 29 August 2008', viewed on 16 May 2009 at http://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/gazetted/2008/08.htm.

be made to facilitate enrolment of homeless electors.[60] Homelessness Australia noted that:

> A reason of 'homelessness' should be seen as sufficient to register an individual with 'no fixed address'.
>
> A reason of 'homelessness' should be seen as sufficient reason for failing to vote on Election Day. A list of valid reasons should be publicly stated and available.
>
> Individuals who successfully register with 'no fixed address' should not be removed from the electoral roll if they fail to vote in an election.[61]

6.73 PILCH also expressed its concerns in relation to the one month period after which an itinerant elector was required to enrol as a normal elector and suggested lengthening the period to six months.[62] PILCH also suggested the introduction of a definition for 'homelessness' into section 96 of the *Commonwealth Electoral Act 1918* so homeless people would be more obviously eligible to enrol to vote.[63]

6.74 PILCH noted that a model to facilitate the enrolment of homeless electors had been adopted in the Victorian *Electoral Act 2002* that incorporated a specific definition of homelessness.[64] Under the Act, a definition of homeless electors was included in section 3A to cover:

- a person living in:
  - ⇒ crisis accommodation; or
  - ⇒ transitional accommodation; or
  - ⇒ any other accommodation provided under the *Supported Accommodation Assistance Act 1994* (Cth); and
- a person who has inadequate access to safe and secure housing within the meaning of section of the *Supported Accommodation Assistance Act 1994* of the Commonwealth.[65]

60 Homelessness Australia, submission 34, p 4.

61 Homelessness Australia, submission 34, p 4.

62 PILCH Homeless Persons' Legal Clinic, submission 135, pp 24-25.

63 PILCH Homeless Persons' Legal Clinic, submission 135, p 24, Farrell J (PILCH), transcript, 11 August 2008, p 70.

64 PILCH Homeless Persons' Legal Clinic, submission 135, p 24, Farrell J (PILCH), transcript, 11 August 2008, p 70.

65 *Electoral Act 2002* (Vic).

6.75 Some of the features of the homeless elector provisions of the Victorian Electoral Act include:

- as an elector with no fixed address, electors enrol using the address of one of the following:
  - ⇒ the address where they were last eligible to enrol;
  - ⇒ the address where a next of kin lives;
  - ⇒ their place of birth; or
  - ⇒ if not born in Australia, a place that they feel the closest connection to; and
- no fine is imposed if an elector does not vote and their name is not taken off the roll if they do not vote.[66]

Efforts to increase participation by homeless electors

6.76 In the lead up to the 2007 election the AEC undertook a broad range of activities to promote enrolment and voting by homeless electors. The AEC noted that it had actively engaged in consultation with state and national peak bodies, and service providers, to ascertain what strategies might engage the homeless in the electoral process — including Homeless Australia, PILCH, the Saint Vincent de Paul Society, the Big Issue, Centacare, Uniting Care Australia and Hanover Welfare Services. [67]

6.77 These consultations identified SAAP provider organisations, as a way to disseminate no fixed address enrolment forms and information to electors experiencing homelessness. The AEC designed and dispatched a direct mail to over 1300 SAAP organisations between 27 September and 5 October 2007.[68]

6.78 In October 2007, the AEC focused upon a campaign of providing information on the 'itinerant' details in terms of enrolling and voting. A special section within the AEC website, explaining enrolling and voting procedures for people experiencing homelessness, was dedicated to this group. Fact sheets and other relevant information was also produced.[69]

6.79 The AEC also worked with some Melbourne welfare agencies to encourage the voting experience for homeless electors. A 'voting day' was

66 Victorian Electoral Commission, 'Being homeless does not make you vote-less', viewed on 16 May 2009 at http://www.vec.vic.gov.au/nofixedaddress.html.

67 Australian Electoral Commission, submission 169.6, pp 13-14.

68 Australian Electoral Commission, submission 169.6, p 14.

69 Australian Electoral Commission, submission 169, p 57.

specially arranged so that the welfare agencies provided, to possible electors, a meal and some basic electoral information. Thereafter, transport was provided to the city where a pre-poll centre had been set up. Approximately 50 electors who were experiencing homelessness, took part in this initiative.[70] In their submission, the AEC indicated their interest in developing this service further in conjunction with service providers if the Act was appropriately changed to enable mobile polling for such electors.[71]

Proposals to increase participation by homeless electors

6.80 Previous Joint Standing Committees on Electoral Matters have made various recommendations to enable greater participation by homeless electors.[72]

6.81 Following the 2004 Federal Election, the then committee made several recommendations which related to enfranchisement of people experiencing homelessness including that the:

- AEC to produce, in consultation with homeless provider agencies, an action plan to promote and encourage enrolment and voting amongst disadvantaged groups (including homeless and itinerant persons etc); AEC to report to the committee on the details of the plan; adequate funding for this task to be allocated to AEC; and following the next election, the AEC to seek feedback from the relevant homeless providers, and modify the proposed plan accordingly;
- AEC to continue consultations with homeless providers to target homeless people in their public awareness campaigns, and give AEC staff appropriate training on the needs of homeless and marginalised citizens. [73]

6.82 The government response to this committee's report expressed its support for these recommendations and noted that the AEC will advise the Special Minister of State on its consultations.[74]

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70 Australian Electoral Commission, submission 169, p 57.

71 Australian Electoral Commission, submission 169, p 57.

72 Joint Standing Committee on Electoral Matters – reports following Federal Elections 2004, 2001, 1996.

73 Joint Standing Committee on Electoral Matters, Parliament of Australia, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (2005), pp 14, 17, 132.

74 2004 report government response. http://www.aph.gov.au/house/committee/em/elect04/Report/govres.pdf.

6.83 PILCH and Hanover considered that these recommendations were not implemented, in particular that the action plan (recommendation 2), with strategies for engagement, did not eventuate.[75] PILCH asserted that much of the intended material for homelessness services was not produced and circulated, and it was considered that some of the strategies, when implementation was attempted, were inadequate or too late. PILCH noted that:

> …the AEC's fact-sheet was not appropriately focused for its intended audience as its content was too lengthy and complex. In our view, electoral information must be set out clearly and in simple English – a one page step-by-step process would more helpfully assist people wishing to enrol as a 'no fixed address' voter. The materials provided were insufficient for the purposes of engaging people experiencing homelessness in the electoral process.[76]

6.84 PILCH was also critical of the AEC's efforts in relation to the action plan noting that:

> …the AEC did not formulate, implement and publicly report against a detailed ongoing action plan to promote and encourage enrolment and voting among homeless persons.[77]

6.85 When PILCH requested access to such a plan, by applying under the freedom of information legislation, the AEC advised there was no such document.[78] This was further verified by Hanover:

> Hanover wishes to formally register its concerns that these materials were not actually produced and circulated. Additionally, it appears that the Action Plan as recommended by the Joint Standing Committee was not developed by the AEC.[79]

75 Hanover Welfare Services, submission 109, p 2; PILCH Homeless Persons' Legal Clinic, submission 135, pp 14-15.

76 PILCH Homeless Persons' Legal Clinic, submission 135, pp 14-15.

77 PILCH Homeless Persons' Legal Clinic, submission 135, p 15.

78 PILCH Homeless Persons' Legal Clinic, submission 135, p 15.

79 Hanover Welfare Services, submission 109, p 2.

Victorian model

6.86 PILCH and Hanover nominated the facilitation of homeless voting and the positive relationships with the Victorian Electoral Commission as providing a model for engagement with homeless electors.[80]

6.87 PILCH provided an example of the Victorian Electoral Commission's initiatives to engage homeless electors in the lead up to the 2006 state election:

- enrolment days at a number of homelessness service providers including St Mary's House of Welcome, Front Yard, St Kilda Crisis Centre, Sacred Heart Mission and St Kilda Drop-in Centre. Lunch was provided at each enrolment day, as well as transport to and from the location for those that required it. Information about the enrolment days were sent to all homelessness service providers in Victoria;
- development and wide distribution of posters specifically targeting people experiencing homelessness and very simple one page fact sheets in relation to no fixed address enrolment;
- training for electoral workers who staffed the polling stations on Election Day in relation to homelessness and effective communication;
- provision of mobile polling at homelessness service providers for organisation that were able to guarantee attendance by 20 people;
- establishment of homelessness and voting advisory committee, including representatives of homelessness service providers as well as consumers themselves;
- assistance with development and printing of information kits and brochures by service providers, including the Clinic;
- attended the Melbourne homelessness festival *Home is Where the Heart is* in 2007 to provide information and assist people to enrol to vote.[81]

Assisted voting

6.88 Under the Commonwealth Electoral Act, assisted voting is available to electors who satisfy a polling official that they are 'so physically

80 PILCH Homeless Persons' Legal Clinic, submission 135, pp 19-20 and submission 135.1, p 35; Hanover Welfare Services, submission 109, p 9; transcript, 11 August 2008, pp 81-86.

81 PILCH Homeless Persons' Legal Clinic, submission 135, p 19.

incapacitated or illiterate that he or she is unable to vote without assistance'.[82]

6.89 Ms Marette Corby considered that polling officials should be more sensitive when providing assistance to disadvantaged electors. Ms Corby noted that:

> I have been voting for a decade and a half and on several occasions I have been to polling booths on election day and requested some assistance in being able to vote.
>
> On not all occasions but on many occasions I have been advised by the voting assistant that I would have to vote above the line as they did not have the time to spend with me completing the 'below the line' Senate electoral ballot. This concerns me because the last time I voted using the electric voting system was the first time when I felt completely enfranchised and able to truly express my opinions in a vote.[83]

Mobile polling

6.90 Under the Commonwealth Electoral Act mobile polling is permitted for remote parts of Australia, but not in urban areas.[84] Other areas where mobile polling is permitted are hospitals and prisons.[85]

6.91 The AEC were supportive of more flexible arrangements being introduced for mobile polling.[86] The AEC noted that:

> Prior to the last election the Commonwealth Electoral Act was amended to allow for commencement of pre-polling in exceptional circumstances by allowing the gazettal of a location as soon as possible after it had commenced operating. However, there may well be circumstances where a mobile team would be the best response, but the current legislation provides no flexibility apart from the specific locations mentioned above.
>
> This flexibility could be achieved by refining section 227 of the Commonwealth Electoral Act to remove the reference to 'remote' divisions. Further, in lieu of gazettal, greater accessibility to information on planned mobile polling could be achieved by

82 *Commonwealth Electoral Act 1918*, s 234.

83 Corby M, submission 195, p 1.

84 Barry-Macaulay A, PILCH Homeless Persons' Legal Clinic, transcript, 11 August 2008, p 69.

85 *Commonwealth Electoral Act 1918*, ss 224, 225 and 226, 226A.

86 Australian Electoral Commission, submission 169.18, p 9.

> requiring the places to be visited to be detailed on the AEC website, rather than gazetted. Existing local arrangements for advising political parties and candidates of the locations of mobile polling would continue to apply.[87]

6.92 The committee has recommended earlier in this chapter that mobile polling in town camps be facilitated to give the AEC additional flexibility to provide specified election services to a number of Indigenous electors. The committee notes that the Victorian Electoral Commission established a mobile polling centres in Melbourne during the 2006 state election and collected 68 votes.[88]

6.93 PILCH recommended that voting stations be established at 'locations that are easily accessible and appropriate to people experiencing homelessness'.[89]

6.94 Hanover was also keen to ensure that mobile polling facilities were provided in homeless crisis services, 'such as Hanover's Crisis Centre operating in Southbank, and our newly opened crisis service in Dandenong'[90]. In terms of the number of locations where such a service was required, Hanover suggested that 'you could get away with 10 across the country if the target included major crisis centres and drop-in centres, and centred around breakfast and/or lunch time'.[91]

Committee conclusion

6.95 The committee recognises that the itinerant voting provisions of the Commonwealth Electoral Act do not provide sufficient flexibility to facilitate the enrolment of many homeless electors.

6.96 The committee supports the adoption of the model used in Victoria to enfranchise homeless electors. The incorporation of a definition of homelessness within the Commonwealth Electoral Act will facilitate the enrolment of electors who otherwise find it difficult to enrol and maintain their enrolment under the itinerant enrolment provisions.

6.97 The committee notes that the Victorian provisions allow homeless electors to nominate a 'home' division based on a range of criteria (such as the address where they were last eligible to enrol, the address where a next of

87 Australian Electoral Commission, submission 169.18, p 9.

88 Victorian Electoral Commission, Report on the 2006 State election, p 35.

89 Barry-Macaulay A, PILCH Homeless Persons' Legal Clinic, transcript, 11 August 2008, p 69.

90 Hanover Welfare Services, submission 109, p 9; Hollows A, transcript, 11 August 2008, p 82.

91 Keenan T, Hanover Welfare Services, transcript, 11 August 2008, p 83.

kin lives) that are not dissimilar to the arrangements in place for persons applying to enrol from outside Australia and residents of Norfolk Island under the Commonwealth Electoral Act.[92]

6.98 The committee notes comments from homeless service providers PILCH and Hanover that the AEC did not develop and implement a plan to provide electoral services to homeless electors following the then Joint Standing Committee on Electoral Matters' inquiry into the 2004 election. The committee considers that while the AEC carried out a number of activities to raise awareness amongst homeless electors about the 2007 election, it is important that the AEC document the different elements of its strategies to engage with homeless electors. In doing so, the AEC should consult with providers of homeless services to ensure that the services are targeted appropriately and make appropriate documents available for comment.

Recommendation 19

6.99 **The committee recommends the *Commonwealth Electoral Act 1918* be amended to incorporate a definition of homelessness modelled on those in the Victorian *Electoral Act 2002* to facilitate enrolment or continued enrolment of homeless persons. This definition should include persons living in:**

- **crisis accommodation; or**
- **transitional accommodation; or**
- **any other accommodation provided under the *Supported Accommodation Assistance Act 1994*.**

6.100 The limited flexibility of the mobile polling provisions under the Commonwealth Electoral Act do not provide for the provision of targeted voting services to homeless people — a group of the community that are particularly disadvantaged.

6.101 The committee notes the positive experiences with mobile polling at homeless service providers by the Victorian Electoral Commission at the 2006 state election, and considers that the Victorian Electoral

92 *Commonwealth Electoral Act 1918*, ss 94A and 95AA.

Commission's engagement of homeless electors should be a model that the AEC should follow.

Recommendation 20

6.102 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow mobile polling and/or pre-poll facilities to be provided at such locations and at such times as the Australian Electoral Commission deems necessary for the purposes of facilitating voting.**

For example, mobile polling or pre-poll facilities should be able to be provided where there is likely to be sufficient demand for such facilities by homeless and itinerant electors, or in such other circumstances as warrant their use.

6.103 While many disadvantaged electors are able to vote without assistance, where electors seek assistance from electoral officials it is important that electoral officials treat each elector with respect and understanding. The committee notes that electoral officials involved in the trial of electronically assisted voting at the 2007 election were provided with specific training to instruct polling officials in how to deal with voters who were blind or had low vision.[93] The committee considers that client-specific training should be part of the training package for all polling officials where appropriate.

Recommendation 21

6.104 **The committee recommends that the Australian Electoral Commission ensure that staff engaged in providing advice or services to electors with special needs (eg homelessness, sight impaired) be provided with appropriate training on how to communicate effectively and with sensitivity to the needs of such electors.**

93 Sheridan and Associates, *Evaluation of the electronic voting trial for blind and sight impaired electors at the 2007 federal election: Final evaluation report* (2008), p 6.

7

Responding to the increased demand for early voting

Background

7.1 Attendance voting — the physical act of casting a vote in person at a polling booth on the Saturday of the election — is an important feature of democracy in Australia. It provides an opportunity to witness and participate in a community activity and reinforces the important role that democracy plays in our lives.

7.2 Nevertheless, the committee recognises that not all Australians can, or may necessarily want to, take part in elections in this way. The increasingly 'programmed' nature and business of modern lifestyles means that other commitments often restrict the opportunity to vote in person on election day. There are also those in the community who are unable, for a number of reasons including health and remoteness, to attend polling places in person on election day.

7.3 Compulsory voting, introduced for the 1924 federal election, imposes a requirement on all electors to attend a polling place or apply for a declaration vote so that they are marked off the electoral roll. Since its inception, the *Commonwealth Electoral Act 1918* has included provisions that allow for types of voting that provide electors with different options for casting their votes if they are unable to attend a polling booth.

7.4 'Early' voting is generally defined to include postal and pre-poll voting. 'Convenience' voting is somewhat broader, generally encompassing postal and pre-poll voting as well as absent voting (whereby an elector who is out of their home division but still within their home state or territory on

election day may cast a vote at a polling place in any other division within the jurisdiction) as well as interstate voting (whereby a vote can be cast on election day at an interstate voting centre — typically large pre-poll centres and Australian Electoral Commission (AEC) divisional offices).

7.5 Some electors cast pre-poll or postal vote not for convenience, but because they experience real difficulties in attending a polling place on election day. The AEC makes a significant effort to increase opportunities for such electors to vote through the provision of mobile polling, involving teams of electoral officials travelling to specific regions and facilities (such as hospitals and prisons) and providing electors with an opportunity to cast a pre-poll vote.

7.6 The grounds on which an elector may apply for a pre-poll or postal vote are set out in schedule 2 of the Commonwealth Electoral Act and include:

- the elector will be absent from the state or territory for which they are enrolled throughout the hours of polling on polling day;
- the elector will not, at any time during the hours of polling on polling day, be within eight kilometres by the nearest practicable route of any polling booth in the State or Territory for which the elector is enrolled;
- the elector will be unable to attend a polling booth on polling day because of serious illness, infirmity or approaching childbirth; and
- the elector will be unable to attend a polling booth on polling day because the elector will be at a place (other than a hospital) caring for a person who is seriously ill or infirm or who is expected shortly to give birth.[1]

7.7 To apply to cast a postal vote, an elector must make contact with the AEC for a postal voting pack. Applications for pre-poll votes must be made verbally at a pre-poll voting centre. The AEC does not verify whether the electors meets the grounds set out in schedule 2 of the Act, but simply requires the elector to confirm that they meet one of these reasons by signing the declaration set out on the pre-poll declaration voting form.

7.8 The Commonwealth Electoral Act imposes a number of constraints on the ability of the AEC to provide mobile polling, limiting mobile polling activity to hospitals and 'special hospitals', prisons and remote divisions.[2] In each of these circumstances, the Act imposes separate requirements in relation to the advertising and notification that mobile polling will take

1 *Commonwealth Electoral Act 1918*, schedule 2.

2 *Commonwealth Electoral Act 1918*, ss 223 to 227.

place and the availability of electoral material including how to vote cards.[3]

7.9 Pre-poll, postal and absent votes are collectively referred to as 'declaration votes'. The Commonwealth Electoral Act contains special provisions for both the vote issuing processes and counting process. Electors are required to complete a form printed on the envelope, and electoral officials must check that it is completed, then determine which division the elector's claimed address is in. The elector is then issued the relevant House of Representatives and Senate ballot papers, which must be inserted into the envelope which in turn is placed in a sealed ballot box. The issuing process takes around 10 minutes in total. [4]

7.10 After the close of polling, all declaration votes are forwarded to the respective Divisional Returning Officers and following their receipt, a detailed scrutiny process is conducted by AEC officials in accordance with schedule 3 of the Commonwealth Electoral Act. This process can take between six to 12 days for all declaration votes to pass through preliminary and further scrutiny processes and for the ballot papers to be counted.[5]

7.11 There have been a number of different views expressed as to whether the trend to rising numbers of early votes should be facilitated and encouraged or whether the grounds for casting an early vote should be more tightly policed by the AEC so that only those with genuine reasons should be eligible to vote in this way.

Early voting trends

Overview

7.12 At the 2007 federal election, more than 2 million of the 13.3 million votes issued were early votes, with around 1.1 million pre-poll votes and 830,000 postal votes issued.[6] The AEC has highlighted to the committee the significant continuing growth in early voting over successive elections, with pre-poll votes increasing by 294 per cent and postal votes

3 *Commonwealth Electoral Act 1918*, ss 223 to 227.

4 Australian Electoral Commission submission 169.1, p 45.

5 Australian Electoral Commission, submission 169, p 43.

6 Australian Electoral Commission submission 169, p 30.

by 230 per cent between the 1993 and 2007 elections.[7] The growth has occurred in all states and territories, although at different rates (table 7.1).

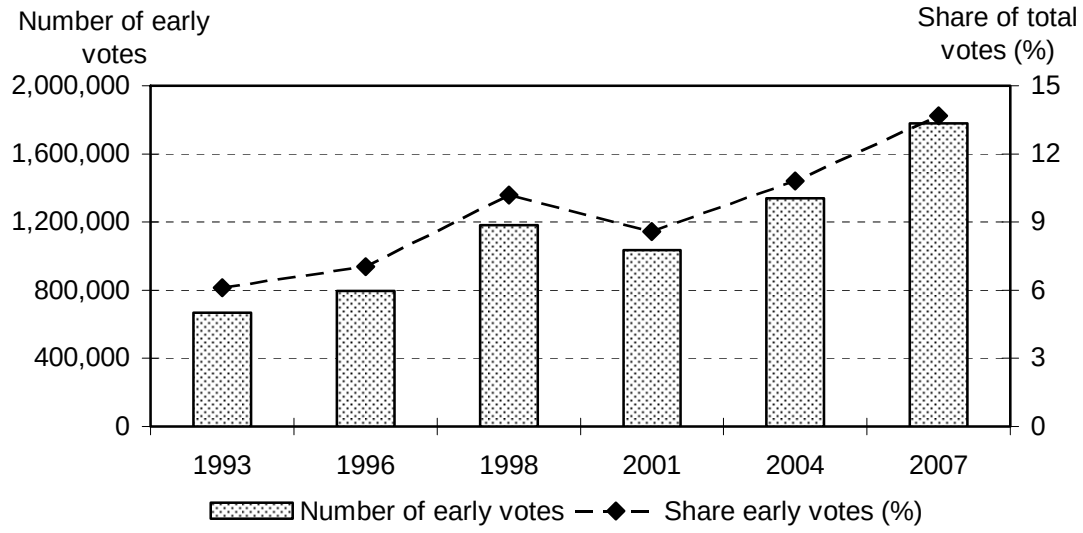
Table 7.1 Growth in early voting, by jurisdiction, 1993 to 2007 elections

Jurisdiction	1993	1996	1998	2001	2004	2007
NSW	228,194	272,198	469,801	374,187	475,195	600,962
VIC	180,274	207,037	302,337	290,695	385,925	565,345
QLD	143,085	165,083	211,981	227,678	269,973	339,782
WA	48,595	70,368	84,388	83,178	102,463	129,981
SA	54,007	60,725	110,134	74,049	91,539	113,400
TAS	18,581	27,827	27,359	26,729	32,174	39,297
ACT	34,402	32,490	56,991	37,663	42,628	50,037
NT	7,961	10,020	12,370	12,386	14,531	21,049
Total	**715,099**	**845,748**	**1,275,361**	**1,126,565**	**1,414,428**	**1,859,853**

Source *Appendix C, table C.3.*

7.13 This growth has resulted in the share of early votes counted as a proportion of total votes counted increasing from 6.1 per cent at the 1993 election to 13.7 per cent at the 2007 election. The number of early votes counted for Senate elections over this period almost tripled from 670,000 to almost 1.8 million (figure 7.1).

Figure 7.1 Growth in early voting, Senate (votes counted), 1993 to 2007 elections



Source *Appendix C, table C.2.*

7 Australian Electoral Commission, submission 169, p 38.

7.14 There does not appear to be a consistent explanation across divisions for the growth in early voting. Research conducted by the AEC in 2004 on trends in declaration voting noted that generally the rate of declaration voting is higher in the more populous states, although the ACT has the highest incidence of any jurisdiction. Other observations made by the AEC on the incidence of declaration voting by division included:

- divisions located in inner metropolitan areas had the highest incidence of declaration voting whilst rural and outer metropolitan regions tended to have lower rates — Inner metropolitan divisions generally have a higher proportion of high income earners who may be more likely to be travelling at election time while the reverse is true for some outer metropolitan and rural divisions; and
- religious beliefs may also play a part in explaining some variations; as federal elections are held on Saturday (the Jewish Sabbath), it is probably no coincidence that the two divisions with the largest number of persons of the Jewish religion (Melbourne Ports and Wentworth) also have the highest proportion of declaration voters.[8]

7.15 Beneath the overall trend of increasing early and convenience voting, it is useful to examine each category.

Pre-poll voting

7.16 Pre-poll votes may be cast by electors who meet one of the conditions of schedule 2 of the Commonwealth Electoral Act. In general terms, such electors are unable to attend a polling place in their state or territory on election day.

7.17 Pre-poll votes may be cast in the period following the availability of ballot papers, generally the Monday or Tuesday following the declaration of nominations in an election. Pre-poll votes may be cast at any pre-poll centre in any state or territory up to and including the Friday prior to election day.

7.18 On election day, only those voters who are interstate may cast pre-poll votes on election day.

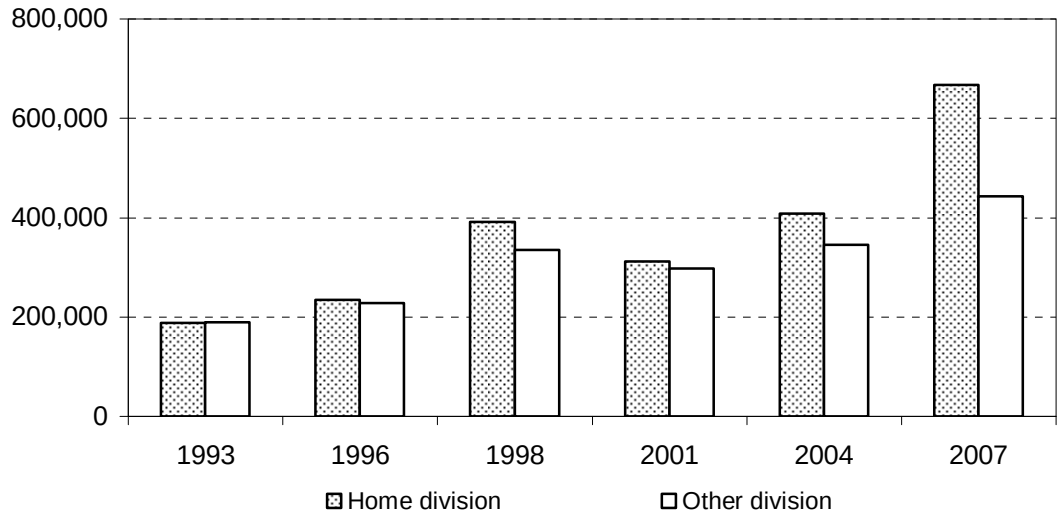
7.19 Outside Australia, pre-poll votes are issued in the lead up to and on polling day in order to enable eligible overseas electors to cast votes.

8 Australian Electoral Commission, 'Analysis of Declaration Voting', *Research Paper Number 3* (2004), pp 6–8.

Consistent with the trend towards early voting, the rate of pre-poll voting has increased significantly over time.

7.20 A significant, and increasing, majority of pre-poll votes are cast by electors at pre-poll voting centres in the division in which they are enrolled (figure 7.2). These votes are referred to as 'home division pre-poll votes'.

Figure 7.2 Home division and other division pre-poll votes issued, 1993 to 2007 elections



Source *Appendix C, table C.11.*

7.21 At the 2007 election, home division pre-poll votes issued accounted for around 60 per cent of total pre-poll votes issued.[9] There is considerable variation across divisions in the number of home division pre-poll votes issued as a share of total pre-poll votes issued, ranging from 90 per cent (Werriwa, Wentworth and Watson) to around 20 per cent (Banks, Ballarat and Aston).[10]

Postal voting

7.22 Electors who choose to vote using a postal vote fall into two categories:

- Those who are registered as 'General Postal Voters' (GPVs) and receive a postal voting pack at each election automatically as a result of their GPV registration; and
- Those who apply at each election to receive a postal voting pack.

9 Australian Electoral Commission, submission 169.1, p 45.

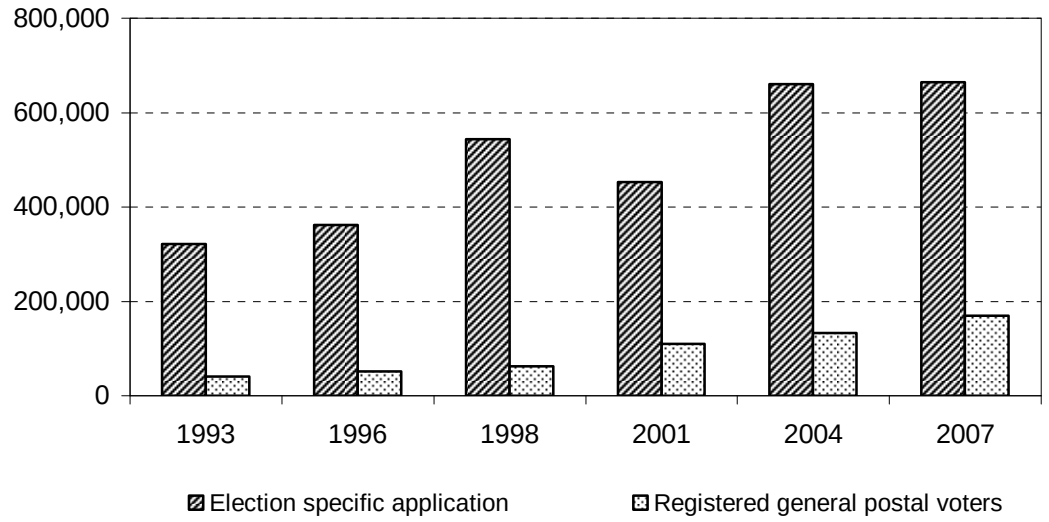
10 Appendix C, table C.11.

7.23 Not all electors who apply for a postal vote end up voting in this manner. At the 2007 election, around 90 per cent of electors who had applied for a postal vote actually voted this way. Of these, around 95 per cent of votes were included in the count.[11]

7.24 The committee was unable to determine from the available data the proportion of postal voters who were registered as GPVs compared to those who applied for a postal vote. However, it is likely that electors who are registered as GPVs are more likely to actually cast a postal vote as they are more accustomed to voting this way.

7.25 Over the past six federal elections, growth in the number of overall applications for postal votes has tapered off, with over 90 per cent of the increase for the 2007 election due to a rise in the number of electors registered as GPVs (figure 7.3). It is unclear whether this will be a sustained trend, with some variation between elections in the demand for postal vote applications for electors who are not registered as a GPV.

Figure 7.3 Growth in postal vote applications, by type, 1993 to 2007



Source *Australian Electoral Commission, submission 169.10; submission 168 to the Joint Standing Committee on Electoral Matters inquiry into the 2004 election, p 14.*

7.26 Over the past three elections, the overall number of registered GPVs has increased by almost 55,000 (48 per cent) to 169,000 at the 2007 election. Between the election in November 2007 and May 2008 the number of registered GPVs rose by a further 24,000. The growth in GPVs has been significant across all jurisdictions (table 7.2).

11 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 54; Submission 169.1, p 135.

Table 7.2 Growth in general postal voters, by jurisdiction, 2001 election to 31 May 2008

Jurisdiction	2001	2004	2007	31 May 2008
NSW	44,101	50,694	60,876	75,577
VIC	26,071	29,894	39,569	43,548
QLD	23,533	28,161	35,778	38,127
WA	10,073	11,691	16,100	17,279
SA	6,653	8,244	10,548	11,290
TAS	1,189	1,770	2,267	2,605
ACT	1,357	1,610	2,465	3,013
NT	1,034	1,186	1,345	1,400
Total	114,011	133,250	168,948	192,839

Source *Australian Electoral Commission, submission 169.1, Annex 3, p 31–46; submission 169.10, pp1–9.*

Absent voting

7.27 An absent vote is a vote cast by electors who are out of their electorate but still within their state or territory on election day. These votes may be cast at any polling place in the state or territory.

7.28 The overall number of absent votes cast at federal elections has remained largely unchanged over the past three elections, with between 850,000 and 860,000 absent votes issued, although there has been some variation between jurisdictions.[12]

7.29 A characteristic of absent votes is that a very significant proportion of absent votes are cast by electors in an adjoining division to their own.

7.30 Information provided to the committee by the AEC highlights that divisions with the highest exchanges of absent votes at the 2007 election did so with adjoining divisions (table 7.3). In analysing this and other data the AEC concluded that:

> on polling day the majority of absent votes cast for a division were issued by a contiguous division. It would appear that the bulk of absent ballots are cast by electors who have drifted over their division's boundary in the course of their movements on polling day, rather than being cast by electors who are planned tourists visiting other parts of the state for whom pre-poll voting may be desirable.[13]

12 Australian Electoral Commission, submission 169, Annex 4, pp 36–37.

13 Australian Electoral Commission, submission 169.1, pp 51–52.

Table 7.3 Absent votes exchanged between selected divisions, 2007 election

Jurisdiction	Division receiving	Received from	Number of absent votes received
South Australia	Sturt	Adelaide	2,364
Tasmania	Franklin	Denison	2,283
Victoria	McEwen	Scullin	2,197
Queensland	Flynn	Capricornia	2,166
Victoria	Corangamite	Corio	2,153
Australian Capital Territory	Canberra	Fraser	1,841
Queensland	Fadden	Moncrieff	1,834
Victoria	Corio	Corangamite	1,820
Victoria	Melbourne Ports	Higgins	1,779
New South Wales	Sydney	Grayndler	1,749
Queensland	Kennedy	Herbert	1,725
Queensland	Fairfax	Fisher	1,706
Victoria	Gorton	Maribyrnong	1,672
Victoria	Holt	La Trobe	1,666
Queensland	Kennedy	Leichhardt	1,666
Queensland	Bonner	Griffith	1,663
Tasmania	Bass	Lyons	1,656
New South Wales	Richmond	Page	1,652
Western Australia	Canning	Brand	1,633
Australian Capital Territory	Fraser	Canberra	1,617

Source *Australian Electoral Commission, submission 169.1, p 51.*

Overseas voting

7.31 Voting is not compulsory for electors travelling overseas at the time of the election. However, the AEC establishes a number of overseas voting centres to provide electors travelling overseas, and those living overseas who are registered as overseas voters, with the opportunity to vote.

7.32 Votes cast at overseas voting centres are pre-poll votes and are subject to the same scrutiny processes as pre-poll votes cast in Australia. At the 2007 election, the AEC, in conjunction with the Department of Foreign Affairs and Trade, Austrade, and overseas posts that offer full consular services, provided voting services at 104 overseas posts.[14]

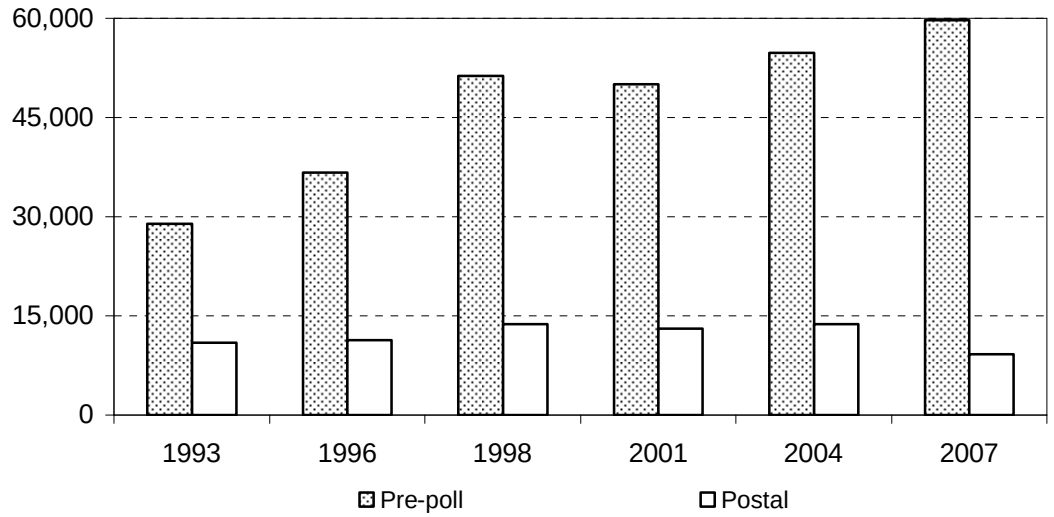
7.33 These overseas posts issued at total of 70,059 votes (59,747 pre-poll votes and 10,312 postal votes).[15] After growing between the 1993 and 1998

14 Australian Electoral Commission sub 169, p 56.

15 Australian Electoral Commission sub 169, p 56.

elections, the number of overseas votes issued has since stabilised at around between 60,000 and 70,000 (figure 7.4).

Figure 7.4 Overseas votes issued, by type, 1993 to 2007 elections



Source *Appendix C, table C.9.*

Trends for early voting in state and territory elections

7.34 The trend to increasing numbers of early votes is not confined to federal elections. At recent state and territory elections there have been equally significant increases in both pre-poll and postal voting (table 7.4).

Table 7.4 Trends in early voting at recent state and territory elections, by jurisdiction

Jurisdiction	Recent trends in early voting
NSW	The number of electors casting pre-poll votes increased by 66 per cent between the 2003 and 2007 state elections, with the number of postal votes increasing by 37 per cent. Between these elections, there were 55 additional pre-poll voting centres.
Victoria	The number of electors casting pre-poll votes increased by 45 per cent between the 2002 and 2006 state elections, with the number of postal vote applications increasing by 12 per cent. The number of pre-poll voting centres fell from 79 at the 2002 election to 77 at the 2006 election.
Queensland	The number of electors casting pre-poll votes increased by 25 per cent between the 2004 and 2006 state elections with the number of postal and unenrolled votes increasing by 39 per cent; The number of pre-poll voting centres fell from 244 at the 2004 election to 239 at the 2006 election.
Western Australia	The number of electors casting pre-poll votes at the 2005 state election (latest available) increased by 30 per cent compared to the 2001 election, with the number of postal votes received increasing by 46 per cent. The number of pre-poll voting centres fell from 57 at the 2001 election to 29 at the 2005 election.
South Australia	The number of electors casting pre-poll voted in person increased by 1.6 per cent at the 2006 state election compared to the 2002 state election, with the number of electors casting a postal vote increasing by 38 per cent. The number of pre-poll voting centres remained unchanged at 19 between elections.
Tasmania	The number of pre-poll and postal votes each increased by 14 per cent between the 2003 and 2006 House of Assembly elections.
ACT	The number of electors casting pre-poll votes increased by 45 per cent at the 2008 election compared to the 2004 election, with a 47 per cent increase in postal votes cast. The number of pre-poll voting centres remained unchanged at 5.
Northern Territory	The number of electors casting a pre-poll vote at the 2005 elections increased by 39 per cent compared to the 2001 election, with the number of postal votes cast increasing by 52 per cent.

Source *Electoral Commission NSW, Report on the 2007 State Election (2007), p 6; Victorian Electoral Commission, Report to Parliament on the 2006 Victorian State election (2007), pp 4, 27 and 29; Victorian Electoral Commission, Report to Parliament on the 2002 Victorian State election (2003), p 27; Electoral Commission Queensland, 2006 State General Election: Statistical Returns, p 6 and A14; Electoral Commission Queensland, 2004 State General Election: Statistical Returns, p 6; Western Australian Electoral Commission, 2005 State General Election: Election Report, p 17; Western Australian Electoral Commission, 2001 State General Election: Election Report, p 17; South Australian Electoral Office, South Australian Parliamentary Elections 18 March 2006, pp 30 and 36; Tasmania Electoral Commission, Report on Parliamentary Elections (2006), p 166; ACT Electoral Commission, 'voting data: 2004 election', viewed on 4 February 2009 at http://www.elections.act.gov.au/docs/election_04/04fp.xls#VoteTypes!A1; ACT Electoral Commission, Election Statistics, ACT Legislative Assembly Election 2008 (2008), p 18; Northern Territory Electoral Commission, 2005 Legislative Assembly General Election Report Part 1 of 2 (undated), p 18.*

Explaining the growth in early voting

7.35 The co-occurrence of elections with school holidays is generally considered to have played a significant role in influencing the number of electors who cast pre-poll and postal votes. The AEC observed that although election periods for the 1998 and 2004 elections did coincide with school holidays in many parts of Australia and that this may have accounted for the peaks in declaration voting at those elections. However,

as the trend has now been sustained over such a length of time that school holidays by themselves no longer provide a complete explanation for the increase in declaration voting.[16]

7.36 Other factors the AEC considered to be contributing to the rise in early voting include:

- changing patterns of work leading to more electors finding it difficult to attend polling places between 8a.m. and 6p.m. on a Saturday;
- widespread distribution of postal vote applications by political parties during the election campaign;
- increased mobility of electors;
- an increasing public demand for flexible and convenient service delivery;
- as more electors have become aware of the convenience of early voting, they are both "spreading the word" and continuing to cast early votes over repeated electoral events.
- an ageing population is resulting in higher numbers of GPVs.
- the increase in the number of electors on the roll means that even if the proportion of electors who cast a declaration vote remains steady, the absolute number of declaration votes will increase with the roll.
- no provision in the Commonwealth Electoral Act for the AEC to challenge an elector's claim to a postal or pre-poll vote or to ask under which category the elector qualifies.
- party workers are also sometimes seen campaigning outside early voting centres, encouraging passers by to vote with no mention of entitlement.[17]

7.37 Local factors may also influence growth in early voting. Significant increases in early voting in the following divisions were partly attributed to local campaigning and conditions:

- Mayo (South Australia) — the doubling of the number of pre-poll votes issued at the 2007 election compared to the 2004 election was partly attributed to an influx of 'schoolies' at a popular seaside holiday area within the division;[18]

16 Australian Electoral Commission, submission 169, p 39.

17 Australian Electoral Commission, submission 169, pp 39–40.

18 Drury C, Australian Electoral Commission, transcript, 20 August 2008, p 3.

- Holt (Victoria) — the almost 75 per cent increase in the number of postal votes received at the 2007 election compared to the 2004 election was partly attributed to greater efforts by political parties to inform electors about the postal voting option;[19]
- Brand (Western Australia) — the 75 per cent increase in pre-poll voting was attributed to the presence of naval vessels, large numbers of fly-in fly-out mine workers and a changed preference of older electors to utilise pre-poll facilities rather than postal voting.[20]

7.38 State electoral authorities have attributed the increase in early voting to a number of different factors. The Western Australian Electoral Commission attributed the increase at the 2005 election to an increased awareness by electors of their eligibility for this form of voting, the timing of the election during the post-Christmas holiday period, the promotion of early voting (in person) in previous federal elections and increased usage by defence personnel prior to deployment to areas affected by the Boxing Day tsunami.[21]

7.39 The NSW Electoral Commission also pointed to growing pressures to accommodate demand for early voting:

> There is an increasing demand by electors to have more pre-poll voting options as getting to a polling place on election day can be difficult. There is also pressure from electors in regional and coastal locations for additional pre-poll voting facilities in towns on shopping or market days.[22]

7.40 There appears to be an 'accommodation' of increased demand for early voting in some jurisdictions to satisfy higher demand and to mitigate the impact of early voting on the counting of votes. In NSW, electors were permitted for the first time at the 2007 state election to make an oral declaration of their eligibility for pre-poll voting, which, according to the NSW Electoral Commission, helped to speed up the voting process for electors and election officials. The NSW Electoral Commission is planning for further increases in pre-poll voting in the 2011 NSW election.[23]

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19 Wight D, Australian Electoral Commission, transcript, 11 August 2008, p 8; Australian Electoral Commission, submission 169.7, p 4.

20 Hon Gary Gray AO MP, Member for Brand, transcript, 25 November 2008, p 1.

21 Western Australian Electoral Commission, 2005 State General Election: Election Report, p 17.

22 Electoral Commission NSW, *Report on the 2007 State Election* (2007), p 30.

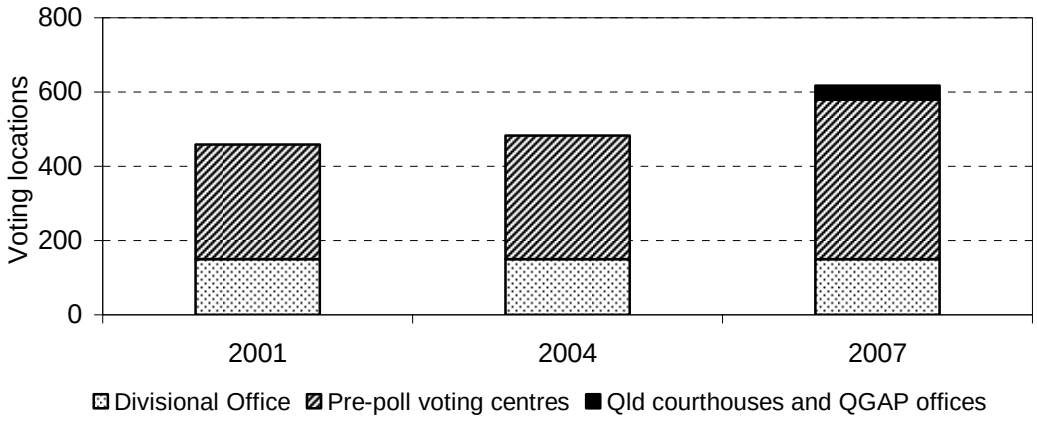
23 NSW Parliament Joint Standing Committee on Electoral Matters, *Administration of the 2007 NSW election and related matters* (2008), p 20.

7.41 Victoria, Tasmania and the ACT have adapted to increased numbers of pre-poll votes by accepting pre-poll votes as ordinary votes. In the remaining jurisdictions a pre-poll vote is cast as a declaration vote.[24]

Responding to the increase in early voting

7.42 The AEC have largely sought to accommodate demand for early voting by increasing the number of pre-poll voting centres at recent elections (figure 7.5).

Figure 7.5 Number of pre-poll voting centres, by type, 2001 to 2007 elections



Source *Australian Electoral Commission submission 169.1, Annex 7, p 136–144.*

7.43 The location of pre-poll voting centres is also important. Additional pre-poll voting centres in recent years have tended to target high traffic areas such as shopping centres and airports, thereby increasing the visibility and opportunity for electors to take advantage of early voting arrangements. For example, at the 2007 federal election the AEC operated pre-poll voting centres at domestic and international airports in Adelaide and Perth, with the number of votes taken at each centre 1,898 and 6,071 respectively.[25] The AEC noted that the number of pre-poll votes taken at the Perth domestic terminal, with 4,529 early votes issued in 2007, was more than double the 2,001 votes lodged in 2004.[26]

24 Australian Electoral Commission, submission 169.1, Annex 5, pp 79-80.

25 Australian Electoral Commission, submission 169.1, p 48; Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 4.

26 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 4.

7.44 The largest increase in the number of pre-poll voting centres occurred in Queensland, with the AEC utilising 39 courthouses and Queensland Government offices as pre-poll voting centres.[27] The use of these facilities was in response to a recommendation of the committee's review of the 2004 election to overcome some of the issues associated with postal voting and to use facilities that are also used as pre-poll centres for state elections.[28]

7.45 The AEC noted that the choice of pre-poll voting locations and operations had a number of features including:

- where possible, early voting centres were located in areas serviced by public transport. In many circumstances this meant early voting centres were located in or near a shopping complex;
- consistent opening days and hours were implemented whenever possible and appropriate. Early voting centres located in shopping complexes often had extended opening hours to align with the opening hours of the complex; and
- advertising and signage of and for early voting centres was improved.[29]

7.46 In particular circumstances, the Commonwealth Electoral Act also allows the AEC to appoint mobile polling teams to visit electors in prisons, 'special hospitals' and in remote divisions.[30] Mobile polling teams issue ordinary, pre-poll as well as absent or provisional votes. At the 2007 election, the AEC established 446 special hospital mobile polling teams, 25 prison mobile teams and 391 remote mobile polling locations were visited, similar to the efforts made at the 2004 election.[31]

Impact of the trend to early voting

7.47 The trend to early voting now sees almost one in five electors casting their vote before polling day. Such a decisive move away from 'ordinary' voting has implications for the level of resourcing required to run elections, count votes, and also impacts on the nature of campaigning.

27 Australian Electoral Commission, submission 169, p 30.

28 Joint Standing Committee on Electoral Matters, *The 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, pp 238–240.

29 Australian Electoral Commission, submission 169, p 30–31.

30 Australian Electoral Commission, submission 169, p 52.

31 Australian Electoral Commission, submission 169, p 52.

7.48 The trend to increased declaration voting (two-thirds of which are pre-poll and ordinary votes) has a number of consequences for counting processes, mostly influenced by the complexity and time consuming nature of the declaration vote scrutiny (as set out in schedule 3 of the Commonwealth Electoral Act).[32] The AEC noted that:

> The counting of ordinary votes at polling places is a relatively straightforward process, which is undertaken on election night with the involvement of the large number of polling officials (around 70,000 at the 2007 election) who have been employed for the day. Declaration vote scrutinies are time consuming. The preliminary scrutiny of declaration votes has to be managed by AEC divisional office staff, supplemented by experienced casual employees, over the 13 day period following polling day. It should be noted that once a declaration vote has gone through preliminary scrutiny the ballot papers are still required to go through the normal count and fresh scrutiny processes. The need to process increasing numbers of votes in such a way has direct cost and timeliness implications.
>
> The increasing use of declaration voting, and the corresponding reduction in the number of votes which can be counted on election night, increases the probability that in a close election, the result will not become clear for several days, possibly later in the first week after polling day after the declaration vote exchange has been completed. [33]

7.49 For political parties and candidates, the trend to early voting has an impact on the nature of campaigning, with parties and candidates seeing a need to provide how to vote information at pre-poll centres or through direct mail to prospective postal voters.[34] Any changes to address the impact of the early voting trend on the AEC needs also to consider the impact on campaign activities.

7.50 The AEC suggested that the traditional aspects of attendance voting, with Australians voting together on the Saturday and seeing the count come in later that evening are an 'historical part of Australian elections'.[35] However, the AEC also pointed to the risk of 'frustrating and

32 Australian Electoral Commission, submission 169, p 40.

33 Australian Electoral Commission, submission 169, p 40.

34 Hon Gary Gray AO MP, Member for Brand, submission 144, p 1; The Nationals, submission 145, p 4.

35 Australian Electoral Commission, submission 169, p 42.

disenfranchising Australian electors if due attention is not paid to their preference for convenient voting options'.[36]

7.51 Suggestions put forward by the AEC to previous election inquiries in relation to addressing the trend to early voting have included:

- Changing the postal vote application form so that the applicant must tick off the reason why the applicant requires a postal vote from a list of permitted reasons (1998 election review);[37]
- Pre-poll votes cast in the electors home division to be considered as an ordinary vote rather than a declaration vote (1993, 1996, 1998, 2001 and 2004 election reviews);[38] and
- Allowing scrutineers to be present at pre-poll voting centres (2001);[39]

7.52 For this inquiry, the AEC considered that three options should be considered:

- Parliament can accept that there now exist two normal forms of voting and implement an effective and efficient way of administering this within the electoral system — This would require an acknowledgement that early voting is a 'normal' form of voting and the allocation of appropriate resources to respond to the demands of electors. One way of improving efficiency in the declaration vote process under this option is to issue pre-poll votes cast in the elector's home division as ordinary votes;
- Parliament may decide that the shift to early voting has increased to unacceptable levels, and that such a shift is not desirable in the Australian electoral system — If this were the case, the Commonwealth Electoral Act would need to be amended to define the evidence which voters would have to produce to establish their eligibility for an early vote in terms of schedule 2 to the Commonwealth Electoral Act, and to empower the relevant polling officials to refuse to issue a vote. The

36 Australian Electoral Commission, submission 169, p 42.

37 Joint Standing Committee on Electoral Matters, *The 1998 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2000), Commonwealth of Australia, p 48.

38 Joint Standing Committee on Electoral Matters, *The 1998 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2000), Commonwealth of Australia, p 49; *The 2001 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2003), Commonwealth of Australia, p 158;

39 Joint Standing Committee on Electoral Matters, *The 2001 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2003), Commonwealth of Australia, pp 158–159.

AEC note that such an approach would 'represent a major deviation from past practice in living memory'; or

- Do nothing — In the AEC's view, adopting a 'no change' strategy would see the voting system become 'outdated and inefficient'. The AEC notes that 'In a close election with a large number of declaration votes, Australia could experience a situation where the result of the election is not known for over a week after polling day due to the extra time taken for the count.'[40]

7.53 Previous Joint Standing Committees on Electoral Matters have generally placed a high value on attendance voting and considered that early voting opportunities should be restricted to electors who genuinely qualify for such a vote under schedule 2 of the Electoral Act.[41]

7.54 In its 1996 election report, the Joint Standing Committee on Electoral Matters endorsed the view expressed by the previous committee that pre-poll home division votes be considered as an ordinary vote 'would encourage and endorse the trend towards an ever-increasing proportion of the vote being cast before polling day'.[42] In its 2001 election report, the committee reiterated this position, noting that:

> In general, an ordinary vote should only be available to an elector when voting in their home division on election day. This committee has received no evidence in this inquiry warranting a change in this position.[43]

Committee conclusion

7.55 The committee has re-examined the comments made by previous Joint Standing Committees on Electoral Matters and the comments by the AEC to the committee following the 2007 election.

7.56 The committee considers that a 'do nothing' approach for early voting is not sustainable into the longer term, with ever increasing numbers of early

40 Australian Electoral Commission, submission 169, pp 41–42.

41 Joint Standing Committee on Electoral Matters, *The 1996 federal election: Report of the inquiry into the conduct of the 1996 federal election and matters related thereto* (1997), Commonwealth of Australia, p 54.

42 Joint Standing Committee on Electoral Matters, *The 1996 federal election: Report of the inquiry into the conduct of the 1996 federal election and matters related thereto* (1997), Commonwealth of Australia, p 54.

43 Joint Standing Committee on Electoral Matters, *The 2001 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2003), Commonwealth of Australia, p 158

votes impacting on the speed of the count with the ultimate outcome that election results will be delayed with uncertainty over election results inevitably creating frustration for electors and candidates.

7.57 Attendance voting has been an important cultural element of Australian elections and gives electors an opportunity to participate in a community activity that is fundamental to our way of life. However, the committee agrees with the AEC that there is a real risk of frustrating and disenfranchising electors who are now used to and expect, a range of convenient voting options.

7.58 The committee's preferred approach therefore is to embrace the trend to increased early voting. The committee considers that a range of measures should be adopted that will have the effect of making it easier for electors to take advantage of early voting but at the same time allowing the AEC to conduct the counting of votes in a more cost effective and timely manner.

7.59 Action is also required to ensure that political parties and candidates have appropriate access to pre-poll centres to provide information to electors using these facilities to cast their votes.

Home division pre-poll votes as ordinary votes

7.60 As noted above, the AEC has long argued that a pre-poll votes cast in an elector's home division should be cast as an ordinary vote rather than a declaration vote.

7.61 At the 2007 election, around 38 per cent of declaration votes were pre-poll votes. Of these, home division pre-poll votes made up 60 per cent of all pre-poll votes — accounting for 5 per cent of all votes cast at the 2007 election.[44]

7.62 Under the AEC's proposal, pre-poll votes would be issued as ordinary votes for electors voting at a divisional office or early voting centre located within the division for which they are enrolled. The AEC described how such a system would operate in practice:

> Provided the elector's name was found on the certified list for the home division, it would be marked off as in an ordinary polling place and he or she would be issued with ballot papers. The completed ballot papers would be placed in a ballot box. They would not be placed in a declaration envelope.

44 Australian Electoral Commission, submission 169, p 43.

> For electors whose names could not be found on the certified list, and for electors voting at a divisional office or early voting centre located in a division other than the division for which they are enrolled, pre-poll votes would continue to be issued as declaration votes as per the existing process.
>
> At the close of each day, the ballot boxes remain sealed and all votes issued reconciled. While declaration votes, including pre-poll votes from other divisions, would still go through the preliminary scrutiny process, ordinary pre-poll votes could begin to be counted after 6 p.m. on polling day.[45]

7.63 The AEC considered that there were four advantages associated with such a change relating to timeliness of the election result, reducing delays in the preliminary scrutiny, reduction in administrative load and that such an approach has already been adopted in a number of jurisdictions. The AEC noted that:

> At the 2007 election approximately 80 per cent of votes were counted after 6 p.m on polling day. If home pre-poll votes were counted as ordinary votes, then more than 85 per cent of the vote would have been counted after 6 p.m. on polling day at the 2007 election. This obviously would have resulted in a larger number of votes being counted on election night and included in the reported results, and might have resulted in the public knowing the outcome of a number of close seats on election night.
>
> A second advantage associated with ordinary pre-poll votes in home divisions is the fact an elector would be immediately marked off the certified list of voters for his or her home division. The consequence of this is a reduction in the time delay associated with processing declaration votes through the preliminary scrutiny to verify eligibility.
>
> A third advantage of ordinary pre-poll votes in home divisions is a reduction in the administrative load and the costs associated with the issuing, sorting and collating of declaration votes.
>
> A further advantage is that the AEC can already be confident of successful implementation of ordinary pre-poll voting in home divisions. Issuing ordinary votes before polling day is already being successfully implemented at the federal level under the CEA in relation to mobile polling. Additionally, the practice of issuing home pre-polls as ordinary votes has successfully been in use at

45 Australian Electoral Commission, submission 169, pp 43–44.

> the state and territory level for many years. For example, Victoria introduced pre-poll ordinary voting at the 1996 Victorian state election. The result was a significant reduction in the number of declaration votes issued, the faster finalisation of election results, resource savings and reduced staff expenditure. Queensland, Tasmania, the Northern Territory and the Australian Capital Territory have also adopted this practice.[46]

7.64 All of the major political parties participating in this inquiry gave broad in-principle support for the AEC's proposal for home division pre-poll votes to be issued as ordinary votes.[47] The Liberal Party of Australia noted that:

> A long standing anomaly of our current electoral system is the delay in the counting of pre-poll votes. The Liberal Party would support any review of the current arrangements and, in particular, any proposal that would change the arrangements for pre-poll votes so that these votes are counted on the evening of election day, when ordinary votes are counted, and not left until following days. This is a simple and straight-forward change which would assist in getting a speedier outcome in seats with close results.[48]

7.65 Such a change would involve the same standards of integrity of the pre-poll voting process as currently applies for pre-poll votes, with the existing checks and adequate records retained. While some jurisdictions, including Victoria and the ACT allow electors to make an oral declaration that they are entitled to a pre-poll vote, the system favoured by the committee retains a requirement that electors casting a home division pre-poll vote sign a declaration that they are entitled to cast a pre-poll vote.

7.66 A complementary change to issuing home division pre-poll votes as ordinary votes is to broaden eligibility for pre-poll and postal voting to include electors who will, or expect to be absent from their home division on election day. Under current arrangements, an elector is not eligible to cast an early vote if they are out of their division on election day but within eight kilometres of any polling booth in the state or territory for which they are enrolled.[49] Without such a change, relatively large numbers of electors cast absent votes on election day in divisions adjoining their home division, rather than being eligible to cast a pre-poll or postal vote.

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46 Australian Electoral Commission, submission 169, p 44.

47 Bitar C, ALP National Secretariat, transcript, 11 November 2008, p 17; Liberal Party of Australia, submission 156, p 6; Henderson B, The Nationals, transcript, 3 February 2009, p 14.

48 Liberal Party of Australia, submission 156, p 6.

49 *Commonwealth Electoral Act 1918*, schedule 2, s 2.

7.67 An example of the effect of delays associated with the current arrangements was provided by a former AEC Divisional Returning Officer, Mr Ivan Freys:

> You should note the only difference between an absent vote and an early vote (pre-poll) is the colour of the envelope.
>
> At present, for example, when a family from Sydney is holidaying in Byron Bay NSW, and they vote absentee there; their votes are first reconciled, amalgamated and balanced at the end of the night in the polling place before being sent to the Division of Richmond, at Tweed Heads, to be amalgamated with all other absentee, postal and pre-poll votes, again reconciled, balanced and then forwarded by air to Sydney.
>
> They will reach the Sydney exchange centre on either Monday or Tuesday morning where they will again be reconciled and amalgamated this time with all the other declaration votes from around Australia for distribution to the enrolled Division/s. These Divisions will receive those votes on Wednesday afternoon or early Thursday morning, when they will once again have to be reconciled before they can be sorted into alphabetical order, marked off the electoral rolls in preparation to be opened and counted. It would now be Thursday afternoon or Friday morning before the first votes could be opened, counted and added to the tally. All in all a hideously complex, repetitive, expensive and time intensive exercise.
>
> Instead, if the vote was taken earlier in the home Division's early voting (pre-poll) centre, the vote would have been returned to the Divisional office and stored until the week prior to polling day where the votes received could be checked against the electoral rolls and if enrolled, marked off, ready to be opened and counted on the Sunday after polling day. Around a full week earlier than if the elector voted as an absentee voter anywhere else in their home State.
>
> This anomaly applies even if the declaration vote was taken only one kilometre outside the home Division. Only in co-located Divisions could the local Divisional Returning Officers swap declaration votes between themselves, on the Sunday after polling day, to save this delay.[50]

50 Freys I, submission 112, p 2.

7.68 Relaxing the grounds of application for a postal or pre-poll vote also received general support from the major political parties.[51] The ALP National Secretariat noted that:

> I would support a move like that because, again, it gives people more options to get their vote in and get their vote counted. Look at things like Sydney Town Hall. Thousands of people work in the CBD every day, but they cannot vote by pre-poll; they have to wait till the day and then vote absentee. That would solve an issue like that, or help.[52]

7.69 In relation to eligibility to cast an early vote, groups representing homeless electors considered that schedule 2 of the Commonwealth Electoral Act should be amended so that the grounds for casting an early vote should be expanded to include a fear for personal safety.[53] Homelessness Australia noted that:

> Persons escaping from domestic violence may be unwilling to attend polling places due to the risk of being identified, found by their attackers, or being at risk of further harm. This issue is of particular concern in rural or remote areas where there may be only one reasonably accessible location available for polling.[54]

Committee conclusion

7.70 Almost 2 million votes were cast before polling day at the 2007 election, with one in five voters taking advantage of increased opportunities, to cast a pre-poll or postal vote. Added to these were another 1 million absent or provisional votes that were cast in declaration envelopes, requiring additional scrutiny before being admitted to the election count.

7.71 A significant implication of the trend to increased numbers of early and declaration votes is the extra time taken for the election result to become clear as the AEC undertakes the additional scrutiny processes required. It is also more resource intensive for the AEC to conduct the count.

7.72 The committee supports the AEC's proposals to ameliorate these effects by issuing home division pre-poll votes, which account for around 60 per

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51 Bitar C, Australian Labor Party National Secretariat, transcript 11 November 2008, p 17; Henderson B, The Nationals, transcript, 3 February 2009, p 14; Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, pp 11–12.

52 Bitar C, Australian Labor Party National Secretariat, transcript 11 November 2008, p 17.

53 Homlessness Australia, submission 34, p 5; Homelessness NSW, submission 131, p 3.

54 Homlessness Australia, submission 34, p 5.

cent of all pre-poll votes, as ordinary votes. This would allow a significant number of extra votes to be counted on election night.

7.73 Electors who cast such votes should be required to sign a declaration that can be kept for evidentiary purposes — in a similar manner to the standards of integrity that are applied to declaration votes. Such an approach will ensure that the same high standard of integrity will continue to apply to votes previously cast as home division pre-poll votes as under the existing declaration voting arrangements.

Recommendation 22

7.74 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow pre-poll votes cast at a pre-poll voting centre in an elector's home division prior to polling day to be cast as ordinary votes, wherever practicable.**

Recommendation 23

7.75 **The committee recommends that, in order to ensure a continuing high standard of integrity applies to votes cast as home division pre-poll votes, electors who cast ordinary votes at pre-poll voting centres should still be required to sign a declaration at the time of voting, indicating that they are entitled to a pre-poll vote. A record of such declarations is to be kept by the Australian Electoral Commission for evidentiary purposes.**

Recommendation 24

7.76 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require pre-poll votes cast as ordinary votes in an elector's home division prior to polling day to be counted on polling night in the same manner as ordinary votes cast in polling places on polling day, wherever practicable.**

7.77 The committee considers that a complementary change would be to broaden eligibility for an early vote to include an elector being absent from their home division on election day. With thousands of absent votes

being cast in divisions adjoining an elector's home division, such a change is likely to lead to a lower number of absent votes as electors who are unable to vote within their division on polling day, take up the opportunity to vote in a pre-poll centre.

7.78 The effect of such a change would be that votes previously cast as absent votes could be issued as ordinary home division pre-poll votes. There would be no change to the high standard of integrity that applies to these votes, with the committee recommending earlier that a signed declaration continue to be required.

Recommendation 25

7.79 **The committee recommends that schedule 2 of the *Commonwealth Electoral Act 1918* be amended to provide that being absent or expecting to be absent from an elector's home division on polling day be a valid ground of application for postal or pre-poll voting.**

The committee also considers that eligibility for an early vote should be broadened to allow electors who fear for their personal safety to be given a wider range of opportunities to cast their vote.

Recommendation 26

7.80 **The committee recommends that schedule 2 of the *Commonwealth Electoral Act 1918* be amended to allow fear for personal safety to be a ground for applying for pre-poll or postal votes.**

More timely preliminary scrutiny of declaration votes

7.81 The committee notes that the Commonwealth Electoral Act already includes provisions allowing the preliminary scrutiny of certain declaration votes to be conducted in the five working days prior to polling day.[55] If the committee's recommendation in relation to allowing home division pre-poll votes to be cast as ordinary votes is implemented, one further effect will be to 'free up' some AEC resources by removing the

55 *Commonwealth Electoral Act 1918*, s 266.

preliminary scrutiny requirements from around 60 per cent of pre-poll votes.

7.82 This should provide an opportunity for the AEC to conduct more timely preliminary scrutinies of those pre-poll and postal votes on hand in divisional offices in the days prior to election day.

7.83 The Federal Director of the Liberal Party of Australia supported such a proposal, noting that:

> We would be open to that. I just do not think that this whole area has been looked at for many years. I guess it is probably an issue of resources in part, but we believe that it is something that can and should be looked at.[56]

Committee conclusion

7.84 The committee considers that, wherever possible, the AEC should conduct as much of the preliminary scrutiny of pre-poll and postal votes received in home divisions before polling day as possible, prior to polling day, in order to increase the number of early votes counted in a timely manner following the close of the polls.

7.85 Such a move should facilitate earlier counts for these votes and provide more timely information about the election result.

Recommendation 27

7.86 **The committee recommends that, where possible, the Australian Electoral Commission should, prior to polling day, conduct as much of the preliminary scrutiny of pre-poll and postal votes on hand in home divisions as is possible, in order to increase the number of early votes counted in a timely manner following the close of the polls.**

Expanding access to pre-poll voting opportunities

7.87 Another option to accommodate the trend for increased early voting is to expand access to pre-poll voting opportunities.

56 Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 11.

7.88 As noted in chapter 2, there were over 100 additional pre-poll voting centres in Queensland at the 2007 election, with the AEC utilising courthouses, Queensland Government Agencies and other locations throughout rural and regional Queensland.[57]

7.89 The Australian Labor Party National Secretariat considered that there should be greater access to pre-poll facilities, including an expansion in numbers and placement in high traffic locations:

> … The ALP believes [the committee] should examine the potential for broadening the scope of the current legislative provisions relating to pre-poll, so that a greater number of people can access it. The ALP believes that with increasing work and family commitments, work travel and mobility, pre-poll has become an important avenue for ensuring every voter is able to exercise a vote.
>
> Concurrent with this, the ALP believes the figures from the 2007 election reinforce our previous calls for more pre-poll voting venues, in more accessible locations. This should include prominent shopping centres and JSCEM should investigate any legislative impediments which prevent the AEC being able to access the most public venues available. The ALP believes this would cut down the number of voters registering for a postal vote, keeping the administrative processes, and the potential for errors, to a minimum.[58]

7.90 The Federal Director of the Liberal Party of Australia also expressed support for an expansion of pre-poll facilities where appropriate, to meet increased demand.[59]

Committee conclusion

7.91 The committee supports these views and considers that the AEC needs to meet the likely increased demand for early voting at future elections. This may not necessarily involve expanding the number of pre-poll voting centres, but by choosing the most appropriate locations, being flexible with opening and closing times at pre-poll centres and providing sufficient staffing to allow electors to cast an early vote without incurring any significant delays when doing so.

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57 Australian Electoral Commission, submission 169, p 30.

58 ALP National Secretariat, submission 159, p 2.

59 ALP National Secretariat, submission 159, p 2; Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 11.

Mobile polling flexibility

7.92 There are two main areas where there are opportunities for mobile polling to be conducted on a more flexible basis to facilitate more appropriate mobile polling and other voting services to electors.

Mine workers

7.93 In advance of the election, the AEC contacted the management of various mining companies to offer the range of voting services best suited to the voting needs of miners. The AEC noted that the companies were, in the main, reluctant to agree to mobile or static voting services being provided on mining sites. Services included emailing and ringing mine sites to inform them of the voting services that were available, postal vote applications were sent to mine management to distribute to mining staff and applications were delivered to some mine sites along with AEC boxes to collect the completed applications.[60]

7.94 Notwithstanding these efforts, providing polling services to mine workers in Western Australia was a challenge for the AEC. The AEC's Western Australian State Manager told the committee:

> It is true to say that that did represent a challenge. The occupational health and safety requirements that the mining operators apply for people to actually be on site did limit our ability to provide mobile polling services to remote mine sites.
>
> In a number of cases we approached mining companies, and in some cases it was possible to visit and conduct, with our mobile polling program. In one particular case the mining company had initially agreed to allow mobile polling on site, and then in the interim had reversed that decision, and at fairly short notice we then had to try and arrange for postal voting or alternative arrangements.[61]

7.95 The number of mining sites in Western Australia is in the order of 30 to 50 sites, with some having several hundred employees on site. Where mobile polling arrangements were possible and were considered by the AEC to be the most appropriate voting strategy, the AEC considered that it needed to be better informed about relevant site access requirements, including

60 Australian Electoral Commission, submission 169, pp 54–55.

61 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, pp 6–7.

occupational health and safety inductions and mandatory drug and alcohol testing requirements.[62]

7.96 The AEC advised the committee that they would be looking at implementing different arrangements to cater for workers at such sites at future elections, which may include it considering furthering the provision of pre-poll voting centres at airports to service fly-in fly-out miners.[63]

Special hospitals

7.97 Another category of mobile polling conducted by the AEC is 'special hospital' mobile polling. Under the Commonwealth Electoral Act, special hospital mobile polling may only take place in the five days prior to, and on, election day. Special hospital mobile polling is limited to those institutions that can be declared as special hospitals, such as 'convalescent home or an institution similar to a hospital or convalescent homes'.[64]

7.98 At the 2007 election, almost 70,000 electors cast their votes with special hospital mobile polling teams (table 7.5).

Table 7.5 Special hospital voting, by jurisdiction, 2007 election

State	Declaration	Ordinary	Total
New South Wales	2,869	14,170	17,039
Victoria	4,037	16,907	20,944
Queensland	1,919	9,829	11,748
Western Australia	1,708	6,432	8,140
South Australia	1,646	6,214	7,860
Tasmania	280	2,601	2,881
Australian Capital Territory	75	549	624
Northern Territory	91	262	353
Total	12,625	56,964	69,589

Source *Australian Electoral Commission, submission 169, p 55.*

7.99 The AEC proposed two changes regarding special hospital mobile polling:

- any definition of a hospital or special hospital should instead make reference to the *Aged Care Act 1997*; and

62 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 7.

63 Nagle C, Australian Electoral Commission, transcript, 21 August 2008, p 7.

64 *Commonwealth Electoral Act 1918*, ss 4 and 225.

- mobile polling should be able to begin 12 days before polling day rather than the current five days.[65]

7.100 The AEC considered that the notion of a 'convalescent home' was outdated and that the definition of a special hospital required the AEC to treat people differently even where they were resident in the same facility.[66] The AEC noted that:

> There are a number of large aged care institutions in Australia where a varied level of care is provided. For example, the same institution may encompass both high-level care units eligible for special hospital status under the CEA, and independent living units. Some institutions may also offer a high level of care to certain residents even though they are not resident in what would traditionally be categorised as a "convalescent home". In these institutions, the AEC can take votes from those residents in the dedicated high care unit, but not from residents of the same institution who live independently, or from staff, even though the AEC is already on the premises.
>
> This inconsistency is emphasised by state arrangements. For example, the Victorian Electoral Commission undertook mobile polling at independent living facilities for the 2006 state election, but those same electors could not vote with mobile polling teams for the federal election. In addition, there are cases where a person is assessed as requiring a high level of care and his or her partner is residing at the same aged care institution but does not receive such care. The AEC considers that in this situation, both the resident and the partner should be able to vote at the same time at the same location.[67]

7.101 The committee notes that the type of facilities referred to by the AEC, would include those specified in s. 41(3) of the *Aged Care Act 1997* under the definition of 'residential care'. Inclusion of such facilites would allow mobile polling to be conducted in residential aged care facilities and hostels:

> Residential care is personal care or nursing care, or both personal care and nursing care, that:
>
> - is provided to a person in a residential facility in which the person is also provided with accommodation that includes:

65 Australian Electoral Commission, submission 169, p 56.

66 Australian Electoral Commission, submission 169, p 56.

67 Australian Electoral Commission, submission 169, p 56.

- ⇒ appropriate staffing to meet the nursing and personal care needs of the person;
- ⇒ meals and cleaning services; and
- ⇒ furnishings, furniture and equipment for the provision of that care and accommodation; and

- meets any other requirements specified in the Residential Care Subsidy Principles.

However, residential care does not include any of the following:

- care provided to a person in the person's private home;
- care provided in a hospital or in a psychiatric facility;
- care provided in a facility that primarily provides care to people who are not frail and aged;
- care that is specified in the Residential Care Subsidy Principles not to be residential care.[68]

7.102 In relation to the AEC's proposal to extend mobile polling from five days to 12 days before polling day, the chief reason put forward for such a change was to provide for a period that is consistent with that for remote mobile polling.[69] The AEC noted that:

> The CEA states that special hospital mobile polling can occur in the five days preceding, and on, polling day. In comparison, remote mobile polling can begin twelve days before polling day. The AEC sees no advantage in retaining the discrepancy in time frames and considers that they should be consistent at twelve days. The ageing demographic of Australian society will necessitate an increase in the number of aged care facilities visited and the number of votes taken at the facilities in future elections.
>
> The need to extend the number of days available to mobile poll at special hospitals is exacerbated in geographically large divisions. The AEC believes that in future elections the tyranny of distance with an increasingly ageing population will mean that some electors may miss out on casting their vote if the number of days available to conduct mobile polling is not increased. Increasing the time to provide these services to twelve days will allow for a more comprehensive service for affected electors at future elections.[70]

7.103 The AEC also suggested that where elderly people vote using mobile polling at aged care facilities, that the AEC could provide those electors

68 *Aged Care Act 1997*, s 41-3.

69 Australian Electoral Commission, submission 169, p 56.

70 Australian Electoral Commission, submission 169, p 56.

with some form of thankyou letter that the electors could retain to indicate that they had voted with the mobile polling team.[71] The AEC noted that:

> At the 2007 election nearly 70,000 electors voted via special hospital teams. Whilst the majority of these electors only voted once, there is always the potential in these situations for confusion. This potential may well increase if the AEC's proposal to lift the restrictions imposed by the current definition of special hospitals in the Electoral Act is viewed favourably by the Committee.
>
> Accordingly, the AEC would be prepared to consider the production of some form of advice (for example a small 'thank you' card) for provision to the aged elector at the time of voting, indicating to the patient and to family and visitors of those patients that they had already voted.[72]

Committee conclusion

7.104 The committee considers that additional flexibility should be introduced into mobile polling arrangements to allow the AEC to provide better services to electors in certain circumstances. The committee's recommendation in relation to how mobile polling can be applied to homeless and Indigenous electors (see chapter 6), is equally applicable to special hospital mobile polling as well as instances where the AEC considers that mobile polling is an appropriate strategy to service voting needs, such as at major sporting and other social events that coincide with an election period.

7.105 In relation to mobile polling and other polling services targeting mine workers, the committee endorses the AEC proposal for a range of improvements to provide better services to these electors.

Recommendation 28

7.106 **The committee recommends that the Australian Electoral Commission implement its proposed mobile polling and other election services to cater for mine workers in Western Australia for future elections. Such arrangements should also be provided in other states with a large number of mine workers such as Queensland and South Australia.**

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71 Killesteyn E, Australian Electoral Commission, transcript, 17 March 2009, p 14.

72 Australian Electoral Commission, submission 169.17, p 16.

7.107 In relation to special hospital mobile polling services, the committee agrees with the AEC that, with the ageing population and subsequent increase in the number of electors in aged care institutions, additional flexibility should be provided, including amending the definition of 'hospital' and 'special hospital' to reflect the types of facilities covered by s 41-3 of the *Aged Care Act 1997*. In addition, the committee agrees that the time period for conducting mobile polling at special hospitals should be extended from five days before polling day to twelve days before polling day.

7.108 Consistent with the committee's view that 'convenience' voting should not generally be discouraged; the committee considers that staff working in residential aged care facilities should also be able to cast a vote at the mobile polling facility.

Recommendation 29

7.109 **The committee recommends that the definition of 'hospital' and 'special hospital' in the *Commonwealth Electoral Act 1918* be amended to reflect the current definitions of aged care under the *Aged Care Act 1997*, and that any person residing or working in a residential aged care facility, including staff, should be able to vote at the mobile polling facility.**

Recommendation 30

7.110 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to extend the period during which special hospital mobile polling may be conducted, to 12 days before polling day.**

7.111 The committee also agrees with the AEC's suggestion that in order to reduce confusion about whether an elector has already voted at an election and to reduce the number of instances where electors vote more than once, that the presiding officer of the team provide patients or residents of hospitals or special hospitals who have voted with that mobile polling team with a receipt or letter, to indicate that they have, on that date, cast a vote with that mobile polling team.

Recommendation 31

7.112 **In order to mitigate against possible accidental multiple voting, the committee recommends that the presiding officer of a mobile polling team be required to provide patients and residents of hospitals or special hospitals who vote with that mobile polling team, with a receipt or letter to indicate that they have, on that date, cast a vote with that mobile polling team.**

Pre-poll voting at shopping centres

7.113 Several inquiry participants raised concerns regarding restrictions which made it impossible for party workers to conduct campaign activities around pre-poll voting centres, particularly those located in high traffic areas such as shopping centres.

7.114 The importance of and need for such pre-poll centres is highlighted by the experience of a pre-poll centre sited at a busy shopping centre in Hobart, Tasmania, which experienced a dramatic increase in the number of pre-poll votes issued at the 2007 election compared to the 2004 election. At this centre, the AEC reported there were no issues experienced with parties being able to provide how-to-vote cards, with a table set aside within the centre for electors to pick up the required information.[73]

7.115 In Western Australia, the Hon Gary Gray AO MP considered that there were instances where campaign activity was restricted at certain pre-poll voting centres, which had a negative impact on parties' and candidates' ability to provide information to electors:

> We can expect well over 1.2 million votes at the 2010 election to be early votes. That also means that in order for our elections to work as, culturally, we are used to them working, the handing out of a how-to-vote at a polling station or a polling location is an understood part of that practice, but of the 15 federal divisions in Western Australia, in two of them it is not possible to be present to hand out a how-to-vote. It is my belief that when the Australian Electoral Commission writes its leases with shopping centres, it should pay due attention to the need for all sides of politics—this is not a Labor Party thing, it is not Liberal Party thing, it is not Australian Greens thing; it is my contention that, if you have taken the time and the trouble to be a candidate for election, you have a

73 Neilson M, Australian Electoral Commission, transcript, 12 August 2008, p 27.

> right to turn up at every polling location and hand out your how-to-vote material to advocate for your vote. There are significant electorates where that is not possible and where that is made not possible because of corporate policies of the landlord. I do not think that is fair.[74]

7.116 Similar concerns were raised by the Federal Director of the Liberal Party of Australia:

> One of the reasons why I emphasised the importance of the continuing process of communication between the AEC and the political parties is to make sure that there is a commonality of interpretation of relevant bylaws and other requirements from polling booth to polling booth on election day, but also from pre-poll centre to pre-poll centre. Whether everyone likes it or not, it is a characteristic of Australian elections that people do have available a how-to-vote card when they go in to vote. Given the nature of our voting system, the preferential nature and how important to the integrity of the electoral system and to avoiding informal votes how-to-vote cards are, I believe it is important that the political parties are able to provide the opportunity for people to have access to a how-to-vote card if they wish to take it, including in pre-poll centres.[75]

7.117 In response to the issues raised by the Hon Gary Gray AO MP, the Shopping Centre Council of Australia considered that whilst shopping centre owners appreciate the desire of candidates to gain access to the crowds that shopping centres generate, the primary obligation of a shopping centre owner must be to the centre's retailers and to the customers of the centres.[76] The Council noted that:

> It can be difficult to balance the owner's obligations to their retailers and customers with the desire to assist the democratic process but most shopping centre owners exercise commonsense in responding to requests for access. Where bans or limitations on political campaigning have been imposed it is usually because such activity has been found to be too disruptive for retailers and too intrusive for customers.
>
> Many shopping centre owners have developed specific policies on access to their centres to ensure consistency of treatment. Other

74 Hon Gary Gray AO MP, Member for Brand, transcript, 25 November 2008, p 2.

75 Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 12.

76 Shopping Centre Council of Australia, submission 185, p 1.

> owners make decisions on access on a case by case basis, taking into account the particular circumstances of the local area, the number of candidates, and the size and space available in the shopping centre itself. In some centres there may be local security issues that make political campaigning unwise while in others retailers may have indicated they do not like the disruptions to trading conditions that can be caused by election campaigning or other forms of political campaigning.[77]

7.118 Suggested changes proposed by the Hon Gary Gray AO MP to ameliorate concern over access by campaign workers and candidates to pre-poll voting centres were:

- that the Australian Electoral Commission should investigate, collaboration with major shopping centre owners and other interested parties, a voluntary set of guidelines which ensure access for appropriate electoral activity; and
- that it should also be a condition for AEC offices that the lease agreement allows campaign volunteers to distribute how-to-vote cards to pre-poll voters.[78]

Committee conclusion

7.119 The committee considers that while the AEC can face limited choices about the siting of pre-poll voting centres, every effort should be made to ensure that political parties and candidates have the opportunity to provide relevant information to electors. Where possible, the AEC should engage in discussions with shopping centre management aimed at facilitating campaign activity around pre-poll voting centres located within shopping centres and seek to formalise these arrangements before an election is announced so that political parties and candidates are aware of what activity will be permitted.

7.120 All other things being equal, the committee considers that the location of pre-poll voting centres should be based on maximising access for electors, with access by campaign workers and candidates an important, but, secondary consideration. However, wherever possible, the AEC should seek to formalise favourable arrangements with shopping centre management so that pre-poll voting centres continue to provide opportunities for campaign workers to distribute election information.

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77 Shopping Centre Council of Australia, submission 185, p 2.

78 Hon Gary Gray AO MP, Member for Brand, transcript, 25 November 2008, p 2.

7.121 That said, the committee recognises that, for a range of reasons, not all pre-poll facilities will be able to provide unlimited access for campaign workers. Where such access is not possible, the AEC should work with the political parties and candidates to find other solutions, such as providing a dedicated space at the entrance to such facilities where campaign workers may offer how to vote material or, alternately arrange for the provision of a table or counter where such material can be made available to electors.

Recommendation 32

7.122 **The committee recommends that where a pre-poll voting centre (which may be a Divisional Returning Office) is to be located within a shopping centre, the Australian Electoral Commission work with shopping centre management to arrange appropriate access by campaign workers during the times where voting is possible, including where appropriate, specifying a requirement as part of its lease arrangements, that provides full access for parties and candidates to conduct their how to vote activities. Where such an arrangement is not feasible, the Australian Electoral Commission should ensure that political parties and candidates are advised of the alternative arrangements to be put in place to allow how to vote material to be made available in these centres.**

Postal vote applications issued by political parties

7.123 The Commonwealth Electoral Act imposes a range of provisions regulating applications for postal voting, including the requirement to gazette 'approved forms' such as postal voting applications (PVAs) and that an application form 'must be physically attached to, or form part of, other written material issued by any person or organisation'.[79]

7.124 The AEC considered that it is now common practice for major political parties to undertake large-scale reproduction and distribution of their own version of the official PVA, and typically these applications are attached to campaign material. The AEC observed that while this practice began as a strategy in marginal seats, it has now spread to most divisions.[80]

79 *Commonwealth Electoral Act 1918*, s. 184AA.

80 Australian Electoral Commission, submission 169, p 35.

7.125 A number of inquiry participants considered that political parties and candidates should not be involved in the postal voting process, including either in directly mailing postal voting applications to electors or acting as an intermediary in returning completed postal voting application forms.[81] These objections were based on the privacy of information about electors, concerns about the independence of and public trust in the process, and delays in processing postal vote applications. The Australian Privacy Foundation told the committee that:

> It seems clear that the intention of the political parties is to capture the names and addresses of voters who make their application for a postal vote through them, in order that they can contact them later in the campaign,with material customised for postal voters. There is no information in the material that we have seen about the collection and use of the personal information by the political party concerned. In the case of the forms we have seen, the mailings run a serious risk of misleading electors into thinking they would be returning the forms directly to the relevant Electoral Commission.
>
> The collection of postal vote application information by the political parties feeds back into the compliance requirements on the Electoral Commissions. The Australian Electoral Commission is bound by IPP 2 to notify individuals of certain matters when collecting personal information, and the NSW Electoral Commission is subject to the similar provisions of IPP 3 (s.10 of the Privacy and Personal Information Protection Act 1998 (PPIPA)). The application forms themselves appear to be a standard form based on the ones issued by the Electoral Commissions and available from Post Offices. The forms themselves do not contain any privacy statement or information, and while the versions issued by the Commissions have some explanatory text attached, the party versions have only a crudely paraphrased version of this explanation, at best (there appear to be many local variations). To the extent that the Commissions give notice in association with the forms, it is surely misleading if it does not mention the collection and use of the information by the political parties en route to the Commissions, assuming that the Commissions are aware of the practice.[82]

81 Australian Privacy Commission, submission 58, pp 1–2; NSW Greens, submission 64, p 5; Electoral Reform Society (SA), submission 94, p 3; Jones E, submission 95, p 14; Getup!, submission 155, p 14.

82 Australian Privacy Commission, submission 58, pp 1–2.

7.126 The NSW Greens also considered that political parties should not have an 'intermediary' role:

> Currently many parties and candidates encourage voters to send applications for a postal vote to the candidate's campaign address.
>
> While it is appropriate that parties encourage voters to legitimately apply for a postal vote, the completed application forms should only be returned to the local returning officer. It should be illegal for parties and candidates to encourage voters to send a completed application to anyone other than the local Returning Officer. The current system causes delay for the voter and an extra administrative burden for the AEC when parties arrive with large bundles of accumulated applications close to the deadline for receipt of postal vote applications.
>
> Further, the current system is open to rorting, especially when information distributed to voters encouraging a postal vote is designed to appear as if it is official AEC material.[83]

7.127 The major political parties considered that they actually performed a valuable role in providing information to electors through the distribution of postal voting applications and information. The Liberal Party of Australia noted that:

> It is in some ways a convenience that is extended by the parties to the AEC. It does relieve them of some of the burden. I believe it is an essential and critical part of the scope of electioneering these days—that political parties continue to be allowed to participate in the postal vote application process. We would strongly reject any proposal or suggestion that that should change.[84]

The impact of 'party' postal voting applications

7.128 While the AEC recognised that political parties see the provision of party PVAs to electors as an important and well-established service and was not arguing for its removal, the AEC saw that the flow of these 'party PVAs' to the AEC via a local or party campaign office gave rise to a number of concerns.[85]

83 NSW Greens, submission 64, p 5.

84 Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 11.

85 Australian Electoral Commission, submission 169, p 35.

7.129 The AEC's chief concern was that the way the party materials are designed does not necessarily make it clear to electors that applications will be returned through party channels:

> Some materials have in the past been produced bearing the Commonwealth coat of arms; other materials have been accompanied by a reply paid envelope addressed to the Returning Officer, but with a post office box number of the party rather than the AEC.[86]

7.130 The potential for delays in the receipt of PVAs by the AEC following receipt and on-forwarding through political party offices was highlighted in statistics provided by the AEC when the date of the witness signature was compared to the date of receipt by the AEC (table 7.6).

Table 7.6 Period between witness signature and receipt by the AEC of postal voting applications, applications received between 5 November 2007 and including 22 November 2007 (inclusive)

	AEC	ALP	National	Liberal	Other
Same Day	28,186	1,377	355	1,303	324
1 day later	37,089	3,828	844	2,499	323
2 days later	28,534	5,204	976	4,364	242
3 days later	22,575	5,155	1,083	5,305	273
4 days later	17,770	4,886	1,046	6,380	287
5 days later	11,368	4,055	823	6,686	273
6 days later	6,638	3,531	623	5,748	175
7 days later	4,331	3,045	448	4,547	81
8 days later	2,485	1,956	226	3,007	73
9 days later	1,428	1,237	177	1,829	26
10 days later	1,155	1,080	128	1,535	29
11 days later	922	882	114	1,119	21
12 days later	743	694	87	846	34
13 days later	678	653	95	726	26
14 days later +	5,395	5,740	543	4,869	108
Total	169,297	43,323	7,568	50,763	2,295

Source *Australian Electoral Commission submission 169, p 37.*

7.131 To improve the timeliness of PVA returns, the AEC considered that the Commonwealth Electoral Act should be amended to require 'party' PVAs to be returned directly from the elector to the AEC.[87] The AEC proposed

86 Australian Electoral Commission, submission 169, p 35.

87 Australian Electoral Commission, submission 169, p 36.

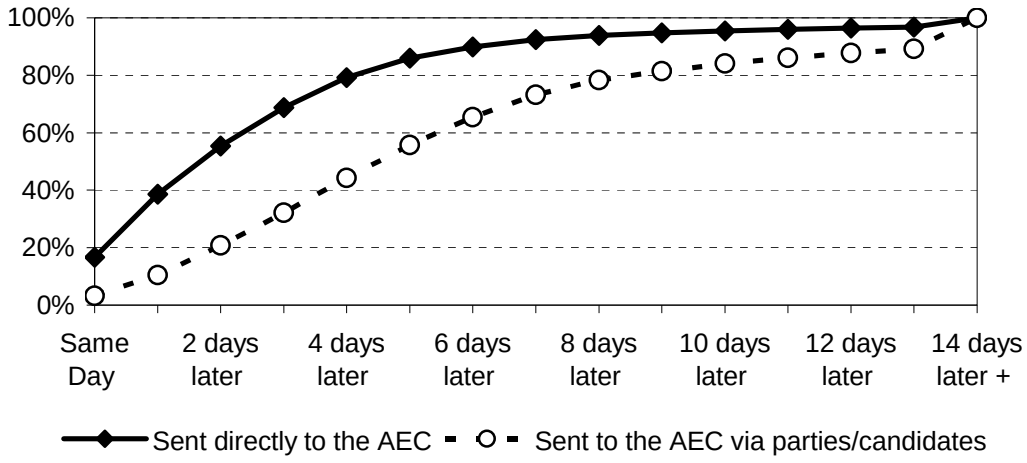
that an appropriate model on which such a provision could be based was subsection 143(2) of the *Electoral Act 1992 (ACT)*, which provides that:

> A person commits an offence if the person does anything to induce someone else:
>
> - To complete an application form for declaration voting papers for postal voting; and
> - To return the completed form to an address that is not an address authorised by the commissioner.[88]

Committee conclusion

7.132 While it may be true that there are delays in returning postal voting applications, those delays are relatively minor (figure 7.6). Such delays are not necessarily within the control of the political parties and may be influenced by other factors.

Figure 7.6 Cumilative share of postal vote applications received by the Australian Electoral Commission from date of witness signature to receipt, by source, 2007 election



Source *Australian Electoral Commission, submission 169, p 37.*

7.133 It is important that political parties return postal voting applications to the AEC in a timely manner. The committee notes that the Commonwealth Electoral Act imposes a penalty of $1,000 for failing to deliver a postal vote application 'as soon as practicable'.[89]

88 Australian Electoral Commission, submission 169.1, p 18.

89 *Commonwealth Electoral Act 1918*, s 197.

Approved form for postal voting applications

7.134 The Nationals and the Liberal Party of Australia considered that the postal vote application form was too complex and not very user friendly.[90]

7.135 Concern was also expressed that the approved form was not gazetted early enough to allow the required logistical arrangements for campaigning to be undertaken in a timely manner and that the gazetted form was difficult to reproduce as it contained too much detail.[91] The Federal Director of the Nationals told the committee:

> In short, the gazetted PVA continues to defy all accepted written communication trends and has become increasingly complex and less user friendly. This is resulting in our campaign workers reporting numbers of postal voting applications completed inaccurately, with the lack of a signature or a witness's signature the common shortcoming. Most state PVAs are significantly simpler in their design, although there is also considerable scope to improve their layout to a more user-friendly format as well. The Nationals recommend that this issue be addressed, and additionally we ask that the committee consider recommending that gazettal of whatever PVA form is to be used for an election be achieved at least six months, and preferably 12 months, prior to a scheduled election. Late gazettal and regular changes cause enormous difficulty in planning and budgeting for the production of PVAs for those parties and candidates that offer this service to voters.[92]

7.136 The AEC's response to these issues noted that there were a range of reasons that contributed to the complexity of the form, the gazettal of the whole PVA and the timing of the gazettal of the PVA.[93] For the 2007 election, the printed PVA was an 8-panel form (with each panel being one-third A4 size), with the gazetted version being a 7-panel form. This was one more panel than at the 2004 election.[94]

7.137 The complexity of the PVA was largely attributed by the AEC to material that related to legislative requirements and AEC judgement about what

90 Henderson B, The Nationals, transcript, 3 February 2009, pp 4–5; Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 3.

91 Henderson B, The Nationals, transcript, 3 February 2009, pp 4–5; Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 3.

92 Henderson B, The Nationals, transcript, 3 February 2009, pp 4–5.

93 Australian Electoral Commission, submission 169.17, pp 13–16.

94 Australian Electoral Commission, submission 169.17, pp 13–14.

information is important for electors to consider when applying to vote by post.[95] Some of the key points noted by the AEC that influence the amount of information included in the PVA relate to:

- Subsection 184(1) of the Electoral Act requires the application to be in the approved form, with subsection 184(1) (a) specifically requiring that the applicant makes a declaration "that he or she is an elector entitled to apply for a postal vote". The inclusion of this takes up a full panel, with the application itself and instructions on how to complete the form taking a further 2 panels;
- Subsection 184(3) requires the application to be "signed by the applicant in the presence of an authorised witness";
- The majority of one panel of the PVA is devoted to information about translator services;
- 2 panels contain information about early voting options and how to vote by post.

7.138 While the AEC cited that it had legal advice that the grounds for an application (as set out in schedule 2 of the Commonwealth Electoral Act) should be reproduced in full, the other parts of the PVA were largely based on a judgement by the AEC that it was necessary to provide sufficient information to electors about postal voting. The AEC noted that:

> The overwhelming AEC concern is that electors who wish to vote by post do so with full information at their disposal to ensure that the application is fully completed, and they understand the voting logistics – there is no point applying for a postal vote late in the election timeframe when there is little chance of the postal voting papers being received by them in time, when they could easily have had a pre-poll vote if they had been aware of that option.[96]

7.139 In relation to the gazettal of the PVA prior to the election, the AEC noted that there were a range of processes that needed to be completed before a PVA could be developed and gazetted. Given these processes, the AEC considered that 'the setting of a fixed date to gazette such an important form in an environment where there is no fixed date for an election is not practical'.[97]

95 Australian Electoral Commission, submission 169.17, p 14.

96 Australian Electoral Commission, submission 169.17, p 15.

97 Australian Electoral Commission, submission 169.17, p 15.

7.140 In addition to its own review of the PVA form following the election, the AEC noted that the outcomes of the committee's election review and the government's green paper were relevant factors that may impact on the design of the PVA — the outcomes of which were not likely to be completed until late 2009.[98]

7.141 The AEC considered that the uncertainty over the timing of these processes work against the earlier gazettal of the PVA. The AEC noted that:

> This lack of control places the AEC in a dilemma. Should it gazette a PVA say in August 2009, to provide it 12 months ahead of the earliest time for a half Senate election? Presumably then some political parties may commence the printing of their associated material. If, however, the relevant legislation is subsequently changed, the PVA could need to be re-gazetted, at considerable cost to the parties to reprint their material. As an example of issues to be balanced in choosing the time to gazette the PVA, the PVA for the 2007 election was initially gazetted in June 2007, but had to be re-gazetted in September that year as a result of the High Court decision in Roach v Electoral Commissioner ([2007] HCA 43) which reinstated prisoner voting entitlements.[99]

7.142 Currently, the AEC is planning was to gazette the PVA for the next federal election in the last quarter of 2009, with the ultimate timing 'determined by any emerging legislative impacts that may flow from the [committee's] recommendations or the government's green paper'.[100]

Committee conclusion

7.143 It is important that electors are provided with the necessary information about postal voting and other voting options prior to making a decision about whether to cast an early vote or whether they should seek to use other voting options.

7.144 In the committee's view, decisions about the relative complexity of the PVA essentially involve judgements about the level of material that is considered necessary or essential and what content, if any, is of less importance.

98 Australian Electoral Commission, submission 169.17, p 15.

99 Australian Electoral Commission, submission 169.17, p 15.

100 Australian Electoral Commission, submission 169.17, p 16.

7.145 The committee accepts that the legal advice received by the AEC indicates that the provision of information in relation to an elector's eligibility to cast an early vote is an essential part of the PVA. Other elements of the PVA, however, might be simplified, or even excluded entirely, depending on judgements made by the AEC and advice provided by other stakeholders.

7.146 The committee notes that the adoption of the committee's recommendation regarding removing the requirement for applicant and witness signatures on the PVA would reduce the form by at least one panel.[101]

7.147 On balance, the committee considers that the PVA should be changed to a more user friendly style and that only that section of the form requiring completion by an applicant for a postal vote be gazetted as the approved form. Such an approach will be complementary to the committee's recommendation regarding the removing the requirement for a applicant and witness signatures on the PVA in order to facilitate lodgement online, electronically or in printed form (recommendation 6).

Recommendation 33

7.148 **The committee recommends that, in conjunction with the recommendation removing the requirement for applicant and witness signatures, the postal voting application form:**

- **be made simpler and more user-friendly;**
- **be gazetted at least 3 months prior to the expected date of an election where practicable; and**
- **only that section of the form requiring completion by an applicant for a postal vote be gazetted as the approved form.**

101 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, p 3.

8

Formality issues

8.1 At the 2007 election more than 510,000 electors cast votes in the House of Representatives elections were deemed to be informal by electoral officials, thereby excluding them from the count. While this represents a decline of around 95,000 informal votes compared to the 2004 election, the disenfranchisement of hundreds of thousands of electors, effectively disqualifying them from deciding who should represent them and form government is of continuing concern.

8.2 This chapter examines the range of factors that contributed to informality at the 2007 election for the House of Representatives and the Senate and possible ways to reduce informality. Issues arising out of the Court of Disputed Returns' decision on the McEwen petition and the Australian Electoral Commission's (AEC) response to the decision along with the AEC's subsequent review of formality guidelines are also examined.

Background

8.3 As noted in chapter 2, the rate of informal voting in the House of Representatives and Senate elections declined across all jurisdictions at the 2007 election compared to the 2004 election. This was the first decline in the national rate of informal voting since the 1993 election.[1] While the decline is significant, it is of note that there were still over 510,000 informal votes cast for the House of Representatives.[2]

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1 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 2.

2 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 9.

8.4 The AEC's analysis of informality following the 2007 election found that there appear to be four significant influences that correlate strongly with higher than average informality rates:

- divisions with high candidate counts;
- differences in state and federal electoral systems;
- proximity to other election events; and
- a high proportion of citizens from non-English speaking backgrounds.[3]

8.5 These four areas of influence on informality have been consistently identified as strong predictors of informality by the AEC.[4]

8.6 A ballot paper may be ruled informal for a number of reasons including:

- the ballot paper is not marked at all;
- the ballot paper does not have the official mark and has not been initialled by the polling official and the ballot paper is not authentic in the opinion of the Divisional Returning Officer;
- the ballot paper has writing on it which identifies the voter;
- in the case of an absent, postal or provisional vote the ballot paper is not contained in the declaration envelope; and
- the voter has not marked a vote correctly for it to be considered acceptable in accordance with section 268 of the *Commonwealth Electoral Act 1918*.[5]

8.7 The AEC notes that Australia traditionally has one of the highest rates of spoiled or informal ballots among established democracies, given the compulsory enrolment and voting nature of this country's electoral system.[6]

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3 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 2.

4 Australian Electoral Commission, *Informal Vote Survey House of Representatives 2001 Election* (2003), Research Report number 1; *Analysis of Informality during House of Representatives 2004 Election* (2005), Research report number 7.

5 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 56; *Commonwealth Electoral Act 1918*, s 268.

6 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 7.

House of Representatives

8.8 At a national level, informal voting in House of Representatives elections declined for the first time since the 1993 election. Changes in informality at a national level from election to election have generally been consistent across the states and territories, although some jurisdictions, most notably, NSW and South Australia, have recorded higher informality for a number of elections (table 8.1).

Table 8.1 Informal voting, House of Representatives, 1983 to 2007 elections (per cent)

State/ territory	1983	1984	1987	1990	1993	1996	1998	2001	2004	2007
NSW	2.2	5.7	4.6	3.1	3.1	3.6	4.0	5.4	6.1	5.0
VIC	2.2	7.5	5.3	3.5	2.8	2.9	3.5	4.0	4.1	3.3
QLD	1.3	4.5	3.4	2.2	2.6	2.6	3.3	4.8	5.2	3.6
WA	2.0	7.1	6.6	3.7	2.5	3.2	4.2	4.9	5.3	3.9
SA	2.0	7.1	6.6	3.7	4.1	4.1	4.5	5.5	5.6	3.8
TAS	2.3	5.9	5.0	3.3	2.7	2.4	3.1	3.4	3.6	2.9
ACT	2.2	4.7	3.5	3.0	3.4	2.8	2.9	3.5	3.4	2.3
NT	4.4	4.6	5.8	3.4	3.1	3.4	4.2	4.6	4.4	3.9

Source *Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, p 7.*

8.9 There are a number of factors to consider when looking at the longer term trend in informality at House of Representatives elections:

- the spike in informality at the 1984 House of Representatives election is generally attributed to the introduction of above-the-line voting in Senate elections;[7] and
- between the 1984 and 1996 elections, ballot papers that were assumed to have been accidentally marked non-consecutively for the House of Representatives (1,2,3,3,…) were counted as formal votes. The ballot was accepted as formal and preferences distributed up to the point where the mistake of numbering began. These ballot papers then became 'exhausted'.

8.10 Following each election, the AEC undertakes a survey of informal ballot papers to identify the possible causes that influence informal voting at federal elections. The largest proportion of informal votes at the 2007 election were those with a '1 only' (30 per cent), followed by blank ballot

7 Democratic Audit of Australia, submission 45, p 7; Australian Electoral Commission, submission 169.1, Annex 9, p 165.

papers (20 per cent), non-sequential numbering (18 per cent), and marks and scribbles (15 per cent) (table 8.2).

Table 8.2 Informality, by category and jurisdiction, 2007 election (% of total informal vote)

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Blank	25.8	18.2	15.0	15.4	26.9	29.3	22.3	23.5
1 only	25.9	36.2	24.7	36.4	24.3	17.3	21.6	18.0
Incomplete numbering	3.1	5.3	3.6	5.3	3.3	4.5	2.9	4.6
Tick or cross	10.2	11.0	15.2	9.4	12.8	7.2	8.1	8.3
Non sequential	9.9	15.8	24.4	15.2	15.9	15.0	21.7	26.3
Marks and scribbles	22.4	11.5	13.3	16.2	14.9	25.1	20.3	16.9
Voter identified	0.1	0.1	0.2	0.0	0.0	0.0	0.1	0.1
Other	2.6	1.9	3.6	2.2	1.9	1.6	2.9	2.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source *Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, p 11.*

8.11 The overall number of informal House of Representatives ballot papers declined by over 95,000 at the 2007 election when compared to the 2004 election. The categories of informal voting that made the largest contribution to the decline were the number of '1 only' ballot papers (down by over 45,000), the number of blank ballot papers (down by over 26,000) and the number of ballot papers with marks and scribbles (down by almost 14,600).[8]

8.12 The 10 divisions with the highest overall informality in 2007 were all in western Sydney (figure 8.1), with five of these divisions also having the highest 'poor English' ranking, indicating that they have the lowest levels of English proficiency out of all of the national divisions.[9] The AEC noted that:

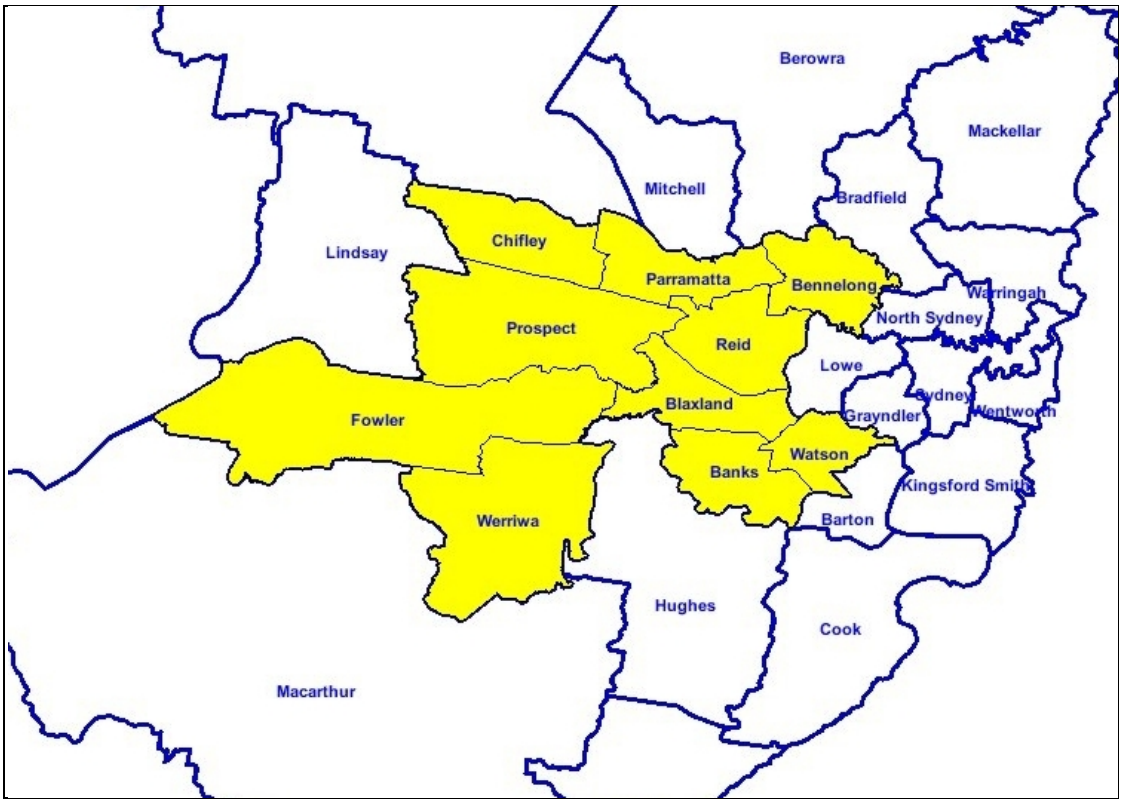
> In fact the five divisions with the highest levels of informality in 2007 also featured in the top ten for the 2004 and 2001 elections, indicating that any voter confusion over different systems is likely to be extenuated by other factors. The persistence of this high informality in certain divisions suggests other factors are also

8 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 10.

9 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 12.

important, given state elections in NSW do not all necessarily fall in close proximity to the federal event.[10]

Figure 8.1 Divisions with the highest informality rates at the 2007 election



Source *Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, p 13.*

8.13 AEC research on informality at the 2007 House of Representatives election confirmed previous results that attributed informality to the four factors of (1) divisions with high candidate counts, (2) differences in state and federal electoral systems, (3) the proximity to other election events and (4) the proportion of citizens from non-English speaking backgrounds.[11] The AEC noted that:

- divisions which have a higher than average number of candidates are generally more likely to also have higher than average rates of informality. Number of candidates was found to have a strong correlation with informality, explaining approximately one-quarter of change within informality rates. The decrease in informal voting across

10 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 12.

11 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, pp 2–3.

the past two federal elections coincided with a decrease of the average number of candidates per division (7.27 in 2004 to 6.66 in 2007);

- differences between state and federal electoral systems has a significant impact on unintentional informal voting. The evidence suggests that electors who can cast a valid ballot with a '1 only' preference in state elections (NSW and QLD) may be conditioned to do the same for the federal House of Representatives ballot, not knowing this is actually informal in the federal system;
- proximity to another electoral event may increase the level of informality in a federal election. There may be confusion for those voters coming from a state electoral system, such as NSW, that has different criteria for casting a formal ballot. The confusion surrounding how to cast a formal vote appears to contribute to unintentional informality in some states; and
- it is possible that linguistic and cultural barriers experienced by some NESB electors may amplify problems associated with high candidate numbers and state/federal electoral differences. This issue appears particularly relevant in NSW, which has a comparatively high proportion of NESB electors. In 2007, five of the top six divisions with the highest rates of informality, were also the top five electorates with the highest proportion of NESB. The 14 divisions with the highest rates of informality in 2007, all border each other in a concentration based around western Sydney.[12]

8.14 Optional preferential voting is used for House of Assembly elections in NSW and Queensland; with electors only required to indicate a single preference ('1') on the ballot paper for a vote to be counted as formal. Lower house elections in all other states and territories generally use full preferential voting systems (box 8.1).

12 A Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, pp 2-3.

Box 8.1 Voting systems by jurisdiction

New South Wales	
Legislative Assembly	Optional allocation of preferences
Legislative Council	Optional allocation of preferences above the line and partial preferential if voting below the line
Victoria	
Legislative Assembly	Full preferential voting
Legislative Council	Single preference when voting above the line (plus group ticket voting) and full preferential when voting below the line
Queensland	
Legislative Assembly	Optional allocation of preferences
Western Australia	
Legislative Assembly	Partial preferential voting
Legislative Council	Single preference when voting to the left of the line (plus group ticket voting) and full preferential when voting to the right of the line
South Australia	
House of Assembly	Full preferential voting
Legislative Council	Single preference when voting above the line (plus group ticket voting) and full preferential when voting below the line
Tasmania	
House of Assembly	Partial preferential voting
Legislative Council	Partial preferential voting
ACT	
Legislative Assembly	Partial preferential voting
Northern Territory	
Legislative Assembly	Full preferential voting

Source Electoral Council of Australia, 'Electoral Systems', viewed on 18 May 2009 at http://www.eca.gov.au/systems/index.htm; Bennett S and Lundie R, 'Australian Electoral Systems', *Research paper no 5 2007-08* (2007), p 31.

8.15 The AEC noted that informality at Legislative Assembly elections in NSW and for the Legislative Assembly in Queensland, were lower than for House of Representatives elections in these states since 2003 (table 8.3).

Table 8.3 Comparison of state and federal elections – overall informality rate, New South Wales and Queensland, 2003 to 2009 (per cent)

Election	2003	2004	2006	2007	2008	2009
NSW Legislative Assembly election	2.62%			2.69%		
NSW – House of Representatives federal election		6.1%		4.95%		
QLD Legislative Assembly election		1.99%	2.08%			1.94%
QLD - House of Representatives federal election		5.2%		3.56%		

Source *Australian Electoral Commission, submission 169.17, p 8.*

8.16 While the average number of candidates per division declined in the 2007 House of Representatives elections, there were 10 divisions where informality increased when compared to the 2004 election. In seven of these divisions, the number of candidates increased from the previous election (table 8.4).

Table 8.4 Informality rate and number of candidates in divisions where informality increased at the 2007 election

Division	Number of candidates 2007 election	Number of candidates 2004 election	Difference between 2007 and 2004 elections	Change in informality 2007 election compared to 2004 election (percentage points)
Murray	9	7	+2	+1.06
Richmond	7	8	-1	+0.67
Bendigo	9	5	+4	+0.67
Grayndler	7	5	+2	+0.56
Bennelong	13	7	+6	+0.38
Parkes	7	5	+2	+0.25
New England	0	0	0	+0.11
Mallee	6	6	0	+0.10
Page	10	8	+2	+0.07
Riverina	5	4	+1	+0.05

Source *Australian Electoral Commission, 'Virtual Tally Room, House of Representatives, House of Representatives Results, Candidates', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/HouseCandidatesBySurname-13745-A.htm; 'Virtual Tally Room, House of Representatives, Candidates', viewed on 26 May 2009 at http://results.aec.gov.au/12246/results/HouseCandidatesBySurname-12246-A.htm.*

8.17 The number of divisions with more than nine candidates at the 2007 election (8), was lower than that for the 2004 election (13), with the division of Bennelong having the highest number of candidates at the 2007 election (13), one less than the 14 candidates who stood for the division of Greenway at the 2004 election.[13] The strong relationship between the number of candidates and informality gives rise to risks that 'ballot flooding' (running large numbers of candidates to make the ballot paper bigger and voting more difficult) can impact on election results by leading to a significant increase in informality.

Senate

8.18 All states and territories recorded a decline in informality at the 2007 Senate elections (table 8.5). Informality in Senate elections at a national level has been lower than House of Representative elections since the 1998 election.[14]

Table 8.5 Informal voting, Senate, by jurisdiction, 1996 to 2007 elections (per cent)

State/territory	1996	1998	2001	2004	2007
NSW	3.8	3.3	3.5	3.5	2.2
VIC	3.6	3.8	5.6	5.1	3.2
QLD	3.3	3.0	3.0	2.8	2.3
WA	3.5	2.7	3.6	3.5	2.4
SA	3.3	2.8	3.1	3.5	2.4
TAS	3.2	3.1	3.3	3.4	2.6
ACT	2.5	2.0	2.3	2.5	1.7
NT	2.8	2.0	2.8	3.1	1.9
National average	3.5	3.2	3.9	3.8	2.5

Source *Australian Electoral Commission, Electoral pocketbook: election 2007 (2009), p 56.*

8.19 The rate of informality in Senate elections is generally below that for House of Representatives elections. However, the AEC noted that at least eight divisions (Gorton, Maribyrnong, Bruce, Hotham, Batman, Scullin,

13 Australian Electoral Commission, 'Virtual Tally Room, House of Representatives, House of Representatives Results, Candidates', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/HouseCandidatesBySurname-13745-A.htm; 'Virtual Tally Room, House of Representatives, Candidates', viewed on 26 May 2009 at http://results.aec.gov.au/12246/results/HouseCandidatesBySurname-12246-A.htm.

14 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 56.

Melbourne and Calwell) reported a higher informality rate for the Senate than the House of Representatives at the 2007 election.[15]

8.20 When ruling a Senate ballot paper informal, the categorisation of whether the informality related to an attempt to vote above the line or below the line is problematic.[16] The AEC noted that:

> Each Senate ballot paper essentially contains two different voting systems on the one ballot paper, which creates difficulties in clearly separating informal above-the-line (ATL) votes and informal below-the-line (BTL) votes. Some types of informal votes, such as blank ballot papers or a ballot paper incorrectly marked both above and below the line cannot be inferred to be informal ATL or informal BTL. Inferring intention in other types of informally marked ballot papers is also problematic – is a ballot paper marked with only a '1' next to the first candidate of a below the line grouping an informal ATL vote or an informal BTL vote?[17]

8.21 The AEC did not conduct a survey of informality for Senate ballot papers following the 2007 election. In 2001, a national informal ballot paper survey was conducted, which found that over one-half of the informal votes cast in South Australia's 2001 half Senate election resist categorisation as either informal above-the-line or below-the-line. (That is, the categories of 'blank ballot paper', 'writing, slogan, poetry' and 'other') and another quarter of informal votes could be interpreted as being either informal above the line or informal below the line (ballot papers marked with a first preference only below the line) (table 8.6).[18]

15 Australian Electoral Commission, *Analysis of informal voting: House of Representatives 2007 election* (2009), Research report number 11, p 18.

16 Australian Electoral Commission, submission 169.6, p 1.

17 Australian Electoral Commission, submission 169.6, p 1.

18 Australian Electoral Commission, submission 169.6, p 2.

Table 8.6 Types of informal voting, 2001 South Australian Senate election

Category	Number	Proportion
Blank Ballot Paper	10,375	34.0%
1st Pref Only marked below the line	7,742	25.3%
Writing, slogans, poetry	2,854	9.3%
Less than 90 per cent of boxes numbered below the line	2,690	8.8%
Other	2,623	8.6%
More than one number 1 above the line	1,346	4.4%
More than one number 1 below the line	845	2.8%
Large number of repeating numbers or missing numbers below the line	830	2.7%
Ticks and crosses below the line	617	2.0%
Combination of ticks and crosses above the line	413	1.4%
Use of letters above the line	154	0.5%
No 1st preference below the line	67	0.2%
Total	30,556	100.0%

Source *Australian Electoral Commission, submission 169.6, p 2.*

Efforts to reduce informality at the 2007 election

8.22 The AEC reported to the committee that strategies implemented in 2007 to reduce informality included:

- the AEC analysed ABS data at the polling place level to identify polling places with both high informality at the 2004 election and high populations of 'culturally and linguistically diverse' groups. On this basis, the AEC expanded its recruitment drive to employ staff for selected polling places who could speak the targeted language(s) for those communities. These polling officials were provided with a badge indicating the language that they spoke (in 21 languages).
- some polling places played a DVD of translated formality television advertisements, either in a loop of all languages or in selected languages according to their elector profile.
- the three questions issuing officers are required to ask of electors were translated into 21 languages and made available for divisions to download and have available at polling places as required.
- how to vote guides (instructions on how to vote in English and translated into 21 languages in a flipchart format) were supplied to each polling place, mobile polling team and early voting centre.

- Polling staff in divisions with the highest 2004 informality levels were provided with extra training.[19]

8.23 In addition to this specific work, the AEC noted that a range of publications included information about how to vote. The AEC's communication strategy also included elements aimed at reducing informality.[20]

8.24 The committee noted that in relation to NSW, the AEC intended to continue to research and analyse the informal voting figures from the 2007 election to understand which mix of strategies may have had the greatest impact in working to reduce informality levels at the 2007 election.[21]

Comments on informality by inquiry participants

8.25 Inquiry participants' comments on informality at the 2007 election related mainly to the need to continue with strategies to reduce informality and examine the harmonisation of federal and state/territory voting arrangements.

8.26 The Liberal Party of Australia welcomed the fall in informality at the 2007 election and commended the AEC on the consultative approach it took after the 2004 election to ensure its advertising and information campaigns were effective.[22] The Liberal Party of Australia noted that:

> We believe it is important the AEC continues to produce advertising and information campaigns that target informality. In doing so we encourage the AEC to again work in consultation with the parties to ensure the most simple and effective campaigns are developed.[23]

8.27 Mr Eric Jones considered that greater resources should be directed to reduce informality, including utilising part-time 'political and youth political officers' who speak the major Non-English language in high informal rate areas to conduct voting and general democratic educational programmes for the year prior to an election.[24] Mr Jones supported such an arrangement being delivered by the AEC or through funding provided to the political parties:

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19 Australian Electoral Commission, submission 169, p 64.

20 Australian Electoral Commission, submission 169, p 65.

21 Australian Electoral Commission, submission 169.15, p 4.

22 Liberal Party of Australia, submission 156, p 5.

23 Liberal Party of Australia, submission 156, p 5.

24 Jones E, submission 95, p 9.

> Why should the political parties do this type of work? To be seen to be putting something back into the democratic process. There is a lot of cynicism about politicians and politics out in the broader community and perhaps this might help in building up their position in the eyes of the community.
>
> However, if the above is not acceptable, at least try it on a trial basis by funding and having the AEC employ such people for the year before an election.[25]

8.28 University of Melbourne academic Dr Sally Young considered that various strategies should be continued to reduce informality including:

> Civics education, the AEC conducting education programs and running advertisements on voting (including during non-election periods as a way of better reaching voters before the sound and fury of an election campaign begins and when many other political messages are then competing for their attention), as well as writing to voters from non-English speaking backgrounds in their own languages to advise them on voting procedures.[26]

8.29 Participants advocating that voting systems be harmonised across the federal and state/territory elections considered that such an approach would contribute to reducing informality, with some suggesting a move to optional preferential voting in the House of Representatives.[27] Mr William Bowe referred to research that indicated confusion between state and territory systems contributed one percentage point to informality in those jurisdictions where optional preferential voting was used at a state level.[28]

8.30 The Nationals supported harmonising voting systems as a means of addressing informality, noting that:

> The Nationals recommend the Committee work with the State and Territory jurisdictions to get a common voting system nationwide. Compulsory preferential voting has been the traditional voting system in Australia since federation and is the system used in the majority of State jurisdictions. The Nationals recommend it should be implemented in every State and Territory to reduce voter confusion and informal voting.[29]

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25 Jones E, submission 95, pp 9–10.

26 Young S, submission 77, p 2.

27 Bowe W, submission 106, p 2; Hon Peter Lindsay MP, Member for Herbert, submission 57, p 3; The Nationals, submission 145, p 3; Getup!, submission 155, p 13.

28 Bowe W, submission 106, p 2.

29 The Nationals, submission 145, p 3.

8.31 The New South Wales Government expressed its concern about the continuing high proportion of informal votes in the state, noting that the 15 electorates with the highest rates of informal voting are all located in the state.[30] The New South Wales Government supported the adoption of optional preferential voting at a federal level, noting that:

> A significant factor is the difference in voting arrangements between New South Wales, where preferential voting is optional, and the Commonwealth, where preferential voting is compulsory. This leads to voter confusion, resulting in a higher number of otherwise valid votes being classified as informal.
>
> I encourage the Committee to consider the benefits of optional preferential voting in the interests of removing inconsistency between Stale and Federal voting arrangements. State and Federal education programs designed to improve voter understanding of the electoral process would no doubt be more effective if consistent voting arrangements applied across all jurisdictions.[31]

8.32 The Democratic Audit of Australia considered that the adoption of optional preferential voting, which requires voters to only number '1' for a vote to be counted, should be considered for House of Representatives elections and for voting below the line for Senate elections.[32]

8.33 As an alternative to optional preferential voting, the Democratic Audit of Australia proposed the re-introduction of the 'savings' provision that was part of voting arrangements between 1983 and 1998.[33]

Committee conclusion

8.34 The committee welcomes the reduction in informality recorded at the 2007 election compared to the 2004 elections. While the decline in the overall informality rate is a positive outcome, the committee remains concerned about the persistently high levels of informality recorded in some divisions, particularly in south western Sydney.

8.35 Although harmonisation of voting systems appears to provide some opportunity to reduce informality, the committee does not consider that it is necessary to harmonise this aspect of electoral arrangements —

30 NSW Government, submission 161, p 1.

31 NSW Government, submission 161, pp 1–2.

32 Democratic Audit of Australia, submission 45, p 7.

33 Democratic Audit of Australia, submission 45, p 7.

decisions about what voting system is appropriate for each jurisdiction should be left to each respective parliament to determine.

8.36 The committee does not support a change to adopting optional preferential voting for House of Representatives elections. However, the committee has examined a range of savings provisions that could be adopted. These are discussed later in this chapter.

8.37 With the drivers of higher informality generally well understood, it is important that the AEC continue its efforts to address informality, particularly in areas that consistently record relatively high levels of informality.

Recommendation 34

8.38 **The committee recommends that the Australian Electoral Commission increase efforts to improve electors' understanding of the federal voting systems and take appropriate measures to reduce the rate of informal voting, especially in electorates with a high percentage of electors from non-English speaking backgrounds.**

'Saving' informal votes

8.39 As pointed out in chapter 2, a set of protections or savings provisions apply to ballot papers and operate to ensure that ballot papers are included in the count as long as they express valid preferences. These protections are known as formality provisions.

8.40 For Senate elections, an elector may vote by placing the single figure '1' in one and only one of the squares above the line, or by placing consecutive numbers beginning at 1 until all squares below the line are numbered.

8.41 A number of savings provisions ensure that where mistakes are made in expressing preferences on Senate ballot papers the ballot papers may still be regarded as formal. These include provisions that allow for:

- a first preference mark to be indicated by the presence of the number '1', or a tick, or a cross in a square above the line;[34]

34 *Commonwealth Electoral Act 1918*, s 239.

- less than complete numbering below the line;[35] and
- a ballot paper which is informal below the line to be counted if it is formal above the line.[36]

8.42 Similarly, a number of savings provisions ensure that where mistakes are made in expressing preferences on House of Representatives ballot papers, those ballot papers may still be regarded as formal. These include a provision that allows for ballot papers with a first preference for one candidate and an order of preference for all the remaining candidates except one to be regarded as formal, with the blank square deemed to be the voter's last preference, and where there are only two candidates in a House of Representatives election and the ballot paper contains a first preference for one candidate and the other square is blank or contains a number other than two it may be deemed formal.[37]

8.43 Prior to the 1998 federal election, a further provision existed in the Commonwealth Electoral Act that 'saved' votes where electors had made numbering errors in marking their House of Representatives ballot paper, keeping such votes in the count up to the point where the error had been made.

8.44 A different savings provision still exists in elections for the House of Assembly in South Australia, serving to keep votes in the count where voters mark only the single preference '1' despite a full preferential voting system being in place there.

Savings provision for the South Australian House of Assembly elections

8.45 Elections for the South Australian House of Assembly use compulsory preferential voting, with a savings provision in place to include as many votes as possible with incomplete or out of sequence preferences. Elections for the South Australian Legislative Council are similar to the Senate voting requirements, with voters able to make a single preference above the line or complete all preferences below the line.

8.46 Under the voting system for the House of Assembly, all candidates in an electorate have the right to register one or two ticket votes. On election day, copies of each of the tickets registered in an electorate are displayed on the voting screens of every polling place in that electorate. These

35 *Commonwealth Electoral Act 1918*, s 270.

36 *Commonwealth Electoral Act 1918*, s 269 (1).

37 *Commonwealth Electoral Act 1918*, s 268 (1)(c).

provide a guide to voters on how to fill in the sequence of further preferences for their first choice candidate. A candidate's how to vote material is required to match the registered ticket vote and parties are banned from advocating a vote that does not include preferences.[38]

8.47 The approach adopted for South Australian House of Assembly elections ensures that votes marked with a single preference, which can include a single number '1' as well as a tick or a cross, are included in the count, with preferences beyond those preference expressed directed according to the registered tickets.[39]

8.48 The impact of this savings provision on the rate of informality for South Australian House of Assembly elections is to markedly reduce the informality rate, which would, at a minimum, be twice as high without the savings provision (table 8.7).

Table 8.7 South Australian House of Assembly informal and ticket voting, 1985 to 2006 state elections (per cent)

	1985	1989	1993	1997	2002	2006
Total informal votes	3.5	2.8	3.1	4.0	3.1	3.6
Accepted ticket votes	4.1	6.0	5.9	4.9	4.0	4.6

Source *Green A, submission 62.1, p 14.*

8.49 The effect of the savings provision at the 2006 South Australian state election was noted by Mr Antony Green, who told the committee that:

> At the 2006 South Australian election, a total of 35,029 informal votes were recorded, a rate of 3.6 per cent, compared to 5.2 per cent in the Legislative Council. Compared to Victoria, Western Australia, and Commonwealth elections in every state, South Australia is the only state using compulsory preferential voting where lower house informal voting is less than upper house informal voting.
>
> In total, 43,553 votes were admitted to the count after being 'saved' by the use of registered ticket votes. All of these votes would have been informal under the Commonwealth Electoral Act. Under Commonwealth formality rules, the South Australian lower house informal vote would have been 8.1 per cent, not 3.6 per cent.[40]

38 Green A, submission 73 to the Joint Standing Committee on Electoral Matters inquiry into the 2004 election, p 14.

39 Green A, transcript, 23 July 2008, p 7.

40 Green A, submission 62, p 3.

Savings provisions for non-sequential numbering in the Commonwealth Electoral Act

8.50 As previously noted, between the 1984 and 1996 federal elections a savings provision existed in the Commonwealth Electoral Act that meant that a House of Representatives ballot paper would be deemed formal provided that it bore a unique first preference, and numbers - any numbers, in all of the remaining squares, or in all but one (with that last square left blank).[41] The provision was part of section 270 of the Commonwealth Electoral Act and applied only to House of Representatives ballot papers and read:

> '(2) Where a ballot-paper in a House of Representatives election in which there are 3 or more candidates-
>
> (a) has the number 1 in the square opposite to the name of a candidate;
>
> (b) has other numbers in all the other squares opposite to the names of candidates or in all those other squares except one square that is left blank; and
>
> (c) but for this subsection, would be informal by virtue of paragraph 133 (1) (c), then-
>
> (d) the ballot-paper shall not be informal by virtue of that paragraph;
>
> (e) the number 1 shall be taken to express the voter's first preference;
>
> (f) where numbers in squares opposite to the names of candidates are in a sequence of consecutive numbers commencing with the number 1- the voter shall be taken to have expressed a preference by the other number, or to have expressed preferences by the other numbers, in that sequence; and
>
> (g) the voter shall not be taken to have expressed any other preference.
>
> (3) In considering, for the purposes of subsection (1) or (2), whether numbers are in a sequence of consecutive numbers, any number that is repeated shall be disregarded.'[42]

41 Australian Electoral Commission, submission 169.1, p 31.

42 Australian Electoral Commission, submission 169.1, p 163.

8.51 As noted by the AEC, the parliament recognised the possibility that section 270(2) might appear to offer optional preferential voting for the House of Representatives in contradiction to the requirement for full preferential voting in section 240, and accordingly enacted section 329(3) to make it an offence to distribute how-to-vote cards that might induce electors to vote otherwise than in accordance with the instructions on the ballot paper.[43]

8.52 Commencing at the 1987 election, a series of campaigns were conducted by several individuals advocating that electors not vote at all, cast an optional preferential vote under then section 270(2), or that they vote informal. The AEC noted that:

> At the 1987 election, a campaign was run in Victoria advising electors not to vote at all, or to cast an optional preferential vote under then section 270(2), or to vote informal. The AEC sought injunctions against the campaigners (Mr van Moorst and Mr Langer) on the basis of these three campaign objectives. The Court awarded injunctions to prevent the campaigners from advocating not voting at all, and to prevent them from inducing electors to vote otherwise than in accordance with the instructions on the ballot paper. However, the Court decided that as it was not unlawful to vote informal, it could not be illegal to advocate informal voting.
>
> At the 1990 election, the campaigners did not proceed with their planned advocacy, so there was no need for the AEC to initiate court proceedings. However, as a consequence of an indication that such campaigns may be run in the future, the 1990 JSCEM recommended to Parliament a further tightening of the penalties to protect the full preferential voting system. Section 329A was enacted in 1992:
>
> - '(1) A person must not, during the relevant period in relation to a House of Representatives election under this Act, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing with the intention of encouraging persons voting at the election to fill in a ballot paper otherwise than in accordance with section 240.
> - In this section: 'publish' includes publish by radio or television.'
>
> At the 1993 election, Mr Langer indicated that he was intending to run a campaign advocating informal voting and optional

43 Australian Electoral Commission, submission 169.1, p 163.

preferential voting. After receiving warnings from the AEC, on 5 March 1993 he applied to the High Court for an injunction to prevent the AEC from intimidating him, and a declaration that section 329A was unconstitutional. The High Court dismissed his injunction application, but referred the constitutionality of section 329A to the Full Bench.

On 7 February 1996 (8 days after the issue of the writs for the 1996 election) the High Court decided3 that section 329A was a valid enactment of Parliament.

At the 1996 election, Mr Langer again indicated that he was intending to run a campaign advocating informal voting and optional preferential voting and after he published an advertisement which was clearly in breach of section 329A, the AEC obtained an injunction against him from the Victorian Supreme Court. Mr Langer immediately defied that injunction, and was sent to jail for contempt of court. Mr Langer then appealed the injunction to the Federal Court and lost. He then appealed the contempt order and was given early release from jail.[44]

8.53 Following the 1996 election, the then Joint Standing Committee on Electoral Matters examined the operation of the savings clause and the impact of sections 329(3) 329A on the electoral process. The committee found that in its view, 'the Langer affair has clearly shown that section 329A is an ineffective and heavy-handed provision' and recommended that section 329A and related provisions should be repealed, while the wording of section 240 should be clarified.[45]

8.54 In 1998, the former sections 270(2), 329(3) and 329A of the Commonwealth Electoral Act were repealed by the *Electoral and Referendum Amendment Act 1998*, and section 240(2) was introduced, so that section 240 now reads:

> **240 Marking of votes in House of Representatives election**
>
> (1) In a House of Representatives election a person shall mark his or her vote on the ballot-paper by:
>
> (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and

44 Australian Electoral Commission, submission 169.1, pp 163–164.

45 Australian Electoral Commission, submission 169.1, p 164.

(b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.

(2) The numbers referred to in paragraph (1)(b) are to be consecutive numbers, without the repetition of any number.[46]

8.55 The AEC noted that the current wording 'clearly prescribes full preferential voting, and both the savings provision and sanctions for advocating other than full preferential voting have been removed'.[47]

8.56 In 1996, when non-sequentially numbered ballot papers were last admitted as formal and were classified by the AEC as 'exhausted', a total of 48,979 such votes were cast out of 10,883,852 formal votes (0.45 per cent). The exhausted votes were of a similar magnitude for each of the states and territories, NSW (0.46 per cent), Vic (0.49 per cent), QLD (0.26 per cent), WA (0.62 per cent), SA (0.51 per cent), TAS (0.21 per cent), ACT (0.49 per cent), NT (0.48 per cent).[48]

8.57 At the 1998 election, the first following the abolition of the savings provision, the level of informality for the House of Representatives election rose from 3.4 per cent to 4.2 per cent.[49] It is not known how much of the increase was due to the removal of the savings provision. Three years later at the 2001 election, around 15,000 Langer-style votes were identified by the AEC as part of its informal vote survey for the election. The proportion of 'Langer style' informal votes as a proportion of total informal votes varied significantly across jurisdictions (table 8.8).

46 *Commonwealth Electoral Act 1918*, s 240.

47 Australian Electoral Commission, submission 169.1, p 164.

48 Australian Electoral Commission, submission 169.1, p 165.

49 Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, p 7.

Table 8.8 'Langer style' informal votes, by jurisdiction, 2001 election (per cent)

State/territory	Langer style	Non sequential	Total informal votes
New South Wales	2.37%	22.52%	5.42%
Victoria	3.22%	10.49%	3.98%
Queensland	2.00%	14.15%	4.83%
Western Australia	4.18%	21.75%	4.92%
South Australia	1.05%	13.40%	5.54%
Tasmania	6.88%	13.17%	3.40%
Australian Capital Territory	0.83%	7.66%	3.52%
Northern Territory	14.56%	15.06%	4.64%
National	2.68% (15,564)	17.18% (99,946)	4.82% (580,590)

Source *Australian Electoral Commission, Research report number 1: Informal vote survey, House of Representatives, 2001 election (2002), p 8.*

8.58 The AEC estimates that if such ballot papers had been able to be counted at the 2007 election, up to 90,149 additional ballot papers would have been admitted across Australia, representing 17.79 per cent of total informal votes at the 2007 election.[50]

8.59 The AEC notes that those ballot papers that were saved by the operation of section 270(2) are likely to fall into three categories – those so marked deliberately to take advantage of the savings clause; those so marked accidentally in the belief that preferences were optional and those so marked accidentally. The AEC considered that it is not possible to identify the motivation behind ballot paper markings, although previous AEC research reports have examined the possible environmental determinants of ballot paper informality.[51]

8.60 It is of note that for the 10 divisions in NSW recording the highest rates of informality at the 2007 election, votes classified as 'non sequential' are more likely to feature as a reason why votes were ruled informal compared to the NSW average (table 8.9).

50 Australian Electoral Commission, submission 169.1, p 164.

51 Australian Electoral Commission, submission 169.1, p 164.

Table 8.9 Highest informality divisions, by informality type, 2007 election (per cent)

Division	Totally blank	'1' only	Incomplete numbering	Ticks and crosses	Non sequential	Marks and scribbles	Other (symbols, illegible, other)
Blaxland	19.04	34.54	7.61	10.85	15.03	9.98	2.95
Watson	16.57	46.15	5.30	10.10	7.82	10.72	3.34
Chifley	18.51	28.56	8.53	11.57	25.73	6.09	1.01
Prospect	18.44	34.76	3.26	19.12	11.16	8.87	4.39
Fowler	14.61	42.62	2.05	21.53	6.53	10.99	1.67
Reid	19.53	32.81	6.67	10.3	14.34	14.52	1.83
Parramatta	18.81	30.63	11.22	7.64	20.7	9.43	1.57
Werriwa	19.12	41.8	4.24	13.31	10.34	10.36	0.83
Banks	18.87	40.23	5.28	10.38	11.54	10.15	3.55
Bennelong	11.31	22.15	11.99	5.31	32.79	9.77	6.68
NSW average	**18.21**	**36.23**	**5.29**	**11**	**15.78**	**11.51**	**1.98**

Source *Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, pp 11 and 15.*

8.61 The AEC considered that any reintroduction of the savings provision, while appearing to be relatively simple, would instead 'reinstate policy conflicts in the Commonwealth Electoral Act remedied by the 1998 amendments'.[52]

8.62 Some of the basic policy conflicts identified by the AEC in 1996 were that with the savings provision in place, the Commonwealth Electoral Act:

- required full preferential voting;
- prohibited inducing optional preferential voting;
- prohibited the advocacy of optional preferential voting;

but

- allowed certain optional preferential votes as formal.[53]

8.63 The AEC considered that these contradictions would occur again if a savings provision were introduced. The AEC noted that:

> While various courts had consistently upheld the Parliament's intentions in enacting the above provisions of the Commonwealth Electoral Act, there was a perception that there was a 'loophole' in the Commonwealth Electoral Act that allowed for the avoidance of

52 Australian Electoral Commission, submission 169.1, p 164.

53 Australian Electoral Commission, submission 169.1, p 166.

> the requirement for full preferential voting. This perception may have been exacerbated by the increased availability of optional preferential voting at state elections; it remains possible that some electors are confused by the different ballot paper marking requirements across Commonwealth and state elections.
>
> It is also clear that the reintroduction of a savings provision alone would see an increase in the number of House of Representatives ballot papers that were not fully preferenced. Not only could non-aligned campaigns re-emerge to advocate less than full preferential voting, but experience in those states and territories with optional preferential voting show that political campaigns themselves move towards advocating exhausting a ballot paper to limit preference flows to other groups and parties.[54]

8.64 The AEC considered that without a reintroduction of the sanctions that prevented advocating other to vote in a way other than in accordance with full preferential voting 'the effect would be to allow for open and possibly widespread advocacy of optional preferential voting at federal elections'.[55] The AEC noted that:

> This would send a clear signal that Parliament was accepting in principle that optional preferential voting should exist as an alternative to full preferential voting for federal elections, although the Commonwealth Electoral Act may not clearly state as much. The question would then arise as to why Parliament does not expressly provide for optional preferential voting in the Commonwealth Electoral Act, rather than allowing it to exist only as a 'loophole'.
>
> Of more concern is the possibility that if Parliament were to introduce savings provisions without prohibiting advocacy in relation to those provisions, public confusion about the real intentions of the legislators on the method of voting required under the Commonwealth Electoral Act can be expected to increase under the pressure of well-organised public campaigns in support of optional preferential voting. The AEC does not believe that this potential confusion can be properly and appropriately addressed by AEC education campaigns alone.[56]

54 Australian Electoral Commission, submission 169.1, p 166.

55 Australian Electoral Commission, submission 169.1, p 167.

56 Australian Electoral Commission, submission 169.1, pp 167-168.

Committee conclusion

8.65 The committee supports the retention of full preferential voting for House of Representatives elections. That said, it is important that where an elector expresses a clear preference but makes a mistake when completing the ballot paper, that the vote should be included in the count up to the point where the mistake is made.

8.66 The savings provision used for South Australian House of Assembly elections significantly reduces informality and would have potentially 'saved' almost 154,000 votes at the 2007 federal election, had such a provision been included in the Commonwealth Electoral Act. However, the committee considers that the South Australian model which also saves votes where only a single preference is expressed (including a '1', a tick or a cross), is a step too far, in that it may actively encourage optional preferential voting rather than operating as a genuine savings provision.

8.67 The AEC has provided evidence that up to 90,000 votes may have been cast in 2007 where the ballot paper included non-sequential numbering.[57] The number of votes in this category has remained at this level for the past three elections. One-third of these informal votes are cast in NSW, with significant numbers also recorded in Victoria, Queensland and Western Australia (table 8.10).

Table 8.10 Number of informal votes attributed to non-sequential numbering, 2001 to 2007 elections

	2001	2004	2007
New South Wales	40,040	33,914	33,375
Victoria	14,683	25,122	23,136
Queensland	9,750	11,729	13,290
Western Australia	10,695	11,143	12,416
South Australia	6,972	7,829	6,180
Tasmania	1,303	964	1,473
Australian Capital Territory	492	363	524
Northern Territory	615	840	960
Total	84,550	91,904	91,354

Source *Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, p 10; Australian Electoral Commission, Informal Vote Survey House of Representatives 2001 Election (2003), Research Report number 1; Analysis of Informality during House of Representatives 2004 Election (2005), Research report number 7.*

8.68 Further, there are clear risks associated with ballot flooding given the strong relationship between higher number of candidates and higher

57 Australian Electoral Commission, submission 169.1, p 164.

informality rates. Of the 10 divisions with the highest informality rates in NSW at the 2007 election, those with the highest numbers of candidates (Blaxland, Chifley, Reid and Parramatta) were associated with a higher than average proportion of ballot papers ruled informal because of non-sequential numbering errors (table 8.11). In these 10 divisions alone, 10,091 ballot papers were ruled informal due to non-sequential numbering.

Table 8.11 Informality in the 10 NSW divisions with the highest informality rates, 2007 election

Division	Informality rate (%)	Change in informality compared to 2004 election (% points)	Number of candidates 2007 election	Change in number of candidates compared to 2004 election	Proportion of informal votes due to non-sequential numbering (%)	Number of votes ruled informal due to non-sequential numbering
Blaxland	9.49%	-0.78	8	0	15.03%	1,221
Watson	9.05%	0.05	6	-1	7.82%	625
Chifley	7.99%	-2.11	9	+1	25.73%	1,795
Prospect	7.73%	-1.68	5	-1	11.16%	742
Fowler	7.67%	-1.44	4	-1	6.53%	424
Reid	7.57%	-3.77	7	-1	14.34%	933
Parramatta	6.56%	-1.97	10	-1	20.70%	1,238
Banks	6.36%	-1.57	6	-1	11.54%	647
Werriwa	6.53%	-1.45	6	-1	10.34%	576
Bennelong	6.22%	-0.24	13	+6	32.79%	1,890
NSW average	4.90%	-1.20	7	-0.6	15.78%	681

Source *Australian Electoral Commission, Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, pp 13, 38–86; 'Virtual Tally Room, House of Representatives, House of Representatives Results, Candidates', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/HouseCandidatesBySurname-13745-A.htm; 'Virtual Tally Room, House of Representatives, Candidates', viewed on 26 May 2009 at http://results.aec.gov.au/12246/results/HouseCandidatesBySurname-12246-A.htm.*

8.69 The committee's preference therefore is to reinstate the savings provisions that existed in the Commonwealth Electoral Act between the 1984 and 1996 elections to include those ballot papers where there are non consecutive numbering errors in the count up to the point at which the numbering errors began.

8.70 While the committee acknowledges the AEC's concerns in relation to the potential re-emergence of campaigns advocating for optional preferential voting, the committee considers that these concerns do not justify the exclusion of up to 90,000 votes where electors have expressed clear preferences for a number of candidates but may have made mistakes in

numbering their ballot paper. Such a savings provision will also provide some insurance that election results are not affected by deliberate attempts to increase the number of candidates (and thereby leading to a rise in the informality rate) to influence the outcomes of an election.

8.71 Under the committee's proposal, votes marked with a single preference (either a '1', a tick, or a cross), will not be saved. The committee therefore does not consider that the reinstatement of the savings provision should be seen as accommodating optional preferential voting.

8.72 The committee recognises that the reinstatement of such a provision would need to be accompanied by an appropriate penalty provision to deter the advocacy of a vote other than in accordance with full preferential voting.

Recommendation 35

8.73 **The committee recommends that:**

- **Section 240 (2) of the *Commonwealth Electoral Act 1918*, which provides that the numbers on House of Representatives elections ballot papers are to be consecutive numbers, without the repetition of any number, be repealed, and**
- **the savings provision contained in paragraph 270 (2), repealed in 1998, which provided that in a House of Representatives election in which there were more than three candidates, and where a full set of preferences was expressed on the ballot paper, but there were non-consecutive numbering errors, the preferences would be counted up to the point at which the numbering errors began, at which point the preferences were taken to have 'exhausted', be reinstated to the *Commonwealth Electoral Act 1918*, and**
- **the Government amend the *Commonwealth Electoral Act 1918* to provide a penalty provision sufficient to deter the advocacy of 'Langer style voting'.**

Implications arising from the McEwen petition

8.74 The Court of Disputed Returns' (CDR) decision on the McEwen petition and the subsequent review of the AEC's ballot paper guidelines and recount policy have significant implications for the administration of elections by the AEC.

8.75 The committee has examined the decision and throughout the Inquiry has canvassed various options designed to mitigate against similar experiences occurring in future elections.

Court of Disputed Returns process and decision

8.76 As noted in chapter 2, a petition was filed with the Court of Disputed Returns on 25 January 2008, relating to the conduct of the recount in the division of McEwen.

8.77 A summary of the events commencing with the count of ballot papers in the division of McEwen through to the court's decision is outlined in table 8.12.

8.78 The final decision by the court was made on 2 July 2008, with the court ruling that the final margin in favour of Ms Fran Bailey was 27 votes.[58]

8.79 In coming to this view, the court conducted a review of 643 'reserved' ballot papers that had been set aside during the recount when scrutineers challenged the decisions of the Divisional Returning Officer. As a result of the court's review of these ballot papers, the Court reversed 154 of the decisions made by the Australian Electoral Officer during the recount in respect of the 643 ballot papers on which it ruled.[59]

8.80 The court also made a number of important observations in respect of issues associated with ruling on the formality of ballot papers and developed a set of 'principles' (the first two 'cardinal' principles and the second three 'subordinate' principles) that reflected past practice in ruling on formality including elements of various judgements by courts on these matters. The principles developed were:

- That the ballot, being a means of protecting the franchise, should not be made an instrument to defeat it;

58 *Mitchell v Bailey (No 2) [2008] FCA 692,* paragraph 84.

59 *Mitchell v Bailey (No 2) [2008] FCA 692*, Schedule.

- Doubtful questions of form should be resolved in favour of the franchise where there is no doubt as to the real intention of the voter;
- When seeking to determine the voter's intention resort must be had, exclusively, to what the voter has written on the ballot paper;
- The ballot paper should be read and construed as a whole; and
- A voter's intention will not be expressed with the necessary clarity unless the intention is unmistakeable and can be ascertained with certainty.[60]

8.81 Three ballot papers, which did not bear the initials of the presiding officer, were ruled to be informal under s 268(1)(a) of the Commonwealth Electoral Act.[61] The three ballot papers were of different appearance and of these, two appeared to be initialled on the back by the DRO as being admitted to the recount accompanied by the text 'DRO convinced the ballot paper came from a legitimate pre-poll envelope through the dec exchange'.[62]

8.82 While paragraph 268(1)(d) of the Commonwealth Electoral Act provides that a ballot-paper will be informal if 'it has upon it any mark or writing…by which, in the opinion of the Divisional Returning Officer, the voter can be identified…', the court ruled that three ballot papers, which had on them what appeared to be initials, to be formal votes. [63] This was consistent with, and confirmed established AEC guidance on formality, which provides that a person's initials annotated on a ballot-paper will not usually identify a voter, noting that on a divisional roll with around 100,000 voters there will frequently be several, if not numerous people with the same two initials.[64]

60 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 52.
61 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 77.
62 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraphs 74–78.
63 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 69.
64 *Mitchell v Bailey (No 2) [2008] FCA 692*, paragraph 63.

Table 8.12 Timeline of events, division of McEwen, 2007 election

Date	Event
2007	
Saturday 24 November	Polling day: ordinary, provisional and absent votes were cast by electors at polling places between 8 am and 6 pm. Ordinary votes were counted at the polling places in McEwen, for the purposes of providing an election night tally, which at the conclusion of counting showed Mr Mitchell leading by 558 votes.
Monday 26 November	A fresh scrutiny commenced of ordinary ballot-papers received at the Divisional Counting Centre from polling places across McEwen. The fresh count included a check of ballot-papers for formality, first preference totals and tallies of the preferred vote for Mr Mitchell and Ms Bailey. The counting continued until 10 December and, in addition to ordinary votes, included postal votes, which may be accepted up to 13 days after polling day, namely 7 December 2007.
Monday 10 December	The DRO for McEwen (the DRO) concluded the distribution of preferences, resulting in a majority for Mr Mitchell of 6 votes as follows: Mr Mitchell 48,416 Ms Bailey 48,410 Informal 3,823 (3.8%) Total 100,649 Ms Bailey wrote to the DRO setting out a number of reasons supporting a request for a recount. Independently of the specific issues raised in Ms Bailey's letter, the Australian Electoral Officer (AEO), in close consultation with the Electoral Commissioner and in accordance with section 279 of the Commonwealth Electoral Act, directed the DRO to conduct a recount of all ballot-papers.
Wednesday 12 December	The DRO commenced the recount at the Divisional Counting Centre. In total, 4,116 ballot-papers were declared to be informal in the recount. The DRO estimates between 1200 and 2000 ballot-papers were referred for his personal decision on formality. Scrutineers disagreed with the decision of the DRO in respect of 643 ballot-papers and these were reserved for decision of the AEO.
Thursday 13 December	The AEO advised candidates that he would commence consideration of reserved ballot-papers the next day at his office in Melbourne and that they were each entitled to appoint one scrutineer to observe the process.
Friday 14 December and Monday 17 December	The AEO made decisions in respect of 406 ballot-papers on 14 December and decisions on the remaining 237 ballot-papers on 17 December.
Wednesday 19 December	The AEC announced that the recount of all ballot-papers resulted in a majority for Ms Bailey of 12 votes as follows: Mr Mitchell 48,253 Ms Bailey 48,265 Informal 4,116 (4.1%) Total 100,634 The recount identified a number of errors that contributed to a net decrease of 15 ballot-papers from 100,649 to 100,634. As well, the recount took account of the AEO's decisions on the formality of reserved ballot-papers which contributed to the increase in informal ballot-papers of 293 – from 3,823 to 4,116.
Thursday 20 December	The DRO declared Ms Bailey as the elected candidate for McEwen.

Table (continued)

Table 8.12 (continued)

Friday 21 December	The EC certified in writing that Ms Bailey was the elected candidate, attached the certificate to the writ for the general election relating to the members of the House of Representatives to be elected from Victoria, and returned the writ to the Governor-General.
2008	
Friday 25 January	Mr Mitchell disputed the outcome of the election by petition to the Court of Disputed Returns (CDR), complaining that a significant number of the 643 reserved ballot-papers had been wrongly rejected by the AEO.
Thursday 21 February	The petition was heard before Justice Crennan of the High Court. The Court ordered that the matter be remitted to the Federal Court of Australia (FCA) and set a timetable for submissions to be filed by each party. The Court also ordered that the AEC deliver to the Victorian Registry of the FCA the 643 ballot-papers reserved for the consideration of the AEO.
Friday 28 March	The first directions hearing before Justice Tracey of the FCA, sitting as the CDR, between Mr Mitchell (Petitioner), and Ms Bailey (First Respondent) and the AEC (Second Respondent). During the directions hearing submissions were made by Counsel on what, if any, access would be provided to the reserved ballot-papers. Arising out of the hearing the parties undertook to provide submissions to the Court on the principles of formality and an agreed submission on the process to be adopted for the hearings.
Tuesday 22 April	The Court handed down its reasons for its decision that the Petitioner and the First Respondent could not view copies of the 643 reserved ballot-papers (Mitchell v Bailey (No 1) [2008] FCA 426).
Friday 2 May	In a second directions hearing, Justice Tracey indicated that he was considering providing Counsel for the Petitioner and Counsel for the First Respondent with access to the reserved ballot-papers.
Wednesday 21 May	This was the first day of two days of full hearing before Justice Tracey. The Court ordered that Counsel for Mr Mitchell and for Ms Bailey were to have access to the reserved ballot-papers under Court supervision so that they could identify the ballot-papers where the decision of the AEO was disputed. Subsequently, in their submissions to the Court, Counsel for both parties disputed only 285 of the 643 ballot-papers.
Tuesday 17 June	On the second day of the hearing, Counsel made submissions to the Court on ballot-paper formality.
Wednesday 2 July	The CDR handed down its judgement that the decisions of the AEO in respect of 153 of the 643 reserved ballot-papers should be changed, finding that 12 ballot-papers should have been treated as informal rather than formal, and that 141 should have been treated as formal rather than informal (Mitchell v Bailey (No2) [2008] FCA 692) (Mitchell v Bailey). The Court's decisions resulted in an increased majority for Ms Bailey of 31 votes as follows: Ms Bailey 48,339 Mr Mitchell 48,308 Informal 3,987 (4.0%) Total 100,634
Friday 11 July	The CDR handed down its judgement that the Commonwealth should meet the legal costs of both Ms Bailey and Mr Mitchell. The Commonwealth had not opposed the making of such orders (Mitchell v Bailey (No3) [2008] FCA 1029).

Source *Henderson A, Review of ballot-paper formality guidelines and recount policy (2008), pp 2-5, (exhibit 4).*

Henderson review

8.83 Following the decision of the Court of Disputed Returns (CDR) decision, the AEC commissioned Mr Alan Henderson PSM to conduct a review to identify action that should be taken by the AEC to ensure that processes and procedures are in pace for future elections to address the matters identified in the Court's decision.[65] The review was to:

- consider the specific ballot-papers and the Court's decision in Mitchell and any implications in the way in which electoral officials are supported by AEC policies, guidelines, procedures, manuals, and training in making decisions about the formality of ballot-papers;
- consult with key stakeholders about the impact of the Court's decision on the scrutiny process for electoral events;
- identify measures to improve the quality, consistency, transparency and accountability of decision-making by electoral officials on the formality of ballot-papers; and
- identify any necessary changes to the existing policies, guidelines, procedures, manuals and training produced by the AEC on the formality of ballot-papers.[66]

8.84 Given the potential link between decisions on the formality of ballot-papers and the case for undertaking recounts, the review was also required to consider the AEC's policy on recounts and identify possible criteria for accepting or rejecting requests for a recount.[67]

8.85 Judicial redress based on the formality of ballot-papers in respect of House of Representatives election outcomes has been exceedingly rare, with two or three cases in the period since the passage of the original Commonwealth Electoral Act 1902.[68] Mr Henderson considered that two factors seem relevant in explaining the rarity of court challenges: (a) the size of the winning margin; and (b) the effectiveness and transparency of electoral administration. Mr Henderson noted that:

> These factors are related. In situations where there is great confidence in the effectiveness of administration it is less likely

65 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), attachment 1, p 36 (exhibit 4).

66 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), attachment 1, p 36 (exhibit 4).

67 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 36 (exhibit 4).

68 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 9 (exhibit 4).

> that results will be subject to challenge. Transparency is important in building confidence not least because administrative decisions and procedures that are subject to scrutiny by stakeholders are likely to be more rigorous and effective than those that are never subject to external scrutiny.[69]

8.86 Mr Henderson noted that close results are rare, with only five divisions in the last five federal elections having a winning margin of less than 100 votes.[70] Court challenges to the outcome of House of Representative divisional elections have also been rare – with at most three cases identified since federation.[71] Mr Henderson noted that:

> The evidence from these cases shows that the impact of disagreements on formality is muted because they do not consistently favour particular candidates. While the Court reversed the decisions on the formality of 153 of the 100,634 ballot-papers in McEwen, the total number of formal votes for one candidate increased in net terms by 74 and the votes for the other candidate increased by 55.[72]

Guidance on formality and Australian Electoral Commission manuals

8.87 The key guidance in the CDR decision in Mr Henderson's view, emphasised the requirement for ballot-papers to be read and construed as a whole, with one or more poorly formed numbers to be deciphered in the context of a consecutive series of numbers rather than as single number in isolation.[73] Mr Henderson considered that it was the interpretation of this principle of 'the ballot-paper as a whole' that accounted for the great majority of the 153 ballot-papers where the CDR reversed the decision of the AEO.[74]

8.88 After reviewing the AEC's guiding documents on formality, Mr Henderson found that the main AEC documents, the Polling Place Procedures Manual, Training of Operational Staff Manual and Scrutineer's Handbook 'do not directly address the whole of ballot-paper principle'. Mr Henderson also considered that the Formality Policy, which is prepared primarily for the information of permanent AEC officials' does address the whole of ballot-paper principle and the interpretation of

69 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 9 (exhibit 4).
70 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 30 (exhibit 4).
71 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 8 (exhibit 4).
72 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 30 (exhibit 4).
73 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 30 (exhibit 4).
74 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 30 (exhibit 4).

unclear markings or poorly formed numbers. In relation to the Formality Policy, Mr Henderson considered that there was some divergence between the Formality Policy and the CDR decision. Mr Henderson noted that:

> The Formality Policy document refers to one unclear marking in a consecutive series of numbers, whereas the CDR found in Mitchell v Bailey that the 'discernable sequence of numbers' test may mean that a formal ballot-paper could include more than one unclear marking. In sum, there was a gap in AEC guidance for the consideration of the admission or rejection of ballot-papers. This can be addressed by incorporating the 'discernable sequence of numbers' test supported by realistic illustrations of poorly formed numbers in AEC manuals. The provision of publicly available comprehensive guidance for the consideration of the admission or rejection of ballot-papers should provide the basis for greater consistency and accuracy in decision-making on the formality of ballot-papers.[75]

8.89 Mr Henderson made a number of recommendations to provide additional guidance to AEC officials and scrutineers on ballot paper informality. Mr Henderson recommended that:

- The following guidance provided by the CDR in *Mitchell v Bailey* should be incorporated in AEC manuals, handbooks and training:
  - ⇒ Ballot-papers should be read and construed as a whole, with one or more poorly formed numbers to be deciphered in the context of a consecutive series of numbers rather than as single numbers in isolation;
  - ⇒ Poorly formed numbers must bear a reasonable resemblance to identifiable numbers;
  - ⇒ Unconventional but recognisable numbers such as continental 1s and 7s are acceptable;
  - ⇒ Initials annotated on a ballot-paper will not usually identify a voter and therefore does not provide a basis for rejecting a ballot-paper; and
  - ⇒ If a ballot-paper lacking official markings is considered authentic, then the annotation made by the Divisional Returning Officer (DRO) under subsection 268(2) of the Commonwealth Electoral Act should specify that the DRO is 'satisfied that it is an authentic ballot paper' – Section 6(e).

75 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 30 (exhibit 4).

- A single comprehensive set of information on formality, including guidelines and illustrative ballot-papers for decision-makers on the admission or rejection of ballot-papers should be made available on the AEC website at www.aec.gov.au. The illustrative ballot-papers should include actual examples of poorly formed numbers on formal ballot-papers as well as extremely poorly formed numbers that would render a ballot-paper informal – Sections 7(b) and 7(c).
- To assist decision-making in the potentially tense environment of close election counts:
  - ⇒ The briefs (manuals or handbooks) documenting guidelines on formality for decision-makers made available to scrutineers should be as comprehensive as, and identical in their relevant wording to, those available to electoral officials;
  - ⇒ Officials should brief scrutineers on the guidelines at the commencement of counting processes;
  - ⇒ Copies of the guidelines on formality should be readily available in counting centres;
  - ⇒ Officials should be prepared to fully explain their reasoning by reference to the guidelines in relation to their decisions on specific ballot-papers; and
  - ⇒ At least in recounts, scrutineers should be prepared to explain their reasoning for seeking the reserving of ballot-papers by reference to the guidelines – Section 5.[76]

Recount policy

8.90 Mr Henderson noted that the current AEC recount policy provides that 'there is no minimum number under which a recount will occur' because 'given the checks and balances' in the scrutiny system significant sorting errors are highly unlikely to go undetected.[77] Mr Henderson considered that the evidence for the period since 1984 supports this judgement, noting that:

> The average difference is 22 votes for the 6 recounts where the margins for both the initial count and the recount are available. The size of the change between the initial count and the recount in McEwen, 18 votes, was close to the average. However the direction of the change combined with the narrow initial margin

76 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 30 (exhibit 4).

77 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 31 (exhibit 4).

meant it was very significant because it changed the result of the election.[78]

8.91 In considering whether there should be an 'automatic' threshold for conducting a recount, Mr Henderson noted that the AEC generally undertakes recounts when the margin is less than 100 votes. Mr Henderson considered that there would be some merit in introducing 100 votes as an automatic threshold for recounts, and for 'State and National Office executives to monitor progress in close seats, to ensure that additional support is readily available to address the inevitable pressures that arise in close counts'.[79]

8.92 Mr Henderson made a number of recommendations in relation to the AEC's recount policy, recommending that:

- A threshold for an 'automatic' recount should be introduced with the key elements of recount policy revised to read as follows: A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division, unless the margin of votes on the initial count is less than 100, in which case a recount will be undertaken as a matter of course – Section 8(c).
- The details of all future recounts and requests for recounts should be systematically documented and assessed by National Office – Section 8 (c).
- Consistent with the practise of identifying close seats to be followed during counting, senior State and National Office executives should monitor progress in those seats, to ensure that additional experienced support and resources arereadily available to address the inevitable and appropriate increase in expectations in regard to transparency and attention to detail that arise in close counts – Section 8(d).
- Senior management should emphasise the importance of the existing policy whereby DROs and AEOs are expected to consult senior managers in the State and National Office respectively, including informing the Deputy Electoral Commissioner, before deciding whether to undertake a recount – Section 8(d).[80]

78 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 31 (exhibit 4).

79 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 31 (exhibit 4).

80 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 31 (exhibit 4).

8.93 The committee notes that the AEC already commenced administrative action to implement the recommendations from the Henderson Report relating to training and information materials.[81] The AEC noted that:

> It is anticipated that this action will assist in addressing any reasonable concerns about the AEC's handling of disputed ballot papers. The CDR decision has provided the AEC with clear guidance on the application of the formality rules in the Commonwealth Electoral Act. Additionally, the AEC now has a wealth of examples and precedents of disputed ballot papers that have been ruled upon by the CDR and which have been analysed and adapted to form the basis of new manuals, handbooks and training.[82]

Process for handling disputed ballot papers

8.94 During the course of the inquiry the committee explored the option of replacing the single decision-maker for dealing with reserved ballot papers in a recount situation with a panel of three comprising the relevant AEO and two other AEC officers at the Senior Executive Service level or equivalent.[83] The committee also examined whether such a process should involve discussions between the three members in the presence of (or absence of) scrutineers, and whether it was necessary for the panel to come up with a written statement of reasons as to the reasons behind the rulings on individual ballot papers.[84]

8.95 The rationale behind such a move would be to increase confidence in rulings on disputed ballot papers thereby avoiding a lengthy CDR process and the associated uncertainty of an election result. The replacement of a single AEO ruling on disputed ballot papers would not change the existing process whereby parties can petition the CDR disputing an election result.

8.96 The AEC's final response to this issue took account of the findings of the Henderson review and the CDR decision on the McEwen petition. The AEC noted that the report by Mr Henderson sets out for the AEC the broad guidance given by the CDR on formality and recommended that a single comprehensive set of information on formality be developed.[85] The

81 Australian Electoral Commission, submission 169.17, p 9.

82 Australian Electoral Commission, submission 169.17, p 9.

83 Mr Mark Dreyfus QC MP, Member for Isaacs, transcript, 11 August 2008, p 96.

84 Australian Electoral Commission, submission 169.8, pp1–5.

85 Australian Electoral Commission, submission 169.17, p 9.

AEC was of the view that the provision of such information was likely to increase transparency in the process, noting that:

> The development of such information, and the training of AEC officers and the stakeholders on the formality rules flowing from the CDR decision and the Henderson Report, will provide greater transparency in the decision-making process by the AEO and will assist in both identifying those ballot papers that are really in dispute and preventing unnecessary challenges.[86]

8.97 In the AEC's view, changing the existing single decision-maker to include some panel arrangements involved a number of risks that would not necessarily reduce delays in the return of the writs.[87] The AEC noted that:

> To replace the AEO with a panel that includes the AEO and two other senior AEC officers could give rise to concerns that the relatively straightforward process that currently exists will be elevated to a court-like setting with the panel needing to retire to make final decisions and then returning before the scrutineers to notify them of the panel's decision. An alternative process would be to have the panel discuss the matters before the scrutineers and reach a decision in their presence. This alternative process then raises the issue about how any minority views are resolved in front of scrutineers.
>
> Inherent risks of increasing the lodging of petitions to the CDR challenging the panel's decisions in the absence of transparency appear to exist if either of these two processes were to be adopted. The risks would clearly increase where the panel decision was not unanimous and that lack of unanimity occurred in the presence of scrutineers. This would also run the risk described by Associate Professor Graeme Orr in Submission No. 187 that the panel 'would be sitting in judgment on the decisions of other electoral officials in a court setting'.
>
> The AEC is concerned that delays in the return of the writs would occur if any new process involving a proposed decision-making panel results in the need for a written statement of reasons to be prepared and published. The imposition of a requirement to provide statements of reasons would appear to be inevitable to preserve transparency in decision-making if the panel was to retire

86 Australian Electoral Commission, submission 169.17, p 9.

87 Australian Electoral Commission, submission 169.17, pp 8–9.

> from the presence of scrutineers to consider the disputed ballot papers.[88]

8.98 In his review, Mr Henderson recommended that officials should be prepared to 'fully explain their reasoning by reference to the guidelines in relation to their decisions on specific ballot papers'.[89] The AEC noted that presently, this full explanation of the reasoning of the decision-maker occurs when the AEO conducts the scrutiny of the reserved ballot papers in the presence of the scrutineers. This is all done orally as only the final decision itself (i.e. 'admitted' or 'rejected') is required to be recorded in writing (see subsection 279B(7) of the Electoral Act).[90]

8.99 In the AEC's view, this recommendation does not require the decision-maker to provide a formal statement of reasons and that the adoption of such an alternative process would create additional risks. The AEC noted that:

> This would clearly create risks that additional time may be required to formally record the basis for decisions and to obtain legal advice in the preparation of formal reasons for decision.[91]

8.100 The AEC therefore suggested that rather than adopt a three person panel model, the effectiveness of the measures to be adopted to implement the recommendations of the report from Mr Henderson should be reviewed after the next federal election in which an AEO is required to review reserved ballot papers under sections 279B, 280 and 281 of the Commonwealth Electoral Act.[92]

Committee conclusion

8.101 The committee recognises that the closeness of the result in the division of McEwen and the resulting Court of Disputed Returns' petition was a relatively rare event in the context of federal elections.

8.102 That said, the reversal of almost one-quarter of the AEO's decisions in respect of the 643 reserved ballot papers is of concern and may be seen as putting community confidence in election results at risk. There is also the possibility of increased disputation, as candidates in tight election contests

88 Australian Electoral Commission, submission 169.17, p 10.

89 Henderson A, *Review of ballot-paper formality guidelines and recount policy* (2008), p 14 (exhibit 4).

90 Australian Electoral Commission, submission 169.17, p 10.

91 Australian Electoral Commission, submission 169.17, p 10.

92 Australian Electoral Commission, submission 169.17, p 11.

may be encouraged to take their chances by having the results of elections reviewed by a different decision maker.

8.103 The committee supports the review process adopted by the AEC following the decision by the Court of Disputed Returns on the McEwen petition.

8.104 The committee endorses the AEC's proposed response in implementing the recommendations by Mr Henderson, which the committee agrees, should provide for a greater understanding by electoral officials and scrutineers about rulings on formality.

8.105 The additional transparency associated with the publication of guidelines on formality, which incorporate illustrative ballot papers based on the judgement by the Court of Disputed Returns in the McEwen petition, is also welcomed.

8.106 The committee supports the AEC's arguments in continuing with a single electoral official (the AEO for the respective jurisdiction), to rule on formality in a recount situation, given the AEC's adoption of the recommendations in the Henderson review.

8.107 The committee also supports the AEC proposal that the process be reviewed after the next federal election in which an AEO is required to review reserved ballot papers under sections 279B, 280 and 281 of the Commonwealth Electoral Act.

8.108 It is of concern to the committee, however, that those ballot papers which were considered formal by the DRO even though they did not contain the initials of an issuing officer nor a watermark were not annotated by the DRO in such a way as to reflect the requirements of s268(2) of the Commonwealth Electoral Act.

8.109 The committee also agrees with the recommendation by Mr Henderson that section 268(2) be amended to require a Divisional Returning Officer who rules a ballot paper to be formal despite the ballot paper not containing either the initials of a issuing officer or the official mark, to annotate the ballot paper with the words 'I am satisfied that this is an authentic ballot paper'.

8.110 This move is complementary to the committee's support of moves by the AEC to amend the wording of s209A in order to allow for ballot papers to be printed with a 'feature approved by the Electoral Commission'. In combination, these amendments will serve to eliminate confusion about ballot paper formality (see recommendation 36 below).

8.111 Accordingly, the committee recommends that the AEC adopt all of the recommendations contained in the report prepared by Mr Henderson,

with the exception of recommendation A(v) from that report which is the subject of recommendation 37 of the committee.

Recommendation 36

8.112 **The committee recommends that the Australian Electoral Commission adopt all recommendations contained in the report entitled Review of Ballot-Paper Formality Guidelines and Recount Policy prepared for the Australian Electoral Commission by Mr Alan Henderson, except for recommendation A(v) which is the subject of recommendation 37.**

Recommendation 37

8.113 **The committee recommends that section 268(2) of the *Commonwealth Electoral Act 1918* be amended to provide that in those cases where the Divisional Returning Officer responsible for considering the question of the formality of a ballot paper, is satisfied that the ballot paper is not informal, because the Divisional Returning Officer is satisfied that it is an authentic ballot paper on which a voter has marked a vote, the Divisional Returning Officer be required to annotate the ballot paper with the words 'I am satisfied that this is an authentic ballot paper'.**

Clarification of permitted official marks, and removals to 'on-demand' printing of ballot papers

8.114 While ballot papers are typically printed on water marked paper, the Commonwealth Electoral Act includes provisions that give the AEC some flexibility to print ballot papers utilising regular printers. Such provisions are usually used by the AEC in the early stages of postal voting and at Australian embassies overseas.[93] Where ballot papers are printed locally, the formality requirements of the Commonwealth Electoral Act require that the ballot paper is authenticated by the initials of the presiding officer.[94]

8.115 According to the AEC, it had received advice from the Australian Government Solicitor following the CDR decision on the McEwen petition

93 Australian Electoral Commission, submission 169.18, p 7.

94 Commonwealth Electoral Act, s 268.

that put a narrower construction on the meaning of paragraph 209A(b). The Australian Electoral Commission noted that:

> It is restrictive because of the legal interpretation of the word 'overprint'. What we have done, to some extent, may not have been strictly legal in terms of the act but we need the flexibility. It is just the wording in that section of the act. For example, we need the flexibility when we print ballot papers from files sent overseas before they actually get ballot papers.[95]

8.116 In the AEC's view, it was clearly not intended, at the time that paragraph 209A(b) was inserted in the Act, that there would be a critical distinction between ballot papers which had acquired their colour through printing with a coloured wash, and ballot papers which had acquired their colour through having been printed on dyed stock.[96] Furthermore, the AEC noted that:

> The advice has highlighted the need to have a provision sufficiently flexible to enable the use of evolving technology for security printing (including 'on demand' printing) – which these days can include methods which do not fall within the definition of 'overprinting', such as the use of stock with markings visible under ultraviolet light, or even the inclusion of holograms.[97]

Committee conclusion

8.117 The committee notes the AEC's legal advice and considers that there is benefit in providing the AEC with additional flexibility in the printing of ballot papers.

Recommendation 38

8.118 **The committee recommends that paragraph 209A(b) of the *Commonwealth Electoral Act 1918* and paragraph 25A(b) of the *Referendum (Machinery Provisions) Act 1984* be repealed, and replaced with the words 'a feature approved by the Electoral Commission'.**

95 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, p 34.

96 Australian Electoral Commission, submission 169.18, p 8.

97 Australian Electoral Commission, submission 169.18, p 8.

9

Modernisation and sustainability of electoral administration

9.1 The Australian Electoral Commission (AEC) has raised a number of concerns with the committee relating to the sustainability of its operations given the twin pressures of a reduction in the growth of appropriations and the rising costs of conducting elections and ongoing operations.

9.2 The AEC participated in a recent inquiry by the Joint Committee of Public Accounts and Audit (JCPAA) on the application of an annual efficiency dividend to small Commonwealth public sector agencies. The AEC raised concerns with the JCPAA about the application of the efficiency dividend to the AEC. In its inquiry report the JCPAA noted that the Joint Standing Committee on Electoral Matters was the preferred forum for addressing issues associated with the *Commonwealth Electoral Act 1918*.

9.3 There are certain areas where the AEC considers that it has limited flexibility to continue to find ongoing savings as required under current funding arrangements. There are a number of changes that could be made to give the AEC flexibility and provide for a business model that incorporates a greater reliance on electronic transactions.

Election costs and cost pressures

9.4 As noted in chapter 2, the AEC estimate that the cost of the 2007 federal election was $114 million, excluding $49 million in public funding provided to election candidates. Most of the expenditure related to

staffing costs, although advertising and promotion expenses were also significant (table 9.1).[1]

Table 9.1 2007 election expenditure, to 30 June 2008 ($)

Item	Amount ($)
Employee Expenses	42,517,402
Property Office Supplies and Services	6,235,077
Election Cardboard and Supplies	4,860,054
Contractors	1,945,670
Consultancy	1,265,580
Travel	2,770,215
Advertising, Promotion and Media Services	29,519,430
ITC Services	10,874,985
Mailing and Freight Services	8,296,548
Printing and Publications	4,643,200
Legal Services	485,960
Other Expenses	659,347
Sub total	*114,073,467*
Public funding	49,002,639
Total expenses	**163,076,106**

Source *Australian Electoral Commission, Electoral pocketbook: election 2007 (2009), p 73.*

9.5 In real terms, the cost of the election per elector increased from $6.38 at the 2004 election to $8.36 at the 2007 election, a rise of 31 per cent. The AEC nominated several areas where they had experienced increases in election expenses including:

- a one-off pay increase of 5 per cent pay for polling officials;
- increased staffing costs due to a rise of approximately 2,300 temporary staff for the 2007 election;
- running the electronic voting trials at a cost of $2.8 million; and
- a 30 per cent increase in venue hire costs.[2]

9.6 As noted in chapter 2, a key driver of the higher election cost in 2007 was the increased spending on advertising. The committee calculates that if the additional $19.3 million spent on advertising at the 2007 election compared to the 2004 election was excluded, the cost per elector for the 2007 election would have been around $6.95, representing an 8.9 per cent real increase in the cost of the 2007 election compared to the 2004 election.

1 Australian Electoral Commission, submission 169, p 79.

2 Australian Electoral Commission, submission 169, p 80.

The AEC was required to fund this increased advertising expenditure by drawing on its accumulated cash reserves, running operating losses over the financial years 2006-07 and 2007-08.[3] Such a situation is obviously unsustainable over the longer term.

Inquiry into the effect of the efficiency dividend on smaller public agencies

9.7 During 2008, the JCPAA conducted an inquiry into the effects of the ongoing efficiency dividend on smaller public agencies.

9.8 The then Electoral Commissioner told the JCPAA that:

> The combination of the efficiency dividend with the indexation arrangements […] means that we are suffering quite significant, real losses in our running-cost appropriations and that is what we are actually struggling with.[4]

9.9 In their submission to the JCPAA's inquiry, the AEC noted that the *Commonwealth Electoral Act 1918* imposed a range of requirements that make it difficult to achieve efficiencies:

> The Commonwealth Electoral Act mandatory nature and the prescription of its provisions are fundamentally at 'odds' with the application of the efficiency dividend. The prescription in the Commonwealth Electoral Act inhibits contemporary and efficient ways of transacting with eligible enrollees, electors, political parties and associated entities. Efficiencies that can be brought to bear on highly prescribed processes are few in number.[5]

9.10 Some examples of the constraints imposed by the Commonwealth Electoral Act provided by the AEC included a requirement under s 38 of the Act to maintain a divisional office network and the high level of mandated and prescribed processes associated with maintaining the electoral roll.[6]

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3 Australian Electoral Commission, submission 169, p 79.

4 Campbell I, Australian Electoral Commission, transcript, 21 August 2008, p 60.

5 Australian Electoral Commission, submission 42 to the Joint Committee on Public Accounts and Audit inquiry into the effects of the ongoing efficiency dividend on smaller public agencies, p 5.

6 Australian Electoral Commission, submission 42 to the Joint Committee on Public Accounts and Audit inquiry into the effects of the ongoing efficiency dividend on smaller public agencies, pp 5–6.

9.11 In its report to the parliament, the JCPAA acknowledged the adverse impact of the efficiency dividend on small agencies and proposed that the government either exempt the first $50 million of all agencies' appropriations from the efficiency dividend, excluding departments of state (the preferred option) or exempt the first $50 million of the appropriations of all agencies that have departmental expenses of less than $150 million, excluding departments of state. A further recommendation on sharing savings through coordinated procurement was also made. [7]

9.12 The JCPAA further noted that the Joint Standing Committee on Electoral Matters was the preferred forum for addressing issues associated with the Commonwealth Electoral Act.[8] As a result, and in accordance with concerns about ensuring the continued integrity of electoral processes and elections, the committee considers that it must give the application of the efficiency dividend to the AEC due attention.

Funding arrangements and the impact of the efficiency dividend

9.13 The AEC is typically funded on an election cycle basis, with annual appropriations rising and falling to take account of the peak of expenditure around federal election events (figure 9.1).

9.14 The most recent resourcing review, conducted during 2003-04, provided for a degree of budget supplementation, with an additional $28.1 million provided over the five years to 2007-08. Additional funding of $6.3 million over four years to 2007-08 was also provided to support roll integrity activities (table 9.2).[9] In each case, supplementation was subject to the efficiency dividend.[10]

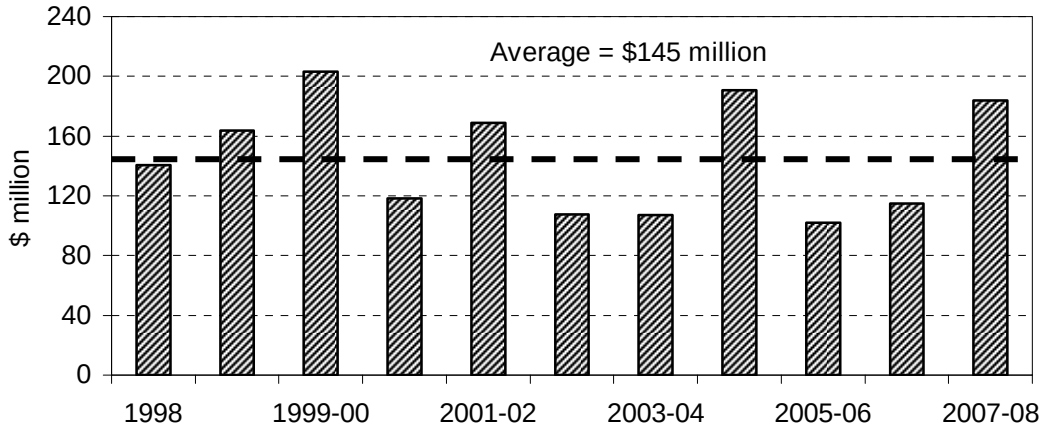
7 Joint Standing Committee on Public Accounts and Audit, *Report 413, The efficiency dividend and small agencies: Size does matter* (2008), Commonwealth of Australia, p 134.

8 Joint Standing Committee on Public Accounts and Audit, *Report 413, The efficiency dividend and small agencies: Size does matter* (2008), Commonwealth of Australia, pp 33–34.

9 Australian Electoral Commission, submission 169.15, p 8.

10 Australian Electoral Commission, submission 169.15, p 8.

Figure 9.1 Australian Electoral Commission annual appropriations, 1997-98 to 2007-08, (real $ million)



Source *Australian Electoral Commission, Annual Report 2007-08, p 178; Annual Report 2005-06, p 156; Annual Report 2003-04, p 136; Annual Report 2001-02, p 114; Annual Report 1999-2000, p 112.*

Table 9.2 Supplementation provided to the Australian Electoral Commission following the 2003-04 resourcing review ($ million)

	2003-04	2004-05	2005-06	2006-07	2007-08
General supplementation	5.1	19.7	8.0	4.1	15.4
Roll integrity activities		1.7	1.4	1.3	1.4

Source *Australian Electoral Commission, submission 169.16, p 8.*

9.15 In the AEC's view, the additional resources provided to maintain a staffing of three full time equivalent (FTE) employees in each divisional office was based on a 'snapshot' of actual staffing. As a result, it did not take account of average staffing levels nor allow for absences including backfilling and represented an ongoing shortfall of between $2.3 million (45 FTE) and $4.4 million (75 FTE).[11]

9.16 The ongoing impact of the efficiency dividend on the AEC will require it to absorb significant savings, at a level that is significantly higher than in past years (table 9.3).

11 Australian Electoral Commission, submission 169.15, p 8.

Table 9.3 Annual efficiency dividends rate (per cent) and impact on the Australian Electoral Commission's budget ($ million)

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Efficiency dividend rate (%)	1	1	1	1.25	1.75	3.25	3.25	3.25	3.25
Estimated impact on funding ($m)	-0.9	-1.6	-0.9	-1.3	-3.0	-3.0	-3.2	-5.8	-3.2

Source *Australian Electoral Commission, submission 169.16, p 8.*

9.17 The AEC noted that the cumulative effect of the increased efficiency dividend to 2011-12 of $29.4 million exceeds the additional resources gained from the 2003-04 resourcing review.[12]

9.18 Notwithstanding the impact of the efficiency dividend, the AEC pointed to the unsustainability of continuing to incur operating losses, which over the past two financial years has amounted to up to $17 million.[13]

9.19 The AEC estimated that, were it to retain the current business model through to the next election, the cost of the election (excluding public funding) would be $135 million.[14] This compares to a cost of $113 million for the 2007 election.[15] The AEC noted that:

> This estimate provides for a slight increase in the scale of public awareness leading up to the event to ensure the accuracy of the electoral roll, but does not take account of increases in the eligible enrolment and voting population. Further, it does not take account of Government policy initiatives that may impact the AEC over the next cycle such as emissions trading and the rise of 'green' procurement. Given the AEC's dependency on paper, property and logistics, the AEC is exposed to cost increases these initiatives might bring.[16]

9.20 Should the AEC not receive significant additional funding over the electoral cycle to meets its obligations under the Commonwealth Electoral Act and avoid further operating losses, the AEC warned the committee that it would result in 'less polling places and reduced staff, both leading

12 Australian Electoral Commission, submission 169.15, p 8.
13 Australian Electoral Commission, submission 169, p 81.
14 Australian Electoral Commission, submission 169, p 81.
15 Australian Electoral Commission, submission 169, p 80.
16 Australian Electoral Commission, submission 169, p 81.

to increased queues at polling places and an increase in the time taken to count votes'.[17]

2009-10 Budget

9.21 As noted in chapter 6, the AEC will receive an additional $13 million over the next four years as part of the 2009-10 Budget to deliver a program that will close the gap in areas of Indigenous disadvantage by improving the electoral enrolment and participation of Indigenous Australians.[18]

9.22 The AEC is expected to have an operating surplus of $3 million in 2008-09, which the AEC attributed to 'a number of positions not being filled until late in the financial year and a reduced level of spending across the board'.[19] The AEC noted that:

> The reduction in spending was, in part a management decision to reduce expenditure in the 2008-09 year to improve the overall cash position of the agency following operating losses in 2006-07 and 2007-08.

9.23 Beyond 2008-09, the AEC is expecting that expenditure will be equal to revenue in each year over the forward estimates.[20] Appropriation revenue over the forward estimates period will rise from $105 million in 2009-10 to $186 million in 2010-11 (when the election is expected to be held) (table 9.4).

Table 9.4 2009-10 Budget Australian Electoral Commission appropriation revenue, 2009-10 to 2012-13 ($'000)

	2008-09	2009-10	2010-11	2011-12	2012-13
Appropriation revenue ($'000)	101,500	105,209	186,456	107,114	114,364

Source *2009-10 Budget, Portfolio Budget Statements, Department of Finance and Administration, p 99.*

9.24 The committee notes that as part of the 2009-10 Budget, further savings of $6.1 million over four years ($1.5 million per year) are to be recovered

17 Australian Electoral Commission, submission 169, p 81.

18 Senator the Hon John Faulkner, Special Minister of State, '$13.0 million to help improve Indigenous electoral participation', media release, 12 May 2009.

19 2009-10 Budget, Portfolio Budget Statements, Department of Finance and Administration, p 99.

20 2009-10 Budget, Portfolio Budget Statements, Department of Finance and Administration, p 99.

from the AEC, with savings to be achieved by reducing expenditure on Electoral Education Centres, the use of in-house legal advice rather than external legal providers and through implementing general efficiency measures.[21] The committee noted that the budget papers state that:

> Savings will also be achieved by closing the Electoral Education Centres located in Melbourne and Adelaide, and ceasing financial support for the Western Australian Electoral Education Centre. The internet and printed material will provide alternative means of providing electoral education.[22]

Committee conclusion

9.25 The AEC, like many public sector organisations, faces significant cost pressures in the delivery of its services and the need to find savings to meet savings targets imposed by a whole of government efficiency dividend. As a public sector agency, the AEC should not be immune from the overall objectives of such a policy, which encourages agencies to innovate and become more efficient in the delivery of services.

9.26 The committee notes that the 2009-10 Budget did not address the issue of the application of the efficiency dividend to small agencies, as examined in 2008 by the Joint Standing Committee on Public Accounts and Audit. Further, the 2009-10 Budget included an additional $6 million of savings over four years from a range of activities, including electoral education services in several capital cities.

Recommendation 39

9.27 **The committee recommends that the Australian Electoral Commission be resourced appropriately in order that it continue to provide high quality electoral services to the Australian population and to do so in a manner that does not compromise the integrity of the electoral system.**

21 2009-10 Budget, Budget Paper No 2, p 249.

22 2009-10 Budget, Budget Paper No 2, p 249.

9.28 The committee considers that there are a range of areas where the AEC should be given more flexibility in the delivery of its services and in allocating its resources and has recommended such flexibilities be provided. Such changes will also provide greater capacity for innovation within the AEC. The committee considers that there are some services, such as the National Tally Room, where the AEC should continue to provide the same services as at previous elections. These are discussed below.

9.29 Should the government accept the committee's recommendations it is likely that the modernisation of some administrative arrangements and some additional flexibility in operational areas will yield some savings over the medium term. The committee will continue to monitor the financial pressures faced by the AEC — and if required, make further recommendations to the government about what further resources are required by the AEC.

National Tally Room

9.30 The provision of the National Tally Room (NTR) at the 2007 election was estimated by the AEC to have cost $1 million to build and operate, with significant costs including:

- $372,000 for IT services;
- $188,000 for construction and deconstruction;
- $117,000 for security;
- $96,000 for venue hire and Exhibition Park in Canberra services;
- $71,000 for contract staff; and
- $32,000 for signwriting/painting of the tally board.[23]

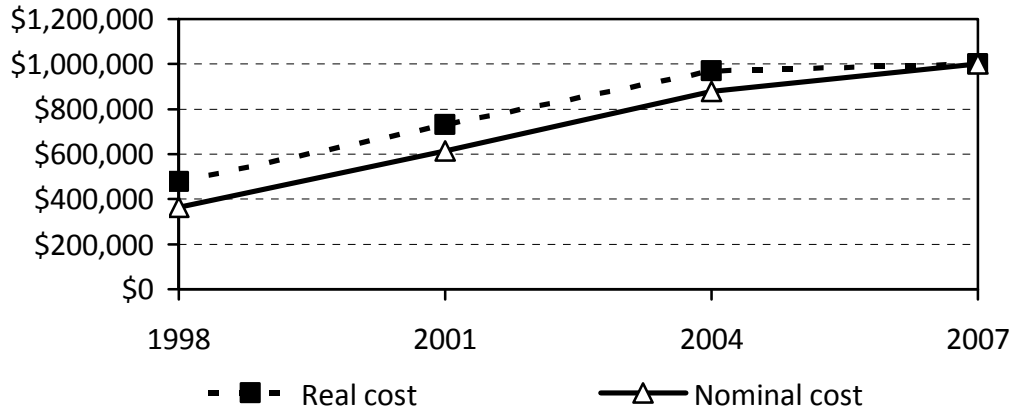
9.31 In addition, storage costs for the tally board and associated structures are approximately $18,000 per annum.[24]

9.32 The cost of providing the NTR has increased significantly over recent elections, rising in real terms by almost 110 per cent from $363,000 at the 1998 election (figure 9.2).

23 Australian Electoral Commission, submission 169, p 26.

24 Australian Electoral Commission, submission 169, p 26.

Figure 9.2 National Tally Room cost, 1998 to 2007 elections ($)



Source *Australian Electoral Commission, submission 16a to the Joint Standing Committee on Electoral Matters inquiry into certain aspects of the administration of the AEC, p 17; Joint Standing Committee on Electoral Matters, Inquiry into the 2001 election and matters related thereto (2003),Commonwealth of Australia, p 119; Australian Bureau of Statistics, Consumer Price Index, cat no 6401.0, viewed on 2 June 2009 at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6401.0Mar%202009?OpenDocument.*

9.33 The AEC argued that its internet results centre known as the 'virtual tally room' is now the frontline system for the transparent publication of election results (including to media outlets), and the NTR is now primarily a large media centre, no longer a critical and essential forum for ensuring widespread dissemination of election results.[25] Given this, the AEC considered that these significant costs could be avoided by discontinuing the tally room at future elections.[26] The AEC noted that:

> The cost of the NTR, and the burden which its establishment within a tight timeframe places on the AEC, continue to be a significant concern for the AEC, especially in a period in which resources are stretched. The AEC notes that during the JSCEM's 2007 inquiry a number of media organisations expressed their support for the continuation of the NTR. The AEC believes that the time has come for media organisations to be asked to share some of the costs of the NTR. This, ultimately, is the only way of determining the true extent of the value they place on its continuation. While acknowledging the importance of the NTR to some people as part of the fabric of an election and its importance to the media the NTR is not necessary to the conduct of an election. If in the allocation of resources for an election, the AEC is

25 Australian Electoral Commission, submission 169, p 26.

26 Australian Electoral Commission, submission 169, p 26.

> required to choose between diminishing services to electors, such as closing polling places, having longer queues at polling places or not running the NTR, then the AEC will deem the NTR of a lower priority and will not continue to provide it.[27]

9.34 The AEC suggested that if the continued staging of the NTR is desired by the parliament, the AEC must receive additional funding, either through the budget or through charging, to cover associated costs.[28] The AEC considered that if the costs of running the NTR are to be recovered from media organisations, it would be most appropriate to charge a flat fee for access in advance.[29] The AEC noted that:

> The quantum of fees could not be set until the costs of running the NTR in the election year are finalised. However, it is likely that television networks would pay the majority of access fees given their significant usage of floor space and infrastructure. Conditions for access to the NTR would remain the same as for the 2007 election unless otherwise determined by the AEC (rotation of floor positions, floor space etc).[30]

9.35 The committee notes that early in 2007 the AEC raised a proposal to abolish the NTR in favour of disseminating the results by electronic means. Following stakeholder consultation which yielded vastly differing views, the AEC announced that the NTR would continue to be staged for the 2007 election, which would 'enable broader consideration and assessment of the future for the NTR' for future elections.[31]

9.36 The Joint Standing Committee on Electoral Matters of the 41st parliament examined this issue in some detail during mid-2007 and supported the continuation of the NTR, recommending that 'the Australian Government ensures that the National Tally Room is retained for future federal elections'.[32] In coming to this conclusion, this committee stated that:

> The committee supports the continuation of the NTR given its historical place in Australian politics and elections. Australia is

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27 Australian Electoral Commission, submission 169, pp 26–27.

28 Australian Electoral Commission, submission 169, p 27.

29 Australian Electoral Commission, submission 169.1, p 42.

30 Australian Electoral Commission, submission 169.1, p 42.

31 Australian Electoral Commission, 'AEC to stage Tally Room at 2007 Federal Election', media release, 18 May 2007, viewed on 21 April 2009 at http://www.aec.gov.au/About_AEC/Media_releases/2007/05_18a.htm.

32 Joint Standing Committee on Electoral Matters, *Review of certain aspects of the administration of the Australian Electoral Commission* (2007), Commonwealth of Australia, p 54.

> one of the world's longest running democracies, and needs to value its history and traditions.
>
> Furthermore, the committee notes, there is a value—and logic—in having a central tally room in the national capital for the federal election. This value extends far beyond dollar or logistical considerations.
>
> … The committee is of the view that the abolition of the NTR would have a negative impact on the perception of the transparency of elections.[33]

9.37 The government response to this committee's report, presented in September 2008, supported the recommendation in principle, noting that:

> Prior to the next federal election, the Government will give careful consideration to the arrangements for the National Tally Room, including the possibility of sharing the cost of the facility with the media. The Government will take account of the views of the Parliament, the AEC and other interested parties, including media stakeholders.[34]

Committee conclusion

9.38 The committee considers that the National Tally Room plays an important part in elections and should be provided by the AEC at future elections.

9.39 The committee believes that the National Tally Room is much more than a media centre on election night, providing a focus for broadcasts of election results. It serves as a manual back up contingency in the event of significant computer systems failures, where the capacity to revert to alternative means of presenting election results in a timely, transparent manner, is of major importance to all stakeholders in the electoral process.

9.40 For a voting population that includes persons from every element of Australia's diverse population, and who are for that one night, focussed on the electoral process more intently than at any other point in time, the National Tally room represents a transparent and accessible symbol of actual participation in the most inclusive electoral process in the world, one which determines the future of the nation.

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33 Joint Standing Committee on Electoral Matters, *Review of certain aspects of the administration of the Australian Electoral Commission* (2007), Commonwealth of Australia, p 53.

34 Government response, viewed on 21 April 2009 at http://www.aph.gov.au/house/committee/em/aec/caa.pdf.

9.41 The committee notes the government's support for the continuation of the National Tally Room and consideration of the possibility that costs could be shared with media organisations.

9.42 While the issue of cost sharing with media organisations was also raised with the committee by the AEC, the committee is reluctant to move towards a funding arrangement that, by requiring media organisations to pay for participation, could then lead to media organisations having a greater opportunity to determine how the National Tally Room is structured and used on election night.

9.43 Therefore the committee does not consider that a cost sharing model is appropriate and that the AEC should fully fund the staging of the National Tally Room.

Recommendation 40

9.44 **The committee recommends that the Australian Electoral Commission be required to continue with staging the National Tally Room at future elections.**

Flexible regime for forms design

9.45 The current regime of forms used by the AEC is the 'approved form' as defined in the Commonwealth Electoral Act. Section 4 of the Commonwealth Electoral Act defines an approved form to be a form approved by the AEC by notice published in the Gazette. Various sections of the Commonwealth Electoral Act refer to the use of an approved form for the execution of an administrative function. For example, a claim for enrolment or a transfer of enrolment must be in the approved form s 98(2)(a)).[35]

9.46 The AEC noted that the current approved form regime permits only one approved form for each type of enrolment transaction at any one time, with a later approved form repealing an earlier form.[36] An implication of these requirements is that no more than one form can be in use at one time for the same enrolment purpose, preventing the AEC from producing forms in different formats for different audiences or initiatives.

35 Australian Electoral Commission, submission 169, p 76.

36 Australian Electoral Commission, submission 169, p 76.

9.47 The AEC considered that improving the flexibility of the arrangements for the design of forms would enhance the AEC's capacity to tailor forms to specific client groups, for example the vision impaired, or to persons who would benefit from the use of a form specifically targeted to their needs, rather than more generic ones.[37] The AEC also noted that in the longer term, any shift to the use of online transactions will require a more flexible regime, under which appropriate designs can be developed to meet the different requirements associated with the capture of information via computer, whilst still providing for the use of hardcopy forms.[38]

9.48 In order to provide more flexibility in forms design, the AEC proposed the introduction of a new class of forms, to be known as authorised forms.[39] These forms would be subject to authorisation by the Commission (or its delegate) but would not require gazettal. The AEC considered that any new power for the AEC to authorise forms should specifically allow for the authorising of more than one form for a designated enrolment purpose at one time.[40]

Committee conclusion

9.49 The committee supports the AEC's proposals that more flexible arrangements be established for the authorisation of approved forms. The committee considers that such an approach will allow the AEC to design forms that are targeted at different groups of electors and initiatives and facilitate the design of forms for the types of electronic transactions that the committee has supported in this report relating to updating enrolment details and applying for postal votes.

37 Australian Electoral Commission, submission 169, p 76.

38 Australian Electoral Commission, submission 169, pp 76-77.

39 Australian Electoral Commission, submission 169, p 77.

40 Australian Electoral Commission, submission 169, p 77.

Recommendation 41

9.50 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide a flexible regime for the authorisation by the Australian Electoral Commission of approved forms, which will:**

- **allow for a number of versions of an approved form;**
- **enable forms to be tailored to the needs of specific target groups; and**
- **facilitate online transactions.**

Flexibility in the allocation of enrolment processing tasks

9.51 The Commonwealth Electoral Act gives the AEC greater flexibility in allocating work across its divisional offices within the same state or territory during an election period (between the announcement of the election and polling day) than it has at other times.[41]

9.52 The AEC considered that there would be benefit in providing the AEC with greater flexibility to conduct its enrolment-related work in a non-election period in the same manner as during election times.[42] The AEC told the committee that:

> One of the other areas we have pursued is sharing enrolment processes across our divisions. Changing the Act to provide point-of-receipt processing by any AEC office within a state or territory has the potential to enhance timeliness of our operations. It will also result in better service delivery by providing electors with a higher level of customer service through reduced handling time. The Act currently provides for this process to be in place during election periods, so it seems logical to provide the same service to electors at all times.[43]

41 *Commonwealth Electoral Act 1918*, ss 2A to 2E.

42 Australian Electoral Commission, submission 169.18, p 3.

43 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, p 3.

9.53 The AEC considered that the benefits of such an arrangement to be numerous, including assisting with roll processing during peak times. The AEC noted that:

> For example, last year there were some 82 roll closes, at both State/Territory and local level, and the application of these wider processing arrangements at all times would assist the AEC in handling these other roll closes in an effective manner. Many of these roll closes also occur at short notice, making the desirability of an ongoing cross divisional processing arrangement within the same State/Territory very high. More broadly, the wider application would also help the AEC with scheduling and handling of other important issues, such as unexpected staff absences in particular divisions, absence of staff from offices for training and or educational purposes, or the conduct of school and community visits programs, as well as allowing further skilling up and development of staff by exposing them to enrolment matters that are not common in their division (e.g. rural road numbering, an issue not often encountered by those working in predominantly metropolitan divisions).[44]

9.54 In conducting its activities under such arrangements, the AEC noted that it would 'apply and maintain its usual processes and practices to ensure that high levels of integrity of enrolment are maintained at all times, irrespective of the division in which the enrolment form is processed.'[45]

Committee conclusion

9.55 The committee considers that giving the AEC additional flexibility to share workloads across its divisional offices within a state or territory will lead to a more effective use of resources within the AEC.

9.56 That said, the committee considers that the divisional office structure, which gives the AEC a physical presence in almost all of the 150 divisions across the country, is a significant asset to the AEC. The physical presence of an AEC office and dedicated staff in a division give the AEC a capacity to draw on local knowledge and experience when conducting roll maintenance activities and delivering electoral education.

9.57 While the committee supports the AEC's proposal to enable workloads to be shared across divisional office within the same state or territory outside

44 Australian Electoral Commission, submission 169.18, p 4.

45 Australian Electoral Commission, submission 169.18, p 4.

of election periods, the committee does not wish to see the administrative and electoral capacity or the importance of maintaining divisional offices reduced.

Recommendation 42

9.58 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the Australian Electoral Commission to manage its workloads in non-election periods by allowing enrolment transactions to be processed outside the division for which the person is enrolling, provided that those transactions are processed by a division that is within the same state or territory. This will permit workloads to be managed in the same manner as is currently permitted during election periods.**

Electronic certified lists in polling places and pre-poll centres

9.59 At recent elections in their jurisdictions, the ACT, Western Australian, Queensland and Victorian Electoral Commissions have used electronic means to mark electors' names from the roll before providing them with ballot papers, either on polling day at some or all polling places, or at some, or all, pre-poll voting centres. At the ACT Legislative Assembly election in 2008, no hardcopy certified lists were used at all; total reliance was placed on personal data assistant devices as the storage medium for the lists of voters, and the hardcopy lists (one per polling place) which were provided as an emergency backup did not have to be used.[46]

9.60 The AEC considered that the ACT experience proved to be an entirely positive one, noting that 'the facility was very well accepted by polling officials, and, in the view of the ACT Electoral Commissioner, significantly streamlined both election day and post-election activities'.[47]

9.61 The AEC noted that the Commonwealth Electoral Act did not cater for the use of electronic certified lists and proposed that the Act should be amended to enable the use of such technology.[48]

46 Australian Electoral Commission, submission 169.18, p 1.

47 Australian Electoral Commission, submission 169.18, p 1.

48 Australian Electoral Commission, submission 169.18, p 3.

9.62 Some of the advantages of such electronic certified lists outlined by the AEC included:

- having a smaller carbon footprint than paper lists (thereby reflecting government policy favouring the use of "greener" technology). For the 2007 election, more than 27,500 certified lists, each on average containing 90,000 names were scanned. The overall scanning process involved 2.5 billion records on nearly 13 million scanned pages, printed on over 6 million A4 sheets of paper;
- ease of transportation;
- reducing the need for a separate scanning process post-election, thereby enabling quicker identification of apparent non-voting and multiple voting;
- providing an enhanced opportunity to produce automated reports assisting with ballot paper reconciliation and voter flow monitoring, not least because the times at which people are marked off can be recorded automatically;
- time savings associated with the location of names on an electronic list rather than a hardcopy list can help to optimise voter flow through the polling booths, and thereby reduce queuing times; and
- a reduction in polling official error in marking incorrect names.[49]

9.63 The AEC considered that having the flexibility to utilise this form of technology in certain locations and circumstances at AEC discretion would provide enhanced flexibility and allow the AEC to provide a better service to voters, and to take advantage of innovations in other jurisdictions.[50]

9.64 At the 2008 ACT election, the ACT Electoral Commission put in place a range of measures to ensure the security of equipment and data including:

- treating hardware items, like hardcopy certified lists, as accountable items;
- password-protecting access to the software application;
- configuring the software application to shut down after a specified period of idleness, with a password being required to be entered to reactivate it; and

49 Australian Electoral Commission, submission 169.18, p 1.

50 Australian Electoral Commission, submission 169.18, p 2.

- deletion of the entire database after a specified number of unsuccessful attempts to enter a password.[51]

Committee conclusion

9.65 The committee considers that there are considerable benefits for the AEC in being able to use electronic certified lists in some situations. It is important that if such lists are to be used, appropriate security measures be put in place, such as those used by the ACT Electoral Commission for the 2008 ACT election, to protect the security of the equipment and data.

Recommendation 43

9.66 **The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to enable the use of electronic certified lists in polling places and pre-poll voting centres, with appropriate measures implemented to ensure the security of the equipment and data.**

Proposed technical and operational amendments to the Commonwealth Electoral Act

9.67 As part of its initial submission to the committee the AEC outlined a number of 'technical' and 'operational' amendments to the Commonwealth Electoral Act. The AEC noted that:

> There is continuing necessity to update and modernise sections of legislation. The AEC has compiled a list of recommended basic amendments to the CEA and the Referendum (Machinery Provisions) Act 1984 (Referendum Act). These amendments are consolidated into two tables. The first table outlines remedies for technical errors and defects, such as grammatical and cross-referencing errors. The second table outlines amendments that will assist in the administration of the CEA and the Referendum Act.[52]

9.68 The suggested 'technical' amendments suggested by the AEC are outlined in table 9.5 and table 9.6.

51 Australian Electoral Commission, submission 169.18, p 3.

52 Australian Electoral Commission, submission 169, p 71.

Table 9.5 Suggested 'technical' amendments to the *Commonwealth Electoral Act 1918*

Provision	Australian Electoral Commission comments
17(1A)	This section still refers to subsection 91(4A) and 91(4A)(e) which were deleted after consequential amendments to the Commonwealth Electoral Act for roll access. Needs to be updated to refer to 90B(1) and 90B(4).
90B(1), Item 13	Replace incorrect reference to 'the Senator' with 'the member'.
93(8AA), 208(2)(c) and 221(3)	The High Court held in Roach v Electoral Commissioner [2007] HCA 43 that certain provisions of the Commonwealth Electoral Act are invalid because they are contrary to the Commonwealth Constitution. The Court held that subsections 93(8AA) and paragraph 208(2)(c) of the Commonwealth Electoral Act are constitutionally invalid.
Part XI and section 123	The 'Electoral Commission' is defined for the purposes of the Commonwealth Electoral Act in section 4 and the term is used generally throughout the Commonwealth Electoral Act. Part XI separately defines and uses the term 'Commission' except in section 138A where it refers to the 'Electoral Commission'. The distinction between 'Commission' and 'Electoral Commission' serves no purpose and should be remedied for legislative consistency.
171	Section 171 contains an incorrect cross-reference to paragraph 170(a)(ii), which should be to paragraph 170(1)(b).
306A(8)	Delete reference to AFIC Codes and the Corporations Act 2001. The AFIC Codes are no longer based in the Corporations Act 2001 and ADI's are now regulated by APRA under the Banking Act 1959.
314AA(1)	Remove the repeated word 'or' in the sentence.
318(2)	Reference to '3(c)' appears incorrect. Replace with '3' to correct typographical error.
385A(2)	Delete reference to section 332 of the Commonwealth Electoral Act. Section 332 was repealed in 1999.
390A	Remove reference to section 10 of the Crimes Act 1914, as section 10 has been repealed.
Various sections	The use of a hyphen in the words ballot and paper is inconsistent through out the Commonwealth Electoral Act. That is, ballot paper and ballot-paper are used interchangeably. It is recommended that the hyphen is removed.

Source *Australian Electoral Commission, submission 169, Annex 10, p 73.*

Table 9.6 Suggested 'technical' amendments to the *Referendum (Machinery Provisions) Act 1984*

Provision	Australian Electoral Commission comments
49 (1)	Requires amendment to be consistent with subsection 80(1) of the Commonwealth Electoral Act to provide for an explicit power to abolish polling places by notice in the Gazette.
Various sections	The use of a hyphen in the words ballot and paper is inconsistent through out the Referendum Act. Ballot paper and ballot-paper are used interchangeably. It is recommended that the hyphen is removed.

Source *Australian Electoral Commission, submission 169, Annex 10, p 74.*

9.69 The suggested 'operational' amendments proposed by the AEC are set out in table 9.7 and table 9.8.

Table 9.7 Suggested 'operational' amendments to the *Commonwealth Electoral Act 1918*

Provision	Australian Electoral Commission comments
31 (4)	This subsection comes under the heading of Assistant Australian Electoral Officers for States, however refers to a person acting as AEO for the ACT (this is already covered by subsection 30(4)). Should read 'An Assistant Australian Electoral Officer for a State who is acting as Australian Electoral Officer for the State has, and may exercise, all the powers of the Australian Electoral Officer for the State.'
90A	The Commonwealth Electoral Act does not explicitly prohibit the photographing and photocopying of the roll that is available for public inspection. If the recording of the roll by electronic device is not stopped it will allow for the recording of electoral roll information on a large scale. This may result in inappropriate use of electoral roll information.
90B(1) Item 16	Provision of roll information to State or Territory electoral authority. In the 2004 amendments, the mechanism for providing roll information to State and Territory electoral authorities was rolled into the table in subsection 90B(1). An inadvertent consequence of this is that the information can only be used for a permitted purpose. Subsection 91A(2B) currently limits the use of this information to any purpose in connection with an election or referendum, and monitoring the accuracy of information contained in a Roll. States such as WA use the information for a range of purposes, for example, jury lists.
126(2A)(b)	Section 126 deals with political parties who are applying to become registered political parties. Located within this section is subsection 126(2A), which deals with membership of the political party. Subsection 126(2A) applies to both applicant political parties and already registered political parties. The current language of paragraph 126(2A)(b) implies that any person may easily change the Register of Political Parties at any time In reality a change to the Register of Political Parties can only be executed by following the requirements in section 134 of the Commonwealth Electoral Act. Paragraph 126(2A)(b) should refer to section 134 to align these two sections.
129(1)(d) and (da)	These provisions concern the registration of political parties. The previous government attempted to stop the registration of parties with similar names to the established parties by introducing these provisions. Considering the result of the AAT case on 'liberals for forests' and the advice sought from several Senior Counsel it appears that these provisions would not stop parties with similar words as existing parties from being registered. The application of these provisions is impossible due to the subjective test in the provisions. Recommended solution is to repeal the section or to provide a regulation making power to prescribe certain words that may not be used,for example, 'Labor'.
131	To become a registered political party an application must be made to the AEC (section 126). The AEC must give the applicant notice if their application is faulty. After the AEC has given the applicant this notice, section 131(2) provides that the AEC is not required to consider the issue further until they receive a written request from the applicant. As section 131 of the Commonwealth Electoral Act currently stands, there is no limitation period on the time the applicant can take to reply to a notice issued by the AEC. This means that there is no resolution of applications where no response is received to a notice under section 131(1). To facilitate administrative efficiency a reasonable time limitation should be attached to section 131. Amend section 131 to make clear that an application lapses if a notice under section 131(3) is not received within 90 days of the issue of a notice under section 131(1). This will resolve applications where no response is received to a notice under section131 (1).

(continued)

Table 9.7 (continued)

132A and 133	These provisions cover the same topic. Sections 132A and 133 are in Part XI of the Act dealing with Registration of Political Parties. Section 132A explicitly states that the Commission must give reasons to applicants in relation to any decisions made under Part XI. Subsection 133(3) states that the Commission must give an applicant written notice of any decisions where an application of registration of a political party has been refused. This subsection is unnecessary duplication of the requirements of section 132A, which already requires written notice of all decisions.
185 (1A)	Repeal this provision. The current provision requires the DRO to ask Defence and AFP for information about the movements of their personnel. For security reasons this information is not openly available. Therefore, a DRO will not know when Defence or AFP personnel leave for their overseas service.
195A(6)	Subsection 194(2) of the Commonwealth Electoral Act provides that where a postal vote is unlikely to reach the appropriate Divisional Returning Officer within 13 days after polling day a person can hand their postal vote to a person who is at a capital city office of the Electoral Commission and who is an officer of the AEC as provided for by subparagraphs 195(2)(h)(i) and 195(2)(h)(ii). Subsection 194(3) provides that where an officer receives a ballot paper under this provision they must deal with the ballot paper in accordance with section 195A and 228 of the Commonwealth Electoral Act. As a matter of current procedure the AEC receives all ballot papers from overseas electors to one post office address in Sydney. The AEC has received advice from the Australian Government Solicitor that the procedural requirements for dealing with postal votes as set out in subsection 195A(6) do not apply to postal votes received from overseas electors to the Sydney post office address. For the avoidance of doubt the AEC would like subsection 195A(6) to be amended to specifically state that it only applies to postal votes received in accordance with subsection 194(2).

Source *Australian Electoral Commission, submission 169, Annex 10, pp 75–76.*

Table 9.8 Suggested 'operational' amendments to the *Referendum (Machinery Provisions) Act 1984*

Provision	**Australian Electoral Commission comments**
Part VII	Include a provision for the date fixed for the return of the writ shall not be more than 100 days after the issue of the writs. This will make this consistent with section 159 of the Commonwealth Electoral Act.
Part III	Provide for Electoral Commissioner discretion for 'Other Mobile Polling' where it is necessary or convenient to be done for the conduct of elections. This provision may provide for mobile polling to be conducted other than as currently provided, such as the town camps outside Alice Springs.

Source *Australian Electoral Commission, submission 169, Annex 10, p 77.*

Committee conclusion

9.70 The committee has commented on those sections relating to the photographing and photocopying of the roll (s 90A) and prisoner voting (ss. 93(8AA), 208(2)(c) and 221(3)), in chapter 11 of this report.

9.71 Apart from these sections, the committee considers that the changes suggested above by the AEC to make electoral legislation clearer (in the case of technical changes), or work more efficiently (in the case of operational amendments) are supported by the committee. In respect to section 129(1)(d) and (da), the committee favours the repeal of the section.

Recommendation 44

9.72 **The committee recommends that the technical and operational changes proposed by the Australian Electoral Commission in submission 169, Annex 10, with the exception of those relating to photographing and photocopying of the roll (s 90A), (see recommendation 52) and prisoner voting (ss 93(8AA), 208(2)(c) and 221(3)) (see recommendation 46), be incorporated into the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* when other amendments to these Acts are progressed.**

9.73 As a general point, the committee has recommended throughout this report that a number of changes should be made to the Commonwealth Electoral Act. Where any applicable section/s of the Referendum (Machinery Provisions) Act are not specified in the recommendations, the committee considers that where applicable, consequential changes made to the Commonwealth Electoral Act should also be made to the Referendum (Machinery Provisions) Act.

Recommendation 45

9.74 **The committee recommends that any recommendations in this report that propose amending the *Commonwealth Electoral Act 1918* should, where also appropriate, be incorporated into the *Referendum (Machinery Provisions) Act 1984*, to ensure consistency between the provisions applying to elections and referenda.**

10

Modernising regulatory arrangements

10.1 The *Commonwealth Electoral Act 1918* includes a range penalties and processes to encourage compliance. The Australian Electoral Commission (AEC) has proposed that these arrangements be modernised to provide a staged approach to enforcing compliance. Events in the division of Lindsay during the 2007 election campaign suggest that the current penalties relating to the distribution of unauthorised material are inadequate.

Commonwealth Electoral Act offence provisions

10.2 The Commonwealth Electoral Act is generally highly prescriptive of the responsibilities of the AEC and the processes that the AEC must follow in carrying out its duties. The Act also includes prescribes a range of obligations for electors (such as the requirement to enrol and vote) as well as obligations for candidates and political parties in some areas of their campaign activity (such as requirements to disclose some donations and to include on printed electoral advertisements the name and address of the person who authorised the advertisement and the name and place of business of the printer).[1]

10.3 Penalties imposed by the Commonwealth Electoral Act are, in some cases, significant. For example, electoral bribery is subject to a penalty of $5,000 or imprisonment for two years, or both.[2]

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1 *Commonwealth Electoral Act 1918,* part XX in relation to disclosure obligations and s 328(1) in relation to printed electoral advertisements.

2 *Commonwealth Electoral Act 1918*, s 326.

10.4 The AEC noted that it may adopt any or all of the following strategies in response to an apparent breach of the Act:

- a request to cease and desist;
- injunction action undertaken in the Federal Court to compel compliance;
- referral to the Australian Federal Police (AFP) for investigation; and
- referral to the Commonwealth Director of Public Prosecutions (CDPP) for preliminary advice or prosecution.

10.5 The offence provisions in the Act are solely criminal offences. The AEC noted that, as such, the involvement of external agencies such as the AFP and the CDPP are required in order for such matters to be pursued.[3]

10.6 The reliance on other agencies to pursue possible breaches of the Commonwealth Electoral Act raised a number of difficulties in enforcing compliance. The AEC told the committee:

> The existing process for dealing with serious breaches of the Act is that the first step is to identify prima facie evidence of the breach, including the identity of any persons involved. The matter is then referred to the AFP for investigation and the preparation of a brief of evidence to be given to the CDPP.
>
> The above processes are also subject to the guidelines issues by both the AFP and the CDPP for the referral and handling of alleged criminal offences. Both of these sets of guidelines refer to an assessment of the seriousness of the alleged offence, the resources available for dealing with these matters and the public interest involved. It is noted that with the exception of the bribery offence in section 326 of the Act, almost all of the penalties for a breach of the Act are fines of up to $1,000 that under the criminal law they are summary offences (see section 4H of the Crimes Act 1914).
>
> Accordingly, the evaluation undertaken by the AFP of the available resources and the relatively low penalties in the Commonwealth Electoral Act, almost always results in the AFP deciding not to accept the referral and therefore it is unable to investigate breaches of the Commonwealth Electoral Act.[4]

3 Australian Electoral Commission, submission 169.6, p 7.

4 Australian Electoral Commission, submission 169, pp 68–69.

10.7 As an alternative to criminal action, section 383 of the Commonwealth Electoral Act provides for injunctive relief. The power to seek an injunction was first introduced into the Commonwealth Electoral Act in 1983. The AEC, political parties or candidates are able to use this power to obtain an injunction to stop any alleged breaches of the Act.[5]

10.8 The injunctive power has rarely been exercised by the AEC. The AEC noted a number of legal and practical issues that arise in attempting to seek the issuing of an injunction from the courts:

> The major issue relates to the availability of admissible evidence, having regard to both the requirements of the Commonwealth Electoral Act and the common law dealing with the equitable relief of an injunction. The High Court of Australia in the case of ABC v Lenah Game Meats Pty Ltd [2001] HCA 63 set out the common law test for the equitable relief available as an injunction. In short the requirement is that the person seeking the injunction must show (1) that there is prima facie evidence supporting a finding that the Commonwealth Electoral Act has been breached by the Respondent named in the proceedings; (2) that the person is suffering damage for which a payment of compensation will be insufficient; and (3) the balance of convenience supports the granting of an injunction.
>
> Accordingly, for the AEC or any other party to consider exercising the right to seek an injunction under section 383 of the Commonwealth Electoral Act it must possess admissible evidence that addresses all three elements of the above common law test. In practice, this has become an insurmountable obstacle to the obtaining by the AEC of an injunction, especially on polling day.[6]

10.9 In light of the difficulties faced by the AEC in taking action for alleged breaches of the Commonwealth Electoral Act, the AEC considered that 'an entirely fresh approach' be adopted, including a hierarchy of sanctions that may be imposed by the AEC itself, rather than having to look to an external agency to impose sanctions.[7]

10.10 The AEC proposed that the Commonwealth Electoral Act be amended to provide the AEC with a range of options for dealing with electoral offences including:

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5 Australian Electoral Commission, submission 169, p 69.

6 Australian Electoral Commission, submission 169, pp 69–70.

7 Australian Electoral Commission, submission 169, p 70.

- warning letters for technical breaches;
- public shaming and reports to Parliament for more serious breaches;
- compliance agreements that are signed and published on the internet that acknowledge the breach and agreed steps to prevent future breaches;
- civil penalties; and
- withholding election funding for continuing breaches.[8]

10.11 The committee sought clarification on the AEC's proposals and further detail was provided by the AEC in submission 169.6. The committee notes that the range of options under the proposed enforcement model reflects those available to the Canadian electoral authority (Elections Canada). The AEC considers that this model provides 'an effective and transparent framework in which compliance matters are able to be handled'.[9]

10.12 The model proposed by the AEC is for a compliance regime that is based on a hierarchy of graduated responses to non compliance. The AEC noted that the model is based on the well known 'Braithwaite Enforcement Pyramid' that was developed in the 1980s. The lowest level of the Enforcement Pyramid involves a softer approach which is employed more frequently to the less serious matters of non compliance. The toughest sanctions (such as criminal penalties), are at the apex of the pyramid and are applied less frequently.[10]

10.13 The AEC noted that this does not mean that the regulator should not retain the ability to use the toughest sanction possible to a flagrant violation of the regulatory laws, merely that a range of sanctions often results in making lower-level sanctions more effective in preventing the non compliance, without needing to escalate the sanctions up the pyramid to the more serious levels of punishment.[11]

10.14 The five levels in the enforcement approach proposed by the AEC would cover:

> The first enforcement tool in the proposed Enforcement Pyramid that is available is the publication of information about the requirements of electoral laws. This is currently dealt with on an administrative basis by the AEC with the publication of a range of

8 Australian Electoral Commission, submission 169, p 70.
9 Australian Electoral Commission, submission 169.6, p 8.
10 Australian Electoral Commission, submission 169.6, p 7.
11 Australian Electoral Commission, submission 169.6, p 7.

> information in such documents as the Electoral Backgrounders and other Fact Sheets that are freely available on the AEC's website.
>
> The second level … is the use of warning letters. While this is currently an administrative practice within the AEC, it is proposed that the Commonwealth Electoral Act should be amended to clearly reflect this process and to remove any suggestion that the only action that is available to the AEC to deal with non compliance is criminal action.
>
> The third level … is the ability to publish public announcements of the details of complaints and undertakings and agreement that have been given that noncompliant action will be remedied. This would provide a transparent and accountable process for the handling of complaints.
>
> The fourth level … would be the ability to impose civil sanctions/penalties. Such civil action is already contained in other Commonwealth legislation.
>
> The fifth level … would be the imposition of criminal sanctions and penalties as is currently provided for in the Commonwealth Electoral Act.[12]

Committee conclusion

10.15 The committee considers that the current regulatory model under the Commonwealth Electoral Act requires modernisation to provide for effective methods of enforcing compliance.

10.16 The committee notes that the Electoral Reform Green Paper on Donations, Funding and Expenditure has raised a number of issues associated with the enforcement of current funding and disclosure arrangements. Some of the options canvassed in the green paper include the approach adopted in Canada discussed previously and how offences could be applied to political parties (rather than party 'agents').[13]

10.17 Given the uncertainty about the funding and disclosure approach, including any changes to enforcement approaches and the limited opportunities for the committee to examine the AEC's proposals in detail, the committee is reluctant to support the changes proposed by the AEC at

12 Australian Electoral Commission, submission 169.6, p 7.

13 Australian Government, *Electoral Reform Green Paper: Donations, funding and expenditure* (2008), pp 69–72.

this stage. The committee considers that this issue should be addressed, but that it would be more effectively undertaken once the final model for funding and disclosure reform is developed.

Events in the division of Lindsay

10.18 Under the Commonwealth Electoral Act, the maximum penalty for printing and publication of electoral advertisements or notices that do not include the name and address of the person who authorised it and the name and place of business of the printer, is $1,000 if the offender is a natural person and $5,000 if the offender is a body corporate.[14]

10.19 As noted in chapter 1, the committee has not examined in detail the events relating to the distribution of unauthorised election material in the division of Lindsay at the 2007 election because the court processes are not complete.

10.20 The events in the division of Lindsay gave rise to some comment from inquiry participants about the appropriateness of penalties and other provisions of the Commonwealth Electoral Act regarding misleading statements.[15] The ALP National Secretariat told the committee that:

> The ALP remains concerned about the events which occurred in the final week of the election campaign in Lindsay. The Committee will be familiar with these events, which do not need to be recounted here.
>
> The ALP does, however, believe that the events, the investigation process and the penalties finally issued fall well below a standard that would be acceptable to the general community.
>
> We believe that JSCEM should now review the provisions of the Commonwealth Electoral Act 1918 relating to misleading statements, specifically s.329, with a view to providing further legislative definition to an offence under this part of the Act, and with a view to strengthening the penalties.[16]

14 *Commonwealth Electoral Act 1918*, s 328.

15 NSW Greens, submission 64, p 5; Bowe W, submission 106, p 1; Australian Labor Party National Secretariat, submission 159, p 4.

16 Australian Labor Party National Secretariat, submission 159, p 4.

10.21 Media reporting of the event, and subsequent court proceedings are set out in table 10.1.

Table 10.1 Media reporting of the events in the division of Lindsay

Date	Media comments
20 November 2007	Pamphlet claiming to be from 'The Islamic Australia Federation' and carrying the ALP logo are alleged to have been distributed in the division of Lindsay. (a)
22 November 2007	Australian Electoral Commission refers complaints by the Australian Labor Party and the State Director of the NSW Liberal Party of Australia to the Australian Federal Police. (b)
22 March 2008	NSW police confirm that they had commenced legal proceedings over the incident against five men. After consulting the Commonwealth Director of Public Prosecutions, the NSW Police charged the men under Section 328 of the Commonwealth Electoral Act, which deals with the printing and publication of election material. (a)
29 April 2008	Mr Troy Craig pleads guilty to one count of distributing unauthorised electoral material. The magistrate agreed with Mr Craig's barrister that his client's prior good character and minor role in the incident made it appropriate for the charge to be dismissed. (c)
7 May 2008	Mr Greg Chijoff is convicted and fined $750 for distributing unauthorised electoral material. (d)
20 May 2008	Mr Mathew Holstein pleads guilty to distributing unauthorised election material and is fined $500. (e)
29 April 2009	Mr Gary Clark is convicted of distributing unauthorised electoral material. Mr Jeff Egan is acquitted of distributing unauthorised electoral material. The court found that he did not know the leaflet failed to contain the necessary authorisation and printing details. (f)
19 May 2009	Mr Gary Clark is fined $1,100 and was ordered to pay court costs of more than $2,000. (f)

Source *(a) Gilmore H and Carty L, Lib charges over leaflet, http://www.smh.com.au/news/national/lib-charges-over-leaflet/2008/03/22/1205602728688.html; (b) ABC News, 'Candidate's husband faces expulsion over flyer scandal', http://www.abc.net.au/news/stories/2007/11/22/2098121.htm; (c) Perth Now, 'Bogus leaflet charge dropped', http://www.news.com.au/perthnow/story/0,21498,23617680-5005361,00.html?from=public_rss; (d) Jacobson G, Sydney Morning Herald, 7 May 2008, Chijoff fined over extremist scare, http://www.smh.com.au/news/national/chijoff-fined-over-extremist-scare/2008/05/07/1210131046871.html; (e) Herald Sun, 'Lib supporter sorry for leaflet drop', http://www.news.com.au/heraldsun/story/0,,23729323-5005961,00.html. (f) Salusinszky I, The Australian, Court bites Jackie Kelly's husband, http://www.theaustralian.news.com.au/story/0,25197,25406750-5013871,00.html; (f) ABC Local Radio, 'MP's husband fined for bogus election leaflets', viewed on 20 May 2009 at http://www.abc.net.au/news/stories/2009/05/19/2574605.htm?site=local.*

Committee conclusion

10.22 While the committee intends to examine in detail the events in the division of Lindsay once court proceedings are concluded, the court judgements in several of the cases relating to the events in the division of Lindsay, where fines of less than $1,000 were imposed, have clearly demonstrated that the penalties imposed under the Commonwealth Electoral Act for the distribution of unauthorised material are inadequate.

Recommendation 46

10.23 **The committee recommends that the penalties imposed under s 328 of the *Commonwealth Electoral Act 1918* ($1,000 for a natural person and $5,000 for a body corporate) be revised to ensure that they provide a greater deterrent.**

11

Other issues

11.1 This chapter examines a number of specific issues relating to enrolment voting eligibility (prisoner voting, and overseas and expatriate voting), assisted voting for electors who are blind or have low vision, the optional provision of electronic copies of electoral rolls to Senators and Members of the House of Representatives, the counting system used to conduct the Senate count and access to electoral roll information by the finance industry.

Prisoner voting

11.2 The decision of the High Court of Australia in *Roach V Electoral Commissioner (2007) 239 ALR1* has implications for the application of the current provisions in the C*ommonwealth Electoral Act 1918* in relation to the voting rights of prisoners.

Background

11.3 Up until 1983, prisoners were generally disqualified from voting if they were serving a sentence for an offence with a maximum of one year's goal. In 1983, the federal franchise was expanded to prisoners whose offences carried a maximum sentence of less than five years. In 1995, this was changed to an actual sentence of five years or more.[1]

11.4 Amendments to the Commonwealth Electoral Act in 2004 reduced the opportunity of prisoners to vote by lowering eligibility to those prisoners

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1 Orr G, *Constitutionalising the franchise and the status quo: The High Court on prisoner voting rights* (2007), Democratic Audit of Australia Discussion paper 19/07, p 2.

serving a sentence of imprisonment of less than three years.[2] More recently, the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* amended the Commonwealth Electoral Act to provide that all persons serving a sentence of full-time imprisonment, irrespective of the length of the sentence, could enrol to vote but were not entitled to vote at a federal election.[3]

11.5 There is considerable variation in the eligibility of prisoners to enrol and vote in Australian state and territory elections, ranging from all prisoners retaining a right to enrol and vote (South Australia and the ACT) with thresholds varying from 12 month (NSW), 3 years (Tasmania and NT) and 5 years (Victoria). In Queensland and Western Australia, prisoners serving a sentence of imprisonment are not eligible to vote.[4]

Implications of the *Roach* decision

11.6 In 2007, the High Court of Australia, by 4-2 majority ruled that the relevant sections of the Commonwealth Electoral Act (s 93(8AA) and s 208(2)(c)) were constitutionally invalid, and that the previous law, under which prisoners whose period of imprisonment was less than three years were entitled to vote, applied.[5]

11.7 In light of the *Roach* decision, the AEC considered that an appropriate 'technical' amendment should be made to the Commonwealth Electoral Act (covering ss 93(8AA), 208(2)(c) and 221(3)).[6]

11.8 Several inquiry participants, however, considered that any exclusion of prisoners from voting should be removed.[7]

11.9 The Democratic Audit of Australia considered that such restrictions are symbolic and do not fit in with the logic of compulsory voting and of the sentencing purpose of rehabilitation.[8]

11.10 The Human Rights and Equal Opportunity Commission and the Public Interest Advocacy Centre considered that in light of Australia's status as a signatory to the International Covenant on Civil and Political Rights, and a

2 Australian Electoral Commission, submission 169, Annex 3, p 30.

3 Australian Electoral Commission, submission 169, Annex 3, p 30.

4 Australian Electoral Commission, submission 169.1, Annex 5, p 56.

5 *Roach v Electoral Commissioner (2007) 239 ALR1.*

6 Australian Electoral Commission, submission 169, Annex 10, p 73.

7 Democratic Audit of Australia, submission 45, p 4; Human Rights and Equal Opportunity Commission, submission 97, pp 12–17; Public Interest Advocacy Centre, submission 103, pp 24–25.

8 Democratic Audit of Australia, submission 45, p 4.

number of international legal developments, that the indiscriminate disenfranchisement of groups of prisoners risks contravening international law and argued for removal of the three-year requirement.[9] The Commission believed that disenfranchisement should only be imposed by a court during the sentencing process, where the nature and circumstances of the offence indicate that the person is not fit to participate in the political process.[10]

Committee conclusion

11.11 The committee considers that it is necessary to amend the Commonwealth Electoral Act to repeal those provisions found to be unconstitutional by the High Court of Australia. The committee considers that the previous three-year disqualification is appropriate.

Recommendation 47

11.12 **The committee recommends that the Government amend the *Commonwealth Electoral Act 1918* to reinstate the previous three-year disqualification for prisoners removed from s 93(8)(b) in 2006, to reflect the High Court of Australia's judgement in *Roach v Australian Electoral Commissioner* that s 93(8AA) and s 208(2)(c) are constitutionally invalid.**

Overseas and expatriate voting

11.13 The issue of enrolment by overseas electors received considerable attention in submissions to the inquiry, with over 65 submissions addressing this particular subject.[11] The majority of these submissions apparently originated from a campaign coordinated by the Southern Cross Group.[12]

9 Human Rights and Equal Opportunity Commission, submission 97, pp 12–17; Public Interest Advocacy Centre, submission 103, pp 24–25.

10 Human Rights and Equal Opportunity Commission, submission 97, pp 12–17.

11 See submissions 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 30, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 48, 49, 52, 53, 55, 59, 69, 71, 72, 74, 75, 82, 89, 90, 91, 92, 93, 100, 101, 102, 110, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 143, 148, 151, 152, 153, 157 and 163.

12 See Southern Cross Group, media release, 'Aussie Expats Urged to Have Say on Voting', 30 April 2008, viewed on 20 April 2009 at http://www.southern-cross-

11.14 Submissions to the inquiry outlined a number of perceived problems with the current restrictions applicable to eligible overseas electors (EOEs) and raised concerns about the level of information available to expatriate Australians regarding enrolment and voting.

11.15 The ALP National Secretariat raised some concerns with the committee over the conduct of polling overseas, noting that:

> Our research indicates that the administration of the election at overseas posts may also have limited the franchise of Australians residing abroad or travelling for extended periods. Particular problems were experienced in relation to accessing reliable information services about polling times, polling locations and processes at overseas missions and in Australia, and the provision of service to voters attempting to cast in-person ballots or apply for and submit postal votes. The ALP believes that JSCEM should look into the conduct of the 2007 overseas polling operation as administered by the AEC and the Department of Foreign Affairs and Trade (DFAT).[13]

Background

11.16 The AEC noted that there are two distinct sets of issues related to the enfranchisement of Australians abroad — those related to principle and those related to logistics.[14]

11.17 Australians resident abroad who have a fixed intention to again reside in Australia within six years have two specific options available to them:

- eligible overseas elector status is available for existing enrolled electors, under the following conditions:
  - ⇒ the status must be applied for either three months before the elector departs Australia or within three years of departure;
  - ⇒ is only available to those currently enrolled;
  - ⇒ the status is granted for six years initially; and
  - ⇒ the status can be extended by informing the relevant DRO every year from year six onwards that the elector retains an intention to resume permanent residency in Australia.

group.org/archives/Overseas%20Voting/2007/SCG_Media_Release_JSCEM_Inquiry_30_April_2008.pdf

13 ALP National Secretariat, submission 159, p 4.

14 Australian Electoral Commission, submission 169.6, p 16.

- enrolment from outside Australia is available for those who have left Australia and are not currently enrolled. Acceptance of an application for enrolment from outside Australia confers automatic eligible overseas elector status if the applicant:
  - ⇒ meets the requisite age and citizenship qualifications;
  - ⇒ applies within three years of departure; and
  - ⇒ intends to resume residence in Australia within six years of departure.[15]

11.18 There are also other electors outside Australia at any given time who may be able to vote at an election because they are enrolled electors who are temporarily abroad and who may require overseas voting services at a federal event but who are permanently resident in Australia.[16]

11.19 In May 2006, there were approximately 16,000 eligible overseas electors on the electoral roll. Nineteen divisions had in excess of 200 eligible overseas electors enrolled, with the two ACT divisions (Canberra and Fraser) having the highest eligible overseas elector enrolment of 940 and 815 respectively. Those divisions with the lowest numbers of eligible overseas electors included Barker (7), Throsby (8) and Lyne (9).[17]

11.20 At the 2007 election, 70,059 votes were issued by overseas posts, an increase of 2 per cent compared to the 2004 election.[18] London and Hong Kong issued the largest number of overseas votes, contributing 16,226 votes and 10,456 votes respectively (table 11.1).

15 Australian Electoral Commission, submission 169.6, pp 16–17.

16 Australian Electoral Commission, submission 169.6, p 17.

17 Southern Cross Group, submission 158, p 49.

18 Australian Electoral Commission, submission 169, p 58.

Table 11.1 Votes issued by selected overseas posts, top 5 and bottom 5 posts, by type, 2007 election

Overseas Post	Pre Poll	Postal voting applications	Postal voting certificate (a)	Total Votes
Top 5				
London	12,737	3,489	3,593	16,226
Hong Kong	9,970	486	421	10,456
Singapore	2,717	110	187	2,827
New York	1,437	399	96	1,836
Bottom 5				
Sao Paulo	29	0	1	29
Abuja	10	5	2	15
Pohnpei	10	3	5	13
Canakkale	4	3	0	7
Tripoli	0	0	33	0
Total	**59,747**	**10,312**	**9,465**	**70,059**

Note *(a) Completed postal voting certificate returned to Australia.*

Source *Australian Electoral Commission, submission 169, Annex 8, p 68.*

11.21 Voting rights for Australian expatriates generally falls within the middle of the spectrum when compared to comparable common law democracies.[19] Associate Professor Graeme Orr notes that citizenship was only introduced into Australian law in 1981 as a mechanism of formally restricting the franchise, which otherwise remained residency-based, and that the 'onus of justification rests with those who seek a dispensation for citizens who set up a residence abroad to remain on the roll. It does not lie on the legal tradition of favouring residency over mere citizenship.[20]

19 Orr G,'Citizenship, Interests, Community and Expression: Expatriate Voting Rights in Australian Elections', Bronitt S and Rubenstein K (eds), *Citizenship in a Post-National World*, Centre for International and public law, Law and policy paper 29, pp 26–27.

20 Orr G,'Citizenship, Interests, Community and Expression: Expatriate Voting Rights in Australian Elections', Bronitt S and Rubenstein K (eds), *Citizenship in a Post-National World*, Centre for International and public law, Law and policy paper 29, pp 26–27.

Proposals for change

11.22 Submissions from Australian citizens resident overseas have drawn attention to the limitations of the current provisions in facilitating enrolment and many consider that they unduly exclude citizens, many of whom assert that they have a strong interest and connection with Australia (box 11.1). Proposals for change in these submissions include:

- extend the right to vote to all Australian citizens resident overseas;[21]
- amend witnessing provisions for postal voting applications to reflect the difficulty some electors experience in having a witness who is on the electoral roll countersign the application;[22]
- making it compulsory for overseas Australians on the electoral roll to vote at an election;[23] and
- the need for clearer and more accessible information regarding enrolment arrangements for Australians travelling or residing overseas.[24]

11.23 The Southern Cross Group considered that the Commonwealth Electoral Act should be amended to provide for broader entitlement for expatriate Australians and that, even if such moves were not supported, that more could be done by the AEC to educate departing Australians and existing Australian expatriates on the electoral rules applicable to them and what they have to do to stay enrolled and participate while overseas.[25]

11.24 The Southern Cross Group contends that the *Roach* case supports the view that 'the primary right to be enrolled is tightly linked to an individual's citizenship'.[26] As a result, the Southern Cross Group believes that there should be no time constraints which might act to deny that right to any overseas Australian whether they are abroad permanently or temporarily, long-term or short-term and that the current three-year limit applying to enrolment from overseas should be repealed together with the concept of a six-year entitlement to be enrolled as an eligible overseas elector.[27]

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21 *See* Morris T, submission 14; Blackney S, submission 75.

22 *See* Coad L, submission 89.

23 *See* Lawton R, submission 119.

24 *See* Steinberg A, submission 117.

25 Southern Cross Group, submission 158, p 7.

26 Southern Cross Group, submission 158, p 30.

27 Southern Cross Group, submission 158, p 30.

Box 11.1 Selected expatriate comments on current enrolment and voting provisions

Mr Stephen Blackney (submission 75)

"I am an Australian who has been disenfranchised since moving to the UK in 1985. Originally I intended returning in 2 years but studies and then the recession in the late '80s delayed the return. At no time, even when I voted at Australia House in that period, was I informed that I could lose the vote. So I have had some of my citizenship taken away without seeking to become a citizen elsewhere. My Australian passport is the only one I have, despite pressure from my employer in the '90s to adopt a more convenient one for travel in Eastern Europe.

I come from Victoria and grew up in the bush and in Melbourne. My wife is English. She and I were living in Flemington when we left. My family was based in Eaglemont. I am proud of being Australian, we are different, and find it embarrassing that I can vote in the UK elections by virtue of being a commonwealth citizen but can't vote in my own country. I would like to have my voting rights back please."

Ms Adrienne Farrelly (submission 90)

"I believe that the deadline of 3 years should be extended as the vast majority of Australians are now living overseas for longer periods yet still very connected with their nation. We represent our nation with great pride, celebrate all our national holidays such as Australia Day, Anzac Day (we even play "two up" in Shanghai) Melbourne Cup and in Shanghai, we have the best know Australian Charity Ball that beats all our fellow expatriate's events insofar as being innovative, original and spectacular.

I believe the 3 year period was suitable when most overseas postings were for that period and it was difficult to keep in touch and connected with our home land. However, in current times we are highly connected to Australia and amongst ourselves. Disenfranchising citizens from voting freely and easily I believe is a very damaging for a nation's spirit. In this globalised world we are embracing many migrants and encouraging them to become Australian citizens yet at the same time alienating Australians abroad. Many of the Australian Diaspora have a deep connection to their homeland and it can be quite heartbreaking when we are shunned from our motherland."

Mr Normon Bonello (submission 121)

"I have recently re-gained my Australian Citizenship through amendments regarding Section 18 (renounced Australian Citizenship) and am once again proud to call myself Australian. Even though I currently live outside Australia being an Australian to me should mean that I am given the privilege to actively participate in the electoral process. Yet, currently it's not possible for me to participate in the electoral process - which I see as unfair. I believe that I can make a positive contribution by being allowed voting rights as I have very close ties with Australia, Australians and keep myself well informed of issues and events that concern Australia (locally and globally) - even though I don't currently live in Australia.

In this age of Australians being scattered around the world I would like to see provisions made to enable me and others insimilar situations to be able to register for voting and participate in actual voting in Australian elections."

11.25 The detailed amendments to the Act suggested by the Southern Cross Group seek to allow:

- those Australians departing from Australia, or presently living overseas having the right to:
  - ⇒ advise the AEC that they wish to be removed from the roll while they are overseas; or
  - ⇒ remain on the roll at their present registered address without advising the AEC of their departure. This would need to be done in the full knowledge that failure to vote at an election or referendum during their absence, or in any situation in which an AEC check failed to explain their absence from the registered address, could result in them being removed from the roll;
- request the AEC to register them as an EOE:
  - ⇒ there should be no requirement for the person to have to declare an intention to return to Australia within any period. Nor should the registration as an EOE be time limited; and
  - ⇒ while registered as an EOE, and if overseas on election day, an individual should retain the right to not vote at an election or referendum without running the risk that not voting will result in their removal from the roll by the AEC, because voting is not compulsory for Australian citizens abroad on polling day.[28]

11.26 The Southern Cross Group also proposed revised procedures in respect of EOEs to provide updated information via email to EOEs as to their current status as an EOE, information relating to redistributions, by-elections and elections. Such a facility should also have a password protected facility allowing EOEs to change their postal or email details or to check the correctness of other aspects of enrolment.[29] To avoid the use of the postal system, where a postal vote has been requested, after nominations close and ballot papers become available, the Southern Cross Group suggest that ballot papers could be forwarded by email (together with a serially numbered covering advice), to be returned by post.[30]

11.27 At the same time as it dispatches the e-mail to EOEs announcing an election or referendum, the Southern Cross Group consider that the AEC should request Department of Foreign Affairs and Trade (DFAT) to send an appropriately worded e-mail to all of those recorded in the DFAT

28 Southern Cross Group, submission 158, p 32.

29 Southern Cross Group, submission 158, p 32.

30 Southern Cross Group, submission 158, p 32.

Register of Australians Overseas advising the recipient to check their electoral registration. DFAT missions should be expected to pass on the information to all Australian expatriate groups within their geographical area of responsibility.

11.28 In relation to providing better education for eligible voters before they depart Australia, the Southern Cross Group proposed introducing a new brochure for airline staff to give travellers with their outgoing passenger card and boarding pass outlining how to maintain enrolment when overseas under different circumstances. Collection boxes could then be provided at immigration desks or departure gates.[31] The Southern Cross Group noted that:

> If this plan were comprehensively implemented at all international airports and ports, at least some of the Australians who should be on the electoral roll but currently are not would become enrolled, because they would be educated to do so as they left the country. With some 5 million residents leaving the country annually for a wide variety of periods and reasons, but most returning within a relatively short period, this step could not fail but to significantly increase electoral participation by all eligible voters overseas on polling day.[32]

11.29 The Southern Cross Group also considered that email addresses on enrolment forms should be provided to Members of parliament and candidates so that they can be sent appropriate information:

> at least the e-mail addresses of EOEs in a particular electorate [should be] available to the elected MPs and candidates for that electorate. This would facilitate increased contacts between this group of eligible voters and the individuals who represent them. When a person becomes an EOE, for example, the sitting MP could send the person an e-mail or letter, noting that they are now overseas, but nevertheless encouraging them to stay in touch, communicate any issues that they feel concerned about, and remain connected with the democratic process.[33]

11.30 ALP Abroad also supported a broader franchise for expatriate Australians and a formal responsibility for the AEC to provide electoral services to overseas Australians. ALP Abroad suggested that:

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31 Southern Cross Group, submission 158, p 32.

32 Southern Cross Group, submission 158, p 32.

33 Southern Cross Group, submission 158, p 44.

- The AEC has a specific remit to promote enrolment and voting as overseas voters to every Australian leaving the country and those who the AEC is aware have left.
- Any Australian citizen can enrol to vote as overseas voter at any time,
- Once enrolled, overseas enrolment remains valid ,subject to the same provisions of other enrolled voters,
- That the provisions of the act that make voting compulsory for all other voters applies to overseas voters.[34]

Efforts to enfranchise under current arrangements

11.31 The AEC considers that they provide 'probably' the world's most extensive overseas voting service, and at a significant cost, despite the lack of compulsion on Australians abroad to vote.[35]

11.32 There are a number of logistical and mechanical issues raised in enfranchising and providing electoral services for Australians abroad. Wider electoral modernisation initiatives, such as electronic update of details and the removal of the paper form requirements in the Commonwealth Electoral Act may alleviate some of these. The AEC noted that changes to some other mechanical issues may be possible, but only with longer term technological improvements in AEC systems.[36]

11.33 Some of the issues raised in submissions from overseas citizens and electors were noted by the AEC. The AEC's response to these issues noted that:

- The AEC uses letters to communicate, which does not suit electors abroad —The AEC is currently legislatively required to communicate some processes to electors by post. Legislative change could allow for more official communication to be by email. The AEC is investigating technological change that would allow for storage of email addresses, enabling more automated communication through electors' preferred medium.
- Electors have to use forms to advise of changed details — Again, this is a legislative requirement. The AEC canvassed new ways of updating electors' enrolled details in its Second Submission to the Joint Standing Committee on Electoral Matters;

34 ALP Abroad, submission 1, p 4.

35 Australian Electoral Commission, submission 169.6, p 18.

36 Australian Electoral Commission, submission 169.6, p 17.

- The AEC does not cross reference electoral roll data with DIAC arrivals and departure information — This is correct. Use of departure information would not help, as departers do not need to provide contact details or accurate absence details. Arrivals information does not differentiate between permanently returning Australians and temporarily returning Australians.
- The AEC does not provide information to electors on enrolment abroad —The booklet provided with Australian passports provides information on enrolment supplied by the AEC. The DFAT smart traveller website includes information and a link to the AEC, and displays information on current electoral events (including federal by-elections). Some DFAT posts use their email and contact networks to advise of federal electoral events. Given the emphasis submissions have placed on the use of the internet by Australians abroad to 'stay in touch' the use of the AEC and DFAT websites as information sources appears appropriate to the AEC.
- (Potential) electors should be proactively contacted by AEC — There is a clear theme in submissions that the AEC should be proactively contacting potential electors abroad. While the AEC will continue discussions with DFAT as to any new information sources on Australians abroad, and any new mechanisms for communicating with them, it is simply not feasible for the AEC to 'track' electors leaving Australia. It is not unreasonable that electors abroad should advise the AEC of their circumstances and contact details; any streamlined enrolment system such as that discussed in submission two would enable more prompt AEC response or action in such cases.
- Electors abroad are very mobile — The submissions received back up the belief that electors abroad move frequently – some relate multiple residences in one country and other multiple international moves. The AEC is not equipped or resourced to track such electors, and it may not appear appropriate to divert more resources to an elector group that is not covered by the compulsory enrolment or voting provisions, and away from assisting those that are so covered to comply with the law.[37]

37 Australian Electoral Commission, submission 169.6, pp 17–18.

Committee conclusion

11.34 The proposals out forward by the Southern Cross Group and ALP Abroad in relation to providing for a more generous and flexible enrolment system have previously been raised before with former Joint Standing Committees on Electoral Matters.

11.35 Current arrangements do require electors who are travelling overseas with an intention to take up residence in another country to notify the AEC and then take the appropriate steps to maintain their enrolment. However, the committee considers that the taking of actions such as these are valid indicators of electors' actual and continuing interest in Australian electoral politics and their preparedness to act on their franchise.

11.36 Associate Professor Orr considered that the current arrangements were likely to remain in place, noting that:

> … there is little case in democratic theory for an expansive expatriate franchise. In particular, citizenship by itself is an insufficient basis for an assertion of expatriate voting rights. Conventional as it is, the six-year rule serves as a proxy for not transplanting roots. Those who maintain and use the franchise are, however, permitted to keep it indefinitely, provided they maintain the bureaucratic hurdles to prove they value the vote as a fundamental, if not symbolic, act of expression.[38]

11.37 The committee agrees with Associate Professor Orr and the AEC view that it is not appropriate to divert more resources to an elector group that is not covered by the compulsory enrolment or voting provisions, and away from assisting those that are so covered to comply with the law.

11.38 The committee considers that requirements for eligible overseas electors to regularly update their enrolment and vote in Australian elections are appropriate and form a valid method of measuring whether a continuing interest in Australian political affairs exists. The committee therefore supports the existing eligibility provisions relating to eligible overseas electors in the Commonwealth Electoral Act.

38 Orr G,'Citizenship, Interests, Community and Expression: Expatriate Voting Rights in Australian Elections', Bronitt S and Rubenstein K (eds), *Citizenship in a Post-National World*, Centre for International and public law, Law and policy paper 29, pp 26–27.

Recommendation 48

11.39 **The committee recommends that current provisions of the *Commonwealth Electoral Act 1918* regarding the eligibility of overseas electors to enrol and vote at elections be retained.**

Assisted voting for blind and low vision electors

11.40 As noted in chapter 2, the committee does not consider that its recommendation for the discontinuation of electronically assisted voting as conducted at the 2007 election has closed the door on electronic voting. Changed circumstances, including improvements in technology and higher levels of demand may lead to electronic voting or other alternatives being reconsidered at some time in the future.

11.41 The committee notes that the AEC has already begun to address this challenge and has lodged a supplementary submission to the committee following the release of the committee's report.[39] Although the AEC did acknowledge that a disadvantage with the large scale deployment of electronic voting machines to static polling centres is cost, the AEC noted that:

> An alternative approach to providing secret and independent voting for voters who are blind or have low vision as well as other potentially disadvantaged groups is based on the notion of pre-identifying voters with special needs and tailoring the nature of the service to suit.[40]

11.42 The AEC went on to say that such services could include:

> Online voting, where voting software that underpinned the electronic voting trials is deployed over the internet rather than on hardware in a polling place. Voters who are blind or have low vision are able to access the internet with accessibility software known as 'screen readers' loaded on their own computers. The screen reading software reads the contents of the web page to the user. The web page needs to be designed to accommodate accessibility software for optimum performance; and

39 Australian Electoral Commission, submission 169.17, p 11.

40 Australian Electoral Commission, submission 169.17, p 11.

Braille ballot papers that could be produced specifically for pre-registered voters and in the numbers required.[41]

Committee conclusion

11.43 The committee welcomes the AEC's continued efforts to examine alternative approaches for assisted voting for electors who are blind or have low vision. The committee supports the AEC's efforts to develop alternative arrangements that will provide secret and independent voting for electors who are blind or have low vision that are viable and that will be sustainable over the longer term.

Recommendation 49

11.44 **The committee recommends that the Australian Electoral Commission continue to work with organisations representing electors who are blind or have low vision to investigate the viability and sustainability of assisted voting arrangements aimed at providing secret and independent voting for electors who are blind or have low vision.**

Roll and certified list prints in electronic form

11.45 A table in section 90B of the Commonwealth Electoral Act sets out the persons and organisations to whom the AEC must give information in relation to the rolls and certified lists of voters, and specifies the information to be given and the circumstances in which it is to be given. Items 7 to 10, 11 to 14, and 15 in the table specify information to be given to Senators and Members of the House of Representatives; all of those items refer to the supply of 'a copy' or 'copies' of either certified lists or rolls, and thereby require the supply of hardcopy documents.[42]

11.46 According to the AEC, such a requirement does not reflect the increasing use of technology to store information in large quantities. As such, the AEC considered that the Commonwealth Electoral Act should be amended to permit Senators and Members of the House of

41 Australian Electoral Commission, submission 169.17, p 11.

42 Australian Electoral Commission, submission 169.18, p 2.

Representatives to elect to receive a copy of a roll or certified list in electronic format, rather than just hard copy format.[43]

Committee conclusion

11.47 The committee supports the AEC's proposal that the Commonwealth Electoral Act be amended to provide for the supply of a copy of a roll or certified list in electronic format, rather than just a hard copy format, where a Senator of Member of the House of Representatives elects to do so.

Recommendation 50

11.48 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended so that:**

- **where an item in the table in s 90B of the Act entitles a Senator or Member to receive one copy of a roll or certified list, that item be amended to permit the Senator or Member to opt for the relevant copy to be supplied in electronic rather than hardcopy form; and**
- **where an item in the table in s 90B of the Act entitles a Senator or Member to receive three copies of a roll or certified list, that item be amended to permit the Senator or Member to opt to receive one of the copies in electronic rather than hardcopy form, and to receive either zero, one or two hardcopies.**

Senate counting systems

11.49 Under the proportional representation system used for Senate elections, a candidate is required to achieve a minimum 'quota' of votes. With six candidates elected at a half Senate election, a quota is equal to the number of formal ballot papers divided by one more than the number of Senators to be elected and then adding one to the result. In percentage terms this is means that 14.3 per cent of the formal vote is needed to win one of six Senate seats in a half-Senate election.

43 Australian Electoral Commission, submission 169.18, p 2.

11.50 Under the full preferential system used in Senate elections, vacancies are filled as candidates achieve the quota. A candidate whose first preference votes equal or exceed the quota is declared elected. Votes surplus to the quota that have been cast for successful candidates are transferred (at a reduced value) to the remaining candidates according to the second preferences recorded by the voters. As each candidate receives a quota, the candidate is elected and their surplus votes are distributed to those candidates remaining in the count. If all surplus votes have been distributed and vacancies remain to be filled, the candidate with the smallest number of votes is eliminated with those votes being distributed among remaining candidates according to continuing preferences as expressed on the ballot papers until all positions are filled.

11.51 At the 2007 federal election, first preferences elected at least two Senators from each of the major parties in each state (table 11.2).

Table 11.2 Senate quotas achieved on first preferences, by jurisdiction, 2007 election

	Australian Labor Party	Liberal/Nationals	Greens
New South Wales	2.9448	2.7528	0.5898
Victoria	2.9191	2.7652	0.7055
Queensland	2.7438	2.8282	0.5124
Western Australia	2.5203	3.2351	0.6507
South Australia	2.4933	2.4698	0.4542
Tasmania	2.8067	2.6172	1.2690
Australian Capital Territory	1.2251	1.0260	0.6442
Northern Territory	1.4081	1.2007	0.2646

Source *Australian Electoral Commission, 'Virtual Tally Room, Senate, First preferences by candidate', viewed on 23 February 2009 at http://results.aec.gov.au/13745/Website/SenateStateFirstPrefs-13745-NSW.htm.*

11.52 The number of iterations of counting used to allocate surplus preferences and exclude unsuccessful candidates varies significantly across jurisdictions, with the number of iterations ('counts') positively related to the number of candidates (table 11.3).

Table 11.3 Counts required to complete Senate election, by jurisdiction, 2007 election

	Number of candidates	Counts required
New South Wales	79	246
Victoria	68	215
Queensland	65	200
Western Australia	54	197
South Australia	46	173
Tasmania	28	109
Australian Capital Territory	16	1
Northern Territory	11	1

Source *Australian Electoral Commission, 'Virtual Tally Room, New South Wales - Result of the Transfer and Distribution of Preferences', viewed on 23 February 2009 at http://results.aec.gov.au/13745/Website/External/SenateStateDop-13745-NSW.pdf.*

11.53 There are a number of counting systems used in proportional representation systems. While the particular counting system used may or may not lead to different results to that which would occur if another system was used, inquiry participants pointed out the possibility that changing the counting system might also change Senate results in some states, if certain assumptions were made about preference flows.

Criticisms of current counting arrangements

11.54 According to Mr Anthony van der Craats, the current formula to determine the surplus transfer value 'seriously distorts the proportionality and value of the vote'.[44] Mr van der Craats argued that:

> The formula used is based on the value of a candidate's surplus divided equally by the number of ballot papers allocated to the candidate who holds a surplus value. Ballot papers received by a successful candidate at a fraction of its original value are transferred at the same value as a ballot paper that held a significantly higher value.
>
> The result of this distortion in the value of the vote can result in the election of a candidate not based on merit or voters support. The system currently used was adopted as a trade off at a time when the method of counting the ballot was undertaken by a manual process. With the use of computer aided counting the

44 van der Craats A, submission 51, p 3.

> system and formula used is no longer justified and should be reviewed.[45]

11.55 Mr van der Craats proposed that the current system be replaced with a counting system which both changes the method of calculating the surplus transfer value and the method for distributing preferences when candidates are excluded from the count. Such a change would involve a change from the current 'inclusive Gregory' counting system to one that incorporates the 'weighted inclusive Gregory' counting system to calculate the surplus transfer value in association with a 'reiterative' counting system when candidates are elected or excluded.

11.56 Under the current 'inclusive Gregory' system, the surplus transfer value is calculated as:

$$Transfer\ value = \frac{Number\ of\ surplus\ votes}{Total\ number\ of\ ballot\ papers\ received}$$

11.57 Under the 'weighted inclusive Gregory' system, the surplus transfer value is given appropriate weights to reflect their contribution to previous counts. The following formulae are used in calculating the surplus transfer value. For those votes that the candidate receives at full value:

$$Transfer\ value = \frac{Number\ of\ surplus\ votes}{Total\ number\ of\ votes\ received}$$

11.58 For those votes that a candidate receives from another candidate's surplus, the transfer value is expressed as:

$$Transfer\ value = \frac{Number\ of\ surplus\ votes}{Total\ number\ of\ votes\ received} \times Transfer\ value\ applied\ to\ previous\ candidate$$

11.59 Under the counting system proposed by Mr van der Craats, the change to calculating transfer values from the inclusive Gregory method to the weighted inclusive Gregory method would be supplemented by a change in the 'segmentation' process, whereby the count progresses on a reiterative basis. Mr van der Craats notes that under this system:

> A reiterative count recalculates the quota each time a candidate is excluded from the count and does a complete fresh recount from

45 van der Craats A, submission 51, p 3.

> the start as it more accurately reflects the distribution of preferences (ie: under the current segmented system a voter is effectively denied the choice of voting for an elected candidate if the voter's 2nd preference is only distributed after their 2nd choice has been declared elected![46]

11.60 Mr van der Craats considered that the current segmentation process can produce an 'unfair decisive outcome' in the results of the distribution process. Mr van der Craats noted that the existing process was:

> … originally introduced to limit the extent of distortion that occurs as a result of the paper based surplus transfer value.
>
> The aggregating and segmentation of the vote is another outdated system left over from the need to facilitate the ease of a manual count. With the adoption of a computer counting system and the use of a value based surplus transfer formula there is no real justification to maintain the aggregated segmentation distribution of the ballot.[47]

11.61 Mr van der Craats noted that such a reiterative counting process could be undertaken using a number of methods including the 'Wright' system,[48] or the 'Meeks' method.[49]

11.62 The committee noted that the counting system adopted by the Western Australian Electoral Commission for Legislative Council elections had been recently changed to use the weighted inclusive Gregory method rather than the inclusive Gregory method. This change was prompted by concerns arising in the 2001 Legislative Council elections that in close contests the choice of method can influence outcomes.[50]

11.63 Several inquiry participants expressed support for a change to adopt the weighted inclusive Gregory method rather than the inclusive Gregory method for Senate elections. The Proportional Representation Society told the committee that:

> In Senate elections, the transfer value is currently calculated by dividing the elected member's surplus by the number of ballot papers received by the elected candidate. This value is calculated

46 van der Craats A, submission 51.2, p 15.

47 van der Craats A, submission 51, p 4.

48 van der Craats A, submission 51.1.

49 van der Craats A, submission 188.1.

50 Miragliotta N, 'Little differences, big effects: An example of the importance of choice of method for transferring surplus votes in PR-STV voting systems', *Representation*, vol 41 no 1, pp 15–24.

> without regard to the previous value of these ballot papers, which could range downwards from full value (1.0), through various previous transfer values to as low as 0.01 or thereabouts. Hence some votes can actually increase in value and have an undue influence in the count. So much for "one vote, one value"!
>
> The Electoral Reform Society argues that instead of this flawed averaging mechanism, there needs to be a weighted calculation on each bundle of votes at their previous values. This calculated transfer value is the elected person's surplus divided by the total vote value (not total ballot papers) received by the elected candidate. This figure would then be multiplied by the previous transfer values of each bundle.
>
> … While this procedure is more accurate than the current averaging method, it is more complicated. However now that all Senate elections are conducted by the Australian Electoral Commission using computer data entry procedures, any complications in the calculations can easily be handled electronically.

11.64 Mr Antony Green, whilst noting that there was not a right or wrong method, also expressed support for the weighted inclusive Gregory method:

> I would recommend the weighted inclusive Gregory method—which I have outlined here and which is being used at the next Western Australian election—simply because in this example, because the Liberal Party got well over two quotas, when it reached the third quota suddenly everything reverted back to ballot papers instead of votes. That is a manual system which assists and gives a lot more power at that point to a party which has more than a quota to any party which has less than a quota. I think the votes are effectively being treated unequally at that point and they should be treated equally.[51]

Election outcomes under different current counting arrangement

11.65 The impact of adopting the weighted inclusive Gregory method was demonstrated by Mr Green in the case of the 2007 Victorian Senate count.[52] In calculating the impact of the different counting systems, Mr Green made the important assumption that One Nation had lodged a group

51 Green A, transcript, 23 July 2008, p 21.

52 Green A, submission 62.1, pp 23–26.

voting ticket that preferenced the Liberal Party of Australia ahead of the Australian Labor Party — the reverse of how preferences were allocated on group voting tickets lodged by One Nation.[53]

11.66 Under such a scenario, Mr Green calculated that using the inclusive Gregory method, the last candidate elected would have been the Australian Greens' candidate, Mr Richard Di Natale. Under the weighted inclusive Gregory method, the last candidate elected would have been the Australian Labor Party's candidate, Mr David Feeney.[54]

11.67 It is important to note that results modelled by Mr Green would only have come about with the assumption that the One Nation preferences had been reversed.

11.68 Mr van der Craats modelled the 2007 Senate election results using his proposed counting system for each state and territory, without making any changes to the actual preferences specified by parties and candidates. According to Mr van der Craats, the Senate results would have been unchanged in all states and territories except for Queensland.[55] In Queensland, Mr van der Craats calculated that under two alternative ways that could be used in a reiterative counting process (the 'Wright' and 'Meeks' approaches), the Senate result in Queensland would have resulted in the last Senate vacancy being filled by the Australian Greens' candidate, Ms Larissa Waters, rather than the Australian Labor Party candidate, Mr Mark Furner.[56]

11.69 The committee noted that the AEC was not in a position to provide an independent check of the figures given to the committee by Mr van der Craats, since that would require the independent development of software to implement the 'Wright' and 'Meeks' counting methods.[57] The AEC also noted that:

> If Mr van der Craats' figures are taken at face value, a different result would have been produced by the 'Wright' and 'Meek' methods at last year's Senate election in Queensland. About that there is little that can be said: different counting methods, by definition, will in some cases produce different results. The mere fact of difference does not establish that the 'Wright' and 'Meek' methods have any greater legitimacy than the current system.

53 Green A, submission 62.1, p 23.

54 Green A, submission 62.1, p 23.

55 van der Craats A, submission 51.3.

56 van der Craats A, submission 188.1, p 40.

57 Australian Electoral Commission, submission 169.3, p 5.

> Finally, as the AEC understands it, Mr van der Craats has not provided any simulation of the effect at last year's Senate election of using a non-iterative Weighted Inclusive Gregory method, as is done at Upper House elections in Western Australia.[58]

Australian Electoral Commission advice on Senate counting systems

11.70 The committee requested that the AEC provide advice on Mr van der Craats' criticisms of the current Senate counting system.

11.71 The AEC noted that Mr van der Craats' preference to move to the weighted inclusive Gregory method was not new, having been raised with the then Joint Select Committee on Electoral Reform in its review of the 1984 election.[59] The AEC's submission to the Joint Select Committee on Electoral Reform noted that it is difficult to compare different approaches and say that one is 'better' than the other, noting that:

> The preliminary point should be made that proportional representation systems of scrutiny can be no more than devices to provide, first, for the representation within a legislature of a reasonable cross-section of views and, second, for the representation of political groups in approximate proportion to their support within the electorate. Provided that two or more systems satisfy these broad criteria, there is very little basis for arguing that one is better than another, and the choice between any two must rest on the criterion of ease of practical implementation. No process whereby the complex preferences of millions of voters are agglomerated into an election result in which six candidates are successful and the rest are not can be said to be definitively 'correct' or 'accurate'.
>
> In addition, the Commission would reject as fallacious the proposition that there exist real but unobservable entities called 'vote values' which it is the duty of the system to reflect in the formula laid down for the calculation of 'transfer values'. To base ... [prescriptions] for legislative change on such a proposition would be to give overriding normative significance to what is merely a metaphor which has been used in the past to describe the mathematics of proportional representation systems.[60]

58 Australian Electoral Commission, submission 169.3, p 5.

59 Australian Electoral Commission, submission 169.3, p 2.

60 Australian Electoral Commission, submission 169.3, p 2.

11.72 The AEC also noted that 'it cannot be seriously asserted that the result produced by one would be any more legitimate than the different result which the other would produce in certain restricted circumstances'.[61]

11.73 In its advice to the committee for this inquiry, the AEC reiterated the view that it put forward in 1984, and disagreed with Mr van der Craats that there existed in surplus transfers a 'correct' proportional value of the vote.[62] The AEC noted that:

> While it can easily be demonstrated that different electoral systems or formulae have different properties and therefore are capable of producing different results, it does not follow that there must, among a number of such formulae, be a 'correct' one.[63]

Committee conclusion

11.74 The committee accepts that there is not necessarily a single 'correct' system by which surplus votes for Senate candidates are transferred when a candidate is elected or eliminated from the count. The existence of anomalies, such as that which lead to a change in counting system from the inclusive Gregory method to the weighted inclusive Gregory method for upper house elections in Western Australia, does not reduce the legitimacy of a voting system.

11.75 The committee also does not support a change in segmentation arrangements to a 'reiterative' approach suggested by Mr van der Craats. Although counting under the current system is conducted by computer, the committee considers that one of its strengths is that it can be conducted manually if necessary, thereby providing greater transparency and redundancy than a counting system that may only be conducted by computer.

11.76 The committee agrees with the AEC that there appears to be no benefit in moving to a new counting system when the system that is currently used has general acceptance and legitimacy. The committee therefore considers that the current counting system used for Senate elections be retained.

61 Australian Electoral Commission, submission 169.3, p 2.

62 Australian Electoral Commission, submission 169.3, p 2.

63 Australian Electoral Commission, submission 169.3, p 2.

Recommendation 51

11.77 **The committee recommends that the current counting system used for Senate elections be retained.**

Finance industry access to the electoral roll

11.78 One of the issues considered by the committee was whether the finance industry should be provided with a greater level of access to electoral roll information than it is currently entitled to.

11.79 Companies providing proof of identity services for the financial sector are provided with limited information (name and address only) from the electoral roll. The use ('permitted purposes') for which this roll information may be used is strictly limited to identity verification for the purposes of the *Financial Transaction Reports Act 1988* (FTR Act) or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The roll information must not be used for any other purpose.[64] Subsection 90B(4) of the Commonwealth Electoral Act does not permit the Australian Electoral Commission to provide date of birth information for FTR Act or AML/CTF Act purposes.

Background

11.80 Under the Commonwealth Electoral Act, members of the public may inspect the electoral roll at AEC offices. The publicly available roll contains name and address details.

11.81 Members of Parliament, political parties, approved medical researchers and public health screening programs may also be supplied with confidential roll information. For medical health researchers, this may, include electors' gender and age range information.

11.82 In addition, certain government agencies ('prescribed authorities') may be supplied with confidential roll information, for the prescribed purposes

64 AEC website, 'Supply of elector information for compliance with identity verification legislation', viewed on 26 April 2009 at http://www.aec.gov.au/Enrolling_to_vote/About_Electoral_Roll/id_verification.htm.

that are set out in schedule 1 of the *Electoral and Referendum Regulations 1940*.

11.83 The AML/CTF Rules require 'reporting entities' (as defined in the AML/CTF Act) to collect and verify certain information regarding their customers in order to confirm their identity. Specifically, the AML/CTF Rules (at 4.2.13) provide that a reporting entity may achieve 'electronic-based safe harbour' if it can verify the following information via electronic means:

- the customer's name and the customer's residential address using reliable and independent electronic data from at least two separate data sources; and either
- the customer's date of birth using reliable and independent electronic data from at least one data source; or
- that the customer has a transaction history for at least the past three years.[65]

11.84 The Global Data Company noted that these criteria for safe harbour in respect of electronic verification represent the benchmark against which 'reporting entities' will assess their customer's identity and sought greater access to electoral roll data on this basis.[66]

Proposed changes

11.85 Although name and address information is available from the electoral roll to prescribed organisations, Global Data Company, the Australian Finance Conference and FCS OnLine noted that they currently are unable to access independent and reliable date of birth or transaction history data in Australia and that the provision of date of birth information would be an important enhancement to FTR Act and AML/CTF Act identity verification requirements.[67]

11.86 Global Data Company considered that the date of birth data should be made available to prescribed organisations for facilitating the carrying out of an applicable customer identification procedure under the AML/CTF Act for the following reasons:

65 Global Data Company, submission 70, p 2.

66 Global Data Company, submission 70, p 2.

67 Global Data Company, submission 70, p 2; FCS OnLine, submission 83, p 1; Australian Finance Conference, submission 104, pp 2–3.

- The date of birth data recorded on the Electoral Roll represents the most reliable and independent source of data for the purposes of identity verification under the AML/CTF Act;
- There is no reason to believe that the provision of date or birth information to prescribed organisations (which already receive name and address information) would be technically or logistically difficult to achieve;
- In light of the existing protections afforded by the Electoral Act for any Electoral Roll information disclosed to prescribed organisations for AML/CTF Act purposes, there is no increased danger or risk relating to privacy or unauthorised use or disclosure of such information; and
- The necessary amendments to the Electoral Act to allow for the provision of date of birth information would be relatively straightforward.[68]

11.87 It is important to note that name and address details from the electoral roll are not distributed widely in the financial industry, with a limited number of agencies verifying information sent to them against the electoral roll. Global Data Company described how the process worked in practice:

> We are given, on a quarterly basis, a disk from the AEC which contains the current electoral roll. That is then uploaded and stored securely by us. Then, for instance, if you are opening a savings account online, you might go to a web portal; you would enter your name, address, telephone number, and date of birth, not dissimilar to going to a bank and giving them your drivers licence and recording that information. Once you press 'submit', that data is encrypted, sent to our different databases, and then all we provide back is whether that was a match to the data on our databases, or no match. I think it is important to note that we do not give back any physical data at all; it is only allowing the reporting entity to know that that person is who they say they are.[69]

11.88 FCS OnLine also considered that wider use of the electoral roll for identity verification would be beneficial and that where a person consents to identity verification, businesses should be able to use the electoral roll for such information.[70]

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68 Global Data Company, submission 70, p 3.

69 Sedgely E, Global Data Company, transcript, 12 August 2008, p 33.

70 FCS OnLine, submission 83, p 2.

11.89 Australian Finance Conference supported a re-instatement of provisions withdrawn in 2004 allowing electronic access to the electoral roll for debt collection purposes by the private sector. [71] The Conference noted that:

> In the current economic climate which has seen customers of our Members increasingly facing financial stress, we see the potential for a correlated increase in default or non-payment in the near future. The ease with which a customer can walk away from their contractual obligations to repay by changing residence and impediments to easily locating them is of concern to the industry. Yet again, customers that do the right thing will bear the consequences with the attendant increase in the costs of products or services to offset the default losses. In our view, there is a strong economic and public interest argument to support the reinstatement of access by the finance industry to an electronic copy of the electoral roll to assist with debt recovery and receivables management.
>
> We believe access can be provided in a way which restricts the secondary use to this purpose thereby minimising the potential for abuse of the privacy of the personal information contained in the roll. Access by the private sector for AML purposes has provided a good model in this regard. Further, the current access provisions within the Act recognise that at times the balance must shift from privacy in favour of other public interests, like protection of the public revenue. For example, a number of Government Departments and Agencies (eg Centrelink, Comsuper, Department of Human Services, Department of [Education], Employment and Workplace Relations) are able to use the electoral roll to locate persons for debt recovery purposes. There is equally a public interest in the private sector recovering what it is owed.[72]

Committee conclusion

11.90 While the committee can see some benefit in providing date of birth details for the purposes of the anti money laundering and counter terrorism requirements, it does not support the provision of date of birth information from the electoral roll.

11.91 The committee recognises that a number of government agencies have access to the electoral roll and candidates and political parties have access

71 Australian Finance Conference, submission 104, p 3.

72 Australian Finance Conference, submission 104, p 4.

to certain details for electioneering purposes. That said, the committee places a very high value in ensuring that, wherever possible, elector information should remain private and that there be no wider secondary use of such information. Such an approach is required to ensure that potential electors are not dissuaded from enrolling because they hold a perception that their information will be shared across a number of spheres for non-electoral related purposes.

11.92 The committee therefore considers that the current arrangements relating to the provision of electoral roll information to prescribed organisations for the purposes of identity verification under the *Financial Transaction Reports Act 1988* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* be retained.

Recommendation 52

11.93 **The committee recommends that the current arrangements relating to the provision of electoral roll information to prescribed organisations for the purposes of identity verification under the *Financial Transaction Reports Act 1988* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* be retained.**

11.94 On a related matter, AEC noted that s 90A of the Commonwealth Electoral Act does not explicitly prohibit the photographing and photocopying of the roll that is available for public inspection. The AEC suggested that if the recording of the roll by electronic device is not stopped, it will allow for the recording of electoral roll information on a large scale and potentially result in inappropriate use of electoral roll information.[73]

11.95 Given the pace of technological developments, the committee agrees with the AEC and considers that it is important to specify that making a copy or copies of the electoral roll that is available for public inspection should be prohibited, whilst recognising also that it may still be necessary for authorised persons to copy the information for legitimate purposes.

73 Australian Electoral Commission, submission 169, Annex 10, p 75.

Recommendation 53

11.96 **The committee recommends that the current provisions of the *Commonwealth Electoral Act 1918* relating to the inspection of electoral rolls be amended to explicitly prohibit the unauthorised photographing or photocopying of any roll that is made available for public inspection.**

Daryl Melham MP
Chair
2 June 2009

Dissenting Report – Mr Scott Morrison MP, Senator the Hon Michael Ronaldson, Senator Simon Birmingham, Liberal Party of Australia, Hon Bruce Scott MP, The Nationals

Introduction

The Commonwealth Electoral Act mandates that Australian citizens undertake some basic tasks to meet their obligations in relation to the conduct of elections, namely:

- to enrol to vote,
- to accurately maintain their enrolment at their permanent place of residence,
- to cast a vote when an election is called, and,
- to fully extend preferences to all candidates contesting election for the House of Representatives in their local electorate.

These requirements are the basic building blocks of our system of compulsory preferential voting. They are not onerous requirements. They represent the modest responsibilities of citizenship. The vast and overwhelming majority of Australians fulfil these responsibilities.

Yet the majority report of the Government members of the Committee concludes these requirements impose an unwarranted inconvenience on citizens and seeks to

apply a lowest common denominator approach to reform of our electoral laws. This approach is opposed by Coalition members of the Committee.

In the lead up to the last election the AEC conducted a highly successful campaign encouraging Australians to value their vote. The campaign led to a surge in enrolments prior to the election, based on the active response of citizens to this important message. The recommendations of the majority report are in direct conflict with this message.

The majority report argues for a relaxation of important measures introduced to protect the integrity of our electoral process and most significantly the electoral roll itself. The product of their recommendations is to reward complacency towards our democracy and appease those who fail to meet their responsibilities under the Act. Such recommendations include:

- extending the close of rolls and thereby reducing the time available for scrutiny of late enrolments by the Australian Electoral Commission once an election is called;
- weakening existing proof of identity requirements for those found not to be on the roll;
- removing any sanctions for failing to maintain your enrolment as required under the Act;
- removing the requirement for voters to fully exhaust preferences for House of representative elections.

The approach taken in the majority report to address the problem of people failing to maintain their enrolment or vote properly is to simply ignore it. In short, they seek to legitimise illegitimate behaviour, rather than uphold and enforce the reasonable requirements of the Act. This is a lazy and dangerous approach that is not supported by Coalition members of the Committee.

Coalition members commend and support efforts by the AEC to boost enrolments, including on-line registration with appropriate safeguards. However, we do not believe this should be achieved at the expense of the integrity of our electoral system or by diluting the responsibilities of citizens under the Act.

A century ago Australia was one of only a handful of functional democracies around the world. As a consequence we must not only continue to prize our own democracy but be a standard bearer for all those who have paid a heavy price to join the family of democratic nations.

The enemy of democracy is complacency. The measures recommended in the majority report and highlighted below seek to reward such complacency.

Accordingly the Coalition members oppose the following recommendations of the majority report:

Recommendation 1

The committee recommends that Section 155 of the C*ommonwealth Electoral Act 1918* be repealed and replaced by a new section which provides that the date fixed for the close of the rolls shall be 7 days after the date of the writ.

The closure of the rolls seven days after the issue of a writ is a significant threat to the integrity of the electoral roll.

Closing the roll at 8 pm on the day the writs for the election are issued (usually three or four days after the election is called) for people enrolling for the first time, and people re-enrolling after being removed from the roll, currently gives the AEC an extra 7 days to verify new enrolments and an extra 4 days to verify changes of address.

At a time when the AEC is processing a large number of enrolments, these changes have greatly assisted the AEC in identifying and discounting fraudulent enrolments. Under the old scheme, to which Labor proposes returning, more than 520,000 changes to enrolment or new enrolments were submitted to the AEC in the seven-day period before the close of rolls during the 2004 Federal election. The proposed timeframe of seven days will again make it was virtually impossible to exclude fraudulent votes from the count.

The Coalition considers that the existing arrangements ensure that the electoral roll contains a high degree of accuracy and integrity, and is concerned that the extra time period allows for a return to a system which permits calculated fraudulent enrolments to take place.

Furthermore, evidence provided by the AEC in their first submission to the inquiry at 2.2.5 noted that under the new rules the number of people missing the close of rolls deadline in 2007 was 100,370 compared to 168,394 in 2004. This represents a reduction of more than 40%.

As a consequence, in contrast to the argument asserted in the majority report, the combination of the effective campaign run by the AEC to encourage enrolment, combined with the fact that failure to enrol prior to the election being called would result in not being able to vote had a positive effect on encouraging enrolment. This outcome highlighted the virtue of an enforcement incentive over the liberalised approach recommended in the majority report.

Coalition members also note the statement by the AEC in their first submission at 2.3.1. that 'the reduction in the close of rolls period meant that during 2007 the AEC placed a strong emphasis on ensuring that eligible electors were correctly

enrolled prior to the issue of writs and that the focus was on having an "election ready roll" at the appropriate time'.

Coalition members of the Committee believe a return to the previous system will serve to discourage citizens from making or maintaining their enrolment during the ordinary course of the year, as they will have the opportunity to delay such action until an election is called.

Recommendation 2

The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 that require provisional voters to provide proof of identity

- **be repealed; and**
- **that the *Commonwealth Electoral Act 1918* be amended so that where doubt exists in the mind of the Divisional Returning Officer as to the bona fides of an elector who casts a declaration vote, that the Divisional Returning Officer is to compare the signature of the elector on the declaration envelope to the signature of the elector on a previously lodged enrolment record before making the decision to admit or reject the vote.**

The Coalition is opposed to any weakening of the proof-of-identity provisions in relation to enrolling or provisional voting on the grounds that it removes an important deterrent that acts to prevent citizens from failing to maintain their enrolment or who may seek to engage in multiple voting.

Given that failure to properly maintain one's enrolment is a breach of the Act, it is not unreasonable for such persons to be subjected to a more stringent procedure to admit their vote, as a result of neglecting their responsibilities under the Act.

According to the AEC approximately 75% of provisional voters showed evidence of identity when voting. Of the 33,901 provisional voters who failed to provide this identification on polling day, only one in five of these voters subsequently provided this proof of identity by the cut off date, i.e. the close of business on the following Friday.

In the majority report it is argued, without any supporting evidence, that the attrition rate is a result of voter apathy as the result of the election is known. This conclusion is difficult to reconcile with the fact that in the electorates of Swan and McEwen for example, where there were 260 and 188 provisional voters respectively who failed to provide their proof of identity in the week following the

poll. In each case the election in these seats hung in the balance throughout the following week and well beyond.

The argument is made that the validity of these voters can be determined by a comparison of signatures. However, such a process would fail to provide any deterrent or consequence for voters who fail to meet their obligations to maintain their enrolment under the Act. Such failure should trigger a requirement for a more stringent process.

The majority report argues that the proof of identity requirement in these cases should be relaxed to avoid the situation where voters may be disenfranchised through no fault of their own due to administrative errors in the publication of the roll by the AEC. No evidence has been provided by the AEC or is provided in the majority report indicating the extent of such administrative errors to support this view.

Coalition members agree that in the event of such errors, the subsequent requirement for proof of identity should be waived. If identity has already been provided on polling day there is no issue. If subsequently the AEC determines and certifies that an omission is the result of their administrative error, the vote should be automatically included, subject to checking the signatures. Otherwise the proof of identity requirements should stand.

Finally, in relation to multiple voting while the majority report asserts that there has been no evidence of attempts at multiple voting, this is no reason to remove deterrent measures protecting against such behaviour. If this were the case a reduction in illegal boat arrivals would be a valid argument for reducing funding for border control.

Recommendation 3

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who has lodged a declaration vote at an election has been removed from the roll by objection action on the ground of non-residence and

(a) the omission occurred after the election prior to the election to which the scrutiny relates, or

(b) where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the omission from the roll was made before the last such redistribution, then:

- **if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but**
- **if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.**

The situation envisaged in recommendation 3 relies on the elector having been negligent in maintaining their correct enrolment. The Coalition considers that it would be highly undesirable to further weaken the consequences of failing to enrol correctly.

People who live at a location for 21 days are, by law, required to enrol at that address. If they do not do so, they are breaking the law. It is true they may not be aware of any changes to boundaries which could affect which electorate they now reside. However they are aware of the fact that they have changed address.

The amendments proposed in the majority report mean that a person who fails to enrol still retains their right to vote in Senate elections if they are living in the same state as their previous legitimate enrolment.

Incredibly, the majority report is also proposing that a person who has failed to enrol at their new address, but allegedly still resides in the same electorate, retains all their existing voting rights – both for the Senate and House of Representatives. Nor is there any statutory penalty for failing to enrol at a new address.

Effectively, the changes proposed by the Government members of the Committee mean that there is no consequence for breaching the Electoral Act. The benefits of correctly enrolling are reduced to nothing and there is no disincentive for any

person who fails to correctly enrol, leading to a situation where the whole basis for the AEC's Continuous Roll Update (CRU) program is severely undermined.

If the Government is seriously proposing this sort of arrangement – which is effectively 'enrolment on polling day' – then they might as well abandon CRU and its attendant costs, and propose a UK-style fixed-date roll.

Recommendation 14

The committee recommends that, in order to encourage the enrolment of young Australians, the Australian Electoral Commission introduce a national 'Schools Bounty Scheme' under which government and non government schools, universities and technical colleges and the like would receive a specified amount for valid enrolment forms collected and forwarded to the Australian Electoral Commission.

The notion of introducing a financial inducement to encourage enrolment, however far removed from the individual, represents a corruption of our democratic process. If our schools and universities need such a financial incentive, then a more appropriate action may be to address the chronic failure of civics education in these institutions.

The Coalition Members of the Committee are completely opposed to such an inappropriate measure. Once again, it is a requirement of the law to enrol to vote when you turn 18. No incentive should be required, provided or solicited to take up your most important democratic right.

Recommendation 20

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow mobile polling and/or pre-poll facilities to be provided at such locations and at such times as the Australian Electoral Commission deems necessary for the purposes of facilitating voting.

For example, mobile polling or pre-poll facilities should be able to be provided where there is likely to be sufficient demand for such facilities by homeless and itinerant electors, or in such other circumstances as warrant their use.

While Coalition members of the Committee have no objection to the AEC being given authority to establish mobile polling places we do not accept that such measures are necessary to assist voters who are itinerant or homeless.

While we support the measures contained in the majority report to assist with the recognition and enrolment of persons who are homeless, such persons still have ready access to polling places, especially in metropolitan areas. By contrast Coalition members believe that voters in rural and remote areas would have greater claim to having access to these services than itinerant or homeless voters.

The Coalition members believe that these facilities should only be established where voters would not have access to existing facilities provided by the AEC and that the AEC be required to report to the Joint Standing Committee on Electoral Matters following each election detailing where they have used the powers to establish mobile or pre polling places and outline their justification for using those powers.

Recommendation 35

The committee recommends that:

- **Section 240 (2) of the *Commonwealth Electoral Act 1918*, which provides that the numbers on House of Representatives elections ballot papers are to be consecutive numbers, without the repetition of any number, be repealed, and**
- **the savings provision contained in paragraph 270 (2), repealed in 1998, which provided that in a House of Representatives election in which there were more than three candidates, and where a full set of preferences was expressed on the ballot paper, but there were non-consecutive numbering errors, the preferences would be counted up to the point at which the numbering errors began, at which point the preferences were taken to have 'exhausted', be reinstated to the *Commonwealth Electoral Act 1918*, and**
- **the Government amend the *Commonwealth Electoral Act 1918* to provide a penalty provision sufficient to deter the advocacy of 'Langer style voting'.**

The Coalition strongly opposes the proposal to remove the requirement for voters to sequentially number their ballot. The majority report states at 8.65 that it supports the retention of 'full preferential voting for the House of Representatives' yet then recommends that the requirement to fully extend preferences not be required to constitute a valid vote. This is an absurd proposition that clearly seeks to have one's cake and eat it.

The Government members of the Committee argue that their recommendation is required to reduce the informality rate. However they seek to achieve this by simply calling an informal vote a formal vote.

Evidence was consistently presented to the Committee from recognised experts such as Antony Green and Emeritus Professor Colin Hughes that the preferred option to reduce informal voting of the kind highlighted in the majority report was to introduce optional preferential voting. This expert evidence has been conveniently ignored by the Government members of the committee in their majority report.

The expert testimony of Green and Hughes are strongly supported by the comparison of rates of informality between State and federal elections in NSW. In March 2007, the informality rate at the State Election using optional preferential voting was 2.69%. At the November 2007 Federal election the rate of informality in NSW was 4.95%.

For political reasons the Government members of the committee consider this approach inconvenient and have put forward a less effective option, that undermines the integrity of the compulsory preferential system and leaves the system open to abuse.

Given the significant proliferation of new communications technologies since the measures proposed by the Government members of the committee were originally removed, it is simply naive to pretend that suitable protections can be implemented to prevent Langer style abuse of the system, should these vote-saving measures now be reintroduced.

If the Government members are interested in genuine reform to reduce informality they should seriously consider the adoption of optional preferential voting at a federal level. If not, then Coalition members strongly believe they should not seek to undermine our system of compulsory preferential voting and retain the current provisions of the Act.

Recommendation 46

The committee recommends that the penalties imposed under s 328 of the *Commonwealth Electoral Act 1918* ($1,000 for a natural person and $5,000 for a body corporate) be revised to ensure that they provide a greater deterrent.

Coalition members do not oppose changes to increase s.328 penalties. However, the Coalition considers that the failure of the Government members to call for an increase in penalties for a broad range of other offences betrays a cynical and partisan motive to highlight rogue behaviour in the 2007 Lindsay campaign, rather than address the issue of penalties in a serious and balanced fashion.

If Government members were being consistent and were addressing these matters seriously – rather than being partisan opportunists – they would also be addressing penalties in relation to:

- failure to declare donations made to candidates and political parties;
- failure of political parties and candidates to report such donations;
- failure to enrol when a person turns 18;
- failure to update a person's true residential address;
- falsely requesting a pre-poll vote;
- multiple voting;
- impersonation of another voter; and
- deliberately giving an incorrect residential address, usually to secure political and/or financial advantage.

Recommendation 47

The committee recommends that the Government amend the *Commonwealth Electoral Act 1918* to reinstate the previous three-year disqualification for prisoners removed from s 93(8)(b) in 2006, to reflect the High Court of Australia's judgement in Roach v Australian Electoral Commissioner that s 93(8AA) and s 208(2)(c) are constitutionally invalid.

The Coalition members reject the views of organisations such as Getup as outlined in their evidence to the Committee on this matter. We remain firmly of the view that people who commit offences against society, sufficient to warrant a prison term, should not, while they are serving that prison term, be entitled to vote and elect the leaders of the society whose laws they have disregarded.

We acknowledge the High Court's decision in Roach, but we also note that the Court only gave a narrow decision in relation to a blanket exclusion, and did not seek to invalidate the general principle that the franchise may be removed from certain prisoners. It is the view of the Coalition that voting should be denied to those who are currently serving full-time custodial sentences of one year or longer.

This would align the voting disqualification with the disqualification from being a Member of Parliament, at s.44(ii) of the Australian Constitution:

> Any person who … has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a state by imprisonment from one year or longer… shall be incapable of being chosen or of sitting as a senator or member of the House of Representatives.

People being detained on remand, those serving alternative sentences such as periodic or home detention, those serving a non-custodial sentence or people released on parole should still be eligible to enrol and vote.

A whole or partial ban on prisoner voting is an established feature in many other Western countries including the United Kingdom, Switzerland, Belgium, as well as the majority of States in the United States of America.

Mr Scott Morrison MP
Deputy Chair

Senator the Hon Michael Ronaldson

Hon Bruce Scott MP

Senator Simon Birmingham

Dissenting Report – Senator Bob Brown, Australian Greens

The Electoral Matters Committee has thoroughly investigated the conduct of the 2007 federal election and developed sound recommendations on many issues.

Truth in advertising

Another persistent problem in our electoral system that the committee has failed to tackle is truth in advertising, in particular, the lack of contemporaneous regulation and penalties for parties, groups or individuals who knowingly lie or distort the truth in advertisements and publications about candidates and their policies during election campaigns.

We saw the well-publicised, tawdry example in the 2007 election campaign of the Liberal Party member Gary Clark distributing bogus flyers in the seat of Lindsay to scare people into thinking the Labor party supported terrorists. The spreading of lies in this instance was a deliberate act to gain an electoral advantage. His actions did not result in any penalty against the Liberal candidate before the election and afterwards he was charged with producing an unauthorised pamphlet and fined just $1100.

The Greens have also borne the brunt of attempts by political parties and third parties to unfairly smear their policies and candidates but there is little recourse for action against the parties before or after the election.

As the Australian Greens point out in its submission to the government's green paper on electoral reform:

> Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

The Greens advocate amendment to the Commonwealth Electoral Act to make it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent, similar to legislation introduced in South Australia.

The committee should have addressed this thorny problem.

Senator Bob Brown

Supplementary remarks – Daryl Melham MP

Should British subjects who are not Australian citizens continue to exercise the franchise?

In 1984 Australian citizenship become the qualification for enrolment and voting. However, an exception was made for British subjects who were already on the electoral roll, recognising them as a separate class of elector, with grandfathering arrangements put in place to maintain their entitlement to the franchise.

The Australian Electoral Commission (AEC) advised that as at 30 September 2008, some 162,928 electors with 'British subject' notation remained on the electoral roll.[1]

Since 1984, three significant events have occurred which provide sufficient reason to reconsider whether grandfathering arrangements that maintain the franchise for British subjects who are not Australian citizens continue to be justified.

The first was the passage of the *Australia Act 1986,* which severed any remaining constitutional links between the Commonwealth and state governments and the United Kingdom.

The second was the High Court of Australia's decision in 1999 in relation to the eligibility of a citizen of another country (in this case the United Kingdom) to be a member of the Commonwealth Parliament. In the view of the High Court, Ms Heather Hill — who was a citizen of the United Kingdom and had been elected to the position of Senator for Queensland at the 1998 federal election— was a subject

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1 Australian Electoral Commission, submission 169.6, Annex 3. Note that the national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission (159,095) due to an error made by the Commission in summing each division and jurisdictions. There are also minor differences in the totals for New South Wales (41,509 not 41,510) and Victoria (41,742 not 41,743).

or citizen of a 'foreign power' as defined under s44(i) of the Constitution, thus ruling her ineligible to stand for the Commonwealth Parliament.

The third is that, since 2002, there have been no restrictions on Australians holding citizenship of another country at the same time as holding Australian citizenship. The effect of this change is that large numbers of British subjects are now eligible to become citizens of Australia whilst retaining their former citizenship.

The issue was brought to the committee's attention by former Senator Andrew Murray in the Australian Democrats' submission to the inquiry.[2]

It is time to examine whether maintaining the enrolment and voting franchise for a certain class of non-citizens continues to be appropriate.

By including these supplementary remarks, I seek to foster genuine and considered debate around this issue. As a member of parliament representing a diverse electorate in terms of origin of citizens, I urge those who engage in the debate to consider whether the grandfathering arrangements put in place in 1984, are relevant and appropriate now, given that they extend the franchise to one group of non-citizens when it is not extended to others.

Background

Subsection 93(1)(b)(ii) of the Commonwealth Electoral Act both entitles and requires British subjects who were on the Commonwealth electoral roll immediately prior to 26 January 1984 to enrol and vote at federal elections.

British subjects who are eligible to vote in federal elections in Australia comprise citizens from 48 different Commonwealth and former Commonwealth countries including: the United Kingdom; Canada; India; Malaysia; New Zealand; Jamaica; Tonga; and Zimbabwe.[3]

Australia's second federal election, held on 16 December 1903, was the first to take place according to uniform voting rights and electoral procedures in all states.[4] At that time, the eligibility requirements for enrolment and voting were set out in the *Commonwealth Franchise Act 1902* (Franchise Act) and the *Commonwealth Electoral Act 1902*. The Franchise Act granted the right to vote to British subjects 21 years or older who had lived in Australia for more than six months.[5]

2 Australian Democrats, submission 56, p 12.

3 Australian Electoral Commission, 'British Subjects Eligibility', viewed on 26 November 2008, at http://www.aec.gov.au/Enrolling_to_vote/British_subjects.htm.

4 Australian Electoral Commission, 'Fact Sheet No. 3 – Voting in the Federal Election', viewed on 27 November 2008, http://www.foundingdocs.gov.au/resources/transcripts/cth5i_doc_1902.pdf.

5 Section 3, *Commonwealth Franchise Act 1902*.

In 1924, the Commonwealth Electoral Act was amended to make voting compulsory.[6]

In 1931, the United Kingdom passed the Statute of Westminster Act which granted a number of Commonwealth countries, including Australia, the power to act as fully independent states and create their own citizenship laws. The Statute was to come into force once adopted by the Australian Parliament.[7]

The Curtin Labor Government adopted the Act in 1942 and the Menzies Liberal Government passed the Nationality and Citizenship Act (Citizenship Act) in 1948.[8]

Up until 26 January 1949, any person born in Australia was considered to be a citizen of the British Commonwealth. The Citizenship Act introduced the principle of citizens belonging to Australia rather than the British Commonwealth.[9] It was not until the Commonwealth Electoral Act was amended in 1981 that the eligibility requirements for enrolment and voting changed from British subjects to Australian citizens.[10]

Prior to 26 January 1949, Australians were identified as British subjects. After that date, all Australians were legally defined as Australian citizens.

From 1973 onwards, most of the references to British subjects were amended in relevant legislation by substituting the words 'Australian citizen' for 'British subject'. Most references related to eligibility requirements to be appointed to the Australian Public Service or to similar government agencies.

Between 1981 and 1985 successive governments sought to amend the remaining Commonwealth Acts which contained references to British subjects.

Subsection 93(1)(b)(ii) of the Commonwealth Electoral Act (previously section 39 prior to 1984) was amended in 1981 to grant enrolling and voting rights to:

> Australian Citizens or British subjects (other than Australian citizens) who were electors on the date immediately before the date fixed under sub-section 2 (5) of the Statute Law

6 National Archives of Australia, 'Documenting a Democracy, Commonwealth Electoral Act 1924', viewed on 10 December 2008 at http://www.foundingdocs.gov.au/item.asp?sdID=89.

7 Dyrenfurth N, 'The Spirit of Sturdy Independence": Robert Menzies' Language of Citizenship, 1942-52', *Australian Journal of Politics and History*, Volume 52, number 2, 2006, pp. 202-223.

8 N Dyrenfurth, "The Spirit of Sturdy Independence": Robert Menzies' Language of Citizenship, 1942 52, Australian Journal of Politics and History: Volume 52, Number 2, 2006, pp. 202-223.

9 National Archives of Australia, Commonwealth Documents, 'Nationality and Citizenship Act 1948', viewed on 27 November 2008 at http://www.foundingdocs.gov.au/item.asp?sdID=97.

10 *Statute Law (Miscellaneous Amendments) Act 1981*, s 32.

> (Miscellaneous Amendments) Act 1981 [a date to be fixed by proclamation].[11]

On 7 May 1981, the then Minister for Immigration and Ethnic Affairs, the Hon Ian MacPhee MP, made the following statement on voting rights for migrants:

> The removal of the anomaly between British subjects and other migrants was recommended by the Report of the Review of Post-arrival Programs and Services for Migrants more widely known as the Galbally report. When this report was tabled in the Parliament in May 1978 the Prime Minister (Mr Malcolm Fraser) announced the Government's acceptance of all of its recommendations.[12]

Mr MacPhee also commented on the status of British subjects already on the electoral roll who had not become Australian citizens, stating:

> One of the options considered by Ministers was that British subjects already enrolled should be permitted to take themselves off the roll. Ministers decided that this option should not be adopted. As a consequence, compulsory enrolment and voting will continue for all those who are now on the roll and who will in future be eligible to be on the roll. The introduction of these changes will constitute a further milestone in the social and political development of Australia. The changes reflect the cultural diversity of modern Australia and its independent identity.[13]

Subsection 93(1)(b)(ii) was amended again in 1982 to:

> British subjects (other than Australian citizens) whose names were, immediately before [a date to be fixed by proclamation], on the roll for a Division; or on a roll kept for the purposes of the Australian Capital Territory Representation (House of Representatives) Act 1973 or the Northern Territory Representation Act 1922.[14]

Sub-section 2 (5) of the *Statute Law (Miscellaneous Amendments) Act 1981* was proclaimed in the Commonwealth of Australia Gazette on 26 January 1984.[15]

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11 *Statute Law (Miscellaneous Amendments) Act 1981*, s 32.

12 Hon I MacPhee MP, Minister for Immigration and Ethnic Affairs, Hansard, 7 May 1981, p 2117.

13 Hon I MacPhee MP, Minister for Immigration and Ethnic Affairs, Hansard, 7 May 1981, p 2117.

14 *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, s 215

15 Commonwealth of Australia Gazette, 26 January 1984, No. S247.

Subsection 93(1)(b)(ii) was amended again in 1985 to:

> Persons (other than Australian citizens) who would, if the relevant citizenship law had continued in force, be British subjects within the meaning of that relevant citizenship law and whose names were, immediately before 26 January 1984, on the roll for a Division.[16]

On 16 October 1985, the then Attorney General, the Hon Lionel Bowen, made the following statement in his second reading speech:

> The amendment provides for the continuation of a definition of 'British subject' for the purpose of the franchise qualifications. This amendment is required because, when section 7 of the Australian Citizenship Amendment Act 1984 is proclaimed, it will repeal 'British subject' status provisions in that legislation.[17]

To date, subsection 93(1)(b)(ii) of the Commonwealth Electoral Act, as it pertains to the eligibility of British subjects to enrol and vote, has not been further amended. British subjects who were on the electoral roll prior to 1984 are still required to maintain enrolment and vote in federal elections.

Broader legislative and judicial developments impacting on the franchise for British subjects

Since the grandfathering arrangements were put into the Commonwealth Electoral Act by the parliament in 1984, a number of significant legislative and juridical developments have occurred, which, I believe, provide sufficient justification for examining whether continuing to enfranchise British subjects remains appropriate.

In 1986, following requests from state premiers to remove most of the remaining links between the United Kingdom and the Australian states, the Commonwealth Parliament passed the *Australia Act 1986.* The Australia Act was mirrored in legislation passed by the United Kingdom in the same year. Some of the links broken by the Australia Acts included that the British Parliament:

- declared it would no longer legislate for any part of Australia (section 1);
- relinquished its powers to disallow state legislation (section 8); and

16 *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985,* schedule 1.

17 Hon L Bowen MP, Attorney General, House of Representatives Hansard, p 2170.

- removed requirements that certain classes of state legislation such as constitutional amendments be assented to in the United Kingdom (section 9).

In commenting on the effect of the Australia Acts and the extent to which Australia became disconnected from the United Kingdom after 1986, Gaudron J of the High Court of Australia noted in a decision concerning the eligibility of subjects of a foreign power to run for parliament (see below) that:

> It may be accepted that the United Kingdom may not answer the description of 'a foreign power' in s 44(i) of the Constitution if Australian courts are, as a matter of the fundamental law of this country, immediately bound to recognise and give effect to the exercise of legislative, executive and judicial power by the institutions of government of the United Kingdom. However, whatever once may have been the situation with respect to the Commonwealth and to the States, since at least the commencement of the Australia Act 1986 (Cth) ('the Australia Act') this has not been the case.[18]

While certain British subjects are required to enrol and vote in federal elections, they are unable to run for parliament. Subsection 44(i) of the *Commonwealth of Australia Constitution Act* (the Constitution) disqualifies an individual from running or being elected to the Commonwealth Parliament if they have dual citizenship.

Subsection 44(i) of the Constitution provides:

> Any person who is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.[19]

Anyone who wishes to challenge the validity of an election of another individual on the grounds that they owed allegiance to a foreign power, for example, must make a petition to the High Court of Australia.[20]

18 Gleeson CJ, Gummow and Hayne JJ in Sue v Hill (1999) 163 ALR 648 at 665.

19 *Commonwealth of Australia Constitution Act,* s 44(i).

20 *Commonwealth Electoral Act 1918,* s 354.

In 1992, the High Court commented on the 'foreign allegiance' disqualification in section 44(i) of the Constitution. The majority view of the Court was that naturalised Australian citizens who also have foreign citizenship and are standing as candidates should take 'reasonable steps to renounce foreign nationality'.[21]

A subsequent High Court case in 1999 further clarified the extent to which British subjects are eligible to stand for the Commonwealth Parliament. In *Sue v Hill*, the High Court decided that Ms Heather Hill was not duly elected as Senator for Queensland at the 1998 federal election because she was disqualified by section 44(i) of the Constitution. Ms Hill was both a British subject and an Australian citizen at the time of her nomination. A majority of the High Court found that the United Kingdom is regarded as a 'foreign power' for the purposes of section 44(i).[22]

In coming to their decision in relation to this case, the High Court made a number of important observations about the eligibility of British subjects to stand for parliament. In my view, these are also relevant in relation to the continued enfranchisement of British subjects under the Commonwealth Electoral Act. In her judgement, Gaudron J noted the impact of the Australia Acts on whether the United Kingdom was a 'foreign power' had changed since 1986. Gaudron J stated that:

> It may be accepted that, at federation, the United Kingdom was not a foreign power for the purposes of s 44(i) of the Constitution. In this regard, the Commonwealth of Australia was brought into being by an Act of the Parliament of the United Kingdom, namely, the Commonwealth of Australia Constitution Act 1900 (Imp) ("the Constitution Act"). And it was brought into being as "one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland" (now the United Kingdom of Great Britain and Northern Ireland). Moreover, the Commonwealth remains under the Crown, as is readily seen from s 1 of the Constitution. By that section, the legislative power of the Commonwealth is "vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives". Further, the Governor-General is appointed by the Queen , proposed laws may be reserved by the Governor-General "for the Queen's pleasure" and laws may be disallowed by the Queen .

21 Sykes v Cleary (1992) 109 ALR 577.

22 Sue v Hill (1999) 163 ALR 648.

> And by s 61 of the Constitution, "[t]he executive power of the Commonwealth is vested in the Queen".[23]

However, Gaudron J noted that the relationship between the United Kingdom and the Commonwealth can change over time:

> Once it is accepted that the divisibility of the Crown is implicit in the Constitution and that the Constitution acknowledges the possibility of change in the relationship between the United Kingdom and the Commonwealth, it is impossible to treat the United Kingdom as permanently excluded from the concept of "foreign power" in s 44(i) of the Constitution. That being so, the phrase is to be construed as having its natural and ordinary meaning.
>
> … It is necessary, at this point, to consider whether there has been such a change in the relationship between the United Kingdom and Australia that the former is now a foreign power. In this regard, a change in that relationship has been noted by this Court on several occasions. Thus, for example, Barwick CJ observed in New South Wales v The Commonwealth that "[t]he progression [of the Commonwealth] from colony to independent nation was an inevitable progression, clearly adumbrated by the grant of such powers as the power with respect to defence and external affairs" and the Commonwealth "in due course matured [into independent nationhood] aided in that behalf by the Balfour Declaration and the Statute of Westminster and its adoption".[24]

In the view of Gaudron J, the impact of the passage of the Australia Acts in 1986 was therefore to change the relationship that had existed since federation, noting that:

> At the very latest, the Commonwealth of Australia was transformed into a sovereign, independent nation with the enactment of the Australia Acts. The consequence of that transformation is that the United Kingdom is now a foreign power for the purposes of s 44(i) of the Constitution.[25]

23 Gaudron J, Sue v Hill (1999) 163 ALR 648 at 692.

24 Gaudron J, Sue v Hill (1999) 163 ALR 648 at 693 and 694.

25 Gaudron J, Sue v Hill (1999) 163 ALR 648 at 695.

As a result of the passage of the Australia Acts and subsequent High Court decisions in relation to whether certain British subjects are eligible to stand for the Commonwealth Parliament, I consider that there is now clearly an inconsistency between the grandfathering arrangements put in place by the parliament in 1984 to continue to enfranchise British subjects and the status of British subjects as a subject or citizen of a 'foreign power' under s 44(i) of the Constitution.

Number of British subjects on the electoral roll

The AEC estimated that, at 30 September 2008, some 162,928 electors with British subject notation remained on the electoral roll. This represented 1.18 per cent of electors on the electoral roll at that time.[26] Table 1 below provides a breakdown of the number of British subjects on the electoral roll in each state and territory. The AEC note that the figures will:

> (i) *not include* any British subject electors who enrolled prior to the AEC commencing to record British subject status and who have not changed their enrolment since that time; and
>
> (ii) *include* electors recorded as British subjects who have since taken out Australian citizenship and not updated their enrolment.[27]

26 Australian Electoral Commission, submission 169.6, Annex 3. The national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission 169.6 for the national total of electors with British subject notation (159,095) and total enrolment (13,783,688). There are also minor differences for the New South Wales total (41,510) and Victorian total (41,742). These are due to errors made by the Commission in summing each division and jurisdiction.

27 Australian Electoral Commission, submission 169.6, p 12.

Table 1 Electors on the electoral roll with 'British subject' notation, by jurisdiction (a)

State	British subject notation	Enrolment	Proportion of electors with British subject notation (per cent)
New South Wales	41,509	4,550,184	0.91%
Victoria	41,742	3,466,611	1.20%
Queensland	29,360	2,632,020	1.12%
Western Australia	22,187	1,338,744	1.66%
South Australia	21,151	1,083,693	1.95%
Tasmania	4,272	351,656	1.21%
Australian Capital Territory	1,794	241,224	0.74%
Northern Territory	913	120,973	0.75%
Total	162,928	13,785,105	1.18%

Note *(a) The national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission 169.6 for the national total of electors with British subject notation (159,095) and total enrolment (13,783,688). There are also minor differences for the New South Wales total (41,510) and Victorian total (41,742). These are due to errors made by the Commission in summing each division and jurisdiction.*

Source *Australian Electoral Commission, submission 169.6, Annex 3.*

There are a number of divisions where a significantly high proportion of the total number of electors in the division have British subject notations. Table 2 highlights the divisions in which a significant proportion of British subjects are enrolled.

A full list of the number of electors with British subject notation is presented in appendix C, table C.10.

British subjects may have significant effects on voting patterns and election results. There are eight divisions with more than 2,500 electors with British subject notations on the electoral roll, and a further 62 divisions with more than 1,000 electors with British subject notations on the electoral roll. Of these 70 divisions, six divisions had final margins of less than 1,000 votes.[28]

28 Appendix C, table C.10.

Table 2 Electors on the electoral roll with 'British Subject' notation, selected divisions, as at 30 September 2008

Division (State)	British subject notation	Enrolment	Proportion of Electors with British subject notation (per cent)
Wakefield (SA)	3,693	96,621	3.82%
Brand (WA)	2,870	94,849	3.03%
Dunkley (VIC)	2,659	93,565	2.84%
Kingston (SA)	2,784	98,959	2.81%
Canning (WA)	2,665	97,778	2.73%
Flinders (VIC)	2,595	96,357	2.69%
Makin (SA)	2,540	95,347	2.66%
Mayo (SA)	2,522	97,630	2.58%
Hasluck (WA)	1,923	83,412	2.31%
Casey (VIC)	1,959	90,019	2.18%
Throsby (NSW)	1,851	89,161	2.08%
La Trobe (Vic)	1,940	93,304	2.08%
McMillan (Vic)	1,779	88,281	2.02%
Pearce (WA)	1,928	97,586	1.98%
Forde (QLD)	1,690	88,498	1.91%
Gilmore (NSW)	1,651	88,386	1.87%
Holt (VIC)	1,775	103,146	1.72%
Lalor (VIC)	1,830	106,609	1.72%
McEwen (VIC)	1,845	106,986	1.72%
Gippsland (VIC)	1,604	95,431	1.68%
Forrest (WA)	1,610	96,033	1.68%
Fisher (QLD)	1,458	88,608	1.65%
Fadden (QLD)	1,565	95,239	1.64%
Longman (QLD)	1,494	91,570	1.63%
Port Adelaide (SA)	1,651	101,448	1.63%

Source *Australian Electoral Commission, submission 169.6, Annex 3.*

While the grandfathering arrangements only allow British subjects on the electoral roll prior to 1984 to maintain the franchise, the age profile of electors with British subject notation is such that as a group, they will continue to exercise influence on election outcomes for over a decade, with the bulk of these electors aged between 45 and 65 years (figure 1).

Figure 1 Electors enrolled with British subject notation, by age, as at 30 September 2008

Source *Australian Electoral Commission, submission 169.6, Annex 3.*

Dual citizenship

A dual citizen is a person who holds citizenship of two countries. From 4 April 2002, changes to the *Australian Citizenship Act 1948* removed restrictions on Australians holding the citizenship of another country.[29]

Such a change largely reflects a trend towards the relaxation of citizenship around the world, with Professor Kim Rubenstein considering that such a move 'is an acceptance and consequence of globalisation and cosmopolitanism'.[30]

Dual citizenship has also been accepted by a number of other countries. Of note is that the countries of origin for a number of British subjects permit their citizens to hold dual citizenship. For example:

- Canada — Citizens are allowed to acquire foreign nationality without automatically losing Canadian citizenship;[31]
- New Zealand— There are no restrictions on New Zealand citizens also holding the citizenship of another country;[32] and

29 Australian Citizenship Legislation Amendment Bill 2002, clause 1.

30 Rubenstein K, 'Citizenship in the age of globalisation: The cosmopolitan citizen?', in Chen J, Puig GV and Walker G (eds), *Rights protection in the age of global anti-terrorism* (2007), Law in Context 88.

31 Citizenship and Immigration Canada, 'Dual Citizenship', viewed on 22 September 2008 at http://www.cic.gc.ca/english/resources/publications/dualci_e.asp.

- United Kingdom — There are no restrictions on United Kingdom citizens also holding the citizenship of another country.[33]

There are some countries where British subjects living in Australia remain citizens however, that do not permit their citizens from holding dual citizenship. Such countries include India and Singapore.[34]

Conclusion

The parliament's grandfathering arrangements for British subjects was appropriate in 1984, when citizenship became the key qualification for enrolment and voting in Australia. However, the passage of the Australia Acts to separate Australia and its states from the United Kingdom in 1986, and the High Court judgements in *Sykes v Cleary* and *Sue v Hill*, have in my view, confirmed that there is inconsistency between maintaining a continuing franchise for non-citizens who remain subject to, or are citizens of a foreign power, whilst not allowing British subjects to represent Australian people in the parliament.

Notwithstanding our historical links, I believe that in this day and age, continuing the grandfathering arrangements for a special class of British subjects is unfair and unreasonable to other non-citizens. No other group of non citizens receive 'special' considerations or relaxation of the enrolment and voting rules.

Further, with dual citizenship arrangements now in place for many British subjects, who have the ability to take up Australian citizenship without having to give up citizenship of another country, the continuation of the grandfathering arrangements for British subjects is no longer appropriate. The removal of barriers to dual citizenship in Australia and many other countries from which many British subjects originated, suggests that most electors on the electoral roll with British subject notation would not be disadvantaged were they to take out Australian citizenship upon removal of the grandfathering arrangements.

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32 New Zealand Embassy, 'Dual Citizenship/Nationality', viewed on 22 September 2008 at http://www.nzembassy.com/info.cfm?c=36&l=96&CFID=9817&CFTOKEN=11005406&s=nz&p=60956.

33 Home Office, UK Border Agency, 'Can I be a citizen of two countries', viewed on 7 May 2009 at http://www.ukba.homeoffice.gov.uk/britishcitizenship/dualnationality/.

34 Article 9 of the Constitution of the Republic of India, India Code Legislative Department, viewed on 19 September 2008 at http://indiacode.nic.in/coiweb/coifiles/p02.htm; Article 134 of the Constitution of the Republic of Singapore, Singapore Statutes Online website, viewed on viewed on 22 September 2008 at http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-CONST&doctitle=CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20SINGAPORE%0a&date=latest&method=part&sl=1.

The grandfathering arrangement for certain British subjects continues to provide them with preferential treatment.

Entitlement to the franchise is not automatic. To be eligible to enrol and vote at an election a person must be 18 years or older, an Australian citizen and have lived for at least one month at their current address. The franchise is not extended to all persons that meet these criteria, with several classes of persons excluded from enrolling or voting including those who:

- are of unsound mind and incapable of understanding the nature and significance of voting;
- are a permanent resident but not an Australian citizen;
- have been convicted of treason or treachery and have not been pardoned; and
- are serving a sentence of imprisonment of three years or longer.

Additional barriers are placed on Australian citizens living overseas who wish to remain on the electoral roll. They are required to enrol as eligible overseas electors and, after a six year period and voting at each federal election, maintain their enrolment by informing the relevant Divisional Returning Officer every year from year six onwards that they retain an intention to resume permanent residency in Australia.

It has been 60 years since the Nationality and Citizenship Act came into effect and 25 years since the eligibility qualification for enrolment and voting in the Commonwealth Electoral Act changed from British subjects to Australian citizenship. It is not unreasonable to believe that British subjects have had more than enough time to become Australian citizens.

In order to ascertain exactly how many electors may be affected by such a change, it is critical to find out exactly how many British subjects on the electoral roll may have taken out Australian citizenship but who have not yet updated their enrolment.

The AEC advised the committee that such an exercise would require the individual examination of the images of enrolment forms (some of which are held only on microfiche) for each of the remainder of the 13.8 million people enrolled, to establish place of birth, and then compare AEC records with citizenship data from the Department of Immigration and Citizenship.[35] The AEC considered that it does not have the resources to carry out such a manual task.[36]

35 Australian Electoral Commission, submission 169.15, p 12.

36 Australian Electoral Commission, submission 169.15, p 12.

The committee heard that the AEC asked the Department of Immigration and Citizenship (DIAC) to provide the number of permanent residents who were British subject and at least 18 years old in Australia in January 1984 who are still resident but not Australian citizens today. DIAC advised the AEC that they do not have the historical data to provide a specific answer, but that using a combination of census and stock data sources; they estimate the count may be within 143-163,000 people. Given that there were a number of untested assumptions made in deriving this estimate; DIAC does not recommend relying on its accuracy.[37]

One alternate approach, which would ascertain the current citizenship status of electors with British subject notation is for the AEC to write to each of the 162,928 electors requesting that they advise the AEC of their citizenship status.

Following that, I recommend that the government should move to end the enfranchisement of British subjects who are not Australian citizens, whom the High Court has decided are 'aliens'. This would require the Commonwealth Electoral Act to be amended to remove all references to the eligibility of British subjects who are not Australian citizens to remain enrolled and to vote in federal elections and referenda.

I believe that such a change should occur before the 30th anniversary of the passage of the *Australian Citizenship (Amendment) Act 1984* — when entitlement to the franchise was to be based on Australian citizenship. To this end, I suggest that the change be made to have effect on 26 January 2014.

The change should be preceded by an extensive education campaign designed to encourage those remaining enrolled British subjects to become Australian citizens.

In order to provide a safety net for former British subjects who have taken out Australian citizenship but who may be removed from the electoral roll by mistake, transitional arrangements should be put in place to allow such electors to cast a provisional vote at the next following election and be reinstated to the roll if they provide their Australian citizenship number to the Australian Electoral Commission.

There are eight divisions with more than 2,500 electors with British subject notations on the electoral roll, and a further 62 divisions with more than 1,000 electors with British subject notations on the electoral roll.

Of the 150 divisions at the 2007 election, nine divisions had final margins of less than 1,000 votes and 19 divisions had margins of less than 2,500 votes. It is clear that the continued enfranchisement of British subjects has the potential to affect

37 Australian Electoral Commission, submission 169.15, p 12.

election outcomes. It is not fair to Australian citizens and other non-citizens that such a situation continues to exist.

The right to enrol and vote is not unfettered, with potential electors needing to satisfy a range of requirements before they can exercise the franchise. It is reasonable to require that people take out Australian citizenship as an essential element of their entitlement to enrol and vote at federal elections.

Recommendation 1

That the Australian Electoral Commission write to each of the 162,928 electors with British subject notations on the electoral roll to ascertain their citizenship status. Where it is determined that the elector is an Australian citizenship and has provided their Australian citizenship number – the British subject notation should be removed. Where it is determined that the elector is a British subject but not an Australian citizen, the notation should be retained.

Recommendation 2

That the *Commonwealth Electoral Act 1918* be amended to remove all references to the eligibility of British subjects to remain enrolled and to vote in federal elections and referenda by 26 January 2014 — 30 years since citizenship became a necessary qualification. This change should be preceded by an education campaign designed to encourage enrolled British subjects to become Australian citizens.

Recommendation 3

That upon removal of the grandfathering arrangements to enfranchise British subjects who are not Australian citizens, a transitional safety net be put in place to require British subjects who are Australian citizens and who were removed from the electoral roll in error by the Australian Electoral Commission as part of implementing the preceding recommendation, to cast a provisional vote at the next following election; and that they be required to provide their Australian citizenship number to the Australian Electoral Commission in order for their votes to be admitted to the count and they are reinstated to the electoral roll.

Daryl Melham MP
Chair

A

Appendix A – Submissions and Exhibits

Submissions

1	ALP Abroad
2	Mr Don Morris
3	Mr Warwick Young
4	Mr Phil Robins
5	Mr Paul McMahon
6	Ms Peggy Syphers
7	Mr Peter Milton
8	Mr Derek McIntosh
9	Mr Bill Helem
10	Mr Jason Toppin
11	Mr G H Schorel-Hlavaka
11.1	Mr G H Schorel-Hlavaka
12	Guide Dogs WA
12.1	Guide Dogs WA
13	Name Withheld
14	Dr Tim Morris
15	Ms Alia Papageorgiou
16	Mr Simon Vivian
17	Ms Ingrid Folger
18	Mr Peter Brun
19	Mr Peter Higgins

20 Ms Gail Gottwald
21 Ms Ella Hurrell
22 Mr Henry Karnilowicz
23 Ms Fiona Jackson
24 Mr Peter Morris
25 Ms Nicole Roberts
26 Mr John Roberts
27 Mr Rowan Ramsey MP, Member for Grey
28 Mr Francis Pauler
29 Mr Greg Secomb
30 Ms Emily Carr
31 Mr John Meeves
32 Mr Martin Gordon
33 Mr Jim Burns
34 Homelessness Australia
35 Mr Duncan Sinclair
36 Mr Robert Rutherford
37 Mr Bruce Clarke
38 Mr Jon Brady
39 Ms Geraldine Norris
40 Mr Robert Fleming
41 Ms Rhonda Kaan
42 Name Withheld
43 Mr David Sheppard
44 Ms Jennifer Hodder
45 Democratic Audit of Australia
46 Mr Michael Doyle
47 Mr Phillip Jack
48 Mr Christopher Jones
49 Mr Stephen McDonald
50 Mr Mervyn Murchie
51 Mr Anthony van der Craats
51.1 Mr Anthony van der Craats
51.2 Mr Anthony van der Craats

52 Mr Harry Mitchell
53 Mr Paul Kent
54 Eurobodalla Greens
55 Mr David Hart
56 Australian Democrats
57 Hon Peter Lindsay MP, Member for Herbert
58 Australian Privacy Foundation
59 Mr Adrian Streather
60 Ms Catherine King MP, Member for Ballarat
61 Government of Western Australia
62 Mr Antony Green
62.1 Mr Antony Green
63 Mr Robert Johnston
64 The Greens NSW
65 Mr Chris Stewart
66 Mr Darrell Main
67 Festival of Light Australia
68 People with Disability Australia
68.1 People with Disability Australia
69 Dr Robert Jones
70 The Global Data Company Pty Ltd
70.1 Confidential
71 Mr Gregory Horne
72 Ms Jennifer Tursi
73 Royal Society for the Blind of South Australia
74 Ms Suzanne Morony
75 Mr Stephen Blackney
76 Mr Sean Tyrell
77 Dr Sally Young
78 Mr Robert Altamore
79 Mr Peter Brent
80 Mr Bertil Nilsson
81 Blind Citizens Australia
82 Mr Kevin Murphy

83	FCS Online
84	Mr Bruce Kirkpatrick
85	Mr Rupert Kilcullen
86	Uniting Justice Australia, Uniting Church of Australia
86.1	Uniting Justice Australia, Uniting Church of Australia
87	Dr Kathy Edwards
88	Citizens Electoral Council of Australia
89	Ms Laura Coad
90	Mr Adrienne Farrelly
91	Ms Margaret Weirick
92	Ms Janet Magnin
93	Ms Dianne Reidlinger
94	Electoral Reform Society of South Australia
95	Mr Eric Jones
96	Mr Geoffrey Powell
97	Human Rights and Equal Opportunity Commission
98	Mr Lex Stewart
99	Confidential
100	Ms Merran Loewenthal
101	Mr Michael Young
102	Mr Peter McCombe
103	Public Interest Advocacy Centre
104	Australian Finance Conference
105	Mr Stefan Slucki
106	Mr William Bowe
106.1	Mr William Bowe
107	Mr Matthew Chan
108	Mr George Archbold
109	Hanover Welfare Services
110	Mr Ed Smith
111	Mrs Carol Evans
112	Mr Ivan Freys
113	Ms Patricia Stillman
114	Mr Greg Madson

115 Ms Patricia Sippel
116 Computing Research & Education Association of Australasia
116.1 Computing Research & Education Association of Australasia
116.2 Computing Research & Education Association of Australasia
117 Ms Anita Steinberg
118 Ms Joanne Connor
119 Mr Robert Lawton
120 Mr Eoin Lauchlann-Griffin
121 Mr Norman Bonello
122 Mr John Wulff
123 Mr Ryan Heath
124 Ms Leanda Lee
125 Mr David Hitchins
126 Mr Don Willis
127 Mr Kok Cheng Tan
128 Ms Celeste Hawes
129 Ms Lynette Eyb
130 Mr Carlton Lane
131 Homelessness NSW
132 Mr Mark Dreyfus QC MP, Member for Isaacs
132.1 Mr Mark Dreyfus QC MP, Member for Isaacs
133 Dr Joo-Cheong Tham
133.1 Dr Joo-Cheong Tham
134 Mr Colin Hughes
135 PILCH Homeless Persons' Legal Clinic
135.1 PILCH Homeless Persons' Legal Clinic
136 Mr Sean Burke
137 Council for the National Interest WA
138 Software Improvements Pty Ltd
139 Mr Nick Xenophon, Senator-Elect for South Australia
140 Mr Barry Chapman
141 Liberty & Democracy Party
142 Vision Australia
143 Mr Peter Evans

144 Hon Gary Gray AO MP, Member for Brand
145 The Nationals
146 Mrs Esther Mace
147 Mr Barry Downs
148 Ms Julie Weller
149 Mr Max Bradley
150 Ms Kathy Fela
151 Mr Eric Brown
152 Ms Lara Cummings
153 Ms Anne Witham-Ellis
154 Ms Marian Jones
155 GetUp!
156 Liberal Party of Australia
157 Ms Alison Hogg
158 Southern Cross Group
159 Labor National Secretariat
160 Registries Limited and Everyone Counts Inc
160.1 Registries Limited and Everyone Counts Inc
161 New South Wales Government
162 Hon Warren Snowden MP, Member for Lingiari
163 Ms Parisa Mazari
165 Urban Taskforce Australia
166 Mrs Coral Arnold
167 Mr Gary Miller
168 FCS Online
169 Australian Electoral Commission
169.1 Australian Electoral Commission
169.2 Australian Electoral Commission
169.3 Australian Electoral Commission
169.4 Australian Electoral Commission
169.5 Australian Electoral Commission
169.6 Australian Electoral Commission
169.7 Australian Electoral Commission
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169.9 Australian Electoral Commission
169.10 Australian Electoral Commission
169.11 Australian Electoral Commission
169.12 Australian Electoral Commission
169.13 Confidential
169.14 Australian Electoral Commission
169.15 Australian Electoral Commission
169.16 Australian Electoral Commission
169.17 Australian Electoral Commission
169.18 Australian Electoral Commission
169.19 Australian Electoral Commission
169.20 Australian Electoral Commission
169.21 Australian Electoral Commission
170 Ms Louise McManus
171 Mr Chris Harries
172 Mr Paul Myers
173 Mr Stephen L Hart
174 Mr Michael Bayles
175 Mr Eric Lockett
176 Mr Rob W Myers
177 Mrs Sonja Doyle
178 Action on Smoking and Health
179 Hon Fran Bailey MP, Member for McEwen
180 Ms Lenore Johnstone
181 Mr Roland Wen
182 NSW Young Labor
183 Cobar Shire Council
184 Mr Tim Leeder
184.1 Mr Tim Leeder
184.2 Mr Tim Leeder
185 Shopping Centre Council of Australia Limited
186 Mr Stephen Paul
187 Associate Professor Graeme Orr
188 Mr Anthony van der Craats

188.1 Mr Anthony van der Craats
188.2 Mr Anthony van der Craats
189 Mr Laurie Parker & Ms Helen Parker
190 Department of Defence
191 The Cancer Council Victoria
192 Australia Post
193 Mr Ron Joachim
194 Dr Klaas Woldring
195 Name Withheld
196 Ms Marrette Corby
197 Mr John Redgment
198 Mr Roger Deshon

Exhibits

1. 2007-Line up in Banks on voting day, provided by Mr Daryl Melham MP, 27 June 2008.

2. National Roy Morgan Survey, provided by GetUp!, 23 July 2008 (related to submission 155)

3. Rural and regional mail paths, provided by Australia Post, 1 September 2008 (related to submission 192)

4. Review of Ballot-Paper Formality Guidelines and Recount Policy; prepared by Alan Henderson, AEC 08/1045, provided by Australian Electoral Commission, 10 March 2009 (related to submission 169)

5 AEC enrolment form, provided by Democratic Audit of Australia, 22 September 2008 (related to submission 45)

6 Canada enrolment form (in French), provided by Democratic Audit of Australia, 22 September 2008 (related to submission 45)

7 NZ enrolment form, provided by Democratic Audit of Australia, 22 September 2008 (related to submission 45)

8 Access delayed is access denied: Electronic reporting of campaign finance activity' Holman C, Stern R, Public Integrity, Winter 2000, provided by Democratic Audit of Australia, 22 September 2008 (related to submission 45)

9 National Interest on ABC Radio National, transcript, 11 April 2008, provided by Democratic Audit of Australia, 22 September 2008 (related to submission 45)

10 Table 2-1 Data sources used by the AEC in 2004-05, provided by Democratic Audit of Australia, 22 September 2008 (related to submission 45)

11. Electronically Assisted Voting at the 2007 Federal Election for Electors who are Blind or have Low Vision, provided by Australian Electoral Commission, 22 June 2008 (related to submission 169)

12. Remote Electronic Voting at the 2007 Federal Election for Overseas Australian Defence Force personnel, provided by Australian Electoral Commission, 22 June 2008 (related to submission 169)

B

Appendix B – Public Hearings

Friday 27 June 2008 - Canberra

Australian Electoral Commission

Mr Ian Campbell, Australian Electoral Commissioner

Mr Pablo Carpay, Assistant Commissioner, Roll Management

Mr Paul Dacey, Deputy Electoral Commissioner

Mr Tim Evans, Assistant Commissioner People & Performance

Mr Doug Orr, Assistant Commissioner, Elections

Mr Tim Pickering, First Assistant Commissioner, Electoral Operations

Mr Paul Pirani, Chief Legal Officer

Ms Gail Urbanski, Assistant Commissioner, Communications & Information Strategy

Wednesday 23 July 2008 - Sydney

Individuals

Mr Antony Green

Mr John Meeves

GetUp!

Mr Sam McLean, National Mobiliser, Grassroots Campaigner

Mr Brett Solomon, Executive Director

Human Rights and Equal Opportunity Commission

Mr Graeme Innes, Human Rights & Disability Discrimination Commissioner

People with Disability Australia

Mr Dean Price, Senior Advocate

Public Interest Advocacy Centre

Ms Brenda Bailey, Senior Policy Officer

Ms Deirdre Moor, Manager Policy & Programs

The Greens NSW

Ms Lesa de Leau, Campaign Director

Mr Chris Maltby, Registered Officer

Vision Australia

Mr Michael Simpson, General Manager Policy & Advocacy

Thursday 24 July 2008 - Sydney

Individuals

Mr Ivan Freys

Australian Finance Conference

Ms Helen Gordon, Corporate Lawyer

Homelessness Australia

Mr Digby Hughes, Policy and Research Officer

NSW Young Labor

Ms Elizabeth Larbalestier, Secretary

Mr Christopher Parkin, President

Parliament of New South Wales

The Hon Donald Harwin, member of the Legislative Council

Uniting Justice Australia, Uniting Church of Australia

Rev Elenie Poulos, National Director

Urban Taskforce Australia

Mr Aaron Gadiel, Chief Executive Officer

Wednesday 6 August 2008 - Brisbane

Individuals

Emeritus Professor Colin Hughes

Mr David Kerslake

Mr Darrell Main

Australian Electoral Commission

Ms Anne Bright, Australian Electoral Officer for Queensland

Mr Tim Pickering, First Assistant Commissioner Electoral Operations

Monday, 11 August 2008 - Melbourne

Individuals

Mr Mark Dreyfus QC MP, Federal Member for Isaacs

Mr Anthony van der Craats

Dr Sally Young

Australian Electoral Commission

Mr Daryl Wight, Australian Electoral Officer, for Victoria

Blind Citizens Australia

Ms Leah Hobson, National Policy Officer

Hanover Welfare Services

Dr Andrew Hollows, General Manager, Research & Organisational Development

Mr Tony Keenan, Chief Executive Officer

Ms Violet Kolar, Assistant Manager Research

PILCH Homeless Persons' Legal Clinic

Ms Caroline Adler, Manager & Principal Lawyer

Ms Amy Barry, Macaulay, Lawyer

Mr James Farrell, Secondee & Voluntary Lawyer

Tuesday 12 August 2008 - Melbourne

Individual

Dr Joo-Cheong Tham

Australian Electoral Commission

Ms Marie Neilson, Australian Electoral Officer for Tasmania

Mr Tim Pickering, First Assistant Commissioner, Electoral Operations

Registries Limited and Everyone Counts

Mr Craig Burton, Chief Technology Officer

Ms Debra Pitman, Business Manager

The Computing Research & Education Association of Australasia

Dr Vanessa Teague

The Global Data Company

Mr Edward Sedgley, Director

Wednesday 20 August 2008 – Adelaide

Individual

Dr Kathy Edwards

Australian Electoral Commission

Dr Christopher Drury, Australian Electoral Officer for South Australia

Electoral Reform Society of South Australia

Mr Deane Crabb, Secretary

FamilyVoice Australia

Dr David Phillips, National President

Royal Society for the Blind of South Australia Inc.

Mr Trevor Frost, Community Educator

Thursday 21 August 2008 - Perth

Individuals

Mr William Bowe

Mr Andrew Murray

Association for the Blind of Western Australia

Mrs Carol Solosy, Director, Training, Employment & Information Services

Australian Electoral Commission

Mr Colin Nagle, Australian Electoral Officer for Western Australia

Mr Ian Stringall, Director of Operations for Western Australia

Council for the National Interest WA

Mr Denis O'Sullivan, Chairman Western Australian Committee

Greens WA

Ms Margo Beilby, Co-Convener

Ms Diane MacTiernan, Member of Administrative Working Groups

Monday 1 September 2008 - Canberra

Australia Post

Mr Paul Burke, Acting Corporate Secretary

Mr Ben Franzi, Manager, Network Customer Requirements

Mr Christopher Jobling, Manager, Customer Connections

Mr Don Newman, Acting Group Manager, National Logistics

Mr Scott Staunton, Deputy General Counsel, Legal Services

Australian Electoral Commission

Mr Ian Campbell, Australian Electoral Commissioner

Mr Pablo Carpay, Assistant Commissioner Roll Management

Mr Doug Orr, Assistant Commissioner Elections

Mr Tim Pickering, First Assistant Commissioner Electoral Operations

Monday 22 September 2008 - Canberra

Democratic Audit of Australia

Mr Peter Brent, Member

Professor Brian Costar, Co-ordinator

Mr Norman (Norm) Kelly, Member

Friday 17 October 2008 - Canberra

Australian Electoral Commission

Ms Judy Birkenhead, Assistant Director, Electronic Voting

Mr Paul Dacey, Acting Electoral Commissioner

Ms Barbara Davis, First Assitant Commissioner, Business Support

Mr Iain Loganathan, Australian Electoral Officer for the Northern Territory

Ms Kathy Mitchell, Acting Assistant Commissioner Roll Management

Mr Doug Orr, Assistant Commissioner, Elections

Mr Tim Pickering, First Assistant Commissioner, Electoral Operations

Department of Defence

Mr Ross McAllister, Program Director Common Services - SOE

Mr William Meldrum, Defence Project Director - Electronic Voting Trial for 2007 Federal Election

Air Commodore Anthony Needham, Director General Workforce Planning

Group Captain Geoffrey Robinson, Acting Director-General, Headquarters Joint Operations Command

Software Improvements Pty Ltd

Ms Carol Boughton, Managing Director

Mr Kevin Cox, Chief Technical Officer

Tuesday 11 November 2008 - Canberra

Australian Labor Party

Mr Karl Bitar, National Secretary

Mr Elias Hallaj, Assistant National Secretary

Mr Nick Martin, Assistant National Secretary

Tuesday 25 November 2008 - Canberra

Individuals

Hon Fran Bailey MP, Federal Member for McEwen

Hon Gary Gray AO MP, Federal Member for Brand

Hon Peter Lindsay MP, Federal Member for Herbert

Tuesday 2 December 2008 - Canberra

Liberal Party of Australia

Mr Brian Loughnane, Federal Director

Tuesday 3 February 2009 - Canberra

The Nationals

Mr Brad Henderson, Federal Director

Tuesday 17 March 2009 - Canberra

Australian Electoral Commission

Mr Paul Dacey, Deputy Australian Electoral Commissioner

Mr Ed Killesteyn, Australian Electoral Commissioner

Mr Paul Pirani, Chief Legal Officer

Mr Tom Rogers, Australian Electoral Officer for New South Wales

Thursday 16 April 2009 - Canberra

Individuals

Mr Andrew Murray

Professor George Williams

Action on Smoking and health

Ms Anne Jones, Chief Executive Officer

Construction, Forestry, Mining and Energy Union

Mr John Sutton, National Secretary

Democratic Audit of Australia

Mr Peter Brent, Researcher

Professor Brian Costar, Co-ordinator

Public Interest Advocacy Centre

Ms Deirdre Moor, Manager Policy & Programs

The Wilderness Society Inc

Mr Alec Marr, Executive Director

Dr Gregory Ogle, Legal Co-ordinator

Monday 11 May 2009 - Canberra

Australian Electoral Commission

Mr Paul Dacey, Acting Electoral Commissioner

Ms Barbara Davis, Acting Deputy Electoral Commissioner

Ms Kathy Mitchell, Acting Assistant Commissioner, Communication & Information Strategy

Mr Tom Rogers, Acting First Assistant Commissioner

Ms Bronwyn Shelley, Acting Chief Legal Officer

C

Appendix C – Selected data

Table C.1 Turnout in selected divisions, House of Representatives, 1993 to 2007 elections

	1993	1996	1998	2001	2004	2007
Lingiari	na	na	na	80.55	77.71	81.26
Kalgoorlie	89.72	88.83	86.97	86.81	83.53	84.58
Leichhardt	93.39	92.32	91.97	92.13	91.16	92.63
Kennedy	93.92	93.66	93.15	93.43	92.56	93.35
Parkes	95.56	95.86	94.88	95.57	95.69	95.90
Solomon	na	na	na	91.99	91.21	92.06
Calare	96.93	96.82	96.20	96.18	95.67	95.77
Herbert	95.56	94.12	94.68	95.17	93.82	94.09
New England	96.63	96.08	95.18	95.96	95.4	95.94
Grey	94.62	95.02	94.64	94.60	94.19	94.95
Northern Territory	88.79	89.10	90.33	86.11	84.25	86.53
National average	**95.80**	**95.80**	**95.0**	**94.90**	**94.3**	**94.80**

Note *na Not applicable. Prior to the 2001 election, the Northern Territory was a single electoral division. Since the 2001 election, the Northern Territory is comprised of Solomon (largely taking in Darwin and surrounding areas) and Lingiari (covering the remaining parts of the Northern Territory).*

Source *Australian Electoral Commission, 'Virtual Tally Room (2007), House of Representatives, Turnout by division', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/HouseTurnoutByDivision-13745-NAT.htm; 'Virtual Tally Room (2004), House of Representatives, Turnout by division', http://results.aec.gov.au/12246/results/HouseTurnoutByDivision-12246-NAT.htm; 2001 Election results CD, ''House of Representatives, Turnout by division; Election Statistics CD 1993, 1996, 1998, House of Representatives results, Turnout by division'.*

Table C.2 Senate votes counted, by type, by jurisdiction, 1993 to 2007 elections

	1993	1996	1998	2001	2004	2007
NSW						
Ordinary	3,211,735	3,319,040	3,107,128	3,376,156	3,379,647	3,449,290
Absent	224,977	216,030	296,893	266,289	252,692	251,301
Postal	95,686	105,342	164,093	131,719	189,502	205,924
Pre-Poll	117,297	150,758	268,599	210,628	261,702	368,640
Provisional	32,043	34,567	47,608	36,932	34,043	14,289
Adjustment	-125	-66	-	-	-	-
Total	3,681,613	3,825,671	3,884,321	4,021,724	4,117,586	4,289,444
Victoria						
Ordinary	2,494,785	2,503,061	2,482,393	2,599,902	2,574,485	2,541,221
Absent	156,682	148,550	164,441	195,165	188,561	195,804
Postal	85,251	96,458	119,732	123,007	176,776	213,144
Pre-Poll	85,428	96,204	157,793	146,750	190,134	330,292
Provisional	11,163	24,877	30,487	27,035	28,685	9,758
Adjustment	-91	124	-	-	-	-
Total	2,833,218	2,869,274	2,954,846	3,091,859	3,158,641	3,290,219
Queensland						
Ordinary	1,630,700	1,687,564	1,714,385	1,848,840	1,920,562	2,002,158
Absent	122,936	130,973	142,557	139,033	136,531	144,665
Postal	66,138	80,321	92,766	107,947	136,924	154,169
Pre-Poll	63,561	76,944	103,054	99,378	118,299	168,590
Provisional	5,698	13,627	13,807	20,329	17,995	7,237
Adjustment	119	12	-	-	-	-
Total	1,889,152	1,989,441	2,066,569	2,215,527	2,330,311	2,476,819
Western Australia						
Ordinary	873,508	881,036	920,134	965,578	949,116	1,007,611
Absent	72,655	80,661	84,042	94,632	107,223	95,684
Postal	19,394	26,218	29,860	32,476	39,409	48,760
Pre-Poll	26,135	39,570	48,695	44,458	57,044	74,677
Provisional	5,090	13,075	10,701	9,410	16,815	5,815
Adjustment	-27	108	-	-	-	-
Total	996,755	1,040,668	1,093,432	1,146,554	1,169,607	1,232,547
South Australia						
Ordinary	857,851	841,944	791,057	857,273	845,255	856,774
Absent	56,052	54,549	70,173	63,032	64,516	63,067
Postal	26,873	29,582	55,940	35,632	44,785	52,027
Pre-Poll	24,502	27,019	47,809	33,326	41,479	56,134
Provisional	3,117	12,235	9,261	8,308	7,127	3,318
Adjustment	-30	-1	-	-	-	-
Total	968,365	965,328	974,240	997,571	1,003,162	1,031,320

Table C.2 (continued)

	1993	1996	1998	2001	2004	2007
Tasmania						
Ordinary	282,224	267,801	276,516	275,848	279,291	281,875
Absent	16,340	21,514	14,889	15,395	15,314	15,514
Postal	9,357	13,577	13,269	12,862	15,844	17,124
Pre-Poll	8,232	12,662	12,549	11,843	14,577	20,440
Provisional	731	3,499	858	3,207	3,732	723
Adjustment	-	-	-	-	-	
Total	316,884	319,053	318,081	319,155	328,758	335,676
Australian Capital Territory						
Ordinary	148,297	158,907	140,574	167,335	168,295	177,174
Absent	3,793	5,262	3,864	5,334	4,411	3,104
Postal	5,714	5,463	10,172	5,955	7,567	9,984
Pre-Poll	27,071	25,308	45,302	30,353	33,460	38,311
Provisional	1,939	1,977	1,075	1,421	2,898	653
Adjustment	-	-	-	-	-	-
Total	186,814	196,917	200,987	210,398	216,631	229,226
Northern Territory						
Ordinary	73,405	77,874	81,113	81,680	78,808	80,591
Absent	-	-	-	2,081	2,084	1,926
Postal	2,166	2,643	2,839	2,304	3,064	3,431
Pre-Poll	5,075	6,376	8,576	8,881	10,102	16,246
Provisional	811	1,234	2,361	756	1,265	369
Adjustment	-	-	-	-	-	-
Total	81,457	88,127	94,889	95,702	95,323	102,563
National total						
Ordinary	9,572,505	9,737,227	9,513,300	10,172,612	10,195,459	10,396,694
Absent	653,435	657,539	776,859	780,961	771,332	771,065
Postal	310,579	359,604	488,671	451,902	613,871	704,563
Pre-Poll	357,301	434,841	692,377	585,617	726,797	1,073,330
Provisional	60,592	105,091	116,158	107,398	112,560	42,162
Adjustment	-154	177	-	-	-	
Total	10,954,258	11,294,479	11,587,365	12,098,490	12,420,019	12,987,814

Note *For the 1993 and 1996 elections, an adjustment column is shown in this table. At these elections ballot papers for candidates were amalgamated for the whole division for rechecking and counting prior to the distribution and transfer of preferences. In some cases, this fresh scrutiny showed that an earlier count was in error. As it was not possible to identify where the error was made, the adjustment column accounts for these discrepancies between the earlier count and the final divisional total*

Source *Australian Electoral Commission, 'Virtual Tally Room (2007), Senate, Senate votes counted by state', viewed on 27 May 2009 at http://results.aec.gov.au/13745/Website/SenateVotesCountedByState-13745.htm. 'Virtual Tally Room (2004), Senate, Senate votes counted by state', viewed on 27 May 2009 at http://results.aec.gov.au/12246/results/SenateVotesCountedByState-12246.htm; 2001 Election results CD 'Senate votes counted by state'; Election Statistics CD 1993, 1996, 1998, 'Senate results votes counted by vote type by division'.*

Table C.3 Declaration votes received, by type, by jurisdiction, 1993 to 2007 elections

	Provisional votes	Absent votes	Pre-poll votes	Postal votes	Total declaration votes
1993					
NSW	60,051	253,491	124,720	103,474	541,736
VIC	18,560	165,971	89,044	91,230	364,805
QLD	11,796	129,691	68,734	74,351	284,572
WA	7,916	77,149	27,573	21,022	133,660
SA	6,817	59,327	25,539	28,468	120,151
TAS	1,592	16,953	8,587	9,994	37,126
ACT	2,992	4,171	28,184	6,218	41,565
NT	2,620	-	5,450	2,511	10,581
National total	112,344	706,753	377,831	337,268	1,534,196
1996					
NSW	53,687	242,867	160,441	111,757	568,752
VIC	49,709	173,563	103,724	103,313	430,309
QLD	21,728	141,715	80,264	84,819	328,526
WA	19,879	91,092	41,958	28,410	181,339
SA	18,037	63,412	29,109	31,616	142,174
TAS	4,626	22,811	13,310	14,517	55,264
ACT	2,970	5,868	26,649	5,841	41,328
NT	3,786	-	7,029	2,991	13,806
National total	174,422	741,328	462,484	383,264	1,761,498
1998					
NSW	73,416	334,937	282,075	187,726	878,154
VIC	48,621	186,007	166,954	135,383	536,965
QLD	22,257	154,155	107,538	104,443	388,393
WA	17,641	93,150	51,574	32,814	195,179
SA	13,887	77,174	50,045	60,089	201,195
TAS	1,547	15,530	13,217	14,142	44,436
ACT	1,823	4,095	46,492	10,499	62,909
NT	3,376	-	9,176	3,194	15,746
National total	182,568	865,048	727,071	548,290	2,322,977

(continued)

Table C.3 (continued)

	Provisional votes	Absent votes	Pre-poll votes	Postal votes	Total declaration votes
2001					
NSW	59,469	294,184	219,596	154,591	727,840
VIC	40,979	213,627	151,746	138,949	545,301
QLD	29,244	150,154	103,903	123,775	407,076
WA	14,445	101,004	46,790	36,388	198,627
SA	12,637	68,637	34,900	39,149	155,323
TAS	4,419	16,467	12,445	14,284	47,615
ACT	2,228	5,589	31,158	6,505	45,480
NT	1,817	2,283	9,569	2,817	16,486
National total	165,238	851,945	610,107	516,458	2,143,748
2004					
NSW	50,583	279,071	270,907	204,288	804,849
VIC	48,293	210,802	196,943	188,982	645,020
QLD	29,416	148,427	122,928	147,045	447,816
WA	24,832	119,149	59,519	42,944	246,444
SA	16,155	72,372	43,367	48,172	180,066
TAS	5,108	16,522	15,183	16,991	53,804
ACT	4,315	4,865	34,511	8,117	51,808
NT	2,176	2,363	10,740	3,791	19,070
National total	180,878	853,571	754,098	660,330	2,448,877
2007					
NSW	48,035	275,657	380,922	220,040	924,654
VIC	38,995	216,538	339,392	225,953	820,878
QLD	35,392	164,021	175,449	164,333	539,195
WA	21,853	107,116	77,814	52,167	258,950
SA	14,344	70,390	58,536	54,864	198,134
TAS	4,162	16,901	21,221	18,076	60,360
ACT	2,726	3,458	39,552	10,485	56,221
NT	2,175	2,360	17,401	3,648	25,584
National total	167,682	856,441	1,110,287	749,566	2,883,976

Source *Australian Electoral Commission, 'Virtual Tally Room (2007), General, declaration votes received by state', viewed on 27 May 2009 at http://results.aec.gov.au/13745/Website/GeneralDecVotesReceivedByState-13745.htm; Virtual Tally Room (2004), General, declaration votes received by state', viewed on 27 May 2009 at http://results.aec.gov.au/12246/results/GeneralDecVotesReceivedByState-12246.htm; 2001 Election results CD, 'General information, declaration votes received'; Election Statistics CD 1993, 1996, 1998,'General information, declaration votes received'.*

Table C.4 Declaration votes counted, House of Representatives, by type, by jurisdiction, 1993 to 2007 elections

	Provisional votes	Absent votes	Pre-poll votes	Postal votes	Total declaration votes
1993					
NSW	26,525	216,929	115,851	94,326	453,651
VIC	8,087	152,497	84,524	84,372	329,496
QLD	3,121	113,892	63,597	67,083	247,710
WA	3,870	70,746	25,847	19,247	119,710
SA	1,384	53,946	24,058	26,351	105,738
TAS	320	16,027	8,153	9,239	33,739
ACT	1,775	3,739	26,861	5,647	38,022
NT	804	-	5,062	2,147	8,013
National total	45,886	627,776	353,953	308,412	1,336,079
1996					
NSW	30,297	211,290	149,246	104,499	495,332
VIC	20,352	143,464	94,925	95,401	354,142
QLD	9,831	126,677	75,798	79,814	292,120
WA	10,763	77,469	38,965	25,812	153,009
SA	10,400	52,628	26,581	29,085	118,694
TAS	3,199	21,277	12,560	13,378	50,414
ACT	1,761	5,184	25,139	5,399	37,483
NT	1,231	-	6,369	2,637	10,237
National total	87,834	637,989	429,583	356,025	1,511,431
1998					
NSW	40,908	283,037	264,453	171,835	760,233
VIC	25,291	159,762	156,145	123,625	464,823
QLD	10,859	139,311	102,126	95,489	347,785
WA	8,823	81,583	48,124	29,918	168,448
SA	7,796	68,633	47,307	55,530	179,266
TAS	612	14,693	12,471	13,098	40,874
ACT	917	3,826	45,049	10,055	59,847
NT	2,352	-	8,580	2,822	13,754
National total	97,558	750,845	684,255	502,372	2,035,030

(continued)

Table C.4 (continued)

	Provisional votes	Absent votes	Pre-poll votes	Postal votes	Total declaration votes
2001					
NSW	27,608	254,834	207,499	141,392	631,333
VIC	19,451	186,107	144,452	128,689	478,699
QLD	16,583	135,115	98,202	114,915	364,815
WA	6,756	91,299	43,816	33,487	175,358
SA	6,154	60,307	32,773	36,460	135,694
TAS	2,778	15,149	11,746	13,439	43,112
ACT	1,291	5,265	30,174	6,021	42,751
NT	645	2,049	8,868	2,388	13,950
National total	81,266	750,125	577,530	476,791	1,885,712
2004					
NSW	28,544	245,680	259,022	189,256	722,502
VIC	22,201	180,961	187,468	176,645	567,275
QLD	14,667	132,752	116,870	136,977	401,266
WA	13,078	102,246	56,078	39,226	210,628
SA	4,843	61,997	40,807	44,662	152,309
TAS	3,353	15,038	14,465	15,837	48,693
ACT	2,643	4,368	33,289	7,567	47,867
NT	1,183	2,070	10,050	3,107	16,410
National total	90,512	745,112	718,049	613,277	2,166,950
2007					
NSW	8,378	243,876	364,678	205,906	822,838
VIC	5,609	190,254	326,906	213,833	736,602
QLD	3,849	140,946	166,853	155,225	466,873
WA	3,191	92,113	73,687	48,914	217,905
SA	2,002	61,232	55,655	52,002	170,891
TAS	459	15,343	20,300	17,128	53,230
ACT	493	3,073	38,162	9,990	51,718
NT	231	1,910	16,098	3,468	21,707
National total	24,212	748,747	1,062,339	706,466	2,541,764

Source *Australian Electoral Commission, 'Virtual Tally Room (2007), House of Representatives, House of Representatives votes counted by state', viewed on 27 May 2009 at http://results.aec.gov.au/13745/Website/HouseVotesCountedByState-13745.htm ; 'Virtual Tally Room (2004), House of Representatives, votes by state', viewed on 27 May 2009 at http://results.aec.gov.au/12246/results/HouseVotesCountedByState-12246.htm; 2001 Election results CD, 'House of Representatives votes counted by vote type by division'; Election statistics CD 1993, 1996, 1998, 'House of Representatives Results, Votes Counted by Vote Type'.*

Table C.5 Declaration votes rejected, House of Representatives, by type, by jurisdiction, 1993 to 2007 elections

	Provisional votes	Absent votes	Pre-poll votes	Postal votes	Total declaration votes
1993					
NSW	33,526	36,562	8,869	9,148	88,105
VIC	10,473	13,474	4,520	6,858	35,325
QLD	8,675	15,799	5,137	7,268	36,879
WA	4,046	6,403	1,726	1,775	13,950
SA	5,433	5,381	1,481	2,117	14,412
TAS	1,272	926	434	755	3,387
ACT	1,217	432	1,323	571	3,543
NT	1,816	-	388	364	2,568
National total	66,458	78,977	23,878	28,856	198,169
1996					
NSW	23,390	31,577	11,195	7,258	73,420
VIC	29,357	30,099	8,799	7,912	76,167
QLD	11,897	15,038	4,466	5,005	36,406
WA	9,116	13,623	2,993	2,598	28,330
SA	7,637	10,784	2,528	2,531	23,480
TAS	1,427	1,534	750	1,139	4,850
ACT	1,209	684	1,510	442	3,845
NT	2,555	-	660	354	3,569
National total	86,588	103,339	32,901	27,239	250,067
1998					
NSW	32,508	51,900	17,622	15,891	117,921
VIC	23,330	26,245	10,809	11,758	72,142
QLD	11,398	14,844	5,412	8,954	40,608
WA	8,818	11,567	3,450	2,896	26,731
SA	6,091	8,541	2,738	4,559	21,929
TAS	935	837	746	1,044	3,562
ACT	906	269	1,443	444	3,062
NT	1,024	-	596	372	1,992
National total	85,010	114,203	42,816	45,918	287,947

(continued)

Table C.5 (continued)

	Provisional votes	Absent votes	Pre-poll votes	Postal votes	Total declaration votes
2001					
NSW	31,861	39,350	12,097	13,199	96,507
VIC	21,528	27,520	7,294	10,260	66,602
QLD	12,661	15,039	5,701	8,860	42,261
WA	7,689	9,705	2,974	2,901	23,269
SA	6,483	8,330	2,127	2,689	19,629
TAS	1,641	1,318	699	845	4,503
ACT	937	324	984	484	2,729
NT	1,172	234	701	429	2,536
National total	83,972	101,820	32,577	39,667	258,036
2004					
NSW	22,039	33,391	11,885	15,032	82,347
VIC	26,092	29,841	9,475	12,337	77,745
QLD	14,749	15,675	6,058	10,068	46,550
WA	11,754	16,903	3,441	3,718	35,816
SA	11,312	10,375	2,560	3,510	27,757
TAS	1,755	1,484	718	1,154	5,111
ACT	1,672	497	1,222	550	3,941
NT	993	293	690	684	2,660
National total	90,366	108,459	36,049	47,053	281,927
2007					
NSW	39,657	31,781	16,244	14,134	101,816
VIC	33,386	26,284	12,486	12,120	84,276
QLD	31,543	23,075	8,596	9,108	72,322
WA	18,662	15,003	4,127	3,253	41,045
SA	12,342	9,158	2,881	2,862	27,243
TAS	3,703	1,558	921	948	7,130
ACT	2,233	385	1,390	495	4,503
NT	1,944	450	1,303	180	3,877
National total	143,470	107,694	47,948	43,100	342,212

Source *The figures in this table are calculated by subtracting declaration votes counted (table C.4) from declaration votes received (table C.3).*

Table C.6 Electoral roll, by jurisdiction, as at 30 June, 1991 to 2008

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
1991	3,682,249	2,827,560	1,812,526	978,359	968,098	314,107	174,825	83,631	10,841,355
1992	3,774,033	2,904,865	1,924,733	1,019,439	970,066	318,849	186,788	89,809	11,188,582
1993	3,854,030	2,943,112	1,986,587	1,043,923	1,021,568	326,821	193,945	94,765	11,464,751
1994	3,826,483	2,892,013	1,993,339	1,040,779	1,007,874	324,651	192,383	97,792	11,375,314
1995	3,876,330	2,977,197	2,009,332	1,063,318	1,003,607	315,512	198,545	93,943	11,537,784
1996	3,997,657	3,028,943	2,094,850	1,104,162	1,012,652	331,080	204,969	103,124	11,877,437
1997	3,989,416	3,018,089	2,110,149	1,119,266	1,006,034	322,127	203,632	104,151	11,872,864
1998	4,054,003	3,015,405	2,144,981	1,124,910	989,884	320,479	205,328	104,648	11,959,638
1999	4,133,129	3,106,115	2,183,729	1,156,691	1,018,589	326,374	209,063	106,101	12,239,791
2000	4,187,911	3,153,514	2,241,387	1,169,243	1,030,970	324,838	215,212	107,776	12,430,851
2001	4,154,672	3,199,570	2,326,846	1,203,847	1,024,112	325,535	214,949	105,611	12,555,142
2002	4,216,767	3,253,105	2,353,278	1,204,743	1,052,739	332,896	218,735	109,717	12,741,980
2003	4,270,127	3,265,797	2,369,873	1,207,713	1,044,802	332,228	218,949	109,250	12,818,739
2004	4,310,662	3,283,191	2,441,694	1,217,279	1,039,531	335,940	223,782	109,388	12,961,467
2005	4,311,489	3,338,389	2,463,798	1,265,107	1,054,730	341,172	226,737	113,053	13,114,475
2006	4,299,510	3,324,691	2,458,457	1,259,528	1,058,029	343,494	226,576	111,254	13,081,539
2007	4,427,879	3,405,136	2,563,157	1,291,576	1,068,303	346,911	235,015	113,237	13,451,214
2008	4,528,444	3,467,794	2,642,032	1,326,577	1,083,154	353,031	241,628	119,910	13,762,570

Source *Australian Electoral Commission, Annual Report 2007-08, p 34; Annual Report 2002-03, p 29; Annual Report 1996-97, p 20.*

Table C.7 Population, by jurisdiction, as at 30 June, 1991 to 2008

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
1991	5,898,731	4,420,373	2,960,951	1,636,067	1,446,299	466,802	289,320	165,493	17,284,036
1992	5,962,569	4,455,002	3,029,950	1,658,045	1,456,512	469,826	294,674	168,086	17,494,664
1993	6,004,880	4,472,387	3,109,788	1,677,669	1,460,674	471,659	299,302	170,734	17,667,093
1994	6,060,190	4,487,570	3,187,113	1,703,009	1,466,138	472,939	301,953	175,826	17,854,738
1995	6,126,981	4,517,387	3,265,109	1,733,787	1,469,429	473,673	305,291	180,101	18,071,758
1996	6,204,728	4,560,155	3,338,690	1,765,256	1,474,253	474,443	308,746	184,443	18,310,714
1997	6,276,961	4,597,201	3,394,671	1,794,992	1,481,357	473,605	309,494	189,283	18,517,564
1998	6,339,071	4,637,820	3,447,725	1,822,668	1,489,552	471,967	310,320	192,148	18,711,271
1999	6,411,370	4,686,402	3,501,421	1,849,733	1,497,819	471,430	312,745	194,935	18,925,855
2000	6,486,213	4,741,339	3,561,537	1,874,459	1,505,038	471,409	315,632	197,753	19,153,380
2001	6,575,217	4,804,726	3,628,946	1,901,159	1,511,728	471,795	319,730	199,939	19,413,240
2002	6,628,951	4,863,084	3,714,798	1,926,111	1,521,127	472,766	323,077	201,524	19,651,438
2003	6,672,577	4,923,485	3,809,214	1,953,070	1,531,278	477,646	326,054	202,111	19,895,435
2004	6,707,189	4,981,467	3,900,910	1,982,637	1,540,434	482,770	327,862	204,094	20,127,363
2005	6,756,457	5,048,602	3,994,858	2,017,088	1,552,514	486,327	330,549	208,396	20,394,791
2006	6,816,087	5,126,540	4,090,908	2,059,381	1,567,888	489,951	334,500	212,625	20,697,880
2007	6,888,014	5,204,826	4,181,431	2,106,119	1,584,197	493,371	340,144	216,940	21,015,042
2008	na	na	na	na	na	na	na	na	na

Source *Australian Bureau of Statistics, Australian Demographic Statistics (2008) ,cat no 3101.0, Table 4, Estimated Resident Population, States and Territories (Number), viewed on 27 May 2009 at http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Sep%202008?OpenDocument.*

Table C.8 Election and close of rolls enrolment, by jurisdiction, 1993 to 2007 elections

	1993	1996	1998	2001	2004	2007
Election Enrolment						
NSW	3,814,932	3,955,782	4,076,081	4,227,937	4,329,115	4,496,208
VIC	2,932,640	2,972,635	3,081,632	3,234,874	3,309,800	3,441,822
QLD	1,971,729	2,091,384	2,188,024	2,336,698	2,475,611	2,612,504
WA	1,038,968	1,088,487	1,149,619	1,206,422	1,248,732	1,313,201
SA	1,014,400	1,001,006	1,013,989	1,039,025	1,051,923	1,076,220
TAS	327,919	329,304	330,121	331,675	342,809	349,753
ACT	192,487	203,170	209,536	221,184	227,541	238,786
NT	91,563	98,800	105,048	111,022	112,930	118,045
Total	11,384,638	11,740,568	12,154,050	12,708,837	13,098,461	13,646,539
Close of rolls enrolment						
NSW	3,793,616	3,926,293	4,031,749	4,204,383	4,302,122	4,495,336
VIC	2,925,654	2,954,596	3,056,887	3,218,746	3,292,409	3,442,096
QLD	1,970,226	2,082,451	2,177,556	2,319,481	2,463,402	2,612,300
WA	1,035,381	1,077,647	1,140,845	1,200,438	1,237,349	1,312,942
SA	1,014,648	989,885	1,006,398	1,034,377	1,049,814	1,075,968
TAS	327,879	325,750	329,751	328,829	339,589	349,788
ACT	190,458	200,828	208,684	219,876	224,896	238,742
NT	91,105	97,740	104,755	110,501	111,649	117,901
Total	11,348,967	11,655,190	12,056,625	12,636,631	13,021,230	13,645,073

Source *Australian Electoral Commission, 'Virtual Tally Room (2007) General enrolment by state', viewed on 27 May 2009 at http://results.aec.gov.au/13745/Website/GeneralEnrolmentByState-13745.htm; 'Virtual Tally Room (2004) General enrolment by state', viewed on 27 May 2009 at http://results.aec.gov.au/12246/results/GeneralEnrolmentByState-12246.htm; 2001 Election results CD, Enrolment statistics by division'; Election statistics CD 1993, 1996, 1998, 'General Information, enrolment statistics by division'; Federal Election 2001 Close of Rolls, Electoral Newsfile No 100, p 1; Federal Election 1998 Close of Rolls, Electoral Newsfile No 74, p.1.*

Table C.9 Overseas votes issued, by type, 1993 to 2007 elections

	1993	1996	1998	2001	2004	2007
Pre-poll	28,978	36,655	51,337	50,006	54,792	59,758
Postal	10,911	11,313	13,749	13,030	13,752	9,164
Total	39,889	47,968	65,086	63,036	68,544	68,922

Source *Australian Electoral Commission, Electoral pocketbook: election 2007 (2009), p 54; 'Virtual Tally Room 2004 Election: Declaration votes issued by state', viewed on 25 May 2009 at http://results.aec.gov.au/12246/results/GeneralDecVotesIssuedByState-12246.htm; 2001 Election results CD, General information, declaration votes issued, by division; Election statistics: 1993, 1996, 1998 CD, General information, declaration votes issued.*

Table C.10 Selected statistics by division

Division and jurisdiction	2004 provisional votes rejected	2007 provisional votes rejected	2007 non-sequential informal votes	Electors with British subject notation	2007 election margin
New South Wales					
Banks	297	729	647	486	**18,283**
Barton	565	1,049	481	472	**19,838**
Bennelong	337	622	1,890	551	**2,434**
Berowra	264	454	1,234	774	**14,899**
Blaxland	599	1,731	1,221	299	**28,450**
Bradfield	441	592	401	722	**22,693**
Calare	358	872	313	644	**19,861**
Charlton	447	568	702	826	**21,413**
Chifley	515	1,079	1,795	732	**33,204**
Cook	352	730	609	748	**11,315**
Cowper	431	738	406	1,216	**2,089**
Cunningham	69	225	639	1,224	**30,535**
Dobell	417	509	898	1,353	**6,430**
Eden-Monaro	466	694	592	1,051	**5,760**
Farrer	300	687	345	742	**19,273**
Fowler	416	962	424	453	**28,505**
Gilmore	296	655	655	1,651	**6,537**
Grayndler	797	1,254	858	454	**41,802**
Greenway	468	586	623	984	**7,240**
Hughes	335	606	281	540	**3,605**
Hume	378	712	111	1,272	**6,989**
Hunter	233	925	509	635	**26,331**
Kingsford Smith	607	1,095	201	668	**23,052**
Lindsay	255	748	862	1,438	**11,079**
Lowe	545	739	102	334	**11,598**
Lyne	210	490	1,048	1,255	**13,560**
Macarthur	463	661	646	1,303	**1,108**
Mackellar	359	533	1,229	889	**20,857**
Macquarie	194	677	586	1,377	**12,347**
Mitchell	444	436	447	882	**18,837**
New England	416	849	449	494	**25,194**
Newcastle	366	692	768	592	**26,905**
North Sydney	486	712	676	784	**9,181**
Page	416	883	773	871	**4,030**
Parkes	398	1,107	883	525	**21,501**
Parramatta	730	956	1,238	643	**11,726**

(continued)

Table C.10 (continued)

Division and jurisdiction	2004 provisional votes rejected	2007 provisional votes rejected	2007 non-sequential informal votes	Electors with British subject notation	2007 election margin
Paterson	325	628	683	1,226	**2,540**
Prospect	481	996	742	622	**21,354**
Reid	351	1,208	933	298	**26,692**
Richmond	444	1,013	672	1,483	**14,460**
Riverina	421	908	190	404	**27,378**
Robertson	394	696	750	1,354	**184**
Shortland	353	518	225	1,092	**25,217**
Sydney	1,145	1,254	445	560	**29,864**
Throsby	234	590	309	1,851	**37,751**
Warringah	422	617	398	790	**16,163**
Watson	806	1,427	625	321	**32,664**
Wentworth	748	1,247	1,285	742	**6,804**
Werriwa	720	998	576	882	**24,288**
	21,514	*39,657*	*33,375*	*41,509*	***na***
Victoria					
Aston	379	378	379	1,179	**8,674**
Ballarat	610	885	312	1,209	**14,304**
Batman	839	837	599	433	**41,345**
Bendigo	618	959	1,157	1,140	**11,038**
Bruce	688	789	558	706	**13,401**
Calwell	1,082	1,574	1,307	887	**33,344**
Casey	500	656	324	1,959	**9,914**
Chisholm	514	519	440	689	**11,792**
Corangamite	551	818	467	1,356	**1,542**
Corio	699	962	830	1,321	**14,837**
Deakin	489	529	265	1,059	**2,328**
Dunkley	768	802	283	2,659	**6,982**
Flinders	671	814	412	2,595	**14,639**
Gellibrand	1,035	1,194	946	907	**36,112**
Gippsland	561	907	509	1,604	**10,419**
Goldstein	695	644	420	924	**10,323**
Gorton	1,204	1,605	883	897	**40,238**
Higgins	705	795	497	777	**11,489**
Holt	1,207	1,723	448	1,775	**21,599**
Hotham	847	864	721	680	**21,149**
Indi	508	680	411	866	**15,573**
Isaacs	736	1,078	599	1,509	**13,901**
Jagajaga	353	455	391	759	**15,725**

(continued)

Table C.10 (continued)

Division and jurisdiction	2004 provisional votes rejected	2007 provisional votes rejected	2007 non-sequential informal votes	Electors with British subject notation	2007 election margin
Kooyong	442	443	264	735	**15,622**
La Trobe	638	790	840	1,940	**871**
Lalor	793	1,303	492	1,830	**29,674**
Mallee	455	708	781	571	**35,416**
Maribyrnong	946	860	656	575	**24,227**
McEwen	672	949	1,205	1,845	**31**
McMillan	490	734	967	1,779	**7,729**
Melbourne	1,152	1,801	695	642	**39,015**
Melbourne Ports	1,041	1,426	258	785	**12,301**
Menzies	415	475	410	667	**10,120**
Murray	658	917	1,876	796	**29,438**
Scullin	679	721	556	561	**34,039**
Wannon	538	693	208	743	**12,738**
Wills	914	1,099	770	383	**38,647**
	26,092	*33,386*	*23,136*	*41,742*	***na***
Queensland					
Blair	397	1,006	578	1,018	**7,459**
Bonner	425	728	325	763	**7,572**
Bowman	432	923	341	1,193	**64**
Brisbane	559	941	309	609	**11,314**
Capricornia	434	1,157	467	689	**21,630**
Dawson	577	1,406	284	724	**5,134**
Dickson	412	609	332	1,014	**217**
Fadden	687	1,113	522	1,565	**17,023**
Fairfax	518	1,064	581	1,456	**4,949**
Fisher	584	973	403	1,458	**4,941**
Flynn		1,076	1,011	788	**253**
Forde	581	983	715	1,690	**4,550**
Griffith	695	1,044	292	640	**20,402**
Groom	432	866	748	589	**13,686**
Herbert	606	1,537	965	713	**343**
Hinkler	351	760	306	1,445	**2,781**
Kennedy	736	1,861	393	685	**12,359**
Leichhardt	879	2,262	893	871	**6,689**
Lilley	590	1,152	202	734	**14,340**
Longman	503	1,207	302	1,494	**5,869**
Maranoa	419	1,188	376	648	**22,833**
McPherson	439	1,104	282	1,432	**14,761**

(continued)

Table C.10 (continued)

Division and jurisdiction	2004 provisional votes rejected	2007 provisional votes rejected	2007 non-sequential informal votes	Electors with British subject notation	2007 election margin
Moncrieff	476	1,129	513	1,338	**22,783**
Moreton	544	809	291	522	**7,644**
Oxley	561	1,310	329	1,103	**22,739**
Petrie	398	658	369	1,078	**3,412**
Rankin	769	1,164	469	1,078	**18,797**
Ryan	326	618	206	700	**6,418**
Wide Bay	419	895	486	1,323	**13,665**
	14,749	*31,543*	*13,290*	*29,360*	***na***
Western Australia					
Brand	901	1,598	887	2,870	**9,286**
Canning	882	1,253	719	2,665	**9,580**
Cowan	864	1,169	1,194	1,440	**2,908**
Curtin	686	1,003	221	873	**21,488**
Forrest	628	1,547	762	1,610	**9,992**
Fremantle	684	1,138	788	1,290	**14,605**
Hasluck	780	1,189	891	1,923	**1,852**
Kalgoorlie	953	1,648	919	747	**3,377**
Moore	587	790	548	1,040	**12,881**
O'Connor	680	1,368	1,240	1,230	**25,183**
Pearce	796	1,282	467	1,928	**15,361**
Perth	791	1,123	981	1,161	**13,856**
Stirling	1,026	1,355	1,233	941	**2,089**
Swan	914	1,355	1,088	1,237	**164**
Tangney	582	844	478	1,232	**13,461**
	11,754	*18,662*	*12,416*	*22,187*	***na***
South Australia					
Adelaide	1,180	1,180	278	1,225	**15,111**
Barker	1,227	1,239	429	1,306	**17,905**
Boothby	717	758	598	1,307	**5,247**
Grey	990	1,334	884	1,588	**7,899**
Hindmarsh	894	988	475	1,175	**9,170**
Kingston	1,119	1,146	588	2,784	**8,003**
Makin	860	865	666	2,540	**13,437**
Mayo	823	766	335	2,522	**12,680**
Port Adelaide	1,348	1,632	541	1,651	**35,767**
Sturt	897	863	523	1,360	**1,711**
Wakefield	1,257	1,571	863	3,693	**11,438**
	11,312	*12,342*	*6,180*	*21,151*	***na***

(continued)

Table C.10 (continued)

Division and jurisdiction	2004 provisional votes rejected	2007 provisional votes rejected	2007 non-sequential informal votes	Electors with British subject notation	2007 election margin
Tasmania					
Bass	269	613	424	756	**1,271**
Braddon	250	763	237	888	**1,909**
Denison	379	829	262	689	**19,994**
Franklin	419	789	293	879	**6,058**
Lyons	438	709	257	1,060	**11,140**
	1,755	*3,703*	*1,473*	*4,272*	***na***
Australian Capital Territory					
Canberra	723	1,078	152	993	**27,159**
Fraser	949	1,155	372	801	**32,750**
	1,672	*2,233*	*524*	*1,794*	***na***
Northern Territory					
Lingiari	638	800	634	383	**10,427**
Solomon	355	1,144	326	530	**196**
	993	1,944	960	913	**10,623**
National total	**89,841**	**143,470**	**91,354**	**162,928 (a)**	**na**

Note *na – not applicable. (a) The national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission 169.6 for the national total (159,095), New South Wales total (41,510) and Victorian total (41,742) due to an error made by the Commission in summing each division and jurisdiction.*

Source *Australian Electoral Commission, 'Virtual Tally Room (2007), House of Representatives, Two party preferred by division', viewed on 29 May 2009 at http://results.aec.gov.au/13745/Website/HouseTppByDivision-13745-NAT.htm; 'Virtual Tally Room (2007), General, declaration votes received by division, viewed on 29 May 2009 at http://results.aec.gov.au/13745/Website/GeneralDecVotesReceivedByDivision-13745-NAT.htm; Virtual Tally Room (2004), General, declaration votes received by division, viewed on 29 May 2009 at http://results.aec.gov.au/12246/results/GeneralDecVotesReceivedByDivision-12246-NAT.htm; 'Virtual Tally Room (2007), House of Representatives, votes counted by division', viewed on 29 May 2009 at http://results.aec.gov.au/13745/Website/HouseVotesCountedByDivision-13745-NAT.htm; 'Virtual Tally Room (2004), House of Representatives, votes by division, viewed on 29 May 2009 at http://results.aec.gov.au/12246/results/HouseVotesCountedByDivision-12246-NAT.htm; Analysis of informal voting: House of Representatives 2007 election (2009), Research report number 11, pp 36–185; submission 169.6, pp 42–46.*

Table C.11 Pre-poll votes issued, by type, 1993 to 2007 elections

	1993	1996	1998	2001	2004	2007
Home division	188,098	234,822	391,871	312,041	408,863	667,625
Other division	189,751	227,672	335,294	298,008	345,239	442,709
Total	377,849	462,494	727,165	610,049	754,102	1,110,334

Source *Australian Electoral Commission, 'Virtual Tally Room (2007) Declaration votes issued by division', viewed on 25 May 2009 at http://results.aec.gov.au/13745/Website/GeneralDecVotesIssuedByDivision-13745-NAT.htm; 'Virtual Tally Room (2004) Declaration votes issued by state', viewed on 25 May 2009 at http://results.aec.gov.au/12246/results/GeneralDecVotesIssuedByState-12246.htm; 2001 Election results CD, 'General information, declaration votes issued, by division'; Election statistics CD 1993, 1996, 1998, General information, declaration votes issued.*

Table C.12 Voter turnout, Senate, by jurisdiction, 1993 to 2007 elections (per cent)

	1993	1996	1998	2001	2004	2007
New South Wales	96.5	96.7	95.3	95.2	95.1	95.4
Victoria	96.6	96.5	95.9	95.6	95.4	95.6
Queensland	95.8	95.1	94.5	94.8	94.1	94.8
Western Australia	95.9	95.6	95.1	95.0	93.7	93.9
South Australia	95.5	96.4	96.1	96.0	95.4	95.8
Tasmania	96.6	96.9	96.4	96.2	95.9	96.0
Australian Capital Territory	97.1	96.9	95.9	95.1	95.2	96.0
Northern Territory	89.0	89.2	90.3	86.2	84.4	86.9

Source *Australian Electoral Commission, 'Virtual Tally Room (2007), Senate, Turnout by state', viewed on 26 May 2009 at http://results.aec.gov.au/13745/Website/SenateTurnoutByState-13745.htm; 'Virtual Tally Room (2004), Senate, turnout by state', http://results.aec.gov.au/12246/results/SenateTurnoutByState-12246.htm; 2001 Election results CD, 'Senate, Turnout by division; Election statistics 1993, 1996, 1998 CD, 'Senate, Turnout by division'.*