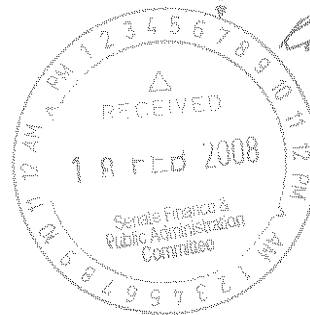




AEC

Australian Electoral Commission

Electoral Commissioner



Received in Senate
Office 6/12/07
[Signature]

Senator the Hon John Faulkner
Special Minister of State and Cabinet Secretary
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to your recent request for advice on the interaction between the Australian Electoral Commission and yourself in relation to your role as the Minister responsible for electoral matters.

The issue of the relationship between the Australian Electoral Commission (AEC) and the Minister responsible for the administration of the *Commonwealth Electoral Act 1918* (the Electoral Act) is complex. This issue must be examined in the context of such matters as the specific powers contained in the Electoral Act itself, the Administrative Arrangements Order and the doctrine of ministerial responsibility.

While the doctrine of ministerial responsibility to the Parliament and the electorate makes the Minister responsible for the policy of the Electoral Act (including the actions of the AEC itself), this responsibility does not carry with it any legislative power to direct the AEC in the performance of its powers and functions. Indeed, the specific legislative powers given to the Minister under the Electoral Act are very limited.

As a matter of law, the AEC is not a legal entity that is separate from the Commonwealth of Australia. It is made up of the Chairperson, the non-judicial member and myself (see section 6 of the Electoral Act). The Electoral Act provides that the AEC reports to you under section 7 of the Electoral Act as follows:

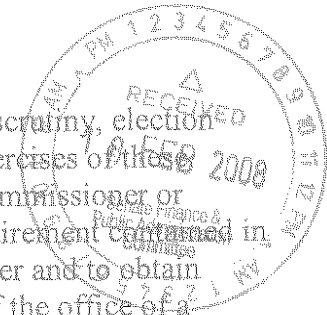
“(b) to consider, and report to the Minister on, electoral matters referred to it by the Minister and such other electoral matters as it thinks; and

.....

(d) to provide information and advice on electoral matters to the Parliament, the Government, Departments and authorities of the Commonwealth;”

Earlier this year, in the context of the development of the Bill that became the *Commonwealth Electoral Amendment (Democratic Plebiscites) Act 2007*, the AEC received external legal advice confirming that there was no power in the Electoral Act for the Minister to direct the AEC in the performance of its powers and functions. As you are aware, the Electoral Act deals with a wide range of electoral matters including

enrolment, registration of political parties, nominations, voting, scrutiny, election funding and financial disclosure, electoral offences, etc. The exercises of these powers are vested in the Electoral Commission, the Electoral Commissioner or individual statutory officers in the AEC. There is a specific requirement contained in section 38 of the Electoral Act for the AEC to consult the Minister and to obtain written authority before changes can take place to the location of the office of a Divisional Returning Officer outside a Division. This power was inserted into the Electoral Act in 2006. But this power cannot be categorised as a direction power.



Over time the convention has developed whereby the AEC briefs the Minister in relation to matters involving the exercise of its powers and functions under the Electoral Act but operates at arms length in relation to the actual exercise of those powers and functions. This arms length approach is entrenched in guidelines and practices on a wide range of matters.

I trust that the above information is of assistance.

Yours sincerely


Ian Campbell
Electoral Commissioner

5 December 2007