

Enrolment fraud management

- 3.1 Having discussed the Australian Electoral Commission's (AEC's) strategies for managing the Commonwealth Electoral Roll (the roll), the committee will now examine the effectiveness of the AEC's processes for detecting, investigating and prosecuting enrolment fraud, as well as the level of external scrutiny of the AEC.
- 3.2 The detection, investigation and prosecution of fraud in Commonwealth agencies is governed by the *Fraud control policy of the Commonwealth*, which sets out a Government wide policy framework for dealing with fraud.¹

AEC fraud control plan

- 3.3 The foreword to the *Fraud control policy of the Commonwealth* states:
- ...The development of a comprehensive approach to fraud control issues reflects the importance that the federal government places on combating fraud against the Government.²
- 3.4 The comprehensive approach adopted by the Government in the *Fraud control policy of the Commonwealth* applies to all Commonwealth agencies, and provides for Commonwealth agencies to:
- adhere to the Government's directions on fraud prevention (including acceptance of the value of risk assessment);

1 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, 60p.

2 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p iii.

- report information on all instances of fraud against Commonwealth programs to the Australian Federal Police (AFP);
- refer to the AFP for investigation all cases of fraud except those routine and minor matters either investigated by agencies under their own legislation, or as agreed with the AFP and the Director of Public Prosecutions (DPP), or multijurisdictional organised crime fraud referred to the National Crime Authority (NCA); and
- adhere to the standards and guidelines set by the Minister for Justice for fraud prevention, investigation of fraud cases, collection and reporting of fraud related information, and the training of agency fraud investigators.³

3.5 The *Fraud control policy of the Commonwealth* makes it clear that each agency's fraud control plan must implement the Government's requirements in relation to fraud prevention, its detection, investigation, and prosecution.⁴

3.6 Both the AEC's *Fraud control plan 1997-1999*⁵ and the *Fraud control policy of the Commonwealth* are currently under review (with the AEC's plan now 18 months out of date). In the AEC's case, a new fraud control plan is in the final stages of development.⁶ As outlined in chapter 1, the new *Commonwealth fraud control policy and guidelines* is currently in the consultation stage, with a second consultation draft released in April 2001.⁷

3.7 As discussed in chapter 2, enrolment fraud falls within the wider definition of fraud identified by the AEC. The committee is of the opinion that the AEC's approach to enrolment fraud should reflect the seriousness with which the Government and community takes enrolment fraud. Roll management is clearly within the current fraud control plan. However, the committee would like to see the AEC develop a more comprehensive approach to dealing with enrolment fraud as part of the new AEC fraud control plan.

3 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, pp 1-3 and p 17.

4 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p 5.

5 Australian Electoral Commission. 1998. *Fraud control plan 1997-1999*. Canberra, AEC, 34p.

6 Submissions p S892 (AEC).

7 Law Enforcement Coordination Division, Attorney-General's Department. April 2001. *Commonwealth fraud control policy and guidelines: Consultation draft no. 2*. 28p. <http://law.gov.au/aghome/commprot/olec/LECD/FCPConsultDraft2.htm>

Recommendation 8

- 3.8 **That the Australian Electoral Commission develop a more comprehensive approach to enrolment fraud as part of any new fraud control plan.**

Issues relating to AEC staff

- 3.9 The *Fraud control policy of the Commonwealth* makes it clear that agencies are responsible for fostering an environment amongst agency staff that makes active fraud control a major responsibility of all staff. This includes developing training programs that are targeted at fraud control issues.⁸

Training of AEC staff

- 3.10 The AEC advised the committee that divisional staff have primary responsibility for ensuring that the enrolment details of people changing enrolment or newly enrolling are correct.⁹ Divisional staff are guided in applying the enrolment procedures by the *Divisional Office procedures manual* and the *General enrolment manual*. In many cases, it is the diligence of divisional staff that has led to the detection of enrolment fraud.¹⁰
- 3.11 The AEC *Fraud control plan 1997-1999* indicates that all staff should be provided with fraud prevention and awareness training.¹¹ However, the *Fraud control policy of the Commonwealth* indicates that effective handling of fraud cases requires a high level of training for personnel, such as divisional staff, involved in fraud prevention, detection and investigation.¹² The draft *Commonwealth fraud control policy and guidelines* indicates that compliance with the training requirements in the guidelines will be mandatory.¹³ Such high level training for divisional staff does not

8 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p 2.

9 Submissions p S502 (AEC).

10 Submissions p S843 (AEC).

11 Australian Electoral Commission. 1998. *Fraud control plan 1997-1999*. Canberra, AEC, p 8.

12 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p 48.

13 Law Enforcement Coordination Division, Attorney-General's Department. April 2001. *Commonwealth fraud control policy and guidelines: Consultation draft no. 2*. pp 19-20. <http://law.gov.au/aghome/commprot/olec/LECD/FCPConsultDraft2.htm>

appear to be provided for as part of the current AEC *Fraud control plan 1997-1999*.

- 3.12 Given that training has been identified as effective for personnel involved in fraud prevention, and it is likely that the Government will require that training will be mandatory for staff involved in fraud detection and prevention, the committee believes that as part of an overall fraud control plan, the AEC should ensure that all AEC staff involved in the prevention and detection of enrolment fraud, including divisional staff, receive appropriate training in the prevention and detection of fraudulent enrolment.

Recommendation 9

- 3.13 **That, as part of an overall fraud control plan, all Australian Electoral Commission staff involved in the prevention and detection of enrolment fraud be trained in appropriate prevention and detection strategies.**

Staff security checks

- 3.14 All new AEC staff are subject to political neutrality checks:
- All staff, ongoing, non-ongoing and election casuals, are made aware that it is a condition of employment within the AEC that they must not be politically active...¹⁴
- 3.15 The standard employment contract for all staff contains a clause stating:
- Please note that the AEC must maintain strict political neutrality, any person who is, and is seen to be, active in political or electoral affairs, and intends to publicly carry on this activity, cannot be considered for engagement.¹⁵
- 3.16 The AEC indicated that no checks are made in relation to this clause, and that the employee's undertaking in relation to this clause would be taken at face value. According to the AEC, an employee's connection with a candidate or party would not take long to come to light.¹⁶
- 3.17 According to the AEC, all staff are also required to sign a secrecy undertaking with regard to information held by the AEC. This is based on

14 Submissions p S899 (AEC).

15 Submissions p S899 (AEC).

16 Transcript p 8 (AEC).

section 323 of the *Commonwealth Electoral Act 1918* (the Electoral Act), the breach of which attracts a penalty of a \$1,000 fine.¹⁷

- 3.18 Political neutrality, particularly of casual staff, was an issue discussed during the inquiry into the 1998 federal election. As a result, in the 1998 Federal Election Inquiry Report, the AEC was asked to:

...assess the effectiveness of its staff selection procedures to ensure that it continues as an independent, professional and ethical organisation that is respected by the people who use its services.¹⁸

- 3.19 The AEC stated that, in relation to that recommendation:

...an updated policy on political neutrality has been drafted to cover all AEC employees under the *Public Service Act 1999* and the *Commonwealth Electoral Act 1918*. This draft policy incorporates a revised political affiliations undertaking for employees to sign. The draft policy is currently passing through internal consultation processes prior to consideration and endorsement by the Electoral Commissioner...¹⁹

- 3.20 The political neutrality of AEC staff was again raised as an issue during this inquiry following an allegation by Ms Karen Ehrmann, subsequently discredited by the Shepherdson Inquiry,²⁰ of an AEC staff member providing enrolment cards to individuals during preselection contests in Queensland.²¹ The focus of concern for the committee on this occasion is the level of security checks applied to AEC staff who have access to the roll.²²

- 3.21 The AEC indicated that the roll is not accessible to casual AEC staff or to many permanent AEC staff. In addition, the AEC's IT security system is able to detect any internal manipulation of the roll for fraudulent purposes.²³ Nevertheless, the AEC indicated it would consider security and character checks under section 22 of the *Public Service Act 1999* if the committee believes this is necessary.²⁴

17 Transcript p 9 (AEC).

18 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 11.

19 Submissions p S1350 (AEC).

20 Queensland Criminal Justice Commission. April 2001. *The Shepherdson Inquiry: An investigation into electoral fraud*. pp 37-38. www.cjc.qld.gov.au/shepinquiry/finalreport.pdf

21 Submissions p S811 (AEC).

22 Transcript pp 8-12 (AEC).

23 Submissions pp S809-S810 (AEC).

24 Submissions p S899 (AEC).

- 3.22 While the roll is a public document and therefore does not attract a security classification, the unauthorised compromise, misuse of, or damage to it might be considered to cause harm to the country. The Commonwealth *Protective security manual* indicates that documents of this sort attract a classification of 'Protected'.²⁵ The appropriate level of security clearance for access to 'Protected' documents is 'Position of Trust'.²⁶
- 3.23 The *Fraud control policy of the Commonwealth* indicates that there is a great deal of commonality between protective security and fraud control. It also indicates that clearance of staff for 'Positions of Trust' is an important fraud control mechanism.²⁷
- 3.24 While not wishing to imply that AEC staff act with anything other than the highest integrity, the committee recommends that all AEC staff who have access to the roll as part of their work be required to obtain a 'Position of Trust' security clearance.

Recommendation 10

- 3.25 **That all Australian Electoral Commission staff who have access to the Commonwealth Electoral Roll as part of their work be required to obtain a 'Position of Trust' security clearance.**

Staff – management communications

- 3.26 At the request of the committee, the AEC provided all Divisional Returning Officers (DROs) with an opportunity to express their views on the AEC's first submission to the inquiry. These responses were provided verbatim by the AEC to the committee as part of submission 74. Ten DROs responded to the opportunity provided by the AEC. The submissions from the ten DROs, along with those from DROs Mr Mark Lamerton, Mr Graham Smith, and Mr Bob Patching, indicated a marked divergence of opinion between divisional staff and the AEC central office over issues such as the usefulness of the national door

25 Commonwealth of Australia. 1991. *Protective security manual*. Canberra, AGPS, pp 33-34.

26 Commonwealth of Australia. 1991. *Protective security manual*. Canberra, AGPS, p 83.

27 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p 48.

knock.²⁸ The AEC recognised this difference during the 3 April 2001 hearing, with the Electoral Commissioner indicating:

We have a problem that there is this them-and-us attitude and it is something I definitely want to make sure we break down. It is not going to be an easy process...There is a lot of old attitudes that have yet to be broken down but the other thing is that we have to have a decent communication plan within the AEC so that we can bring our people along with us.²⁹

3.27 At that hearing, the Electoral Commissioner announced the AEC had started a process of developing a strategic plan that will contain a communication plan to improve consultation between AEC management and staff.³⁰ The committee looks forward to a positive outcome from this process and will follow up this issue during the next federal election inquiry.

Enrolment fraud investigation

3.28 The *Fraud control policy of the Commonwealth* provides a framework for enrolment fraud investigation. Agencies are to investigate routine instances of fraud against agency programs. All serious instances of criminal conduct are to be referred to the AFP, and the AFP is to conduct all investigations into instances of criminal conduct.³¹

AEC investigation process

3.29 In line with the *Fraud control policy of the Commonwealth*, the AEC indicates that, once detected, it has:

...a statutory responsibility to institute investigations and prosecutions where it has uncovered possible breaches of the Electoral Act that might indicate enrolment fraud.³²

28 Submissions p S1109 (AEC) p S586 (M.Lamerton), p S590 (G.Smith), and p S658 (B.Patching). Differences of opinion between DROs and AEC management were also discussed at Submissions p S418 (A.McGrath).

29 Transcript p 568 (AEC).

30 Transcript p 568 (AEC).

31 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p 10.

32 Submissions p S842 (AEC), and Submissions p S501 (AEC).

- 3.30 The AEC identified the tracking down and interviewing of suspects, the examination of evidence and the providing of a brief to the DPP as the responsibility of the AFP.³³
- 3.31 The AEC said that information on possible enrolment fraud can arise through:
- written complaints;
 - Continuous Roll Updating (CRU) procedures such as data matching;
 - mail outs derived from the AEC's roll management system (RMANS);
 - electronic scanning of the certified list of voters;
 - return to sender mail from Members of Parliament;
 - the enrolment objection process; and
 - the observations and deductions of experienced AEC staff.³⁴
- 3.32 According to the AEC, the vast majority of false enrolment cases are resolved administratively because they disclose no more than an innocent error on the part of the elector or the staff member. In other cases, for example false enrolment as a result of infirmity or low levels of literacy, prosecution is not warranted in the public interest.³⁵
- 3.33 The AEC indicated that:
- Those enrolment fraud cases that do disclose sufficient evidence to indicate a deliberate intention to defraud the electoral system are referred to the AFP for investigation and the DPP for advice on prosecution...³⁶
- 3.34 A number of agencies, such as the Australian Taxation Office, can investigate cases of serious fraud. Currently, the AEC does not have a specialised fraud investigations unit. It indicated that it is a small agency of roughly 800 staff, and is therefore too small to set up a dedicated fraud investigation unit.³⁷ When questioned by the committee, the AEC indicated that it was not seeking any amendments to the Electoral Act to provide any extra funding dedicated to the establishment of a centrally organised electoral fraud unit, or investigative powers for divisional staff

33 Submissions p S843 (AEC).

34 Submissions p S843 (AEC).

35 Submissions p S501 (AEC).

36 Submissions p S501 (AEC).

37 Transcript p 541 (AEC), and Submissions p S843 (AEC).

on the basis that the current processes for detecting enrolment fraud were sufficient.³⁸

3.35 The AEC said it uses sections 74-75 of the *Interim Ministerial Direction on fraud control* issued as part of the *Fraud control policy of the Commonwealth* to provide a threshold requirement for reporting fraud to the AFP.³⁹ The threshold reporting requirements are:

- where the monetary value of the fraud case exceeds \$A500; or
- where any non-financial benefit or advantage gained results in a significant loss or disadvantage to the Commonwealth; or
- where the fraud undermines confidence in a program or system.⁴⁰

Relationship between AEC and AFP

- 3.36 The *Fraud control policy of the Commonwealth* indicates that service agreements can be agreed between an agency and the AFP in order for an agency to meet its obligations and requirements in support of Commonwealth fraud control policy.⁴¹
- 3.37 The AEC indicated that it does not have a service agreement with the AFP in relation to electoral fraud because during non-election periods there is a great deal of uncertainty as to the number of investigations required.⁴²
- 3.38 Contact between the AFP and the AEC has tended to take place at the state head office level, with the number of cases under investigation driving the level of contact.⁴³ The AFP also provides the AEC with quarterly reports on the progress of investigations. Both the AFP and the AEC appeared to indicate that there has not been any consultation between the two agencies specifically related to detecting and investigating enrolment fraud.⁴⁴ However, the AFP indicated that from its

38 Transcript p 541 (AEC), and Submissions p S842 (AEC).

39 Australian Electoral Commission. 1998. *Fraud control plan 1997-1999*. Canberra, AEC, p 11.

40 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, p 3.

41 Commonwealth Law Enforcement Board. 1994. *Best practice for fraud control: Fraud control policy of the Commonwealth: Incorporating an Interim Ministerial Direction on fraud control*. Canberra, AGPS, pp 14-15.

42 Submissions p S1346 (AEC).

43 Submissions p S1346 (AEC), and Transcript p 555 (AEC).

44 Transcript p 542 (AEC).

perspective, ‘...there is an understanding of each other’s roles and responsibilities...’⁴⁵

- 3.39 The AEC said that as a result of the committee’s inquiry, there has been renewed interest within the AEC, AFP and the Attorney-General’s Department about the overall conduct of electoral fraud investigations.⁴⁶ At the public hearing on 2 March 2001 the AFP reported that it is now in consultation with the AEC on how both agencies can deal with matters of enrolment fraud:

...In our last lot of discussions we initiated some procedures between us and the AEC whereby specific types of electoral matters could be included in our case categorisation and prioritisation model. At the present time, it refers in fairly broad details to different types of crime. We thought it would be useful for both agencies to include some examples in that model for guidance for our people and for the AEC in terms of what should be referred. We have also explored with that organisation and offered them the opportunity to speak to the decision makers in our organisation who decide on a regular basis which matters will be accepted or not be accepted. We have also offered to speak to officers of the AEC around the country so that we can ensure there is a common understanding.⁴⁷

- 3.40 According to the AEC, the AFP contacted the AEC on 8 March 2001 to arrange a meeting between the AEC, the DPP, and the AFP in Canberra to establish a protocol for the referral of electoral offences for legal advice, investigation, and prosecutions.⁴⁸ However, the AEC reported that:

...in the context of those electoral offences now included in the *Criminal Code*, to come into effect on 24 May, and the possibility of further amendment to the Electoral Act to increase penalty levels for other electoral offences before the next federal election, it would seem prudent to defer any further inter agency discussions until the JSCEM Report is tabled, and if necessary, until the formal Government Response...⁴⁹

45 Transcript p 501 (AFP).

46 Submissions p S1347 (AEC).

47 Transcript p 501 (AFP).

48 Submissions p S1347 (AEC).

49 Submissions p S1348 (AEC).

- 3.41 The committee is of the opinion that, given the framework provided in the *Fraud control policy of the Commonwealth*, and the enthusiasm of the agencies involved, the negotiation of a service agreement should proceed as soon as possible.

Recommendation 11

- 3.42 **That, as a matter of immediate priority, the Australian Electoral Commission, the Australian Federal Police, and the Commonwealth Director of Public Prosecutions develop a service agreement to cover the referral of electoral fraud offences for legal advice, investigation and prosecutions.**

AFP investigative process

- 3.43 Once a case has been referred to the AFP, it reported that it:

...applies an objective test to all matters that are referred to it. It is our case categorisation and prioritisation model, and that is a public document so that all interested parties know the basis upon which, in general, we accept or reject matters for investigation. The number of matters referred to us clearly exceeds our capacity to investigate all matters, and we do not believe it is appropriate for us to investigate all matters.⁵⁰

- 3.44 In applying the Case Categorisation and Prioritisation Model (CCPM), the AFP considers seven dimensions:
- the type of incident that is involved in the matter;
 - the impact of the particular referral on the Australian community;
 - the priority of the matter (the degree of urgency or interest or exceptional circumstances);
 - the resources that would be required for the AFP to investigate the matter;
 - the budget that would be necessary for the AFP to take on a particular investigation;
 - the length of time it will take to complete; and

50 Transcript p 500 (AFP).

- where relevant, the property value that can be identified.⁵¹
- 3.45 Once these seven criteria have been applied to the case, an operations committee determines whether or not a matter will be accepted.⁵²
- 3.46 In addition to the application of the CCPM, the AFP recognised the need to investigate a number of lower priority matters to ensure there is an effective criminal deterrent for people committing routine types of offences.⁵³
- 3.47 If the matter has been accepted by the AFP, it is assigned to an operational team and that team carries out the investigation under the direction of a relevant general manager. The team in the area is required to report the progress of the investigation to the AFP head office.⁵⁴
- 3.48 In terms of the number of cases that were accepted by the AFP for investigation, the AFP was able to report that between 1 July 1995 and 1 February 2001, approximately 145 serious or complex cases of electoral fraud were referred of which 69 were accepted for investigation; and approximately 300 lesser matters were referred of which 80 were accepted for investigation.⁵⁵ It should be noted that these are figures for all electoral fraud, which includes matters such as multiple voting as well as enrolment fraud.
- 3.49 The AEC has for some time expressed a concern about the level of priority accorded cases of electoral fraud referred to the AFP. At the hearing on 3 April 2001, Mr Paul Dacey, Assistant Commissioner, Elections and Enrolment, indicated that:
- ...it has been one of our concerns...over the many years I have been in the organisation that we do not get that priority...⁵⁶
- 3.50 The level of investigation of electoral fraud is affected by the level of the penalty for the relevant offence. The level of the penalty has an impact on the CCPM to the extent that, in an environment of limited resources, the AFP accords a low priority to lower penalty offences.⁵⁷ Low penalties are also associated with a short period within which prosecutions can be initiated (in the case of enrolment fraud, one year), which means that some
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51 Australian Federal Police. *Case categorisation and prioritisation model*. 6p. <http://www.afp.gov.au/services/cst/ccpm.htm> and Transcript p 500 (AFP).

52 Transcript p 500 (AFP).

53 Transcript p 500 (AFP).

54 Transcript p 503 (AFP).

55 Transcript pp 500-501 (AFP).

56 Transcript p 543 (AEC), and Transcript p 81 (AEC).

57 Submissions p S519 (AEC).

cases investigated by the AFP cannot be prosecuted because the time limit for prosecutions has expired.⁵⁸ The relationship between penalty levels in the Electoral Act and the levels of AFP investigation were raised in both the 1996⁵⁹ and 1998⁶⁰ federal election inquiries.

Tied funding

- 3.51 One suggestion made by the AEC to overcome the relatively small number of investigations into electoral fraud undertaken by the AFP is for tied funding to be made available to the AFP for electoral fraud inquiries, given that it has the skills and training to conduct this sort of investigation.⁶¹ The AEC was not aware of any other tied funding arrangements with the AFP of the sort that the AEC has suggested.⁶²
- 3.52 The Attorney-General's Department indicated that tied funding is possible, but that it is always difficult for an organisation to operate because the organisation needs the flexibility to adjust to rapidly changing circumstances.⁶³ The committee believes that these inhibiting factors make this a less attractive solution to the problems of investigation of enrolment fraud cases than the one outlined below.

Penalties for enrolment offences

Offences

- 3.53 Prior to 24 May 2001, the offence and penalty provisions under the Electoral Act that are relevant to enrolment fraud included:
- false witnessing (sections 337 and 342);
 - personation (339(1)(a)(b) and 336);
 - false and misleading statements (339(1)(k)); and

58 Submissions p S842 (AEC).

59 Joint Standing Committee on Electoral Matters. 1997. *The 1996 Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 89.

60 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 95.

61 Submissions p S843 (AEC).

62 Transcript p 543 (AEC).

63 Transcript p 472 (Attorney-General's Department).

- forging and uttering (344).⁶⁴

3.54 The penalties associated with these offences range from a \$500 fine to \$1,100 fine and six months in prison.

3.55 It is widely accepted that the penalties for electoral fraud offences in the Electoral Act are relatively low compared to some offences in other Commonwealth legislation.⁶⁵ This has most recently been expressed in the report of the Shepherdson Inquiry, which argued that:

It is difficult to understand why the Commonwealth offence of making a false claim affecting the electoral roll is not an indictable offence....After all, the integrity of the electoral roll is fundamental to the legitimacy of our democratic system.⁶⁶

Transfer of offences to the criminal code

3.56 On 24 May 2001 the offence of forging an electoral paper or using such a forgery (sections 339 and 344 of the Electoral Act) were replaced by general forgery offences in the *Criminal Code*, which carry a penalty up to 10 years imprisonment. Similarly, the false statement offence, section 339 of the Electoral Act, was replaced by the false statement offence in the *Criminal Code*, which carries a benchmark penalty of 12 months imprisonment.⁶⁷ These changes are part of a broader process to consolidate key Commonwealth criminal offences in the *Criminal Code*.⁶⁸ The changes were made as part of the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*.

3.57 The Attorney-General's Department pointed out that one of the advantages of moving these offences to the *Criminal Code* is that, because the benchmark penalty for these offences will be 12 months or more imprisonment, there will be an unlimited period in which to prosecute.⁶⁹ Enrolment fraud investigated under the *Criminal Code* will also be accorded a higher priority in the CCPM process.

64 Submissions p S501 (AEC), and Submissions p S527 (Attorney-General's Department).

65 Transcript p 549 (AEC), and Transcript p 285 (T.Gillman), p 464 (Attorney-General's Department), and p 528 (Liberal Party of Australia).

66 Law Enforcement Coordination Division, Attorney-General's Department. April 2001. *Commonwealth fraud control policy and guidelines: Consultation draft no. 2*. p 172. <http://law.gov.au/aghome/commprot/olec/LECD/FCPConsultDraft2.htm>

67 Transcript p 464 (Attorney-General's Department).

68 Transcript p 464 (Attorney-General's Department).

69 Transcript p 466 (Attorney-General's Department).

Disqualification from parliament

- 3.58 Another approach to penalties has been advocated by Professor Colin Hughes, who argued that, as attacks on the integrity of the rolls are perpetrated by ‘careerists who seek advancement in elective office or within party hierarchies,’⁷⁰ the most appropriate remedy for enrolment fraud might be to remove them from or deny them access to such positions:
- ...The way to hit careerists is to blight their careers, to make the offence a disqualifying offence.⁷¹
- 3.59 Professor Hughes pointed out that under section 44 of the Constitution, anyone who has been convicted of any offence punishable by imprisonment for one year or longer is disqualified from nominating as a candidate for the Commonwealth Parliament.⁷²
- 3.60 The idea that people convicted of an offence in relation to enrolment fraud be banned from holding public office was likened to a corporate licensing arrangement by the Attorney-General’s Department. The Department said it would always encourage people to look at those alternative punishment mechanisms because they often provide quite a different deterrent to the straight offence or penalty.⁷³
- 3.61 The AEC indicated that the removal of the offences of forgery and false and misleading statements from the Electoral Act to the *Criminal Code* will have the effect of raising the penalty levels to the benchmark level of 12 months imprisonment, which will have the effect of bringing any person convicted of forgery or false and misleading statements within the disqualification provided for in the Constitution.⁷⁴

Increasing penalties for the remaining offences

- 3.62 A number of clauses relating to enrolment fraud still remain in the Electoral Act (sections 339(1)(a)(b); 336; 337; and 342). These clauses will retain their low penalty level.
- 3.63 The Attorney-General’s Department indicated that, when considering an increase in penalty levels, the principles to think about in terms of whether these penalties should be increased are: what are the incentives you need

70 Submissions p S674 (C.Hughes).

71 Transcript p 226 (C.Hughes).

72 Submissions p S386 (C.Hughes).

73 Transcript p 466 (Attorney-General’s Department).

74 Submissions p S522 (AEC).

to overcome in order to deter the offence from being committed; and also what is the potential harm that could come from committing the offence.⁷⁵

3.64 The report of the Shepherdson Inquiry argued that, in the case of enrolment fraud offences, the deterrent value of the penalties are not sufficiently high, and that:

...it appears that penalties including maximum terms of imprisonment should be reviewed and consideration given to increasing them...⁷⁶

3.65 Given that the motivation for committing enrolment fraud is often the pursuit of a career in parliament or a political party, as discussed above, the committee believes that an appropriate deterrence to overcome the incentive to commit such offences would be to disqualify people convicted of these offences from running for the Commonwealth Parliament.

Recommendation 12

3.66 **That the benchmark penalty for the enrolment fraud offences remaining in the *Commonwealth Electoral Act 1918* be increased to 12 months imprisonment or a fine of 60 penalty units.**

External scrutiny of fraud control activities

3.67 The AEC's *Fraud control plan 1997-1999* indicates that the AEC is required under the *Fraud control plan of the Commonwealth* to report all prima facie cases of fraud to the AFP, and to provide an annual report on fraud in the AEC to the Commonwealth Law Enforcement Board.⁷⁷ The proposed reporting guidelines for Commonwealth agencies in the draft *Commonwealth fraud control plan and guidelines* are similar.⁷⁸

3.68 In addition to the fraud reporting requirements, the AEC identifies a number of bodies to which it is accountable for the management of the roll:

75 Transcript p 465 (Attorney-General's Department).

76 Queensland Criminal Justice Commission. April 2001. *The Shepherdson Inquiry: An investigation into electoral fraud*. p 175. www.cjc.qld.gov.au/shepinquiry/finalreport.pdf

77 Australian Electoral Commission. 1998. *Fraud control plan 1997-1999*. Canberra, AEC, pp 11-12.

78 Law Enforcement Coordination Division, Attorney-General's Department. April 2001. *Commonwealth fraud control policy and guidelines: Consultation draft no. 2*. pp 19-20. <http://law.gov.au/aghome/commprot/olec/LECD/FCPConsultDraft2.htm>

- the Australian National Audit Office (ANAO);
- the Commonwealth Ombudsman;
- the Federal Privacy Commissioner;
- the Joint Standing Committee on Electoral Matters;
- the Joint Statutory Committee of Public Accounts and Audit;
- the Senate Estimates Committees; and
- the High Court, sitting as the Court of Disputed Returns.⁷⁹

- 3.69 As a further mechanism for external scrutiny of the AEC, Dr Amy McGrath advocated the creation of an electoral ombudsman, whose task would be to act as a recourse for grass roots complaints from party workers, officials, candidates, and voters at large.⁸⁰ A similar proposal was made by Professor Colin Hughes, who argued that, in light of the considerable damage done to the reputation of the electoral system, consideration might be given to the creation of an inspector-general to receive and investigate complaints.⁸¹
- 3.70 At the hearing on 3 April 2001, the AEC rejected the establishment of either an electoral ombudsman or an inspector-general, on the basis that there is currently sufficient external scrutiny of the AEC to detect any administrative flaws or electoral offences.⁸²
- 3.71 In relation to additional external scrutiny, the committee is of the opinion that, properly employed, the current mechanisms for external scrutiny should prove sufficient, the committee is therefore not inclined to advocate the creation of another mechanism for external scrutiny.

ANAO performance audit on the AEC management of the electoral roll

- 3.72 In mid year 2000 the Joint Statutory Committee on Public Accounts and Audit sought suggestions from other parliamentary committees on suggested audit topic for the next financial year. As part of that process the JSCEM suggested an audit into the integrity of the electoral roll. That suggestion was picked up and included in the ANAO's audit program for 2000-2001.⁸³

79 Submissions p S500 (AEC).

80 Submissions p S615 (A.McGrath).

81 Submissions p S683 (C.Hughes).

82 Transcript p 541 (AEC).

83 Australian National Audit Office. July 2000. *Audit work program 2000-2001*. Canberra, ANAO, p 61.

- 3.73 On 19 July 2000 the ANAO advised the AEC of its planned Audit Work Program for the financial year 2000-2001. A proposed performance audit signalled in the ANAO advice was into the integrity of the electoral roll.⁸⁴
- 3.74 The ANAO is currently undertaking a preliminary scoping study on the roll with a view to undertaking a full performance audit shortly. The committee understands that the audit will have two objectives: to provide the Parliament and the AEC with an opinion as to the accuracy, validity and completeness of the roll; and to examine the effectiveness of the AEC's management of the roll, in particular, the effectiveness of the AEC's processes for ensuring the roll's accuracy.
- 3.75 The committee notes that, as part of its performance audit of the Management of Tax File Numbers, the ANAO conducted a number of special data-matching exercises to test the quality of the Australian Taxation Office's database.⁸⁵ These data-matching exercises were conducted under section 32 of the *Auditor-General Act 1997*. The committee feels this would be a useful exercise to test the accuracy of the roll.

Recommendation 13

- 3.76 **That the Australian National Audit Office conduct a data-matching exercise with a sample of the Commonwealth Electoral Roll as part of its current performance audit of the Australian Electoral Commission's management of the roll.**
- 3.77 The committee will examine the audit report and, if it considers it to be necessary, will seek to conduct an inquiry into the outcomes of the audit and any additional policy matters that need to be addressed.
- 3.78 The committee believes that the ANAO data matching exercise is a useful external check on the accuracy of the roll and that such an external check should be undertaken annually.

84 Submissions p S1310 (AEC).

85 Australian National Audit Office. 1999. *ANAO Audit Report No.37 1998-1999: Management of Tax File Numbers*. Canberra, ANAO, p 36.

Recommendation 14

- 3.79 **That the Australian National Audit Office conduct an annual data-matching exercise on a sample of the Commonwealth Electoral Roll as a regular check on the accuracy of the roll.**

Scrutiny by the committee

- 3.80 In relation to this committee, the AEC reported that it does not routinely report cases of possible fraudulent enrolment to the committee after every federal election because there are relatively few cases.⁸⁶ However, the committee believes that enrolment fraud is serious enough to warrant regular reporting of cases. The committee also believes that the AEC should report to the committee on the progress it is making in implementing the recommendations contained in this report.

Recommendation 15

- 3.81 **That, during each federal election inquiry, the Australian Electoral Commission report all cases of enrolment fraud detected during the previous parliament.**

Recommendation 16

- 3.82 **That the Australian Electoral Commission report its progress in implementing the recommendations contained in this report to the committee at the next federal election inquiry.**

86 Submissions p S835 (AEC).