

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 *Commonwealth 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

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

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 EOE's to provide updated information via email to EOE's 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 EOE's 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 EOE's 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 EOE's 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:

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 or 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 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:

$$\text{Transfer value} = \frac{\text{Number of surplus votes}}{\text{Total number of ballot papers received}}$$

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:

$$\text{Transfer value} = \frac{\text{Number of surplus votes}}{\text{Total number of votes received}}$$

11.58 For those votes that a candidate receives from another candidate's surplus, the transfer value is expressed as:

$$\text{Transfer value} = \frac{\text{Number of surplus votes}}{\text{Total number of votes received}} \times \text{Transfer value applied to previous candidate}$$

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

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**