

Australian Electoral Commission

**SUPPLEMENTARY SUBMISSION TO THE JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS**

AEC RESPONSES TO JSCEM INQUIRIES OF 2 MAY 1997

Canberra

7 May 1997

CONTENTS

	Page	
1	Preamble	
2	Responses to JSCEM Inquiries of 2 May 1997.....	3
2.1	Proof of Identity at Citizenship Ceremonies.....	3
2.2	Eligible Overseas Electors.....	4
2.3	Postmarking of Postal Vote Envelopes.....	5
2.4	Residents in Nursing Homes.....	5
2.5	Enrolment and Computer Technology.....	6
2.6	Continuous Roll Reviews.....	8
2.7	Issue of Writs and Close of Rolls.....	8
2.8	Prisoner Enrolment and Voting.....	13
2.9	Writs for By-elections.....	14
2.10	Electoral Advertisements and Australia Post.....	15
3	Minor Amendments to Previous AEC Submissions.....	17
Table 1	Daily Transactions - Announcement to Close of Rolls.....	11
Table 2	Federal By-elections 1901 to 1996.....	19

Attachment: Continuous Roll Update (CRU) Pilot Progress Report

1. Preamble

1.1 This supplementary submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its "Inquiry into the 1996 Federal Election", as advertised on Saturday 22 June 1996 in all major newspapers. The submission is supplementary to the major AEC submission, "The Conduct of the 1996 Federal Election" presented to the JSCEM on 29 July 1996 (submission No 30).

1.2 The AEC has so far submitted a total of twenty written submissions to the JSCEM (Nos 30, 77, 78, 79, 80, 84, 90, 95, 96, 97, 98, 99, 100, 108, 109, 118, 126, 128, 129, 133), and participated in public hearings on 15 August, 25 October, and 18 November 1996.

1.3 On 2 May 1997, Mr Russell Chafer, the JSCEM Inquiry Secretary, wrote on behalf of the JSCEM to the Electoral Commissioner with a series of further questions relating to the operation of the *Commonwealth Electoral Act 1918* (CEA). The JSCEM questions (in italics) and the AEC responses are provided below.

1.4 In the third part of this submission, the AEC has taken the opportunity to put on the public record some minor amendments to previous written submissions.

2. Responses to JSCEM Inquiries of 2 May 1997

2.1 Proof of Identity at Citizenship Ceremonies

At p 24 of its original submission of 29 July 1996, the AEC refers to the procedure where new citizens fill in and return enrolment forms at citizenship ceremonies. At the ceremonies, does the Dept of Immigration impose a proof of identity requirement on those new citizens?

2.1.1 Prior to a citizenship ceremony, a standard letter is sent to all citizenship candidates from the Department of Immigration and Multicultural Affairs (DIMA). The letter advises the following: "You are required to bring this invitation letter to the ceremony as well as a form of identification (preferably photo included)".

2.1.2 This advice is also contained in a publication entitled "Australian Citizenship Ceremonies - A Handbook for Local Government Authorities", issued by the Minister for Immigration and Multicultural Affairs to all Local Government Authorities responsible for the conduct of citizenship ceremonies. Local Government Authorities are advised to "ask candidates to bring along their notification letter to the ceremony as well as a form of identification (preferably with photograph) so that it can be verified that they are in fact the person acquiring citizenship."

2.1.3 The AEC does not require enrolment applicants to provide identification at citizenship ceremonies. The enrolment application forms used at ceremonies are pre-printed by DIMA with the applicant's personal details and provided to new citizens with their citizenship certificate. Applicants are requested to sign and have their enrolment form witnessed in accordance with provisions of the CEA, during, or immediately following, their conferral ceremony.

2.2 Eligible Overseas Electors

At p 29 of the 29 July submission, the AEC proposes legislative amendments in relation to eligible overseas electors. If such information is available, approximately how many Australian citizens were overseas at the time of the 1996 federal election (as against the number of overseas electors who actually voted?)

2.2.1 At page 29 of the AEC submission No 30 of 29 July 1996 recommendation 5 is as follows:

The AEC recommends that the CEA be amended to provide for official Australian Government representatives on postings outside Australia to remain enrolled, or to enrol after departing Australia, for a subdivision, under similar criteria to that provided for itinerant electors in section 96(2A) of the CEA.

2.2.2 The question now raised by the JSCEM was asked of the AEC by the former JSCEM Chairman at the 15 August 1996 public hearings. At pages 10-11 of the AEC submission No 84 of 16 September 1996 the following response was provided:

2.13.1 The AEC has not been able to obtain figures on the number of Australian electors who were overseas at the time of the 1996 federal election. The Department of Immigration and Multicultural Affairs can only provide yearly figures on the total number of Australians who are overseas. The Australian Bureau of Statistics provides monthly figures of Australian residents who have left and returned to the country, but these figures are not matched to give a balance of the number of Australian residents who are overseas at any given time. For example, not all of those returning are included in the figure for those that have left, as they may have been overseas for some years and just returned. In addition, the numbers of people leaving from and returning to Australia include those under 18 years old and therefore not eligible to vote.

2.13.2 The number of Australian electors who voted overseas is 46,307. Details of where these electors voted are provided in Appendix D of the AEC submission No 30.

2.3 Postmarking of Postal Vote Envelopes

At p 58 of the 29 July submission, the AEC calls for a repeal of the provisions related to postmarking of postal vote envelopes. How many postal votes received after polling day were not accepted because of a non-existent or illegible postmark?

2.3.1 At page 58 of the AEC submission No 30 of 29 July 1996 recommendation 18 is as follows:

The AEC recommends that paragraph 7 of Schedule 3 of the CEA and paragraph 7 of Schedule 4 of the RMPA, with respect to the postmarking of postal vote envelopes, be repealed.

2.3.2 Since reporting on this matter in submission No 30 the AEC has conducted no additional surveys on postmarking. However, information from operational areas indicates that mail articles are still being received by the AEC with either no postmark or an illegible postmark.

2.3.3 The AEC maintains the view that to use a postmark test for admittance of postal votes to the further scrutiny is unreliable and may be disenfranchising voters. The decision as to whether postal votes should be admitted to the further scrutiny as being within time should be made on the basis of an elector signature and a witness signature on the declaration, dated prior to the close of polling day.

2.4 Residents in Nursing Homes

At p 66 of the 29 July submission, the AEC suggests that residents of hospitals and nursing homes, rather than just "patients", be able to use mobile polling facilities. The Committee asked for a form of words that would ensure that only those residents genuinely unable to cast ordinary votes were able to use mobile polling facilities (given the changing nature of aged/retirement facilities, whereby large numbers of able-bodied electors may live in an estate which contains relatively few infirm electors).

2.4.1 At page 66 of the AEC submission No 30 of 29 July 1996 recommendations 25 and 26 are as follows:

The AEC recommends that section 225 of the CEA and section 49 of the RMPA be amended to allow not only the patients of special hospitals to use electoral visitor mobile polling facilities, but also the residents of retirement homes and retirement villages.

Similarly, the AEC recommends that where an institution is appointed as a hospital that is a polling place under section 224 of the CEA and section 48 of the RMPA, residents of the institution also be allowed to use the electoral visitor mobile polling facilities, notwithstanding that they might not be included in the definition of a "patient".

2.4.2 The difficulty with the policy proposal indicated by the JSCEM question is that deciding whether residents in hospitals, nursing homes and retirement homes and villages are “genuinely” unable to cast an ordinary vote would in many cases be beyond the expertise of electoral officials, suggesting as it does the necessity for medical knowledge, and may well create unnecessary and distressing disputes between the frail and elderly and electoral officials. The AEC recommendations are aimed precisely at avoiding such distressing disputes arising, by relaxing the rules for issuing votes in places where the frail and elderly reside.

2.4.3 However, if the JSCEM wishes to pursue this course, then the AEC suggests that the JSCEM make its recommendation in the policy terms it thinks appropriate and leave it to the Office of Parliamentary Counsel to draft the appropriate legal wording in due course.

2.5 Enrolment and Computer Technology

At p EM473 of the transcript for the 18 November public hearing, Ms Dawson advised (in relation to unauthorised commercial use of the roll) that “an important issue [is] the speed with which technology is changing. Our legislation, section 91 and so on, is written in very old-fashioned terms and it should be updated. We would like to do something about that because computer technology is just racing ahead of the legislation.” The Committee has asked for more detail on the problems being experienced and possible amendments to section 91.

2.5.1 It is not only section 91 that requires review, but the entire legislative/policy/operational environment of enrolment data handling by the AEC. Such a review would entail a detailed contextual analysis of the legal regime set by sections 89 to 92 of the CEA, all consequential and related provisions in the CEA, and all subordinate practices and procedures; an examination of emergent computer technologies and their policy implications, current Government policy on privacy, data-matching, copyright and the Internet, and any other possible enhancements and constraints.

2.5.2 Such a complex review cannot be undertaken in time for the AEC to provide specific recommendations for legislative amendment to this JSCEM inquiry. However, it is suggested that the JSCEM consider making a generalised recommendation that such a review be undertaken by the AEC when priorities permit.

2.5.3 In this context, the JSCEM should note the June 1995 Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs entitled “In Confidence: a report of inquiry into the protection of confidential personal and commercial information held by the Commonwealth.” The Government Response to this Report has yet to be provided, but Recommendation 35 is as follows:

The Committee recommends that the Commonwealth Electoral Act 1918 be amended so that the end use restrictions which currently apply to electoral

roll data contained on tape or disk also apply to the same data containing in microfiche or in hard copy.

2.5.4 As an example of the practical problems being experienced in relation to the enrolment legislation, on pages 6-7 of the AEC submission No 118 of 3 December 1996, the AEC made the following submission and recommendation in response to a question from the former Chairman of this JSCEM:

2.4 Information Collection and Data-Matching

On page EM 412 Mr Cobb asked for specific recommendations on amending section 92(1) of the Commonwealth Electoral Act 1918 (CEA) to empower the AEC to collect information relevant to the maintenance of the Commonwealth Electoral Roll.

2.4.1 Section 92(1) of the CEA, which has remained substantially unchanged since 1902, reads as follows:

All officers in the service of the Commonwealth, all police, statistical, and electoral officers in the service of any State, officers in the service of any local governing body, and all occupiers of habitations shall upon application furnish to the Electoral Commission or to any officer acting under its direction all such information as the Electoral Commission requires in connection with the preparation, maintenance and revisions of the Rolls.

2.4.2 In the intervening years there have been considerable developments in the mechanics of information collection, analysis and transfer, and considerable developments in the law in relation to privacy and freedom of information, making it most unlikely that this provision would provide a sufficient legal underpinning for expanded data-matching of personal elector data with external databases.

2.4.3 At page 6 of the AEC submission No 98 of 23 October 1996, entitled "Enrolment and Voter Identification", the following was concluded:

There is merit in the expansion of matching personal elector data with external databases, provided that the relevant technical and statutory issues can be resolved.

2.4.4 However, the AEC also concluded that any substantial changes to current arrangements would have to be preceded by thorough feasibility studies. Such a feasibility study, focussed on developing an upgraded data-matching environment for the AEC, would include a comprehensive examination of legislative amendments that might be necessary in the CEA and other statutes in order to support data-matching.

It is recommended that the JSCEM endorse the conduct by the AEC, in cooperation with other relevant Commonwealth, State and Territory departments and agencies, of a feasibility study, identifying costs, benefits, modalities of implementation, and requirements for legislative amendments, of the following

options for the expanded matching of enrolment data in order to enhance the integrity of the rolls:

(a) manual provision of data in response to requests for information relating to individual enrolments;

(b) bulk comparison of data held by the AEC and other departments and agencies;

(c) on-line connections between the AEC's RMANS system and the computer systems of other departments and agencies, enabling validation of data as an enrolment form is entered onto the system; and

(d) such other options as may appear as a result of the study to be viable.

2.6 Continuous Roll Reviews

At p EM493 of the transcript for 18 November, Mr Dacey referred to a pilot of the continuous roll reviews, the results of which were to be available in the first quarter of 1997. Has there been any further progress?

2.6.1 The final report is to be submitted to the June meeting of the Australian Joint Roll Council (AJRC) for approval and is not therefore yet publicly available. However, a copy of the February 1997 Continuous Roll Update (CRU) Pilot Progress Report is attached.

2.7 Issue of Writs and Close of Rolls

The AEC has regularly expressed its support for the statutory seven-day period between the issue of the writs for an election and the close of the rolls. The Committee has asked for advice on:

(a) the corresponding period in the electoral legislation of all the States and Territories;

(b) the number of persons who enrolled or changed their enrolment in the couple of days between the announcement of the 1996 federal election and the issue of the writ (27 to 29 January inclusive); and

(c) how a reduced close-of-rolls period might affect the AEC's capacity to administer upgraded enrolment requirements - for example, the production of one item of proof of identity (such as a driver's licence) and an upgrading of the witnessing portion of the enrolment form into a proof of identity (POID).

2.7.1 In relation to the first part of the question on the statutory period between the issue of the writ and the close of the rolls, section 155 of the CEA provides that the period for federal elections shall be 7 days. The

State/Territory electoral authorities were asked to provide comparable information and have advised as follows:

New South Wales: Subsection 50(1) of the *Parliamentary Electorates and Elections Act 1912* provides that the Australian Electoral Officer for New South Wales must, as soon as practicable after the issue of the writ for an election in any district, certify, sign and transmit to the State returning officer for the district a printed copy of the roll for each subdivision in the district as in force at 6 pm on the day of the issue of the writ.

Victoria: Section 154 of the *Constitution Amendment Act 1958* provides that the date named for the close of the rolls shall be 3 days after the date of the writ. This was introduced for the first time at the 1996 State election. Prior to 1996 there was a 7 day period between the issue of the writ and close of roll.

Queensland: Section 80 of the *Electoral Act 1992* provides for the rolls to close not less than 5 days or more than 7 days from the issue of the writ. Subsection 80(3) of the Act expressly excludes the application of the *Acts Interpretation Act 1954*, and accordingly the day the writ is issued and the day the rolls close are both counted towards the prescribed period.

On three occasions the writ has been issued late on a Tuesday afternoon for the rolls to close in 5 days, namely the following Saturday in effect, allowing only 3 week days for persons to enrol or amend their registration.

Legislation which preceded the 1992 Act provided for the rolls to close at 5 pm on the day the writ was issued. Whilst reliable data is not readily available, the practice of announcing an election date in advance of the writ being issued was followed as far as can be ascertained, without exception. Certainly going back to early 1970 a short period was allowed to carry out an enrolment campaign before the writ for an election or by-election was issued.

Western Australia: Section 69A of the *Electoral Act 1907* provides that the time of the close of rolls is 6 pm on the day 8 days after the date of the writ. Prior to the 1989 State election, the date for the issue of the writ was also the date for the close of the rolls.

South Australia: Section 28 of the *Constitution Act 1934*, section 48 of the *Electoral Act 1985*, and section 27 of the *Acts Interpretation Act 1915*, provide jointly that the period between the issue of the writs and the close the rolls is 7 to 10 days.

Tasmania: Section 48 of the *Electoral Act 1985* provides that the close of the roll is 6 pm on the day of the issue of the writ for both House of Assembly and Legislative Council elections. However, there are 5 to 10 days notice for close of roll for a House of Assembly election.

Under section 69 of the Act the issue of the writ for a House of Assembly election is not less than 5 days and within 10 days after either the publication of a proclamation dissolving the Assembly or the expiry of the Assembly term of election. This has been the case since 1985. For at least 20 years prior to that the writs were to issue only "within 10 days" of the ceasing or dissolving of the Assembly.

For the Legislative Council elections there is notice of the close of rolls by virtue of the fact that section 19(4) of the *Constitution Act 1934* provides that the poll, if required, is to be held on the 4th Saturday in May (unless the Governor appoints another Saturday in May).

Australian Capital Territory: As the ACT has fixed term elections writs are not issued and there is no formal announcement date. The “pre-election period” starts on the 36th day before polling day. The rolls close 7 days later, on the 29th day before polling day.

Northern Territory: Subsection 29(2) of the *Northern Territory Electoral Act 1995* provides for the rolls to close at 6 pm on the day of the issue of the writ.

2.7.2 It is important to note that these statutory provisions define a legal minimum period between the issue of the writ and the close of the rolls. They do not prevent the announcement, in advance of the issue of the writ, of the proposed election date, and while the AEC has been unable in the time available to obtain detailed information on the point, such announcements appear to have been the rule rather than the exception.

2.7.3 In relation to the second part of the question on the number of persons who enrolled or changed their enrolment between the announcement of the 1996 federal election on Saturday 27 January 1996 and the issue of the writ on Monday 29 January, two preliminary points must be made.

2.7.4 First, the AEC has information on the number of electoral enrolment transactions entered into the RMANS system during each day of the roll close period. In periods of peak enrolment activity, however, an enrolment form will not necessarily be entered into the system on the day on which it has been completed by the elector. This is so first because many enrolment forms are lodged by mail, and secondly because of time lags in data entry once forms are received.

2.7.5 Secondly, in 1996, the election was announced late in the morning of 27 January, the Saturday of the Australia Day long weekend. Even if a potential enrollee decided immediately upon hearing that announcement that his or her enrolment needed updating, he or she would in all probability have been able to obtain an electoral enrolment form only on Monday 29 January; and if lodged by mail that form would be unlikely to have been received and entered into the system before Tuesday 30 January. It follows that the figures for the period 27 to 29 January almost exclusively represent data entry of enrolment forms received prior to the announcement of the election, and of enrolment forms received from persons who were able to visit a Divisional Office on 29 January.

2.7.6 The total numbers of transactions applied to RMANS on each day from the announcement of the election until the conclusion of roll close processing were as follows.

Table 1 Daily Transactions - Announcement to Close of Rolls

27 January (Saturday)	434
28 January (Sunday)	413
29 January (Monday)	15,370
30 January (Tuesday)	27,451
31 January (Wednesday)	22,656
1 February (Thursday)	49,671
2 February (Friday)	48,620
3 February (Saturday)	37,920
4 February (Sunday)	3,710
5 February (Monday)	97,241
6 February (Tuesday)	90,904
7 February (Wednesday)	34,138
8 February (Thursday)	1,013

2.7.7 In relation to the third part of the question, on how a reduced close-of-rolls period might affect the capacity of the AEC to administer upgraded enrolment requirements, these issues were addressed to the extent possible at the time at paragraphs 6.1.1 to 6.1.5 on pages 47 to 48 of the AEC submission No 98 of 23 October 1996, entitled “Enrolment and Voter Identification”.

2.7.8 As the question raises the possibility of a reduced close-of-roll period, it is important that the AEC reiterate at the outset the critical contribution which is made to the *accuracy* of rolls by the opportunity afforded to voters to make last-minute corrections to their enrolments.

2.7.9 As reported in paragraph 4.3.2 on page 22 of the AEC submission No 30 of 29 July 1996, for the 1996 election, between 29 January and 8 February 1996 (close of rolls 5 February), a total of 428,694 enrolment cards were processed nationally. This total included new enrolments, re-enrolments and reinstatements to the roll, transfers of enrolment, and deletions from the roll arising from deaths, duplicate enrolments and objection action. Enrolments were processed for 100,718 persons who had not been previously enrolled.

2.7.10 The AEC has seen no evidence, either concrete or circumstantial, which calls the validity of these changes to the rolls into question; and in the absence of such evidence, the AEC can only conclude that they served to enhance the accuracy of the rolls. Had some or all of them been prevented, either by the elimination of the close-of-roll period, or by its substantial reduction, there would have been two direct effects.

- Potential electors who were denied the opportunity to effect new enrolments would have been disenfranchised.
- Electors who were on the roll for an address they had left would have been denied the opportunity to update their address details, and this would have meant that their superseded enrolments would have been retained on the rolls, as “deadwood”.

2.7.11 Indeed, it would be no overstatement to say that in the view of the AEC no single policy change would be more damaging to the accuracy of the electoral rolls than the denial to voters of the opportunity to make corrections to their enrolments in the period immediately preceding the roll close.

2.7.12 As to the question of how a reduced close-of-rolls period might affect the capacity of the AEC to administer upgraded enrolment requirements, the AEC is unable to provide definitive advice at this stage, since the impact in practice of such changes, while likely to be substantial (and possibly very substantial) in both administrative and financial terms, would depend on the exact nature of the tasks to which the upgraded requirements would give rise.

2.7.13 For example, a requirement that voters produce a proof of identity (such as a driver's licence) would, as was pointed out at paragraph 5.4.2 of the AEC submission No 98, in effect preclude enrolment by mail, as many voters "would be rightly reluctant to commit valuable personal documents to the post to obtain enrolment". (This would of course be especially true of a document like a driver's licence, the production of which can be requested by police.) Voters would therefore be forced to come to an office or agency to enrol. This would have major practical implications for the whole of the enrolment process, and for joint rolls, and not just at election time.

2.7.14 At present, the system of enrolment (substantially) by mail, when coupled with a seven day close-of-rolls period, gives voters in almost all parts of the country a comparable opportunity to correct their enrolments prior to the roll close. Enrolment in person, combined with a reduced close-of-rolls period, would have the potential to discriminate against voters in remote and rural areas. To avoid such discrimination, it would be necessary to establish a number of temporary offices or agencies sufficiently large to ensure that potential voters in those areas would be provided with as good an opportunity to obtain correct enrolment as voters in urban areas.

2.7.15 If, on the other hand, enrolment claimants were simply required to quote a driver's licence number on their electoral enrolment forms, rather than being forced to bring the licence to an office or agency, the practical implications of administering the system would be completely different.

2.7.16 If the JSCEM has in mind a proposal more concrete than that set out in the question, the AEC would as always attempt to provide the JSCEM with an analysis of the implications of the proposal.

2.8 Prisoner Enrolment and Voting

Does the AEC have a view on the workability of a total ban on prisoners enrolling and voting, or a 6-month or one-year (actual sentence) disqualification rather than the current five years?

Also, how many additional people would have been disenfranchised at the 1996 election had there been (a) a total ban on prisoners voting; or (b) a one-year disqualification?

2.8.1 The AEC has no comment to make on whether or not prisoners should enrol and vote; that is a policy matter for the Parliament. The AEC is unable to comment within the time frame available on whether problems might be experienced with a total ban on prisoners enrolling and voting. As with partial bans, the problems that are likely to arise will be in the actual identification of those disqualified. Mobile polling and the availability of postal vote applications in prisons would cease, but access to postal votes for those prisoners voting for their home address might still be possible through family members or friends, and the position of parolees would be problematic.

2.8.2 In this context, the AEC is now satisfied that the operational problems raised with the previous JSCEM about the reporting to the AEC of actual/potential sentences by Prison-Controllers has been resolved by amendments made to section 93(8)(b) and section 109 of the CEA by the *Electoral and Referendum Amendment Act 1995*. The following list of extracts provides a background account of the progress of these amendments:

- (a) pages 10-11 of AEC submission No 91 dated 2 August 1993;
- (b) AEC submission No 141 dated 27 January 1994;
- (c) pages 1-2 of AEC submission No 151 dated 25 May 1994;
- (d) pages 142-144 (and page 165) of the JSCEM Report on the 1993 Federal Election, recommending amendments to section 93(8)(b) and section 109 (recommendation 68), and a dissenting view;
- (e) page 1253 and 1262 of the Senate Hansard of 21 September 1995, providing the Government Response to recommendation 68 of the JSCEM Report on the 1993 Federal Election.
- (f) provisions of the *Electoral and Referendum Amendment Act 1995* amending sections 93(8)(b) and section 109.

2.8.3 Attention is also drawn to page 19 of the AEC submission No 84 of 16 September 1996, where it was reported that 730 votes were issued at the 1996 federal election by mobile polling teams visiting prisons, as detailed by State/Territory in Table 18 of that submission; and pages 47-48 of the AEC submission No 90 of 20 September 1996, which outlines the recent history of parliamentary debate on prisoner enrolment and voting.

2.8.4 In relation to the question on how many additional people would have been disenfranchised at the 1996 election had there been (a) a total ban on prisoners voting or (b) a one year disqualification, the AEC is unable to

respond with any useful information because there is no baseline data on the total number of prisoners who voted.

2.8.5 The AEC removes from the Commonwealth Electoral Roll those prisoners currently advised by the Prison-Controllers as disqualified from enrolment and voting, and any declaration votes received from such persons would not be admitted to the count. However the AEC does not maintain records of persons who are in prison, not disqualified from enrolment and voting, and who exercise their right to vote for their home address (or the prison).

2.9 Writs for By-elections

On Professor Hughes' suggestion on the timing of by-elections (submission No 26), which the AEC supported at p 18 of its submission of 20 September 1996 (no 90), the Committee has asked for the average time (and the range of times) between a vacancy in the House of Representatives and the issue of the writ for the by-election, taken across all Commonwealth by-elections held to date.

2.9.1 At page 3 of submission No 26 of 24 July 1996 by Professor Colin Hughes, former Electoral Commissioner, the following suggestion was made:

...It is the provisions for the holding of by-elections for the House of Representatives. It does not appear that there is too much elasticity in timing, that the holding of a by-election may be too long delayed for the best representation of that electoral division and that possibly partisan considerations could influence the Government of the day or be thought to have influenced it. A requirement that the writ issue within thirty days of the resignation or death of a Member, except during the final three or four months of the life of the House would be an improvement on the present situation.

2.9.2 At page 18 of the AEC submission No 90 of 20 September 1996, the following was said in response to Professor Hughes' suggestion:

The AEC supports this recommendation in relation to by-elections resulting from vacancies occasioned by death or resignation after the election, where the Speaker of the House must issue the writ under section 33 of the Constitution. The same principle might also apply to supplementary elections occasioned by a failed election, through the death of a candidate for example, under section 181 of the CEA, where the Governor-General must issue the writ under section 152 of the CEA.

2.9.3 In this general context, attention is drawn to the observations made by the AEC on pages 15 to 17 of the AEC submission No 95 where the events following the voiding of the 1996 House of Representatives election for the Division of Lindsay in relation to the issue of the writ are described.

2.9.4 There have been 135 federal by-elections since 1901 and on average it has taken 15 days to issue the writ from the date the seat was vacated. In

1983, 58 days elapsed between the vacancy in the Division of Moreton and the issue of the writ. By contrast, in 1994, the writs for Bonython, Fremantle and Warringah were issued on the day of vacancy.

2.9.5 On 25 November 1992, the Court of Disputed Returns voided the by-election of Mr Phil Cleary, but the Speaker of the House did not issue a writ for a further by-election. Instead the people of Wills remained unrepresented until the following general election, for which writs were issued on 8 February 1993, 75 days after the vacancy had been declared by the Court.

2.9.6 The average time for issue of a writ by types of vacancies is as follows:

Election voided	7 days
Expulsion	5 days
Death	13 days
Resignation	19 days

2.9.7 At Table 2 (in the Appendix at page 19) the dates of vacancy and issue of writ for all federal by-elections since 1901 are provided.

2.10 Electoral Advertisements and Australia Post

In their submissions, Mr Peter Andren MP (submission no 56) and the NSW Branch of the National Party (no 85) suggest that Australia Post's procedures be amended so that it checks bulk mail-outs of election material, and does not deliver the material where the authorisation requirements are not met. While the Committee appreciates that this might be a matter for Australia Post, it is interested in the AEC's views on the practicality of such a recommendation.

2.10.1 The AEC made its comments on the operation of the authorisation requirements for electoral advertising (section 328 of the CEA) at pages 43-46 of submission No 30 of 29 July 1996. The AEC recommendation No 13 is as follows:

The AEC recommends that section 328 of the CEA and section 121 of the RMPA be amended to provide that where an electoral advertisement is presented in such a way that there can be no reasonable doubt as to the individual who or body which is responsible for its publication, then the authorisation requirements will be taken to be satisfied.

2.10.2 In submission No 56 of 24 July 1996, Mr Peter Andren MP makes the following recommendation:

Australia Post should be instructed to ensure all bulk mail outs during election campaigns are checked to see whether they contain election material. Such material should then be checked to ensure it contains proper authorisation. Australia Post should also ensure that it has proper identification of people responsible for bulk mail outs during election campaigns.

2.10.3 In submission No 85 of 12 September 1996, Mr Liam Bathgate, General Secretary of the National Party of Australia, NSW Branch, makes the following comments and suggestions in his submission:

In the last days of the campaign in Page, Australia Post began distributing a flyer, highly defamatory of Ian Causley, which carried neither authorisation nor the name and address of the printer (the flyer was in fact loose, not in envelopes as suggested by Australia Post in some of the correspondence referred to). As a result of concerted action in Page and by me, we were able to get Australia Post to halt distribution (although it transpired a large number were in fact distributed). We requested a Police investigation (declined) and an AEC investigation, the results of which are set out in the letter dated 10 April. At the end of the day, the significant result is the last sentence of that letter, from Brian Nugent, stating "I have asked Australia Post to consider reviewing their procedures relating to unaddressed mail, particularly electoral material subject to the provisions of the Commonwealth Electoral Act. ...I believe Australia Post should change its procedures when electoral writs are issued, to ensure it does not breach the Electoral Act and assist others to breach the Act, by distributing such material. Would it be possible for you to help ensure this is done?"

2.10.4 The AEC assumes that the JSCEM is referring in its question only to possible action by Australia Post in relation to bulk mail-outs of open and unaddressed flyers containing electoral advertising during the election period, and not to the invasion of sealed mail.

2.10.5 In the view of the AEC, any requirement under the CEA that Australia Post be responsible for the identification, assessment and

3. Minor Amendments to Previous AEC Submissions

3.1 The AEC takes this opportunity to bring together on the public record a number of minor amendments to its twenty written submissions so far filed with the JSCEM. Some of these amendments have already been advised at the public hearings.

3.2 On the title page of the AEC submission No 30 of 29 July 1996, the date of that submission is cited as 30 July 1996. It should be amended to read 29 July 1996.

3.3 In paragraph 5.8.3 on page 41 of the AEC submission No 30 of 29 July 1996, the fourth last line reads: “subsequently resigned his office of profit, was re-elected.” After “re-elected” the words “at the next federal election” should be inserted.

3.4 The first sentence of paragraph 5.8.5 on page 41 of submission No 30 should be replaced with the following amended sentence:

It may be recalled that in 1988 the High Court, sitting as the Court of Disputed Returns, also held that Senator Wood was disqualified from standing as a candidate for Parliament under section 163 of the CEA because he was at the time of his election a British subject, although the matter was first raised in a defective petition as contrary to section 44(i) of the Constitution (Re Wood (1988) 62 ALJR 328).

3.5 In paragraph 11.1.1 on page 80 of the AEC submission No 30 of 29 July 1996, in the second sentence the words “Commonwealth Electoral Amendment Act 1994” should be deleted.

3.6 In the past line of paragraph 7.2.7 on page 56 of the AEC submission No 98 of 23 October 1996, the figure \$551.0 million should be replaced with \$555.1 million. In the fifth line of paragraph 8.3.7 on page 62 of submission No 98 the word “would” should be deleted.

3.7 Table 2 at page 4 of the AEC submission No 99 of 24 October 1996 is incorrect and is replaced by Table 3 on page 9 of AEC submission No 108 of 14 November 1996. In addition, the third line of the italicised paragraph on page 9 of submission No 108 should read “receiving more postal votes than were issued”, instead of “issuing more postal votes than were returned.”

3.8 In the second last line of paragraph 4.5.1 on page 10 of the AEC submission No 108 of 14 November 1996, the figure of 35% should be replaced by 35.5%. In Table 5 on page 11 of submission No 108 some minus signs were omitted, and the replacement Table 5 reads as follows:

Year	Central Office (% increase)	Head Offices (% increase)	Divisional Offices (% increase)	Total (% increase)
1991/92	116	210	445	771
1992/93	109 (-6.03)	203 (-3.33)	453 (1.80)	765 (-0.78)
1993/94	118 (8.26)	195 (-3.94)	399 (-11.92)	712 (-6.93)
1994/95	133 (12.71)	210 (7.69)	416 (4.26)	759 (6.60)
1995/96	151 (15.53)	190 (-9.52)	414 (-0.48)	755 (-0.53)

3.9 In paragraph 3.7 at page 9 of the AEC submission No 109 of 14 November 1996 the second sentence reads: "However, the AEC remains as reluctant as the ECQ to be put in the position of having to enter the political fray to seek injunctions in relation to the truth content of political." The word "advertising" should be added to the end of the sentence.

3.10 In part (c) of the recommendation on page 7 of the AEC submission No 118 of 3 December 1996, the word "in-line" should be replaced with "on-line".

Appendix

Table 2 Federal By-elections 1901 to 1996

Division	Date of Vacancy	Issue of Writ
Darling Downs	8 August 1901	13 August 1901
Tasmania	6 February 1902	11 March 1902
East Sydney	18 August 1903	20 August 1903
Wilmot	2 February 1904	10 February 1904
Melbourne	10 March 1904	15 March 1904
Riverina	13 April 1904	19 April 1904
Echuca	10 June 1907	13 June 1907
Adelaide	10 May 1908	14 May 1908
Wakefield	23 July 1909	29 July 1909
Kooyong	26 July 1910	2 August 1910
Batman	18 December 1910	10 January 1911
North Sydney	4 February 1911	15 February 1911
Boothby	8 October 1911	18 October 1911
Werriwa	1 April 1912	6 May 1912
Kalgoorlie	25 November 1913	5 December 1913
Adelaide	2 December 1913	8 December 1913
Bendigo	9 December 1913	4 January 1915
Grampians	1 January 1915	18 January 1915
Dalley	2 April 1915	19 April 1915
Wide Bay	26 October 1915	2 November 1915
Darwin	10 May 1917	6 June 1917
Grampians	15 September 1917	25 September 1917
Flinders	5 April 1918	12 April 1918
Swan	2 September 1918	18 September 1918
Corangamite	23 October 1918	12 November 1918
Echuca	14 August 1919	21 August 1919
Ballaarat	2 June 1920	8 June 1920
Kalgoorlie	12 November 1920	17 November 1920
Maranoa	3 June 1921	13 June 1921
West Sydney	1 August 1921	8 August 1921
Parramatta	11 November 1921	14 November 1921
Yarra	10 January 1922	20 January 1922
Eden-Monaro	12 January 1926	25 January 1926
Dalley	18 January 1927	1 February 1927
Warringah	13 April 1927	26 April 1927
Martin	7 May 1928	24 May 1928
Wide Bay	31 July 1928	17 August 1928

Division	Date of Vacancy	Issue of Writ
Balaclava	5 July 1929	11 July 1929
Franklin	22 October 1929	25 November 1929
Parkes	19 December 1930	7 January 1931
East Sydney	5 February 1931	18 February 1931
East Sydney	15 January 1932	21 January 1932
Flinders	6 October 1933	12 October 1933
Newcastle	8 April 1935	7 May 1935
Fawkner	25 June 1935	24 July 1935
Kennedy	15 October 1936	5 November 1936
Darling Downs	6 November 1936	18 November 1936
Gwydir	28 March 1937	8 April 1937
Wakefield	25 October 1938	10 November 1938
Griffith	28 March 1939	28 April 1939
Wilmot	7 April 1939	3 May 1939
Corio	30 January 1940	9 February 1940
Kalgoorlie	2 October 1940	17 October 1940
Swan	15 November 1940	28 November 1940
Boothby	23 April 1941	6 May 1941
Fremantle	5 July 1945	18 July 1945
Wimmera	31 December 1945	8 January 1946
Henty	11 February 1946	25 February 1946
Macquarie	13 June 1951	28 June 1951
Balaclava	20 June 1951	28 June 1951
Lyne	28 January 1952	19 February 1952
Flinders	26 August 1952	16 September 1952
Werriwa	1 October 1952	28 October 1952
Bradfield	28 October 1952	19 November 1952
Dalley	21 March 1953	2 April 1953
Lang	13 July 1953	29 July 1953
Corangamite	10 June 1953	29 July 1953
Gwydir	15 November 1953	24 November 1953
Cook	26 March 1955	21 April 1955
Cunningham	17 February 1956	27 March 1956
Barker	9 August 1956	11 September 1956
Wentworth	17 October 1956	7 November 1956
Richmond	12 July 1957	1 August 1957
Parramatta	10 February 1958	14 February 1958
Hunter	10 February 1960	26 February 1960
La Trobe	10 February 1960	26 February 1960
Bendigo	17 May 1960	8 June 1960
Balaclava	2 June 1960	8 June 1960

Division	Date of Vacancy	Issue of Writ
Calare	28 September 1960	4 October 1960
Higinbotham	16 October 1960	27 October 1960
Batman	21 July 1962	31 July 1962
Grey	31 March 1963	16 April 1963
East Sydney	31 July 1963	13 August 1963
Denison	24 December 1963	15 January 1964
Angas	23 April 1964	8 May 1964
Parramatta	24 April 1964	8 May 1964
Robertson	30 September 1964	26 October 1964
Riverina	21 January 1965	26 January 1965
Dawson	9 January 1966	21 January 1966
Kooyong	17 February 1966	3 March 1966
Corio	10 June 1967	20 June 1967
Capricornia	2 August 1967	23 August 1967
Higgins	19 December 1967	19 January 1968
Curtin	10 February 1969	14 March 1969
Bendigo	9 April 1969	30 April 1969
Gwydir	30 April 1969	1 May 1969
A.C.T	1 April 1970	20 April 1970
Chisholm	31 July 1970	13 August 1970
Murray	1 February 1971	15 February 1971
Parramatta	11 July 1973	14 August 1973
Bass	2 June 1975	4 June 1975
Cunningham	22 August 1977	8 September 1977
Werriwa	31 July 1978	15 August 1978
Grayndler	16 April 1979	15 May 1979
McPherson	7 January 1981	27 January 1981
Boothby	22 January 1981	27 January 1981
Curtin	22 January 1981	27 January 1981
Wentworth	17 February 1981	3 March 1981
Lowe	4 January 1981	25 January 1982
Flinders	22 October 1982	10 November 1982
Wannon	31 March 1983	7 April 1983
Bruce	21 April 1983	13 May 1983
Moreton	15 August 1983	12 October 1983
Hughes	19 December 1983	25 January 1984

Division	Date of Vacancy	Issue of Writ
Richmond	18 January 1984	25 January 1984
Corangamite	18 January 1984	25 January 1984
Scullin	20 December 1985	3 January 1986
Adelaide	31 December 1987	4 January 1988
Port Adelaide	12 February 1988	19 February 1988
Groom	22 February 1988	4 March 1988
Oxley	17 August 1988	5 September 1988
Gwydir	24 February 1989	6 March 1989
Menzies	25 February 1991	5 April 1991
Wills	20 February 1992	9 March 1992
Werriwa	22 December 1993	24 December 1993
Fremantle	4 February 1994	4 February 1994
Mackellar	14 January 1994	18 February 1994
Bonython	11 February 1994	11 February 1994
Warringah	18 February 1994	18 February 1994
Kooyong	17 September 1994	14 October 1994
Canberra	30 January 1995	17 February 1995
Wentworth	28 February 1995	3 March 1995
Blaxland	23 April 1996	13 May 1996
Lindsay	11 September 1996	16 September 1996
Fraser	6 December 1996	30 December 1996