

Australian Electoral Commission

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

AEC RESPONSES TO PATCHING SUBMISSIONS

Canberra

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CONTENTS

	Page
1. Preamble.....	3
2. Introduction.....	3
3. Alleged Persecution by AEC Management.....	4
4. Enrolment by Non-Citizens.....	5
5. Splitting of Postal Vote Envelopes.....	7

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 As part of the JSCEM inquiry, public hearings are in progress, and the first of these, on 15 August 1996, involved officers of the AEC. Subsequent to this hearing, further public hearings, not involving the AEC, have taken place as follows:

13 September (Canberra), involving Mr Nick Dondas MP, Mr Gary Gray, and Mr Lynton Crosby;

23 September (Sydney), involving Ms J Bieleski, Mr Derek Freeman, Mr Bruce McCarthy, Ms Barbara McGarity, Dr Amy McGrath and Mr Arthur Viney;

4 October (Brisbane), involving **Mr Bob Patching**, Mr Graham Smith, the Qld ICJ, Mr George Johnson, and Professor Colin Hughes;

9 October (Canberra) involving Mr Randall MP, Mrs Gash MP, Mr Filing MP, and Mr Tuckey MP.

1.3 This submission provides responses from the AEC to various issues

2.3 In his 1996 JSCEM submission No 88, Mr Patching variously implies that the AEC suppressed information, files have been lost or deleted, that the public has been deliberately misled, that AEC management has been negligent in failing to act on his expert advice, and that he has been persecuted in the circumstances of his employment. He says that the Electoral Commissioner was responsible for “public denigration of my reputation as a person of integrity” and claims that he is “entitled to an apology and retraction”. No such apology or retraction will be forthcoming.

2.4 In his submission Mr Patching raises the following central issues of electoral administration, which will be responded to by the AEC in turn:

- (a) alleged persecution by AEC management;
- (b) enrolment by non-citizens;
- (c) splitting of postal vote envelopes.

3. Alleged Persecution by AEC Management

3.1 Mr Patching seeks to convey an overall impression that he is a misunderstood and persecuted electoral expert striving alone for excellence, but constantly frustrated by a conspiracy of corrupt and/or incompetent bureaucrats. Over the years Mr Patching has indicted Queensland Area Managers, the Queensland Director of Operations, the current Australian Electoral Officer (AEO) for Queensland, as well as his two predecessors, and the current Electoral Commissioner, as well as his two predecessors, in his accounts of the alleged operational failings of the AEC.

3.2 The AEC rejects the general impression conveyed to this JSCEM that Mr Patching has in any way been unfairly or improperly treated during his many years of employment with the AEC. To the contrary, considerable time, effort and cost has been expended over the years in investigating Mr Patching’s complaints, and in attempting to improve Mr Patching’s performance in and management of the Division of Rankin.

3.3. In his 1996 written submissions and oral evidence, Mr Patching has once again attacked the integrity of the AEC and its officers. Mr Patching has also claimed that it is “not uncommon for me to be the recipient of different treatment to other AEC staff because of submissions and evidence”. He has offered no examples of such different treatment and these allegations are categorically denied.

3.4 In his oral evidence of 4 October 1996, Mr Patching advised the JSCEM that he had not been DRO for Rankin during the 1996 federal election because the Australian Electoral Officer (AEO) for Queensland had refused to allow him to return to his position despite medical advice. This is a misleading submission as the following background demonstrates.

3.5 As the result of a complaint from the public concerning the Division of Rankin in August 1995, the AEO for Queensland reached the conclusion that the incident amounted to misconduct and he instituted internal disciplinary proceedings against Mr Patching which led to formal counselling on 1 September 1995.

3.6 Soon after this matter was dealt with, Mr Patching applied for stress-related sick leave. As the leave eventually extended past four weeks, a referral was made to the Commonwealth Medical Officer (CMO). Mr Patching also lodged a compensation claim which was rejected by COMCARE when they found that it related to a disciplinary matter and the stress was not proven to be work-related. In January 1996, the CMO provided a report to the AEO and recommended a graduated return-to-work program at the Divisional Office which would have had Mr Patching operating part-time over a period of six weeks from 18 January.

3.7 The AEO decided, in consultation with the CMO, that with a federal election pending it would be unwise to allow Mr Patching to resume his duties immediately, as it is generally accepted that the election period is the most stressful time for Divisional Returning Officers. Mr Patching was not satisfied with this joint AEC/CMO decision, and without consulting the AEO or the CMO, returned to his own doctor who issued a further sick leave certificate. Mr Patching eventually returned to his duties on 7 May 1996. To have allowed Mr Patching to resume duty and be immediately placed in a very stressful environment would have left the AEC open to potential claims for compensation had Mr Patching's health again deteriorated.

4. Enrolment by Non-Citizens

4.1 Mr Patching disputes the statement by the Electoral Commissioner, on 7 March 1996 in the Sydney Morning Herald, that: "Regarding the claim of 200 enrolled non-citizens in Queensland: the divisional officer in Rankin who made the claim was unable to produce supporting evidence to my predecessor."

4.2 Beyond a list of names supplied to AEC management, Mr Patching has not supplied any supporting detail, such as the original enrolment applications. Mr Patching's inability to produce his supporting evidence apparently resulted from his loss of the material, and not from any conspiracy on behalf of AEC management to make the files disappear.

4.3 Mr Patching's list of names as supplied to AEC management, shows the names of 140 applicants whose enrolments were rejected, but the list also shows the names of 53 applicants, who in response to letters of enquiry, were able to prove their citizenship eligibility despite the fact that the Department of Immigration and Ethnic Affairs had no record of them.

4.4 On page 42 of the Report by the previous JSCEM entitled "The Conduct of the 1993 Federal Election", the following appears:

4.3.34 The DRO for Rankin in Queensland advised the Inquiry that there is very little likelihood of a non-citizen being detected if he or she ticks the citizenship box on an enrolment card. The DRO described an informal arrangement he had implemented, whereby if an enrollee ticked the citizenship box but was born in a different county he (the DRO) would fax the details to a contact in the Department of Immigration and Ethnic Affairs for checking. He has ceased this practice due to uncertainty about the implications under the Privacy Act.

4.5 Mr Patching's unilateral and unauthorised action in sending personal elector details on an informal basis to officers of another Commonwealth Department for "checking" was probably in breach of the Privacy Act. Had Mr Patching advised AEC management at the time of his "informal arrangement", his activities would have been investigated far sooner.

4.6 The previous JSCEM Report continues on page 43 as follows:

4.3.35 As of June 1993 the AEC has been receiving the details on a specific category of elector called "new citizen provisional enrollees", who make a provisional claim for enrolment at the time of registering for Australian citizenship. There is still no detailed check on other categories of electors born overseas, including all those on the rolls before June 1993.

4.3.36 A more detailed check is desirable. The DRO for Rankin, through his informal arrangement, picked up 200 non-citizens attempting to enrol over nine months in his Division. If his informal arrangement were to be formalised for all Divisions it could be of great benefit in improving the accuracy of the electoral rolls.

4.4.37 The Committee accordingly requests that the AEC negotiate with the Department of Immigration and Ethnic Affairs, with a view to implementing the sort of check discussed in paragraph 4.3.34.

Recommendation 20: that the AEC negotiate with the Department of Immigration and Ethnic Affairs in order to establish more extensive cross-checking of citizenship information.

4.7 The Government Response to this Recommendation of the previous JSCEM was supportive, but the AEC has been unable to move forward on such extensive data-matching arrangements without the approval of the Privacy Commissioner, and without a substantial reorganisation of technological facilities and staffing arrangements to allow such data-matching to occur under appropriate regimes of security and accountability. For further discussion of the stringent Guidelines for Data-Matching, as issued by the Privacy Commissioner, see the AEC submission of 24 October 1996 entitled "Enrolment and Voter Identification".

4.8 Further, as is also discussed in the AEC submission on "Enrolment and Voter Identification", decisions on citizenship qualifications involve a highly complex area of Commonwealth law, and Divisional Returning Officers

are simply not qualified to be making such personal and unsupervised judgements, which carry the risk of disenfranchising eligible electors.

4.9 It is notable for example, that the list of names supplied by Mr Patching to AEC management contained the names of 53 applicants who were subsequently able to provide evidence of citizenship. Had Mr Patching exercised his personal judgement on the basis that there were no records of these people with the Department of Immigration and Ethnic Affairs, then these 53 persons could have been disenfranchised.

4.10 The AEC is of the view that any further investigation or review of Mr Patching's allegations on this issue is pointless. The AEC is well aware of the problems and complexities of determining citizenship eligibility at enrolment and has taken steps to reach out to the ethnic community through its direct involvement in Citizenship Ceremonies, where new citizens are now automatically provided with a personalised enrolment form (see page S153 of the AEC submission No 30).

4.11 As the AEC submission of 23 October 1996 on "Enrolment and Voter Identification" explains, any suggestion that would involve "going behind" the citizenship declaration by an enrolment applicant, should involve a feasibility study to examine resource implications, privacy implications, and the complexities of citizenship law.

4.12 Singling out citizenship for special investigation also prompts the question of the need to "go behind" the rest of the declarations made by all electors. The electoral roll is a high quality document, well suited to the purposes envisaged in the CEA. The use of a single data source for all Australian electoral rolls, namely, the enrolment application form, now facilitates the provision of the rolls for federal, State and most local government elections. If the JSCEM is concerned about the potential for fraud or ignorance on the part of overseas born residents/citizens, then perhaps all relevant federal and State legislation should be amended to provide for investigation of all sections of the enrolment form completed by all claimants.

5. Splitting of Postal Vote Envelopes

5.1 In Mr Patching's second letter to the JSCEM of 27 September 1996 he alleges that the Electoral Commissioner misled the public on the number of votes affected by the splitting of some postal vote certificate envelopes during processing by Australia Post; provides the JSCEM with advice on what he thinks should have been done to rectify the problem; and claims that AEC management was negligent in dealing with the problem as it developed.

5.2 The background to the splitting of some postal vote certificate envelopes (PVCs) begins in July 1995 when, after tendering, the AEC contracted Wiggs Pty Ltd to manufacture some 700,000 PVCs in preparation for the next federal election. The PVCs were to be manufactured to design specifications supplied by the AEC, which included the use of recycled paper,

in accordance with Government guidelines. The completed PVCs were distributed by Wiggs directly to the AEC State and Territory Head Offices of the AEC and from there to Divisional offices.

5.3 In about September 1995 Central Office of the AEC was advised by a Victorian Divisional officer that the PVCs supplied to him were faulty. The side seam of the PVCs were not properly glued. A national survey was then undertaken of all PVC supplies held in Divisional offices and it soon became apparent that the problem was not confined to Victoria. The AEC contacted Wiggs and requested rectification of what appeared to be a serious manufacturing problem in breach of contract. When Wiggs failed to respond, the AEC made enquiries of other similar manufacturers and eventually shipped all PVCs to Union Offset Co Pty Ltd in Canberra, who had undertaken to re-glue the side seam on all PVCs.

5.4 With the side seam problem rectified, the PVCs were then redistributed to all Divisional offices and it was assumed that no more problems would arise. The AEC is currently engaged in litigation against Wiggs Pty Ltd in relation to the payment of the contract price for the manufacture of the PVCs, and will therefore be making no further comment on this matter.

5.5 On 15 February 1996, with the federal election underway, Central Office was advised by a Queensland DRO that PVCs were being returned from voters with the top perforated fold either fully or partially split. On the same day a voter in Queensland complained that his PVC had split across the top perforated fold, and that he had used sticky tape to repair it.

5.6 A number of DROs were contacted across the country and it was discovered that the problem was not confined to Queensland. All States reported some envelopes being returned with the top perforated fold fully or partially split. Central Office assumed at this stage that the problem of the split along the top perforated fold was a manufacturing fault attributable to Wiggs, because of the previous experience with the unglued side seam on the PVCs.

5.7 After consulting previous advisings from the Attorney-General's Department on similar difficulties experienced in 1993 with the privacy flap on the PVC, and on the assumption that the PVCs were still secure in their transmission through Australia Post, at 2.40 pm on 15 February a nation-wide AEC e-mail was transmitted as follows:

Following reports earlier today that Postal Vote Certificates (PVC) have been returned with either full or partial splits in the sealing flap on the certificate please ensure that the appropriate steps outlined below are actioned:

Despatch of Postal Vote Certificates:

Step 1 - Turn the certificate envelope so that the "Return Address" faces you.

Step 2 - Seal across the perforation line on the right hand side ie the perforation next to the three postage bars of the certificate envelope, with clear sticky tape.

Receipt of Postal Vote Certificates:

Where certificate envelopes have been returned with either a full or partial split:

Step 1: Seal the certificate with AEC security tape.

Step 2: Sign and date across the tape before placing in a ballot box.

5.8 On 19 February reports from Queensland revealed that the processing of PVCs by newly-installed automatic sorting machines at some Australia Post mail exchanges had resulted in splitting of the top perforated fold and that some ballot papers had come loose from the PVCs and had either been shredded during processing or were being collected by Australia Post and stored for retrieval by and (om3ed f)-7 sp T* 0i668003 Tc 09039 T0(It no(ngad eica(s ap)0(I)0

State/Territory	House of Reps loose papers	Senate loose papers
NSW and ACT	20	16
Victoria	6	7
Queensland	55	61
South Australia	20	26
Western Australia	nil	nil
Tasmania	nil	nil
Northern Territory	nil	nil
Total	101	110

5.11 On 27 February the AEC informed the Attorney-General's Department that a small number of PVCs had burst during sorting by Australia Post machinery, and as a result some ballot papers had become separated from their envelopes. The AEC further informed the Attorney-General's Department that based on previous advice those loose ballot papers could not be admitted to the count. The AEC sought advice on whether those postal voters whose votes had been discarded could be issued with a fresh set of ballot materials, if such voters could be identified. The AEC was advised that such a course of action was not legally possible, and this advice was confirmed in writing on 28 February.

5.12 On 29 February 1996 the Electoral Commissioner wrote a letter to the editor of the Australian newspaper as follows:

Lest Amy McGrath ... causes voters to worry about their vote being damaged in the mail, Australia Post has discovered that a very small number of postal vote envelopes have been damaged when being processed by the large mail sorting machines - to date about 110 envelopes out of some 400,000 spread across the 148 electoral divisions

Australia Post has looked at the problem from their end and the Electoral Commission, when notified of it, took immediate steps to reinforce all envelopes provided to electors. These steps have proved effective.

5.13 The AEC reported to the JSCEM on the splitting of some postal vote certificate envelopes in the 29 July submission No 30 paragraphs 7.6.4 to 7.6.5 on page S188 of Volume 1 of the JSCEM submissions. The AEC put this report in the context of the more general issue of PVC design, and recommended that the CEA be amended to allow the AEC more flexibility in envelope design (which could include double enveloping).

5.14 On 2 August 1996, the AEC also provided information for a Question on Notice from Mr McDougall who asked how many (a) postal and (b) absent vote envelopes were invalidated at the election because of splitting. That is, apart from those loose ballot papers that could not be reconciled with their PVCs and were discarded, and apart from those split and repaired PVCs, with their ballot papers intact, that were able to pass through the preliminary scrutiny, how many other damaged PVCs were eventually rejected at the

preliminary scrutiny. The Minister for Administrative Services, Mr Jull, responded to Question on Notice No 273, that 74 PVCs were rejected, and 12 absent votes were rejected, because of splitting.

State	Postals	Absents	Total
Victoria	10	1	11
Queensland	55	11	66
South Australia	9	nil	9
Total	74	12	86

5.15 That is, there were initially 110 damaged PVCs, as mentioned in the Electoral Commissioner's letter of 29 February, and after a detailed review of the fate of all material affected, it eventuated that an additional 86 declaration votes were not admitted to the count nationwide. The AEC regrets the disenfranchisement of these 196 voters, but believes the problem can be addressed for the future with amendments to the CEA to allow improved PVC design, together with a change from recycled paper to higher quality paper, a change in manufacturer, and closer liaison with Australia Post.

5.16 Mr Patching implies that an AEC management conspiracy to mislead the public is evidenced by comparing the statement on 31 May by Mr Mackay that 253 envelopes were received empty, with the statement by the Electoral Commissioner three months earlier on 29 February, prior to the election, that 110 envelopes had been damaged by mail sorting machines. It should be obvious to anyone that any total numbers quoted would change over time as more declaration votes were received, apart from the fact that the 253 empty envelopes reported by Mr Mackay were not all necessarily affected by the mail sorting process. Voters do on occasion return empty envelopes.

5.17 Mr Patching, who was not present on duty with the AEC for any part of the election period, claims that the AEC management of the problem during the election was deficient, and that staff were not kept properly advised of developments. Mr Patching's expressed conclusion, on the basis of his discussions well after the events in question with a few local staff members, is ill-informed and without substance.

5.18 Mr Patching has also expressed his personal doubts about the legality of the corrective measures adopted by the AEC, without apparently being aware that AEC management consulted with the Attorney-General's Department on the procedures to be adopted when the problem was first revealed in February.

5.19 Mr Patching attacks the integrity of the AEC generally by implying that loose ballot papers were not properly accounted for and numbers were not reconciled. Firstly, not all ballot papers were returned to the AEC by Australia Post because they had been shredded in the automated sorting process, while some others were never put into the envelopes by electors in the first place. Secondly, it was not possible to return loose Senate ballot papers to Divisions for reconciliation, because the Divisional origins of those ballot papers could not be determined from the Senate ballot paper alone, and nor could they be matched with the loose House of Representatives ballot papers. Thirdly, there would have been no point in returning House of Representatives ballot papers to Divisions because, again, these could not be matched up with postal vote applications or certificates. Finally, because there was no possible way of closing the accountability loop at the Divisional level, holding all loose ballot papers from the mail exchanges in Head Offices, or the offices to which they were delivered by Australia Post, was the most sensible and secure option.

5.20 Most importantly, Mr Patching makes the final suggestion that the AEC did not care about disenfranchising some voters because it did not affect any election result. Apart from the thoroughly objectionable nature of this attack on the integrity of the AEC and its officers, Mr Patching seems to have missed the point. The corrective measures taken by the AEC were directed to that very purpose of saving the franchise for as many affected voters as possible.