

Australian Electoral Commission

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

AEC RESPONSES TO JSCEM HEARINGS OF 25 OCTOBER 1996

Canberra

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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 To date, the AEC understands the JSCEM has received some 100 written submissions, thirteen of which have been provided by the AEC - submissions numbered 30, 77, 78, 79, 80, 84, 90, 95, 96, 97, 98, 99, 100. The JSCEM has so far bound these 100 written submissions in five volumes, and in submission No 90 the AEC responded to issues raised in the majority of these submissions from other organisations and individuals.

1.3 As part of the 1996 JSCEM inquiry, public hearings are in progress, and the following six public hearings have taken place:

- 15 August (Canberra) involving the AEC;
- 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.
- 25 October (Canberra) involving Mr Riebeling MP, Mr McMullan MP, and the AEC.

1.4 This submission provides responses from the AEC to various questions raised by members of the JSCEM at the public hearings of 25 October 1996, and responses to issues raised in the more recent written submissions to the JSCEM, in particular, Norfolk Island and ACT Representation Entitlements, and Northern Territory Subdivisions and Provisional Voting.

2 Norfolk Island and ACT Representation Entitlements

2.1 The federal enrolment and voting entitlements of Norfolk Islanders have been the subject of a number of written and oral submissions from the AEC: for example, submission No 139 of 21 December 1993 (pp S1413-S1416), submission No 30 of 29 July 1996 (p S155), and submission No 84 of 16 September 1996 (p 7).

2.2 In these submissions the AEC has consistently recommended an amendment of the CEA to provide that Norfolk Islanders may enrol and vote only for the Division of Canberra. It is noted that the unanimous view of the previous JSCEM was in support of the AEC recommendation (see recommendation 69 on page 145 of the Report on the 1993 Federal Election). The AEC has also recommended that the views of the Department of Sport, Territories and Local Government be obtained on any proposal to change the enrolment and voting entitlements of Norfolk Islanders.

2.3 In addition to being asked to consider the electoral base of Norfolk Islanders, the JSCEM has now been asked to consider increasing the notional population of the A.C.T. in order to ensure it retains three seats in the House of Representatives at the next redistribution, by adding in the population of Norfolk Island.

2.4 In submission No 15 of 11 July 1996 Mr Jim Coates recommended to this JSCEM that all Norfolk Islanders be counted for the purposes of calculating the representation entitlement of the A.C.T. In submission No 47 of 1 July 1996 Mr Bob McMullan MP made the same recommendation to the JSCEM. In submission No 90 of 20 September 1996 the AEC responded to the written submissions of Mr Coates and Mr McMullan at pages 13 and 28. On 25 October 1996 Mr McMullan provided oral evidence to the JSCEM in support of his recommendation.

2.5 The two issues raised before this JSCEM in relation to Norfolk Island, the electoral base, and A.C.T. representation entitlements, should be considered and resolved in tandem in order to avoid anomalous outcomes.

2.6 In relation to arguments put forward by Mr McMullan and Mr Coates, in its November 1985 Report entitled "Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament", the Joint Select Committee on Electoral Reform recommended the adoption of fixed formulae for the representation of the Territories in the federal Parliament.

2.7 Underlying the perceived need for fixed formulae was the proposition that the representation of the Territories should not be maintained in an *ad hoc* way in response to short term political exigencies. The AEC believes that this principle should continue to be endorsed by the JSCEM.

2.8 Accordingly, if it is accepted that Norfolk Islanders should be regarded for representation entitlement purposes as people of the ACT as recommended by Mr McMullan and Mr Coates, and if it is accepted that Norfolk Islanders should vote only for the Division of Canberra as recommended by the AEC, then the AEC suggests that the JSCEM take the opportunity to emphasise that its recommendations in relation to Norfolk Island are based on the electoral policy grounds submitted by the AEC; are not motivated by a desire to manipulate the representation of the ACT in the short term, and do not provide a precedent for any such manipulation in the future.

2.9 The AEC has obtained the following advice from the Attorney-General's Department:

Section 122 of the Commonwealth Constitution empowers the Commonwealth Parliament to make laws for the government of its Territories, and to allow the representation of any such Territory in either House of the Commonwealth Parliament to the extent and on the terms which it thinks fit. It is the view of this Department that section 122 authorises the Commonwealth Parliament to include the people of one or more external Territories (including Norfolk Island) in a mainland Territory electorate (including the ACT). The CEA currently does so in relation to the external Territories of Cocos (Keeling) Islands and Christmas Island by including them in the Northern Territory for electoral purposes. The CEA also includes the Jervis Bay Territory and its people in the ACT. Similar provision could be made including the external Territory of Norfolk Island in one of the AEC electoral Divisions.

By virtue of subsection 48(2) of the CEA, the number of members of the House of Representatives to be chosen in the several States at a general election shall be determined in the following manner:

(a) a quota is ascertained by dividing the number of people of the several States by twice the number of the senators for the States;

(b) the number of members to be chosen in each State is determined by dividing the number of people of the State by the quota and, if on such division there is a remainder greater than one-half of the quota, one more member is chosen in the State.

By virtue of subsections 48(2A), (2B) and (2C) of the CEA, the people of the Territories of Cocos (Keeling) Islands and Christmas Island are aggregated with the people of the Northern Territory and the aggregate number is divided by the quota ascertained under subsection 48(2) to determine the number of members to which the Northern Territory (including the Territories of Cocos (Keeling) Islands and Christmas Island) is entitled.

The CEA could ... be validly amended so as to include corresponding provisions aggregating the people of the Territory of Norfolk Island with the people of the ACT and dividing the aggregated number by the subsection 48(2) quota so as to determine the number of members to which the ACT (including the Territory of Norfolk Island) is entitled.

2.10 Accordingly, the AEC has no objections to Mr McMullan's proposal to include the population of Norfolk Island in the calculations for ACT representation entitlements, and suggests that the JSCEM consider this proposal within the context of the AEC recommendation to include all Norfolk Island voters in the Division of Canberra.

2.11 Note that for the purposes of calculating representation entitlements, the Australian Bureau of Statistics provides the AEC with the most recent residential population statistics, which are estimates based on the most recent census, including data obtained from other government data sources, such as natural net population increase and internal and external migration.

2.12 The Norfolk Island Government Gazette No 52 of 10 October 1996 reported that the **total population** of Norfolk Island is currently **2,181** persons, of which 1,282 are residents, 188 are General Entry Permit Holders, 293 are Temporary Entry Permit Holders, 9 are "others", and 409 are visitors. Of the total 1,772 "Ordinarily Resident Population" from outside Norfolk Island, **1,393** or 78.6% are **Australian citizens** (these figures have been provided by the Office of the Administrator for Norfolk Island in draft form prior to the imminent publication of the 1996 Norfolk Island Census Report, and are now provided to the JSCEM with the permission of Mr Michael Mathews, Statistician for the Census).

3 Northern Territory Subdivisions and Provisional Voting

3.1 In submission No 30 of 29 July 1996 at pages S158-S161, the AEC advised the JSCEM that, unlike for other Divisions in Australia, some provisional votes in the Division of the Northern Territory (and Kalgoorlie) may not pass the preliminary scrutiny because of the existence of subdivisions. The AEC noted that the matter was then before the Court of Disputed Returns and suggested the JSCEM await the outcome of the petition before examining the issue further.

3.2 On 10 October 1996 a Full Bench of the High Court handed down its decision on the Question Reserved in the Snowdon petition. The result is that the petitioner's allegations were found to be without substance and Mr Snowdon was ordered to pay the costs of the Question Reserved to the first respondent, Mr Dondas, and to the second respondent, the AEC.

3.3 In submission No 96 of 23 October 1996 the AEC provided a full report to the JSCEM on the Snowdon petition and the decision of the Court, and recommended that the JSCEM now examine the options for reform provided by the AEC in its original submission No 30.

3.4 In submission No 94 of 18 October 1996 Mr Daryl Melham MP proposed an amendment to the CEA to provide that the subdivisions in the Division of the Northern Territory (and Kalgoorlie) do not apply at a federal election (presumably for the purposes of the preliminary scrutiny of provisional votes). This is essentially the same as one of the two options for reform suggested to the JSCEM by the AEC in its original submission No 30.

3.5 The AEC has obtained legal advice from the Attorney-General's Department on Mr Melham's proposal to the following effect:

Section 31 of the Commonwealth Constitution provides that State laws relating to elections for the more numerous House of the Parliament of the State are applicable to elections in the State of members of the House of Representatives until the Commonwealth Parliament 'otherwise provides'. Paragraph 51(xxxvi) empowers the Commonwealth Parliament to make laws with respect to matters in respect of which the Constitution makes provision until the Commonwealth Parliament otherwise provides. Section 122 of the Constitution empowers the Commonwealth Parliament to allow the representation of the Northern Territory in either House of the Commonwealth Parliament to the extent and on the terms which it thinks fit.

The High Court recently confirmed the power of the Commonwealth Parliament 'to determine, not only the representation of the Northern Territory in the Parliament, but also the terms of representation including matters germane to the franchise, enrolment and the adoption of District boundaries for the purposes of enrolment on the Roll for the Division of the Northern Territory' (Snowdon v Dondas, 10 October 1996, unreported, at p 12). That case confirmed the correctness of excluding provisional votes from scrutiny in the election for the Division of the Northern Territory held earlier this year in the circumstances with which Mr Melham's submission is concerned. The 'practical' discrimination applicable to electors of the Division of Kalgoorlie (as well as the Division of the Northern Territory) was made clear to the Court in that case, but the Court gave no indication that the provisions of the CEA in that respect were open to constitutional challenge.

Consequently, ... there would be no prospect of a successful legal challenge being made to an amendment of the CEA along the lines suggested by Mr Melham where that amendment was designed to eradicate the practical discrimination that currently exists in relation to the electors of the Divisions of the Northern Territory and Kalgoorlie. Legislation to that end would ... be clearly authorised by paragraph 51(xxxvi) and section 122 of the Constitution.

3.6 Accordingly, the AEC supports Mr Melham's proposal to amend the CEA to specify that federal subdivisions in the Divisions of the Northern Territory and Kalgoorlie do not apply for the purposes of voting at federal elections.

4 Questions Arising from JSCEM Hearings of 25 October

4.1 Provisional Voting in Western Australia

On page EM 317 of the transcript Mr Nairn asked for statistics on provisional voting for Western Australia.

Table 1: Provisional Votes - Western Australian Divisions

| WA Divisions | Issued | Accepted | Rejected |
|---------------------|---------------|-----------------|-----------------|
| Brand | 1716 | 1243 | 473 |
| Canning | 1272 | 916 | 356 |
| Cowan | 1178 | 729 | 449 |
| Curtin | 1405 | 979 | 426 |
| Forrest | 1425 | 959 | 466 |
| Fremantle | 1478 | 984 | 494 |
| Kalgoorlie | 2400 | 1524 | 876 |
| Moore | 1225 | 788 | 437 |
| O'Connor | 1352 | 937 | 415 |
| Pearce | 1014 | 630 | 384 |
| Perth | 1494 | 721 | 773 |
| Stirling | 1390 | 854 | 536 |
| Swan | 1536 | 1024 | 512 |
| Tangney | 1004 | 648 | 356 |
| TOTAL | 19889 | 12936 | 6953 |

4.2 Queuing at Belmont State School

On page EM 319 Mr McDougall asked for information on queuing at the Belmont State School in Brisbane.

4.2.1 The following delays of more than 10 minutes at polling booths have been reported by the Divisional Returning Officer for Griffith.

Table 2: Polling Booth Queues in Division of Griffith

| | |
|--------------|--------------------------------------|
| Belmont | 18 minutes between 8.30 and 9.00 am |
| | 13 minutes between 5.00 and 5.30 pm |
| Bulimba | 12 minutes between 8.30 and 9.00 am |
| Camp Hill | 12 minutes between 9.00 and 9.30 am |
| Cannon Hill | 11 minutes between 8.00 and 8.30 am |
| Carindale | 15 minutes between 8.00 and 8.30 am |
| Holland Park | 23 minutes between 8.00 and 8.30 am |
| Mansfield | 13 minutes between 8.00 and 11.00 am |

4.2.2 The Australian Electoral Officer for Queensland has reported that the two delays at 8.30 am and at 5 pm at the Belmont State School were not excessive, and were not due to bad planning. In general voter flow throughout the day was smooth and trouble-free. It is simply the case that at particular

times of the day, for whatever reasons, a lot of electors may turn up at the one time to vote and there will be a queue until they are attended to. The Belmont State School polling booth is the largest in the Division and is still growing. The Divisional Returning Officer is considering the use of additional sites near by in order to cope with the expected increase in demand.

4.3 Postal Votes Issued and Returned

On page EM 322 of the transcript Mr McDougall queried the statistics provided in Table 2 of AEC submission No 99, where the ACT is recorded as receiving more postal votes than were issued.

4.3.1 Postal votes may be issued by any Division or overseas post. This means that postal votes are issued by a Division for the same Division and any other Division. Postal votes are returned by electors to their enrolled Division or an overseas post which is not necessarily the Division which issued the postal vote.

4.3.2 At the 1996 federal election a total of 5,706 postal votes were issued by the three ACT Divisions including 4,367 for the Canberra, Fraser and Namadgi Divisions and 1,339 for Divisions outside the ACT. Similarly other Divisions issued postal votes on behalf of the three ACT Divisions. This resulted in the number of postal votes received in the ACT being greater than the number of postal vote applications issued by the same Divisions.

4.3.3 Following a detailed analysis of the statistics in Table 2 of Submission No 99 it appears that postal votes issued by overseas posts were omitted. The amended Table 3 below provides the correct statistics.

Table 3: Postal votes issued by and returned to the AEC

| State/Terr | Number issued for State/Terr | Number received by State/Territory |
|--------------|------------------------------|------------------------------------|
| NSW | 120360 | 111757 |
| VIC | 110754 | 103313 |
| QLD | 91167 | 84819 |
| SA | 34134 | 31616 |
| WA | 31986 | 28410 |
| TAS | 15612 | 14517 |
| NT | 3850 | 2991 |
| ACT | 6270 | 5841 |
| TOTAL | 414133 | 383264 |

4.4 Pre-Poll and Postal Votes 1984-1995

On page EM 323 of the transcript Mr McDougall asked if the statistics provided in Table 15 of the AEC submission No 84 could be split into pre-poll and postal votes.

4.4.1 In paragraph 2.23.1 of the AEC submission No 84 it is explained that Table 15 does not provide statistics that distinguish between pre-poll and postal votes prior to the 1993 federal election, because up until that time there was no operational distinction between pre-polls (or “oral” postal votes as they were known then) and postal votes.

4.4.2 However, in Table 4 below, separate statistics for pre-poll and postal votes for the 1993 and 1996 federal elections are provided.

Table 4: Postal and Pre-Poll Votes 1993 - 1996

| | 1993 | 1993 | 1993 | 1996 | 1996 | 1996 |
|-------------------------|----------------|-----------------|----------------|----------------|-----------------|----------------|
| | Postal | Pre-poll | Total | Postal | Pre-poll | Total |
| NSW | 95,686 | 117,297 | 212,983 | 105,342 | 150,758 | 256,100 |
| VIC | 85,251 | 85,428 | 170,679 | 96,458 | 96,204 | 192,662 |
| QLD | 66,138 | 63,561 | 129,699 | 80,321 | 76,944 | 157,265 |
| SA | 26,873 | 24,502 | 51,375 | 29,582 | 27,019 | 56,601 |
| WA | 19,374 | 26,135 | 45,529 | 26,218 | 39,570 | 65,788 |
| TAS | 9,357 | 8,232 | 17,589 | 13,577 | 12,662 | 26,239 |
| NT | 2,166 | 5,075 | 7,241 | 2,643 | 6,376 | 9,019 |
| ACT | 5,714 | 27,071 | 32,785 | 5,463 | 25,308 | 30,771 |
| Total | 310,559 | 357,301 | 667,880 | 359,604 | 434,841 | 794,445 |
| % of total votes | 2.84 | 3.26 | 6.1 | 3.18 | 3.85 | 7.03 |

4.5 Multiple Marks and Polling Official Error

On page EM 344 of the transcript Mr McDougall asked what percentage of the 16,000 multiple marks on the certified lists of voters from polling booths was attributable to polling official error.

4.5.1 As at 6 November 1996, 49% of the total number of multiple marks have been attributed to polling official error. Of the remaining 51% of multiple marks: 0.5% are multiple marks for voters whose details have been referred to the Australian Federal Police; 2% are multiple marks which resulted in returned undelivered notices; 6% are multiple marks for which voters have admitted multiple voting; 7% are multiple marks for voters whose cases are still being investigated at the Divisional level; and 35.5% are for voters where investigations indicate they have voted only once.

4.5.2 An explanation of the operational procedures and other issues associated with investigating multiple marks is contained in paragraphs 2.17 to 2.20 of the AEC submission No 84.

4.6 AEC Staff Statistics

On page EM 351 of the transcript Mr Ferguson asked for AEC staffing statistics from 1992.

4.6.1 Until the beginning of the 1995/96 financial year the AEC maintained staffing statistics on a month by month basis, which allowed the calculation of the Average Staffing Level (ASL) for each financial year. ASL data had been required by the Department of Finance, but the requirement ceased from 1 July 1995 with the introduction of the revised running costs arrangements.

4.6.2 The AEC Human Resource Management System, which has been in use since September 1995 and is now used to report staffing, does not maintain ASL. It can, however, provide a snapshot of staffing levels at a point in time. This data is also available from the staffing numbers maintained in previous years.

4.6.3 Table 4 therefore, is of actual staffing levels at 30 June for each financial year from 1991/92 to 1995/96. These numbers are not ASL numbers and therefore differ from the numbers reported in Annual Reports for 1991/92 to 1994/95.

Table 5: AEC Staffing Levels since 1992

| 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) |

4.6.4 The reduction in staffing in 1993/94 followed the adoption at the commencement of that year of a triennial approach to funding as a way of allowing the conservation of staffing resources in non-election years and of increasing resources for election years. It also followed a decision that Divisional offices could no longer be protected from the effects of the Efficiency Dividend.

4.6.5 The increase in staffing at Central Office over the past five years is due to the following factors:

- the increased reliance on IT systems to deliver election results more quickly and reliably;

- increased staff to prepare accrual financial statements and implement and maintain computerised financial and personnel systems;
- the transfer of some industrial elections work and staff to Central Office from the Victorian Head Office;
- an increased involvement in international election activities, reflecting a new function (section 7(1)(fa) of the CEA) conferred on the AEC by the Parliament following a unanimous recommendation made by the Joint Standing Committee on Foreign Affairs, Defence and Trade in 1991;
- an increased focus on electoral research work (section 7(1)(e) of the CEA).

4.7 Pre-Poll and Mobile Polling in Remote Divisions

On page EM 353 of the transcript Mr Ferguson asked for information on the prevalence of mobile polling in remote divisions and of pre-poll voting centres in the Division of Kalgoorlie.

4.7.1 Table 6 lists the number of locations in remote Divisions where remote mobile polling and pre-poll voting was conducted for the 1996 federal election.

Table 6: Mobile Polling and Pre-Poll Voting in Remote Divisions

| State/Territory | Remote Division | Remote Mobile Polling Places | Pre-poll Voting Centres |
|-----------------|--------------------|------------------------------|-------------------------|
| NSW | Parkes | 38 | 4 |
| VIC | Mallee | 6 | 3 |
| QLD | Kennedy | 0 | 5 |
| | Leichhardt | 16 | 3 |
| | Maranoa | 0 | 3 |
| WA | Kalgoorlie | 53 | 23 |
| SA | Grey | 19 | 9 |
| | Wakefield | 2 | 5 |
| NT | Northern Territory | 192 | 13 |

4.7.2 Table 7 lists the number of locations where pre-poll voting centres operated for the 1996 federal election.

Table 7: Pre-Poll Voting Centres by State/Territory

| No. of Pre-Poll Voting | NSW | VIC | QLD | WA | SA | TAS | ACT | NT |
|------------------------|-----|-----|-----|----|----|-----|-----|----|
| | | | | | | | | |

| Centres per Division | | | | | | | | |
|-----------------------------|----|----|----|----|----|---|---|----|
| 1 PPVC | 21 | 12 | 7 | 2 | 2 | 4 | 2 | |
| 2 PPVCs | 13 | 2 | 7 | 1 | | | | |
| 3 PPVCs | 5 | 2* | 3* | 1 | | | 1 | |
| 4 PPVCs | 5* | 2 | 1 | 1 | 1 | | | |
| 5 PPVCs | | | 2* | | 1* | | | |
| 6 PPVCs | 1 | 1 | | | | | | |
| 7 PPVCs | | | | 1 | | | | |
| 8 PPVCs | | | | | | | | |
| 9 PPVCs | | | 1 | | 1* | | | |
| 10 PPVCs | 1 | | | | | | | |
| 13 PPVCs | | | | | | | | 1* |
| 23 PPVCs | | | | 1* | | | | |

* includes pre-poll voting centres in remote Divisions

4.7.3 In the Division of Kalgoorlie, pre-poll voting centres operated at the following 23 locations: Broome, Carnarvon (2), Coolgardie, Coral Bay, Cue, Denham, Derby, Esperance (2), Exmouth, Kambalda West, Kununurra, Laverton, Leinster, Leonora, Meekatharra, Mt Keith, Mt Magnet, Norseman, Port Hedland, Southern Cross, Wiluna.

4.7.4 In the Division of Kalgoorlie, mobile polling teams visited the following 53 locations: Bayulu Community, Beagle Bay, Bililuna, Blackstone Community, Bow River, Burringurrah Community, Coonana Community, Cosmo Newberry Community, Djugerari, Doon Doon, Gibb River Stn, Glen Hill, Imintji, Jamieson Community, Jimbalakudunj, Kalumburu Community, Kanpa Community, Kiwirrkurra Community, Kupartiyi, Kurrawang Community, Lombadina, Looma Gorge, Mijijimaya Community, Mt Barnett, Mt Elizabeth, Mt House, Mt Margaret Community, Mulan, Mulga Queen Community, Muludja, Ngalingkadji, One Arm Point, Oombulgurri, Pandanus Park, Pantijan, Parnngurr Community, Patjarr, Pinnacles, Punmu Community, Ringers Soak, Taralintji, Tjirrkarli Community, Tjukurla Community, Tjun Tjun Tjara Community, Wannan Community, Warakurna Community, Warburton Community, Warralong Community, Wingellina Community, Woodstock - Abydos, Yagga Yagga, Yakanarra, Yiyili.