

Australian Electoral Commission

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

THE NAMING OF ELECTORAL DIVISIONS

Canberra

8 January 1997

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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 national 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 On 5 December 1996 the JSCEM Secretariat wrote to the Electoral Commissioner with the following request:

...the Committee has asked for advice from the AEC, on whether the guidelines on the naming of electoral divisions will require that, if one of the ACT's three divisions is abolished following the next determination of State and Territory representation entitlements, "Canberra" will be the division so abolished. This request follows discussions between the Chairman and Mr Malcolm Mackerras.

1.3 This supplementary submission provides an historical perspective on the guidelines/conventions for the naming of Divisions, and suggests one possible outcome of the 1997 ACT Redistribution. However, the AEC emphasises that the naming of Divisions is not a statutory responsibility of the AEC, but comes entirely within the purview of the relevant Redistribution Committees and augmented Electoral Commissions. When the 1997 ACT Redistribution Committee and augmented Electoral Commission are convened, comments and suggestions will be invited from the public as to appropriate names for the ACT Divisions.

2. JSCEM Submissions on Division of Canberra

2.1 On 21 December 1993 the AEC made a submission to the previous JSCEM suggesting that eligible Norfolk Islanders be required to enrol only for the Division of Canberra (Attachment A). Recommendation 69 of the Report of the 1993 JSCEM was that section 95AA of the Electoral Act be amended so that Norfolk Islanders who choose to enrol may only enrol in the Division of Canberra (Attachment B). The Government Response to that recommendation was “deferred for further consideration”, and no further progress was made before the advent of the 1996 federal election.

2.2 On 1 July 1996 Mr Bob McMullan MP wrote to the JSCEM, enclosing correspondence from Mr Jim Coates, suggesting that the population of Norfolk Island be included in the population of the ACT for the purposes of the determination of representation entitlements for the ACT, in order to prevent the loss of one of the three current ACT federal Divisions at a subsequent redistribution (submission No 47 - Attachment C). On 11 July 1996 Mr Jim Coates wrote to the JSCEM suggesting that all people on Norfolk Island be included in the ACT for representation purposes (submission No 15 - Attachment D).

2.3 On 29 July 1996 the AEC recommended to the JSCEM that section 95AA of the CEA be amended so that Norfolk Islanders may only enrol for the Division of Canberra, and that the JSCEM seek the views of the Department of Sport, Territories and Local Government on this recommendation (submission No 30 - Attachment E).

2.4 On 16 September 1996 the AEC responded to a request from Senator Minchin for the AEC to present its views once again on incorporating Norfolk Island into the Division of Canberra for federal electoral purposes. After restating its views on enrolling Norfolk Islanders only for the Division of Canberra, the AEC made the following further observations on why the Division of Canberra is considered to be the appropriate ACT Division for enrolment purposes (submission No 84 - Attachment F):

With the recent redistribution of the ACT into three Divisions, there is of course no logical reason why the new Division of Namadgi should not be selected as the one Territory Division for Norfolk Island, except for the fact that there is some historical investment in the name of the Division of Canberra. That is, it is likely that the Division of Canberra would stay as the name of one of the remaining Divisions. This means that if the Division of Canberra were to be named in the CEA as the Division for Norfolk Island enrolment, it is unlikely that it would require amendment to change its name following ACT redistributions in the future.

2.5 On 20 September 1996 the AEC responded to the submissions of Mr McMullan and Mr Coates, as mentioned in paragraph 2.2 above, indicating

that not all Norfolk Islanders are Australian citizens (submission No 90 - Attachment G).

2.6 On 14 November 1996 the AEC responded to further inquiries by the JSCEM on the McMullan/Coates proposal to include the population of Norfolk Island in the ACT for representation purposes. The AEC advised that the Attorney-General's Department could see no legal obstacles to the proposal, and suggested that the McMullan/Coates proposal be considered by the JSCEM in conjunction with the AEC recommendation that eligible Norfolk Islanders only enrol for the Division of Canberra (submission No 108 - Attachment H).

3. Legislative Framework for Redistributions

3.1 Part IV of the Commonwealth Electoral Act 1918 (CEA) provides for the conduct of federal redistributions. The process is summarised at Attachment I.

3.2 The Redistribution Committees and augmented Electoral Commissions established under the CEA for the purposes of federal redistributions are separate legal entities from the AEC, although parts of their membership may be in common.

3.3 Section 73 of the CEA provides for an augmented Electoral Commission to make a final determination of the boundaries and names of the Divisions in a State or Territory, by notice published in the Gazette. Whilst the final decision on the names of Divisions is taken by the augmented Electoral Commission, the extensive public consultation that is part of the process leading up to this final decision generally ensures that a wide range of views from a variety of sources are considered in deciding on appropriate names.

3.4 Under section 77 of the CEA, and subject to certain caveats, any decision relating to redistributions under Part IV of the CEA is final and conclusive. Prior to 1983 Parliament was required to approve recommended redistribution decisions but this is no longer the case. Section 78 of the CEA makes it an offence to improperly seek to influence the members of redistribution bodies.

4. 1969 Fox Committee Guidelines

4.1 In 1969, prior to the extensive legislative revision of the CEA in 1983-1984, a House of Representatives Select Committee published a Report entitled "The Naming of Electoral Divisions", known as the Fox Report after the Chairman of the Committee (Attachment J). The terms of reference of the Committee were to consider and report upon:

- (a) the criteria which should be adopted in naming Electoral Divisions; and
- (b) whether the Distribution Commissioners should attach names to Divisions at the time of publishing their proposals or whether some other person or persons should attach the names and, if some other person or persons, when.

4.2 The Committee noted in its Report that from 1903 to 1969 Parliament had by resolution altered names proposed by Distribution Commissioners. That is, the allotment of names to Divisions by the Commissioners had always been on a provisional basis and as a matter of convenience, and it was recognised by Commissioners that the naming of Divisions was not within their powers and functions.

4.3 The Committee recommended the following criteria be adopted in naming Electoral Divisions:

Naming after persons

- (a) That, in the main, Divisions be named after former citizens who have rendered outstanding service to their country provided that the Division is within the State with which the person was mainly associated.
- (b) That, when new Divisions are created, the names of former Prime Ministers be considered provided that the Division is within the State from which the former Prime Minister was a representative.
- (c) That, while the naming of Divisions after early explorers is commendable, the Division should be in the State with which the explorer was mainly associated in his explorations.
- (d) That a name should not be used until 10 years after a person's death.

Geographical names

- (e) That locality or place names should generally be avoided but the Committee is aware that in certain areas the use of a geographical feature may be appropriate (e.g. Eden-Monaro, Riverina).

Aboriginal names

(f) That a proportion of Aboriginal names should be used and, as far as possible, the names of those existing Divisions with Aboriginal names should be retained.

Other criteria

(g) That the names of Commonwealth Divisions should not duplicate existing State Divisions and discussions between the Commonwealth and State Electoral Officers should take place on this question.

(h) That qualifying names should not be used (e.g. North Sydney, Melbourne Ports, Port Adelaide).

(i) That any similarity in the pronunciation of names should be avoided (e.g. Lawson-Dawson).

(j) That the names of Division which have been abolished at a redistribution should not be re-allocated at the same redistribution to new areas quite remote from the old Divisions.

(k) That names of Divisions should not be changed or transferred to new areas without very strong reasons.

(l) That, when two or more Divisions are partially combined at a redistribution, as far as possible the name of the new Division should be that of the old Division which has the greatest number of electors within the new boundaries.

4.4 It is important to note that these 1969 guidelines, which were no more than guidelines, pre-dated the extensive legislative amendments to the CEA that occurred in 1984/84, and which included a complete recasting of the provisions relating to redistributions, including the removal of parliamentary approval of redistribution decisions.

4.5 The 1969 Fox Committee guidelines were never formally responded to by the Government of the day.

5. 1986 JSCER Guidelines

5.1 The second parliamentary report to consider the naming of Divisions was Report No 2 of the Joint Select Committee on Electoral Reform (JSCER), entitled “The operation during the 1984 general election of the 1983/84 amendments to Commonwealth Electoral Legislation”, which said the following at pages 16-18 (Attachment K):

The AEC reported to the Committee that the uncertain status of the Report from the House of Representatives Select Committee on the Naming of Electoral Divisions (the Fox Report) of 1969 caused concern. Whilst it was apparent that certain of the criteria endorsed in the Report had not been followed in subsequent redistributions, for example criterion (d) that a name should not be used until 10 years after a person’s death and criterion (e) that locality or place names should generally be avoided, it remained the only source of guidance that the Redistribution Committees, and subsequently the augmented Electoral Commissions, had available to them.

5.2 The 1986 JSCER made a number of recommended amendments to the 1969 Fox Committee Guidelines as follows (amendments in bold):

In the naming of Electoral Divisions the following criteria should be observed.

Naming after persons

(a) That, in the main, Divisions be named after former citizens who have rendered outstanding service to their country **and that every effort be made to retain the names of original Federation Divisions.**

(b) That, when new Divisions are created, the names of former Prime Ministers be considered. **It is noted in particular that the former Australian Prime Minister, John Christian Watson, has not continued to be honoured by having an electoral Division named after him. The Committee did not accept the Fox Committee’s requirement that the Division not be named after a person until that person had been 10 years dead.**

Geographical names

(c) That locality or place names should generally be avoided but the Committee is aware that in certain areas the use of geographical features may be appropriate (eg Eden-Monaro, Riverina).

Aboriginal names

(d) That Aboriginal names should be used where appropriate, and, as far as possible, the names of those existing Divisions with Aboriginal names should be retained.

Other criteria

(e) That the names of Commonwealth Divisions should not duplicate existing State Divisions and discussions between the Commonwealth and State Electoral Officers should take place on this question.

(f) That qualifying names (eg North Sydney, Melbourne Ports, Port Adelaide) should be used where appropriate. The Fox Committee was opposed to the use of qualified naming.

(g) That names of Divisions should not be changed or transferred to new areas without very strong reasons.

(h) That 2 Fox Committee guidelines, ie avoiding similarity in pronunciation (Lawson and Dawson) and that the names of Divisions should not be reallocated, be deleted.

(i) That, when two or more Divisions are partially combined at a redistribution, as far as possible the name of the new Division should be that of the old Division which has the greatest number of electors within the new boundaries.

5.2 In the Government Response to the 1986 JSCER Report, the Government did not express a view on the above recommendations.

6. 1995 JSCEM Recommendations

6.1 The third parliamentary report to consider the naming of Divisions was the 1995 Report of the Joint Standing Committee on Electoral Matters, entitled "Report on the Effectiveness and Appropriateness of the Redistribution Provisions of Parts III and IV of the Commonwealth Electoral Act 1918." The relevant section of the Report is at Attachment L.

6.2 After reviewing the two previous committee reports, reproducing the 1986 JSCEM guidelines (see paragraph 5.2 above), and examining the 1994 Queensland redistribution, the Report made the following comments and recommendations at pages 87-89 (emphasis added):

8.11 The AEC advised that **the use of guidelines, rather than binding legal provisions, allows enough flexibility for unanticipated circumstances while providing redistribution bodies with ample assistance in performing their task.** However given the apparent lack of awareness of the naming conventions, more effort could be made to publicise the conventions when suggestions and comments are called for.

Recommendation 23: that at future redistributions, the AEC or the Redistribution Committee publicise the naming conventions when public suggestions and comments are called for.

8.12 Redistribution Committees and augmented Electoral Commissions are already free to disregard convention (i) where the convention would be inappropriate (the 1994 redistribution of the ACT being an example). Nonetheless, the Committee agrees ... that ... where appropriate socio-demographic factors should override the purely numerical factors presently recognised in convention (i).

Recommendation 24: that the naming convention which applies when two or more ... divisions are combined (*that as far as possible the name of the new division should be that of the old division which has the greatest number of electors within the new boundaries*) be amended, to provide that where the socio-demographic nature of the division in question has significantly changed, this should override the numerical formula.

6.3 The Government has not yet responded to these recommendations. The AEC supports recommendation 23, except that the publicising of the naming conventions should be done by the Redistribution Committee and the augmented Electoral Commission rather than by the AEC. Recommendation 24 is also supported by the AEC.

7. Amended Naming Conventions

7.1 Assuming that the 1995 JSCEM recommendations become operative for the next round of redistributions in 1997, including the 1997 ACT Redistribution, then the Naming Conventions for Divisions might read along the lines of the following (amendments in bold):

Redistribution Committees and augmented Electoral Commissions must publicise the Naming Conventions for Divisions when public suggestions and comments are called for. In the naming of Electoral Divisions the following criteria should be observed.

Naming after persons

(a) That, in the main, Divisions be named after former citizens who have rendered outstanding service to their country and that every effort be made to retain the names of original Federation Divisions.

(b) That, when new Divisions are created, the names of former Prime Ministers be considered....**(deletion)**

Geographical names

(c) That locality or place names should generally be avoided but ... **(deletion)** ... in certain areas the use of geographical features may be appropriate (eg Eden-Monaro, Riverina).

Aboriginal names

(d) That Aboriginal names should be used where appropriate, and, as far as possible, the names of those existing Divisions with Aboriginal names should be retained.

Other criteria

(e) That the names of Commonwealth Divisions should not duplicate existing State Divisions....**(deletion)**

(f) That qualifying names (eg North Sydney, Melbourne Ports, Port Adelaide) may be used where appropriate....**(deletion)**

(g) That names of Divisions should not be changed or transferred to new areas without very strong reasons.

(h) ...**(deletion)**

(i) That, when two or more Divisions are partially combined at a redistribution, as far as possible the name of the new Division should be that of the old Division which has the greatest number of electors within the new boundaries. **Where the socio-demographic nature of the division in question has significantly changed, this should override the numerical formula.**

8. 1997 ACT Redistribution

8.1 Assuming the amended Naming Conventions for Divisions were to be applied for the 1997 ACT Redistribution, where it is expected that one of the three ACT Divisions will be abolished, then the name of the Division of Canberra might well be retained, as previously suggested by the AEC (see paragraph 2.4 above).

8.2 Although the AEC is unable to predict the outcome of the deliberations of the separately constituted and yet to be convened ACT Redistribution Committee and augmented Electoral Commission, it is possible that the name of the Division of Namadgi might be discontinued in favour of the name of the Division of Canberra for the following reasons:

- Redistribution Committees and augmented Electoral Commissions are free to disregard any convention where the convention would be inappropriate. It might be considered that the socio-political significance of the name of the Division of Canberra, being the seat of the nation's capital, is enough to override any application of the numerical criterion in convention (i).
- Convention (d) is that Aboriginal names should be retained where appropriate. The name "Canberra" is Aboriginal as is the name "Namadgi", so that this convention is effectively self-cancelling.
- Although the Naming Conventions do not include any reference to the "last in, first out" principle, common sense might suggest that the oldest Divisional name, Canberra, should be retained in place of the newest Divisional name, Namadgi, as it is possible that in due course a third ACT Division will have to be recreated and the name Namadgi would be re-allocated.

8.3 On the other hand, the 1997 ACT Redistribution might abolish the name of the Division of Canberra and retain the names of the Divisions of Namadgi and Fraser, as has been suggested by Mr Mackerras. Such a result would be just as open to the ACT Redistribution Committee and the augmented Electoral Commission to decide, as would the alternative result outlined above.

9. The Mackerras View

9.1 On 23 November 1996 Mr Malcolm Mackerras, Senior Lecturer in Politics, University College, University of NSW, at the Australian Defence Force Academy in Canberra, published an article in the Canberra Times newspaper (Attachment M), in which he challenged any assumption that the Division of Namadgi would be absorbed into the two "older" Divisions of Canberra and Fraser at a forthcoming ACT redistribution.

9.2 In Mr Mackerras's view, the two Divisions remaining after the next ACT redistribution will be called "Fraser" and "Namadgi" and the name "Canberra" will disappear in accordance with "certain guidelines for the naming of electoral divisions", in particular the following:

That, in the main, divisions be named after former citizens who have rendered outstanding service to their country and that every effort be made to retain the names of original federation divisions.

That, when two or more divisions are partially combined at a redistribution, as far as possible the name of the new division should be that of the old division which has the greatest number of electors within the new boundaries; and

That names of divisions should not be changed or transferred to new areas without very strong reasons.

9.2 On 2 December 1996 Mr Mackerras was interviewed on ABC radio 2CN and the transcript (Attachment N) is as follows in part:

I have in fact discussed it with Michael Cobb, and I should mention that there are now two possibilities. One is that we will save the third seat and that could conceivably ... be achieved if Bob McMullan's proposal were adopted. I think it is most unlikely that that will be adopted. I can't think of any reason why Liberal and National Party Members of that Committee would want to go out of their way to save a Labor seat - bearing in mind there are three seats, all Labor...

... since I don't think his proposal really has much chance, I thought there was no harm in just testing what people think. That is, do the people of the ACT: one, resent losing the third seat; two, if so, regardless of that, would they think the name Canberra should remain on the map or should it disappear?

My suggestion is that the guidelines, which are much easier to change than the Electoral Act, should be changed with the effect that the two seats would then be Canberra and Namadgi. If the guidelines are not changed I don't have much doubt that the two seats will be Fraser and Namadgi. In other words, the name Canberra would disappear if there was no change in the guidelines for naming electoral divisions.

... the changing of the guidelines are relatively simple. All the Electoral Matters Committee needs to do is to meet and issue two extra guidelines, and I have drafted them out - I'll just read them to you.

“That every effort be made to retain the names of divisions of Aboriginal origin...”... That would keep Namadgi.

And, “That every effort be made to retain the names of the following divisions: Adelaide, Brisbane, Canberra, Melbourne, Newcastle, Perth and Sydney.”

Now, all of those names, except Canberra, are already covered by existing guidelines which say that every effort should have been made to retain the names of original Federation divisions, but Canberra, of course, is not a Federation division, whereas the other names that I’ve read out are.

9.3 After taking two calls from listeners to the interview Mr Mackerras said:

I am getting a fairly clear cut opinion that people are quite happy to see the name Canberra disappear and then we keep the names Fraser and Namadgi...

9.4 After two more calls, Mr Mackerras said:

The point I’d make is simply that if you read the existing guidelines, it seems to me that they don’t leave a great deal of option to the Boundary Commission. The Boundary Commission would be more or less told that the seats should be Fraser and Namadgi.

9.5 After a few more calls, Mr Mackerras concluded as follows:

...we now have a reaction and the reaction is that the people wish to retain the name Fraser and I would say that will now clearly be the case. I do not intend to write off that the guidelines be changed, as I would have done had the reaction been different...

10. Conclusion

10.1 The 1995 JSCEM endorsed the AEC view that the guidelines on the naming of Divisions, rather than being binding legal provisions, provide Redistribution Committees and augmented Electoral Commissions with enough flexibility for unanticipated circumstances, while also providing ample assistance in performing their task.

10.2 The AEC indicated in an earlier submission that it is likely that the name of the Division of Canberra would be retained at the forthcoming redistribution because of the historical investment in that name. The AEC was not making any firm prediction as to any particular outcome of the ACT Redistribution, which is the responsibility entirely of the relevant Redistribution Committee and augmented Electoral Commission, but was merely expressing a view, as Mr Mackerras has done.

10.3 Essentially, the guidelines on the naming of Divisions would not prevent the outcome suggested by the AEC, or the outcome suggested by Mr Mackerras, because the guidelines are not legally binding.

10.4 The AEC is of the view that the 1995 JSCEM recommendations for amendments to the Naming Conventions for Divisions should be implemented as soon as possible, and that the 1997 ACT Redistribution Committee and augmented Electoral Commission be then left free to make their deliberations as to the fate of the name of the Division of Canberra on the basis of community comments and suggestions, including those of Mr Mackerras if he so wishes, and the interpretation of the naming conventions as appropriate.