

Australian Electoral Commission

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

VOTING OUTSIDE THE POLLING PLACE

Canberra

10 March 1997

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.

1.2 On 21 February 1997, the Chairman of the JSCEM asked the AEC for advice on the capacity of polling place officials to take ballot papers immediately outside the polling place to electors, and for advice on any similar provisions in State and Territory electoral legislation. The issue has arisen in the context of the recommendation of Mr Graham Smith, Divisional Returning Officer for Forde, that an "incapacitated vote" be introduced.

2 Response

2.1 The AEC supports the extension of assisted voting under section 234 of the *Commonwealth Electoral Act 1918* to allow the presiding officer of a polling booth a discretion to take ballot papers outside the perimeter of the polling place to certain voters who are unable to enter the polling booth due to illness, disability, or advanced pregnancy, and to supervise the casting of a vote in the presence of scrutineers. Such an amendment would go a considerable way towards alleviating the problems outlined by the AEC in submission No 30, page S193, in relation to wheelchair access to polling booths.

2.2 The AEC asked the State and Territory Electoral Commissions about the possibility of voting outside a polling place under their various Electoral Acts, and the following information has been provided.

2.3 Section 103(3) of the *Electoral Act 1992* (Queensland) provides:

(3) If an elector (including an elector who makes or must make a declaration vote) is unable to enter a polling booth because of illness, disability or advanced pregnancy, but is able to come to a place (the "voting place") close to the polling booth, then, subject to subsection (4) -

- (a) the issuing officer may perform the issuing officer's functions; and
- (b) the voter may vote:

at the polling place as if it were the polling booth.

(4) The issuing officer must -

- (a) before taking any action under subsection (3), inform any scrutineers present of the proposed action; and
- (b) allow only 1 scrutineer for each candidate to be present at the voting place; and

(c) ensure that, after the ballot paper is marked, it is -

- (i) folded to conceal the vote; and
- (ii) put into an envelope inside the polling booth in the presence of any scrutineers and place the folded ballot paper in a ballot box.

2.4 In contrast to the Queensland legislation, the AEC would prefer that the presiding officer of the polling place, rather than any issuing officer, takes the primary responsibility, and exercises the discretion as to whether to issue a vote outside the polling place. This is in accordance with the general scheme provided for in section 234 of the *Commonwealth Electoral Act 1918* in relation to “assistance to certain persons”, where the presiding officer takes the vote.

2.5 There might be some circumstances where a demand for such a vote would not be a justified diversion of polling place resources, and the presiding officer should have the discretion, and the authority, to refuse a request for a vote outside. The AEC is also of the view that the presence of scrutineers, or in their absence, another polling official, when the vote is cast, is essential to maintain integrity.

2.6 Section 129(3) of the *Electoral Act 1907* (Western Australia) provides as follows:

(3) Where an elector is at a place that is in close proximity to a polling place but is unable to enter the polling place because of physical disability, sections 118 to 126 shall apply, or may be applied, to the person at the firstmentioned place and, at that place -

(a) the elector -

- (i) may mark his vote on the ballot paper in the presence of the presiding officer, an assistant presiding officer or a poll clerk, and of such scrutineers as are present; and
- (ii) fold the ballot paper so as to conceal the names of the candidates, and hand the ballot paper to the electoral officer in whose presence it was marked; or

(b) the elector’s ballot paper may be marked and folded by an electoral officer in accordance with subsection (1).

(4) The electoral officer who is handed a ballot paper under subsection 3(a)(ii), or who marks and folds a ballot paper under subsection 3(b), shall return to the polling place and deposit the ballot paper in the ballot box.

2.7 The AEC is advised that in South Australia there is a Bill before Parliament that would provide for voting outside the polling booth. Section 80A of the *Electoral (Miscellaneous) Amendment Bill 1996* provides:

80A(1) If a voter satisfies the presiding officer that the voter is unable (because of illness, disability, advanced pregnancy or other condition) to

enter the polling booth to vote, the presiding officer may allow the voter to vote at or near the polling place outside of the polling booth.

(2) The presiding officer must, before issuing the voter with a ballot paper, inform any scrutineers present of the proposed action and invite 1 scrutineer for each candidate to be present at the place where the voting will occur.

(3) After the voter has marked his or her vote on the ballot paper, the presiding officer must, in the presence of the scrutineers, ensure -

(a) that the ballot paper is folded to conceal the vote and placed in an envelope that this then sealed; and

(b) that the envelope is opened inside the polling booth and the folded ballot paper is placed in the box.

2.8 Section 112(a) of the *Parliamentary Electorates and Elections Act 1912* of New South Wales provides as follows:

A person shall not, without lawful authority:

(a) remove a ballot paper from any polling booth, or, where the office of a returning officer is open to enable electors to vote before polling day, remove a ballot paper from that office...

2.9 The AEC is advised by the New South Wales Electoral Commission that “lawful authority” is applied to justify the taking of a ballot paper, in the presence of scrutineers, to an occupant of a vehicle who for various reasons may not be able to enter the polling booth.

2.10 It is noted that section 77(5) of the *Northern Territory Electoral Act 1995* makes it an offence to wilfully take a ballot paper out of a polling place. By contrast, section 339(1)(e) of the *Commonwealth Electoral Act 1918* only prohibits the “fraudulent” removal of ballot papers from the polling booth. However, the overall scheme of the Act makes it clear that ballot papers are not to be used outside the polling place.

2.11 The Australian Capital Territory Electoral Commission and the Victorian State Electoral Commission have indicated that they have no provisions for voting outside the polling place.

2.12 If the JSCEM is minded to recommend that ballot papers be allowed outside the polling place, it is suggested that the recommendation be cast in broad terms to allow consequential implications, such as the situation with respect to pre-poll voting, to be dealt with at the legislative drafting stage under the same general principle.