Australian Electoral Commission

SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

THE CONDUCT OF THE 1996 FEDERAL ELECTION

Canberra

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CONTENTS

Appendices

Abbreviations

AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFP	Australian Federal Police
ATSIC	Aboriginal and Torres Strait Islander Commission
CEA	Commonwealth Electoral Act 1918
CPI	Consumer Price Index
DPP	Director of Public Prosecutions
DRO	Divisional Returning Officer
ELMS	Election Management System
EST	Eastern Standard Time
JSCEM	Joint Standing Committee on Electoral Matters
RMANS	Roll Management System
RMPA	Referendum (Machinery Provisions) Act 1984

1. INTRODUCTION

1.1 Preamble

1.1.1 This major 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 reports on the overall conduct of the 1996 federal election, which from an administrative and operational viewpoint, was the most successful federal election conducted by the AEC since its formation in February 1984.

1.1.2 As happens after every federal election, the AEC again makes a number of recommendations for amendments to the Commonwealth Electoral Act 1918 (CEA) in order to further refine and improve the conduct of federal elections. Many of these recommendations also apply to the Referendum (Machinery Provisions) Act 1984 (RMPA). A summary of the AEC recommendations is in Chapter 15 of the submission.

1.1.3 When the election was announced, the Electoral and Referendum Amendment Bill 1995 (Appendix A), which would have provided, for example, for computerisation of the Senate scrutiny, was still before Parliament. The issues dealt with in that Bill have been canvassed in detail with the JSCEM in the past, and the many important proposed legislative amendments contained in that Bill will therefore not be revisited in this submission. The AEC believes that there would be significant benefits flowing from the enactment of the Bill by Parliament.

1.1.4 The AEC will soon provide a separate and detailed supplementary submission to the JSCEM on the election litigation involving Mr Albert Langer, and, in due course, a supplementary submission reporting on the outcomes of the four election petitions to the Court of Disputed Returns, and a supplementary submission on statistics relating to multiple voting. The AEC is also currently examining the operation of Schedule 3 of the CEA in relation to the preliminary scrutiny of declaration votes, to improve operational procedures. Finally, the AEC would welcome the opportunity to respond in further supplementary submissions to any other electoral matters of particular interest to the JSCEM.

1.1.5 A report on the 1996 federal election, for public information purposes, entitled "Behind the Scenes", will shortly be published and provided to the JSCEM. A separate report on election funding and disclosure matters will be provided to Parliament later this year as required under section 17 of the CEA.

1.2 Election Writs

1.2.1 After the announcement of the election on Saturday 27 January 1996, and the dissolution of Parliament on Monday 29 January 1996, the Governor-General and the State Governors issued the federal election writs, following a request from the Prime Minister for an election on 2 March 1996. The following dates applied:

Issue of Writs	Monday 29 January 1996
Close of Rolls	Monday 5 February 1996
Close of Nominations	Friday 9 February 1996
Polling Day	Saturday 2 March 1996

1.2.2 Following the election, the eight election writs for each of the States and Territories for the House of Representatives were returned to the Governor-General on Monday 1 April 1996. The writs for the Senate were returned to the Governor-General (for the Territories), and to the Governors of the States, in the following order:

Northern Territory	25 March 1996
Tasmania	28 March 1996
Australian Capital Territory	28 March 1996
Queensland	4 April 1996
Western Australia	4 April 1996
South Australia	10 April 1996
New South Wales	10 April 1996
Victoria	11 April 1996

1.2.3 Petitions to the Court of Disputed Returns must be filed within 40 days of the return of the writ for the relevant State/Territory/Division election. Four petitions were filed within the required time periods.

1.3 Significant Features of the Election

1.3.1 **Voter Turnout**. At the 1996 federal election **96.20%** of the 11.7 million enrolled citizens voted, compared with 96.22% at the 1993 federal election. A joint initiative between the AEC and the then Department of Immigration and Ethnic Affairs to enrol **new citizens** at citizenship ceremonies was implemented for the first time in 1996. An estimated 6,000 new Australian citizens were added to the Commonwealth Electoral Roll between Australia Day on 26 January 1996 and the close of rolls on 5 February 1996 thus enabling them to vote, for the first time, at the 1996 federal election.

1.3.2 **Result on the Night**. Over 22 million votes (combined Senate and House of Representatives) were collated and processed on election night. Within 60 minutes of the close of the poll it was clear from the results coming through for the House of Representatives that a change of Government was about to occur. The AEC computer system matched polling place results against historical polling place results, thus allowing calculation of swings for or against the incumbent candidates in Divisions for the House of Representatives. These swings stabilised at approximately 7.00 pm EST, when only 5% of the national vote had been counted. This rapid indication of the result was of course related to the size of the swing against the then Government, but the AEC is nevertheless pleased with the smooth and accurate operation on the night.

1.3.3 **Public Awareness Campaign**. To cater for the enormous number of enquiries received by the AEC during election periods, a **National Telephone Enquiry Service** (13 23 26) was made available from 8.00 am to 8.00 pm from Monday to Friday throughout the 1996 election period. The service was available on the weekend prior to the close of rolls and throughout the polling weekend. On 5 February, at the close of rolls, 29,220 enquires were responded to in a 12 hour period, and a total of 317,799 enquiries were responded to over the whole election period.

1.3.4 **Internet**. For the first time, the new public information environment available on the Internet was used extensively by the AEC, the political parties, and the general public, to seek and provide information about the election. On polling day for example, over 2,500 visits to the AEC Home Page were registered on the Internet. This initial experience suggests that in the future the AEC will need to develop further capacity to utilise the Internet for disseminating election information and providing an electronic enquiry service for AEC clients. However, this early experience also suggests that there are some significant emergent legal problems in relation to copyright, defamation and the authorisation of electoral advertising, for example, that may require legislative attention when overall Government policy on the regulation of the Internet is established.

1.3.5 **Albert Langer**. Public and media attention focussed during the election period on the jailing of Mr Albert Langer for contempt of court. Mr Langer had defied an injunction order imposed by the Victorian Supreme Court to prevent him from misleading voters as to the required voting method under the CEA. Mr Langer had published an advertisement after the issue of the writs advocating a form of optional preferential voting, and at the time of his jailing had continued to advocate such a voting method in defiance of the injunction obtained by the AEC. Under section 329A of the CEA it is an offence to advocate voting in any other way than full preferential, as required under section 240 of the CEA. This offence operates only during the election period, from the issue of the writs to the end of polling day.

1.3.6 Mr Langer's jail sentence from 14 February to 30 April was shortened by the Federal Court, on appeal from the decision of the Supreme Court, and with the support of the AEC, to some three weeks in jail. Had the AEC chosen to prosecute Mr Langer for breaching section 329A he might have faced 6 months in jail. Mr Langer's jailing for three weeks was accompanied by some public speculation about whether his jailing was an obstruction of freedom of speech and therefore unconstitutional. This issue was resolved by the High Court in its decision of 7 February 1996, on a previous Langer case which arose at the 1993 federal election, in which it was held that section 329A is constitutional and therefore a valid enactment of Parliament.

1.3.7 However, the Langer cases do raise some important issues about the consistency of the policy underlying the various relevant provisions of the CEA. In addition, the JSCEM will undoubtedly receive many submissions calling for the repeal of section 329A. The AEC will soon be providing the JSCEM with a detailed supplementary submission on the Langer cases together with recommendations for legislative amendment.

1.3.8 **Other Elections**. Besides the federal election, a number of other elections were conducted around Australia during the early part of 1996. The AEC was responsible for the on-going task of conducting industrial elections, the conduct of three Northern Territory ATSIC by-elections on 2 March, and the March Victorian local government elections, conducted by the AEC for the first time under contract to five Victorian local councils. In addition, three State elections overlapped with the federal election: the Queensland Mundingburra by-election on 3 February; the Tasmanian State election on 24 February, which was conducted by AEC staff under contract to the Tasmanian Electoral Office; and the Victorian State election on 30 March, for which AEC staff processed the close of rolls in the week after polling day for the federal election.

1.3.9 **International Visitor Program.** This election was the first time the AEC arranged a major international program for visitors from other countries so that they could experience the behind-the-scenes operations of an Australian federal election. The program involved 25 guests from countries such as Canada, Fiji, Hong Kong, Malaysia, New Zealand, Papua New Guinea, the Philippines, and the United Kingdom. The Australian Agency for International Development (AusAID) provided financial support for the visits of a number of senior electoral officials, parliamentarians, and representatives of non-government organisations from Cambodia, the Cook Islands, South Africa, Tonga, and Western Samoa. A complete list of the overseas visitors is at Appendix B. This international program was highly successful in promoting mutual understanding of electoral operations and good government practice, particularly with regional countries. The AEC expects the program to continue as a feature of future federal elections.

2 ELECTORAL LEGISLATION

2.1 Introduction

2.1.1 Since the 1993 federal election there have been three Acts of Parliament passed to amend the Commonwealth Electoral Act 1918 (CEA) and the Referendum (Machinery Provisions) Act 1984 (RMPA). A further amending Bill failed to pass the Parliament before the election.

2.2 Electoral and Referendum Amendment Bill 1995

2.2.1 The Electoral and Referendum Amendment Bill 1995, which failed to obtain passage before the election, contained a number of significant technical amendments to the CEA and the RMPA, most of which were recommended by the previous JSCEM in its November 1994 Report entitled “The 1993 Federal Election”. The most important of these was probably the computerisation of the Senate scrutiny.

2.2.2 The Bill was introduced into the House of Representatives on 1 February 1995 and during consideration in the House four amendments were adopted. On 26 June 1995 the Bill was introduced into the Senate, and passed all stages on 20 September 1995. As further amendments were made in the Senate, the Bill was then returned to the House for consideration on 21 September 1995.

2.2.3 The Senate amendments were considered by the House on 30 November 1995. Three of the Senate amendments were not agreed to and the Senate was informed on 1 December 1995. The Senate adjourned before further consideration of the Bill could occur.

2.2.4 The resumption of Parliament was set down for 13 February 1996, but when Parliament was dissolved on 29 January 1996 all legislation before the Parliament lapsed. The AEC has recommended to the Minister for Administrative Services that the Electoral and Referendum Amendment Bill 1995 be reintroduced in the 1996 Spring Sittings. A copy of the Bill and amendments as it stood at the dissolution of Parliament is at Appendix A.

2.3 Electoral and Referendum Amendment Act 1995

2.3.1 The Electoral and Referendum Amendment Act 1995 received Royal Assent on 16 December 1995 and provided for a number of machinery amendments to the CEA and the RMPA to streamline electoral and referendum procedures. The most significant of these were the following:

- **Electoral Roll Reviews** can now be conducted under more flexible and locally appropriate means than was previously required.

- The reporting to the AEC by Prison Controllers of those **prisoners** who are not entitled to be enrolled is now made workable.

- **Eligible overseas electors** may now apply for registration within 3 months of departure for overseas instead of the previous one month, and may now apply for registration within one year after the date of departure, where this was not previously possible.

- The Commonwealth Electoral Roll now closes at 8.00 pm on the day for **close of rolls**, instead of the previous 6.00 pm.

- Enrolment application forms may now be sent in by **fax**.

- Repayment of **bulk nomination** deposits is now made easier, and further clarity is provided in relation to the withdrawal or death of bulk nominated candidates.

- Any person who is caring for a registered **General Postal Voter** may also be so registered, and postal ballot materials will be sent to General Postal Voters directly instead of postal vote applications being required.

- The deposit for security against costs in the **Court of Disputed Returns** has been raised from $100 to $500, and parties to a petition may now have unrestricted legal representation.

- In relation to **election funding**, unregistered State and Territory branches of registered political parties may enter agreements to redirect payments of election funding, and payments of election funding to the Australian Democrats are now paid to the principal agent.

2.4 Commonwealth Electoral Amendment Act 1995

2.4.1 The Commonwealth Electoral Amendment Act 1995 received Royal Assent on 15 June 1995. This Act amended Part XX of the CEA, which governs election funding and financial disclosure, to streamline administrative procedures. A new base funding rate of $1.50 for both House of Representatives and Senate votes was set, and as the funding rate is tied to the Consumer Price Index, the rate for the 1996 federal election rose to 157.594 cents per vote. These developments resulted in a doubling of payments for public funding of elections from the last election. For the 1993 federal election public funding was $14,888,807, and for the 1996 federal election public funding was $32,154,800.

2.4.2 For the 1996 federal election, public funding of political parties and independent candidates became an entitlement to be paid automatically. Previously public funding had operated as a reimbursement scheme requiring political parties and independent candidates to submit original vouchers supporting claimed campaign expenditure. The legislative amendments also required entitlements to be calculated as at the twentieth day after polling day and payments made as soon as possible thereafter. This meant that the bulk of entitlements were paid within four weeks after polling day. Appendix F details the public funding entitlements paid out for the 1996 federal election. Provision was also made in the amending legislation to allow registered political parties to lodge agreements with the AEC redirecting payment of the public funding entitlement of one to the other.

2.4.3 Previously, the claims for election funding provided some basis for determining expenditure by political parties at a federal election. To provide this information in the absence of claims, returns of electoral expenditure by political parties have been reintroduced. The definition of electoral expenditure has also been amended to include direct mailing, thereby recognising its growing importance as a campaign tool.

2.4.4 The Act also amended the annual return provisions of the CEA. Annual returns prepared by registered political parties have been simplified. Annual disclosure returns were introduced for organisations closely associated with registered political parties, and disclosure by donors to political parties, who previously furnished returns following an election, was brought into line with the annual returns required from political parties.

2.5 Commonwealth Electoral Amendment Act 1994

2.5.1 The Commonwealth Electoral Amendment Act 1994 received Royal Assent on 16 February 1994. This Act amended section 60 of the CEA to provide that where there is no office of Surveyor-General in a State, the membership of a federal Redistribution Committee for that State may include the person who, in the opinion of the relevant State Minister, holds the equivalent office. The amendment was designed to cover the situation where a State which is to be redistributed has abolished the office of Surveyor-General.

2.6 Other Legislation

2.6.1 The Radiocommunications (Transitional Provisions and Consequential) Amendments Act 1992, the Law and Justice Legislation Amendment Act 1993, and the Migration Legislation Amendment Act 1994 effected minor consequential amendments to the CEA.

2.7 Regulations

2.7.1 The Electoral and Referendum Regulations (Amendment), Statutory Rules 1995 No 21, were gazetted on 28 February 1995. These regulations effected minor technical changes to the form of the Senate ballot paper.

2.7.2 The Commonwealth Electoral (Annual Returns by Registered Political Parties) Regulations (Repeal), Statutory Rules 1995 No 164, were gazetted on 30 June 1995. The repeal of these regulations followed the enactment of the Commonwealth Electoral Amendment Act 1995 on 15 June 1995, which provided that annual returns by political parties no longer require details of individual financial transactions within set categories.

2.7.3 The Electoral and Referendum Regulations (Amendment), Statutory Rules 1995 No 190, were gazetted on 30 June 1995 and came into effect on 1 July 1995. This was a technical amendment relating to the use of electoral enrolment information for approved medical research and public health programs.

2.7.4 The Electoral and Referendum Regulations (Amendment), Statutory Rules 1995 No 322, were gazetted on 3 November 1995 and amended Part 2 of Schedule 2 of the Regulations. Schedule 2 lists the Commonwealth Government Departments and Authorities to which the AEC may release private electoral enrolment information. The amendment replaced the Trade Practices Commission with the Australian Competition and Consumer Commission.

3 PUBLIC AWARENESS

3.1 Advertising

3.1.1 At the 1996 federal election the AEC conducted an extensive public awareness advertising campaign in order to remind voters of their electoral rights and responsibilities. Four main messages were conveyed in this campaign: the need for eligible persons to ensure that they were correctly enrolled before the close of rolls; the availability of postal, pre-poll, mobile and absent voting facilities; the requirements for formal voting; and when and where to vote.

3.1.2 The AEC's new advertising agency, Box Emery and Partners, was appointed in May 1994 with the assistance of the Office of Government Information and Advertising, and work commenced immediately on the AEC election advertising campaign, which involved five television commercials, 15 separate press advertisements and 13 radio commercials.

3.1.3 Following the announcement of the election on Saturday 27 January 1996, final production of the AEC election advertising campaign was concluded and the first advertisements in the campaign went to air at 2.10 pm the next day. Early preparation of the advertising material enabled the enrolment campaign to commence on air on 29 January. The AEC was particularly pleased with the efforts of its suppliers in producing this result.

3.1.4 Of the total media budget, 39% was spent on television, 12% on radio and 48% on press. A significant portion of this last expenditure related to the statutory requirement to advertise polling places in the newspapers (refer paragraph 3.6). Material appeared in all major metropolitan television, press and radio outlets, and for the majority of the campaign, regional press.

3.1.5 All national advertising was translated into various languages. For television twelve languages were used, for the press 18 languages were used in 44 publications, and on radio 20 languages were used. Radio advertising also appeared on community service stations incorporating print handicapped and Aboriginal communities as well as ethnic language programs. Expenditure on ethnic media outlets accounted for approximately 8% of press media costs and 26% of radio media costs.

3.1.6 As a result of the overlap of the Tasmanian State election and the federal election, special material was prepared for this State. Advertising was coordinated with the State Electoral Office and a joint enrolment campaign went to air before Christmas 1995.

3.1.7 To evaluate community awareness of the AEC election advertising messages, Newspoll was commissioned to undertake advertising tracking research. The results of this research proved favourable. By the conclusion of

the AEC election advertising campaign on polling day, 84% of those surveyed were able to recall seeing some advertisements showing electors how to correctly fill in their ballot papers; 68% relating to pre-poll and postal voting and 60% relating to enrolment. Given a standard industry benchmark of 42% recognition for advertising campaigns of longer duration, the AEC was well satisfied with these results.

3.1.8 The Newspoll research also indicated that recognition of the AEC election advertising campaign had translated into greater understanding of federal electoral processes. Where at the beginning of the 1996 federal election period only 42% of those surveyed believed it was necessary to number all the boxes on the House of Representatives ballot paper, this had increased to 60% by polling day. Similarly, the number of voters who believed it was correct to number one box above the line on the Senate ballot paper rose from 36 to 71%, and the number of voters who understood the need to number all boxes below the line increased from 44 to 74%.

3.1.9 Prior to the election, the AEC undertook to improve Aboriginal and Torres Strait Islander access to the federal electoral process by recruiting indigenous staff to assist in enrolling Aboriginals and Torres Strait Islanders in urban and remote areas. A national radio campaign was promoted through the "Deadly Sounds" radio network and enrolment videos and posters were produced to assist the campaign.

3.2 Voting Guide

3.2.1 The AEC delivered an information leaflet "Your Guide to the Federal Election" to more than seven million Australian households in the fortnight before polling day. The leaflet was similar in content to the 1993 leaflet. It contained State-specific information on pre-poll and postal voting, correct methods for completing the two ballot papers, brief descriptions of the voting systems for the two Houses of Parliament, and the contact number and address for each AEC Divisional office. In addition, the AEC included maps of electoral Divisions in those States/Territories that had been affected by redistributions in 1994: Victoria, Queensland, and the Australian Capital Territory.

3.2.2 During the 1993 federal election the AEC received a few complaints that the AEC Voting Guide had been delivered to households with party political material enclosed. The Australian Federal Police were unable to determine the origin of a similar intrusion into the 1993 AEC public awareness campaign and no further action was possible. However, as a protection against any repeat of such activity in 1996, the AEC had the Voting Guide shrink-wrapped in plastic to physically prevent other material being included. Nevertheless, the AEC again received a handful of complaints about delivery of the Voting Guide with party political material enclosed. As for the 1993 incidents, it has been concluded that

some voters inadvertently mixed together how-to-vote material from other sources that they found in their letter boxes together with the Voting Guide.

3.2.3 The AEC is aware of six instances where individual distributors split open the plastic wrapping and inserted a range of other items which they had undertaken to deliver for other clients, some of which was political campaign material. The AEC held discussions with the distribution contractor about the matter and possible measures that could be taken in the future. The AEC will monitor this problem in the lead-up to the next federal election.

3.2.4 Surveys conducted during the course of the election indicated that the Voting Guide was well received by voters. 46% of those surveyed reported receiving the Voting Guide, 59% read some part of it, and of these, 80% rated it as useful. In addition, the day following the delivery of the Voting Guide, the AEC's national telephone enquiry service received the second highest number of calls for the election period, which suggests a significant impact.

3.2.5 The AEC liaised with the National Federation of Blind Citizens of Australia (NFBCA) to ensure that blind and other print-handicapped electors had appropriate access to the AEC Voting Guide. Regionally-focused audio cassette tapes were produced that included a reading of the Voting Guide and details of both Senate and House of Representative candidates. The tapes were promoted through community service announcements sent to 70 radio stations and radio for the print-handicapped. Two thousand tapes were distributed directly from the NFBCA to the relevant organisations with a further two thousand distributed via other service agencies.

3.3 Public Relations

3.3.1 Along with its extensive advertising campaign, the AEC conducted a public relations campaign during the course of the 1996 federal election. Major activities included the distribution of media releases, background briefings, and utilising available media opportunities to promote key electoral messages.

3.3.2 Public relations events included:

- the enrolment of the Adelaide Rams Super League team;
- postal voting by the Australian Cricket Team in India; and
- the presence of Current Affair reporters during remote mobile polling in the Northern Territory.

3.3.3 The AEC also undertook an extensive publishing program in the period leading up to the election. Major publications included:

- AUSMAP of Post-Redistribution Electoral Boundaries
- Electoral Atlas

- Candidates and Scrutineers Handbooks
- 1996 Election Night Guide
- Electoral Newsfile
- Electoral Pocketbook
- Divisional Profiles
- The People's Say

3.4 National Telephone Enquiry Service

3.4.1 For the first time the AEC set up a national telephone enquiry service, and the number, 13 23 26, was heavily promoted in AEC advertising. The enquiry line was available from 8.00 am to 8.00 pm Monday to Friday throughout the election period to enable callers to be forwarded to their nearest available electoral office or dedicated call centre to have their queries answered. The service was also available on the weekend prior to the close of rolls and throughout polling weekend. A total of 317,799 enquiries were handled during the election period, and on the day for the close of rolls, 5 February, 29,220 enquiries were registered.

3.5 Internet Home Page

3.5.1 During the 1996 federal election the AEC conducted a trial using the Internet to disseminate information about the AEC and the 1996 federal election. The AEC set up its own World Wide Web Home Page providing:

- information on AEC services and skills;
- a list of electoral contacts within Australia and overseas;
- historical data on the 1993 federal election and subsequent by-elections; and
- information on the 1996 federal election.

3.5.2 Information on the 1996 federal election included lists of candidates by State/Territory and Division as well as the location of polling places, which could be searched for by town and postcode. The AEC site also contained a cross-reference to the Australian Broadcasting Commission site, where progressive results were displayed on election night. Finally, details of the House of Representatives and Senate formal results were displayed on the AEC site following the declaration of the polls.

3.5.3 Public use of the AEC Home Page built up to polling day with approximately 2,500 visits from other computer sites. These visits represented over 20,000 individual hits to AEC pages. Activity dropped over the following two weeks to average about 85 visits per day.

3.5.4 Between elections, the AEC expects the that main users to access the AEC Home Page will be students, academics and political commentators seeking statistical data for research purposes. Currently the AEC Home Page is averaging around 60 visits per day.

3.6 Statutory Newspaper Advertising

3.6.1 Sections 153(2)b) and 154(4)(b) of the CEA require that the receipt of the election writs by the Electoral Commissioner from the Governor-General and the State Governors be advertised in not less than two newspapers circulating in the relevant State or Territory. This statutory requirement is an inefficient and outdated means of communicating the necessary message to the public, particularly given that in some States and Territories it may be difficult to find two newspapers that are widely circulated in that State/Territory. The announcement of an election by the Prime Minister generates widespread publicity of the event and of the key dates. The formal requirement relating to the announcement could be met by an insertion of the advertisement in one newspaper in each State and Territory, with a saving of about $16,000. The Electoral and Referendum Amendment Bill 1995, which failed to pass the Parliament before the election, proposed to reduce this requirement to advertising in one newspaper only, but the proposed amendment was defeated.

Recommendation No 1:

> **The AEC recommends that sections 153(2)(b) and 154(4)(b) of the CEA requiring the Electoral Commissioner to advertise the receipt of the writs in at least two newspapers circulating in a State or Territory be amended to require advertising in only one newspaper.**

3.6.2 Section 14(2) of the Referendum (Machinery Provisions) Act 1984 (RMPA) requires that on the receipt of a referendum writ by the Australian Electoral Officer for each State and Territory, the particulars of the writ, a copy of the proposed law, and information on the place where copies are available, be advertised in at least two newspapers circulating in the State or Territory. This statutory requirement is an inefficient and outdated means of communicating the necessary message to the public, particularly given that in some of the States and Territories it may be difficult to find two newspapers that are widely circulated in that State/Territory.

Recommendation No 2:

The AEC recommends that section 14(2) of the RMPA, requiring the Australian Electoral Officers for the States and Territories to advertise the particulars of a writ for a referendum, a copy of the proposed law, and information on the place where copies are available, in at least two newspapers circulating in a State or Territory, be amended to require advertising in only one newspaper.

4. ENROLMENT

4.1. Electoral Redistributions

4.1.1 On 4 March 1994, the Electoral Commissioner determined that, as a result of population changes between the States and Territories, the parliamentary representation entitlements in the House of Representatives for Victoria, Queensland and the Australian Capital Territory would change. As a result of this determination, a redistribution was held in two States and one Territory, with the result that the Australian Capital Territory and Queensland each gained an electoral Division (Namadgi and Longman respectively), and Victoria lost an electoral Division (Corinella).

4.1.2 At the 1996 federal election, voters went to the polls to elect 148 Members to the House of Representatives, one Member more than at the 1993 federal election.

4.1.3 On 22 April 1996, the Electoral Commission determined that, because of the passage of seven years since the last redistribution in 1989, a redistribution of the State of Western Australia was required under section 59(2)(c) of the CEA. The Redistribution Committee was appointed on 21 May 1996 and suggestions and comments on a proposed redistribution were invited from the public by 28 June 1996. These were made available for public comment up until 12 July 1996, and the Redistribution Committee will meet to consider all submissions on 30 July 1996.

4.2 One-vote-one-value

4.2.1 On 20 February 1996, the High Court rejected a challenge brought by three members of the Western Australian State Opposition to the constitutional validity of the electoral boundaries for the Western Australian State Parliament (McGinty v Western Australia (1996) 70 ALJR 200). This important decision of the High Court is given brief attention here in response to Recommendation 11 of the December 1995 JSCEM Report on Redistributions which asked the AEC to advise on the implications of the McGinty decision for federal redistributions.

4.2.2 McGinty argued that the Western Australian State electoral laws create inequality in the numbers of electors in Western Australian State electorates so great that the laws must be invalid because they contravene an implied requirement of “one-vote-one-value”, said to arise from the principle of representative democracy inherent in the Western Australian Constitution Act and in the Commonwealth Constitution.

4.2.3 A majority of the High Court held that the challenged Western Australian electoral laws are valid because the Commonwealth Constitution contains no

implication of equality of voting power affecting the Constitutions of the States or election for members to State Parliaments. The principle of representative democracy identified in the decisions of the High Court dealing with the implied constitutional freedom of political communication applies only to the process of electing members to the Commonwealth Parliament. Nor does the requirement in the Western Australian Constitution Act that the Western Australian Parliament be "chosen directly by the people" imply a requirement of equality of voting power.

4.2.4 As the case concerned State electoral laws, Chief Justice Brennan did not decide whether the Constitution precludes inequality of voting power, of whatever magnitude, for elections for the Commonwealth Parliament. However, other members of the majority indicated that there is no constitutional requirement for equality in voting power for the Commonwealth Parliament. The Constitution does no more than provide for the minimum requirement of representative government, that the people be "governed by representatives elected in free elections by those eligible to vote".

4.2.5 It is then left to Parliament to determine from time to time the form of representative government, including the determination of the electoral system and the size of electoral Divisions for which members may be chosen. The majority judges emphasised that it is Parliament which is authorised by the Constitution to determine these matters, which are of a political nature and about which opinions may vary. A constitutional implication of one-vote-one-value would also be at odds with the history of Australian electoral laws and with a number of provisions of the Constitution which mandate inequality (for example, section 24, which provides a minimum level of representation for the Original States).

4.2.6 However, it remains possible that extreme cases of inequality might be inconsistent with the constitutional requirement of choice by the people. (This was also the position taken by some members of the Court in McKinlay's case (1975) 135 CLR 1 in which the Court had rejected an earlier attempt to establish a constitutional requirement of one-vote-one-value.) The Western Australian electoral laws did not fail this test. Nor is there any reason arising from the judgements in McGinty to doubt the validity of the electoral redistribution provisions of the Commonwealth Electoral Act 1918 (although their validity was not at issue in this case).

4.2.7 It may be recalled that in April 1988 the JSCEM tabled a Report in Parliament entitled "One vote, one value: Inquiry into the Constitution Alteration (Democratic Elections) Bill 1987". The 1988 JSCEM rejected the Macklin Bill, as it was then known, for its drafting defects, but went on to endorse the principle of one-vote-one-value being included in the Constitution. The principle was also subsequently supported by the 1988 Constitutional Commission. At the 1988

federal referendum, a proposal to amend the Constitution to insert a requirement for one-vote-one-value was defeated.

4.3 Enrolment Statistics

4.3.1 Following the 1995 legislative amendments to the CEA, the cut-off time for enrolment on close of rolls day was extended by 2 hours from 6.00 pm to 8.00 pm. The last of the close of rolls enrolment forms were entered into the Roll Management System (RMANS) on the afternoon of Thursday 8 February 1996.

4.3.2 Between 29 January and 8 February 1996, 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.

4.3.3 The enrolment system functioned faultlessly with the exception of some minor delays in response times. The delays were caused by the large number of complex enquiry transactions conflicting with the large number of input transactions, and in some cases to other telecommunications problems. The AEC is investigating alternative methods to accommodate both input and enquiry users while maintaining reasonable response times.

4.3.4 At the close of rolls at 8.00 pm on 5 February 1996 there were 11,655,190 electors enrolled to vote at the 1996 federal election, an increase of 306,223 persons or 2.7% over the 1993 federal election. Of this increase, 8,302 were made up of electors who turned 18 years of age before or on polling day and who were provisionally enrolled at the close of rolls.

4.3.5 The State/Territory breakdown of enrolment statistics at the close of rolls is as follows.

State/Territory	**5 February 1996**
NSW	3 926 293
VIC	2 954 596
QLD	2 082 451
WA	1 077 647
SA	989 885
TAS	325 750
ACT	200 828
NT	97 740
National Total	**11 655 190**

4.3.6 The increasing trend in enrolments at the close of rolls over the past three federal elections is as follows:

1996*	**1993***	**1990**
11 655 190	11 348 967	10 728 435

* These figures include provisional enrolment numbers.

4.3.7 Divisional enrolment activity at the close of rolls period for each State and Territory is shown at Appendix C.

4.4 South Australian Roll Management

4.4.1 The Commonwealth Electoral Roll used jointly by both the South Australian Government and the federal Government is maintained by the South Australian Government on a computer system known as EAGLE. This arrangement is unique to South Australia, so that South Australian enrolment information is the only enrolment information not included on the national enrolment database maintained by the AEC as the Roll Management System (RMANS).

4.4.2 If the South Australian Government accepts the offer of the Commonwealth to process their enrolment data, a joint working party involving the AEC and the South Australian Electoral Commission will be established to oversee the transformation of the Roll from EAGLE in South Australia to RMANS in the AEC.

4.5 Facsimile Enrolment

4.5.1 Section 111A of the CEA, inserted in 1995, enables a person to enrol by facsimile transmission of an enrolment application form to an Australian Electoral Officer or Divisional Returning Officer.

4.5.2 Between the issue of the writs and the close of rolls, the AEC received a substantial number of enrolment application forms via facsimile transmission. The AEC did not anticipate fully the strong interest this new service would generate, and as a consequence the faxing of enrolment forms congested some Divisional office fax machines in the lead up to the close of rolls. A few enrolment forms were not able to be processed because they were only partially transmitted. However, all faxed enrolment forms received in completed form were processed efficiently, with incomplete forms requiring staff processing time dependent upon the level of omission of detail. No delays were experienced in the production of the Certified Lists of Voters.

4.5.3 The AEC will examine any necessary upgrading of office fax machines that might be required, and will advise political parties that the bulk transmission

of enrolment forms by fax is not desirable where other forms of delivery are available. Ultimately the responsibility for sending in an enrolment application form to the AEC rests with the elector and there will always be certain risks involved in making a last minute enrolment application through electronic means.

4.6 New Citizens

4.6.1 During 1995 the AEC and the former Department of Immigration and Ethnic Affairs developed procedures to allow new citizens to enrol to vote immediately after the award of citizenship. The new procedures were introduced as part of the former Government's response to a recommendation contained in the Joint Standing Committee on Migration Report "Australians All - Enhancing Australian Citizenship", tabled in Parliament in October 1994.

4.6.2 The procedures involve the Department printing personalised enrolment application forms which are made available to all new citizens at their citizenship ceremony. AEC staff attend most large ceremonies to assist new citizens to fill in their enrolment application forms and collect them upon completion. These arrangements commenced this year on 26 January, Australia Day, and will continue to be a feature of future citizenship ceremonies. The approach ensures that all new citizens can have their name placed on the Commonwealth Electoral Roll within a few days of attending a citizenship ceremony and, subject to normal close of roll and eligibility requirements, vote at subsequent federal, State and local government elections.

4.6.3 The new arrangements are designed as an alternative to the scheme introduced in June 1993 for the provisional enrolment of applicants for citizenship. The right to claim provisional enrolment by citizenship applicants continues to apply, but the distribution of personalised enrolment application forms and the attendance of AEC staff at citizenship ceremonies has now overcome the legal and administrative problems inherent in the earlier provisional enrolment scheme.

4.6.4 The AEC estimates some 6,000 new Australian citizens enrolled between Australia Day on 26 January and the close of rolls on 5 February for the 1996 federal election.

4.7 Change of Name on Roll

4.7.1 Under section 105(1)(b) of the CEA the Divisional Returning Officer (DRO) may alter the name or address of an elector on the Divisional Roll for which he or she is responsible. Female electors who marry or divorce, for example, may easily have their family name changed on the Roll by simply submitting an enrolment application form with the new personal details. Other electors may change their names by deed poll to anglicise their names, for safety reasons, or to record a name variation from John to Jack, for example.

4.7.2 Electors have every right to change their names and have their new names registered on the Commonwealth Electoral Roll if they can establish that the new name has been accepted in the community. However, the AEC is concerned about the increasing number of electors who wish to be called by names that may have a political or electoral significance, or that are unreasonably long and obviously frivolous. For example, an elector recently applied to a DRO to have her name changed on the Roll to "LouisXVIDelorsChauNguGrimmNixonAndersenPerryCoopGrangerMasure". The DRO had the discretion to reject this application for a name change and did so, because the individual concerned had repeatedly changed her name, and was clearly becoming a vexatious client.

4.7.3 In the week leading up to the election the AEC received an application from an individual wanting a name change to "Abolish Child Support and Family Court", and another from an individual wanting a name change to "Legalise Marijuana". Both individuals stated their intention to stand as candidates in the election, with their new names recorded on the ballot paper. In Tasmania, an individual called "Informal" has attracted significant media attention.

4.7.4 The rejection by the DRO of an application for a name change on the Roll can often become a serious issue of contention between the DRO and the vexatious or frivolous elector. The AEC has advice from the Attorney-General's Department that decisions made by the DRO under section 105(1)(b) cannot be appealed to and reviewed by the Australian Electoral Officer for the State/Territory, or the Administrative Appeals Tribunal. By contrast, Part X of the CEA establishes such review rights for the majority of the important decisions by the DRO on enrolment matters. The AEC believes that, despite the associated costs, review rights should be established for decisions made by the DRO in relation to name changes on the Roll.

4.7.5 Note that this issue also has implications in relation to the names of candidates on ballot papers - see Chapter 5.6.

Recommendation No 3:

> **The AEC recommends that Part X of the CEA be amended to allow a review by the Australian Electoral Officer, and by the Administrative Appeals Tribunal, of a decision by a DRO under section 105(1)(b) of the CEA.**

4.8 Norfolk Island

4.8.1 In a supplementary submission to the JSCEM on 21 December 1993 (No 139) the AEC indicated support for a reconsideration of the provisions of the CEA relating to the enrolment of Norfolk Islanders. In its Report on the 1993 federal election, the JSCEM recommended that section 95AA of the CEA be amended so that Norfolk Islanders may only enrol in the Division of Canberra (recommendation 69 - pages 144-145).

4.8.2 In the previous Government's Response to that JSCEM Report, tabled in Parliament on 21 September 1995, recommendation 69 of the JSCEM Report was "deferred for further consideration". This was to enable the then Department of Environment, Sport and Territories to conduct negotiations with Norfolk Island on the JSCEM proposal.

4.8.3 The AEC remains of the view that Norfolk Islanders should be enrolled only for the Division of Canberra in order to maximise their voting power for the federal Parliament. (Note that under the current definitions in the CEA, and following a recent redistribution of the Australian Capital Territory, the Division of Namadji in the Australian Capital Territory may also enrol Norfolk Islanders.)

4.8.4 The majority of eligible Norfolk Islanders appear to have already signified their appreciation of this principle by enrolling for the Division of Canberra. At the 1996 federal election 92 Norfolk Islanders were enrolled for the Division of Canberra out of a total 133 Norfolk Islanders enrolled Australia-wide. However, the AEC also believes that the views of the Department of Sport, Territories and Local Government should be sought by the JSCEM on this issue.

Recommendation No 4:

> **The AEC recommends 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.**

4.9 Eligible Overseas Electors

4.9.1 During the 1996 federal election a number of Australian citizens resident overseas discovered that they were unable to vote at the election because they had omitted to contact their Divisional Returning Officer to change their enrolment status before departure from Australia. A particular case in point was that in which a senior member of the Australian diplomatic service and his wife were denied a vote at the 1996 federal election because they did not have status as eligible overseas electors under sections 94 and 95 of the CEA. The case concerns His Excellency Mr E R Pocock, AM, who is currently the Australian Ambassador to Belgium, Luxembourg and the European Union, posted to Brussels, Belgium, with his wife Mrs M E Pocock.

4.9.2 On 9 November 1987 Mr and Mrs Pocock enrolled for an address in Bungendore, New South Wales. They were deleted from the Roll for that address on 24 April 1991 on the grounds of non-residence. In 1987 Mr Pocock was appointed Ambassador to France and he and his wife departed from Australia in that year. Neither Mr Pocock nor his wife applied to register with the relevant Divisional Returning Officer as eligible overseas electors.

4.9.3 From the early 1980s until 1992 the AEC participated in the Consular Training Program at the Department of Foreign Affairs and Trade. An AEC officer conducted regular half hour long sessions in that program on the individual electoral rights and responsibilities of consular staff, as well as their responsibilities as consular staff attending to Australians overseas during federal elections. The sessions included information on the special eligible overseas enrolment provisions and advised officers to contact their Divisional Returning Officers before departure overseas. In 1992 the Department decided to provide all such training in-house, but in 1995 the AEC was invited to recommence its participation in the program.

4.9.4 Under sections 94 and 95 of the CEA, enrolled citizens and their spouses who are travelling overseas for a period of three years or less may remain on the Commonwealth Electoral Roll, and vote at federal elections, if they register with their Divisional Returning Officer as eligible overseas electors. Registration as an overseas elector must take place within three months preceding departure overseas or within a year of departure overseas, and can be extended by application to the Divisional Returning Officer. These provisions were brought into the CEA in 1983, to amend similar but limited provisions relating to Defence Force personnel on overseas postings, and were amended in 1995 to allow for an extension of the registration period from within one month prior to departure - to within three months prior to departure and within a year following departure from Australia.

4.9.5 After their posting in France (1987-91) the Pococks were transferred directly to Pakistan (1991-92) and then directly to Belgium (since 1992). On 14

January 1993 the Pococks apparently wrote from overseas to the Divisional Returning Officers for Eden-Monaro and Wentworth, to advise that they had sold their Bungendore residence and purchased another at Potts Point and to ask that their enrolment be transferred. Note that because the Pococks had been removed from the Roll for their Bungendore address in 1991, their application was effectively for new enrolment rather than enrolment transfer. The AEC has no record of receipt of these letters, but even if they had been received, the enrolments could not have been effected at that time because a period of one month residence is required at a new address before enrolment can occur. Accordingly the Pococks remained unenrolled.

4.9.6 Following telephone enquiries from Mrs Pocock, on 11 September 1995 the AEC wrote to Mrs Pocock advising that under section 99 of the CEA, one month's residence at an address is required before enrolment can be effected. Mrs Pocock had already advised the AEC that she and her husband had never lived at the Potts Point address, and accordingly enrolment for that address was not possible. The only way the Pococks can now become enrolled and thus entitled to vote at federal elections, is for them to apply for enrolment after their return from overseas and establishing one month's residence at the Potts Point address. For any subsequent overseas postings, the Pococks can then either apply for overseas elector status, or if they intend to return to their enrolled address, their enrolment record will be noted as temporarily absent with the intention of returning to that address.

4.9.7 On 3 November 1995 the Pococks sent applications to the Divisional Returning Officer for Eden-Monaro to be registered as General Postal Voters with their residential address in Belgium and their postal address as the Department of Foreign Affairs and Trade. The applications were not processed as the Pococks were not enrolled in Australia.

4.9.8 In late 1995 and early 1996, the Chairman of the Electoral Commission, the Electoral Commissioner, and the then Minister for Administrative Services, received representations from the Pococks, and on behalf of the Pococks, from a number of Senators and Members of the House of Representatives. These representations from and on behalf of the Pococks were all to the effect that they had suffered a grave injustice in not being able to enrol from overseas. The Pococks also complained to the Commonwealth Ombudsman, who was eventually satisfied that the AEC had no discretion to enrol the Pococks under the existing provisions of the CEA.

4.9.9 Despite the failure of the Pococks to register as eligible overseas electors before their departure for France in 1987, it is clear that they have an understandable grievance, as there is now no means of rectifying their original oversight without them returning to reside in Australia for at least one month. A possible solution would be to legislate to allow official Australian Government representatives on postings outside Australia to remain enrolled, or to enrol for a

subdivision under similar criteria to that provided for itinerant electors in section 96(2A) of the CEA.

Recommendation 5:

> **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.**

4.10 Northern Territory Subdivisions

4.10.1 In the early 1990s, after a long period during which they tended to increase in size, subdivisions were formally abolished in all States and Territories except in two of the geographically largest Divisions in Australia: the Division of Kalgoorlie in Western Australia, and the Division of the Northern Territory. In the Division of Kalgoorlie, the retention of subdivisions enables the appointment of an Assistant Divisional Returning Officer to service the northern part of the Division, allowing for better client service due to proximity and local knowledge.

4.10.2 In the Northern Territory, the AEC is responsible for the Commonwealth Electoral Roll, used for both federal elections and Northern Territory Legislative Assembly elections, under the Joint Roll Arrangement with the Northern Territory. The 25 existing federal subdivisions in the Northern Territory correspond with the 25 Districts for the Northern Territory Legislative Assembly, and there are two further federal subdivisions for Christmas Island and the Cocos/Keeling Islands. As the Legislative Assembly Districts are small in population (3500-4000), the vote margins are often also small. In order to maintain enrolment accuracy for these Districts, as electors move around the Territory thereby changing their enrolled addresses, enrolment objection action for these small Northern Territory Districts should be easily facilitated. The retention of federal subdivisions allows this, and is strongly supported by the Northern Territory Electoral Office.

4.10.3 However, there is an important negative side-effect of the retention of the relatively small federal subdivisions in the Northern Territory. (Note that with the exception of the Divisions of Kalgoorlie and the Northern Territory, the abolition of subdivisions in all federal Divisions has meant that any reference in the CEA to a subdivision is now read as a reference to the Division as a whole. That is, the Division contains one subdivision.)

4.10.4 Following an Electoral Roll Review or an election, and as the result of information received on the current state of enrolment in their Divisions, Divisional Returning Officers (DROs) normally take large-scale objection action under section 114(2) of Part IX of the CEA to remove the names of electors from

the Roll who appear to have left their current enrolled address and who have not so advised the DRO. Before a name is actually removed from the Roll, the DRO writes more than once to the elector at the last-known enrolled address. For those electors who have moved on without leaving a forwarding address, the DRO, after repeated approaches with no response, will eventually come to the conclusion that the elector has moved to another Division and accordingly take objection action to remove the elector's name and address from the Roll for that Division. It is assumed that the elector has moved to another Division because the Electoral Roll Review process has not located the elector living anywhere else in the same Division. It is also assumed that the elector will, after the period of one month required under section 99(1) of the CEA, apply for enrolment to the DRO in the new Division.

4.10.5 At the next federal election, those electors who have changed address without transferring their enrolment, will then present at polling booths, believing that they are still on the Roll for the original address, only to find that their name is not listed, and they are unable to cast an ordinary vote. Such electors are automatically provided with a provisional declaration vote under section 235 of the CEA.

4.10.6 If the electors who cast provisional votes under these circumstances have only moved to new addresses within the same Division/subdivision, rather than across Divisions, then during the preliminary scrutiny of declaration votes under Schedule 3 of the CEA, all DROs, except those in Kalgoorlie and the Northern Territory, are able to reinstate that elector to the Roll for the original Division. Paragraph 12(b)(i) of Schedule 3 enables this action to be taken by the DRO because effectively a "mistake of fact" has led to the elector's removal from the Roll for a Division/subdivision by objection. This means that the elector now has the entitlement to vote restored, and the vote is passed into the count.

4.10.7 The "mistake of fact" referred to is the misapprehension as to the elector's place of residence, which led to the objection action taken before the election by the DRO to remove the elector from the Roll. Under section 114(2) of the CEA the DRO may object to the enrolment of a person for a Division/subdivision if there are reasonable grounds for believing that the person is not entitled to be enrolled for that Division/subdivision. When taking objection action, the DRO had no idea where the elector had moved to, and had to assume that the elector moved out of the Division/subdivision. It is only at the point when further information is obtained from the elector as detailed on the provisional vote declaration, that the DRO knows the full facts. That is, whether the elector has moved to another Division/subdivision, in which case the objection action was correct, or only within the original Division/subdivision, in which case the DRO made a "mistake of fact". The objection action taken by the DRO in the latter case was wrong because the elector only moved within the one Division/subdivision and should still be entitled to cast a vote for that

Division/subdivision. The DRO is then permitted to rectify this mistake during the preliminary scrutiny in order to restore the entitlement to vote.

4.10.8 Because of the continuing existence of a large number of federal subdivisions in the Division of the Northern Territory, the DRO for the Northern Territory is unable, under Schedule 3 of the CEA, to reinstate an elector to the Roll, who has moved between subdivisions in the Northern Territory rather than out of the Northern Territory Division into another Division. This is because the original objection action was proper and not a "mistake of fact". The elector did indeed move between subdivisions within a Division and was not entitled to remain on the Roll for the original subdivision. The result is that a provisional voter who has moved address across subdivisions within the Northern Territory (and the Division of Kalgoorlie) without advising the DRO, will have his or her vote declared invalid and not counted, whereas in all other States and the ACT, electors who have effectively done the same, by moving address within the same Division/subdivision, will have their enrolment reinstated and their entitlement to vote restored.

4.10.9 The problem is acute in the Northern Territory because of its large and highly mobile aboriginal population. The statistics show that the Northern Territory is particularly affected by the rejection of high numbers of provisional votes at the preliminary scrutiny: where the national Divisional average for rejection of provisional votes was 39.63%, in the Northern Territory it was 67.13%.

4.10.10 As a consequence of this unusual aspect of Roll reinstatements for provisional voters in the Northern Territory, the unsuccessful Australian Labor Party candidate for the Division of the Northern Territory, Mr Warren Snowden, has filed a petition with the Court of Disputed Returns alleging the wrongful rejection by the AEC of some 2,200 provisional votes. As this matter is still before the Court the AEC will make no further comment on the particular details of the case.

4.10.11 To resolve this problem, the CEA could be amended to remove the barrier to reinstatement of provisional votes in the Northern Territory, while still retaining subdivisions, corresponding with the Northern Territory Legislative Assembly Districts.

4.10.12 In the alternative, and given that federal electors are being disenfranchised only to serve the purposes of the Northern Territory electoral system, the Joint Roll Arrangement with the Northern Territory Government could be re-negotiated to remove federal subdivisions. In order to facilitate Northern Territory Legislative Assembly elections, the Commonwealth Electoral Roll on RMANS would then be reprogrammed to allow enrolment information to be sorted by Northern Territory Districts, as is done in the States for State electoral purposes.

4.10.13 It is suggested that the JSCEM await the outcome of the Snowden petition before the Court of Disputed Returns, and any relevant comment by the Court on the fairness or otherwise of the relevant CEA provisions, before moving to any resolution of this problem.

5. Nominations

5.1 Introduction

5.1.1 At the close of nominations at 12 noon on 9 February 1996, a total of 1,163 candidates had nominated for the 1996 federal election: 255 candidates for the Senate; and 908 for the House of Representatives. There were 821 male candidates and 342 female candidates.

5.2 Reduction of Nomination Period

5.2.1 Under section 156 of the CEA nominations close at 12 noon on a day that is not less than 11 days, or more than 28 days, after the issue of the writ for an election. Immediately after the close of nominations the AEC is required, under section 176 of the CEA, to publicly declare the nominations, and the draw for positions on the ballot paper then takes place at AEC offices around the country.

5.2.2 In its submission to the previous JSCEM on 3 August 1993 (No 91), the AEC recommended a time gap between the close of nominations and the declaration of nominations to give AEC staff time to check the details on the nomination forms. The difficulties caused by the current legislation were explained by the AEC, and were reproduced on page 87 of the JSCEM Report on the 1993 federal election as follows:

> the trend at recent elections has been toward an increasing number of candidates nominating and, additionally, for many candidates to leave their nomination until the final day (and often the final hour). Immense pressure is therefore placed on returning officers to administer the detailed process, check that all is in order with the nomination forms, check the entitlement of nominators and generally satisfy themselves that the provisions of the Electoral Act are being met - all in a short period of time in which the critical decision of whether or not to accept or reject the nomination has to be made. There can be, for example, little possibility of obtaining legal advice on the validity of a last minute nomination.

5.2.3 The AEC recommended that the nomination period under section 156(1) of the CEA be amended so as to reduce the nomination period by one day (that is, to a minimum of 10 days and a maximum of 27 days), with the public declaration of the nominations set for 24 hours after the close of nominations. This would allow an additional day for AEC staff to check the validity of last-minute nominations. Section 176 of the CEA would also need to be amended to provide for the declaration of nominations to be made 24 hours after the close of nominations.

5.2.4 The previous JSCEM rejected the AEC recommendation on page 88 of the Report: “The Committee does not favour a 24 hour gap, and instead recommends that nominations close at 12 noon and be declared at 5 pm.”

5.2.5 However, the four coalition members of the previous JSCEM, together with the Australian Democrat member and the Greens member, provided dissenting reports. The four coalition members, with the Greens member concurring, said at page 159 of the JSCEM Report:

> This is a sensible request and should have been acceded to....The recommendation [made by the Committee] leaves a gap of just five hours.....We believe that the ... declaration [should be] set for a full 24 hours after the close of nominations.

5.2.6 In a separate dissenting report, the Democrat member also disagreed with the JSCEM majority decision to reject the AEC proposal, stating that the current legislation further eroded the time the general public had to consider the merits or otherwise of contesting candidates and political parties.

Recommendation No 6:

> **The AEC recommends that section 156(1) of the CEA be amended so as to reduce the nomination period by one day (to not less than 10 days nor more than 27 days), and that section 176 also be amended to provide for the declaration of nominations to be made 24 hours following the close of nominations. A consequential amendment should also be made to section 213(1)(a) of the CEA.**

5.3 Place of Senate Nominations

5.3.1 Section 174(1) of the CEA requires that the office of the Australian Electoral Officer (AEO) shall be the place of nomination for a Senate election. Section 176(1) of the CEA requires the AEO to produce at the hour of nomination, at the place of nomination, all nominations received by the AEO, and thereafter to conduct a draw for ballot paper positions. Section 283 of the CEA requires the AEO, as soon as convenient after the result of the election has been ascertained, to declare at the place of nomination, the result of the election and the names of the candidates elected.

5.3.2 The requirement to carry out the Senate ballot paper draw and to declare the result of the election at the original place of nomination may present, in the future, a difficulty for AEC Head Offices because of limited space. While this problem was managed adequately at the 1996 federal election, the AEC believes the requirement should be amended so as to allow AEOs to make alternative arrangements in the event that convenient space is unavailable.

Recommendation No 7:

The AEC recommends that sections 176(1) and 283(1) of the CEA be amended to allow the Senate ballot paper draw and the declaration of the Senate result to be carried out at the place of nomination or at another convenient location as decided by the Australian Electoral Officer. A consequential amendment should also be made to section 213(1)(a) of the CEA.

5.4 Disendorsed Candidates

5.4.1 Nominations closed at noon on 9 February 1996, and in accordance with legislative requirements, the AEC immediately began printing ballot papers for dispatch to each Divisional office throughout Australia and to overseas posts, to enable pre-poll and postal voting to commence in the week beginning Monday 12 February.

5.4.2 On 14 February, after the close of nominations, the Liberal Party candidate for the House of Representatives Division of Oxley, Ms Pauline Hanson, was disendorsed by the Liberal Party. Ms Hanson thereafter continued her election campaign as an independent candidate for the Division of Oxley, even though her name had already been printed on the House of Representatives ballot papers for the Division of Oxley with the word "Liberal" beside it.

5.4.3 The printing of the House of Representatives ballot paper for the Division of Oxley with Ms Hanson's name beside the word "Liberal" was in compliance with statutory requirements relating to the printing of party affiliations on ballot papers. Section 214(1) of the CEA provides that where a person has been endorsed as a candidate in an election by a registered political party, and a request has been made in respect of the candidate under section 169 of the CEA, the name of that political party must be printed adjacent to the name of the candidate on ballot papers for use in the election.

5.4.4 The AEC received legal advice from the Attorney-General's Department to the effect that party disendorsement after nomination has no effect on the requirement under section 214 of the CEA that the name of the party that endorsed the candidate at nomination must be printed on the ballot paper. Further, the AEC was advised that the payment of public funding under Part XX of the CEA should be made to the agent of the State Branch of the Liberal Party and not to Ms Hanson.

5.4.5 The disendorsement of the Liberal Party candidate for Oxley after the close of nominations is regarded by the AEC as an internal matter for the Liberal Party, and not one on which the AEC should comment further, except to observe that the relevant provisions of the CEA do not need amendment to cover such a rare occurrence that was, in any case, widely canvassed in the media and understood in the community.

5.4.6 It should be noted that section 366 of the CEA prohibits the Court of Disputed Returns from voiding an election on the basis of the printing of incorrect party affiliations on ballot papers.

5.5 Party Names on Ballot Papers

5.5.1 Under the party registration provisions contained in Part XX of the CEA, related political parties are able to register similar names or even identical abbreviations. Separate and independent political parties, however, are required to register with names and abbreviations which sufficiently differentiate them from other registered parties in order to avoid any likely confusion.

5.5.2 At the 1996 federal election, two registered political parties with the same registered abbreviation were each intending to endorse Senate groups in New South Wales under the same abbreviation. Had this eventuated it would have caused considerable voter confusion. Voters would have had two groups of candidates seemingly standing for the same party. In many cases, voters would have been unable to confidently express their preferences on the ballot paper.

5.5.3 The difficulty arose because, while the CEA permits parties which are related to each other to have similar registered names or abbreviations, it does not adequately cover the situation that arises when two parties that were related at the time of their registration have a “falling out”.

5.5.4 There are benefits in having these sorts of problems resolved in a measured way outside an election period, but this is not always possible. To overcome this problem, the CEA could be amended to enable a party, the name, and/or abbreviation of which is deceptively similar to that of another party, to object to the retention by the other party of that deceptively similar name, on the grounds that the parties are no longer related. Such objections could be dealt with in the first instance by the Australian Electoral Commission proper, with review by the Administrative Appeals Tribunal.

5.5.5 However, it should be noted that even if this solution is adopted, the situation may still arise where such an objection is unable to be dealt with prior to the issue of the writs and consequent suspension of the Register of Political Parties.

Recommendation No 8:

> **The AEC recommends that the CEA be amended to enable a registered political party to object to the continuing use of a party name and/or party abbreviation by another party which obtained its registration by claiming related party status to that registered political party, where that relationship no longer exists.**

5.5.6 The CEA makes provision under sections 210(1)(e) and 212(b) for the addition of descriptions to candidates' names to differentiate them on a ballot paper where similarity in their names is likely to cause confusion. However, no such provision exists to ameliorate confusion caused by similarity on a ballot paper of the names or abbreviations of two or more political parties.

5.5.7 Where two or more political parties request identical registered names or abbreviations to be printed against candidates appearing on the same ballot paper, confusion for voters could be avoided by requiring, as appropriate, the registered party names or the registered party abbreviation to be printed against the names of those candidates affected. Where printing either the full names or abbreviations of the parties would not resolve the confusion, the AEC should be empowered to add an appropriate description.

Recommendation No 9:

> **The AEC recommends that the CEA be amended to enable the registered party name or the registered party abbreviation, as appropriate, to be printed against the names of candidates where two or more parties are seeking to endorse candidates with identical party identifiers in the same election, and for an appropriate description to be used where necessary.**

5.5.8 The AEC has always taken section 214 of the CEA, which relates to the printing of party names on ballot papers, to mean that only the name of one political party should be printed on the ballot paper beside the name of a candidate. However, this provision is linked to section 169B of the CEA, which relates to verification of party endorsement, and which would appear to require amendment to ensure that its meaning is clear.

5.5.9 Section 169B(2) provides that a candidate endorsed by two or more parties is taken to have been endorsed by only one party. Where sections 169B(2)(a) and (b) do not operate so as to identify that one party, the candidate must, under section 169B(2)(c), make a choice as to which party is the endorsing party. This view of the CEA is supported by the Explanatory Memorandum for the Commonwealth Electoral Amendment Act 1987 which inserted section 169B in the CEA, and which appears to confirm that the mechanisms spelt out on

sections 169B(2)(a), (b) and (c) are intended to operate alternatively rather than simultaneously.

5.5.10 The AEC received advice from the Attorney-General's Department to the effect that because section 169B(2)(c) falls short of imposing an obligation upon a candidate to provide a written notice specifying a particular party to be printed on the ballot paper where the candidate appears to have been endorsed by more than one party, an amendment to this provision to clarify its intention is necessary.

Recommendation No 10:

> **The AEC recommends an amendment to section 169B of the CEA to provide that a candidate endorsed by more than one political party must specify in writing the name of the political party to be printed on the ballot paper under section 214 of the CEA.**

5.6 Candidates Names on Ballot Papers

5.6.1 As discussed in Chapter 4.7, an increasing number of electors are applying to have their names changed on the Roll to what might be described as frivolous names, such as "Abolish Child Support and Family Court" and "Legalise Marijuana". However, the intention of many such applicants is not frivolous. Their intention is to have such names registered on the Roll, and by nominating as candidates for the election, to thereby have their names printed on the ballot papers, in order to assist in their individual campaigns. In the first example mentioned, the name change on the Roll was requested within days of the close of nominations; and in both cases, the intentions of the electors, to have their new names appear on the ballot papers, were unequivocally stated in their applications.

5.6.2 The AEC is of the view that this development is undesirable in that it could lead to confusion and distress amongst the voting public, and could be considered by some to confer an unfair political/electoral advantage. The Tasmanian Electoral Office has encountered such problems in relation to an individual named "Informal" and is also apparently moving to legislate to prevent any further developments along these lines.

Recommendation No 11:

> **The AEC recommends that the CEA be amended to prohibit the enrolment of an elector with a politically or electorally significant name which, if the elector were to nominate as a candidate for election, has the potential to confuse or mislead voters.**

5.7 Nomination Deposit

5.7.1 Under section 170(3) of the CEA, the nomination deposit for a Senate candidate is $500, and for a House of Representatives candidate it is $250. The nomination deposits have not risen since they were last set by Parliament in 1983.

5.7.2 In the AEC submission of 2 August 1993 (No 91) to the previous JSCEM following the 1993 federal election, it was recommended that the Senate nomination deposit be increased from $500 to $1,500, and that the House of Representatives deposit be increased from $250 to $750. The AEC submitted that the deposits currently required are not sufficiently high to dissuade prospective candidates who are unlikely to attract more than a few votes. The increasing number of candidates is causing problems in the following areas:

- size of the ballot paper (eg NSW Senate);
- voter confusion;
- delays for the draw for ballot paper positions because of last minute nominations;
- rechecking of ballot papers;
- Senate scrutiny;
- increased costs.

5.7.3 Under section 173 of the CEA, nomination deposits are returned if a candidate, or a group of Senate candidates, gains more than 4% of the formal first preference vote. For the 1996 federal election, of the 908 candidates who nominated for the House of Representatives, 402 of those candidates polled less than 4% of the total formal vote. Of the 85 groups who nominated for the Senate, 57 of these groups polled less than 4% of the total formal vote, and of the 29 ungrouped Senate candidates, all received less than 4% of the total formal vote.

5.7.4 The Consumer Price Index has increased by approximately 82.5% since the 1984 federal election, which suggests that the nomination deposits could be increased from $250 to $500 for the House of Representatives and from $500 to $1,000 for the Senate.

5.7.5 The AEC strongly supports the important democratic right of any citizen to offer himself or herself as a candidate for federal election, and does not wish to see this right affected by onerous financial requirements under the CEA. However, reasonable increases in deposits should encourage potential candidates to realistically assess the level of support they would require to be elected, and to have their nomination deposit returned.

5.7.6 The previous JSCEM did not agree with the AEC proposal for an increase in the nomination deposit, and instead, in recommendation 38 on page 84 of its Report on the 1993 federal election, recommended that the CEA be amended so that the number of signatures required in support of nominations (other than

those made by Registered Officers of parties) for the House of Representatives and the Senate be increased to 100 and 500 eligible voters respectively, and that signatories print their names and addresses as well as signing the nomination form.

5.7.7 The Response of the previous Government to this JSCEM recommendation was that such a legislative requirement would disadvantage independent candidates without a large organised party structure, and particularly independent Senate candidates in the smaller States and the Territories. From a practical point of view such a requirement would place an insupportable burden on AEC staff in having to do enrolment checks on all signatories, especially where nominations are lodged close to the close of nominations. The previous Government did not support the JSCEM recommendation to increase the number of signatories for nomination and instead indicated that consideration should be given to increasing the nomination deposit to deter frivolous nominations.

Recommendation No 12:

> **The AEC recommends that section 170(3) of the CEA be amended to increase the deposit for nomination for the House of Representatives from $250 to $500 and to increase the deposit for nomination for the Senate from $500 to $1000.**

5.8 Constitutional Disqualifications

5.8.1 Section 163 of the CEA provides the basic qualifications for candidates standing for election to federal Parliament, and section 44 of the Constitution provides some explicit disqualifications for standing for and being elected as a Member of Parliament. For sound legal reasons, the AEC has no responsibility for advising candidates personally on whether or not they are constitutionally qualified for election, and instead the AEC suggests that if intending candidates are in any doubt they should seek their own legal advice before nominating.

5.8.2 The nomination form requires intending candidates to declare that they are not constitutionally disqualified, and the AEC does not inquire into the validity of these declarations at the point of nomination. The CEA provides that nominations can only be rejected by the Returning Officer for formal defects. The accepted mechanism for disputing the validity of candidates' declarations is the Court of Disputed Returns, either by petition within 40 days of the return of the writ, or by reference from the relevant House of Parliament.

5.8.3 In 1992 the High Court, sitting as the Court of Disputed Returns, found that Mr Phil Cleary, who had been elected to the Division of Wills in a by-election, was disqualified from being elected or sitting as a Member of Parliament because, at the time of his nomination, he held an office of profit

under the Crown, under section 44(iv) of the Constitution (Sykes v Cleary (1992) 176 CLR 77). Mr Cleary was then a Victorian school teacher on leave without pay and the High Court held that he should have resigned his office before nominating. A fresh election was ordered by the Court, and Mr Cleary, who had subsequently resigned his office of profit, was re-elected at the next federal election. It is therefore now understood that federal and State employees are caught by the office of profit disqualification, whether or not they are on leave without pay. The situation with respect to local government employees remains unclear.

5.8.4 Another issue raised in the Cleary case was section 44(i) of the Constitution which disqualifies candidates from being elected or sitting as a Member of Parliament if they hold allegiance to a foreign country, such as is inherent in dual nationality. The High Court said that any person holding dual citizenship at the time of nomination should take "reasonable steps" to divest themselves of that dual citizenship. The High Court gave no guidance as to what might constitute "reasonable steps".

5.8.5 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 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). Senator Wood's disqualification resulted in a recount for the New South Wales Senate and a Senator of the same political persuasion was elected in his place (Re Wood (No 2) (1988) 62 ALJR 377); Re Wood (No 3) (1988) 62 ALJR 638).

5.8.6 On page 77 of its Report on the 1993 federal election the previous JSCEM noted that the disqualifications in section 44 of the Constitution do give rise to considerable problems for some intending candidates, but that the only real means of removing this uncertainty would be to amend or repeal section 44 by referendum. On a related aspect, the reinstatement rights of public servants who resign in order to contest a federal election are not consistent across federal, State and Territory jurisdictions, and it appears that the only way that this can be remedied is by uniform legislation. Model provisions were considered by the Standing Committee of Attorneys-General (SCAG) at a meeting in June 1993 and were then referred to the State and Territory Ministers with a recommendation that they be enacted.

5.8.7 In relation to dual citizenship and the section 44(i) disqualification, the previous JSCEM on page 79 of their Report recommended that the Government examine the introduction into the Citizenship Oath of a simple mechanism for the renunciation of foreign allegiance. This was supported in principle by the previous Government, but was complicated by the move to allow any Australian citizen to hold dual citizenship where this was previously not permitted. This obviously conflicts with the constitutional disqualification for candidates for federal elections, and it would appear that the renunciation of foreign allegiance in the Citizenship Oath is now no longer a sensible option.

5.8.8 Following the 1996 federal election, the section 44 Constitutional disqualifications have led to two challenges to elected Members of Parliament. In the first matter, Ms Jacqueline Kelly, member of the House of Representatives for the New South Wales Division of Lindsay, is the subject of a petition to the Court of Disputed Returns by Mr Ross Free, the unsuccessful Australian Labor Party candidate for the Division. Mr Free alleges that Ms Kelly held an office of profit under the Crown, and dual citizenship, at her election.

5.8.9 In the second matter, Senator Jeannie Ferris, of South Australia, was the subject of a resolution from the Senate to refer the question of her qualifications to the Court of Disputed Returns on 14 July 1996 on the basis that she may have held an office of profit under the Crown subsequent to her election. Senator Ferris resigned on 12 July 1996 and it is likely she will be returned to the Senate under the casual vacancy provisions of section 15 of the Constitution.

6. Political Campaigns

6.1 Authorisation of electoral advertisements

6.1.1 Section 328 of the CEA provides that electoral advertisements must carry the name and address of the authoriser of an advertisement, and the name and place of business of the printer. The requirement applies to electoral matter that is printed, published and distributed, including videos. Certain articles are excluded from the requirement, such as, for example, car-stickers, T-shirts, and business cards. The AEC has been consistently advised by the Director of Public Prosecutions over the years that the provision is directed at preventing the mischief of "irresponsibility through anonymity" in electoral advertising.

6.1.2 After the announcement of the 1996 federal election on 27 February, and on the day before the issue of the writs for the election on Monday 29 January, Mr Andrew Robb, the Federal Director of the Liberal Party, made a formal complaint to the AEC concerning various booklets and pamphlets containing Government Policy Statements printed, published and distributed by relevant Government Departments on behalf of the Government.

6.1.3 Mr Robb referred in particular to the Government Policy Statements "Our Land", "Our Nation", and "Young Australia", which he claimed were published in breach of the CEA in that: they did not include the names of the persons authorising the publications, in breach of section 328(1)(a) of the CEA; they did not include the names and places of business of the printers, in breach of section 328(1)(b) of the CEA; and, where necessary, they did not include the names and addresses of the authors, in breach of section 332(1) of the CEA.

6.1.4 It will be recalled that this matter caught the attention of the national media on the day of the issue of the writs, Monday 29 January, when Mr Derek Volker, the then Secretary of the Department of Employment, Education and Training, was criticised for the launch of the Government Policy Statement "Young Australia" on that day.

6.1.5 The provisions of the CEA relating to electoral campaign advertising are not consistent in the time frames for their application. Section 328 (authorisation of electoral advertising) applies at all times, not just during the election period, whereas sections 329 (misleading electoral advertising), and section 332 (authors of reports), for example, apply only during the election period. The "relevant period" for the latter provisions is defined in section 322 of the CEA as "the period commencing on the issue of the writ for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote at the election."

6.1.6 Not only does section 328, requiring the authorisation of electoral advertising, operate at all times, but given the definition of "electoral matter", it

also applies to a very broad range of material. In section 4(1) of the CEA "electoral matter" means matter which is intended or likely to affect voting in an election, and section 4(9) of the CEA goes on to say: "without limiting the generality of the definition of "electoral matter" in subsection (1), matter shall be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

> (a) the election;
> (b) the Government, the Opposition, a previous Government or a previous Opposition;
> (c) the Government or Opposition, or a previous Government or Opposition, of a State or Territory;
> (d) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory;
> (e) a political party, a branch or division of a political party or a candidate or group of candidates in the election; or
> (f) an issue submitted to, or otherwise before, the electors in connection with the election.

6.1.7 The AEC immediately referred the Robb complaint on Government Policy Statements and sections 328 and 332 of the CEA to the Director of Public Prosecutions, who advised the following:

> The legislation has an extremely wide effect caused in part by the unintended effect of the extended definition of "electoral matter" which was inserted in the Act in 1987.
>
> The gravamen of sections 328 and 332 of the Act seems to be to ensure that the public is aware of who is making comment that may influence voting and to discourage irresponsible anonymous publications. The fact that section 328 applies at all times, not only during the relevant period, combined with the wide definition of "electoral matter", means that some Government documents may be unintentionally caught by the Act outside the official electoral period. Section 332 clearly only operates within the relevant period. On the information supplied there has not been any breaches of section 332. There may have been possible technical breaches of section 328.
>
> On previous occasions where there may have been a "technical breach" of section 328 and where, as in this case, the source of the material is plain, this office has taken the view that the public interest did not require that a prosecution be pursued. Likewise the Prosecution Policy of the Commonwealth would not require a prosecution of any initial breach of section 328 in the circumstances of this case.

> ...the combination of section 328 operating all the time, together with the wide definitions of “electoral matter”, has the potential to catch many publications which may have not been intended and gives rise to cases which do not warrant prosecution...”

6.1.8 The AEC does not suggest any amendment to the CEA to deliberately exclude Government Policy Statements from the operation of section 328, by, for example, narrowing the definition of “electoral matter” in section 4. (Note that the definition of “electoral matter” in section 4 has wider application than just in relation to electoral advertising. It also applies to expenditure disclosure matters in Part XX of the CEA.) Government instrumentalities should not be treated in any way differently from other organisations, and should not therefore be exempted from the authorisation requirements of the CEA. The CEA does, after all, bind the Crown (section 4B).

6.1.9 Nor does the AEC recommend any amendment to the all-year-round time frame for the operation of section 328. Federal elections may often be preceded by a “phoney campaign” which might run for months before the announcement of the actual election and the issue of the writs. Anonymous and irresponsible publications can clearly cause as much mischief during a “phoney campaign” as they can during the actual campaign. Nevertheless, if the JSCEM were minded to reduce the time-frame for the operation of section 328, then rather than adopting the “relevant period” in section 332, that is, from the issue of the writs, it might be more appropriate to make the “starting point” the announcement of the election, as in section 184(4) of the CEA, for example.

6.1.10 However, the AEC does believe that an amendment to section 328 is required in relation to “technical breaches” generally. The Director of Public Prosecutions has advised the AEC on numerous occasions in the past that the clear legislative intention of section 328, in requiring electoral advertising to contain the name and address of the authoriser, and the name and place of business of the printer, is to avoid the mischief of “irresponsibility through anonymity”.

6.1.11 During election periods the AEC receives many complaints of unauthorised election advertising, such as leaflets or how-to-vote cards without the address of the author, or without the name and place of business of the printer, but where the source of the material is clearly apparent on the face of the material. In such cases the AEC and/or the DPP usually assesses these as technical breaches only, and, where possible, the AEC will contact the authors to press for compliance with the legislation. The AEC may require an undertaking that any such material technically in breach of section 328 will not be distributed further, and an attempt be made, where possible, to retrieve from circulation any material already distributed. In all cases dealt with in this manner at the 1996 federal election, the AEC obtained the full cooperation of the authors of such

material, who were generally surprised by the existence of the authorisation requirement, and eager to avoid any further breaches.

6.1.12 However, given the considerable volume of complaints of technical breaches of section 328 in recent federal elections, and the consequent need to dedicate valuable resources to attend to these, it is apparent that an amendment of section 328 to exclude such technical breaches is worth consideration.

6.1.13 It should be possible to amend section 328 so 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. This is essentially the policy already embodied in respect of candidates' business cards in regulation 87 of the Electoral and Referendum Regulations, and would also be consistent with the attitude regularly taken by the DPP that it is not in the public interest to prosecute technical breaches of the authorisation requirements when the origins of a publication are clear.

Recommendation No 13:

> **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.**

6.2 Misleading electoral advertisements

6.2.1 Section 329(1) of the CEA makes it an offence, during the election period, to print, publish or distribute any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote, including publication by radio or television. The AEC is responsible for the application of the offence in relation to printed matter, and the Australian Broadcasting Tribunal is responsible for the application of the offence in relation to matter broadcast on radio or television.

6.2.2 The AEC received a number of complaints under section 329(1) about printed leaflets, how-to-vote cards and the like, but as in previous elections, most complaints were found to be misconceived, requiring no further action.

6.2.3 Generally, complainants misunderstand the intention of the provision, assuming that it must be read to prohibit "untruths" in political advertising. This is not the case, and in fact section 329(1) has a very narrow and specific application, as decided by the High Court in Evans v Crichton-Browne (1981) 147 CLR 169, where it was held:

that the words...”in or in relation to the casting of his vote” refer to the act of recording or expressing the elector’s political judgement, eg. in obtaining and marking and depositing it in a ballot box, and not to the formation of that judgement.

6.2.4 That is, the section only prohibits electoral advertising that would mislead or deceive a voter in the basically procedural aspects of filling out a ballot paper and putting it in the ballot box. It does not prohibit electoral advertising that is “untrue” and which might mislead or deceive a voter in deciding on his or her political preference.

6.2.5 The AEC received a number of complaints about allegedly misleading how-to-vote cards, where a major political party recommended a first preference vote for the Greens, the Democrat or the Independent candidate, and a second preference vote for their own party. As long as the origin of the material is clearly identifiable, and in most cases the authors have no reason or wish to disguise their affiliation with the relevant major political party, then no offence is disclosed.

6.2.6 The AEC believes that this provision is operating as Parliament intended and therefore no amendments are required.

6.3 Truth in Political Advertising

6.3.1 The AEC made a detailed submission on 19 October 1993 (No 115) to the previous JSCEM on the subject of the “Truth in Political Advertising” recommending against formal regulation, and the Report of the JSCEM on the 1993 federal election concluded that legislating for “truth” in political advertising would be impracticable (pages 107-109).

6.3.2 The brief background to this contentious issue is that in 1983, section 329(2) was inserted in the CEA to prohibit the printing and publication of “untruths” in political advertising during the election period. In August 1984 the Joint Select Committee on Electoral Reform (JSCER) concluded that section 329(2) was unworkable, and as a consequence it was immediately repealed. The 1993 JSCEM agreed with the analysis of the 1984 JSCER, and recommended no regulation.

6.3.3 However, a recommendation in a dissenting report to the Report of the previous JSCEM on the 1993 federal election, by members of the Coalition and the Greens Senator, was that the original 1983 section 329(2) be reinserted in the CEA. The minority members of the previous JSCEM observed that regulation of truth in political advertising has worked effectively in South Australian elections.

6.3.4 Section 113 of the South Australian Electoral Act does not ban “untruths” in political advertising, which would require complex and subjective assessments of ideas, images and intangibles in political debate. Instead, the South Australian Electoral Act bans “inaccurate statements of fact”, which is a much more practical basis for regulation.

6.3.5 In Becker v Cameron (1995) 64 SASR 238 it was held by the South Australian Supreme Court on appeal, that the offence created by section 113 of the Electoral Act 1985 (SA) requires the prosecution to prove that the alleged statement is inaccurate and misleading to a substantial or significant extent. The section confines itself to electoral material containing a statement of fact, not a statement of opinion, and the defence of honest and reasonable mistake of fact is available. The Supreme Court also decided that the implied freedom of communication inherent in the Commonwealth Constitution does not confer a right to disseminate false or misleading information.

6.3.6 During the last parliamentary session of the previous Government, the Australian Democrats moved an amendment to the Electoral and Referendum Amendment Bill 1995 to reinstate in the CEA the old section 329(2) banning “untruths”. This amendment was supported by the Coalition members of the Senate, but was not accepted by the House of Representatives. The impasse was not resolved before the Parliament rose for the 1995 Christmas recess.

6.3.7 The AEC remains opposed to the regulation of the “truth” content of political advertising, believing that it is the right and responsibility of voters, with the assistance of a vigilant media, to make their own judgements about such matters. However, if the JSCEM were minded to recommend some form of regulation, then the AEC would suggest a closer consideration of section 113 of the South Australian Electoral Act, rather than the reinsertion of the old section 329(2) of the CEA.

6.3.8 If such regulation of the content of political advertising were to be introduced, some consideration should also be given to whether a separate body should be established to receive complaints and to undertake the necessary investigations and prosecutions. If the AEC were to become the responsible body, there would inevitably be accusations of political partisanship in decisions on investigations and prosecutions, which could impair the AEC’s reputation for political neutrality. Further, it is probable that the creation of such an offence would lead to a large case load which suggests the creation of a separate regulatory body specifically equipped for such tasks. Essentially, the AEC does not believe that its central charter, which is the conduct of federal elections and referendums, should be extended to include the monitoring of “truth” in political debate.

6.3.9 The JSCEM would also need to consider the time frame in which such regulation should operate, that is, at all times, or only during election periods,

and whether it is intended that broadcast electoral matter should be regulated as well as with printed electoral matter, in which case, the responsibilities of the Australian Broadcasting Tribunal would have to be considered.

6.4 Misrepresentation of Ballot Papers

6.4.1 Section 329(3) of the CEA makes it an offence, during the election period, to print, publish and distribute, or broadcast on radio and television, any electoral advertising that contains a representation or purported representation of a ballot paper that is likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

6.4.2 The AEC received some complaints under this provision about how-to-vote cards with, for example, the number one printed in one square and blanks in all other squares. These were dealt with through seeking compliance with the CEA rather than by prosecution.

6.4.3 The AEC believes that this provision is working as Parliament intended and does not recommend any amendments to the legislation.

6.5 Advocacy of Optional Preferential Voting

6.5.1 Section 329A of the CEA, which prohibits, during the election period only, the advocacy of voting otherwise than full preferential, received considerable attention during the election period because of the jailing of Mr Albert Langer. As the operation of this provision and the other relevant provisions of the CEA, which according to Mr Langer and others allow optional preferential voting to co-exist in the CEA with the requirement for full preferential voting, will require close scrutiny by the JSCEM, the AEC will soon be providing a separate and detailed supplementary submission on the issues.

6.6 Authors of Reports

6.6.1 Section 332 of the CEA makes it an offence, during the election period, to print, publish or distribute a newspaper, circular, pamphlet or dodger containing an article, report, letter or other matter containing electoral matter unless the author's name and address are set out at the end. The purpose of this provision is similar in effect to section 328, that is, to prevent the mischief of "irresponsibility through anonymity" in electoral advertising.

6.6.2 The AEC received a number of complaints at the 1996 federal election under this provision, which were dealt with by seeking compliance with the CEA rather than by prosecution. However, at each election the AEC also receives complaints from newspaper editors who claim that this offence is unclear in its application and far too onerous in its requirements in this modern age. For example, this provision covers letters to the editor, so that the names and addresses of correspondents to newspapers must be printed in full, giving rise to anxieties about invasions of privacy. (Note that the Electoral and Referendum Amendment Bill 1995 has provision to delete the requirement for the full address to be published.) This is in contrast to talk-back radio, where the identity of callers commenting on election matters is not required and could hardly be policed. Not all newspaper editors appear to comply with all the requirements of the provision, especially in relation to election commentary in articles and reports.

6.6.3 The AEC has obtained advice from the Director of Public Prosecutions on the possible deletion of section 332 from the CEA, as follows:

> It is apparent that there is a considerable degree of overlap between the operation of section 332 and section 328. There are however differences in the sections, for example section 328 is directed to the inclusion of the name and address of persons authorising electoral advertisements etc, whereas section 332 is directed to the inclusion of the name and address of the author of newspapers etc containing electoral matter. Another is that section 332 is limited in its scope as it only applies to an election period, whereas section 328 is not so limited.
>
> In including circulars and dodgers section 332 is not really broader in scope than section 328. Its additional operation seems to be largely restricted to articles reports and letters etc in newspapers that are not leading articles. We also observe the limited timeframe of the section and that much of what it covers is included within section 328 which has a much more significant penalty. [The situation] in relation to letters to the editor of newspapers illustrates that questions of policy arise in considering if section 332 should be removed as these letters would not appear to fall within the scope of section 328.

6.6.4 The DPP went on to say that section 332 is a little used provision and a highly technical offence. The DPP noted that there is uncertainty in its operation and a lack of clarity as to its application, for example, in relation to what constitutes a "leading article". The DPP also said that as section 332 is an offence of a technical nature, this would be one factor taken into account by the DPP in considering if prosecution in a particular case would be in the public interest.

Recommendation No 14:

> **The AEC recommends that section 332 of the CEA and section 125 of the RMPA be repealed.**

6.7 Push Polling

6.7.1 On 11 March 1995 the Minister for Administrative Services asked the previous JSCEM to inquire into and report on:

> 1. Whether the Commonwealth Electoral Act 1918 needs to be amended to proscribe or control:
>
> > (a) the practice dubbed "push polling" being the conduct of a telephone opinion poll with the purpose or effect of negative political campaigning.
> >
> > (b) Other forms of political campaigning by telephone involving the making of false or defamatory statements about candidates for election.
>
> 2. Whether in the light of the High Court's decision in Theophanous v Herald and Weekly Times which made significant changes to the law of defamation, the provisions of section 350 of the Commonwealth Electoral Act are appropriately drafted to protect candidates from baseless and malicious allegations.
>
> 3. The use of push polling in the Canberra by-election.

6.7.2 In the AEC submission of 14 July 1995 (No 7) to the previous JSCEM the following was concluded:

The Australian Electoral Commission shares the concern of the Prime Minister, the Leader of the Opposition, the major newspaper editorialists, public commentators, and many members of the public, at the introduction of push polling into political campaigning. The deliberate spreading of baseless and malicious allegations about candidates for election is an unwelcome development in Australian politics.

However, the Commission does not believe that an appropriate response is to amend the Commonwealth Electoral Act 1918 to proscribe or control push polling. Statutory regulation of such activities would involve contentious areas of definition, difficulties in enforcement, and might well involve an unconstitutional infringement on freedom of speech.

Nor does the Commission believe that there is any need to amend section 350 of the Commonwealth Electoral Act 1918 in the light of the decision of the High Court in the Theophanous case. The effect of the Theophanous case was to widen the defence to defamation in political discussion. Any attempt to narrow down section 350 to avoid this result in relation to baseless and malicious allegations during political campaigning may well be unconstitutional.

On a related matter, the Commission has for many years expressed its strong opposition to any proposed legislation requiring “truth in political advertising” and the most recent majority report of this Committee took the same position. The Commission’s view is that defining truth and regulating through legislation its expression in political campaigns is impractical and unworkable.

6.7.3 The AEC notes that the previous JSCEM was unable to hand down its report on push polling before the advent of the 1996 federal election.

6.7.4 No formal complaints of push polling were received by the AEC at the 1996 federal election.

7. Declaration Voting

7.1 Introduction

7.1.1 **Before Polling Day:** Voters who will not be in their home State or Territory on polling day, or will not be able to attend a polling booth, may cast a **postal vote** before polling day by making a written postal vote application to their Divisional Returning Officer. If the application is in order, the Divisional Office despatches ballot papers and a declaration certificate envelope, on which the voter makes a declaration as to eligibility. Voters overseas, prisoners and patients in hospitals and nursing homes are obvious clients for this form of declaration voting. Another form of declaration voting, **pre-poll voting**, is available under the same conditions as for postal voting, but without the need for a postal vote application, if voters are able to attend a pre-poll voting centre, such as a Divisional Office, or an Australian Embassy or High Commission overseas. Voters registered as **General Postal Voters** have ballot papers and declaration certificate envelopes despatched to them automatically on the announcement of an election, without the need to make a written postal vote application.

7.1.2 **On polling day:** Any voter, who on polling day is not able to attend a polling booth in their home Division, may cast an **absent** vote at a polling booth in any other Division in the same State or Territory, by making a declaration as to their eligibility. Interstate voters may cast a **"pre-poll"** vote on polling day at a pre-poll voting centre. Any voter whose name cannot be found on the Certified List of Voters is able to cast a **provisional vote** by declaration. Such voters might include those voters whose names have been removed from the Roll by objection action, but who still reside at the same address, or who have only changed address within the same subdivision.

7.1.3 All declaration votes are dealt with after polling day by first passing through a **preliminary scrutiny**, during which the voter eligibility details as recorded on the declaration certificate envelope are checked against the Commonwealth Electoral Roll. It is only when and if the voter details are verified that the declaration certificate envelope is opened, face down to preserve the secrecy of the ballot, and the ballot papers removed, still folded, and added to the count.

7.2 Declaration Vote Statistics

7.2.1 Of the 11,294,479 votes cast at the 1996 federal election, 1,557,075 or 13.8%, were by declaration vote. Of the total votes cast at the election, 3.2% were postal votes, 3.9% were pre-poll votes, 5.8% were absent votes, and 0.9% were provisional votes.

7.3 Pre-poll Ordinary Voting

7.3.1 At the 1996 federal election, of the total 1,761,498 declaration votes issued, 462,418 were pre-poll votes, of which 235,850 were pre-poll votes cast by voters in their home Division.

7.3.2 If, instead of requiring pre-poll voters presenting at pre-poll voting centres in their home Division to cast a declaration vote, such voters were able to cast an ordinary vote, by being immediately marked off the Certified List of Voters for their home Division, then the time delays, administrative load, and costs involved in the issuing, sorting and collating, and in the required preliminary scrutiny, of such declaration votes, could be considerably reduced.

7.3.3 In its 19 October 1993 (No 115) submission the AEC made this recommendation to the previous JSCEM, but it was rejected on the grounds that pre-poll ordinary voting would encourage and endorse the trend towards an ever-increasing proportion of the vote being cast before polling day (pages 89-90 of the JSCEM Report on the 1993 federal election). However, it is not obvious that pre-poll ordinary voting would increase the proportion of votes cast before polling day any more than does the distribution of unsolicited postal vote applications by political parties during the campaign period (refer paragraph 7.4.4). Although the time taken for voting will be reduced by a few minutes, pre-poll ordinary voters must still seek out and present themselves at a pre-poll voting centre, and they must still have a legitimate reason for applying for a pre-poll vote.

7.3.4 At the Victorian State Election held on 30 March 1996 pre-poll ordinary voting was implemented, reportedly resulting in a significant reduction in the number of declaration votes issued, the faster finalisation of election results, and savings in resource and staff expenditure.

Recommendation No 15:

The AEC recommends that the CEA and the RMPA be amended to allow pre-poll voters in their home Divisions to cast an ordinary vote.

7.4 Postal Vote Applications - Distribution by Political Parties

7.4.1 In the AEC submission of 2 August 1993 (No 91) to the previous JSCEM on the 1993 federal election, it was recommended that the CEA be amended to prevent the large-scale reproduction and distribution of official AEC postal vote application forms by political parties, and that if this was not accepted, that the return address for postal vote applications be the Divisional Returning Officer and not political party campaign offices or candidates.

7.4.2 The AEC is becoming increasingly concerned at the potential for voters to be confused about the procedures for applying for a postal vote, and the possibility of a developing public perception that it is the political parties who are

somehow responsible for the conduct of postal voting at federal elections rather than the AEC.

7.4.3 At the past two federal elections the major political parties have blanketed some marginal Divisions with vast numbers of postal vote applications either printed by themselves, or provided by the AEC. In many cases the return address for the postal vote application has been the party campaign offices rather than the AEC, and this has led to a significant risk that some voters will be disenfranchised by this detour and time delay through party political offices, for the recording of voter details for campaign purposes.

7.4.4 The AEC is also concerned that such practices by the political parties are encouraging voters to cast postal votes unnecessarily, thus increasing the number of declaration votes, the administrative load in their processing, the cost of the voting process, and slowing down the finalising of results.

7.4.5 The previous JSCEM considered that political parties should continue to be permitted to reproduce and distribute postal vote application forms to voters, but recommended a prohibition on the inclusion of party political campaign material in the envelope containing the postal vote application form sent by a political party to a voter. The previous JSCEM also recommended that a postal vote application form sent by a political party to a voter should have an AEC office as the only nominated return address. (JSCEM Report on the 1993 federal election, pages 91-92).

7.4.6 The Coalition members of the previous JSCEM dissented from these recommendations, not being persuaded that current practices compromised the perceived political neutrality of the AEC, and remarking that the suggestion that political parties might disenfranchise voters was insulting (JSCEM Report on the 1993 federal election, page 160).

7.4.7 In the event, the previous Government “deferred for further consideration” the recommendations of the majority of the JSCEM that were supported by the AEC, and legislative amendment did not proceed.

7.4.8 In the lead-up to the 1996 federal election, the AEC sought an injunction to prevent the Victorian Branch of the Liberal Party from infringing Commonwealth copyright by printing, publishing and distributing, without authority, a version of the official postal vote application form. The Liberal Party then cross-filed to prevent the Commonwealth asserting its copyright. The Federal Court decided that the Commonwealth had copyright in the postal vote applications forms, but could not, because of the particular circumstances of this case, enforce that copyright (Baillieu and Poggioli v AEC and the Commonwealth, VG 10 of 1996, 22 January 1996, Sundberg J, Federal Court, unreported).

7.4.9 The AEC remains of the view that the current practice of political parties of printing and distributing large numbers of postal vote applications, enclosed with party campaign material, and forwarded through party campaign offices for the purposes of constructing voter profiles for campaign purposes, is detrimental to the overall good conduct of federal elections.

Recommendation No 16:

> **The AEC recommends that the CEA and the RMPA be amended to prohibit a postal vote application form, or a reproduction thereof, being incorporated with material issued by any body other than the AEC.**

Recommendation No 17:

> **The AEC recommends that the CEA and the RMPA be amended as necessary so that a postal vote application form and associated material sent to electors shall nominate only the appropriate office of the AEC as the return address for that application form.**

7.5 Postal Vote Envelopes - Postmarking

7.5.1 The CEA requires a Divisional Returning Officer (DRO) to examine the postmark on a postal vote envelope during the preliminary scrutiny to determine whether the postal vote was cast before polling day. Because of the practical unreliability of this test, many voters are being unnecessarily disenfranchised.

7.5.2 Paragraph 6(e) of Schedule 3 to the CEA provides that if an envelope containing a postal ballot paper is to be accepted for further scrutiny, the Divisional Returning Officer (DRO) must be: “satisfied that ... the vote marked on the ballot paper was recorded prior to the close of the poll”. Paragraph 7 of Schedule 3 to the CEA provides that where an envelope containing a postal ballot paper is postmarked later than polling day: “the vote marked on that ballot paper shall be taken not to have been recorded prior to the close of the poll”.

7.5.3 In paragraph 8.2 of the AEC submission of 19 October 1993 (No 115) to the previous JSCEM, the AEC said the following:

> The usefulness of postmarking as a guide to the date of postage appears to be decreasing. Mail pickups in metropolitan areas are increasingly taken directly to major mail exchanges for coding and sorting, rather than being postmarked at post offices. Mail received in bags by some post offices on Friday or Saturday from agencies in rural areas may not be postmarked, if at all, until the following Monday. The AEC understands that the Australian Postal Corporation in some areas may not postmark any mail in "postage paid" envelopes.

7.5.4 The AEC submission then analysed a (then) recent sample of postal vote envelopes in the Division of Chifley which indicated that 42% had no postmark and a further 5% had an illegible postmark. The AEC submission went on to say that:

> As the decrease in the utility, reliability and comprehensiveness of postmarking is likely to continue, the AEC recommends repealing the provision relating to postmarking altogether, and instead relying on the date of the witness's signature for determining if the vote was cast prior to the close of the poll.

7.5.5 On page 100 of the Report on the conduct of the 1993 federal election, the previous JSCEM said that it considered a postmark to be a more reliable form of verification, and therefore believed that paragraph 7 of Schedule 3 should be retained while postmarks are still available on a substantial proportion of postal vote envelopes.

7.5.6 In preparation for the 1996 federal election, the AEC negotiated with Australia Post for the postmarking of the AEC's mail and particularly for the immediate postmarking of all mail received at post offices before 5 pm on the Friday before polling day, and for rural and remote mail contractors to endorse on AEC envelopes the date of collection. Australia Post General Instructions were amended accordingly.

7.5.7 Despite this much appreciated cooperation from Australia Post, it is evident that a number of postal votes were completed before the close of the poll, but not posted in time to be postmarked before the close of the poll. As a result eligible voters continue to be disenfranchised through no fault of their own. For example, in the Division of Chifley quoted by the AEC for the 1993 federal election, the percentage of postal votes not postmarked for the 1996 federal election was 59% and a further 20% had an illegible postmark.

7.5.8 In December 1995, the AEC received a letter from Senator Minchin enquiring about the procedures for acceptance of postal vote certificates, including the relationship to the postmark, and suggesting that the AEC "impress upon Australia Post the necessity for all mail to be postmarked to ensure that all valid postal votes at the next federal election are counted". In reply, the AEC advised Senator Minchin of the agreement with Australia Post and reminded him

of the conclusion of the previous JSCEM to the AEC recommendation in 1993. Senator Minchin then advised that he would look forward to the matter being raised with the next JSCEM as it should have been examined more closely the first time.

7.5.9 Where there is no postmark or the postmark is illegible, the DRO must be satisfied, in accordance with paragraph 6(e) of Schedule 3, that the vote marked on the ballot paper was recorded prior to the close of the poll. It is AEC policy in these circumstances to determine, unless there is some reason to believe otherwise, that the ballot paper was marked prior to the close of the poll if the date of witnessing is on or before polling day.

7.5.10 Clearly the lack of a postmark is not the problem. It is the existence of a postmark recorded after polling day, where, on the evidence of the witness date, the vote was recorded before polling day. For the reasons outlined above, it is the view of the AEC that the postmark is no longer a sufficiently reliable indicator of when the vote was actually recorded.

Recommendation No 18:

> **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.**

7.6 Postal Vote Envelopes - Privacy of Voter Details

7.6.1 In the May 1989 Report No 3 of the JSCEM entitled “The 1987 Federal Election” recommendation 31 (page 52) was that the AEC introduce a system of double enveloping, or an appropriately designed ready-to-assemble envelope, for the purposes of postal voting. This was in order to address concerns expressed to the 1989 JSCEM about the privacy of voter details written on the outside of a postal vote declaration envelope, and sent through the postal service, and related concerns about the secrecy of declaration votes at the scrutiny.

7.6.2 The AEC has always used strict procedures to preserve the secrecy of declaration votes. At the count, and in front of scrutineers, those declaration envelopes that have passed through the preliminary scrutiny are laid face down for the removal of the ballot papers, and the still folded ballot papers are then added to a pile of other such ballot papers for later scrutiny.

7.6.3 In response to the privacy concerns of the 1989 JSCEM, and in the absence of legislation to permit double enveloping, the AEC developed a postal vote envelope with a “privacy flap” to cover the postal vote declaration certificate printed on the face of the envelope.

7.6.4 However, this design solution has not been entirely successful. Some postal vote declaration envelopes are occasionally returned from the voter with the ballot papers inserted between the privacy flap and the envelope itself, thus invalidating the vote. In addition, at the 1996 election, Australia Post reported instances where postal vote declaration envelopes had split while being processed through Australia Post mail sorting machines. The privacy flap may have been in some measure responsible for this.

7.6.5 Following identification of this problem, all stocks of postal vote declaration envelopes were reinforced with tape along the perforation line connecting the privacy flap to the envelope. No further instances were reported to the AEC following this action. Australia Post also put in place operational procedures to prevent problems occurring in the sorting stage. Any envelope having an attached fold-over flap will be prone to catching other mail in the sorting process, especially when the contents are bulky, as in the case of the Senate ballot paper. For the 1996 federal election, postal vote declaration envelopes were made from recycled material and the resultant weaker construction may have contributed to a number of envelopes bursting open.

7.6.6 The AEC has been advised by the Attorney-General’s Department that it is restrained from developing other possible approaches to the transmission of postal votes, such as double enveloping, by the current provisions of the CEA. That is, section 188(1)(a) of the CEA provides that the postal vote certificate (containing the voter’s declaration) “be printed on an envelope addressed to the DRO for the Division”, and section 194(1)(d) requires the voter to place the ballot papers “in the envelope addressed to the appropriate DRO”. The CEA clearly requires the voter’s declaration to be written on the outside of the envelope containing the ballot papers, and posted in this form to the DRO.

7.6.7 The AEC is of the view that amendments to these provisions of the CEA should be made to allow the AEC greater flexibility in developing more secure and reliable enveloping for postal votes.

Recommendation No 19:

> **The AEC recommends that the relevant postal voting provisions of the CEA and the RMPA be amended to delete the requirement for the declaration certificate and the return address of the Divisional Returning Officer to be printed on the envelope into which the postal ballot papers are placed.**

7.7 Overseas Postal Voting

7.7.1 Ballot papers were despatched overseas between 13 and 15 February to enable pre-poll and postal voting to begin at postal voting centres around the world. 127,900 House of Representatives and 77,040 Senate ballot papers were circulated to 99 overseas posts. A complete list of overseas posts and the number of votes cast at each post is provided at Appendix D.

7.7.2 London was the largest overseas post to receive ballot papers: 23,325 for the House of Representatives, and 21,505 for the Senate. A total of 13,926 declaration votes were cast at Australia House, an increase of 2,127, or 18%, over the number of votes cast at the 1993 federal election. However, the explosion of the IRA bus bomb close to Australia House may have resulted in the significant increase in requests for postal vote applications.

7.7.3 After London, Hong Kong has the largest pre-poll centre located at an overseas post. Following the unprecedented turnout at the 1993 federal election, the Australian Consulate in Hong Kong made contingency arrangements to cater for an expected increase in voter turnout. 7,661 votes were cast by Australian citizens, an increase of 2,476 votes, or 47.8% more than at the 1993 federal election.

7.7.4 For the first time, the AEC sent an officer to London and Hong Kong to assist consular staff from the Department of Foreign Affairs and Trade with pre-poll and postal voting.

7.8 Overseas Postal Voting - Authorised Witness

7.8.1 Section 193(2) of the CEA provides a list of those persons who can act as an authorised witness on the postal vote certificate for overseas postal voters. The list appears to be somewhat outmoded with its reference to the “Queen’s Dominions” instead of the Commonwealth, and its granting of witnessing rights for the Australian franchise to Justices of the Peace, medical practitioners, and ministers of religion, from other countries.

7.8.2 The definition of which particular countries are today part of the “Queen’s Dominions” is fraught with difficulty and voters and AEC staff are perennially confused about its meaning. It would seem appropriate and in line with the intention of this provision to delete any reference to “Queen’s Dominions” and replace with “Commonwealth”. The Attorney-General’s Department has advised that such an amendment would be appropriate.

Recommendation No 20:

The AEC recommends that section 193(2) of the CEA be amended to replace any reference to the "Queen's Dominions" with the "Commonwealth".

7.9 Overseas Postal Voting - Defence Forces

7.9.1 In a Queensland Supreme Court decision on the Mundingburra election petition arising from the Queensland State election last year, the election for the District of Mundingburra was voided on various grounds, including, in particular, the failure of the Queensland Electoral Commission to provide 22 postal votes to Australian Defence Force personnel in Rwanda in Africa.

7.9.2 The Court appeared to accept that if the Queensland Electoral Commission had simply performed its statutory obligation to "post" material to the voters in Rwanda, instead of involving the Australian Defence Force as an agent in the delivery, then there would have been no grounds for overturning the election on account of official error or omission.

7.9.3 For federal elections, the relevant obligations imposed by the CEA are to "send" postal voting papers (section 186), and to "post" postal vote certificates and postal ballot papers (section 188). Simply posting the material to overseas Defence personnel would therefore satisfy the obligations imposed by sections 186 and 188 of the CEA.

7.9.4 The Attorney-General's Department has advised that any attempt by the AEC to convey electoral materials to overseas Defence personnel by alternative means than the postal service, such as was adopted by the Queensland Electoral Commission in using the Australian Defence Force as an agent for the delivery, could give rise to the possibility of a successful challenge to the election if the alternative means of delivery failed.

7.9.5 The AEC has also been advised by the Attorney-General's Department that, in order to ensure that the Defence Force personnel overseas are better able to exercise their voting rights, and to ensure that an election would not be set aside on account of the failure of an alternative delivery mechanism, amendments along the following lines could be considered.

Recommendation No 21:

The AEC recommends that section 188 of the CEA and section 61 of the RMPA be amended to provide that where Australian Defence Force personnel are serving overseas as a formed unit, and the Australian Postal Corporation certifies that the circumstances in the country where the personnel are serving are such that postal vote applications or ballot papers would not, if posted, reach the personnel in time for their votes to be cast prior to the relevant deadline, then a Divisional Returning Officer shall be taken to have satisfied the requirements of section 188 if he or she provides the relevant applications or ballot papers to a member of the Australian Defence Force designated for the purposes of the section.

Recommendation No 22:

The AEC recommends that similar amendments be made to the CEA and the RMPA to cover cases in which the AEC uses services other than postal services, such as contractual delivery, for the conveyance of postal voting material.

Recommendation No 23:

The AEC recommends that the CEA and the RMPA be amended to provide explicitly that a failure of an alternative mechanism to the postal service shall not, in cases where the postal service has broken down, form the basis for a challenge to the result of the election in the Court of Disputed Returns.

8. Voting

8.1 Ballot Papers

8.1.1 For the first time, at the 1996 federal election, computer-generated ballot papers were used for the House of Representatives, replacing the type-set ballot papers used at previous elections. It was also the first time that the House of Representatives ballot papers were issued to polling places in numbered cheque book style pads. This approach was introduced to enable polling officials to more easily reconcile the number of ballot papers issued and to improve the accountability in ballot paper handling at all stages. Ballot papers were despatched to Divisional offices and overseas in the week commencing 12 February to commence pre-poll and postal voting.

8.1.2 Form E in Schedule 1, and sections 210 to 211A of the CEA specify the printing and formatting of the Senate ballot paper. The Schedule makes it clear that the Senate ballot paper must be printed horizontally rather than vertically, and with no layering of groups down the ballot paper. In addition, commercially available printing technologies currently restrict the AEC to using paper one metre in width. At the 1993 federal election these limitations became critical in New South Wales when some 21 groups of candidates nominated, plus 8 ungrouped candidates. This meant that the print size had to be reduced to fit onto the metre wide paper, to a point where legibility was almost a problem.

Recommendation No 24:

> **The AEC recommends that the Electoral Commissioner be provided with a discretion in the CEA with regard to the layout and formatting of the Senate ballot paper to enable cost-effective use of standard paper stocks and printing technologies.**

8.2 Voter Turnout

8.2.1 Of the 11,740,568 eligible electors, 96.20% voted at the 1996 federal election.

8.2.2 At the 1996 federal election the types of votes cast were as follows:

ordinary votes	9 737 227	(86.2%)
absent votes	657 539	(5.8%)
pre-poll votes	434 841	(3.9%)
postal votes	359 604	(3.2%)
provisional votes	105 091	(0.9%)

8.2.3 Note that votes are counted for Senate elections in several stages. In some cases, a fresh count will show that an earlier count was in error. As it is not possible at that stage to identify the ballot papers where the error was made, an adjustment of 177 to the above table accounts for the discrepancy between the earlier count and the final total votes.

8.3 Queues at Polling Booths

8.3.1 At the 1990 federal election large queues at some polling booths were experienced around the country. In the JSCEM Report on the 1990 federal election recommendations were made to improve voter convenience at polling places (pages 20-21).

8.3.2 Standard AEC procedures now involve time checks at polling places to identify any place where voters may have been required to queue for longer than the AEC benchmark of 10 minutes. The information obtained from such surveys is then used to guide polling place resource planning for the next election. In its Report on the 1993 federal election the JSCEM noted with approval that the AEC is continuing to investigate cost effective means of improving the flow of voters at polling places (pages 4-5).

8.3.3 As a result of the implementation of the 1990 JSCEM recommendations, no major queuing problems were experienced at the last two federal elections.

8.4 Disabled Access to Polling Booths

8.4.1 The Commonwealth Disability Strategy commenced in 1994 and has a ten year time period for full implementation. The Strategy requires all Commonwealth agencies, under the provisions of the Disability Discrimination Act 1992, to develop and implement action plans by 1997 to meet the requirements of the Act. The AEC is experiencing particular difficulties in conforming with the Australian Standard AS1428.1, the Design for Access and Mobility, in relation to wheelchair access at polling booths.

8.4.2 At the 1996 federal election, the number of polling booths with wheelchair access was just over 50%, an increase of 15% over the 1993 federal election. While this substantial improvement, together with active consultation with disability organisations prior to the election, tended to minimise complaints to the AEC about lack of wheelchair access to polling booths, the AEC faces considerable problems in achieving further substantial improvements, let alone 100% conformity with the Design Standard in all polling booths across Australia.

8.4.3 The AEC normally has about 33 days notice of a federal election, every 2 to 3 years. It is therefore impossible to book suitable premises for polling booths with wheelchair access in advance of the announcement of an election, and

many of the suitable premises that the AEC may have identified ahead of the announcement may be unavailable on the day.

8.4.4 Schools are frequently used as polling booths, precisely because they are normally available at short notice, but many of the older schools do not have wheelchair access sufficient to meet the requirements of the Design Standard. In addition, in some locations, such as inner urban areas and older rural areas, there are simply no suitable premises with wheelchair access. Further, the Design Standard has some particularly onerous criteria for conformity. Many buildings may partly meet the criteria, such as having appropriate ramp gradients, railings and doorways, but fail because of inappropriate car park guttering, for example. It is therefore technically impossible to classify such premises as having wheelchair access.

8.4.5 Options such as portable ramps have beens2ebJ T* 0.o pors 13(i)5(m)-4(possih/)nes are not feasible due to space limitations. A ramp to cover a metre rise, for

8.6 Mobile Polling in Special Hospitals

8.6.1 Mobile polling by AEC electoral visitors in institutions designated as special hospitals, and appointed as polling places, is governed by sections 224, 225 and 226 of the CEA.

8.6.2 The CEA currently refers to “patients” in special hospitals, which generally refers to hospitals that have not otherwise been appointed as polling places, and to nursing homes and such institutions. The fact that it is only patients at special hospitals that are permitted to be visited excludes the “residents” of many retirement villages who could presumably make good use of such an AEC service were it to be provided.

8.6.3 Many retirement villages comprise a complex of units including a nursing home, an infirmary, and self-care units. Under the current provisions of the CEA only “patients” in the nursing home and infirmary, that is, only those under medical care, may make use of AEC electoral visitors. However, there are many in the self-care units in such complexes who are not sufficiently mobile to get to a polling place and must arrange postal votes. It is distressing for these elderly and frail self-care residents to be told that they cannot vote at the village while others under medical treatment are able to do so.

Recommendation No 25:

> **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.**

Recommendation No 26:

> **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”.**

8.6.4 On a minor technical point, section 226(4)(a) of the CEA makes a cross-reference to section 219, which appears to be a drafting error. The parallel provision to section 226(4)(a) of the CEA is section 50(3)(a) of the RMPA, which is cross-referenced to section 135 of the RMPA. The parallel provision to section 135 of the RMPA is section 348 of the CEA.

Recommendation No 27:

The AEC recommends that the reference in section 226(4)(a) of the CEA to section 219 be amended to refer to section 348 of the CEA.

8.7 Compulsory Voting

8.7.1 Compulsory voting was first introduced in Australia in the State of Queensland in 1915 by the conservative government of the day. At that time, the voter turnout at federal elections under non-compulsory voting was steadily declining from a peak of 78.1% in 1917 to 57.9% in 1922.

8.7.2 The two principal power blocs in the federal Parliament agreed privately that compulsory voting was becoming an increasingly attractive option for federal elections in the light of the Queensland experiment, but neither side of politics wanted to be seen as the author of such a fundamental change to the political system.

8.7.3 In the event, an agreement was made behind closed doors, and a Private Member's Bill to introduce compulsory voting for federal elections was passed in record time (about three hours) through the House of Representatives and the Senate to become the Commonwealth Electoral Act 1924, which amended the Commonwealth Electoral Act 1918, to insert section 245(1), as it is now numbered. At the 1925 federal election voter turnout increased dramatically to 91.3%, and since that time has it has never fallen below 90%.

8.7.4 Compulsory voting has remained in force for federal elections for the past 72 years with bipartisan support. At the time of its introduction in 1924 it was considered a simple and effective mechanism for producing an increase in voter turnout, which was regarded as good for democracy, as well as removing the need for political parties to spend ever-increasing sums of money on bringing the voter to the polling booth, with the associated potential for bribery and corruption.

8.7.5 For the past three federal elections, the AEC has commissioned various reputable private companies to conduct surveys of the level of support for compulsory voting among Australian citizens. In 1990, of those surveyed, 60% believed voting should be compulsory, in 1993, support had grown to 75%, and in 1996 support was at 74%.

8.8 Failure to Vote

8.8.1 After the 1993 federal election 41 non-voters Australia-wide received sentences of one to two days in prison for failure to pay the court-imposed fine of up to $50 with costs for failure to vote. The AEC had no involvement with the sentencing of these individuals to prison. When the court imposes a fine for any statutory offence, it is then up to the court to recover that fine, not the AEC. It appears from media reports that many of the individuals concerned decided not to pay the fine for failure to vote as a protest against compulsory voting.

8.8.2 The 41 individuals who were jailed by the court for failure to pay a court-imposed fine were then characterised as “political prisoners” by the media and through some misinformed commentary the AEC has since been unfairly stigmatised as being responsible for jailing people for failure to vote.

8.8.3 Under section 15A of the Crimes Act 1914, the relevant laws of a State or Territory, with respect to the enforcement and recovery of fines ordered by courts to be paid by offenders under federal laws, must be applied in the relevant jurisdictions. Only some of these jurisdictions have community service orders, for example, as an alternative to a jail sentence for failure to pay court-imposed fines under federal laws. It is likely therefore, that while compulsory voting remains in force under the CEA, and while there is a lack of national uniformity in the availability of alternatives to jail sentences, there will continue to be cases where certain individuals choose to submit to a jail sentence instead of paying the court-imposed fine for failure to vote at federal elections.

8.9 Informal voting

8.9.1 The AEC is currently conducting surveys of House of Representatives and Senate ballot papers, to determine the frequency of informal and exhausted votes. The results of these surveys, and analyses of trends, will be provided to the JSCEM as soon as they are available. Ballot papers will be classified according to the deficiencies which caused them to be informal, or to be set aside as exhausted. The methodology used for survey analysis will follow that adopted for similar surveys conducted after the 1984, 1987, and 1993 elections, to enable the AEC to make an assessment of the long term trends. The tables below provide a comparison of the percentage of informal votes cast at federal elections since 1984:

Senate (%)

	1996	**1993**	**1990**	**1987**	**1984**
NSW	**3.75**	2.65	4.2	4.9	5.2
VIC	**3.55**	3.06	3.6	4.0	3.7
QLD	**3.27**	2.04	2.5	3.1	2.7
WA	**3.50**	2.11	2.9	3.3	4.2
SA	**3.27**	2.31	2.5	3.8	5.0
TAS	**3.16**	2.56	3.1	3.8	5.7
ACT	**2.47**	1.60	2.4	2.4	3.1
NT	**2.75**	2.84	2.8	3.7	2.8
AUSTRALIA	**3.50**	2.55	3.4	4.1	4.3

House of Representatives (%)

	1996	**1993**	**1990**	**1987**	**1984**
NSW	**3.62**	3.1	3.1	4.6	5.7
VIC	**2.93**	2.8	3.5	5.3	7.5
QLD	**2.56**	2.6	2.2	3.4	4.5
WA	**3.16**	2.5	3.7	6.6	7.1
SA	**4.08**	4.1	3.7	6.8	8.2
TAS	**2.35**	2.7	3.3	5.0	5.9
ACT	**2.82**	3.4	3.0	3.5	4.7
NT	**3.39**	3.1	3.4	5.8	4.6
AUSTRALIA	**3.20**	3.0	3.2	4.9	6.3

9. Election Results

9.1 National Tally Room

9.1.1 For the 1996 federal election, the National Tally Room (NTR) was at a new venue, the Indoor Arena at the Australian Institute of Sport (AIS) in Canberra, because the normal venue, Exhibition Park, was being used to host the annual Royal Canberra Show on the weekend of 24 and 25 February 1996. As the NTR takes two weeks to assemble set-up and dismantle, it was impractical for the AEC to use the Exhibition Park venue.

9.1.2 In the event of an election being called on or about the time of the Royal Canberra Show, the AIS had already been reserved as an alternative venue to Exhibition Park as part of a number of contingency arrangements made by the AEC during the second half of 1995. Following the election announcement, the AIS was confirmed as the venue for the NTR.

9.1.3 The AIS as a venue posed significant problems for the AEC:

- reduced workspace area;
- limited commercial vehicle access;
- lack of general purpose rooms;
- inadequate power and telephone systems;
- possible damage to fittings and the wooden parquetry floor; and
- other infrastructure problems.

9.1.4 While the venue presented problems, it also offered a number of advantages:

- improved public access;
- increased area available for AEC infrastructure; and
- better public view.

9.1.5 The radio and print media area was essentially the same size as that available at Exhibition Park, but the area available for all television networks was reduced. This required careful planning and strict adherence to a construction and dismantling schedule. The television networks and other appropriate organisations were fully briefed on the schedule and, in the main, cooperated with each other and the AEC.

9.1.6 The NTR was constructed on time and within the agreed budget of approximately $450,000 excluding computer costs. Because the AIS venue had to be hired for a longer period than the normal venue additional costs of $40,000 were incurred.

9.1.7 The AEC acknowledges the excellent support and assistance provided by the AIS operations staff throughout the construction and dismantling phases of the NTR.

9.1.8 On election night, approximately 4,343 people attended, with the following groups represented:

- about 2,900 members of the public;
- 871 media representatives;
- 122 political party workers or members; and
- 238 AEC staff and support staff.

9.1.9 The AEC received very positive feedback, in the form of written and verbal comments, on its organisation and conduct of the NTR. These comments were made by a cross section of participants attending the NTR, including official and international guests, the public, the media and members of political parties.

9.2 Election Night Result

9.2.1 The Election Night Management Systems (ELMS) provided continuous uninterrupted electronic data feeds to all major television networks throughout election night. For the first time, SBS TV received an electronic data feed.

9.2.2 The AEC once again used the matching polling place technique to analyse polling data, a technique pioneered by the AEC and used in the 1990 and 1993 elections to effectively eliminate bias in early swing figures. The technique proved effective and by 7.00 pm (EST), with only 5% of the national figure available, a swing of +5.00% was registered to the Coalition. This figure remained stable throughout the night. By 7.30 pm (EST), most political commentators had indicated a change of Government had occurred. The final swing with all votes counted was +4.8%.

9.2.3 ELMS received accolades from the media. A total of 82,500 enquiries were recorded on the NTR enquiry terminals. The input of votes from the Divisional Offices was also processed more rapidly than at any previous election.

9.2.4 It may be of interest to note the report extracted below, which was broadcast internationally by the Voice of America on election night:

> The Australian Electoral Commission lived up to its proud boast that nowhere in the world are election results collected and analysed more quickly than in Australia. After only 90 minutes, 10 percent of the vote had been counted, and these early results in Tasmania, New South Wales and Victoria, clearly indicated a change of Government. The trend was confirmed as counting continued, and just three and half hours after the polls in Eastern Australia closed, Prime Minister Keating conceded defeat.

9.3 Preliminary Scrutiny of Declaration Votes

9.3.1 The AEC submission to the JSCEM in October 1993, entitled "Proposed Technical Amendments to Electoral Legislation" (No 115) recommended that section 266(1) of the CEA be amended to provide that the preliminary scrutiny of declaration votes begin on the Monday before polling day.

9.3.2 Under section 266(1) of the CEA, the preliminary scrutiny of all declaration votes cannot commence until the close of the poll. This preliminary scrutiny does not involve any examination of the ballot papers, but rather an examination of voter details contained on the declaration certificate envelope. A declaration vote is accepted for further scrutiny (that is, the examination of the ballot papers contained in the declaration certificate envelopes) if the DRO is satisfied that the voter is enrolled (or entitled to be enrolled) for the Division and the declaration certificate is properly signed and witnessed. In the case of postal votes, the DRO must also be satisfied that the voter's signature on the postal vote declaration certificate is genuine and properly witnessed, and that the vote contained in the envelope was recorded prior to the close of the poll (see Chapter 7.5).

9.3.3 The AEC recommended in 1993 that the timetable for the preliminary scrutiny of declaration votes begin in the week before polling day, rather than at the close of the poll.

9.3.4 The advantages of being able to begin the preliminary scrutiny of declaration votes in the week before polling day are that it would ease the load on the enrolment computer system, transfer a time-consuming activity to a comparatively less busy time of the election period, and speed up the count. The AEC emphasises that this would only involve the initial checking of voter eligibility to cast a declaration vote, and not the actual scrutiny of ballot papers. The envelopes would not be opened and no votes would be counted until after the close of the poll. One possible disadvantage of this approach is that candidates would need to consider providing scrutineers before, as well as after, polling day. However, the shortening of the post-polling day scrutiny period, and the less hectic conditions overall, would result in advantages for scrutineers and AEC officials alike.

9.3.5 The previous JSCEM in its Report on the 1993 federal election agreed with the AEC view and recommended that section 266 of the CEA be amended

to allow the preliminary scrutiny to begin on the Monday before polling day (pages 20-21). The Government Response tabled in Parliament on 21 September 1995 supported the JSCEM recommendation, and the relevant amendment was introduced as part of the Electoral and Referendum Amendment Bill (No 2) of 1995. However, this amendment was subsequently deleted from the Bill by the House of Representatives.

9.3.6 The AEC remains of the view that the introduction of such an amendment would still deliver benefits and again recommends that the preliminary scrutiny of declaration votes commence on the Monday before polling day.

Recommendation No 28:

> **The AEC recommends that section 266 of the CEA concerning the preliminary scrutiny of declaration votes be amended so as to provide that the preliminary scrutiny of declaration votes may begin on the Monday before polling day.**

9.3.7 On a more general point, the AEC is currently reviewing the total operating environment for declaration vote scrutinies under the CEA, including Schedule 3. The issue of enrolment reinstatements, for example, is a vexing problem the AEC believes needs reform.

9.4 The Count

9.4.1 The computerised Post Election System was used to process fresh scrutiny results for the House of Representatives and the Senate. The Post Election System had been extensively tested over the past three years. The testing and strict adherence to approved AEC methodology proved beneficial and contributed to the success of all computer applications during the election.

9.4.2 At the 1993 federal election the AEC conducted a Two-Candidate Preferred (TCP) count for the first time. The count was conducted in polling places on election night to provide an indication of what the result would be for each Division after the actual distribution of preferences.

9.4.3 At the 1996 federal election, the TCP count was extended to include the declaration scrutinies and the fresh scrutiny of the House of Representatives votes. Although this increased the workload undertaken at each Divisional Office, it provided a reliable indication of the final result earlier than was previously possible, particularly in close seats.

9.4.4 In addition, the distribution of preferences was conducted by polling place for the first time. This improved the statistical data the AEC was able to provide to candidates and political parties by making available results of preference flows for each polling place.

9.5 Declaration of the Poll

9.5.1 The declaration of the poll for most House of Representatives Divisions could take place much earlier if the result of the Two-Candidate Preferred (TCP) count were to be used to determine the elected candidate instead of waiting for the full distribution of preferences count as currently required by section 274(7) of the CEA. The Attorney-General's Department has advised that such an amendment to the CEA would be appropriate.

9.5.2 Section 274(7)(d) provides for a full distribution of preferences to be conducted in every Division. The distribution of preferences is conducted by excluding the candidate with the fewest first preference votes and taking the ballot papers of that candidate and distributing those ballot papers to the candidate next in the order of the voter's preference (section 274(7)(d)(i)). This process is continued by excluding the candidate with the fewest votes and distributing the ballot papers of that candidate (including any gained from the distribution of a previously excluded candidate's ballot papers) to remaining unexcluded candidates, until there are only two candidates remaining in the count (section 274(7)(d)(ii)). Where a candidate has an absolute majority of first preference votes, or an absolute majority of votes after the exclusion of candidates, then that candidate is declared elected (section 274(7)(d)(iii)).

9.5.3 The AEC conducts a TCP count on polling night as required by section 274(2A) to provide an indication of which candidate is most likely to be elected for the Division. The TCP count on polling night is conducted on votes cast at polling places only. The TCP count is also conducted in each Divisional Office after the fresh scrutiny of ballot papers, and after the preliminary scrutiny of declaration votes. This continuous update of the TCP count provides scrutineers and the public with a progressive indication of the candidate who is leading in the election.

9.5.4 The AEC recognises that it is possible that the two candidates selected as the "final two" for the polling place TCP count may not be correct. This occurred in 1996 in three Divisions: Calare, Grayndler and Moore, and only occurred in one Division in 1993. In such circumstances, the TCP results are not released on polling night and it is a simple matter to conduct the TCP, using the correct final two candidates, in the fresh scrutiny conducted in each Divisional Office immediately after polling day.

9.5.5 In general, the final TCP figures are a very good indicator for the identity of the successful candidate, and the AEC is of the view that the TCP count should be used to determine the elected candidate where certain conditions, to ensure the integrity of the count, are met.

9.5.6 Where a candidate does not have an absolute majority on first preferences, the TCP could be used to determine the elected candidate where it is impossible for either of the two candidates with the highest first preference votes to be displaced from those positions, regardless of the way that the preferences of the lower placed candidates are distributed. It would not be possible to use the TCP result to determine the elected candidate where it is theoretically possible for one or both of the two candidates with the highest first preference votes to be overtaken by a third candidate during the distribution of preferences. The following tables illustrate these points.

Table A

BANKS	Votes	Notional Votes
Kayes	970	970
Thompson	2076	3046
West	3797	6843
Bailey	5566	12409
Sparkes	28903	
Melham	31878	
TOTAL	**73190**	

Table B

MOORE	Votes	Notional Votes
Hancock	1171	1171
Franssen	3537	4708
Gilfillan	3777	8485
Stevenage	22815	31300
Jones	23766	
Filing	28536	
TOTAL	**83602**	

9.5.7 In the case of the Division of Banks in Table A, the TCP count could be used to determine the elected candidate. In this case, the combined votes of the four lowest rating candidates cannot change the fact that the contest is between the two highest rating candidates, even though the distribution of the ballot papers of those lowest rating candidates can have an impact on which of those two highest rating candidates will finish ahead, and therefore be elected. Therefore, regardless of their order of exclusion, candidates Kayes, Thompson, West and Bailey will be excluded, and candidates Sparkes and Melham will remain in the count.

9.5.8 In the case of the Division of Moore in Table B, the order of exclusion is important, because, although it is inevitable that candidates Hancock, Franssen and Gilfillan will be excluded before candidate Stevenage, it is not certain which of candidates Stevenage, Jones or Filing will be excluded first, without having conducted the earlier exclusions. Therefore, in the case of the Division of Moore, the winning candidate could not be determined using the TCP.

9.5.9 At the 1996 federal elections there were six Divisions (Calare, Wills, Capricornia, Fisher, Curtin and Moore) in which the TCP could not have been used to determine the elected candidate. It is interesting to note that of those, only the Divisions of Calare and Capricornia were considered by commentators to be too close to call on first preferences. (Although the Divisions of Bradfield, Grayndler, Mackellar, and O'Connor also failed the notional votes test, these Divisions were won on first preferences.)

Recommendation No 29:

> **The AEC recommends that the CEA be amended so that in a House of Representatives election, where on the basis of first preferences votes the exclusion of all but two of the candidates is inevitable, the elected candidate be determined from the results of the Two Candidate Preferred (TCP) count, and that the declaration of the poll proceed on the basis of that determination.**

9.6 Computerisation of the Senate Scrutiny

9.6.1 The AEC was disappointed that it was unable to implement its plans to computerise the Senate scrutiny for the 1996 federal election. Computerisation of the Senate scrutiny would have delivered results within days of the 13 day deadline for the return of postal votes in some States and Territories.

9.6.2 In its Report on the 1993 federal election, the previous JSCEM recommended that section 273 of the CEA be amended 5(a1ntnSpor)6e, the Senoll

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10. Fraudulent Enrolment and Voting

10.1 Historical Overview

10.1.1 Since the major reforms instituted by Parliament in 1983-84 to amend the Commonwealth Electoral Act 1918, no federal election has been voided by the Court of Disputed Returns on the grounds that fraudulent enrolment and voting occurred, sufficient to affect the result of the election. The petition by Mr Alasdair Webster to the Court of Disputed Returns following the 1993 federal election, for example, contained hundreds of allegations of multiple voting and personation in the Division of Macquarie. The petition was withdrawn by Mr Webster after he was shown the evidence collected by the AEC which refuted the majority of his alleged instances of fraud. Mr Webster was recently ordered by the Court to pay the costs of the then elected member, Ms Maggie Deahm, whose election he challenged.

10.1.2 Further, no major prosecutions involving widespread and organised multiple voting or personation, sufficient to affect the result of an election, have been undertaken at the federal level in the past decade. After polling day for a federal election, Divisional Returning Officers examine all multiple marks on the identical Certified Lists of Voters for their Division. Those examinations identify and exclude from further investigation, instances of polling official error in marking off the Certified Lists of Voters, and/or computer error in the scanning of those Certified Lists. The majority of the multiple marks on the Certified Lists of Voters that remain turn out to be innocent mistakes or misunderstandings by individual voters. A very small number of prosecutions for multiple voting have occurred following the last three federal elections, and these have usually involved individuals who have deliberately set out to defraud the system to show up its alleged weaknesses.

10.1.3 Finally, for the past decade, a parliamentary inquiry has been held into the conduct of every federal election. At each of these inquiries the possibility of fraudulent enrolment and voting has been investigated, and each time it has been concluded that no evidence was available to support allegations that widespread and organised electoral fraud, involving multiple voting and personation, had occurred to such an extent that the result of any of those elections was in doubt.

10.1.5 The AEC would once again welcome the opportunity to investigate and report back on any new allegations of widespread and organised electoral fraud made to the JSCEM in relation to the 1996 federal election. The AEC will also provide to the JSCEM detailed statistics, as and when they become available, on the number of individual fraudulent enrolment and voting cases investigated and prosecuted in relation to the 1996 federal election.

10.2 Future Directions

10.2.1 The AEC notes that while the majority members of the previous JSCEM concluded In their Report on the 1993 federal election that: “all objective evidence indicates that fraud is not a significant occurrence and did not influence any result at the 1993 federal election” (page 29), there was disagreement with that conclusion from the Liberal and National Party members of that JSCEM. Mr David Connolly MP, Senator Nick Minchin, Senator John Tierney, and Mr Michael Cobb MP, in their dissenting report, on page 153 of the JSCEM Report, said the following:

> .....the majority concludes that changes to the existing electoral procedures are not necessary because there is no “objective evidence” of widespread electoral fraud. We believe that this conclusion is too complacent given the evidence to the Committee which indicates cases of multiple voting....We are also concerned that under the existing procedures there are opportunities for irregular and incorrect enrolment. The current arrangements stress the obligation which proceeds from compulsory voting. We propose that compulsory voting be abolished so that the franchise again becomes the valued right of the free citizen in an open society. We believe that there are measures that should be taken immediately to ensure the integrity of our electoral procedures.

10.2.2 The dissenters to the 1993 JSCEM Report, which include some members of the current JSCEM, then went on to recommend that:

- individuals claiming entitlement to enrolment should be required to provide the AEC with proof of their identity together with evidence of their citizenship by production of either a birth certificate, current passport or certificate of naturalisation.

- rather than rely on last minute enrolment after the election has been called, the AEC should move immediately to a continuous roll review approach to roll management as advocated by this Committee and its predecessors.

- subdivisional voting be reintroduced.

- the AEC take an early opportunity to trial a system of voter cards in a by-election.

- the AEC undertake with other Government departments and some large private organisations a study of ways of developing first, a standard for recording names, and second, rules requiring people to be consistent when providing names to the AEC, government bodies and key private organisations.

10.2.3 Assuming that these recommendations and other similar proposals may be considered further by this JSCEM, the AEC would welcome the opportunity to comment again on their operational and resource implications.

10.2.4 However, the AEC suggests that this JSCEM also examines past analyses of issues such as multiple voting and personation, enrolment and voter identification, and subdivisional voting, as contained in the documents listed in Appendix E, which can be obtained from the JSCEM Secretariat.

11. Funding and Disclosure

11.1 Legislation

11.1.1 Since the 1993 federal election a number of significant amendments have been made to Part XX of the CEA, which deals with election funding and disclosure. The relevant Acts are the Commonwealth Electoral Amendment Act 1995, and the Electoral and Referendum Regulations (Amendment) SR 190 of 1995, which are detailed in Chapter 2 of this submission.

11.2 Handbooks

11.2.1 For the 1996 federal election, the AEC revised its Funding and Disclosure Handbooks and distributed the new editions to all political parties, candidates, third parties, broadcasters and publishers to ensure all stakeholders were aware of the changes to the legislation.

11.3 Disclosure Returns

11.3.1 Disclosure returns are currently being received and will be made available for public inspection on Monday 19 August (24 weeks after polling).

11.4 Funding Entitlements

11.4.1 The calculation of public funding entitlements for the 1996 federal election has been finalised and amounts paid. These amounts are detailed at Appendix F.

11.5 Funding and Disclosure Report

11.5.1 Section 17(2) of the CEA requires the AEC to provide a report on the operation of Part XX of the CEA, relating to funding and disclosure, at each federal election. The Funding and Disclosure Report for the 1996 federal election is expected to be furnished to the Minister for Administrative Services for tabling in Parliament later this year, and will be made available to the JSCEM at that time.

11.6 Annual Returns of Commonwealth Departments

11.6.1 Section 311A of the CEA requires the principal officer of each Commonwealth Department to attach a statement to its annual report setting out particulars of all amounts paid by, or on behalf of, the Commonwealth Department during the financial year to: (a) advertising agencies; (b) market research organisations; (c) polling organisations; (d) direct mail organisations; (e)

media advertising organisations; and the persons to whom those amounts were paid. Any amount less than $1,500 need not be reported.

11.6.2 This provision was inserted in the CEA, without prior consultation and against the wishes of the then Government, by an Opposition amendment to section 20 of the Political Broadcasts and Political Disclosures Act 1991, during the passage of that legislation through the Senate in 1991. It has no relevance to or connection with electoral matters, and the AEC has no role in administering this provision other than as a reporting agency like any other.

Recommendation No 30:

> **The AEC recommends the deletion of section 311A from the CEA and its insertion in more appropriate other legislation**.

12. Election Litigation

12.1 Introduction

12.1.1 For the 1996 federal election, the level of litigation, including injunctions, prosecutions and petitions, was no greater than that which occurred at the 1993 federal election.

12.2 Injunctions

12.2.1 *The Postal Vote Application case*: In the lead-up to polling day, the AEC sought an injunction to prevent the Victorian Branch of the Liberal Party from infringing Commonwealth copyright by printing, publishing and distributing a version of the postal vote application form, without authority. The Liberal Party then cross-filed to prevent the Commonwealth asserting its copyright. On 22 January 1996 the Federal Court decided that the Commonwealth had copyright in the forms, but could not, in this case, enforce that copyright because of the particular circumstances. (Baillieu and Poggioli v AEC and the Commonwealth (VG 10 of the 1996) 22 January 1996, Sundberg J, Federal Court, unreported.)

12.2.2 *The Senate ballot paper cases*: In the first of these cases, Mr Ronald Owen of the Constitutionalists, a political party not registered with the AEC, applied for an injunction in the Queensland Supreme Court to prevent the Queensland Senate election from proceeding until the group name "The Constitutionalists" was added to the ballot paper after the name of their candidate. On 20 February 1996 the Court dismissed the application with costs. (Owen v Longland (1257 of 1996) 20 February 1996, Williams J, Queensland Supreme Court, unreported)

12.2.3 In the second of these cases, Mr John Abbotto applied for an injunction in the High Court in Victoria to prevent the AEC from continuing its electoral advertising campaign on how to vote for the Senate, on the grounds that it was misleading in relation to ungrouped Senate candidates on the ballot paper. The High Court dismissed the application. (Re Australian Electoral Officer (Victoria); ex parte Abbotto (1996) 70 ALJR 493)

12.2.4 *The Langer cases*: On 8 February 1996 the AEC obtained an injunction from the Victorian Supreme Court to restrain Mr Albert Langer from continuing to breach section 329A of the CEA. On 14 February Mr Langer was jailed by the same court until 30 April for contempt of the orders of that Court. Mr Langer's appeal against the injunction was dismissed by the Federal Court on 1 March, and on 7 March, on an appeal from the contempt order, Mr Langer was released from jail.

(*Injunction order*: AEC v Langer (4287 of 1996) 8 February 1996, Beach J, Supreme Court of Victoria, unreported; *Contempt order*: AEC v Langer (4287 of

1996) 14 February 1996, Beach J, Supreme Court of Victoria, unreported; *Injunction appeal*: Langer v AEC (VG 96 of 1996) 1 March 1996, Black CJ, Lockhart and Beaumont JJ, Federal Court, unreported; *Contempt appeal*: Langer v AEC (VG 96 of 1996) 7 March 1996, Black CJ, Lockhart and Beaumont JJ, Federal Court, unreported.)

12.2.5 In a related matter arising from the 1993 federal election, when Mr Langer failed to obtain an injunction against the AEC, the High Court held, on 7 February 1996, that section 329A of the CEA is a valid enactment of the Parliament, because it prohibits conduct that might undermine full preferential voting as required by the CEA, and therefore does not infringe the implied freedom of political communication in the Constitution. (Langer v The Commonwealth (1996) 70 ALJR 176). In a further case arising from the 1993 South Australian State election, which was referred to the High Court and heard at the same time as the Langer matter, an application by Mr Muldowney for similar orders to those sought by Mr Langer was dismissed on 24 April 1996. (Muldowney v South Australia (1996) 70 ALJR 515).

12.2.6 The Langer cases and the issues they raise will be addressed in detail in a supplementary submission to the JSCEM.

12.3 The Ferris Reference

12.3.1 Section 376 of the CEA provides that any question on the qualifications of a Senator or Member of the House of Representatives may be referred by resolution to the Court of Disputed Returns by the House in which the question arises.

12.3.2 *The Ferris Reference*: Soon after the election, a question arose as to whether Senator-elect Ferris held an office of profit under the Crown at the time of her election, which would have disqualified her from being elected or sitting as a Senator under section 44(iv) of the Constitution. On 29 May 1996 the Senate resolved to refer the question to the Court of Disputed Returns, the resolution to take effect on 14 July 1996 should Senator-elect Ferris be a member of the Senate at that time. On 12 July 1996 Senator Ferris resigned her position and will presumably return to the Senate following the filling of the casual vacancy under section 15 of the Constitution.

12.4 Petitions to the Court of Disputed Returns

12.4.1 An election for a Division for the House of Representatives or for a State or Territory for the Senate may be challenged by a petition to the High Court sitting as the Court of Disputed Returns. The period for filing a petition with the Court is 40 days after the return of the writ for the relevant election. Petitions must set out the facts relied on, with sufficient detail; contain a prayer for relief; be signed by a candidate at the election or a person qualified to vote at the

election; be signed by two witnesses; and be accompanied by a deposit of $500 as security for costs. The following petitions were filed with the Court of Disputed Returns against three House of Representatives elections and one Senate election.

12.4.2 *The Free Petition*: A petition was filed by Mr Ross Free challenging the election of Ms Jacqueline Kelly in the Division of Lindsay on the grounds that she was constitutionally disqualified from standing as a candidate or sitting as a Member of the House of Representatives because at the time of nomination she held an office of profit under the Crown, and dual nationality. (Free v Kelly (S 94 of 1996) High Court, Sydney Registry).

12.4.3 *The Snowden Petition*: A petition was filed by Mr Warren Snowden challenging the election of Mr Nick Dondas in the Division of the Northern Territory on the grounds that approximately 2,200 provisional votes were improperly rejected. The AEC is named as the second respondent. (Snowden v Dondas and the AEC (S 95 of 1996) High Court, Sydney Registry.)

12.4.4 *The Stevenage Petition*: A petition was filed by Mr Paul Stevenage challenging the election of Mr Paul Filing in the Division of Moore on the grounds of bribery, misleading advertising, interference with political liberty, and defamation. (Stevenage v Filing (P 26 of 1996) High Court, Perth Registry.)

12.4.5 *The Abbotto Petition*: A petition was filed by Mr John Abbotto challenging the Senate election in Victoria on the grounds of discrimination against ungrouped Senate candidates on the Senate ballot paper. The Commonwealth Electoral Officer (presumably the Australian Electoral Officer for Victoria) is named as the respondent. (Abbotto v Commonwealth Electoral Officer (M37 of 1996) High Court, Melbourne Registry).

12.4.6 The AEC will provide the JSCEM with a supplementary submission on the outcomes of the 1996 federal election petitions in due course.

12.4.7 *The 1993 Webster Petition*: Following the 1993 federal election, Mr Alasdair Webster, the unsuccessful Liberal Party candidate for the Division of Macquarie in New South Wales, filed a petition with the Court of Disputed Returns challenging the election of Ms Maggie Deahm of the Australian Labor Party, on a number of grounds, including extensive allegations of multiple voting and personated voting.

12.4.8 The structure of the original Webster petition caused difficulties for both the Court and the respondents, Ms Deahm and the Electoral Commissioner, and added to the public expense and delay in finalising the matter. The petitioner targeted inappropriate provisions of the CEA for attack, made allegations without sufficient supporting particulars, and made bare assertions that had no bearing on the casting or counting of votes. Nevertheless the Court went to considerable lengths to assist the petitioner in refining the basis of his allegations by allowing many of them to be recast during the course of the hearings and, in some cases, by granting him leave to seek further particulars to ground his allegations in fact.

12.4.9 The petition contained 19 separate allegations, 17 of which were struck out by the Court on 3 September 1993, leaving the two central allegations of widespread multiple voting and personation in the Division of Macquarie. The petitioner was provided with full access to relevant AEC records on each of his hundreds of alleged instances of fraudulent enrolment and voting, and as he appeared unable to produce credible evidence to support his allegations, the AEC then filed a number of affidavits refuting the majority of them. On 28 March 1994, on an application from Mr Webster, the Court dismissed the petition in its entirety, and submissions were then made to the Court on costs.

12.4.10 The petitioner, Mr Webster, sought an order for costs against the Commonwealth; the first respondent, Ms Deahm, sought an order that the Commonwealth or the petitioner pay her costs; and the second respondent, the Electoral Commissioner, sought an order that the petitioner pay his costs.

12.4.11 On 20 June 1996 Justice Gaudron of the Court of Disputed Returns handed down her decision on costs in the Webster petition. The petitioner, Mr Webster, was ordered to pay the costs of the first respondent, Ms Deahm. There was no order on costs against the second respondent, the Electoral Commissioner, or the Commonwealth.

12.4.12 The AEC is concerned about the extensive delays that were allowed to occur in the hearing of the Webster petition, and in the handing down of the costs decision. In all, it took over three years for matters to be finalised. The AEC is of the view that the CEA should be amended to ensure that this does not occur again.

12.4.13 The slow pace of court procedures in election petitions was a problem recognised by the Queensland Electoral and Administrative Review Commission (EARC) in its December 1991 Report (Vol 2) which reviewed the operation of the (Qld) Elections Act 1983-1991. After making reference to the 11 months required to resolve the Nicklin dispute following the 1989 Queensland State election, and to outmoded timetable rigidities in the legislation, EARC said on page 281 of that Report:

> The timetable for the hearing of the petition should ... be reviewed, balancing the importance of resolving the dispute quickly against allowing parties to the dispute adequate time in which to gather evidence in support of their case...The current Act contains no provision that the trial be held within a specified time, nor is there provision in the Act that adjournment be made only on good cause. Although in most instances the Judge hearing the petition would have had regard to the importance of timeliness, the current legislation does not give statutory recognition of this important point...The lengthy period required to dispose of the Nicklin petition illustrates the delays that can take place in the absence of strict procedural deadlines.

12.4.14 EARC made a number of significant recommendations to speed up the timetable for the hearing of election petitions, and the Electoral Act 1992 (Qld) now provides in section 134(3), for example, that "The Court must deal with the petition as quickly as is reasonable in the circumstances." The AEC believes that rather than Parliament imposing strict procedural deadlines on the High Court (the Court of Disputed Returns for federal elections), it might still be appropriate to require the Court to deal with election petitions as expeditiously as possible.

Recommendation No 31:

> **The AEC recommends that the CEA and the RMPA be amended so the Court of Disputed Returns or the High Court must decide election or referendum petitions "as quickly as is reasonable in the circumstances".**

12.5 Prosecutions

12.5.1 No major prosecutions under the offences provisions of the CEA had been initiated at the date of this submission, although a number of investigations are still in progress.

12.6 Level of Penalties

12.6.1 In the light of previous recommendations of the JSCEM, and the 1992 amendments to the Crimes Act 1914 inserting and amending sections 4AA, 4AB and 4B, the AEC is of the view that the level of penalties for offences under the CEA and the RMPA should be reviewed.

12.6.2 On 3 May 1989 the AEC made a submission to the JSCEM recommending an increase in the level of penalties for offences under the CEA. The AEC noted the 1987 prosecution and conviction, under section 336(3) of the CEA, of Mr Denis Hinton, Qld MLA, for signing another person's name on an enrolment application, for which he was fined $400 in his absence.

12.6.3 The AEC had considerable difficulty at the time in obtaining the assistance of the Australian Federal Police (AFP) to investigate the Hinton matter because their prioritisation guidelines are to focus on major crime, which may be identified according to the level of penalty involved.

12.6.4 This problem remains to this day. Although the AEC appreciates the assistance of the AFP in investigating electoral offences, it is becoming increasingly difficult to obtain their agreement to the diversion of their resources to investigate many electoral offences, because the low levels of penalties under the CEA suggest low prioritisation relative to other major crime referrals to the AFP. Multiple voting under section 339(1)(j), for example, carries a penalty of only 6 months imprisonment, or under the Crimes Act 1914 an equivalent pecuniary penalty. At the 1996 federal election the AEC referred a batch of 55 cases of apparent multiple voting in New South Wales to the AFP but only 20 of these cases, all involving four or more multiple marks on the Certified Lists of Voters, were eventually accepted for investigation. The AEC has recently had constructive discussions with the AFP in an effort to obtain a better mutual understanding of each agency's concerns.

12.6.5 The AEC also found Mr Hinton's public response to his conviction and fine of considerable interest. Mr Hinton said that he had not attended the hearing "because it was of a minor nature" and subsequently said that "I have been convicted of a very minor charge of which the worst possible connotation could be that I misguidedly acted to do a good turn for some unknown person."

12.6.6 The AEC concluded its 1989 submission to the JSCEM as follows:

> So long as the maximum penalties remain as light as they are, it is difficult to expect police to give electoral investigations high priority in competition with major crimes against person and property, to expect the courts to impose fines which are likely to be deterrent in their effect, and to consider sentences of imprisonment should the incidence of the offence now be deemed to require this, and to disabuse those who, like Mr Hinton, treat enforcement with contempt.
>
> ...A savage increase in penalties for both categories, enrolment and voting, of offences before the election would go part of the way to restoring public confidence in the integrity of the electoral system. Moreover, the existence of such penalties would disqualify, at least temporarily, those convicted of serious electoral offences and prevent

them from sitting in Australian parliaments with a consequent serious deleterious effect on public confidence in the integrity of the political system.

12.6.7 In the May 1989 Report of the JSCEM on the conduct of the 1987 federal election and the 1988 referendum, recommendation 54 was that the penalties for offences under the CEA be substantially increased, with those penalties currently set at $1,000 or six months imprisonment being increased to $12,000 or imprisonment for not more than two years; and recommendation 55 was that all election penalties be subject to regular review.

12.6.8 On 30 April 1993 the Government Response to the 1989 JSCEM Report was tabled in Parliament. Recommendation 54, for an increase in the penalty levels for electoral offences, was not supported “at this time”, but Recommendation 55, for a review of penalties for electoral offences, was accepted.

12.6.9 The AEC obtained legal advice from the Criminal Law Division of the Attorney-General’s Department in 1992 and 1993 to the effect that the penalty levels for some offences under the CEA could be increased, and that all penalty levels in the CEA should be set by a formula involving penalty units indexed to account for inflation. The indexed penalty unit system was incorporated into the Crimes Act 1914 by the insertion in 1992 of sections 4AA and 4AB and an amendment to section 4B, and applies to the CEA and the RMPA as to most other Commonwealth statutes.

12.6.10 The issue of increasing penalty levels for selected electoral offences was not pursued any further by the AEC at that time due to other priorities. However, the AEC is of the view that it might now be appropriate to once again visit the penalty levels for selected offences in the CEA, with the assistance of formal legal advice from the Criminal Justice Branch of the Attorney-General’s Department.

Recommendation No 32:

The AEC recommends that a formal review of the level of penalties for offences under the CEA and the RMPA be undertaken by the AEC with the assistance of the Attorney-General’s Department, with a view to bringing those penalty levels up to date and in line with penalty rates for similar offences under other Commonwealth statutes.

12.7 Internet Offences

12.7.1 Late last year the AEC became concerned about the apparent lack of a legislative framework for dealing with the inevitable increase of electoral activity on the Internet. The CEA was obviously not framed by Parliament with the Internet in mind, and as a consequence the AEC obtained advice from the Director of Public Prosecutions (DPP) on the possible application of the offences provisions of the CEA to the Internet.

12.7.2 The Internet is essentially an international network of linked computer systems. When information is entered into any one of the linked systems it becomes potentially available to all the systems, and hence to every computer which is connected to any of those systems. Information is transmitted through the Internet by means of the telephone services, which may involve the transmission of signals by means of cables and/or radio signals.

12.7.3 If a person puts material into a computer system that forms part of the Internet that material will become available to anyone anywhere in the world who has access to a computer that is connected to the Internet. A person who gains access to material stored on the Internet will view the material on a video screen. That person will also be able to produce a printed copy of the material if a printer is available, and copy the material onto a disc or other electronic medium.

12.7.4 There is no reason to doubt that electoral/political advertising will increasingly find its way onto the Internet. Indeed, the AEC itself has opened a Home Page on the Internet to provide public information on the electoral system and several political organisations have also established an Internet presence. Such advertising will only be read by those who chose to access it, but this is no different from choosing to read electoral/political material printed in journals, newspapers, pamphlets, leaflets and how-to-vote cards.

12.7.5 The DPP has advised that the following offences under the CEA **do not** apply to material distributed over the Internet:

section 315	returns of electoral expenditure
section 328	authorisation of electoral advertisements
section 330	false statements in relation to rolls
section 332	authors of reports to be identified

12.7.6 The DPP has advised that the following offences under the CEA **do** apply to material distributed over the Internet:

section 329 - misleading and deceptive electoral advertising
section 329A - encouraging persons to mark ballot papers otherwise than in accordance with Act
section 350 - defamation of candidate
section 351 - publication of matter regarding candidates

12.7.7 It will be noted that while section 328 of the CEA, relating to the authorisation of electoral advertising, does not apply to the Internet, section 329, relating to misleading and deceptive electoral advertising, does apply to the Internet. The DPP has advised that the legislative history of these two offence provisions indicate that the words “publish” and “distribute” should be construed narrowly in section 328, and widely in section 329. Where the intention of Parliament was to confine the application of the offence to printed matter only, as in section 328, then “publish” and “distribute” cannot be read to apply to the Internet. By contrast, the intention of Parliament in relation to section 329 was that it be read to apply to electronic media as well as printed media. This is made apparent by the explicit inclusion of radio and television broadcasts, as well as print, in the coverage of the provision. Similar considerations apply to the other provisions examined by the DPP.

12.7.8 On 3 February 1994 the then Attorney-General and the then Minister for Communication and the Arts announced the formation of a joint task force to investigate the way in which computer bulletin boards could be regulated. This task force produced a Report dated 8 August 1994, and subsequently the Attorney-General’s Department and the Department of Communication and the Arts released a Consultation Paper on the Regulation of On-line Information Services dated 7 July 1995. The Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies produced a Report on the Regulation of Computer On-line Services Part 1 dated September 1995. These are but a few of the reports dealing with the problems of regulating the Internet.

12.7.9 It might also be of interest that in the United States of America a major decision relating to the constitutional right of freedom of speech and regulation of the Internet to contain pornography was handed down recently (American Civil Liberties Union v Janet Reno, Attorney-General of the United States (Civil Action No 96-963); American Library Association Inc et al v United States Department of Justice et al (Civil Action No 96-1458), before Sloviter, Chief Judge, United States Court of Appeals for the Third Circuit, Buckwater and Dalzell, Judges, United States District Court for the Eastern District of Pennsylvania, 11 June 1996).

12.7.10 This court decided that the United States Attorney-General could not enforce the provisions of the Communications Decency Act 1996 (CDA) which purported to regulate pornography on the Internet. The court concluded the following:

> ...the Internet may be fairly regarded as a never-ending worldwide conversation. The Government may not, through the CDA, interrupt that conversation. As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion... Just as the strength of the Internet is chaos, so the strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects.

12.7.11 The JSCEM might consider whether all the offence provisions under the CEA should be extended by legislative amendment to apply to Internet, or whether at this stage it might be worth waiting for further clarification of overall Government policy directions in relation to the Internet. The AEC favours the latter course.

13. Costs of the Election

As at 30 June 1996 the expenditure on the 1996 federal election was $57,202,000 excluding $32,157,000 for public funding. Using Close of Rolls enrolment as the basis, the expenditure per elector to 30 June 1996 was $4.91 or $7.67 including public funding.

Expenditure to 30 June 1996

Advertising	7,193,000
Election Stats & Results	144,000
Elector Leaflet	1,474,000
Public Info Materials & Support	889,000
Ballot Paper production & Associated printing	2,740,000
Cardboard Equipment Production	1,732,000
Certified Lists	1,057,000
Computer Support Services	2,782,000
Corporate Services Administration	1,271,000
Divisional Offices	30,749,000
Forms & Equipment	2,544,000
Funding & Disclosure	23,000
National Tally Room	537,000
Operational Administration	919,000
Overseas Postal Voting	260,000
Payment System	118,000
Prosecutions	3,000
Resources Monitoring	91,000
Scanning Centre	256,000
Senate Scrutiny	578,000
Storage & Distribution	761,000
Training of Polling Officials	717,000
Election Allowances	364,000
SUB-TOTAL	**57,202,000**
Public Funding	32,157,000
TOTAL	**89,359,000**

Comparative figures for previous elections are:

	1984 $	1987 $	1990 $	1993 $	1996 $
Average Cost per elector Actual Cost	3.13	3.75	4.02	4.25	4.91
Constant Prices (Dec 1984 Base)	3.13	3.05	2.68	2.62	2.77
Constant Prices (Mar 1996 Base)	5.54	5.40	4.74	4.64	4.91

14. Summary of Recommendations

Recommendation No 1: Statutory Newspaper Advertising

The AEC recommends that sections 153(2)(b) and 154(4)(b) of the CEA requiring the Electoral Commissioner to advertise the receipt of the writs in at least two newspapers circulating in a State or Territory be amended to require advertising in only one newspaper

Recommendation No 2: Statutory Newspaper Advertising

The AEC recommends that section 14(2) of the RMPA, requiring the Australian Electoral Officers for the States and Territories to advertise the particulars of a writ for a referendum, a copy of the proposed law, and information on the place where copies are available, in at least two newspapers circulating in a State or Territory, be amended to require advertising in only one newspaper

Recommendation No 3: Change of Name on Roll

The AEC recommends that Part X of the CEA be amended to allow a review by the Australian Electoral Officer, and by the Administrative Appeals Tribunal, of a decision by a DRO under section 105(1)(b) of the CEA.

Recommendation No 4: Norfolk Island

The AEC recommends 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

Recommendation No 5: Eligible Overseas Electors

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.

Recommendation No 6: Reduction of Nomination Period

The AEC recommends that section 156(1) of the CEA be amended so as to reduce the nomination period by one day (to not less than 10 days nor more than 27 days), and that section 176 also be amended to provide for the declaration of nominations to be made 24 hours following the close of nominations. A consequential amendment should also be made to section 213(1)(a) of the CEA.

Recommendation No 7: Place of Senate Nominations

The AEC recommends that sections 176(1) and 283(1) of the CEA be amended to allow the Senate ballot paper draw and the declaration of the Senate result to be carried out at the place of nomination or at another convenient location as decided by the Australian Electoral Officer. A consequential amendment should also be made to section 213(1)(a) of the CEA.

Recommendation No 8: Party Name on Ballot Paper

The AEC recommends that the CEA be amended to enable a registered political party to object to the continuing use of a party name and/or party abbreviation by another party which obtained its registration by claiming related party status to that registered political party, where that relationship no longer exists.

Recommendation No 9: Party Name on Ballot Papers

The AEC recommends that the CEA be amended to enable the registered party name or the registered party abbreviation, as appropriate, to be printed against the names of candidates where two or more parties are seeking to endorse candidates with identical party identifiers in the same election, and for an appropriate description to be used where necessary.

Recommendation No 10: Party Name on Ballot Papers

The AEC recommends an amendment to section 169B of the CEA to provide that a candidate endorsed by more than one political party must specify in writing the name of the political party to be printed on the ballot paper under section 214 of the CEA.

Recommendation No 11: Candidates Names on Ballot Papers

The AEC recommends that the CEA be amended to prohibit the enrolment of an elector with a politically or electorally significant name which, if the elector were to nominate as a candidate for election, has the potential to confuse or mislead voters.

Recommendation No 12: Nomination Deposit

The AEC recommends that section 170(3) of the CEA be amended to increase the deposit for nomination for the House of Representatives from $250 to $500 and to increase the deposit for nomination for the Senate from $500 to $1000

Recommendation No 13: Authorisation of Electoral Advertisements

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.

Recommendation No 14: Authors of Reports

The AEC recommends that section 332 of the CEA and section 125 of the RMPA be repealed.

Recommendation No 15: Pre-Poll Ordinary Voting

The AEC recommends that the CEA and the RMPA be amended to allow pre-poll voters in their home Divisions to cast an ordinary vote.

Recommendation No 16: Postal Vote Applications - Distribution by Political Parties

The AEC recommends that the CEA and the RMPA be amended to prohibit a postal vote application form, or a reproduction thereof, being incorporated with material issued by any body other than the AEC.

Recommendation No 17: Postal Vote Applications - Distribution by Political Parties

The AEC recommends that the CEA and the RMPA be amended as necessary so that a postal vote application form and associated material sent to electors shall nominate only the appropriate office of the AEC as the return address for that application form.

Recommendation No 18: Postal Vote Envelopes - Postmarking

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.

Recommendation No 19: Postal Vote Envelopes - Privacy of Voter Details

The AEC recommends that the relevant postal voting provisions of the CEA and the RMPA be amended to delete the requirement for the declaration certificate and the return address of the Divisional Returning Officer to be printed on the envelope into which the ballot papers are placed.

Recommendation No 20: Overseas Postal Voting - Authorised Witness

The AEC recommends that section 193(2) of the CEA be amended to replace any reference to the "Queen's Dominions" with the "Commonwealth".

Recommendation No 21: Overseas Postal Voting - Defence Forces

The AEC recommends that section 188 of the CEA and section 61 of the RMPA be amended to provide that where Australian Defence Force personnel are serving overseas as a formed unit, and the Australian Postal Corporation certifies that the circumstances in the country where the personnel are serving are such that postal vote applications or ballot papers would not, if posted, reach the personnel in time for their votes to be cast prior to the relevant deadline, then a Divisional Returning Officer shall be taken to have satisfied the requirements of section 188 if he or she provides the relevant applications or ballot papers to a member of the Australian Defence Force designated for the purposes of the section.

Recommendation No 22: Overseas Postal Voting - Defence Forces

The AEC recommends that similar amendments be made to the CEA and the RMPA to cover cases in which the AEC uses services other than postal services, such as contractual delivery, for the conveyance of postal voting material.

Recommendation No 23: Overseas Postal Voting - Defence Forces

The AEC recommends that the CEA and the RMPA be amended to provide explicitly that a failure of an alternative mechanism to the postal service shall not, in cases where the postal service has broken down, form the basis for a challenge to the result of the election in the Court of Disputed Returns.

Recommendation No 24: Ballot Papers

The AEC recommends that the Electoral Commissioner be provided with a discretion in the CEA with regard to the layout and formatting of the Senate ballot paper to enable cost-effective use of standard paper stocks and printing technologies.

Recommendation No 25: Mobile Polling in Special Hospitals

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.

Recommendation No 26: Mobile Polling in Special Hospitals

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".

Recommendation No 27: Mobile Polling in Special Hospitals

The AEC recommends that the reference in section 226(4)(a) of the CEA to section 219 be amended to refer to section 348 of the CEA.

Recommendation No 28: Preliminary Scrutiny of Declaration Votes

The AEC recommends that section 266 of the CEA concerning the preliminary scrutiny of declaration votes be amended so as to provide that the preliminary scrutiny of declaration votes may begin on the Monday before polling day.

Recommendation No 29: Declaration of the Poll

The AEC recommends that the CEA be amended so that in a House of Representatives election, where on the basis of first preferences votes the exclusion of all but two of the candidates is inevitable, the elected candidate be determined from the results of the Two Candidate Preferred (TCP) count, and that the declaration of the poll may proceed on the basis of that determination.

Recommendation No 30: Annual Returns of Commonwealth Departments

The AEC recommends the deletion of section 311A from the CEA and its insertion in more appropriate other legislation

Recommendation No 31: Court of Disputed Returns

The AEC recommends that the CEA and the RMPA be amended so the Court of Disputed Returns or the High Court must decide election and referendum petitions "as quickly as is reasonable in the circumstances".

Recommendation No 32: Level of Penalties

The AEC recommends that a formal review of the level of penalties for offences under the CEA and the RMPA be undertaken by the AEC with the assistance of the Attorney-General's Department, with a view to bringing those penalty levels up to date and in line with penalty rates for similar offences under other Commonwealth statutes.

APPENDICES

Appendix A: Electoral and Referendum Amendment Bill 1995
Appendix B: Overseas Visitors
Appendix C Close of Rolls Enrolment Transactions
Appendix D: Overseas Postal Voting
Appendix E: Fraudulent Enrolment and Voting - Documents
Appendix F: Election Funding Entitlements

Appendix A: Electoral and Referendum Amendment Bill 1995

Appendix B: Overseas Visitors

CAMBODIA

Mr Chhuor Leang Huot MP, Chairman of the Parliamentary Legislative Committee

Mr Ok Serei Sopheak, Adviser and Director of Cabinet to Deputy Prime Minister Sar Kheng (Co-Minister of the Interior)

CANADA

Mr Jean Oullet, Communications Officer, Elections Ontario

COOK ISLANDS

Mr Moetaekore Iti Moataekore, Acting Assistant Research Officer, Cook Islands Electoral Office

Mr Mata Ringi John, Senior Administration Officer, Cook Islands Electoral Office

FIJI

Mr Kameli Koto, Divisional Planning Officer, Western Division

HONG KONG

Ms Venner Cheung, Deputy Chief Electoral Officer (Operations), Registration and Electoral Office, Boundary and Electoral Commission

MALAYSIA

Datuk Harun Din, Chairman, Election Commission Malaysia

Datuk Omar Hashim, Deputy Chairman, Election Commission Malaysia

Mr Abdul Hamid Ali, Assistant Secretary, Election Commission Malaysia

NEW ZEALAND

Mr Phil Whelan, Chief Electoral Officer, New Zealand Chief Electoral Office

Mr Hugh Garland, Deputy Chief Electoral Officer, New Zealand Chief Electoral Office

PAPUA NEW GUINEA

Mr Moses Warpulu, Director (Registry - Political Parties), Electoral Commission

Mr Ireneus Wabeawa, Senior Electoral Officer, Electoral Commission

PHILIPPINES

Ms Teresita Dy-Liacco Flores, Commissioner, Commission on Elections

Ms Estrella de Mesa, Director III, Planning Department, Commission on Elections

SOUTH AFRICA

Mr Howard Sackstein, Director Legal Services, Independent Electoral Commission

Ms Elsabe During, Personal Assistant to the Constitutional Adviser, Mr SS van der Merwe, Department of Constitutional Development

Ms Drene Nupen, National Director, Independent Mediation Service of South Africa (IMSSA)

Ms Ilona Tip, of IMSSA

TONGA

Mr George Aho, Secretary for Justice and Supervisor of Elections, Ministry of Justice

Mrs Eseta Fusitu'a, Deputy Chief Secretary and Deputy Secretary to Cabinet, Prime Minister's Office

UNITED KINGDOM

Mr Steve Limpkin, Head of Elections, Division D Home Office

Dr David Butler, Fellow of Nuffield College, Oxford

WESTERN SAMOA

Mr Olive Samuela Tuipoloa, Senior Electoral Officer, Legislative Department

Appendix C: Close of Rolls Enrolment Transactions

29 January 1996 to 5 Feburary 1996

New South Wales

	Enrolments	Deletions
Banks	1089	48
Barton	1811	84
Bennelong	2742	76
Berowra	2207	51
Blaxland	1406	76
Bradfield	1532	41
Calare	1946	82
Charlton	1560	57
Chifley	1739	56
Cook	1943	47
Cowper	1899	58
Cunningham	1641	30
Dobell	2435	50
Eden-Monaro	2169	82
Farrer	1700	97
Fowler	1935	43
Gilmore	1882	53
Grayndler	2848	52
Greenway	1717	43
Gwydir	1181	63
Hughes	1821	42
Hume	1323	84
Hunter	1822	87
Kingsford-Smith	1993	75
Lindsay	1858	75
Lowe	2279	62
Lyne	1590	50
Macarthur	2121	36
Mackellar	1978	47
Macquarie	2321	46
Mitchell	1841	47
Newcastle	2075	70
New England	1453	75
North Sydney	3863	78
Page	2598	71
Parkes	1789	134
Parramatta	2092	63
Paterson	1782	77
Prospect	1164	30
Reid	1968	61
Richmond	2763	80
Riverina	1501	91
Robertson	2045	86
New South Wales		

Victoria

	Enrolments	Deletions
Aston	2467	31
Ballarat	3855	82
Batman	2496	36
Bendigo	3263	76
Bruce	3324	62
Burke	2637	15
Calwell	2345	40
Casey	2246	32
Chisholm	3213	57
Corangamite	2396	76
Corio	2651	81
Deakin	2552	47
Dunkley	2889	74
Flinders	2814	57
Gellibrand	2985	65
Gippsland	2619	80
Goldstein	3298	64
Higgins	4319	55
Holt	2828	44
Hotham	2622	68
Indi	3242	41
Isaacs	2553	49
Jagajaga	3081	80
Kooyong	3456	87
Lalor	2704	72
La Trobe	2783	71
McEwen	2967	54
McMillan	2247	71
Mallee	2314	130
Maribyrnong	2054	55
Melbourne	5271	47
Melbourne Ports	4854	55
Menzies	2306	31
Murray	2641	53
Scullin	2036	21
Wannon	2300	134
Wills	2739	64

(continued)

Shortland	1463	56
Sydney	4674	123
Throsby	1456	117
Warringah	2412	67
Watson	1356	58
Wentworth	3587	70
Werriwa	1388	35

Queensland

	Enrolments	Deletions
Bowman	2977	85
Brisbane	5364	78
Capricornia	2835	44
Dawson	3006	39
Dickson	3702	44
Fadden	3378	36
Fairfax	3929	41
Fisher	3266	59
Forde	2838	44
Griffith	3438	71
Groom	3533	42
Herbert	5077	73
Hinkler	3158	41
Kennedy	2617	48
Leichhardt	3905	110
Lilley	3310	57
Longman	3328	54
McPherson	3316	71
Maranoa	2305	55
Moncrieff	3530	95
Moreton	3277	47
Oxley	2188	67
Petrie	3028	80
Rankin	2845	49
Ryan	3881	60
Wide Bay	2838	48

Western Australia

	Enrolments	Deletions
Brand	4986	68
Canning	3401	33
Cowan	3471	32
Curtin	4225	45
Forrest	3186	48
Fremantle	3917	59
Kalgoorlie	5408	77
Moore	4412	34
O'Connor	2357	49
Pearce	3383	23
Perth	3990	45
Stirling	3570	44
Swan	4290	58
Tangney	3257	39

South Australia

	Enrolments	Deletions
Adelaide	4908	414
Barker	2496	212
Bonython	2520	214
Boothby	3503	309
Grey	1875	275
Hindmarsh	4119	312
Kingston	3255	282
Makin	3544	281
Mayo	3880	305
Port Adelaide	2857	259
Sturt	4066	331
Wakefield	2246	221

Tasmania

	Enrolments	Deletions
Bass	2419	75
Braddon	1972	47
Denison	3156	110
Franklin	2030	55
Lyons	2181	79

Australian Capital Territory

Northern Territory

	Enrolments	Deletions
Canberra	3961	123
Fraser	2527	54
Namadgi	2605	68

	Enrolments	Deletions
Northern Territory	8607	363

State/Territory Totals

	Enrolments	Deletions
NSW	99758	3282
VIC	107367	2257
QLD	86869	1538
WA	53853	654
SA	39269	3415
TAS	11758	366
ACT	9093	245
NT	8607	363

National Total	**416574**	**12120**

Appendix D: Overseas Postal Voting

LOCATION	COUNTRY	VOTES	LOCATION	COUNTRY	VOTES
Almaty	Kazakstan	20	Madrid	Spain	114
Amman	Jordan	72	Malta	Malta	195
Ankara	Turkey	41	Manchester	UK	354
Apia	Western Samoa	121	Manila	Philippines	664
Athens	Greece	470	Mexico City	Mexico	52
Atlanta	USA	106	Milan	Italy	69
Auckland	New Zealand	1036	Moscow	Russian Federation	91
Bali	Indonesia	179	Nagoya	Japan	0
Bandar Seri Begawan	Darussalam	119	Nairobi	Kenya	85
Bangkok	Thailand	724	Nauru	Nauru	50
Beijing	China	300	New Delhi	India	270
Beirut	Labanon	271	New York	USA	675
Belgrade	Yugoslavia	69	Nicosia	Cyprus	483
Berlin	Germany	86	Noumea	New Caledonia	73
Berne	Switzerland	99	Nuku'alofa	Tonga	69
Bombay	India	139	Osaka	Japan	146
Bonn	Germany	195	Ottawa	Canada	166
Brasilia	Brazil	17	Paris	France	404
Bridgetown	Barbados	11	Phnom Pehn	Cambodia	307
Brussels	Belgium	116	Pohnpei	Micronesia	25
Budapest	Hungary	115	Port Louis	Mauritius	69
Buenos Aires	Argentina	65	Port Moresby	Papua New Guinea	853
Butterworth	Malaysia	205	Port Vila	Vanuatu	103
Cairo	Egypt	136	Pretoria	South Africa	187
Caracas	Venezuela	6	Rangoon	Burma	70
Colombo	Sri Lanka	154	Riyadh	Saudi Arabia	205
Copenhagen	Denmark	97	Rome	Italy	304
Damascus	Syria	23	San Francisco	USA	319
Dahka	Bangladesh	62	Santiago	Chile	321
Dubai	United Arab Emirates	93	Sao Paulo	Brazil	0
Dublin	Ireland	255	Sendai	Japan	0
Frankfurt	Germany	84	Seoul	Korea	140
Fukuoka City	Japan	6	Shanghai	China	200
Geneva	Switzerland	133	Singapore	Singapore	2036
Guangzhou	China	134	Stockholm	Sweden	117
Hanoi	Vietnam	254	Suva	Fiji	452
Harare	Zimbabwe	163	Taipei	Taiwan	336
Ho Chi Minh City	Vietnam	1228	Tarawa	Kiribati	23
Hong Kong	Hong Kong	7661	Tehran	Iran	18
Honiara	Solomon Islands	204	Tel Aviv	Israel	241
Honolulu	USA	131	The Hague	Netherlands	214
Houston	USA	139	Tokyo	Japan	862
Islamabad	Pakistan	89	Toronto	Canada	289

Istanbul	Turkey	46	Vancouver	Canada	429
Jakarta	Indonesia	931	Vienna	Austria	182
Kathmandu	Nepal	99	Vientiane	Laos	128
Kuala Lumpur	Malaysia	1121	Warsaw	Poland	120
Lagos	Nigeria	7	Washington DC	USA	827
London	UK	13926	Wellington	New Zealand	810
Los Angeles	USA	402			
			TOTAL		**46,307**

Appendix E: Fraudulent Enrolment and Voting - Documents

Multiple Voting and Personation:

1. AEC Submission to the JSCER, July 1985: “The Penal Provisions of the Commonwealth Electoral Act”. (pages 31-35)

2. JSCER Report No 2 of December 1986: “The Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation.” (pages 192-193)

3. AEC Submission to the JSCEM, September 1988: “Conduct of the 1987 Election”. (page 39)

4. AEC Submission No 41 to the JSCEM, 11 October 1988: “Social Security Fraud and Enrolment Records.”

5. AEC Submission No 61 to the JSCEM, 3 November 1988: “AEC Response to Liberal Party Submission on Provision of Printed Rolls and Habitation Tapes and Multiple Voting.”

6. AEC Submission No 62 to the JSCEM, November 1988: “Document Entitled ‘Undermining Electoral Integrity - Preliminary Report.”

7. AEC Submission No 74 to the JSCEM, December 1988: “Close of Rolls Rush and Marginal Divisions.”

8. AEC Submission No 122 to the JSCEM, 10 May 1989: “Moran Enrolment Offence.”

9. JSCEM Report No 3 of May 1989: “The 1987 Federal Election.” (Chapter 6, pages 70-89)

10. AEC Submission No 76 to the JSCEM, 12 September 1990: “Responses to JSCEM queries on enrolment in Division of Richmond and return to sender mail.”

11. AEC Submission No 79 to the JSCEM, 21 September 1990: “Responses to JSCEM queries on multiple voting statistics.”

12. JSCEM Report of December 1990: “The 1990 Federal Election.” (pages 53 - 57)

13. AEC Submission No 91, 3 August 1993: “The Conduct of the 1993 Federal Election.” (pages 35-38)

14. AEC Submission No 107, 14 September 1993: “Fraudulent Enrolment and Multiple Voting.”

15. AEC Submission No 115, 19 October 1993: “Report of Multiple Marks on the Certified Lists used at the election held on 13 March 1993.”

16. AEC Submission No 120, 10 November 1993: “Matters on the Practical Implications of Various Measures Relating to the Integrity of the Electoral Process.”

17. AEC Submission No 127, 19 November 1993: “Responses to comments made at public hearings.”

18. AEC Submission No 136, 13 December 1993: “Voter Cards.”

19. AEC Submission No 140, 14 January 1994: “Response to Claims by the Enterprise Council.”

20. JSCEM Report of November 1994: “The 1993 Federal Election.” (Chapter 4).

Enrolment and Voter Identification:

21. AEC Submission to the JSCER, July 1985: “Enrolment and Roll Maintenance.” (page 35)

22. JSCER Report No 2, December 1986: “The Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation.” (pages 46-47)

23. JSCEM Report No 3 of May 1989: “The 1987 Federal Election.” (Chapter 6, pages 82-84)

24. AEC Submission No 120, 10 November 1993: “Matters on the Practical Implications of Various Measures Relating to the Integrity of the Electoral Process.”

25. AEC Submission No 127, 19 November 1993: “Responses to comments made at public hearings.”

26. AEC Submission No 136, 13 December 1993: “Voter Cards.”

27. JSCEM Report of November 1994: “The 1993 Federal Election.” (pages 35-44).

Subdivisional Voting:

28. AEC Submission to the JSCER, July 1985: “The Election Process”. (page 26)

29. JSCER Report No 2, December 1986: “The Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation.” (pages 94)

30. AEC Submission No 116/127, 2 May 1989: “Locality Voting.”

31. JSCEM Report No 3 of May 1989: “The 1987 Federal Election.” (Chapter 6, pages 82-84)

32. AEC Submission No 120, 10 November 1993: “Matters on the Practical Implications of Various Measures Relating to the Integrity of the Electoral Process.”

33. AEC Submission No 127, 19 November 1993: “Responses to comments made at public hearings.”

34. JSCEM Report of November 1994: “The 1993 Federal Election.” (page 40).

Appendix F: Election Funding Entitlements

Payee	Amount $
Australian Labor Party	$12 856 382.99
Liberal Party of Australia	$12 489 503.44
National Party of Australia	$2 997 271.54
Northern Territory Country Liberal Party	$123 478.05
Australian Democrats	$2 968 965.40
Australian Greens	$281 830.06
The Greens (WA)	$165 918.12
Australians Against Further Immigration	$27 567.92
No Aircraft Noise	$23 929.07
Peter Andren (Calare, NSW)	$34 210.51
Irene Bolger (Batman, VIC)	$6 265.94
Ben Buckley (Gippsland, VIC)	$5 645.02
Graeme Campbell (Kalgoorlie, WA)	$34 505.21
Philip Cleary (Wills, VIC)	$27 968.21
Paul Filing (Moore, WA)	$44 971.02
Michael Gallagher (Berowra, NSW)	$7 933.28
Bryan Hilbert (Swan, WA)	$9 887.45
Terrence Larsen (New England, NSW)	$5 252.61
Robyn Loydell (Eden-Monaro, NSW)	$6 808.06
James Perrett (Gwydir, NSW)	$4 592.29
Allan Rocher (Curtin, WA)	$31 914.36
TOTAL	**$32 154 800.55**

NB: Pauline Hanson's election funding was paid to the Liberal Party as required under the CEA.