Australian Electoral Commission

SUPPLEMENTARY SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

AEC RESPONSES TO OTHER JSCEM SUBMISSIONS IN VOLUMES 1 TO 4

Canberra

20 September 1996

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1. PREAMBLE

1.1 This supplementary submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its "Inquiry into the 1996 Federal Election", as advertised on Saturday 22 June 1996 in all major national newspapers. The submission is supplementary to the major AEC submission, "The Conduct of the 1996 Federal Election", presented to the JSCEM on 29 July 1996 (submission No 30).

1.2 To date, the JSCEM has released four bound volumes containing 83 submissions from various individuals and organisations. The AEC is responding to these submissions to the JSCEM, as appropriate.

1.3 The AEC has not commented on any submissions that go beyond electoral matters, or present arguments that involve political considerations, or are unclear in their arguments. Where the AEC has already commented in other AEC submissions on particular issues raised, or will be doing so separately at a future date, then cross-referencing is provided. For example, in addition to the major AEC submission No 30 of 29 July 1996 entitled "The Conduct of the 1996 Federal Election", on 30 August 1996 the AEC provided four supplementary submissions to the JSCEM on the litigation involving Mr Albert Langer and the related statistics (submissions No 77 and 78 in Volume 3, and submissions No 79 and 80 in Volume 4), and in due course will be providing separate supplementary submissions on any allegations of widespread electoral fraud, and the operational and resource implications of enrolment and/or voter identification.

1.4 Where matters raised in the submissions of others are currently before the courts, such as petitions to the Court of Disputed Returns, or are the subject of ongoing investigations by the Australian Federal Police (AFP), or involve complaints that have been examined and decided by the AEC on the advice of the Director of Public Prosecutions (DPP), the AEC will not be providing any comment in this submission.

2. VOLUME 1 OF JSCEM SUBMISSIONS (Nos 1 to 35)

2.1 Submission No 1: Caroline Staples, Reid Federal Electorate Council of the Australian Labor Party, 19 June 1996, page S01.

2.1.1 *Subject: destruction and defacement of campaign posters and signs:* There is no specific offence under the Commonwealth Electoral Act 1918 (CEA) relating to the destruction and defacement of political advertising, such as campaign posters and signs. Essentially, the protection of such private property from destruction and defacement is the responsibility of the owners, the candidates and political parties, with the assistance of the local police as necessary. There are also different local council by-laws in force across Australia which relate to the fixing of signs to public property, and police powers can be called upon by individuals who object to the fixing of signs and posters on public or private property.

2.1.2 It must be said that the sorts of interventions demanded of AEC officers by some candidates in the heat of the campaign period, and particularly on polling day, are in many cases totally unreasonable. Those demanding such interventions do not appear to appreciate that AEC officers do not have the equivalent of police powers to, for example, seize and/or destroy offensive material. Nor should they. If AEC officers were to be drawn into the often heated political arguments that occur just prior to and on polling day, it could seriously interfere with their primary duties.

2.1.3 *Subject: AEC responsibility:* Where it is apparent that a breach of the CEA is or might be occurring, for example at a polling place on polling day, case assessment is firstly undertaken by the officer-in-charge of the polling booth, and depending on the severity and/or complexity of the apparent breach, advice may be sought from the Divisional Returning Officer (DRO), from the Australian Electoral Officer (AEO) for the State/Territory, from Central Office in Canberra, and finally, from the Director of Public Prosecutions (DPP).

2.1.4 Where problems are of a local nature, and not provided for under the CEA, such as the destruction and defacement of campaign signs and posters outside the perimeter of a polling place, then State police may be called in by persons affected as necessary. Where an offence under the CEA is apparent, the AEC will firstly attempt to obtain compliance with the CEA where this is possible, and in most cases either a request for cooperation or a warning is all that is necessary. However, in more intractable circumstances, case assessment by AEC officers, with advice from the DPP, will indicate whether an injunction is necessary, or whether prosecution is warranted, assuming that the identity of the offender can be established. Where prosecution is a possibility, the AFP may be asked to investigate. This may involve the seizure of some campaign signs and posters by the AFP for the purposes of preparing an evidence brief, but does not extend to wholesale removal and confiscation.

2.1.5 *Subject: authorisation of electoral advertising:* Under section 328 of the CEA it is an offence to print, publish or distribute election advertising that does not contain the name and address of the authoriser and the name and place of business of the printer. If the AEC is notified of a possible offence under section 328 of the CEA, then the AFP may be asked to investigate. As indicated above, this may involve the seizure of some campaign signs and posters by the AFP for the purposes of preparing an evidence brief, but does not extend to wholesale removal and confiscation. AEC officers have no powers to remove or confiscate private property.

2.1.6 The Divisional Returning Officer for Reid (DRO) has reported that he recollects Mr Laurie Ferguson MP contacting him on polling day in relation to the size of a campaign sign. The DRO advised Mr Ferguson that the CEA does not regulate the size of campaign signs. Mr Ferguson also wrote to the DRO on polling day complaining about allegedly unauthorised campaign signs which read "Don't Trust Labor" at several polling booths in the Division. The authoriser of these signs was apparently unknown. Mr Ferguson asked the DRO to immediately remove these signs. The DRO has reported that neither he nor his staff sighted any such unauthorised signs on polling day.

2.1.7 Mr Ferguson also contacted the Australian Electoral Officer for New South Wales, and was referred to the Deputy Australian Electoral Officer for New South Wales (DAEO) on polling day, to complain about his discussions with the DRO in relation to unauthorised campaign signs. The DAEO has reported that his understanding of his conversation with Mr Ferguson was that it related to campaign signs being inside or outside the perimeters of the polling places concerned, and not to whether the signs were authorised. The DAEO asked the DRO to ensure that party campaign material, such as posters and signs, be kept outside the perimeters of the polling places in the Division.

2.2 Submission No 2: Kelvin Thompson MHR, 26 June 1996, page S02.

2.2.1 *Subject: silent enrolment:* One of the fundamental principles of the federal electoral system is that the Commonwealth Electoral Roll be made available for public inspection, in printed form for sale, and for perusal in all AEC offices and public libraries. This public availability of the Roll makes the electoral system openly accountable, by enabling citizens to verify their own enrolment and object to the enrolment of others who may not be qualified to be enrolled to vote at federal elections.

2.2.2 However, in the 1983 First Report of the Joint Select Committee on Electoral Reform (JSCER) the following comment and recommendation was made:

> The Committee was made aware of requests for the 'silent' listing on electoral rolls of people in certain occupational groups such as police, judges and magistrates, and people in danger of violence ... The

Committee recognises the possible need for a provision of this kind and recommends that silent listing be implemented for those who consider themselves to be in danger of violence.

2.2.3 As a consequence of this recommendation, section 104 of the CEA was introduced in 1983 to provide that, where a person considers that having his or her address shown on the Roll would place the personal safety of the person or of members of his or her family at risk, a request may be made in the approved form for silent enrolment. Such a request for silent enrolment must give particulars of the relevant risk and be verified by statutory declaration.

2.2.4 The wording of the provision and its origins in the JSCER recommendation indicate that the Parliament intended that silent enrolment should only be approved in relatively extreme cases of personal risk. The AEC is of the view that a satisfactory balance has been struck in the CEA between the fundamental requirement for an open Electoral Roll, and the need to protect the identity of certain electors at identifiable risk of personal danger.

2.2.5 The DRO for Wills has reported that Mrs Helen Ryan did not actually apply for silent entitlement, but telephoned his office and asked for information regarding silent enrolment. The DRO advised Mrs Ryan of the legal requirements and said that if an application were to be on any basis other than that provided for under the CEA, then he would have no alternative but to reject her claim.

2.3 Submission No 3: C G W Hughes, 27 June 1996, page S04.

2.3.1 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

2.3.2 *Subject: advocacy of optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.3.3 *Subject: costs of by-elections:* By-elections for the House of Representatives are required when a vacancy arises, for example on the resignation of a Member, under section 33 of the Constitution. The Speaker of the House, or if he/she is absent from the Commonwealth, the Governor-General-in-Council, issues the writ for the by-election. There is no time frame set in the Constitution for the issue of the writ.

2.3.4 Public concern at the timing, frequency and cost of by-elections may have been heightened by the proximity of some federal by-elections to State/Territory elections. There were eight federal by-elections between the 1993 and 1996 federal elections. The total cost of these by-elections, excluding public funding, was $2,273,463, at an average of $284,183 per by-election, or approximately $285,000.

2.3.5 The proposal that retiring Members of the House of Representatives should meet the costs of a by-election consequent on their resignation, essentially applies a penalty to retirement, and raises issues of equity in relation to the smaller political parties and Independent Members who do not have a political party machinery behind them to support the payment of a penalty of the magnitude of $285,000.

2.3.6 Further, questions of definition must arise, such as whether there is some threshold set of reasons for resignation that should trigger the penalty. For example, resignation for reasons of ill-health or family problems would presumably have to constitute penalty exclusions. Once it is accepted that some exclusions are necessary, the further question arises as to how such cases should be arbitrated, particularly given that such arbitration would inevitably involve personal and private factors, with their attendant difficulties of interpretation. Legislation would be required for enforcement.

2.3.7 It has also been suggested in the past that resigning Members of the House of Representatives should be replaced with persons selected from the same political party, under a system similar to the filling of casual vacancies for the Senate under section 15 of the Constitution, where a joint sitting of the State Parliament chooses a replacement from the same political party. This idea was canvassed in 1981 by Senator Arthur Gietzelt in a paper entitled "Proposals for Change to our Electoral System - the Debate Rejoined."

2.3.8 However, legal advice is that this "co-option" model, which would require a joint sitting of federal Parliament to choose a replacement, would require Constitutional amendment, as section 24 of the Constitution, for example, requires that Members of the House of Representatives be "directly chosen by the people".

2.4 Submission No 4: Neil Forbes, 27 June 1996, page S05.

2.4.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.5 Submission No 5: Greg Murdoch, Murray Shire Council, 1 July 1996, page S07.

2.5.1 *Subject: disabled access to polling booths:* The DRO for Farrer has reported that, subject to availability, it is intended to use the community centre at Moama and the Shire Council Hall at Mathoura as polling places for the next federal election.

2.6 Submission No 6: F R Ashdown, 1 July 1996, page S08

2.6.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.7 Submission No 7: Michael Doyle, 2 July 1996, page S13

2.7.1 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

2.7.2 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.8 Submission No 8: C Pitkin, Bathurst City Council, 3 July 1996, page S22

2.8.1 *Subject: cut-off time for delivery of postal votes*: At the 1984 federal election, many postal votes delivered to Assistant Returning Officers at overseas posts were delayed in reaching the relevant Divisional Returning Officer (DRO) in Australia. The Attorney-General's Department advised the AEC that votes delivered to any DRO, Assistant Returning Officer or Presiding Officer were to be admitted to the scrutiny regardless of when they were received. This interpretation enabled the delayed overseas votes to be admitted to the scrutiny. However, it was clear that only reasonable delays of postal votes should be contemplated in the future.

2.8.2 As a result of this experience, the AEC submitted to the JSCEM at the post-1984 enquiry that there should be a cut-off date for all postal and pre-poll votes, issued both within Australia and overseas, which would make suitable allowance for any logistical problems encountered in the return of postal votes to Australia, but not delay the declaration of the poll unduly. Amendments to sections 194 and 266 of the CEA were therefore made in 1990 to provide for a period of 13 days after the close of the poll during which late postal votes could be admitted to the preliminary scrutiny. In addition, a DRO was not precluded from declaring a poll where a candidate had a clear majority of votes, and the addition of any late postal votes could not affect the result.

2.8.3 The AEC is of the view that the existing postal voting provisions in the CEA ensure a high level of service to electors, and assist in maintaining the franchise for as many electors as possible, particularly those in remote areas of Australia and overseas (but see also AEC submission No 30, Volume 1, pages S183 to S191).

2.9 Submission No 9: Ross Parkinson, 26 June 1996, page S24

2.9.1 *Subject: time zones*: This issue was considered by the previous JSCEM in its inquiry into the 1993 federal election. The 1993 JSCEM commented that no direct evidence was available to support the contention that voters were so influenced, and made no recommendation to change current practice.

2.9.2 *Subject: how-to-vote cards in polling booths*: the JSCEM considered the issue of banning how-to-vote cards after the 1987, the 1990 and the 1993 federal elections. On each occasion the JSCEM decided that it was neither practical nor necessary to ban how-to-vote cards.

2.9.3 There are civil liberties implications in refusing candidates and their supporters permission to provide material directly to voters on polling day. For many supporters of political parties and candidates, handing out how-to-vote cards is one of the few means by which they can participate in a campaign and directly meet and talk to the voters.

2.9.4 In response to public concern about the environmental impact of paper wastage, the AEC has, for a number of years now, collected and recycled how-to-vote cards discarded in and around polling booths.

2.9.5 Further, in response to suggestions that how-to-vote material be prominently displayed in polling booths, there are physical limitations on how much printed material can effectively be displayed inside polling booth compartments, so as to be equally visible and accessible to all voters. It has been consistently acknowledged that priority must be given to the display of the AEC's own voter assistance material.

2.9.6 Finally, it has long been agreed that the AEC should not become responsible for policing the size, colour and design specifications of how-to-vote material, which might be necessary if how-to-vote material was to be displayed inside polling booth compartments. Political party campaigning and distribution of campaign material should remain the responsibility of political parties and candidates themselves.

2.10 Submission No 10: Brian Cox, 8 July 1996, Page S29

2.10.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.11 Submission No 11: P J Boyle, 10 July 1996, S33

2.11.1 *Subject: constitutional disqualifications:* See AEC submission No 30, Volume 1, page S169.

2.11.2 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.11.3 *Subject: costs of by-elections*: See AEC response to submission No 3.

2.11.4 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

2.12 Submission No 12: S Gilchrist, 1 July 1996, page S37

2.12.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.12.2 *Subject: proportional representation*: No comment.

2.13 Submission No 13: David Pullen, 10 July 1996, page S42

2.13.1 *Subject: Pauline Hanson MP*: See AEC submission No 30, Volume 1, page S164

2.14 Submission No 14: Peter Bradbrook, National Party of Australia (WA), 4 July 1996, page S44

2.14.1 *Subject: electoral advertising*: No comment.

2.15 Submission No 15: Jim Coates, 11 July 1996, page S48

2.15.1 *Subject: ACT representation and Norfolk Island:* For the purposes of extending the franchise to Norfolk Islanders, the CEA was amended in 1992 to provide for the non-compulsory enrolment of qualified Australian citizens, resident on Norfolk Island, in any Division of any State, under conditions similar to those for itinerant enrolment.

2.15.2 Where Norfolk Islanders do not qualify for enrolment in a Division of a State, they may enrol in the Divisions of Canberra or Namadgi in the Australian Capital Territory (ACT). Norfolk Islanders may not enrol for the Divisions of the Northern Territory, or the Division of Fraser in the ACT, as these Divisions already include other territories, namely Christmas and Cocos (Keeling) Islands, and Jervis Bay, respectively.

2.15.3 Not all residents on Norfolk Island are Australian citizens, and not all Australian citizens resident on Norfolk Island are enrolled for federal elections. At the 1996 federal election, 92 Norfolk Islanders were enrolled for the Division of Canberra, and 41 Norfolk Islanders were enrolled for a Division of a State (none for the Division of Namadgi). See also AEC submission No 30, Volume 1, page S155.

2.15.4 Essentially, the proposal that all 3,000 Norfolk Islanders should be counted as part of the ACT for representation purposes, ignores the fact that many Norfolk Islanders are not even Australian citizens.

2.16 Submission No 16: John Bombardieri, 9 July 1996, page S50

2.16.1 *Subject: electoral bias*: No comment.

2.17 Submission No 17: Mark Spill, 16 July 1996, page S54

2.17.1 *Subject: enrolment ID*: See AEC submission in preparation.

2.17.2 *Subject: voter ID*: See AEC submission in preparation.

2.17.3 *Subject: computerised Certified Lists of Voters:* The major drawback to this proposal is cost. At the 1996 federal election there were 30,914 ordinary and declaration issuing points at polling booths across the country. With the assumed small reduction in the number of declaration issuing points, then perhaps 30,000 issuing points would be required. A rough estimate of cost of using personal computers in polling places is $112 million (32,000 PCs at 8,000 polling places).

2.17.4 *Subject: numbered ballot paper counterfoils:* Numbered counterfoils, not numbered ballot papers, were used nationally at the 1996 federal election to assist in ballot paper reconciliation. This is the only operational purpose to which numbered counterfoils can be put. If it is being suggested that the ballot papers also be numbered, then this would be of no use in fraud control unless a link were to be established to the identities of voters. Were this link to be created then the secrecy of the ballot would be seriously compromised.

2.17.5 *Subject: abolition of absent voting:* If the expenditure involved in establishing computerised Certified Lists of Voters, as proposed above, were to be agreed, then absent voting would not be required. However, to take this further and abolish overseas voting, would disenfranchise a significant number of Australian citizens abroad. At the 1996 federal election 46,307 votes were cast at Australian overseas missions. See also AEC submission No 30, pages S189, S260 and S261).

2.17.6 *Subject: data-matching:* The AEC has been moving in this direction in recent years with agreement being reached with Australia Post, and discussions in progress with the Department of Immigration and Multicultural Affairs and the Department of Employment, Education, Training and Youth Affairs. The AEC would support any data-matching proposals that might provide for a more reliable enrolment database, but such possibilities are limited by the currency and reliability of personal information held by other agencies, and by the Privacy Act 1988.

2.17.7 *Subject: computerised rolls*: It is not clear how computerised roll searches for members of the public would be effective, to any significant degree, in deterring any widely-organised fraudulent enrolment just prior to an election. However, the AEC does support improved roll access for genuine enquiries (rather than commercial interests) and has identified the roll access provisions of the CEA for review.

2.17.8 *Subject: enrolment objections:* The suggested imbalance between the enrolment and objection provisions of the CEA is not clear. The requirement that an elector live in a subdivision for one month before enrolling is complemented by the requirement that objection action cannot take place until one month after an elector moves away from a subdivision. It may well be that an elector will wait the full month before enrolling. However, if the elector does not wait, then the enrolment cannot be questioned on that ground. What check could be undertaken? It should be noted that if an

elector is re-enrolling, the previous enrolment is automatically deleted at that time.

2.17.9 The proposition that large groups of electors move their enrolled address in an organised fashion between Divisions to boost numbers in marginal seats is seriously flawed. Firstly, it is not possible to say, except on historical indications, which will be the marginal seats in an election; and in any case, for such a ruse to succeed, a substantial number of organised co-conspirators would have to be involved, with the attendant risk of exposure. Secondly, the AEC has conducted audits of last-minute enrolments at past elections and found no evidence of such organised roll-stacking.

2.17.10 *Subject: subdivisional objections:* The size of the subdivision is irrelevant. Enrolment remains subdivisionally based, whether or not the subdivision is the same as the Division.

2.17.11 *Subject: objections after writ:* The Electoral and Referendum Amendment Bill 1996 will provide for objection action to be taken after the issue of the writ. The unrelated point about last-minute fraudulent enrolments overlooks the time and cost, not to mention the administrative load, that would be required to make the necessary checks of all last-minute enrolments. Until evidence is forthcoming that there is massive fraud at the last moment before an election, and all evidence from AEC audits points in the contrary direction, such an administrative and cost burden is not justified. The election would be over before the enrolment checking was completed.

2.18 Submission No 18: Robert Cooper, 13 July 1996, page S60

2.18.1 *Subject: Senate voting*: No comment.

2.19 Submission No 19: Dr David Blest, 16 July 1996, page S72

2.19.1 *Subject: truth in political advertising*: See AEC submission No 30, Volume 1, page S176

2.20 Submission No 20: Phillip Neuss, 15 July 1996, page S74

2.20.1 *Subject: how-to-vote cards in polling booths:* See AEC response to submission No 9.

2.20.2 *Subject: voter ID:* See AEC submission in preparation.

2.20.3 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.20.4 *Subject: reduction of polling booths:* In 1990 and again in 1992 the JSCEM examined the AEC National Polling Place Resources Policy in the context of the queues experienced at many polling places around Australia at the 1990 federal election (see the December 1990 JSCEM Report on the 1990 federal election and the December 1992 JSCEM Report entitled “Ready

or Not"). Recommendations were made to improve client services at polling places, including ensuring that polling places are located for maximum voter convenience. The revised AEC National Polling Place Resources Policy provides detailed criteria, relating to the size and number of polling places, which are applied by DROs in selecting appropriate polling place sites.

2.20.5 One such criterion is the 100 votes benchmark, above which polling places should not be abolished. The eight polling places identified in this submission all exceeded the 100 votes benchmark at the 1990, the 1993 and the 1996 federal elections. Further, these polling places are not only used for federal elections, but also for Local Government elections, and with the exception of the Repton polling place, for State elections.

2.20.6 The DRO for Cowper advises that if the Nambucca Head polling place (3,200 votes) and the Newville polling place (895) were to be amalgamated, then the combined polling place would have to service over 4,000 voters on polling day. In the opinion of the DRO the Nambucca Heads polling place is currently working to capacity. A better option would be to create a third polling place but suitable premises are not currently available.

2.20.7 The DRO also advises that the Mylestom polling place (332 votes) and the Repton polling place (261 votes) service separate and distinct communities, but voters could conceivably be expected to travel to the Raleigh polling place approxie Newoll13(el)eerces w.

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2.22.1 *Subject: how-to-vote cards in polling booths:* See AEC response to submission No 9.

2.23 Submission No 23: Allan Viney, 15 July 1996, page S80

2.23.1 *Subject: electoral fraud:* See AEC submission in preparation.

2.24 Submission No 24: Clover Moore MLA, 17 July 1996, page S85

2.24.1 *Subject: Independents and tax concessions*: No comment.

2.24.2 *Subject: party names on ballot papers*: Ms Moore's reading of section 129(e) of the CEA appears to be incomplete. Section 129(e) provides that the AEC shall refuse an application for the registration of a political party if, in its opinion, the name of the party or the abbreviation of its name .....

> comprises the words "Independent Party" or comprises or contains the word "Independent" **and**:
>
> > (i) the name, or an abbreviation or acronym of the name, of a Parliamentary party or a registered political party; or
> >
> > (ii) matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a Parliamentary party or a registered political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be. (emphasis added)

2.24.3 This suggests, for example, that a party name such as "The Clover Moore Independent Party" might be possible under the CEA.

2.25 Submission No 25: Graeme Orr, International Commission of Jurists, Queensland Branch, 22 July 1996, page S89

2.25.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.26 Submission No 26: Emeritus Professor Colin A Hughes, 24 July 1996, page S92

2.26.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.26.2 *Subject: truth in political advertising*: See AEC submission No 30, Volume 1, page S176

2.26.3 *Subject: voter ID*: See AEC submission in preparation.

2.26.4 *Subject: timing of by-elections*: The AEC supports this recommendation in relation to by-elections resulting from vacancies occasioned by death or resignation after the election, where the Speaker of the House must issue the writ under section 33 of the Constitution. The same principle might also apply to supplementary elections occasioned by a failed election, through the death of a candidate for example, under section 181 of the CEA, where the Governor-General must issue the writ under section 152 of the CEA.

2.27 Submission No 27: A J Betts, 24 July 1996, page S107

2.27.1 *Subject: group voting tickets:* No comment.

2.28 Submission No 28: Kieran Murphy, 24 July 1996, page S108

2.28.1 *Subject: electoral fraud and voter ID*: See AEC submission in preparation.

2.29 Submission No 29: Amy McGrath OAM, H Chapman Society, 26 July 1996, page S115

2.29.1 *Subject: reinstatement of subdivisions*: It is alleged in this submission that the AEC has adopted an "unauthorised and illegal policy" in relation to subdivisions. This claim is false.

2.29.2 Prior to the amendments made to the CEA by the Commonwealth Electoral Legislation Amendment Act 1983, subsection 26(1) of the CEA did provide that:

> Each Division shall be divided into Subdivisions and the boundaries of each Subdivision shall be as specified by proclamation.

2.29.3 However, subsection 26(1) was repealed in 1983 and replaced with a provision (now section 79) that read as follows:

> The Electoral Commission may, by notice published in the Gazette -
>
> (a) divide a Division into such Subdivision (if any) as are specified and set out the boundaries of each Subdivision so specified; and
>
> (b) divide the Northern Territory into such Districts as are specified and set out the boundaries of each District so specified."

2.29.4 The words "if any" in paragraph (a) make it clear beyond any doubt that the 1983 amendments, except in relation to the Northern Territory, removed any general legal obligation for Division to be subdivided. In addition, the 1983 amendments inserted in the CEA a new subsection 4(4) which provides that:

> Where a Division is not divided into Subdivisions, a reference in this Act to a Subdivision shall, in relation to that Division, be read as a reference to that Division.

2.29.5 Subsection 82(2) of the CEA, as quoted in the submission, does not require the continued existence of subdivisions. Its effect is only to require that there be subdivisional rolls for those Divisions that are subdivided.

2.29.6 It should be emphasised that all steps taken by the AEC with regard to the creation or abolition of subdivisions since the enactment of the 1983 amendments have been in the public domain, by virtue of the fact that they have to be gazetted. Those steps were neither illegal nor unauthorised: they were in fact authorised and made legal by Parliament. Neither subsection 26(1) (which is now subsection 79(1)) nor subsection 4(4) has been amended in any material way since 1983.

2.29.7 The assertion is also made that the 1983 amendments "still limited ordinary voting cast in a division to 'the Subdivision of enrolment'", that at the 1984 election "Subdivisions simply no longer existed" despite the fact that "the Act still required Subdivisional Rolls", and that as a consequence "the three electoral Commissioners of the new Electoral Commission were henceforth in breach of the Parliamentary Act."

2.29.8 The assertions are again false. The relevant amendment enabling Division-wide ordinary voting was made by paragraph 88(b) of the Commonwealth Electoral Legislation Amendment Act 1983 and the Explanatory Memorandum provided to the Parliament when the relevant Bill was being debated noted that that paragraph "amends sub-section 113(1) to provide for ordinary voting to be possible within the division, rather than the subdivision, of the elector's enrolment". Numerous subdivisions still existed at the time of the 1984 election, and official rolls for subdivided Divisions continued to be maintained on a subdivisional basis while subdivisions were maintained.

2.29.9 See also AEC submission No 30, page s206 and Appendix E, page S264, and AEC submission in preparation responding to generalised allegations of widespread electoral fraud.

2.29.10 *Subject: redistributions*: it is asserted at page 13 of the submission that "The AEC has recently adopted voting patterns in polling booths as the basis for drawing up new boundaries in redistributions." While it is not entirely clear what is meant by "voting patterns", to the extent that the assertion can be taken as meaning that the bodies conducting redistributions have since 1984 taken account of past or predicted partisan voting patterns in the course of their work, is totally and utterly without foundation.

2.29.11 The JSCEM might recall that a similar allegation was made by the former Member for McEwen during the 1995 inquiry into Redistributions. The former Member for McEwen was unable to provide any evidence for his allegation, and ultimately withdrew it and apologised to the AEC. Given the

seriousness of the allegation made in the submission, the AEC believes that the JSCEM should seek further information from Ms McGrath to clarify whether she is in fact claiming that partisan voting patterns have been improperly taken into account by redistribution bodies. If that turns out to be the claim, then Ms McGrath should be asked by the JSCEM to provide the evidence.

2.30 Submission No 30: Bill Gray, Australian Electoral Commission, 29 July 1996, page S129

2.30.1 No response.

2.31 Submission No 31: I H Farrow, 29 July 1996, page S266

2.31.1 *Subject: reduction in the size of Parliament*: No comment.

2.31.2 *Subject: provision of enrolment information to political parties*: The AEC is required under the CEA to provide political parties with computerised name and address information from the Commonwealth Electoral Roll, information which is available in other print media to any other person. There is no conflict with the Privacy Act 1988.

2.31.3 *Subject: Robson rotation*: No comment.

2.31.4 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

2.31.5 *Subject: compulsory voting*: See AEC Submission No 30, Volume 1, page S196.

2.31.6 *Subject: funding and disclosure*: No comment.

2.31.7 *Subject: truth in political advertising*: See AEC Submission No 30, Volume 1, page S176

2.32 Submission No 32: Miss Elizabeth McDonald, 23 July 1996, page S279

2.32.1 *Subject: wheelchair access to polling booths*: See AEC submission No 30, page S193, for general comment on the difficulty the AEC is experiencing in complying with national wheelchair access guidelines.

2.32.2 The DRO for Lowe reports that of the 43 polling places used in the Division at the 1996 federal election, 19 were advertised as having wheelchair access. The DRO has now decided that, as a result of Ms McDonald's experience, and in accordance with the national wheelchair access guidelines, the polling places at the United Church Hall, Murray Street, Croydon and Burwood Girls High School will no longer be advertised as having wheelchair access. However, the polling place at the Kindergarten, Railway Street, Croydon, will continue to be so advertised as there are

alternative approaches to that used by Ms McDonald, that would allow wheelchair access. The State Electoral Commissioner for New South Wales has been advised of these decisions, so that similar considerations might be made for State elections.

2.32.3 As the Division of Lowe is located in a well-established part of Sydney, where most of the schools, churches and other community buildings are at least 50 years old, there are very few buildings that can meet today's standards for wheelchair access. However, the DRO will continue to try to identify newer and more suitable premises as they become available.

2.32.4 *Subject: wheelchair access to voting compartments*: Ms McDonald says that "there has not *always* been provision to mark one's ballot privately as one cannot reach in the normal cubicles and there is not *always* a suitable private surface on which to write." (emphasis added).

2.32.5 Within a 14 month period there have been four elections held in the three polling places mentioned by Ms McDonald. Those elections were: the NSW State election on 25 March 1995; the NSW Local Government election on 9 September 1995; the federal election on 2 March 1996; and the NSW State by-election for Strathfield on 25 May 1996. That is, three of the past four elections that Ms McDonald may have attended to vote were conducted by the NSW State Electoral Commission.

2.32.6 For the 1996 federal election, the DRO for Lowe reports that he is certain that table top voting screens were provided at all polling places in the Division. He is equally certain that all officers-in-charge were instructed to provide a table on which frail or wheelchair-bound persons could vote using a table top screen.

2.33 Submission No 33: Ian Chalmers, Australian Private Hospitals Association, 30 July 1996, page S281

2.33.1 *Subject: AEC legal advice:* The AEC does not provide legal advice to individuals, candidates, political parties or commercial interest groups for sound legal reasons, not the least of which is the possibility of providing an opinion which might be found wrong in law by a court, after the election is over, resulting in the possible voiding of an election. Advisory opinions, which may or may not be provided by other Commonwealth agencies in other less critical circumstances, cannot be provided by the AEC in circumstances that could adversely affect the rights and interests of citizens in electing their Government. The AEC is of the view that commercial interest groups such as the APHA should be encouraged to seek their own legal advice rather than asking the taxpayer to fund their legal enquiries for political or other campaign purposes.

2.33.2 *Subject: influencing hospital patients*: The AEC does not believe that an amendment to section 325A of the CEA is warranted.

2.34 Submission No 34: Robert Bath, 30 July 1996, page S286

2.34.1 *Subject: precinct voting:* See AEC submission No 30, Volume 1, Appendix E, page S264

2.35 Submission No 35: Peter Crayson, 25 July 1996, page S287

2.35.1 *Subject: proportional representation*: No comment.

3. VOLUME 2 OF JSCEM SUBMISSIONS (Nos 36 to 63)

3.1 Submission No 36: David G Blair PhD, 27 July 1996, page S312

3.1.1 *Subject: optional preferential voting:* See AEC submission No 77, Volume 3, page S693.

3.2 Submission No 37: Wilson Tuckey MP, 29 July 1996, page S316

3.2.1 *Subject: electoral advertising and defamation:* No comment.

3.2.2 *Subject: Senate balance of power*: No comment.

3.3 Submission No 38: L J Wallace, Cheltenham Branch of the Liberal Party, 31 July 1996, page S342

3.3.1 *Subject: misleading electoral advertising*: The AEC referred the "Democrat" how-to-vote material allegedly printed, published and distributed by the ALP in the Division of Gilmore to the DPP on 15 March 1996, following a formal complaint by Mr Peter Graham QC.

3.3.2 Under section 329(1) of the CEA it is an offence, during the election period only, to print, publish or distribute electoral advertising that is likely to mislead or deceive an elector in relation to the casting of a vote. This provision was considered by the High Court in Evans v Crichton-Browne (1981) 147 CLR 169, in which 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 in the ballot box, and not to the formulation of that judgement.

3.3.3 On 2 April 1996 the DPP advised that the facts alleged in Mr Graham's complaint may have amounted to a breach of section 329(1) of the CEA, but that an investigation would be necessary to establish the facts.

3.3.4 On 16 April the matter was referred to the AFP for investigation. On 2 May 1996 the AFP advised that they could not accept the referral due to other priorities. After further correspondence, on 12 June 1996 the AFP advised that they could now undertake the investigation. The AEC is awaiting the outcome of this investigation.

3.4 Submission No 39: Jamie Snashall, ERS Consultancies Pty Ltd, 31 July 1996, page S346

3.4.1 *Subject: AEC professionalism*: The AEC thanks ERS Consultancies for its comments.

3.5 Submission No 40: Pauline Edser, Dundas Branch of the Liberal Party, 28 July 1996, page S348

3.5.1 *Subject: precinct voting:* see AEC submission No 30, Volume 1, Appendix E, page S264

3.6 Submission No 41: Bert Joy, 30 July 1996, page S349

3.6.1 *Subject: how-to-vote cards at polling booths:* See AEC response to submission No 9.

3.6.2 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

3.6.3 *Subject: election campaign advertising*: No comment.

3.6.4 *Subject: voter ID*: See AEC submission in preparation.

3.6.5 *Subject: funding and disclosure*: No comment.

3.7 Submission No 42: Paul Filing MP, 1 July 1996, page S352

3.7.1 *Subject: authorisation of electoral advertising*: On 15 March 1996 the AEC sought advice from the DPP on a complaint by Mr Tom Herzfeld, campaign director for Mr Filing, that a document entitled "Moore Report - March Edition" had been distributed in the Division of Moore without authorisation as required by section 328 of the CEA. It was alleged that the name of the person who purported to authorise the document was false. On 26 March the DPP advised that:

> in any case where there was sufficient evidence that a person or persons had either printed, published or distributed ... electoral material deliberately using a false name to preserve anonymity, that in my view would constitute more than a technical breach and ... may well warrant prosecution.

3.7.2 On 10 May 1996 the AEC referred the matter to the AFP and is awaiting the outcome of the investigation. Note also that the election in the Division of Moore is currently before the Court of Disputed Returns as a petition filed by Mr Stevenage against the election of Mr Filing.

3.7.3 *Subject: AFP investigations*: The AEC is satisfied that the AFP provides the AEC with electoral investigation briefs which are notable for their high degree of professionalism. Where there is no evidence to be found, the deploying of AEC investigators instead of AFP investigators is unlikely to produce a different result. Indeed there might be considerable risks involved in equipping AEC officers with quasi-police powers, when their primary experience and skills should be concentrated on electoral management. The AEC and the AFP have recently established a joint committee to coordinate investigation referrals on electoral matters.

3.7.4 *Subject: theft of campaign posters*: See AEC response to submission No 1.

3.7.5 *Subject: push polling and defamation*: See AEC submission No 30, Volume 1, page S180.

3.8 Submission No 43: Peter Downes, 30 July 1996, page S355

3.8.1 *Subject: AEC organisational structure*: Whilst it is the AEC's view that the 1996 federal election was adequately administered by the AEC as presently structured, it needs to be understood that there is very serious concern within the AEC that its organisational structure will not meet the expectations of relevant stakeholders and the Australian community at large, when it comes to the conduct of federal elections for the remainder of this century and into the next.

3.8.2 Over the past 20 years a series of reports have analysed and commented upon the organisational structure of the AEC, particularly that of the Divisional offices located in, or close by, each of the 148 federal Divisions across Australia. Many of those reports made recommendations directed at rationalising the Divisional level of the AEC with a view to achieving economic and administrative efficiencies. These recommendations, some of which were made by the predecessors of this JSCEM, have not been implemented.

3.8.3 The closest the AEC has come to rationalising its Divisional structure is by way of establishing a number of collocated offices in New South Wales, Queensland, Tasmania, South Australia and the Australian Capital Territory. Collocation provides for the grouping under the one roof of two or more Divisional offices but retaining the same staff structure within each of them. Collocation also means that one or more of the offices is located outside the boundaries of the relevant electoral Division. Such collocations have already demonstrated that not only can services continue to be adequately provided to clients and stakeholders, both during and between federal events, but they also provide improved working conditions for staff and provide efficiencies in such things as property operating expenses and telecommunications costs. Collocation, however, needs to be distinguished from regionalisation, which goes beyond the collocation of offices and would involve a reorganisation of responsibilities and resources of the AEC.

3.8.4 The AEC holds the very firm view that without further rationalisation of its structures, including the Divisional structure, its capacity to provide a quality service to its clients, stakeholders and the Australian community, will be progressively and rapidly diminished. For example, without a significant upgrade of office automation equipment, which is now 10 years old and operating well beyond its acknowledged use-by date, the AEC faces the real prospect of its information technology failing to meet the demands of the next federal election.

3.8.5 Current funding levels only permit the permanent employment of two people within 65 of the 148 Divisional offices around Australia. Staffing levels of this kind do not create viable administrative units and would not be found in, or accepted by, any other agency within the Australian Public

Service (APS). In addition, the organisational structure at the Divisional level has directly contributed to an escalation in staff stress and complaints in relation to Occupational Health and Safety, the lack of career development, the lack of gender equity within the AEC, and a reduction of service to the community. These issues can no longer be set aside if the AEC is to avoid seriously jeopardising the ongoing operation and capacity of the AEC to fulfil its statutory functions.

3.8.6 In light of the above comments, the question can be legitimately asked as to why AEC management has not taken the necessary action, before now, to reconfigure its resources and rationalise its structures, as other APS agencies have, to meet the demands of the changing environment in which it must now operate. The answer in large measure lies with the legislation. Unlike other statutory bodies and departments, the AEC must meet certain statutory requirements which have acted to limit the AEC's capacity to alter its Divisional structure. Sections 32 and 38 of the CEA state:

> 32(1). There shall be a Divisional Returning Officer for each Division, who shall be charged with the duty of giving effect to this Act within or for the Division subject to the directions of the Electoral Commissioner and the Australian Electoral Officer for the State or, if the Division is, or is part of, the Australian Capital Territory, the directions of the Electoral Commissioner.
>
> 38. The office of a Divisional Returning Officer shall, unless the Commission otherwise directs, be located within the Division.

3.8.7 Whilst neither of these sections alone, or in combination, prevents Divisional offices from being located outside a Division, it is asserted by some that the spirit of the legislation would ordinarily require a Divisional office in each electorate and only in extraordinary circumstances should the AEC exercise its discretion to permit the location of a Divisional office outside the boundaries of the relevant Division.

3.8.8 It is also the case, that on those occasions when the Divisional structure has been subject to change, either by way of collocation or proposed regionalisation, the response from many local Members has been swift, loud and negative. Local Members have justified their opposition to such moves on the grounds of an anticipated reduction in service to the electorate or possible administrative difficulties at the time of the election. Perhaps just as importantly, however, but less often stated, is the perception that the removal of a Divisional office from an electorate will, in one way or another, jeopardise the prospects of the relevant local Member at the next federal election. In recent times, certain local Members, whilst indicating their recognition of the benefits of collocation, nevertheless have pledged to oppose any such moves unless the offices concerned were to be physically collocated in their own electorates.

3.8.9 It must also be said that staff unions have voiced opposition to collocation/regionalisation in the past, based on concerns that some AEC employees had regarding staffing levels and other disturbances to their individual situations. However, there is now wide support within the AEC for

organisational change and acknowledgment of the benefits which would accrue to employees.

3.8.10 As to the reduction of services to the electorate, the successful collocation of a number of offices around Australia have already demonstrated that services can be maintained to the satisfaction of the community and other stakeholders both during and between elections.

3.8.11 The AEC is now at a point where it must move to initiate a reconfiguration of all its resources so that it may not only operate within its annual appropriation, which is subject to a continuing efficiency dividend and other reductions, but also to generate savings sufficient to finance the upgrade of its information technology capabilities. Unless this is done, the AEC will not be able to continue to meet the high expectations of the Parliament and the Australian people in respect of its conduct of elections and the provision of other services. Nor will it be able to meet the legislative requirements in respect of its employees and the maintenance of appropriate working conditions applicable within the APS.

3.8.12 The concerns of the AEC have now been considered by the present Government, which has directed that a submission be prepared canvassing strategies to regionalise AEC service delivery. The submission will be considered by the Government in the context of the 1997/98 Budget.

3.9 Submission No 44: Gratin Darbishire, Grey Power SA (Inc), 30 July 1996, page S358

3.9.1 *Subject: truth in political advertising*: See AEC submission No 30, Volume 1, page S176.

3.9.2 *Subject: proportional representation*: No comment.

3.10 Submission No 45: Senator Michael Baume, 24 June 1996, page S359

3.10.1 *Subject: misleading electoral advertising:* See AEC response to submission No 38.

3.10.2 *Subject: registration of how-to-vote cards:* It has long been agreed that the AEC should not become responsible for policing the content and design specifications of how-to-vote material. Political campaigning and distribution of campaign material should remain the responsibility of political parties and candidates themselves.

3.10.3 *Subject: eligible overseas electors:* See AEC submission No 30, Volume 1, page S156.

3.11 Submission No 46: Joanna Gash MP, 30 June 1996, page S366

3.11.1 *Subject: letters to constituents*: Under section 328(1) of the CEA electoral advertisements require the name and address of the authoriser and the name and place of business of the printer. Under section 328(3)(b) this does not apply to anything in a prescribed class of articles. Under regulation 87(b), section 328(1) does not apply to letters and cards that bear the name and address of the sender.

3.11.2 *Subject: removal of signs*: See AEC response to submission No 1.

3.11.3 *Subject: misleading electoral advertising*: See AEC response to submission No 38.

3.11.4 *Subject: intimidation at polling booths*: The DRO for Gilmore has reported that all returns from officers-in-charge of polling booths and all reports of scrutineers and party workers have been checked and there is no mention of any incidences of assault or intimidation.

3.11.5 *Subject: return-to-sender mail*: The DRO for Gilmore has reported that his office is presently investigating all return-to-sender mail provided to him by Senator Baume. Not only is it not possible to remove electors' names from the Roll after the close of the rolls, but such information provided by politicians requires proper inquiry on a case by case basis. There are many reasons why mail addressed to constituents by politicians may be returned to sender, not the least of which is the possibility that the elector may not approve of the policies canvassed by the politician.

3.11.6 *Subject: AEC responsibility*: The AEC rejects the allegation that "the AEC rarely if ever pursues an enquiry". The DRO for Gilmore has reported that eight formal complaints were made to his office during the election, and were acted upon promptly and appropriately. Most of the allegations in this submission are unsubstantiated and of a general nature and were not provided to the DRO at the time of the election. Also see AEC response to submission No 1.

3.12 Submission No 47: Bob McMullan MP, 1 July 1996, page S372

3.12.1 *Subject: ACT representation and Norfolk Island:* See AEC response to submission No 15.

3.13 Submission No 48: L B Johnston, 2 July 1996, page S374

3.13.1 *Subject: electoral fraud:* The AEC would appreciate the opportunity to investigate any specific instances of electoral fraud known to Mr Johnston.

3.13.2 *Subject: enrolment and voter ID*: See AEC submission in preparation

3.13.3 *Subject: precinct voting*: See AEC submission No 30, Volume 1, Appendix E, page S264

3.13.4 *Subject: federal/State AEC*: See 1992 JSCEM Report entitled "The Conduct of Elections: New Boundaries for Cooperation."

3.14 Submission No 49: Mrs Diana Moloney, 25 July 1996, page S376

3.14.1 *Subject: nursing homes*: No comment.

3.14.2 *Subject: candidate preselection:* No comment.

3.15 Submission No 50: Malcolm MacKellar, Gosford Branch of the Liberal Party, 6 July 1996, page S377

3.15.1 *Subject: enrolment and voter ID*: See AEC submission in preparation

3.15.2 *Subject: multiple voting*: See AEC submission No 30, Volume 1, page S206.

3.16 Submission No 51: Bruce MacCarthy MLA, 19 July 1996, page S379

3.16.1 *Subject: electoral fraud*: Mr MacCarthy says "there were cases of electoral fraud in 1993 in Macquarie, and we found cases of false enrollment (sic) in Lowe in 1990, and in Strathfield this last time." Assuming that Mr MacCarthy is referring to the Division of Macquarie at the 1993 federal election, this election was the subject of a petition to the Court of Disputed Returns by the unsuccessful Liberal Party candidate, Mr Alasdair Webster, who made allegations of widespread electoral fraud. Mr Webster eventually withdrew his petition, and was ordered to pay the costs of Ms Maggie Deahm, whose election he challenged. See also AEC submission No 30, pages S206 and S213.

3.16.2 The AEC would appreciate the opportunity to investigate any specific instances of electoral fraud in the Division of Lowe at the 1990 federal election, that can be provided by Mr MacCarthy to the JSCEM. The AEC notes that Strathfield is not a federal electoral Division, and suggests that Mr MacCarthy takes up any instances of electoral fraud in this area with the New South Wales Electoral Commission.

3.16.3 *Subject: subdivisional voting*: See AEC submission No 30, Volume 1, Appendix E, page S264.

3.16.4 *Subject: enrolment and voter ID*: See AEC submission in preparation.

3.17 Submission No 52: G C Johnson, 29 July 1996, page S380

3.17.1 *Subject: AEC organisational structure*: See AEC response to submission No 43.

3.18 Submission No 53: Trish Worth MP, 29 July 1996, page S389

3.18.1 *Subject: destruction of signs*: See AEC response to submission No 1.

3.19 Submission No 54: Senator Grant Tambling, 18 July 1996, page S392

3.19.1 *Subject: AEC professionalism*: The AEC thanks Senator Tambling for his comments.

3.19.2 *Subject: Christmas/Cocos Keeling Islands*: There are 672 electors enrolled for Christmas Island and 398 electors enrolled for the Cocos (Keeling) Islands.

3.19.3 With respect to "community of interest" the AEC notes that this phrase was also used, inappropriately, by some Norfolk Islanders to argue against their incorporation into the Division of Canberra in the ACT (see AEC submission No 5 of 21 December 1993 to the previous JSCEM and the 1996 AEC submission No 30, page S155.)

3.19.4 The phrase has been borrowed from the provisions relating to redistributions, specifically sections 66(3)(b)(i) and 73(4)(b)(i) of the CEA. In the context of a redistribution that might involve, for the sake of argument, splitting one Division into two Divisions, one of the criteria under the CEA is that "community of interest" should be taken into account. This has been taken to mean that if a Division contains a well-defined community (based on social, economic or regional factors) then that community should not be broken up and split across two Divisions, but will remain intact in one Division.

3.19.5 From this perspective, the Indian Ocean Islanders themselves form a "community of interest" which should not be broken up by splitting that community across Divisions in any redistribution. There is no implication that the Indian Ocean Islanders have any social, economic or regional connection with any particular mainland Division. The incorporation of the Indian Ocean Islands into the Division of the Northern Territory for federal electoral purposes is purely for reasons of administrative convenience, such as regional proximity. In any case, it would be difficult to sustain an argument that the Indian Ocean Islanders have any greater social, economic or regional connections with the ACT than with the Northern Territory.

3.19.6 An Interdepartmental Committee has been established to examine the possible move to Statehood for the Northern Territory, and the electoral rights and responsibilities of the Indian Ocean Islanders will be properly addressed in this forum.

3.20 Submission No 55: Rosslyn Ives, Australian Labor Party, Kooyong Campaign Committee, 22 July 1996, page S395

3.20.1 *Subject: location of Kooyong Divisional Office*: On 30 August 1996 the Electoral Commissioner replied to Ms Ives' letter of 10 June 1996 in the following terms:

> The Kooyong Divisional Office had been located in Kew pending a decision on permanent suitable accommodation. Following refurbishment of the Kew building, it was not possible to reach agreement on suitable terms and conditions with the lessor and a decision was taken to relocate. In September 1995, after examining a number of alternatives with regard to cost, operational efficiency and accessibility to the majority of our clients, the Hawthorn location was selected.
>
> Following negotiations on terms and conditions with the prospective lessor and the subsequent fitout of the premises, the AEC relocated the office to the new location on 10 February 1996.
>
> Whilst it is the AEC's preference not to locate Divisional offices in close proximity to members' electorate offices, there are at least twelve other examples nationally where this has occurred. Such instances might have resulted through lack of suitable alternative space or where members have subsequently moved into the building where we are located. To my knowledge there has never been any other instance of the difficulties described in your letter.
>
> The AEC will be liaising with the lessor to see if a more appropriate arrangement can be put in place for the future. If a reasonable solution is not able to be found, you are assured that the Commission will be seeking alternative premises for pre-polling prior to the next electoral event.

3.21 Submission No 56: Peter Andren MP, 24 July 1996, page S405

3.21.1 *Subject: truth in political advertising:* See AEC submission No 30, Volume 1, page S176.

3.21.2 *Subject: unauthorised electoral advertising:* No comment.

3.22 Submission No 57: Alan Cadman MP, 25 July 1996, page S410

3.22.1 *Subject: subdivisional rolls*: See AEC response to submission No 29.

3.23 Submission No 58: Barbara McGarity, Women Into Politics Inc, 1 August 1996, page S412

3.23.1 *Subject: representation of women*: No comment.

3.23.2 *Subject: computerised voting*: The possibility of mechanised voting at federal elections has been of periodic interest since the beginning of federation. In 1904 the Minister for Home Affairs commissioned an inquiry

into voting machines for federal elections. The Committee invited inventors to submit voting machines for testing and examination, in the following terms:

> In order to obviate informal voting, errors in counting, and delay in Parliamentary Elections, an inquiry has been instituted by the Department of Home Affairs, and exhaustive tests will be made of such Voting Machines as may be submitted to the Department, with a view to the adoption of one of them, if found effective.
>
> (a) that an elector can in one visit to the machine vote preferentially or otherwise with security and perfect secrecy for a Senate or House of Representatives Election, or both, and at least one referendum;
>
> (b) that all possibility of disorganisation, breakdown, fraud, or confusion under the most exacting conditions is eliminated.

3.23.3 The inquiry was advertised nationally and in the USA, where voting machines were already in use. There were sixteen machines submitted from Australian inventors for examination. In explaining the possible reasons why no American inventors submitted the Committee said the following:

> The entirely different electoral conditions obtaining in the United States of America, and the evident difficulty in adjusting the machines in use in that country to meet the novel features connected with the application of the principle of Proportional Representation, may, to some extent, account for the non-submission of American machines.

3.23.4 After examining the machines the Committee concluded that none could provide adequately for preferential voting, or guarantee security.

3.23.5 With the advent of computers, it was thought that perhaps these early problems with mechanised voting might be overcome. However, the First Report of the Joint Select Committee on Electoral Reform in September 1983 concluded that the application of computer technology to federal elections was not appropriate at that time. The AEC Research Report Number 1 of 1986 entitled "Informal Voting 1984 - Senate" also concluded that computerised voting was not feasible at that time. A decade later, the AEC remains unconvinced that computerised voting at Australian federal elections is a feasible proposition. However, the AEC is convinced that a computerised Senate scrutiny is a real possibility, and the Electoral and Referendum Bill Amendment 1995, which was not passed by the last Parliament, included a proposal to computerise the Senate scrutiny.

3.23.6 The proposal involves voters casting their preferences on the traditional ballot papers, and the AEC entering the details into a computer after the event. This can be done by manual data entry or by optical scanning, and would be undertaken during the 13 day waiting period after polling day for the receipt of postal votes. During this period, the AEC would commence the keying and verification of the Senate ballot papers, and then perform the formality check, and the actual automated scrutiny. A computerised Senate scrutiny would leave a paper trail for audit and other purposes, as well as

eliminating the need for recounts and printed records, and providing minimal disruption to voters. The computer program, already developed by the AEC, is based on one used for many years for union ballots and is therefore well tested.

3.23.7 Overseas experience with computerised scrutinies is limited but promising. In the 1993 election in Norway, which has a proportional representation voting system, optical scanning was used in the single constituency of Oslo, which elects 16 members of Parliament. Norwegians have voter cards, and direct computerised voting was feasible, but the Norwegian Government was reluctant to do away with the paper ballot entirely. In Great Britain general elections are still paper-based, but optical scanning of ballot papers is used in union and private elections.

3.23.8 Computerised voting, on the other hand, would require voters to cast their preferences into a computer, either directly into a terminal, or indirectly by a punch card or other machine readable medium. If used in conjunction with some type of security device such as a Personal Identification Number (PIN), a record could also be made that that person had voted.

3.23.9 For comparative purposes it is worth noting that the United States of America uses an array of direct voter input methods, including mechanical and computerised voting. At the 1992 Presidential election, which was conducted by the various State and local authorities, rather than by a single federal agency, 39.3% of voters used manual or voice activated punch cards, 28.4% used mechanical levers, 15.6% used optical scanners, 3.4% used direct electronic voting methods. A further 9.5% used mixed voting methods, while 3.4% used paper ballots. However, a critical distinction is that the USA (like the United Kingdom) has a first-past-the-post electoral system, where voters need only make one preference mark on the ballot paper, and the candidate who obtains the most number of those marks, or preferences, wins.

3.23.10 By contrast, the full preferential voting system used for federal elections in Australia, where voters are required to place numbers on the ballot paper to indicate a descending order of preferences for all candidates listed on the ballot paper, would require much more complex ballot paper presentation than is required for the casting of a single preference vote. (It would not be possible, for example, to use the simple mechanical lever system used in some States of the USA to record a single preference).

3.23.11 With current levels of technology and a full preferential voting system in Australia, computerised voting is less practical than paper-based methods. To devise a computerised voting system which could accommodate full preferential voting would require sophisticated and totally reliable computing facilities. In addition, voters would have to handle the equipment, which, even in its simplest forms, would be difficult for a great many voters, especially the elderly and those with poor literacy and numeracy skills.

3.23.12 Computerised voting would require computing facilities in every polling booth. The cost, not to mention logistical difficulty, of installing computing facilities in all polling booths across the nation for a single day, would be prohibitive. A rough estimate of the cost of using personal computers for such a system is $112 million (32,000 PCs at 8,000 polling places). And with continuous and rapid advances in technology, the investment in PCs might be wasted as they quickly became obsolete.

3.23.13 Another obstacle to computerised voting is the reliability of the actual computer. Experience in the USA has uncovered examples of computer software used for election purposes containing errors sufficient to bring the legitimacy of some election results into question. In addition to programming problems, hardware “crashes” could wreak havoc on polling day if an on-line computer network was employed. Australian experience has seen major computer crashes on the TAB network, Brisbane’s Gold Lotto computer system, and the Australian Stock Exchange computer system.

3.23.14 Perhaps the most serious obstacle to computerised voting is the matter of security. In the USA security has emerged as a serious problem, as computer voting software (ie the programs that count the vote) is produced in secret by commercial companies. Computer experts have claimed that it is impossible to guarantee the security of such commercially-produced systems no matter what audit trails are built in. If the software were to be kept secret, as in the USA, it is extremely unlikely subtle vote rigging would ever be detected. Making software publicly available, to ensure integrity and accountability, carries with it its own drawbacks.

3.23.15 The opportunity to corrupt software would also arise with national networking. Such a network would require stringent security measures to ensure any attempted “hacking” was easily detected. To check the integrity of the software and to guard against fraudulent programming, the only reliable accounting method would be to check the election result against machine-readable cards or ballot papers and manually count them back. To go to such lengths to ensure integrity and accountability would defeat the purpose of computerised voting.

3.23.16 There have been developments in direct voting by telephone, but this has been restricted to smaller and simpler business applications such as shareholder voting. Voter-friendly systems would need to be specifically developed for use in federal elections. The necessary dialogue between the voter and the telephonic system, which would be required for the provision of the detail of a full set of preferences, is not yet available.

3.23.17 Even were such a system to be developed, the operational problems are not trivial. It must be borne in mind that 5.47% of the total 11,258 million voters nationally cast a "below the line" vote for the Senate in the 1996 federal election. In New South Wales and Victoria this meant the expression of full preferences for 63 and 44 Senate candidates respectively. Many voters, particularly the aged, the infirm, the disabled, and non-English

speakers would experience considerable difficulty in accurately providing the necessary information in dialogue with an automated telephone system.

3.23.18 Further, the time taken to complete individual transactions would impact on the capacity of the system to avoid queuing. To date there has been no investigation undertaken on the additional telephone infrastructure required to handle close to 11 million extended calls in the course of a single day, in addition to the normal load. Nor has there been any study of the average length of calls which may be required, although estimates of 15 to 20 minutes have been made. A dedicated telephone centre in each of the 148 federal Divisions, would average 80,000 extended calls per centre on polling day.

3.23.19 Telephonic voting would require each elector to be issued with a phone card or unique pin number. The possibility of issuing a voter card for the identification of voters on polling day was examined by the 1993 JSCEM, and it was noted that it could cost $2 per elector or some $22 million to produce and distribute such a card to the 11 million electors nationally. The AEC is preparing a submission to this JSCEM on enrolment and voter ID.

3.23.20 Though still in comparative infancy, developments in Integrated Circuit (IC) chip technology are being monitored by the AEC. For example, visitors to the National Gallery can now use computer handpieces on audio tours and, instead of following a pre-set tour route, can select any picture description. The use of similar handpieces at polling places may be less expensive than computer terminals, and in overseas developments on this front, the Indian Government has developed handpieces that would allow a voter to select up to 64 candidates. However, this technology has not yet been used at an election and, again, the Indian electoral system is first-past-the-post.

3.23.21 The AEC is vigilant in monitoring technological advances and active in applying any new technology that might improve the administration of federal elections. For example, the AEC has adopted the RMANS roll management system and an Election Management System which gave very prompt results on election night. The newly-developed computerised Senate scrutiny system is ready for use pending passage of relevant legislation.

3.23.22 It is of course possible that in some time in the future, some or all of the above problems with computerised voting may be overcome. But given current technology, a full preferential voting system, and substantial security concerns, the AEC believes that computerised voting is not feasible at present.

3.23.23 *Subject: Senate ticket voting:* No comment.

3.24 Submission No 59: Antony Green, 31 July 1996, page S417

3.24.1 *Subject: election night*: The AEC thanks Mr Green for his comments.

3.25 Submission No 60: Mrs Robin Alcock, 2 August 1996, page S421

3.25.1 *Subject: political campaign material*: See AEC submission No 30, Volume 1, page S145, paras 3.2.2 and 3.2.3.

3.26 Submission No 61: Tony Robinson, 22 July 1996, page S422

3.26.1 *Subject: letters to constituents*: See AEC response to submission No 46.

3.27 Submission No 62: Gary Gray, Australian Labor Party, 5 August 1996, page S426

3.27.1 *Subject: constitutional disqualifications*: The Parliamentary Research Service paper "Office of Profit under the Crown" is one of the primary sources used by the AEC itself, and the paper is regularly recommended as a reading guide to those who make general enquiries on the subject.

3.27.2 The AEC is not responsible in any way for terms of the Constitution or its interpretation - that is a matter for the Attorney-General's Department. In fact, the AEC takes particular care not to provide any possibly misleading advice or opinions in this complex area of constitutional interpretation, except to point to relevant case law such as Sykes v Cleary (1992) and as appropriate to recommend the Parliamentary Research Paper mentioned above. The AEC Candidates Handbook provides a clear warning on the difficulties involved in the interpretation of section 44 of the Constitution, provides the relevant case law, and recommends that candidates who may be in doubt seek their own legal advice. The AEC will consider obtaining permission to publish the Parliamentary Research Paper in the Candidates Handbook for the next federal election. See also AEC submission No 30 page S169, and AEC response to submission No 33.

3.27.3 *Subject: queues at polling booths*: the Australian Electoral Officers (AEOs) for Victoria, South Australia, Tasmania, and the Northern Territory have reported that no complaints of queuing problems at polling booths were made at the 1996 federal election.

3.27.4 The AEO for New South Wales has reported that, using the benchmark of a 10 minute wait to vote, 52 polling places in 17 NSW Divisions had queues in the hours between 8 am and 10 am on polling day. There were 2,629 NSW polling places, so that only 1.98% of all NSW polling places experienced queues. The reasons for the queues differed from Division to Division, but included the high non-English-speaking component of some Divisions, and the concurrence of high profile local events such as sporting events and community parades.

3.27.5 The AEO for Queensland has reported that for the Division of Brisbane delays of more than 10 minutes were experienced at 13 out of 45 polling booths in the Division. In these 13 polling booths, delays of more than 10 minutes occurred on 36 occasions. Of the 36 occasions when delays of more than 10 minutes occurred, 29 of the delays were for 15 minutes or less.

3.27.6 Significant delays of more than 20 minutes occurred at three polling booths in the Division of Brisbane:

(a) at the Buranda polling booth a delay of 31 minutes was recorded at 10 am. This was due to the arrival of a group of visually impaired voters who required assistance to vote. The intention of the group to vote at that time at that booth was not known in advance.

(b) at the Royal Brisbane Hospital polling booth a delay of 20 minutes was reported at 11 am. This sort of occurrence is not unusual at hospital polling places.

(c) at the West End polling booth delays of 20 minutes were recorded at 9.30 am, 11 am, and 11.30 am. Other delays of up to 15 minutes were recorded throughout the day. The premises were unsuitable for the number of voters, particularly given that there was an increase in

3.27.10 *Subject: mobile polling at hospitals and special hospitals*: In the Government Response of 21 September 1995 to the 1993 JSCEM Report, the majority of the JSCEM recommendations were supported, including those relating to mobile polling in hospitals. These recommendations have either been administratively actioned by the AEC, or where legislative amendment is required, are incorporated in the Electoral and Referendum Amendment Bill 1995, which failed to gain passage before the 1996 federal election (see also AEC submission No 30, page S139).

3.27.11 *Subject: special hospitals*: The advice provided to Mr Gray by the AEC was precisely in the terms provided to the AEC from the DPP. See also AEC submission No 30, pages S172 and S193.

3.27.12 *Subject: concurrent federal election and ATSIC by-elections*: There were three ATSIC Regional Council by-elections held in the Northern Territory on polling day for the 1996 federal election. The ATSIC dates had been set before the announcement of the federal election, and to change them at a later date would have disrupted planning and logistics and possibly disadvantaged some voters.

3.27.13 The AEO for the Northern Territory reports that the concurrent conduct of these elections produced no confusion in the communities affected, as the polling places and staff were kept separate. The AEO NT further reports that the concurrent elections in fact had a positive effect on voter turnout for the ATSIC by-elections. Across the three ATSIC wards in which concurrent elections were held, total voter turnout increased by 40.48% over the previous ATSIC election.

3.27.14 *Subject: postal vote applications distributed by political parties*: See AEC submission No 30, Volume 1, page S183.

3.27.15 *Subject: postal vote envelopes and postmarking*: See AEC submission No 30, Volume 1, pages S185-188.

3.27.16 *Subject: Tasmanian State election*: Recommendation No 11 in this submission asks the JSCEM "to raise with the AEC the need to ensure that there is appropriate liaison between it and the State electoral offices and that it recommend that the AEC develop a strategy for ensuring that State officials receive appropriate training and information in the respective requirements of both federal and State electoral legislation." This recommendation refers to the fact that the 1996 federal election and the 1996 Tasmanian State election were held on consecutive weekends.

3.27.17 The Australian Electoral Officer for Tasmania reports that he and the Chief Electoral Officer for Tasmania went to great pains to ensure there was no confusion in the minds of the officials or the public regarding the different arrangements between the federal and State elections. There were joint training sessions of polling officials where the differences were reinforced. There was also considerable media advertising to alert the public

to differences in procedures. It should be noted that in Tasmania, unlike any other State, the five federal House of Representatives electorates and the five Tasmanian Legislative Assembly electorates are exactly the same, and the returning officers for the federal and State elections are the same people.

3.27.18 The close proximity of the 1996 federal election and the 1996 Tasmanian State election, which was the responsibility of the governments concerned, did inevitably provide some difficulties for the political parties, particularly in their political advertising campaigns, but in the circumstances the elections went well and it is noted that no disputes have been filed with the court.

3.27.19 Subject: *how-to-vote-cards in polling booths:* See AEC response to submission No 9.

3.27.20 *Subject: Internet*: See AEC submission No 30, Volume 1, page S218.

3.27.21 *Subject: bribery*: On 24 August 1994 the AEC made a detailed submission to the previous JSCEM on the subject of electoral bribery, and it is recommended that this JSCEM examine that submission for relevant background.

3.27.22 The JSCEM Report on the conduct of the 1993 federal election said the following on electoral bribery at pages 148-149:

> The Committee agrees that the Act should preferably be amended to make clear that activities of the type described do not constitute bribery. It might be feasible, for example, to specify a minimum monetary value in the bribery provisions, and/or to exclude food and drink.
>
> > Recommendation 76: that the AEC report back to the Committee on amendments to section 326 of the Electoral Act, relating to bribery, that would more clearly define the scope and intent of the provision.
>
> If the clarification sought cannot be achieved without risking the effectiveness of the bribery provisions, the Committee agrees that amendments should not be considered. There have been no major cases of electoral bribery brought before the courts in the entire history of parliamentary elections, and the chances of a candidate being charged and prosecuted for the sorts of trivial activities mentioned by the Labor and Liberal parties would appear to be slight.

3.27.23 The AEC did not report back to the JSCEM before being overtaken by the 1996 federal election, at which, once again, there were no prosecutions for bribery. On the advice of the DPP, the AEC has consistently held the position that neither the provision of “tea and bickies” nor the conduct of “happy hours” are to be interpreted as direct attempts to influence or affect votes, and therefore do not represent bribery under the CEA. In other words, offering a cup of tea or a snack in order to encourage persons to meet and to

listen to a candidate, and make their own decision about who to vote for, is distinguished from offering an incentive to vote in a specific way.

3.27.24 Of interest on the issue of defining electoral bribery more precisely, the Queensland Criminal Justice Commission (CJC) has just finished taking evidence and submissions on Police Minister Russell Cooper's memorandum of understanding with the police union, prior to the Mundingburra by-election last year. The Courier Mail editorial of 7 September 1996 made the following comments on the definition of electoral bribery:

> As well as determining whether any criminal prosecutions should be brought and whether anyone should face misconduct charges, Mr Carruthers will also be considering the bribery law in Queensland. The submissions made to him and his comments during the inquiry suggest that there are at least two unsatisfactory aspects of the law. The first is that it does not sufficiently explain to politicians or voters the difference between conduct that should be considered a normal part of the political process and that which should be recognised as bribery and a criminal offence. The second is the seriousness which should be attached to such criminal behaviour, as reflected in the penalties applied upon conviction.
>
> The problem of differentiating between ordinary political promises and political bribes has been addressed under Commonwealth law. As with the Queensland law, it makes it illegal to ask for, receive or obtain, any "property or benefit or any kind" in order to influence a person's vote, candidature or support for or opposition to a candidate or party at any election. But the Commonwealth law includes a proviso that this does not apply "in relation to a declaration of public policy or a promise of public action". Those additional words may arguably be implied in the description of the offence under the Queensland law as "bribery": the law would not make sense otherwise. But they should be there for all to see - particularly the adjective "public" which excludes secret deals.
>
> The second aspect is the penalty, which currently stands at a fine of just over $6,000 or imprisonment for two years. Under Queensland law, that means a hearing before a magistrate. That hardly seems appropriate for an offence which involves a serious attack on the democratic process. At the very least a politician convicted on an offence of electoral bribery should be automatically barred from holding parliamentary office for a set period.

3.27.25 The AEC suggests that the JSCEM await the outcome of the Queensland CJC inquiry, and any views that might be expressed on the general law of electoral bribery, before considering further any amendments to section 326 of the CEA.

3.27.26 *Subject: authorisation of electoral advertisements*: See AEC submission No 30, Volume 1, page S172.

3.27.27 *Subject: Pauline Hanson MP*: See AEC submission No 30, Volume 1, page S164, and page S175.

3.27.28 *Subject: optional preferential voting*: See AEC submission No 77, Volume 3, page S693.

3.27.29 *Subject: heading to electoral advertisements*: The AEC would support any legislative clarification of section 331.

3.27.30 *Subject: authors of reports*: see AEC submission No 30, Volume 1, page S179.

3.27.31 *Subject: defamation:* See AEC submission No 30, Volume 1, page S180.

3.27.32 *Subject: supply of marked roll of postal voters to political parties:* This would not be a difficulty subject to discussions with the Privacy Commissioner and appropriate legislative amendment (see section 189(3) and (4) for example).

3.27.33 *Subject: supply of Certified Lists of Voters to political parties*: The AEC is already required under the CEA to provide Certified Lists to all candidates.

3.27.34 *Subject: location of Kooyong Divisional Office*: See AEC response to submission No 55.

3.27.35 *Subject: funding and disclosure: disclosure via annual accounts*: The AEC strongly supports the proposal that political parties submit audited disclosure returns. This would ensure that disclosure returns have been audited and their accuracy verified by the time that they are placed on the public record.

3.27.36 The AEC notes, however, that financial statements prepared in accordance with other Acts will not provide the extent of detail within the timeframes currently specified in Part XX of the CEA and could not be viewed as an adequate substitute for disclosure returns. The AEC would only support a system of parties lodging audited annual accounts where those accounts provided full and timely disclosure in a simple and easy to understand format.

3.28 Submission No 63: Christopher R King, 24 July 1996, page S606

3.28.1 *Subject: arrest of candidate*: No comment.

4. VOLUME 3 OF JSCEM SUBMISSIONS (Nos 64 to 72)

4.1 Submission No 64: The Hon Derek Freeman AM, 6 August 1996, page S618

4.1.1 *Subject: enrolment and voter ID*: See AEC submission in preparation.

4.1.2 *Subject: how-to-vote cards in polling booths*: See AEC response to submission No 9.

4.1.3 *Subject: optional preferential voting*: See AEC submission No 77, Volume 3, page S693.

4.1.4 *Subject: computerised voting*: See AEC response to submission No 58.

4.1.5 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

4.2 Submission No 65: Lynton Crosby, Liberal Party of Australia, 6 August 1996, page S621

4.2.1 *Subject*: *postal vote applications distributed by political parties*: See AEC submission No 30, Volume 1, page S183.

4.2.2 *Subject: salutation on postal vote and enrolment applications*: Salutation information is unnecessary for official purposes and is not collected or recorded. The AEC RMANS database is not configured to accept the information and to adjust it would require considerable resources. The AEC emphasises that the purpose of the Roll is to list those eligible to vote at federal elections.

4.2.3 *Subject: funding and disclosure: donor disclosure*: The introduction of annual returns by donors to registered political parties was seen as necessary to close a potential loophole in the disclosure provisions, created by the introduction of a transaction threshold of $500. Parties are no longer required to aggregate transactions of less than $500 when determining whether an individual has reached the $1,500 threshold, at which point the details of that person must be disclosed.

4.2.4 Without a separate donor return, a donor would be able to donate any amount to a party without it being disclosed as long as that donation was made in lots of less than $500. The AEC believes that such a loophole would easily be exploited and does not support the abolition of returns by donors to registered political parties without the abolition of the $500 transaction threshold applying to party returns.

4.2.5 It should also be noted that party returns do not distinguish between donations and other receipts. Therefore, without donor returns there is no means by which persons from whom a political party has received $1,500 in the normal course of business can be distinguished from donors.

4.2.6 *Subject: funding and disclosure: timeframe for reporting*: Donors do currently have 20 weeks in which to lodge their returns whereas political parties currently have 16 weeks. The later lodgement date for donors is designed to assist them to fully meet their disclosure responsibilities by allowing four weeks for the AEC to identify donors from party returns, advise them of the need to furnish disclosure returns, and then for the donors to lodge their returns on time.

4.2.7 With the intrusion of the Christmas holiday period already limiting the AEC's opportunities to contact and follow up persons with disclosure responsibilities, any extension of these deadlines is not supported without a further lengthening of the period until their public release, currently 1 February 1997.

4.2.8 *Subject: funding and disclosure: total expenditure report:* The AEC supports this proposal.

4.2.9 *Subject: funding and disclosure: election returns*: The AEC recognises the difficulties faced by political parties in submitting a return of electoral expenditure and in particular the additional burden placed upon party volunteers in local branches. The requirement for parties to lodge these returns was removed at the time that the more detailed annual returns were introduced, but then re-introduced when the requirement to lodge claims for electoral funding was removed. The AEC did not note any objections, on the grounds of disclosure being undermined, when the requirement for parties to lodge this return was originally removed from the CEA, and does not now object to the return again being abolished.

4.2.10 *Subject: funding and disclosure: raising the transaction threshold to $1,500*: The JSCEM previously considered submissions that the transaction threshold to be set at $1,500, before recommending, in its interim report of 30 June 1994, the current threshold of $500. The setting of $500 as a transaction threshold was intended to relieve party administrations, and in particular party volunteers in local branches, from the burden of reporting the detail of every transaction, by only requiring them to track major transactions. The AEC observes that the $500 threshold has been most successful in achieving this aim and does not believe that raising the threshold at this time would see any significant reduction in the workload of party branch volunteers.

4.2.11 *Subject: funding and disclosure: raising the disclosure threshold to $10,000*: Parties which have a national office and a branch/division in each State and Territory have nine separate entities for disclosure purposes. The disclosure scheme does not require the consolidation of the transactions of each of these branches of a party when determining whether the disclosure

threshold has been reached. Donors can, and do, make donations of $1,499 (i.e. just under the current disclosure threshold of $1,500) to each of these individual branches of a party. Raising the threshold to $10,000 will mean that donations of $9,999 could be made to each of the nine branches of the same party, totalling $89,991, and not be disclosed.

4.2.12 The one minor change in workload arising from the raising of this threshold would be that the party agent would need to list fewer persons on their returns, but this is a very small part of the reporting process. There would be no effect on the workload of volunteer office bearers out in the local branches of parties as the tasks of keeping proper financial records and the reporting of individual transactions remains unchanged.

4.2.13 *Subject: funding and disclosure: substantial compliance*: Section 315 already takes account of "honest mistakes" by only providing penalties upon conviction for "knowingly" making omissions or misstatements in the preparation of disclosure returns.

4.2.14 *Subject: enrolment and voter ID*: See AEC submission in preparation, and AEC submission No 30, Volume 1, page S206.

4.2.15 *Subject: supply of private roll information to political parties*: This proposal would need appropriate consultation with the Privacy Commissioner.

4.2.16 *Subject: compulsory voting for the elderly*: The AEC questions whether there is any evidence available to suggest that there is widespread confusion amongst the elderly about compulsory voting. The AEC carries out a special advertising campaign in Victoria targeted at the over 70 year olds, because for local government elections in that State there is an upper age limit.

4.2.17 *Subject: constitutional disqualifications*: See AEC response to submission No 62.

4.2.18 *Subject: optional preferential voting*: See AEC submission No 77, Volume 3, page S693.

4.2.19 *Subject: canvassing at polling booths*: AEC officers receive appropriate training to administer this provision.

4.2.20 *Subject: election blackout*: No comment

4.3 Submission No 66: Ms Ricky Johnston MP, 28 July 1996, page S632

4.3.1 *Subject: AEC professionalism:* The AEC thanks Ms Johnston for her comments.

4.3.2 *Subject: pre-poll voting at night*: This could be accommodated if required.

4.3.3 *Subject: how-to-vote cards in polling booths*: See AEC response to submission No 9.

4.3.4 *Subject: advertising provisional voting*: The AEC already includes in its advertising campaigns information about the availability of provisional voting. A provisional vote is provided when an elector's name cannot be found on the Certified List of Voters, but most voters will not know that they need a provisional vote until they try to vote at the polling booth. The AEC doubts the cost effectiveness of more advertising in this area.

4.3.5 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

4.3.6 *Subject: computerised voting*: See AEC response to submission No 58.

4.3.7 *Subject: four year terms*: No comment.

4.4 Submission No 67: Mr Eoin Cameron MP, 11 July 1996, page S636

4.4.1 *Subject: AEC professionalism*: The AEC thanks Mr Cameron for his comments.

4.4.2 *Subject: counting of votes*: See AEC response to submission No 58.

4.4.3 *Subject: AFP investigations*: No comment.

4.4.4 *Subject: how-to-vote cards in polling booths*: See AEC response to submission No 9.

4.4.5 *Subject: compulsory voting*: See AEC submission No 30, Volume 1, page S196.

4.4.6 *Subject: optional preferential voting*: See AEC submission No 77, Volume 3, page S693.

4.4.7 *Subject: voter ID*: See AEC submission in preparation.

4.4.8 *Subject: truth in political advertising*: See AEC submission No 30, Volume 1, page S176.

4.4.9 *Subject: time zones*: See AEC response to submission No 9.

4.5 Submission No 68: Mr Don Randall JP MP, 18 July 1966, page S643

4.5.1 *Subject: exhausted votes*: see AEC submission No 80, Volume 4, page S1191.

4.6 Submission No 69: Dr Amy McGrath OAM, 3 August 1996, page S644

4.6.1 *Subject: electoral fraud*: See AEC submission in preparation.

4.7 Submission No 70: Dr Amy McGrath OAM, 12 August 1996, page S647

4.7.1 *Subject: electoral fraud:* See AEC submission in preparation.

4.8 Submission No 71: The Hon Nick Dondas AM MP, 12 August 1996, page S655

4.8.1 *Subject: Snowdon v Dondas petition:* No comment.

4.8.2 *Subject: concurrent federal election and ATSIC by election*: See AEC response to submission No 62.

4.8.3 *Subject: adjourned polling*: The AEC notes that the Northern Territory Electoral Act now provides for adjourned polling. See also AEC submission No 30, Volume 1, page S194.

4.9 Submission No 72: Mr Allan Rocher MP, 16 August, 1996, page S657

4.9.1 *Subject: Independents and tax deductibility*: No comment.

4.10 Submission No 73: Mr Graeme Orr, International Commission of Jurists, Queensland Branch, 21 August 1996, page S658

4.10.1 *Subject: prisoner enrolment and voting*: Prior to the reforms to the electoral legislation in 1983, section 39(4) of the CEA read as follows:

> No person who is of unsound mind, and no person attainted of treason, or who has been convicted and is under sentence for any offence punishable under the law of any part of the King's dominions by imprisonment for one year or longer shall be entitled to have his name placed on or retained on any roll to vote at any Senate election or House of Representatives election.

4.10.2 In 1983 the First Report of the Joint Select Committee (JSCER) on Electoral Reform made the following comments and recommendation:

> In relation to the loss of voting rights of prisoners, the majority of the Committee was of the view that, as an initial revision, being convicted and sentenced for an offence punishable by 5 years imprisonment rather than one year as at present should be the basis for deprivation of rights. There was strong support within the Committee for the view that punishment provided by the courts should not be added to by this legislation. This view is taken by several States. The Committee recommends that sub-section 39(4) be amended to read "imprisonment for 5 years or longer".

4.10.3 As a consequence of this 1983 JSCER recommendation, clause 23 of the Commonwealth Electoral Legislation Amendment Bill 1983, proposed to substitute five years for one year in section 39(4) of the CEA. During the House of Representatives Committee stage of the Bill, Mr Steele Hall moved an amendment to omit 5 years and substitute one year on the grounds (a) that there should be consistency with the one year Constitutional disqualification for Members of Parliament, and (b) that prisoners should pay the penalty for their transgressions. Dr Klugman said that it was the duty of the courts to punish and that the loss of civil rights is an additional punishment that should not be metered out. The Hall amendment was defeated.

4.10.4 During the Senate Committee stage of the Bill, Senator Peter Baume moved the same amendment as the Hall amendment in the House. Senator Macklin argued for the liberalisation of the disqualification on the grounds that the criminal activities of people and sentences from which they might suffer ought not to be relevant to their rights as citizens to engage in the political process. The Baume amendment was defeated. The Bill was passed and section 93(8)(b) came into force as follows:

> A person who:
>
> (b) is serving a sentence of 5 years or longer for an offence against the law of the Commonwealth or of a State or Territory;
>
> Is not entitled to have his or her name placed on or retained on any Roll or to vote at any Senate election or House of Representatives election.

4.10.5 In 1986 the JSCEM considered the issue of prisoner enrolment and voting rights and recommended that section 93(8)(b) be repealed. As a consequence the clause 35 and Schedule 3 of the Electoral and Referendum Amendment Bill 1988 proposed to provide enrolment and voting rights for all prisoners. In his Second Reading Speech Senator Robert Ray said:

> The Bill establishes a more rational and consistent approach to the recognition of the voting rights and responsibilities of those in prison. It makes provision for prisoners, other than those convicted of treason, to enrol to vote or to retain their entitlement to enrolment. Honourable Senators would be aware that the present provision only allows prisoners convicted of an offence of five years or less to retain their entitlement to enrolment....a principal aim of modern criminal law is to rehabilitate offenders and orient them towards the society they will re-enter on their release. This process is assisted by a policy of encouraging prisoners to observe their civil and political responsibilities.

4.10.6 In response Senator Puplick foreshadowed that the Opposition would move for an amendment to delete the proposed new provision and return to the 5 year disqualification. He said that if that amendment was not successful then the Opposition would vote against the entire Bill. Senator Knowles expressed great concern that prisoners were to be given the vote

and suggested that the purpose of the legislation was to gain electoral advantage for the Government. He said that the Opposition was of the view that prisoners should not be entitled to all the privileges of law-abiding citizens and that our system of justice exists to punish and deter. The Puplick amendment was agreed to and section 93(8)(b) remained as before.

4.10.11 In 1995, during debate in the House of Representatives on the Electoral and Referendum Bill 1995, Mr Connolly moved an amendment to reduce the prisoner voting entitlement to 12 months. This amendment was defeated in the House, and the Bill failed to gain passage before the announcement of the 1996 federal election. The AEC understands that the 1995 Bill will be re-introduced, with amendments, into the current Parliament.

4.11 Submission No 74: Professor Joan Rydon, 8 August 1996, page S664

4.11.1 *Subject: optional preferential voting*: See AEC submission No 77, Volume 3, page S693.

4.12 Submission No 75: Dr Amy McGrath OAM, 27 August 1996, page S667

4.12.1 *Subject: electoral fraud:* See AEC submission in preparation.

4.13 Submission No 76: The Hon Tom Stephens MLC on behalf of Northwest Members of the Western Australian Parliamentary Labor Party, 29 August 1996, page S685

4.13.1 *Subject: enrolment objections in remote areas*: Mr Stephens, Secretary of the Western Australian State Labor Party, has been corresponding with the AEC for many years now on the subject of enrolment objection action in remote areas of Western Australia. In response to a letter to the AEC of 18 March 1996, in which Mr Stephens put forward basically the same complaints as are contained in this submission, the Electoral Commissioner responded on 16 May 1996 as follows:

> As you are aware the Divisional Returning Officer for a Division is required to object to the enrolment of a person for a Subdivision of that Division if there are reasonable grounds for believing that the person is not entitled to be enrolled for that Subdivision. In cases where a Review Officer reports that his or her inquiries has revealed that an elector has left the address for which they are enrolled the objection process is commenced.
>
> Whilst from a Commonwealth point of view it is recognised that an elector has to move a long way to leave the Division of Kalgoorlie it is easy to forget that the same situation does not apply in the case of a Local Government Authority Ward or indeed a State Legislative Assembly District.
>
> One of the agreements reached in 1983 when the Commonwealth and the State of Western Australia entered into a Joint Enrolment agreement for the Commonwealth to carry out roll maintenance on behalf of the State was for

> the Commonwealth to recognise the difference in size of the LGA Wards and Assembly Districts and to issue objections in order that the Western Australian Electoral Commission could be satisfied that their rolls did not contain the names of electors who were not living in their wards and or districts. We have continued to honour this agreement and we strive to get people to enrol for their current place of living.
>
> The WAEC has informed me that Members get a record of enrolment transactions (ons and offs) on a disc supplied by Consultech on a monthly basis which provides you with an opportunity to alert us if you believe that electors have been removed in error. During the review held last year the bulk of the field work conducted in Aboriginal Communities was carried out by the local Aboriginal Community Electoral Assistant who was able to provide on the spot updates of elector movements.
>
> Your suggestion to attempt to verify the authenticity of the information received from the Review Officer by making telephone inquiries through the Telstra network was in fact implemented in the Kalgoorlie and Karratha offices but with very limited success. The main problem being the fact that a larger number of people in remote areas are not in the telephone directory or do not have a telephone because of the high mobility rate in the Division. You will recall that during the 1991 Census of Population 18% of people enumerated in Kalgoorlie claimed to be visitors.
>
> The objection notice and determination notice that we post to electors is addressed to their postal address if that is different to their residential address. I can assure you that it is not our intention to deny anyone their right to enrol and stay on the roll. Our task in keeping an accurate roll would, of course, be greatly simplified if all electors - whether in the Kimberleys or the suburbs of Melbourne - formed a habit of routinely notifying us of their change of address.

4.13.2 In relation to Mr Stephens' suggestion of data-matching with other agencies, see AEC response to submission No 17, paragraph 2.17.6. In relation to Mr Stephens' comments regarding possible enrolment identification, see AEC submission in preparation. Finally, the Australian Electoral Officer for Western Australia, who is familiar with the complaints of Mr Stephens, has reported the following:

> The sources of information used by the AEC to conclude that an elector is no longer resident at the enrolled address are: (a) the Electoral Roll Reviews, (b) Field Agent advice, (c) the Community Electoral Assistants, (d) non-replies to non-voter notices. It is rare for an elector to be reinstated on the Roll for the same address that he or she was removed from.

4.13.3 *Subject: ATSIEIS Program*: Mr Stephens' description of the historical background to the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) is substantially correct.

4.13.4 An additional reason why the Field Officer positions were unfilled for some time was that the AEC, despite intensive efforts over a long period, had great difficulty in attracting suitable applicants for the central Western Australian position. By August 1996, the AEC had recruited two

indigenous Field Officers and all three Western Australian positions (Perth, Geraldton and Broome) were filled and operating effectively.

4.13.5 The ongoing need for the ATSIEIS program has been supported by program reviews carried out in 1984 (by the Western Australian Institute of Technology), in 1988 (by the Northern Australian Research Unit of the Australian National University), in 1991 (by the JSCEM), and in 1995 (Street, Ryan and Associates, private consultants). However, following the decision by the Government to withdraw the $2M funding for the program in the 1996 federal Budget, and the resultant cessation of the ATSIEIS program, a far more limited service to the indigenous community will be provided by one new position to be created in the AEC Head Office in Perth.

4.14 Submission No 77: Mr Bill Gray AM, Australian Electoral Commission, 30 August 1996, page S692

4.14.1 No response

4.15 Submission No 78: Mr Bill Gray AM, Australian Electoral Commission, 30 August 1996, page S918

4.15.1 No response

5. VOLUME 4 OF JSCEM SUBMISSIONS (Nos 78 to 83)

5.1 Submission No 79: Mr Bill Gray AM, Australian Electoral Commission, 30 August 1996, page S1056

5.1.1 No response

5.2 Submission No 80: Mr Bill Gray AM, Australian Electoral Commission, 30 August 1996, page S1191

5.2.1 No response

5.3 Submission No 81: Mr Donald J Campbell, 3 September 1996, page S1327

5.3.1 *Subject: basis of enrolment objection*: The submission proposes that non-residence at an address, rather than non-residence in a Subdivision, be the basis for objection action. This proposal was considered and rejected by the previous JSCEM in paragraphs 4.4.34 to 4.4.36 of its report on the 1993 federal election. The JSCEM said that it could "see the logic of the proposal that the basis for enrolment should be address rather than Division", but that it could "also see a danger that electors who fail to keep their enrolment address up to date, but still reside within the same Division, could be disenfranchised".

5.3.2 *Subject: unsound mind*: The submission proposes that DROs be empowered to object to a person's continued enrolment on the basis of the person's unsoundness of mind. The unsound mind provisions of the CEA were examined in detail by the Joint Select Committee on Electoral Reform in Report No 2 of December 1986 at paragraphs 3.36 to 3.46. The current provisions of the CEA were enacted on the basis of Recommendation 22 at paragraph 3.47 of that Report, and the AEC believes that these provisions are appropriate and should not be amended.

5.4 Submission No 82: Mr Mark Rea, 4 September 1996, page S1331

5.4.1 *Subject: telephone voting*: see paragraphs 2.30.15 to 2.30.18 of the AEC submission of 16 September 1996 entitled "AEC Responses to JSCEM Hearings of 15 August 1996".

5.5 Submission No 83: Dr Amy McGrath OAM, 9 September 1996, page S1337

5.5.1 *Subject: electoral fraud*: see AEC submission in preparation.