

Australian Electoral Commission

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

ALLEGATIONS OF ELECTORAL FRAUD

Canberra

23 October 1996

CONTENTS

	Page
1. Preamble.....	3
2. McGrath Submission No 29.....	5
3. McGrath Submission No 69.....	8
4. McGrath Submission No 70.....	11
5. McGrath Submission No 83.....	20
6. Oral Evidence of 23 September 1996.....	24

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 The AEC is responding in this submission to the issues related to electoral fraud, under the Commonwealth Electoral Act 1918 (CEA), which have been raised with this JSCEM by Dr Amy McGrath in her four written submissions as follows:

Submission No 29 of 26 July 1996
(Volume 1, pages S115 to S126)

Submission No 69 of 3 August 1996
(Volume 3, pages S644 to S646)

Submission No 70 of 12 August 1996
(Volume 3, pages S647 to S653)

Submission No 83 of 9 September 1996
(Volume 4, pages S1337 to S1343)

1.3 The AEC is also responding in this submission to similar issues raised in the oral evidence of Dr McGrath and other witnesses at the JSCEM public hearings in Sydney on Monday 23 September 1996. Due to the diversity of the points raised by the witnesses, and due also to the fact that many of them were echoing views which have already been addressed by the AEC in its other submissions to the current inquiry, this submission does not attempt to respond to every problematical point made by witnesses. The AEC would be happy to provide the JSCEM, in relation to matters raised in submissions or oral evidence, with any further information which the JSCEM believes it requires.

1.4 The JSCEM might be aware that Dr McGrath has published a book entitled "The Fraudging of Votes" (Tower House Publications, 1995), in which she raises many of the issues that are included in her submissions to this JSCEM, and which ranges across anecdotal and reported evidence for fraudulent voting at federal elections, State elections, local government elections and union elections, from the turn of the century to more recent times.

1.5 Whilst the AEC appreciates that Dr McGrath has a genuine and abiding concern about the conduct of elections at all levels of government in Australia, and is aware that she has canvassed her views widely in talk-back

radio and through the newspapers, the AEC is concerned about Dr McGrath's apparent misunderstanding of the legislative framework and detailed operational procedures that relate specifically to federal elections. The AEC has never been formally approached by Dr McGrath for comment on the factual basis of her criticisms of the AEC and its conduct of federal elections.

1.6 The AEC notes that a constant theme which appears to underlie Dr McGrath's submissions is that the AEC has operated without proper regard to the need for accountability. The AEC rejects any such suggestion. In fact, every federal election which it has conducted has been investigated by the JSCEM, and many specific aspects of electoral administration have also been the subject of inquiries. The AEC is proud of, and greatly values, the good working relationship which it enjoys with the JSCEM, and notes that the JSCEM has frequently expressed its appreciation for the professional advice provided by the AEC.

1.7 A number of submissions which have been made to the JSCEM appear to overlook the fact that the AEC works within a legal, policy and financial framework, all of which are ultimately set by the Parliament. While the AEC is independent in its administration of the laws, and in its provision of advice on the laws, it does not make the laws.

2. **McGrath Submission No 29 of 26 July 1996 (Volume 1, pages S115 to S126)**

2.1 At **page S116 paragraph 3** Dr McGrath states the following:

Subdivisions were de facto abolished by the failure of the new Australian Electoral Commission 1984 to print Subdivisional rolls for all ensuing elections, in disregard of the Commonwealth Parliament's Electoral Act 1918, in that:

a. ordinary votes were still cast 'for the Subdivision of enrolment' (as approved by the majority on the Joint Select Committee 1983)

b. voters had been, and still were, enrolled for a Subdivision.

2.2 *AEC Response*: This alleged failure to print Subdivisional rolls is described as "illegal" by Dr McGrath at page S120 of her submission. The allegation of illegality is entirely false. In fact, subsection 89(1) of the CEA (until it was amended with effect from 30 September 1990), gave the AEC a complete and unfettered discretion to decide whether, and if so when, roll prints should take place.

2.3 Dr McGrath's claim that even after the 1984 amendments to the CEA had been made, "ordinary votes were still cast 'for the Subdivision of enrolment'" appears at a number of points in her submission. In fact, following the 1984 amendments, subsection 221(2) of the CEA provided that:

In the case of a House of Representatives election, an elector shall only be admitted to vote for the election of a member for the *Division* (emphasis added) for which he is enrolled,

while subsection 222(1) provided that:

On polling day an elector is entitled to vote at any polling place for the *Division* [emphasis added] for which he is enrolled

2.4 Dr McGrath also alludes in her submission to various provisions of the CEA which still refer to enrolment in subdivisions. However, as was pointed out at paragraph 2.15.3 of the AEC's submission to the JSCEM dated 16 September 1996 entitled "AEC Responses to JSCEM Hearings of 15 August 1996", these provisions must be read in conjunction with 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.

2.5 There are also various allusions made by Dr McGrath apparently intended to give the impression that the AEC's moves to abolish subdivisions were somehow surreptitious. In fact, abolitions of existing subdivisions have

to be gazetted, so any activity of that type is automatically on the public record. The AEC also made its intentions regarding subdivisions quite clear to the Joint Select Committee on Electoral Reform (JSCER). In a letter on a related subject to the Secretary of the Committee dated 1 October 1986, reference was made to the AEC's "program to reduce the number of subdivisions with the view to their abolition wherever possible". There was no suggestion in the subsequent Report of the JSCER, from any of its members, that the AEC's programme should not proceed in the form in which it had been described.

2.6 At **page S118 third paragraph** Dr McGrath states the following:

the two primary reasons for the principle of Subdivisions of Electoral Divisions were to furnish the building blocks for redistribution, and to reduce electorates to neighbourhood units to discourage manipulation and fraud of the voting system.

2.7 *AEC Response:* Fundamental to any discussion of the AEC's approach to the creation and abolition of subdivisions is an understanding of the situation which applied at the time the AEC was created. As has been submitted by the AEC to the JSCEM on several occasions, at the time of the 1983 election exactly 85% of subdivisions had enrolments of greater than 5000, and 43.12% had enrolments of greater than 10000. The great majority of them were therefore no longer in any real sense "neighbourhood units". This situation had developed as a result of decisions made by governments of varying political persuasions over a long period of time. Even as far back as 1961, 67.8% of electors were enrolled for subdivisions of more than 5000, and 29.6% were enrolled for subdivisions of more than 10000.

2.8 As a consequence of these trends, by 1983 the time was long gone when subdivisions were of any significant use as "building blocks" for redistributions. Well before 1983, Redistribution Committees had been forced to abandon the use of subdivisions in favour of an alternative building block, the so-called "habitation walk". These were small geographical units defined in the enrolment system then used. In the mid-1980s, the AEC undertook the substantial exercise of aligning the boundaries of its habitation walks to those of ABS census collection districts (CCDs). The subsequent use of CCDs as the building block for redistributions has greatly facilitated the obtaining of detailed statistical information of the type which is now required for the application of the strict mathematical criteria governing the drawing of boundaries. In addition, since CCD boundaries have been digitised by ABS, it is now possible to use modern computerised geographic information systems (GISs) in the boundary drawing process, and that has greatly enhanced the ability of the parties to make informed suggestions and comments to the redistribution bodies.

2.9 In regard to fraud, again by 1983 subdivisional sizes had increased to the point where they no longer had a useful role to play in the prevention of fraud. The issue was discussed in detail at paragraphs 31 to 33 of the AEC's October 1988 submission to a previous JSCEM entitled "Response to Liberal

Party Submission of 31 May 1988 (No. 29)” and again at paragraphs 96 to 98 of the AEC’s November 1993 submission to a previous JSCEM entitled “The Practical Implications of Various Measures relating to the Integrity of the Electoral Process”.

2.10 At **page S121 fourth paragraph** Dr McGrath states the following:

Division-wide ordinary voting came to the attention of everyone with the 1984 snap mid-year election, which returned the Hawke Government to office. Subdivisional Rolls had vanished, never to be restored. Subdivisions simply no longer existed.

2.11 *AEC Response:* Subdivisions were not generally abolished at the 1984 election (which, incidentally, was held on 1 December 1984, not “mid year”). In fact, Dr McGrath’s name appears in the printed subdivisional roll, dated 26 October 1984, for the subdivision of Bellevue Hill in the Division of Wentworth. Copies of that roll are held on microfiche at the National Library of Australia.

2.12 At **pages S126 to S128** Dr McGrath makes a number of criticisms about the conduct of redistributions.

2.13 *AEC Response:* The allegation made by Dr McGrath in the last paragraph of her submission (page S128) has already been addressed by the AEC at paragraphs 2.29.10 and 2.29.11 of its submission to the JSCEM dated 20 September 1996 entitled “AEC Responses to other JSCEM Submissions in Volumes 1 to 4”.

2.14 The AEC notes that the redistribution provisions of the CEA were reviewed by the JSCEM only last year, and that it was the unanimous view of the Committee, as expressed in the Foreword to the Report of its Inquiry, that:

The main elements of the process were recommended in the 1983 First Report of this Committee’s predecessor, the Joint Select Committee on Electoral Reform. The Inquiry demonstrated that the Joint Select Committee’s work has stood the test of time remarkably well. Redistributions have largely ceased to be a matter for partisan debate, being conducted in accordance with well-defined principles by expert, independent bodies...This Report endorses the fundamentals of the system while finetuning some aspects, for example the degree to which “community of interest” factors are taken into account.

**3. McGrath Submission No 69 of 3 August 1996
(Volume 3, pages S644 to S646)**

3.1 At page S644, paragraph 1, Dr McGrath states the following:

Senator Tierney's whistleblower mentioned to the JSCEM 1993 that Return to Sender mail had regularly been intercepted, but he was not called.

3.2 AEC Response: As is noted in Dr McGrath's letter to Mr Alan Jones which is attached to her submission, Mr Maley of the AEC immediately requested that full details be provided to the AEC for investigation. No such details were ever provided by Senator Tierney.

3.3 At page S644, paragraph 2, Dr McGrath states the following:

Noel Batisse (CWU) says an organised Left network to intercept mail was in the Redfern Mail Exchange until it was closed in favour of new regional exchanges under the mantle of Graham Richardson. Super-Mail Exchanges are being restored, a cause for alarm.

3.4 AEC Response: This paragraph relates to the administration of the postal service by Australia Post, rather than to the AEC. The AEC has drawn the contents of Dr McGrath's submission to the attention of the Managing Director of Australia Post, and recommends that the contents of the paragraph be taken up by the JSCEM directly with Australia Post.

3.5 At page S644, paragraph 3 Dr McGrath states the following:

1993 Hansard also mentions 'key contractors' were entering enrolment claims on computers. I believe they are involved with the new address-based roll.

3.6 AEC Response: Key contractors have not been used to enter enrolment forms for the AEC since 1992, and at this stage there is no intention to change that.

3.7 At page S644, paragraph 4, Dr McGrath states the following:

The new address-based roll means that DRO's will no longer be able to access the electoral history of any address to trace fraudulent enrolment.

3.8 AEC Response: This statement demonstrates a complete misunderstanding of the address-based system. In fact, it will store details of address history in a format which will provide far faster access to all details about an address, including its enrolment history, than is possible under the current RMANS system.

3.9 At page S644, paragraph 6, Dr McGrath states the following:

There is no penalty in the Electoral Act for anyone who ‘pads’ the roll, or even votes in the names of those who do not exist. Such an act may only be a misdemeanour in Common Law.

3.10 *AEC Response*: Dr McGrath’s claim is false. Subsection 339(1) of the CEA provides *inter alia* that a person shall not:

(k) make a statement:

(i) in any claim, application, return or declaration (not being a statement made by the person in the person’s nomination paper); or

(ii) in an answer to a question;

under this Act (other than Part XX) or the regulations that, to his or her knowledge, is false or misleading in a material particular.

3.11 This provision covers both false statements made in electoral enrolment forms and declaration vote certificates, and the provision of a false name at a polling booth in response to the question “What is your full name?” which, pursuant to paragraph 229(1)(a) of the CEA, must be asked of each person claiming to vote. The penalty is imprisonment for 6 months. Section 7A of the Crimes Act 1914 also makes it an offence to incite, urge, aid or encourage, or to print or publish any writing which incites, urges, aids or encourages, the commission of such an offence.

3.12 At **page S645 paragraph 2** Dr McGrath states the following:

A total cleansing of our present Commonwealth electoral roll must be done forthwith before any convention election, referendum or plebiscite is held....It should be done at one time by experienced enumerators, e.g. retired professionals as in Canada for a fee, and not by casuals paid so much per head for new enrollees.

3.13 *AEC Response*: While Dr McGrath does not attempt to estimate the cost of her proposal, the proposal for the exercise to be undertaken “at one time by experienced enumerators” means that an exercise comparable in scale to the fieldwork undertaken at the recent population census would be required. The overall cost of that fieldwork was of the order of \$45 million. That cost does not include the costs which would be associated with processing the electoral enrolment forms and other documents which would be generated by the enumeration process.

3.14 At **page S645 paragraph 4** Dr McGrath states the following:

Objections to those detected in Divisions across Australia after an election can add up to 140,000 across Australia at least ...

3.15 *AEC Response*: Almost all of the objections after an election relate to *people who did not vote at the election*. They therefore do not in any sense represent fraudulent “roll-padding”.

3.16 At **page S646 last paragraph** Dr McGrath states the following:

Noel Batisse (CWU) has confirmed that there was an organised network by the militant left in the Redfern Mail Exchange, which covered the whole state. When this was dispersed into six centres, the NSW Right took control and developed their own network under the umbrella of Graham Richardson.

3.17 *AEC Response:* This allegation relates to the administration of the postal service by Australia Post, rather than to the AEC. The AEC recommends that the contents of the paragraph be taken up by the JSCEM directly with Australia Post.

**4. Submission No 70 of 12 August 1996
(Volume 3, pages S647 to S653)**

4.1 At **page S648** Dr McGrath recommends that there be an immediate public quasi-judicial external Inquiry into certain aspects of the operation of the AEC.

4.2 *AEC Response:* The AEC notes that the inquiries conducted by the JSCEM are held in public and are external to the AEC itself, and that the JSCEM's powers to inquire have always been regarded as ample and appropriate. It is not clear whether there is anything which (a) could be achieved by an inquiry of the type proposed, and which (b) the JSCEM is incapable of achieving itself, probably at a much lower cost.

4.3 At **page S649 paragraphs 1, 2 and 3**, Dr McGrath states the following:

1. Electoral Commissioners have not complied with their own Electoral Act since 1984.

a. in the failure to maintain, and print, Subdivisional rolls under Section 82 (c).

b. in the failure to enrol enrolees for Subdivisions as required in Sections 90-110.

2. The Electoral Commissioner' action in ceasing to print Subdivisional Rolls, and to conduct elections on a Subdivisional basis, without amendment of Section 82 of the Electoral Act 1918, has been both illegal and improper in terms of Section 82 (a) and (b). This had never been approved either by the Joint Select Committee of 1983, or the amended Electoral Act of 1918.

3. The Electoral Commissioners did not administer the Commonwealth Electoral Act, for which they were responsible, between 1984 and 1989, in accordance with the provision that specified that voters, in casting ordinary votes anywhere in their Division were casting votes 'for the Subdivision of enrolment'.

4.4 *AEC Response:* These comments are based on the fallacious belief that the CEA continued to require after 21 February 1984 that Divisions (other than the Northern Territory) be subdivided. Paragraphs 2.15.1 to 2.15.7 of the AEC's Submission to the JSCEM dated 16 September 1996 entitled "AEC Responses to JSCEM Hearings of 15 August 1996" identify the provisions of the CEA which Dr McGrath appears to have overlooked.

4.5 At **page S649 paragraph 4** Dr McGrath states the following:

The Electoral Commissioners were party to the repeal of clauses in the Joint Roll Agreement with N.S.W. of February 13, 1930, notified in the N.S.W. Government Gazette No. 105 of August 10, 1979.

4.6 *AEC Response:* Since the AEC was not even created until 21 February 1984, and since the Joint Roll Arrangement in any case is executed between the Governor-General and the Governor of New South Wales, this statement is nonsensical.

4.7 At **page S649 paragraph 5** Dr McGrath states the following:

The Commonwealth Electoral Act continued to specify that objections to enrolment of new enrolees were still to their enrolment in that Subdivision (Sections 113-118), although Subdivisions no longer administratively existed for any public use.

4.8 *AEC Response:* The provisions of the CEA referred to in this paragraph are not in fact anomalous. Dr McGrath has failed to take account of subsection 4(4) of the CEA.

4.9 At **page S649 paragraph 6** Dr McGrath states the following:

The Commonwealth Electoral Act continues to specify that new enrolees must have 'lived' one month in the Subdivision for which they were enrolling. The practice is to accept the answer at face value, merely requiring a witness to attest to the enrolee's signature, given Section 99(5) which prevents the validity of any enrolment being questioned 'on the ground that the person has not in fact lived in the Subdivision for a period of one month'.

4.10 *AEC Response:* This argument is fallacious. Subsection 99(5) of the CEA does not apply to the processing of claims for enrolment; it only applies to enrolments which have already been effected.

4.11 At **page S649 paragraph 8** Dr McGrath states the following:

The Commonwealth Electoral Act provides that an elector is not entitled to be enrolled for more than one Subdivision, for a Subdivision other than the Subdivision in which the person lives, or in respect of an address other than the address at which the person is living when the claim is lodged. (Section 99(3)) This is in direct conflict with Section 101. (Absurdity lies in the fact no elector would know where the boundaries of the relevant Subdivisions were, as the rolls do not exist)

4.12 *AEC Response:* The provisions of the CEA referred to are not in fact anomalous. Dr McGrath has again failed to take account of subsection 4(4) of the CEA.

4.13 At **page S650 paragraph 9** Dr McGrath states the following:

The Commonwealth Electoral Act provides that a person, whose name is not on the Divisional roll but claims it should be, can effect a new enrolment on polling day for any claimed address back to 1979 and cast a provisional vote; although rolls to check that claim are not readily available, and those, prior to 1983, not at all...

4.14 *AEC Response:* The CEA does not allow a person to “re-enrol” on polling day. Persons who cast a provisional vote may however be reinstated to the roll pursuant to paragraph 105(4) of the CEA, a process with which the JSCEM would be familiar. This reinstatement right certainly does not apply to “any claimed address back to 1979”.

4.15 At **page S650 second paragraph** Dr McGrath states the following:

It is arguable that the Divisional Rolls, being merely the sum of Subdivisional rolls, cannot exist in their own right.

4.16 *AEC Response:* Such an argument can not be sustained on the basis of subsection 4(4) of the CEA.

4.17 At **page S650 paragraph 1**, Dr McGrath states the following:

The Commonwealth Electoral Act has no specific penalty for anyone who places fictitious names, of people who do not exist, in the electoral roll. Section 331(k) is inadequate to deal with such a practice.

4.18 *AEC Response:* There is no paragraph 331(k) in the CEA. If Dr McGrath is referring to paragraph 339(1)(k), then as noted above it is drafted in language quite wide enough to deal with the sorts of offences discussed by Dr McGrath.

4.19 At **page S650 paragraph 2** Dr McGrath states the following:

The Commonwealth Electoral Act has no effective penalty to enable prosecution of a real person, who enrolls at any address although not living there, now that the question process to determine ‘real place of living’ has been abandoned.

4.20 *AEC Response:* Paragraph 339(1)(k) of the CEA makes conduct of the type described by Dr McGrath an offence. The reference to “the question process to determine ‘real place of living’” is somewhat obscure, but to the extent that Dr McGrath is referring to the repeal by the Commonwealth Electoral Amendment Act 1987 of subsections 93(6) and 229(3), and paragraph 229(5)(b), of the CEA, those amendments were made on the unanimous recommendation of the Joint Select Committee on Electoral Reform, which noted at paragraph 3.32 of its Report entitled “The Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation” that “the rule [expressed in subsection 93(6)], it should be emphasised, is not an obstacle to fraud or impersonation”.

4.21 At **page S651 paragraph 3** Dr McGrath states the following:

The Commonwealth Electoral Act has no effective procedure to prosecute any multiple voter, if he or she, when challenged, simply says ‘I did not do it’. As to those who do, Federal Police prosecutions rarely proceed to conclusion, even in such notorious cases as the Byron Bay case. Thus the many voters each election, who can offer no reason for their multiple voting,

learn by experience that the state of the Act is such that they can do it again with virtual impunity. The Commission's argument, that action to stiffen the Act is unnecessary as no results are affected, seems questionable given the multiple voting of 5,000 voters could not be explained in the 1993 federal election, and is increasing with each election.

4.22 *AEC Response:* The issues raised in this paragraph have been addressed by the AEC at paragraphs 2.20.1 to 2.20.4 of its submission to the JSCEM dated 16 September 1996 entitled "AEC Responses to JSCEM Hearings of 15 August 1996".

4.23 At **page S651 paragraph 4** Dr McGrath states the following:

The Commonwealth Electoral Act prescribes a \$20.00 penalty for failure to enrol, but in practice rarely imposes it. It does ensure that an electoral officer pursues an objection process to remove the name from the roll. This process is one of justice or injustice according to the circumstances. If fairly removed, justice is done. But if unfairly removed, because someone has usurped or borrowed it, for mischievous purposes justice is not, as the onus of proof in court is now on the elector. Under the hugely open process of enrolment nowadays, such manipulation can happen.

4.24 *AEC Response:* The AEC would be pleased to investigate any evidence Dr McGrath has of such usurpation or borrowing of names. Note that any person whose enrolment has been deleted in such circumstances is entitled to a provisional vote.

4.25 At **page S651, second paragraph 5** Dr McGrath states the following:

The intention of the secret ballot principle is breached by the fact that provisional voters (Section 235 1 (a) (b) (d)) and absent voters, cannot put their own votes into their own declaration envelopes. They must, after folding hand their vote to the polling official who issued it. who then 'in the presence of the voter without unfolding the ballot paper' places it in the signed declaration envelope and thereafter in the ballot box (Section 235 2-7).

4.26 *AEC Response:* This procedure dates right back to subsections 121(2) and (3) of the CEA as it was first enacted in 1918. Since the voter is required to fold the ballot paper before presenting it to the issuing officer, since the issuing officer must place it in the declaration envelope without unfolding it, and since the whole process takes place in the open, with scrutineers able to watch, the secrecy of the ballot is not in fact compromised.

4.27 At **page S651 paragraph 6** Dr McGrath states the following:

Any effective challenge to electoral irregularities in specific electorates is virtually impossible for five reasons. No Court of Disputed Returns may inquire into the 'correctness' of any Roll. Certified Lists, used in polling, are not readily available. The terms of onus of proof are too onerous. The cost of litigation is not, as it should be, to the system. The Commission is selective in observing its own rule of thumb, that any protested result less than 200 votes, warrants investigation.

4.28 *AEC Response*: Under subsection 361(1) of the CEA the Court may not inquire into the correctness of the roll. This provision has stood unchanged since 1918. The High Court, sitting as the Court of Disputed Returns, explicitly addressed the status of this provision in its ruling in *Re Berrill's Petition* (1976) 51 ALJR 127; with Stephen J setting out his views (which were endorsed by Gibbs J and Mason J) in the following terms.

It is not to be thought that the fate of this petition discloses a situation in which a person whose name is wrongly removed from the rolls or who is wrongly refused entry upon the rolls is without remedy. On the contrary quite adequate remedies exist for those who choose to avail themselves of them. Enrolment may be claimed as of right by those who are qualified - s.51 - and registrars are required to give effect to valid claims - s.43. By s. 58 of the Act a person whose claim for enrolment has been rejected or whose name has been removed from the roll as a result of an objection may have recourse to a court of summary jurisdiction which is empowered to order enrolment or reinstatement of the rolls. The Act also allows a person entitled to be enrolled but whose name has been omitted from or struck off the roll by error or mistake to vote upon satisfying certain procedural requirements - s.121. Quite apart from these statutory rights a remedy by way of mandamus would be available in appropriate circumstances to enforce the right to registration of a qualified person denied his rights and for whom for any reason the statute did not afford appropriate relief.

Any electoral system which, instead of providing a means of putting the electoral rolls in order before an election, allows alleged errors in those rolls to ground an attack upon the subsequent election exposes to risks of dislocation the democratic process it is designed to serve. Hence, no doubt, the provisions, commonly found in our election laws, for the prior adjudication of disputes as to the state of the rolls, such disputes being treated as wholly distinct from, and not the proper subject-matter of, petitions concerning disputed elections and returns.

4.29 Dr McGrath says that "Certified lists, used in polling, are not readily available." The Attorney-General's Department has advised the AEC that the place at which a person voted constitutes personal information to which the Privacy Act 1988 applies.

4.30 Dr McGrath states that "The terms of onus of proof are too onerous." Section 355 of the CEA requires a petition to (a) set out the facts relied on to invalidate the election or return, and to (b) set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief. Subsection 358(2) of the CEA provides that the Court may, at any time after the filing of a petition and on such terms (if any) as it thinks fit, relieve the petitioner wholly or in part from compliance with the requirement under subsection 355(b). Subsection 358(3) places certain constraints on the exercise by the Court of its discretion under subsection 358(2). These provisions were inserted in the Act in 1990, pursuant to a unanimous recommendation made by the Joint Select Committee on Electoral Reform at paragraph 9.95 of its Report entitled "The

Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation”.

4.31 Dr McGrath says that “The cost of litigation is not, as it should be, to the system.” The normal rule on costs, as applied in Australian courts, is that “costs follow the event”, which means in essence that the loser must pay the winner’s costs. However, since 1983 the Court of Disputed Returns has been empowered in the alternative to order costs against the Commonwealth where it considers it appropriate to do so. That that has happened only twice, in special circumstances: once when a petition was not without merit but failed because of technical problems (*Nile v. Wood* 1988), and once when the petitioner had a genuine grievance but was an invalid pensioner (*Hudson v. Lee* 1993). The AEC is of the view that the current approach should continue to apply. The risk of having to pay costs operates as a significant deterrent to the filing of petitions which are devoid of substantive merit, and thereby saves an elected candidate the burden of having to defend against a frivolous or vexatious petition. The AEC can see no reason for making the taxpayers bear the costs arising from such baseless petitions.

4.32 Dr McGrath says that “The Commission is selective in observing its own rule of thumb, than any protested result less than 200 votes, warrants investigation”. It is not clear what Dr McGrath means by a “protested result” and the AEC “rule of thumb”, but any close election may be subjected to a recount at the discretion of the Electoral Commissioner, and further, if any irregularities are identified, then consideration is given by the AEC to invoking its power under section 357 to file a petition challenging the result with the Court of Disputed Returns.

4.33 At **page S652 paragraph 1** Dr McGrath states the following:

The Electoral Commissioners incorporated a trade-union-based National Consultative Council by formal Memorandum of Agreement at the pinnacle of its decision making process in 1985, including all technological change. This compromised the Parliamentary intent that they operate as an independent statutory body. Such a Council could not be tolerated in a judicial Court.

4.34 *AEC Response*: Under section 22C of the Public Service Act 1922, all agencies are required to develop and implement in consultation with the relevant union(s) a plan designed to achieve appropriate participation by staff in the decision making of the agency. In practice agencies use a National Consultative Council (NCC) or similar body as the central mechanism for implementing such participation. The NCC is a forum for consultation, discussion and negotiation on a range of national issues including equal employment opportunity, occupational health and safety, industrial democracy and technological change. In the AEC there are specialist sub-committees of the NCC, and also State and Territory Consultative Councils. None of the Councils or committees has decision-making power in itself. While Dr McGrath chooses to characterise the establishment of the NCC as a “failing in administrative process”, in fact the opposite is true: the AEC would have been

in breach of the law had it failed to give effect to section 22C of the Public Service Act.

4.35 At **page S652 paragraph 2** Dr McGrath states the following:

Concentration of power in the executive Electoral Commissioner has been tolerated and delegated to an undesirable extent in an electoral system. a. by delegating key powers to his office, b. by accepting his exercise of authority under Section 32 to require District Returning Officers to accept procedural changes on short notice in 1987.

4.36 *AEC Response:* The Commission and the office of Electoral Commissioner both came into being on 21 February 1984, and from that day the Commission was empowered by what is now section 16 of the CEA to delegate certain of its powers to the Electoral Commissioner. Even in 1983 it was a standard procedure to include provision for delegation of powers in Commonwealth legislation establishing statutory authorities, and there is nothing unusual about its adoption in the electoral context. The second source of the alleged undue concentration of power is said to flow from the Electoral Commissioner's "accepting his exercise of authority under Section 32 to require District [sic] Returning Officers to accept procedural changes on short notice in 1987". This is somewhat obscure, but to the extent that the CEA gives the Electoral Commissioner certain powers, the mere exercise of those powers can hardly be said to be a "failing in administrative process".

4.37 At **page S652 paragraph 3** Dr McGrath states the following:

The Electoral Commissioner accepted issue of a Certificate of Exemption from tender process for software used in the initial operation of optical scanning process of certified lists in a federal election (mid-1987) and a half share in the Copyright of the electoral roll used in that election to a computer company, just six weeks before the election though planning had been in progress for years.

4.38 *AEC Response:* This comment refers to the processes associated with the development prior to the 1987 federal election of the process of optical mark reading used to process certified lists after an election. The AEC is unsure what complaint is being made. The 1987 election was an early double dissolution, and gave rise to many administrative challenges for the AEC, one of which was the implementation of the scanning system in a much shorter time-frame than had been contemplated. The process of issuing a Certificate of Exemption from tendering was a standard element of Commonwealth purchasing procedures at the time, and the Certificate was issued by the Department of Administrative Services, a body external to the AEC, after a rigorous examination of the prevailing exigencies. The contractual arrangements associated with the copyright of the scannable certified list format were developed in consultation with the Attorney-General's Department.

4.39 On a related point, the AEC notes that in her book entitled "The Fraud of Votes", at page 153, Dr McGrath puts forward a misguided

critique of the optical *mark* reading technology used by the AEC. The fallacy in her argument flows from her belief that the AEC's scanning of certified lists uses optical *character* reading technology. It does not.

4.40 At **page S652 paragraph 4** Dr McGrath states the following:

The Electoral Commissioners have embarked on a process of regionalisation of the system of District Returning Officers by grouping single electorates - a policy rejected by the former Commonwealth Parliament prior to the 1996 election - under the new title of co-location of offices (by grouping 3 to 5 single electorate offices) as in Queensland and Victoria. Such a change should not be made without specific Parliamentary authority.

4.41 *AEC Response*: In relation to the co-location of Divisional offices, it should be noted that the previous JSCEM, in its September 1992 Report entitled "The Conduct of Elections: New Boundaries for Cooperation" stated at paragraph 2.7.1 that:

The Committee, in acknowledging the substantial infrastructure costs associated with the dispersed nature of the divisional network, considers that regionalisation/collocation in metropolitan and major provincial centres should proceed, and recommends accordingly.

4.42 The entire issue of regionalisation and collocation is one which has been seen as important by the AEC for many years. The JSCEM would be aware that the AEC has consistently sought to obtain its views on, and support for, moves toward a field structure which can meet the challenges of efficient modern administration.

4.43 At **page S652 paragraph 5** Dr McGrath states the following:

The Electoral Commissioners do not prosecute electoral officials who give false or misleading statements to electors about where they should vote (as required by Section 330 (E.g. those hundreds of voters from Blaxland (Macquarie) sent to Keating's electorate of Blaxland in 1993.

4.44 *AEC Response*: The AEC stands prepared to take appropriate action in cases where evidence exists of such transgressions of the CEA by officials. No such evidence was provided to the AEC in relation to the specific allegation made by Dr McGrath.

4.45 At **page S652 paragraph 6** Dr McGrath states the following:

The Electoral Commissioners do not observe their own rule of thumb that any election for a particular electorate, won by a margin of less than 200 votes, should be granted a further recount, particularly of declaration votes, if sought (E.G Dobell electorate in the 1996 election).

4.46 *AEC Response*: See paragraph 4.32.

4.47 At **page S652 paragraph 7** Dr McGrath states the following:

The Electoral Commissioners appear to have no formal transparent process of submitting details of contracts or new roll management systems, for Parliamentary or even Ministerial scrutiny.

4.48 *AEC Response:* AEC purchasing is undertaken in accordance with the requirement of Government policy that efficient and effective use of public moneys be made in accordance with the Finance Regulations. In particular, the AEC is bound by regulation 43B of the Finance Regulations, which requires agencies to notify in the Purchasing and Disposals Gazette details of any contract arranged where the total estimated liability is \$2000 or more. The AEC's activities are also of course subject to the scrutiny of the Auditor-General.

4.49 At **pages S652 and S653 paragraphs 1 to 3** Dr McGrath alleges that officers of the AEC have provided misleading evidence at hearings before the JSCEM.

4.50 *AEC Response:* The AEC regards this allegation very seriously and does not accept that the cited statements made by its witnesses, in the context in which they were made, were misleading in any material way.

**5. McGrath Submission No 83 of 9 September 1996
(Volume 3, pages S1337 to S1343)**

5.1 This submission deals primarily with postal voting. Many of the allegations contained in the submission relate to the operations of Australia Post rather than of the AEC, and if the JSCEM believes that any response to the allegations is called for, Australia Post would be the appropriate body to approach. The AEC has drawn the submission to the attention of the Managing Director of Australia Post.

5.2 At **page S1337 paragraphs 2 and 4** Dr McGrath proposes among other things that postal voting be abolished or restricted in urban electorates, and that “the AEC should consider proxy, not postal, voting in urban areas”.

5.3 *AEC Response:* The possibility of proxy voting at federal elections was examined by the Attorney-General’s Department in 1982. The Electoral Office was advised that there could well be constitutional difficulties in the way of adopting such a scheme, and that no assurance could be given that such a scheme would survive a challenge in the High Court. The AEC accordingly does not regard Dr McGrath’s proposed alternative to postal voting in urban divisions as viable. In the light of the ongoing need to guarantee the right to vote of persons who currently must rely on postal voting, and taking into consideration the fact that neither the JSCEM nor its predecessor has ever shown any interest in the wholesale abolition of postal voting in urban areas, the AEC does not propose to address Dr McGrath’s proposal any further, unless requested to do so by the JSCEM.

5.4 At **page S1342 paragraph 4** Dr McGrath quotes Cooke QC’s comments that:

It is a public scandal that, despite the countless numbers of ballot irregularity cases reported, the Inquiry was informed by the A.E.C. and the Australian Federal Police of only three (3) instances where prosecutions have been pressed.

Dr McGrath then cites from the Cooke Report various cases of ballot irregularities in industrial elections.

5.5 *AEC Response:* When viewed in isolation the comments cited by Dr McGrath could be seen as indicative of broader problems with the Commonwealth’s conduct of industrial elections. It is important to note, however, that a number of the elections referred to in the Cooke Report and cited by Dr McGrath were not conducted by the AEC but by State authorities, or by industrial organisations themselves. The vast majority of the almost 1400 elections conducted by the AEC in the three years from 1986/87 to 1988/89 were without incident.

5.6 The number of court inquiries into industrial elections conducted by the AEC remains low, averaging about 1.5% of all elections over the past 5 years.

Only 8 election results were overturned, and fresh elections called, during that period, (representing just 0.3% of the total), and rarely as a result of errors by AEC returning officers. Overall, this points to a strong record for the AEC. Indeed, Cooke QC went so far as to suggest that all union ballots be conducted by the AEC (6th Report, page 19).

5.7 The AEC is of course concerned at any level of criminal activity in industrial elections, and its policies and procedures are subject to constant review to ensure a prompt and appropriate response to any allegations received. To draw the conclusion, however, based upon only a few examples, that the industrial elections program is generally flawed, would not be an accurate representation of the current environment.

5.8 At **page S1342 final paragraph** Dr McGrath states that of 3,500 union elections held in Australia over the past five years, not a single charge has ever been filed for vote tampering.

5.9 *AEC Response:* That statement, while factually correct, might be wrongly interpreted as indicating a lack of action or commitment on the part of the AEC. The fact is that the AEC can only respond to reports received and that, in that period, only four allegations of criminal activity were received. The AEC took appropriate action to ensure that those matters were investigated, but in all cases either no evidence was found to substantiate the allegations, or there was insufficient evidence for the AFP to lay charges against any individual.

5.10 At **page S1342 final paragraph** Dr McGrath makes statements about the actions of the AEC's Central Office during and after Cooke QC's inquiry. Dr McGrath implies that the AEC took little interest in the Cooke Inquiry:

a state of affairs borne out by the fact that it took no initiative to secure Marshall Cooke QC's reports when they were published...

5.11 *AEC Response:* The reports were forwarded to Central Office as they became available. This was done as a matter of course by the AEC's Queensland Director of Industrial Relations.

5.12 At **page S1343 first paragraph** Dr McGrath also suggests that that the reports have not been acted upon.

5.13 *AEC Response:* The AEC has developed an Industrial Elections Policy and Procedures Manual, which was issued in July 1991. The manual is very comprehensive and is regularly reviewed and updated. Furthermore, the AEC has compiled and continues to maintain a register of legal judgements that reflect contemporary and relevant legal opinion on Industrial Law. AEC industrial elections management and returning officers refer to these documents for guidance on legal precedent in the conduct of industrial elections. The AEC, in conjunction with the Queensland Electoral Commission, also further developed existing software to assist in the management of the roll of industrial organisations and electoral mailouts

during the conduct of elections. This software now allows returning officers to monitor inconsistencies in returned mail. Returned mail inconsistencies are one means of obtaining an indication that some types of irregularities may be occurring. These initiatives took into account the recommendations of the Cooke inquiry, as well as precedent and recommendations from other cases that have appeared before the Industrial Relations Court.

5.14 At **page S1343 first paragraph** Dr McGrath suggests that the reports sent to the AEC's Central Office might have been lost.

5.15 *AEC Response:* The Cooke QC reports, and other AEC papers on the matter, are located in the AEC's Central Office in Canberra.

5.16 At **page S1343 second paragraph** Dr McGrath refers to allegations that the AEC did not refer the evidence of a forensic expert to the Australian Federal Police when the evidence was presented in court and that the AEC cited a 12 month statute of limitations as one of the reasons why no investigation was undertaken.

5.17 *AEC Response:* Evidence from the forensic expert was not read in court until November 1995, some 15 months after the alleged irregularities took place and after the effluxion of the 12 month limitation period applicable to offences under the Industrial Relations Act 1988. That evidence did no more than suggest that persons unknown had obtained multiple ballot papers to which they were not entitled and had completed and returned those ballot papers. The evidence did not identify any of the parties involved. Indeed, his Honour Justice Moore has made no finding as to who had engaged in multiple voting.

5.18 At **page S1343 third paragraph** Dr McGrath refers to Mr Quentin Cook's dismissal from Australia Post.

5.19 *AEC Response:* Mr Cook is one of the parties to the inquiry into the 1994 CEPU election. He also instigated separate proceedings claiming that he was unfairly dismissed by Australia Post. In the course of the CEPU Inquiry, His Honour, Justice Moore, directed that a fresh election be conducted, in accordance with the organisation's rules. Those rules require that for persons nominated for office to be eligible, they must have been continuously financial members of the union over the preceding 12 months. Mr Cook was not continuously financial during the relevant period and was therefore ruled ineligible to stand. That decision was upheld by Justice Moore.

5.20 At no stage in the CEPU Inquiry has it been alleged that Mr Cook's dismissal constituted an irregularity in relation to the election under inquiry. While Mr Cook's dismissal may or may not have some relevance to how he came to be an unfinancial member, the issue of his eligibility to nominate has been the subject of proceedings quite separate from his unfair dismissal case.

5.21 At **page S1343 fourth paragraph** Dr McGrath refers to the 1994 TWU election in NSW and a number of allegations made before the Industrial Relations Court, including the question of security of mail.

5.22 *AEC Response:* Proceedings in this case are still before the Court. The AEC does not wish to comment at this stage of the proceedings other than to advise that the case involves several allegations relating to eligibility to vote, and two allegations of ballot papers being collected to allow multiple voting.

5.23 At **page S1343 paragraph 1** Dr McGrath suggests that union members should be encouraged to adopt the alternative to obligatory voting by having workplace polling booths (attendance ballots).

5.24 *AEC Response:* It is problematical whether, in an industrial elections context, attendance ballots in the workplace would enhance the integrity of ballots to any substantial degree. The AEC also notes that the uniform introduction of attendance ballots would cost, on best estimates, an additional \$20-25 million annually. There would also need to be changes to the Industrial Relations Act 1988. Section 198 of the Act requires that where an election is by a direct voting system then the election shall be by a secret postal ballot, unless an organisation applies for, and is granted, an exemption.

6. Oral Evidence given by Dr McGrath on 23 September 1996

6.1 At **page EM72** of the transcript Dr McGrath states the following:

Before this committee, on 15 August last, Mr Maley, spokesman for the AEC, sought to discredit me as a witness and thereby to influence the judgement of the committee on my forthcoming evidence. He said there had been a misreading of the Commonwealth Electoral Act, implying I had misread it. In truth, Mr Maley misread my submission on division-wide voting. He quoted the phrase 'an unauthorised and illegal policy of the AEC' out of context.

6.2 *AEC Response:* The AEC rejects the proposition that Mr Maley quoted Dr McGrath out of context at the 15 August hearing. Mr Maley was responding to the view clearly being put forward by Dr McGrath that the AEC had acted illegally in abolishing subdivisions. Since Dr McGrath stated later on page EM72 of the 23 September 1996 transcript that:

Mr Maley argued that this administrative disappearance of subdivisions was authorised and legal by virtue of two 1983 amendments to the act: section 79 and subsection 4(4). I argued that these were rendered ineffective by virtue of the fact that amendments of section 82(2) and (3) and sections 93 to 105 were not made, leading to unauthorised and illegal consequences....,

it would appear that Dr McGrath is indeed still making such accusations of illegality against the AEC.

6.3 At **page EM74** of the transcript Dr McGrath states the following:

In any case, the interpretation relied upon by Mr Maley is flawed because the discretion to subdivide under section 79 is not a discretion to unsubdivide - that is, to do the opposite - so as to avoid the mandatory requirement of section 82 and thereby to distort the entire process of proper redistribution.

6.4 *AEC Response:* This statement reflects a further misunderstanding by Dr McGrath of the law. The question of the AEC's right to abolish subdivisions was addressed by the Attorney-General's Department, in an advising to the AEC dated 17 July 1991, in the following terms.

Paragraph 79(1)(a) of the Act provides as follows:

'79. (1) ... The Electoral Commission may, by notice published in the Gazette -

- (a) divide a Division into such Subdivisions (if any) as are specified and set out the boundaries of each Subdivision so specified;

Subsection 4(4) of the Act provides that where a Division is not divided into Subdivisions, a reference in the Act to a Subdivision shall, in relation to that Division, be read as a reference to that Division. Prior to the amendments made to the Act by the Commonwealth Electoral Legislation Amendment Act

1983, the precursor of section 79 provided that each Division shall be divided into Subdivisions and the boundaries of each Subdivision shall be as specified by proclamation (subsection 26(1)). The change in language is significant; the 1983 amendments were clearly designed to give the Electoral Commission a discretion as to whether or not to retain Subdivisions and, in my view, it is clearly open to the Electoral Commission (in reliance on subsection 33(3) of the Acts Interpretation Act 1901) to abolish Subdivisions.

In her various Submissions to the JSCEM, and in her oral evidence, Dr McGrath has made many statements which turn on her reading of the relevant statute law. The AEC suggests that the JSCEM might, if it thinks it worthwhile, consider seeking the views of the Attorney-General's Department on whether any of Dr McGrath's arguments relating to the CEA, including alleged "conflicts" among its provisions, and "Gilbert and Sullivan-esque problems", have any substance.

6.5 At **page EM75** of the transcript Dr McGrath states the following:

The Electoral Commission itself, as quoted in my submission, said that they saw no reason why locality voting should not be introduced.

6.6 *AEC Response:* Locality voting, as discussed by the AEC in submissions to the JSCEM some years ago, is equivalent neither to precinct voting nor to the restoration of subdivisional voting. Under locality voting, voters would still be able to vote at any polling place in a Division, but the great bulk of certified lists would show only persons from areas in the immediate area of the polling place.

6.7 At **page EM76** of the transcript Dr McGrath states the following:

The New South Wales commissioners I have just referred to said that the reason that they recommended locality voting was that 90 per cent of people voted in the same place.

6.8 *AEC Response:* Any evidence on which the New South Wales Commissioners were relying in their Report on this point could only have been anecdotal, since scanning of certified lists had only just been introduced. The AEC would not regard the quoted figure of people who consistently vote at the same polling place as reliable, in the absence of specific evidence. The AEC also notes that 10% of the ordinary voter population represents not far short of 1 million voters nationwide.

6.9 At **page EM76** of the transcript Senator Minchin states the following:

The Electoral Commission always says that this argument about subdivisions is old hat because with optical scanning you can detect multiple voting instantly and therefore any purpose that used to be served by subdivisions in minimising the extent to which people voted more than once is now gone, thanks to the wonders of optical scanning.

6.10 *AEC Response:* With respect, the AEC's argument on this point has consistently been that optical scanning enables cases of multiple voting in the

same name to be identified. The AEC has not argued that scanning can prevent impersonation.

6.11 At **page EM78** of the transcript Dr McGrath states the following:

The problem is that redistribution now is based on principles that nobody knows. Before you knew it was based on moving one subdivision to another division, or splitting it, but now nobody knows the rules; it is not transparent any more. It is now based on research that is the prerogative of the Australian Electoral Commission. That research is not available. It is based on voter patterns and other criteria because they have, in their documents, dismissed the usual criteria of geography and community of interest. There is a whole long document on this. It is a moveable feast for which nobody has the standards.

6.12 *AEC Response*: The issue of the redistribution process was examined by the JSCEM in considerable detail in 1995; the inquiry in question did not recommend any substantial changes to the redistribution provisions of the CEA. The subordinate character of the criteria based on geography and community of interest is not a result of a decision of the AEC, but of the clear requirements of the CEA. The projections of voter populations used in the redistribution process are on the public record, and the methodology underpinning them has been publicly explained by the AEC.

6.13 At **page EM82** of the transcript Dr McGrath, addressing the procedures adopted at Canadian elections, states the following:

When the enumeration is on, they ask for identification. They go to the house, et cetera, and it is a sort of habitation review combined with that. They use professionals. They do not use unemployed casuals to do it, they use retired professionals, honourable people, the sort of people who have worked on oath. They were the sort of people they used to use to authorise your electoral claim. They were people who, shall we say, had to answer to the state under oath for their office, so they could be expected to be more honest.

6.14 *AEC Response*: Dr McGrath's claim that enumerators in Canada as a matter of course ask prospective voters to provide identification is incorrect. On this point, the AEC has been advised by Elections Canada that:

Subsection 67(2) of the *Canada Elections Act* sets out that enumerators may ask prospective voters about their name, age, citizenship, residence address, and whether they need interpretation or level access at the polls. Identification is not asked for and need not be provided.

Elections Canada has also advised that:

The same provision authorizes enumerators to get the surname and given name of every elector at the residence and such information is taken at face value.

In relation to Dr McGrath's characterisation of enumerators in Canada, Elections Canada advised as follows:

While I would not want to comment on the witness' designation of Canadian enumerators as "honourable people", they are certainly not all "professionals". Section 65 of our *Act* indicates that the returning officer of each electoral district puts together the list of enumerators. This is done on the basis of names provided by the parties which ranked 1st and 2nd in that riding at the last election, as well as the RO's own knowledge.

6.15 At **pages EM84 to EM86** of the transcript Dr McGrath discusses at length her proposal for the introduction of numbered ballot papers.

6.16 *AEC Response:* The AEC believes this proposal to be substantially devoid of merit. It does not represent a mechanism for the prevention of fraud, but merely enables ballot papers proven to have been fraudulently cast to be identified and extracted from the count. The alternative, which operates in Australia, is to enable an election to be challenged in circumstances where there are fraudulent votes cast on a sufficient scale to alter the result of the election; where this can be proven, a fresh election is held. Dr McGrath's scheme is therefore fundamentally an alternative to the holding of a fresh election.

6.17 The last occasion on which an election in a federal Division was ordered in Australia on the basis of the presence in the count of votes which ought not to have been included was in 1920. Dr McGrath's scheme by itself would therefore not have had any beneficial effects on federal electoral administration in the last 75 years.

6.18 There are, however, disadvantages associated with Dr McGrath's scheme. The main one is the potential loss of the secrecy of the vote. Dr McGrath has pointed out in relation to New Zealand that the number printed on the ballot paper is obscured with a sticker prior to the issue of the ballot paper to the voter. An AEC officer who attended the recent election in New Zealand was able to observe, however, that the number printed on the ballot was readily visible through the back of the paper, and could therefore potentially be seen by the polling officials during the count.

6.19 On the more general question of the numbering of ballots, the AEC sought the views of the Assistant Chief Electoral Officer of Elections Canada, Mr Ronald A. Gould, who has had extensive experience in the conduct of elections not just in Canada but in many other parts of the world. He responded as follows.

I have always argued vehemently that the placing of serial numbers on the ballots themselves is a serious threat to the secrecy of the vote as the numbers can provide an avenue to identifying how the voter has voted. This situation has actually taken place in Tanzania where I have been told that following the election, the ballots were examined to determine how voters had voted and those who had voted against the elected government were penalized accordingly.

It can be argued that, of course, in wonderfully democratic countries like Australia, New Zealand and the U.K., this kind of abuse of secrecy of the vote would be inconceivable. Unfortunately, situations do change and in certain circumstances, security requirements are used to justify all sorts of invasions of personal privacy.

The usual argument for placing numbers on the ballots is to make it possible for the courts in a situation where fraud has been found to have taken place to identify and nullify the specific ballots cast by individuals who have perpetrated the fraud. However, in Canada and in many other countries where electoral fraud is found to have occurred, the election in that particular location is annulled on the basis of the fact that fraud has taken place. Alternatively, if the number of fraudulent votes is known, it can then be determined whether that number exceeds the difference gained by the winner in a majoritarian system or would have any significant effect on the percentage of votes gained in a proportional system. If it would have a direct impact, a re-vote would be held, if not the original results would stand.

In Tanzania, when the government refused to remove the provision which required numbering of the ballots, one of the alternatives that was proposed was to do the numbering by micro-lettering so that the numbers would not be readily visible with the objective of enhancing confidence in the secrecy of the vote. Unfortunately, printing numbers in the normal way or using micro-lettering still results in numbers which can be used to identify voters as was proven in Tanzania.

I think numbers are extremely important in order to ensure that only official ballots assigned to specific locations are used. As you are well aware, there are alternative systems. If ballots are collated in books, the books themselves can be numbered with an equal number of ballots in each book. Ballots can have one or more counterfoils attached - each counterfoil having a unique number. In Canada, we use two counterfoils, the second counterfoil being removed after the individual has voted and folded his or her ballot, but before the ballot is put into the box. This is done to ensure that the same ballot which was given to the voter is the one which the voter is putting into the ballot box.

6.20 At **page EM88** of the transcript, Dr McGrath states as follows:

They do not have absentee or postal voting in Canada or America. In fact, they were horrified when they heard that we did, and understood why we had electoral fraud.

6.21 *AEC Response*: On this point, Elections Canada has advised the AEC as follows:

Since the reforms of 1993, the *Canada Elections Act* does indeed comprise Special Voting Rules enabling, among other things, voting by mail. Your witness must have had out of date information.

6.22 At **pages EM93 and EM94** of the transcript, Dr McGrath refers to the “microwaving” of votes, which she states is “easier than steaming”.

6.23 *AEC Response:* To the best of the AEC's knowledge, the allegation made by Dr McGrath represents the first occasion on which "microwaving" of votes has been mentioned before the JSCEM. The AEC would be willing to investigate this further if the JSCEM thinks it necessary, and if further and better particulars can be provided. The AEC would point out, however, that in the limited experiments which it has been able to conduct, the cooking of declaration votes in a microwave oven did not turn out to be easier than "steaming": indeed, the only apparent effect was a scorching of the outside of the declaration vote envelope, and a more prominent scorching of the ballot paper contained therein. The strength of the glue holding the envelope together did not appear to have been affected.

6.24 At **page EM106** of the transcript Mr Allan Viney states the following:

That system of lot identification is long overdue. They were established in 1984 and now in 1996 they are just getting around to marrying together.

6.25 *AEC Response:* The JSCEM will be aware that the development of an address-based enrolment system has been championed by the AEC for quite some time. However like other government instrumentalities the AEC operates subject to resource constraints, which limit the speed at which major system changes can proceed.

6.26 At **page EM109** of the transcript Mr Viney states the following:

In the old days you could go down to the post office if you wanted to see if you were on the roll. You could have a look. But the roll is hidden now. If you put the roll into the public domain and invite anyone who sees that and they say, 'hey that is not right, that guy does not live there,' then you can let someone lodge an objection.

6.27 *AEC Response:* Part VI of the CEA makes extensive provision for the public availability of rolls, and in particular for the provision of roll information in an electronic form to political parties. Rolls are also provided to parties in street order format. While the availability of rolls to the general public is important, the AEC does not accept the suggestion which Mr Viney appears to be attempting to make, that if rolls were published in a different format, citizens would as a matter of civic duty scrutinise the rolls with the view to identifying inaccuracies. While detailed records from the pre-1983 period would be difficult to obtain by now, anecdotal evidence strongly suggests that the number of private objections has been negligible for many years.