AUSTRALIAN ELECTORAL COMMISSION

SUPPLEMENTARY SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

ADMISSIBILITY OF PROVISIONAL VOTES

Canberra

23 March 1999

1 Introduction

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 1998 Federal Election", as advertised on 23 January 1999 in all major national newspapers. The submission is supplementary to the major AEC submission entitled "The Conduct of the 1998 Federal Election" which was filed with the JSCEM on 12 March 1999.

1.2 In Part 9.12 of the major AEC submission, which dealt with the enrolment reinstatement of provisional voters during the preliminary scrutiny of declaration votes under Schedule 3 of the *Commonwealth Electoral Act 1918* ("the Electoral Act"), the following was said:

> 9.12.1 The process for the preliminary scrutiny of declaration votes is contained in Schedule 3 of the Electoral Act. The processes have been amended over time and have grown to be cumbersome and complex. The AEC has two main concerns with the procedures as they are currently drafted.
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> 9.12.2 The first is the complex nature of determining the admissibility of provisional votes (that is, the votes of persons who were not on the Certified List of Voters at the time of voting), and the second is the requirement to reinstate to the roll the name of a provisional voter whose vote is admitted, regardless of whether the voter actually lives at the address stated, or within the subdivision claimed. In relation to the determination of the admissibility of provisional votes at the preliminary scrutiny, the AEC is considering providing a supplementary submission dealing with this issue.

1.3 Recommendation 22 of the major AEC submission was that the nexus between the determination of admissibility of a provisional vote and the reinstatement of the enrolment of a provisional voter be broken, by repealing subsections 105(4) and (5) of the Electoral Act. This supplementary submission now deals with the admissibility of provisional votes at the preliminary scrutiny.

2. Determining the Admissibility of Provisional Votes

2.1 Under Schedule 3 of the Electoral Act, dealing with the preliminary scrutiny of declaration votes, the following basic principles apply in determining the admissibility of a provisional vote:

> (a) enrolment is for an address within a subdivision of a Division within a State/Territory;
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> (b) the objection provision provides that an objection based on non-residence can only be served where the elector moves outside the subdivision of enrolment;
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> (c) if an objection deletion is actioned by the AEC, and when attempting to vote, the elector claims to be living within the subdivision, and provided the objection was actioned since the last redistribution or since the general federal election before last, whichever is later, the objection is deemed to

have been based on a mistake of fact, and the elector must be reinstated without question as to their actual residency, and their vote counted;

(d) if the elector moves outside their enrolled Division, but remains within the State/Territory, and claims a vote within their old or new Division, the vote is rejected. However, those voters who claim a vote for the wrong Division, but who are enrolled in another Division will have their Senate vote counted. Similarly, if a voter claims to be enrolled in a Division, but now lives and is enrolled, or was last enrolled since a redistribution or the general federal election before last, in another Division of the same State/Territory, their Senate vote will be counted. Further, their enrolment must be reinstated, without question as to their actual residency, for the Division in which they were last enrolled; and

(e) if the elector moves interstate, does not re-enrol and is removed by objection deletion, and claims a vote within their old or new Division, their provisional vote will not be counted for either the Senate or the House of Representatives.

2.2 These rules are designed to preserve the rights of electors whose enrolment has been deleted through 'official error'. The judgement of what is deemed to be official error is now purely arbitrary. The AEC believes that the vast majority, if not all, of the removals by objection are correct. While the Electoral Act and AEC administrative policies and procedures are based on protection of the franchise, it is clear that most provisional electors have in fact disenfranchised themselves through not meeting the requirement to re-enrol promptly following a change of address. The move to continuous roll update (CRU) procedures will assist in overcoming this apathy by proactively identifying change of address situations and facilitating enrolment.

2.3 However, the Schedule 3 rules for scrutiny of provisional votes are now very complicated to administer and can result in the incorrect admission or rejection of a vote. There are three possible options that could be considered.

2.4 The first option is to maintain the status quo. However, as described above, this will only allow the continuance of a situation that has proven to be complex when other solutions are available.

2.5 The second option is to simplify the rules for determining admissibility of the vote and to tighten the rules for enrolment by basing enrolment on address rather than subdivision. This option complements Recommendation 22 of the major AEC submission of 12 March 1999 to break the nexus between admitting a provisional vote and reinstating the enrolment of the voter. This option as detailed below will also serve to preserve the rights of the elector whose enrolment has been affected by any official error:

(a) if the elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general federal election. If the provisional vote is counted, the

elector's enrolment is not automatically reinstated (this is the crux of Recommendation 22 in the major AEC submission of 12 March), the AEC will conduct a review of that elector's residential status, and the elector will only be reinstated to the Roll if it is established that the electors current residence is still the same as that at which they were last enrolled. If their residence is at a different address to that at which they were last enrolled within the Division, the AEC will take action to secure the re-enrolment of the elector.

(b) if the elector moves outside their enrolled Division, but remains within the State/Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count. Action will be taken by the AEC to secure the re-enrolment of the elector (this is consistent with current provisions); and

(c) if the elector moves interstate, does not re-enrol and is removed by objection deletion, and claims a vote within their old or new Division, their provisional vote will not be counted for either the Senate or the House of Representatives this is consistent with current provisions). Action will be taken by the AEC to secure the re-enrolment of the elector.

2.6 The third option would be to repeal paragraphs 10(b), 11(b), 11A, 11B, 12, 13 and 14 of Schedule 3 to the Electoral Act. This would result in a similar situation to that which occurs at most State elections. In most State legislation the vote of those people whose name cannot be found on the electoral roll is simply not accepted, regardless of the reason for the name of the elector not being on the roll, including as a result of official error. This option is the other extreme to the current situation but is the simplest for all concerned to understand. However, it carries the risk that the rights of those electors whose names have been removed from the Roll through official error are not preserved. This risk could be removed by incorporating a specific definition into the Electoral Act of 'official error' as it relates to deletion of a name from the roll.

2.7 The AEC acknowledges that this topic is particularly complex in operation but does go to the fundamental point of the protection of the franchise. On the other hand, such protection must be balanced against the integrity of any election. As such, the AEC favours the second option.

2.8 An associated matter is that of basing enrolment on address rather than subdivision and here there are three outcomes:

(a) an elector may enrol for an address within a Division within a State/Territory;

(b) if the elector moves from that address, the elector is no longer entitled to be enrolled for that address, and may be removed by objection deletion; and

(c) those electors who are removed from the Roll by objection deletion and who do not re-enrol, but claim a provisional vote will not have their vote counted unless they claim to be living at the address for which they were removed, that is "official error" is deemed to have occurred.

2.9 The issue of basing enrolment on address was the subject of AEC submissions to the 1993 and 1996 JSCEM inquiries. In the November 1994 Report, 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".

2.10 The AEC acknowledges the concern of the JSCEM regarding possible disenfranchisement created by allowing objection based on non-residence at an address. However, with the exception of Victoria and Western Australia, the AEC enrolment database now contains boundary data for federal Divisions, State Districts, local authority areas and local Wards. Any given address may be included in any of four electoral jurisdictions and the current Electoral Act complicates the provision of service to these other jurisdictions as well as giving rise to confusion in the mind of electors as they exercise their rights in other than federal elections. This confusion can be accentuated by the effect of redistributions at the different levels of government.

> **Recommendation 1: (a) that the Electoral Act be amended to make the basis of enrolment the elector's address, rather than the elector's subdivision; and (b) that the objection provisions be amended such that an elector can be removed from the roll where it is shown that the elector no longer lives at an address**.

2.11 Should this JSCEM wish to address the concern expressed by the former JSCEM ("that electors who fail to keep their enrolment address up to date, but still reside within the same Division, could be disenfranchised"), the second of the options listed above could also be adopted. That is:

(a) that if an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general federal election; and

(b) that if an elector moves outside their enrolled Division, but remains within the State/Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count.