AUSTRALIAN ELECTORAL COMMISSION

SUPPLEMENTARY SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

AEC RESPONSES TO OTHER SUBMISSIONS AND TO HEARINGS

Canberra

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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 (submission No 88), and a supplementary AEC submission entitled “The Admissibility of Provisional Votes”, filed with the JSCEM on 23 March 1999 (submission No 159).

1.2 To date, the JSCEM has released four bound volumes of submissions, containing 160 submissions from various organisations and individuals, including the two submissions from the AEC. On 1 April 1999, the JSCEM released three further submissions, No 161 from Dr Amy McGrath, No 162 from the Liberal Party National Secretariat, and No 163 from the Australian Labor Party (ALP) National Secretariat.

1.3 The AEC notes that the printing of Volume 3 of the bound submissions, which contains the major AEC submission No 88, was faulty, so that part of the first page of part 6.2 is displaced off the page, and the remainder of part 6.2, and part 6.3, forming a new page, are missing. Further, one of the print runs of Volume 4 of the bound submissions, was also faulty, so that the last 10 or so submissions, including submission No 159 from the AEC, did not appear.

1.4 The AEC mentions these printing problems only to ensure that the public record does not mislead readers, and advises that whilst the correct versions of the AEC submissions may be obtained on request from the JSCEM Secretariat, they are also available on the AEC Internet site (www.aec.gov.au).

1.5 In this submission, the AEC provides responses to the written submissions from other organisations and individuals. The AEC will not comment on any issues that have been already addressed in submissions Nos 88 and 159; or go beyond electoral matters; or involve matters currently before the courts; or are unclear in the presentation of argument. This submission also provides responses to issues raised by other witnesses and by JSCEM members at the public hearings of 23 March and 1 April 1999.

1.6 In this submission, the AEC has made five recommendations for amendments to the *Commonwealth Electoral Act 1918* (“the Electoral Act”), which are additional to the 29 recommendations in submission No 88, and the one recommendation in submission No 159.

2 Summary of Recommendations

Recommendation 1: That the Electoral Act be amended to expressly empower the AEC to:

(a) conduct reviews of the continuing eligibility of registered political parties;
(b) specify the documentation it requires parties to produce in support of their application for registration and their continued right to remain registered; and
(c) deregister a political party if it fails to produce the documentation requested by the AEC in support of its continuing right to remain registered.

Recommendation 2: That a fee of $500 be required to accompany an application for the registration of a political party and an application to change either the registered name or abbreviation of a political party.

Recommendation 3: That the definition of a member of a political party at section 123(3) of the Electoral Act be expanded to include the requirements that a person must have:

(a) been formally accepted as a member according to the party's rules;
(b) joined the party or renewed their membership within the previous 12 months; and
(c) paid a minimum annual membership fee of $5.00.

Recommendation 4: That the registered abbreviation of a political party be restricted to either an acronym, or a shortened version, of the party's registered name and it should be no longer overall than the registered party name.

Recommendation 5: That the resolution of appointment of future JSCEMs be broadened to empower it to consider, and report upon, any matters raised with it by the AEC pursuant to section 7(1)(d) of the Electoral Act.

3 Submissions on optional preferential voting

3.1 The majority of the 163 written submissions filed with the JSCEM to date are very similar in content and form, and they appear to be part of a campaign by Pauline Hanson's One Nation Party, the Australia First Party, and other minor party supporters to persuade the JSCEM to a particular point of view by the weight of numbers of submissions. In general terms, they argue that full preferential voting is unfair to minor political parties that may receive a substantial number of first preference votes nationwide, that do not translate into seats won in the House of Representatives.

3.2 Many of these submissions appear to be based on a misunderstanding of the way in which the full preferential voting system operates to deliver government in the House of Representatives, but nevertheless, go on to argue in various ways for the introduction of optional preferential voting at federal elections. The AEC notes that arguments in support of optional preferential voting for federal elections have a long and honourable history in electoral politics, and two former Electoral Commissioners, Mr Brian Cox, and Dr Colin Hughes, have already put their personal support for such a change to the federal electoral system on the record with previous JSCEMs.

3.3 In a submission to the previous JSCEM (No 77 of 30 August 1996), entitled "Advocacy of Optional Preferential Voting", the AEC made only one recommendation, as follows: "That the Joint Standing Committee on Electoral Matters seek a special reference from the Government to inquire into the possible introduction of optional preferential voting at federal elections." The JSCEM responded to this recommendation in the June 1997 Report as follows: "There is no need for a separate inquiry into optional preferential voting. While electors should not be compelled to cast a vote, the effects of non-compulsory voting should be assessed in detail before changes are made to the preferential voting system." The AEC notes that the Liberal/National coalition parties, the Australian Labor Party, and the Australian Democrats have now formally registered their support for compulsory voting at federal elections.

3.4 Many of these submissions indicate a lack of understanding of the purpose and legal status of the fresh scrutiny of House of Representatives ballot papers on their return from the polling booths, under section 274(7)(b) of the Electoral Act, which may result in some decisions on formality being overturned. Other submissions indicate a lack of understanding of the purpose and legal status of the provisional two-candidate-preferred (TCP) count, conducted under section 276 of the Electoral Act, at the polling place on election night. These aspects of the electoral system are discussed in part 9 of submission No 88 of 12 March 1999. Other submissions complain that how-to-vote cards issued by the major political parties, seeking the second preference vote of supporters of the minor political parties, are misleading and deceptive. The issue of 'second preference' how-to-vote cards is addressed in part 6.8 of submission No 88, and in this submission in response to submission No 163, and a question raised at the public hearings of 1 April.

3.5 In the context of concerns expressed about the electoral outcomes of full preferential voting, many submissions indicate support for 'Langer-style' voting, a now defunct form of optional preferential voting which formerly exploited a loophole in the Electoral Act. Many submissions also claim that the 'Langer amendments' were introduced quietly and in stealth by the Federal Parliament, just before the 1998 federal election.

3.6 The issue of Langer-style voting was considered by the JSCEM inquiry into the conduct of the 1996 federal election, involving extensive written submissions and public hearings over a period of about a year (including four submissions from the AEC). Langer-style voting was explicitly addressed in the recommendations for legislative amendments contained in the June 1997 JSCEM Report, and the Bill to amend the legislation was introduced in Parliament on 3 December 1997 and passed on 17 July 1998. That is, the Langer amendments were analysed and debated, on the public record, over a period of two years before they were made into law.

3.7 Immediately on the passage of the *Electoral and Referendum Amendment Act 1998* on 17 July 1998, the AEC published an Electoral Backgrounder (No 7) entitled "Langer-style voting", which explained the concept of full preferential voting and its legislative history, including the effect of the amending legislation on Langer-style voting. The AEC went to considerable lengths to ensure that information on the legislative changes was widely distributed and understood by the electorate at large (see, for example, Attachment 01).

3.8 Finally, some have complained that the Langer amendments are unconstitutional. The AEC has reported on an injunction application to the Federal Court by Mr Joseph Bryant, during the course of the election period, in part 12.2 of submission No 88. Justice Wilcox concluded in this case that, "…it seems to me that the advice given to voters by the Electoral Commission about the effect of a Langer-style vote is correct….". The issue of the constitutionality of the Langer amendments raised by Mr Bryant is still to be heard by the High Court.

4 Submission No 8 – John Middleton

4.1 On 24 February 1999 the Acting Disability Commissioner of the Human Rights and Equal Opportunity Commission (HREOC) requested a response from the AEC on a similar complaint from Mr Middleton in relation to assisted voting for the visually impaired. The AEC letter to HREOC of 31 March 1999 is at Atttachment 02.

5 Submission No 13 – Adrian Vaughan

5.1 The matter raised by Mr Vaughan is currently before the Court of Disputed Returns in a petition filed by him on 7 December 1998 in Sydney disputing the election of Senators for New South Wales, and is mentioned in part 12.3 of submission No 88.

6 Submission No 18 – Syd Stirling MLA

6.1 In his submission, Mr Stirling says, “I would be surprised if Nhulunbuy did not record a higher than usual informal vote.” The informal voting rate at the Nhulunbuy polling place for the 1998 federal election was in fact lower than for the 1996 federal election, falling from 4.95% to 4.64%. For the 1996 federal election, the number of votes taken at Nhulunbuy was 1,717, with 85 informal votes. For the 1998 federal election, the number of votes taken at Nhulunbuy was 1,704, with 79 informal votes.

6.2 There was an increase in staffing at the Nhulunbuy polling place for the 1998 federal election, as for all other polling places in the Northern Territory, because of the concurrent Referendum on Statehood. For the 1996 federal election, there were nine AEC staff with one Aboriginal Assistant, and for the 1998 federal election, there were eleven AEC staff with two Aboriginal Assistants.

6.3 The issue of assisted voting at Aboriginal communities in the Northern Territory is addressed in parts 7.5 and 7.6 of submission No 88, and in this submission in response to submissions No 92 and 157.

7 Submission No 22 – Barry Wakelin MP

7.1 Mr Wakelin gave evidence in the public hearing held on 23 March 1999, and tabled submission No 160 at that hearing. The complaints and allegations made by Mr Wakelin are addressed in response to his submission No 160.

8 Submission No 25 – Peter Andren MP

8.1 The issue of tax deductibility for donations to independent candidates was addressed in recommendation 62 of the June 1997 JSCEM Report, and the Taxation Laws Amendment (Political Donations) Bill 1999, currently before the Parliament, is designed to address the anomaly raised by Mr Andren.

8.2 The issue of banning how-to-vote cards was addressed by the AEC in submission No 90 of 20 September 1996 to the previous JSCEM (Attachment 03), and the June 1997 JSCEM Report concluded as follows:

> 7.67 The use of how-to-vote material is always the subject of debate after Federal elections. Calls are often made for how-to-vote cards to be abolished or restricted, for reasons including cost, environment waste, harassment of voters and the difficulties faced by smaller parties and independent candidates in distributing the cards.
>
> 7.68 The Committee does not believe that how-to-vote cards should be banned. Apart from the practical aspects of enforcing such a ban, there are civil liberties implications in refusing candidates permission to provide material to voters. Also, for many supporters of political candidates providing how-to-vote material is one of the few means by which they can participate in a campaign.

9 Submission No 26 – Senator Margaret Reid

9.1 The issues of return-to-sender (RTS) mail and the accuracy of the electoral roll have been the subject of similar complaints by Members of Parliament since 1992. In submission No 91 of 3 August 1993 (Attachment 04), and in submission No 120 of 10 November 1993 (Attachment 05), the AEC addressed these complaints in detail. The November 1994 Report of the JSCEM concluded as follows:

> 4.8.8 Submissions from several individuals and MPs expressed concern about apparently high rates of return-to-sender MP mail, suggesting that such mail indicates a high level of incorrect names or addresses on the electoral rolls. These claims are refuted by the AEC, which advised the Inquiry that it investigates names and addresses on return-to-sender mail forwarded to it.
>
> 4.8.9 One recent investigation in a marginal Division produced no evidence of fraudulent enrolment; indeed, "the evidence examined has tended to reinforce the view that the enrolment system is operating as intended". In the study in question, late-December 1992 roll data was being used for a March 1993 mail-out. The AEC has emphasised the importance of Members and Senators using only the most current enrolment information for mail-outs; failure to do so can give rise to unfounded allegations of inaccuracies in the rolls.
>
> 4.8.10 Those organisations who believe that mail returned unclaimed to them indicates inaccuracies in the rolls always have the option of instituting objection action against the electors in question, as provided for in subsection 114(1) of the Electoral Act. As the AEC points out, there has been a dearth of such private objection action.

9.2 New procedures were implemented in 1995 for the investigation of RTS mail by Divisional staff of the AEC, and accordingly, the Electoral Commissioner wrote to all Members and Senators, including Senator Reid, on 22 March 1995, as at Attachment 06.

9.3 On 22 March 1999, Senator Reid wrote to the Special Minister of State complaining about RTS mail, and asking for confirmation that the people to whom the letters were addressed did not actually vote at these addresses. On 19 April 1999 the Minister responded, on advice from the AEC, to the effect that the RTS mail in question should be forwarded immediately to the Australian Electoral Officer for NSW for investigation, and that no confirmation of the kind requested could be provided, as information on the voting behaviour of individuals is protected from disclosure by the *Privacy Act 1988*.

9.4 With reference to the concerns raised by Senator Reid in submission No 26, that hundreds of her letters to constituents were returned undelivered, the volume of RTS mail would depend on the accuracy and currency of the mailing list used. If the mail was posted within a matter of days after the close of rolls, as indicated by Senator Reid, then it is highly likely that the addresses used did not include the 5,000 enrolment transfers processed by the AEC during the close of rolls period for the A.C.T. at the 1998 federal election.

9.5 Further, the AEC ran a large batch of enrolment deletions following objection action in the A.C.T. on 31 July 1998, and if the mailing list used by Senator Reid was even a month old at the time of posting, it would have included these electors at their old addresses. It is noted that no indication is given in the submission as to the source of address information used on the mailing list, or whether external enrolment information obtained otherwise than from the AEC was combined with AEC enrolment information.

9.6 After the close of rolls for the 1998 federal election, A.C.T. residents still continued to change address and, if the 1997/98 A.C.T. average of 900 enrolments per week continued to apply (including new enrolments and re-enrolments), it is possible that many people voted for the address at which they were living and were enrolled for at the close of rolls, but from which they had moved by polling day.

9.7 When mail is returned unclaimed, Australia Post may provide reasons for non-delivery on the envelope. The accuracy of the reasons given on envelopes is a matter best taken up with Australia Post, but the AEC is aware that the reasons are not always correct. As well, notations such as “no such address” may apply to addresses obtained from sources other than the AEC, or to addresses subject to subsequent processing, such as caravan parks and hostels. It would be most unusual for an elector to enrol for an address in the A.C.T. that is not known to the AEC, given the high quality of address data available.

9.8 In response to the specific questions posed by Senator Reid in her submission, the following responses are provided:

(a) What can be done to improve the integrity of the roll? The AEC has carried out regular Electoral Roll Reviews in the A.C.T. in accordance with the requirements of the Electoral Act, and in addition, has developed new methods to improve roll maintenance, such as the address-based register and continuous roll updating, as discussed in parts 4.3 and 4.4 of submission No 88.

(b) What should I do with these letters? The RTS letters should be provided to the Australian Electoral Officer for New South Wales, the senior officer responsible for the administration of all NSW and A.C.T. federal Divisions.

(c) How can I assure myself that the roll was correct? Candidates at federal elections are provided with copies of the roll for the election as soon as it is printed. Any elector is entitled to object to the enrolment of another person under the provisions of Part IX of the Electoral Act.

(d) Would it be helpful if I delivered all these letters to you or should I send them to the Electoral Commissioner? See (b) above.

10 Submission No 30 – A B McMullin

10.1 The AEC notes that the previous JSCEM said the following, in relation to four year parliamentary terms, in the June 1997 Report:

> 9.41 Mrs Ricky Johnson MP and Mr Graham Smith both submitted that section 28 of the Constitution should be amended to increase the House of Representatives term from three to four years. Their arguments included better long-term planning by government, consistency with State jurisdictions and cost savings.
>
> 9.42 For all these reasons, the Committee has no difficulty giving its unanimous support to four-year terms for the House of Representatives. Parliamentary terms would appear to be a logical topic for examination in any future discussions on constitutional reform.

10.2 The issue of possible cost savings that might result from fixed four-year parliamentary terms is addressed later in this submission in response to a question from Senator Lightfoot at the public hearings of 1 April 1999.

11 Submission No 31 – Brian Cox

11.1 In his submission, the former Electoral Commissioner, Mr Brian Cox, has highlighted a problem with late lodgement of disclosure returns under Part XX of the Electoral Act. He suggests that the AEC might withhold payment of election funding until the intended recipient had fulfilled their responsibility to lodge a disclosure return.

11.2 The AEC does not support this proposal because of the lengthy delays that could result in the payment of election funding entitlements. Over 90% of total funding entitlements are currently paid within 5 weeks of polling day, while candidate and Senate group returns are not due for lodgement until 15 weeks after polling day. The delay for political parties which now lodge annual (financial year) disclosure returns could be far longer. For example, political party annual disclosure returns covering the 3 October 1998 federal election are not due for lodgement with the AEC until 20 October 1999. In any case, experience suggests that most of those political parties and candidates from whom the AEC has the greatest difficulty in obtaining disclosure returns do not qualify for election funding.

12 Submission No 36 – Allen Hampton

12.1 Mr Hampton's recommendations appear to arise from personal experience at a polling booth. The AEC understands that Mr Hampton has worked as an officer-in-charge of a polling place for NSW State elections, which has different legislation and operational procedures. This may explain his particular perspective on federal elections. Many of the operational changes recommended by Mr Hampton for federal elections are already part of AEC systems, policies and procedures under the provisions of the Electoral Act, and are actively reviewed after each electoral event.

12.2 *Providing efficient voting arrangements for Own Division and Absent voters: The AEC be required to review its policies and practices with a view to ensuring polling booths are adequately staffed in a timely manner with trained personnel.* Mr Hampton makes no specific complaint, but nevertheless provides a generalised discussion of those matters that should be considered in planning for elections. The problems experienced due to the timing of the 1998 federal election have been addressed in parts 2.1, 3.2 and 7.2 of submission No 88.

12.3 The AEC provides all Divisional Returning Officers (DROs) with a comprehensive and up-to-date manual for the conduct of elections, the Divisional Office Procedures Elections Manual, which is grounded in the Electoral Act, as well as practical experience and knowledge gained over many years. The manual contains detailed procedures to be followed in all administrative matters relating to elections, including: ensuring conformity with legislative and policy changes; the criteria to be used in assessing the suitability of polling places, such as recent redistributions, seasonal factors, and population changes; the criteria to be used in identifying necessary equipment and staffing; and guidelines for the training of permanent staff, casuals and polling officials. Polling officials attend a comprehensive training program and are provided with an Instruction Manual which outlines various election tasks and their responsibilities during the hours of polling. Election casuals also receive training in their tasks from Divisional office staff.

12.4 After every federal election, the AEC assesses all suggestions, complaints and recommendations about the conduct of polling, including those provided to and by the JSCEM, and by the courts in relevant litigation, and undertakes extensive internal reviews and audits of all policies, systems and procedures. These inquiries, decisions, reviews and audits then become the basis for any necessary amendments to the legislation and to the pendant manuals and guidelines for DROs, in preparation for the next federal electoral event.

12.5 *The AEC be directed to ensure estimates of Absent and Ordinary pre-poll voter numbers take account of local, state or national circumstances particular to the actual date of polling.* To ensure that each polling place is properly equipped, Divisional office staff use the computerised Polling Place Staffing Estimates System which provides an estimated number of electors by Census Collection Districts (CCDs). The system is based on the relationship between polling places and CCDs, and compares voter turnout and enrolment at the last federal electoral event against current CCD enrolment, to produce estimated ordinary votes. All polling places receive votes from a number of CCDs which make up the catchment area of a polling place.

12.6 The system retains ordinary and declaration vote statistics by polling place from the last three federal events. Information from other electoral events such as federal by-elections, State and local government elections may be entered into the system and stored for future reference. Using the system estimates as a basis, the DRO is able to make any required adjustments to staffing levels, in accordance with the National Polling Place

Resources Policy; to the estimated number of certified lists of voters, including additional lists at polling places and spares; and to the estimated polling place catchments resulting from the appointment and abolition of polling places, or when a redistribution occurs. This information is subsequently reviewed and approved by an Area Manager as the basis for allocating resources to each Divisional office.

12.7 *AEC be asked to provide detailed analysis of trends (including State and Local Government elections) in numbers of votes cast prior to Polling Day (Ordinary Pre-Poll and Postal) and to explain how due provision will be made to meet estimated demands*. The AEC is well aware that the number of electors voting early by declaration vote is increasing and has addressed this issue in part 8.6 of submission No 88.

12.8 *The AEC be instructed to expedite the result of the scrutiny as far as possible by establishing procedures to increase the rate of count of Declaration votes through (earlier) scrutiny of the available parcels ie. on the Sunday after polling day*. The AEC has addressed the time taken to provide results in parts 8 and 9 of submission No 88.

12.9 *The AEC be instructed to ensure the best available information is used to determine and arrange Polling Place staffing and to devise procedures to meet unexpected demands.* As discussed above, each DRO is responsible for employing staff, selecting and advising Officers-in-Charge (OICs) of polling places and layout details, staff numbers and recruitment arrangements, as well as the times and locations for the pick-up and delivery of polling place materials.

12.10 As it is not possible for the DRO to observe the operation of all polling places within a Division on polling day, Polling Place Liaison Officers (PPLOs) are employed to visit polling booths during the day, report any problems to the DRO, and provide assistance to OICs as required. Where there are no PPLOs available, OICs are able to contact and report any problems directly to the DRO.

12.11 OICs also receive a comprehensive training program and a Management Manual which details tasks to be undertaken and actions which may be adopted on polling day. For example, on page 37 of the Management Manual, OICs are instructed to check reserve stocks of polling materials and if these supplies are deemed inadequate to contact the Divisional office immediately. The Manual contains an instruction to photocopy forms, envelopes or ballot papers on polling day if additional copies from either the DRO or PPLO cannot be supplied in sufficient time.

12.12 *AEC be instructed to explain and justify how Absent Voter numbers were estimated in 1998 and what changes (if any) have been put in place for future estimations.* See above.

12.13 *Policy or legislation be amended to require House of Representatives Absent Ballot Papers be printed on a distinctive paper.* Section 209 of the

Electoral Act provides that House of Representatives ballot papers must be printed on a green background, and that Senate ballot papers must be printed on a white background with black type (see also part 8.5 of submission No 88). There are systems and procedures already in place at the polling booth to ensure that absent ballot papers are properly issued and returned.

12.14 After issuing ballot papers to a declaration voter the polling official is instructed to direct the voter to a vacant declaration voting compartment, separate to the ordinary voting compartments. The polling official asks the voter to complete the ballot papers, fold them and return them for insertion in the completed declaration envelope, which is sealed in the presence of the voter and put into the declaration vote ballot box. The AEC is not aware of significant numbers of absent votes not being properly sealed inside declaration envelopes at polling places.

12.15 *AEC provide suitable signage to reduce voter inconvenience in the face of 'cross-border anomalies.* The AEC undertakes an extensive advertising campaign during the election period to advise electors where to vote. The AEC also has call centres established so that electors are able to ask specific questions in relation to their personal circumstances, and staff in polling places are able to redirect interstate electors to an appropriate polling place. In dual polling places located on Divisional borders signage directs electors to the correct issuing points.

12.16 *AEC be instructed to seek improvement in polling place management by procedures to ensure best available layout and reasonable set-up.* OICs are provided with an approved polling place layout plan from the DRO and any variations to the model must be discussed with the DRO. The layout must allow for the orderly access of electors to and from the polling place; bank-style queuing of electors; a clear view of all voting screens by issuing staff to ensure that only one elector is in a voting screen at any one time; a clear view of the ballot boxes; constant supervision of the ballot boxes by polling place staff; space to allow for the set-up of an additional issuing point if lengthy delays occur during peak periods; and a separate declaration voting area.

12.17 *AEC be instructed to ensure collection and best use of information from Polling Place officials.* Information provided by and sought from polling officials is used by the AEC to improve operational procedures and systems for future elections. For example, following the 1998 federal election, the AEC surveyed 6,000 polling officials to assess the overall usefulness and relevance of each component of the Training of Polling Staff (TOPS) training package. Information contained in OIC General Returns, such as the non-suitability of or problems in a polling place, is also used by Divisional office staff to make improvements for the next federal event.

12.18 *AEC be instructed to ensure adequate communication is available between the polling place OIC and the Divisional returning Officer, prior to and during polling.* Provision already exists for polling officials to use either hired or personal mobile phones in polling places, if there is no dedicated telephone line in the polling place.

12.19 *Legislative change should be introduced so that where a vote is rejected as a consequence only of a change of address within the claimed Division the name of the voter should be reinstated to the certified list and the vote admitted.* Mr Hampton appears to be confused about the provisions of the Electoral Act in relation to the reinstatement of the enrolment of provisional voters. (Note the AEC has already recommended legislative change in part 9.12 of submission No 88 and submission No 159.)

12.20 As the law currently stands, no declaration votes are rejected at the preliminary scrutiny solely as a consequence of a change of address within the claimed enrolled Division, unless that change and any subsequent objection action happened before the last federal redistribution of that State/Territory or more than two elections ago. For the last federal election, and excepting the Northern Territory and Kalgoorlie, approximately 110,000 declaration votes resulted in enrolment reinstatement, or enrolment transfer in those cases where a new enrolment application was made at the time of the election.

12.21 *AEC be instructed to report and advise what steps are being taken to reduce the number of voters found to be not on the roll and to actively pursue correct enrolment by all persons relocating.* The AEC has addressed these aspects of roll maintenance in part 4 of submission No 88.

12.22 The AEC processes a significant volume of enrolment transactions on a continuous basis, reflecting the mobility of the Australian population. In 1997/98 an average of 245,000 enrolment transactions per month were entered onto RMANS, of which 78% were re-enrolments, transfers of enrolments, or amendments to enrolment details. In the close of rolls period alone for the 1998 federal election, the AEC received approximately 352,000 enrolment applications for entry onto RMANS. Between the close of rolls and polling day, the AEC received a further 125,000 enrolment applications.

12.23 In relation to enrolment applications received after the close of the rolls, those electors re-enrolling would not be shown on certified lists of voters. Electors transferring their enrolment would be shown on the certified lists, but for a different address, and in some cases for a different Division. As electors continue to move address during election periods, the rolls will always contain some out of date information, with the result that some names will not be found on certified lists.

12.24 *AEC be instructed to further actively seek to obtain early enrolment by newly 'of-age' Australians using a strategy of 'point-of-need' intervention.* Mr Hampton does not appear to be aware of the youth enrolment strategies already in place.

12.25 DROs are trained and resourced to visit senior secondary (and other) schools to conduct information sessions, stressing electoral rights and responsibilities and encouraging enrolment. DROs are also provided with enrolment application forms and other display material that can be left in

secondary (and other) school libraries. The AEC operates information booths, with an enrolment focus, at events such as shows, university orientation weeks and other events where large numbers of young people are likely to attend. The AEC also regularly advertises on youth radio programs, and in appropriate publications such as university diaries and AUSTUDY kits.

12.26 Finally, there are Electoral Education Centres established and maintained by the AEC in Canberra and Melbourne. Similar centres operate in Perth and Adelaide with the co-operation of State electoral authorities. These centres educate many thousands of school children each week on the electoral system, including the responsibility of all those of eligible age to enrol and vote at parliamentary elections.

12.27 *Legislative change be introduced to ensure the statutory questions on entitlement to vote are as clear as possible in meaning to electors.* The AEC has no evidence that the questions required under section 229 of the Electoral Act result in any significant level of confusion for electors. While some electors may answer incorrectly the first time, or may not clearly understand the questions being asked in the stated form, polling officials are instructed to use common sense in their dealings with electors and rephrase the questions if necessary.

13 Submission No 37 – Jack Jones

13.1 The AEC addressed the issue of parliamentarians serving their full terms, and the costs of by-elections, in submission No 90 of 20 September 1996 to the previous JSCEM, at Attachment 07. The June 1997 JSCEM Report concluded on the subject of by-elections generally as follows:

> 9.43 Section 33 of the Constitution provides for a by-election when a vacancy arises in the House of Representatives, for example, when a Member has resigned. There is no specified time during which the writ for the by-election must be issued.
>
> 9.44 Former Electoral Commissioner Colin Hughes submitted that to prevent by-elections being unduly delayed by political considerations, there should be a requirement that the writ be issued within 30 days of the death or resignation of the Member (except during the final few months of the life of the House of Representatives). The AEC endorsed Professor Hughes’ proposal.
>
> 9.45 While there is merit in the proposal, 75 days (approximately 2.5 months) is a more reasonable time limit than 30 days.
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> 9.46 *Recommendation 73:*
>
>> that the Electoral Act be amended so that within 75 days of the resignation or death of a Member of the House of Representatives, a writ must be issued for a by-election (except in the four months before the expiry of the House of Representatives by effluxion of time). A similar amendment should apply to supplementary elections caused by, for example, the death of a candidate after the close of nominations.

9.47 A Mr CGW Hughes (not the former Commissioner) suggested that Members who resign should be obliged to fund the subsequent by-elections. The Committee does not support this proposal, for reasons put forward by the AEC:

> 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.
>
> 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.

9.48 Also, the view is often expressed that for cost reasons by-elections should be scrapped altogether. However, a by-election is a more democratic means of filling a vacancy than a party appointment (which would require a referendum on the constitutional requirement that Members be “directly chosen by the people”) or a countback for the relevant division. By-elections serve as a barometer of public sentiment, which can only enhance the functioning of government.

13.2 The Government Response to Recommendation 73, as reported in the Senate Hansard of 8 April 1998 at page 1667, was: “Not supported. The Government is not satisfied that the imposition of a time limit is appropriate with regard to the issuing of a writ for a by-election”.

14 Submission No 39 – David Mudgee

14.1 The AEC has addressed the issue of precinct (and subdivisional) voting in many submissions to the JSCEM over the years. The conclusions of the June 1997 JSCEM Report are at Attachment 08, and recommendation 7 of the JSCEM was as follows:

> that as part of the implementation plan referred to at Recommendation 1, the AEC prepare a detailed proposal for the reintroduction of subdivisional voting for future Federal elections. The proposal should consider a corresponding public awareness campaign (so that people are aware they may be disenfranchised if they fail to advise the AEC of a change of address across a subdivisional boundary, even when remaining within the same division).

14.2 The Government Response to Recommendation 7, as reported in the Senate Hansard of 8 April 1998 at page 1661, was: “Supported in principle. The Government supports the conducting of an investigation into the reintroduction of subdivisional voting. However, the Government believes the JSCEM should conduct a more detailed investigation into the positive and negative aspects of the reintroduction of subdivisional voting”.

14.3 On 9 March 1998 the AEC made a submission to the JSCEM on the advantages and disadvantages of subdivisional voting as part of an Implementation Plan submitted in accordance with Recommendation 1 of the June 1997 JSCEM Report. The Electoral and Referendum Amendment Bill 1999, currently before the Parliament, does not contain any proposal to reintroduce subdivisional voting.

14.4 In relation to Mr Mudgee’s allegation that invalid votes were counted in the Division of Dickson at the federal election, the JSCEM might consider asking Mr Mudgee to produce any evidence he has in support of this allegation. The AEC is not aware of any relevant investigation by the Australian Federal Police. It may be that Mr Mudgee does not appreciate that Langer-style voting is no longer an option at federal elections; or that a single blank square does not necessarily render a House of Representatives ballot paper informal; or that there is a requirement for a fresh scrutiny of House of Representatives ballot papers returned from the polling booths, as described in paragraph 9.3.4 of submission No 88.

15 Submission No 43 – B James

15.1 Ms James says in her submission that Women’s Health Queensland Wide Inc obtained her address from enrolment information obtained from the AEC. The AEC understands that the information was in fact released via the Queensland Electoral Commission (QEC), although the AEC was identified by the QEC as the originating source for the information.

16 Submission No 46 – John Nicholas

16.1 In relation to the complaint about the security of ballot materials in the Division of Riverina, the material was properly sealed before leaving the polling booths, and a courier was used for transportation to the Divisional office, with a driver and an offsider employed so that at least one person could remain with the lockable van at all times.

16.2 Mr Nicholas also complains about the provision of voting facilities in the Division of Riverina. The Barmedman polling booth mentioned by Mr Nicholas was in fact in the Division of Hume and was an ordinary polling booth. However, in the Division of Riverina there was a pre-poll centre at Wyalong, 25 kilometres from Barmedman, at the intersection of the Newell and Mid-Western Highways, which was designed to cater for interstate truck-drivers.

17 Submission No 54 – D Carrington-Smith

17.1 Ms Carrington-Smith expresses her concerns about the abolition of the Division of Oxley in Queensland (formerly held by Ms Pauline Hanson), prior to the 1998 federal election. Although many people may not be familiar with the detailed procedures, they should be assured that redistributions are lawfully conducted under the detailed provisions of Parts III and IV of the Electoral Act (and see paragraph 2.1.10 in submission No 88).

17.2 On 28 February 1997, the Electoral Commissioner determined that as a result of population changes between the States and Territories, the representation entitlements of Queensland and the Australian Capital Territory in the House of Representatives would change. As a result of this determination, it was clear that Queensland would gain a new Division because of population increase in that State. Notice of the redistribution of Queensland was published in the Gazette on 4 March 1997.

17.3 The Redistribution Committee for Queensland was formed, consisting of the Electoral Commissioner, Mr Bill Gray, the Australian Electoral Officer for Queensland, Mr Bob Longland, the General Manager, Surveying and Mapping, Queensland Department of Natural Resources, Mr Graeme Rush, and the Queensland State Auditor-General, Mr Barrie Rollason. Newspaper advertisements invited members of the public to provide suggestions on how Queensland should be redistributed.

17.4 On 28 July 1997, following an extensive public consultation process, the Redistribution Committee for Queensland published a report announcing the details of its proposals for the names and boundaries of the redistributed federal electoral Divisions in Queensland. It was proposed that a new Division, to be known as Blair, would be located west of Brisbane covering the area from Gatton, Liadley and part of Ipswich north to Kingaroy. The Division of Blair was to be formed from parts of the existing Divisions of Fisher, Groom, Longman and Oxley. Outline maps of the proposed boundaries were published in the *Sunday Mail* on 27 July and the *Courier Mail* on 28 July 1997. Objections to the proposed redistribution were invited by 25 August 1997.

17.5 The augmented Electoral Commission, consisting of the Redistribution Committee for Queensland together with the Chairman of the Electoral Commission (the Hon Trevor Morling QC) and the other Commissioner (Mr Bill McLennan, the Australian Statistician), considered the objections, made some alterations to the original proposed redistribution, and then made a final determination of all 27 Divisional boundaries and names for the State of Queensland. The report on the Queensland redistribution was tabled in Parliament as required under the Electoral Act.

17.6 In relation to Ms Carrington-Smith's concerns about multiple voting, the AEC published an Electoral Backgrounder (No 9) entitled "Multiple Voting" on 17 July 1998, which explains the procedures in place to detect and prosecute multiple voting. The general issue of electoral fraud is addressed in part 10 of the AEC submission No 88.

17.7 Ms Carrington-Smith recommends that postal votes should not be accepted for scrutiny after the close of the poll (instead of within 13 days or longer as provided in sections 228(5A) and 266(1)(b) of the Electoral Act). This would be contrary to the view expressed by the previous JSCEM in the June 1997 Report, as follows:

> 5.26…the current provisions assist in maintaining the franchise for electors in remote areas and overseas in particular. As the Act already allows a DRO to declare a poll where a candidate has a clear majority and the addition of late postal votes will not affect the result, the Committee does not recommend any change to the time allowed for the receipt of postal votes.

18 Submission No 55 – Nigel Kendall

18.1 Recommendation 12 of the June 1997 Report of the JSCEM was that the provisions of the Electoral Act relating to compulsory voting be repealed. This recommendation was dissented from by both the ALP and Democrat members of the JSCEM at the time. The Government responded to the recommendation as follows: “Not supported. The Government does not believe that voluntary voting should be considered at this stage” (*Senate Hansard, 8 April 1998, p 1662)*. The AEC notes that in submission No 162 to this JSCEM, the Liberal Party Secretariat said the following: “The Party affirms its opposition to the abolition of compulsory voting”.

18.2 Mr Kendall says that the electoral system must be computerised to deter dishonesty. The AEC addressed the issue of computerised voting in submission No 90 of 20 September 1996 to the previous JSCEM (Attachment 09).

19 Submission No 56 – G W Spence

19.1 Mr Spence quotes section 34 of the Constitution as the basis for the residential qualifications for Members of Parliament. Section 34 also provides that a Member of Parliament must be at least 21 years of age. Clearly this is no longer the case, and a closer reading of section 34 would note the phrase, “until the Parliament otherwise provides….”. The Parliament has otherwise provided in section 163 of the Electoral Act, which contains no express provision in relation to residential qualifications for nomination.

19.2 The requirements suggested by Mr Spence, that candidates should “have been within the electorate which they wish to represent in the Parliament for a reasonable period of time before nominating”, and that candidates should “be within the electorate they represent or they vacate their seat”, would have the effect of circumscribing the choice available to the electorate as a whole.

19.3 While some people might share Mr Spence's views on the need for a resident member, others might not. If people believe that they need a resident member, they have the option of supporting candidates who are resident or

intend to be resident, and opposing others. If a belief in the need for a resident member is sufficiently widespread, a resident member should be elected as a consequence.

20 Submission No 60 - Australian Democrats (SA)

20.1 *Timing of the Election:* The AEC has already addressed issues arising from the timing of the election in parts 2.1, 3.2, and 7.2 of submission No 88, but in relation to the particular complaint about ballot paper shortages at polling places on the Fleurieu Peninsula in the Division of Barker, the DRO was in no doubt that there would be an increase in the number of absent voters attending polling places in and around Victor Harbor. In anticipation of this, additional staff and voting materials were provided, and the number of declaration issuing points for Victor Harbour was increased to nine, for an estimated 1080 declaration votes. Additional declaration issuing points were also allocated to the Goolwa, Port Elliott and Yankalilla, polling places which are adjacent to Victor Harbor.

20.2 For the 1993 federal election, 700 declaration votes were issued at Victor Harbour, and for the 1996 federal election, 772 declaration votes were issued. For the 1998 federal election, 1461 declaration votes were issued at Victor Harbour, about 380 over the estimate, and representing a 100% increase over 1996. As a result there were queues at several polling places, although no electors were turned away and no polling place ran out of ballot papers. Declaration envelopes did run out at several locations, but ordinary envelopes were used until additional supplies were delivered later on polling day.

20.3 *Candidates Handbook:* The concerns expressed about the late availability of an updated Candidates Handbook, because of late amendments to the Electoral Act, are shared by the AEC, and the general issue of the legislation timetable has been addressed at part 2.1 of submission No 88. For the 1998 federal election, all who inquired in the early stages were advised that the Candidates Handbook from the previous election was out of date and that new Handbooks were currently being printed. However, the old Handbooks were provided on request until the updated Handbooks became available, when they were immediately distributed to all candidates.

20.4 *Polling Information:* The itineraries for visits to hospital and nursing homes by Electoral Visitor Teams were provided direct to candidates at least one week prior to the commencement of mobile polling. These itineraries were also displayed in the Divisional Offices for public inspection as required under section 226 of the Electoral Act. DROs advised candidates of any change to these itineraries, and scrutineers who accompanied the mobile teams were advised immediately if itineraries changed. The AEC has no complaint on record of any candidate or scrutineer not receiving this information or of the itineraries not being displayed in any Divisional Office.

20.5 Similarly, all polling place estimates, including dual polling booths estimates, are provided direct to candidates by DROs at the time of

nomination, along with the handbooks and appointment forms, lists of polling places, and numbers of staff employed at each polling place.

20.6 *Two Party Preferred Counting:* After election night, the AEO can determine a new TCP allocation for the provisional distribution of preferences, if there is sufficient information and results available.

21 Submission No 62 – David Kitto

21.1 Mr Kitto alleges that "there are over 40 existing members of that Federal parliament who have dual nationality in spite of the rules laid down in the Australian constitution!" The JSCEM might consider asking Mr Kitto for evidence to substantiate this allegation. Division 2 of Part XXII of the Electoral Act provides a means by which the constitutional qualifications of sitting Members of Parliament may be referred to the Court of Disputed Returns.

22 Submission No 65 – J M Moller

22.1 Mr Moller favours the adoption of a voting system which he describes by the acronym CAPETAL. The core of this system is a variant of the Borda system first proposed in 1781. Mr Moller appears to propose that a candidate for a single-member constituency who wins an absolute majority of first preferences will always win a seat, but that if there is no such candidate, the one who has the highest Borda count will win. Voters will only be able to indicate a number of preferences one more than the number of vacancies to be filled (that is, two, in a House of Representatives election), and may choose to indicate fewer preferences.

22.2 The problem with Borda-style systems is that voters are discouraged from indicating second and subsequent preferences because to do so can decrease the probability that their most preferred candidate will win. This defect is shared by Mr Moller's proposed system. Preferential voting as currently implemented does not have this deficiency: a voter's second preference is only examined when his or her most preferred candidate has no chance of winning. The limit which Mr Moller proposes on the number of preferences which a voter may indicate also appears to be chosen arbitrarily, and the arguments put forward in the submission in support of that position are sketchy and unclear.

22.3 Mr Moller proposes that for Senate elections, voters vote by the use of candidate numbers, as was done at the Constitutional Convention election in 1997. That election, however, was conducted using a postal ballot, and it is doubtful whether the use of voting by numbers would have been feasible at the polling booth: it would certainly be likely to slow the voting process considerably, as voters would need time to find and transcribe the numbers of their preferred candidates.

23 Submission No 68 – E H Vaughan

23.1 Mr Vaughan appears to represent an organisation called the "Enterprise Council Joint Standing Committee". He alleges that the "electoral process was grossly manipulated" in the Division of Dickson, and provides a list of figures, without any explanation as to how they were derived.

23.2 AEC investigations of multiple voting in the Division of Dickson have produced the following statistics to date (multiple voting investigation procedures are described in Electoral Backgrounder No 9):

Apparent multiple marks	109
Confirmed multiple marks	88 (none more than 2)
Matches with non-voters	37
Official error	48
Confirmed dual votes (a confused elderly voter aged 78)	1
Inconclusive	2

23.3 It should be noted that during the inquiry into the conduct of the 1993 federal election, Mr Geoff Moss, the Secretary of an organisation called the Enterprise Council, filed submission No 135 of 1 December 1993, which made a number of serious and unsubstantiated allegations about the conduct of the AEC, and about electoral fraud in the Division of Dickson. The November 1994 JSCEM concluded that, "the evidence put forward by the Enterprise Council fails to substantiate its allegations" (Attachment 10).

24 Submission No 73 – Neil Gillespie

24.1 Mr Gillespie wrote to the AEC on 8 December 1998 concerning the position of ATSIC Regional Councillors who wish to contest a federal election. The AEC letter in response is at Attachment 11.

25 Submission No 76 – Graeme Lee

25.1 The substance of Mr Lee's submission is that the counting of ballot papers in the Division of Dickson might have been subjected to fraudulent manipulation through the addition of over 100 ballot papers that allegedly appeared after counting had been concluded, and were sufficient to ensure the election of Ms Cheryl Kernot. Mr Lee's submission does not accord with the facts.

25.2 The counting of ballot papers in the Division of Dickson was subjected to intense scrutiny, and AEC staff were congratulated by the scrutineers at the conclusion of the count, despite the closeness of the result. There was no question of a re-count or a challenge in the Court of Disputed Returns. Further, there were no complaints filed at the Albany Creek South polling place, where the result of the count on election night was as follows:

Candidate	Votes
Smith	232
Kelly	9
Kernot	1125
Camfield	162
Pantano	29
Halliday	10
Henshaw	1907
Manktelow	157
Dunne	6
First Preference Votes	3637
Informal Votes	86
Total	**3723**

25.3 The reconciliation report from the Officer-in-Charge of the Albany Creek South polling place was as follows:

Votes counted	**3723**
Declaration votes in ballot box	217
Spoilt ballot papers	15
Discarded ballot papers	0
Unused ballot papers	923
Total	4878
To be accounted for	4885
Difference	**7**

25.4 The fresh scrutiny conducted after election night for the Albany Creek South polling place was observed by as many as 20 scrutineers and a contingent of media. Those present were aware that an error in counting at the polling place had been uncovered, and were satisfied with the result of the fresh scrutiny, which was as follows:

Candidate	Votes
Smith	244
Kelly	9
Kernot	1170
Camfield	176
Pantano	30
Halliday	10
Henshaw	1806
Manktelow	165
Dunne	6
First Preference Votes	3616
Informal Votes	111
Total	**3727**

25.5 Mr Lee alleges that "candidate Tony Smith had blank ballot papers for both the Senate and the House of Representatives posted to him just prior to the Election and he handed these in to the Electoral Commission prior to the election. Apparently these were sent to him from the Strathpine Office of the Electoral Commission…" Mr Smith did not hand in any such material to the AEC. Had this occurred, the material would have been immediately referred to the Australian Federal Police (AFP) for investigation.

25.6 Candidates Mr Smith and Mr Henshaw were active in the media with allegations regarding Ms Kernot's enrolment, but the AEC has no evidence that any offence under the Electoral Act was committed by Ms Kernot. The AEC did receive a telephone call on the matter from Mr Smith, and he was advised that he could lodge a private enrolment objection or, if he believed that some offence had had been committed, then he could report it to the AFP for investigation.

26 Submission No 77 – Graham Brunckhorst

26.1 Mr Brunckhorst makes a recommendation to "change the cover up by the AEC, whereby ballot papers are not available to the party scrutineers, under surveillance, after the election has been completed. If there is nothing to hide, then justice should not only be done, but be seen to be done." Party scrutineers have ample opportunity to examine all ballot papers during the provisional TCP count, and the fresh scrutinies and further scrutinies, at both the polling booth on election night, and in the Divisional offices in the weeks after the election, until the declaration of the poll. The AEC does not in any way prohibit or obstruct access by party scrutineers to ballot papers during this period. To the contrary, the AEC believes that continuous observation of the ballot papers by party scrutineers is an essential guarantee of accountability and transparency in the electoral process.

26.2 Access to ballot papers by party scrutineers after the declaration of the poll is not a matter for the discretion of the AEC, but is regulated by section 393A of the Electoral Act, which provides for the secure custodianship of ballot papers in case they are required by the Court of Disputed Returns, and for their eventual destruction. The Act also clearly contemplates an end point to the possibility of any challenges to a particular election. For example, section 355(e) of the Act requires that any petition disputing an election must be filed with the Court of Disputed Returns within 40 days of the return of the writ. Without such a formal ending to each electoral event, government would be under constant threat of destabilisation.

26.3 Mr Brunckhorst further recommends that "all the requirements necessary to register a candidate should be on the candidates application forms, otherwise the AEC should foot all legal bills, pertaining to legal challenges." It is not clear what particular problem is being raised here, but if it relates to constitutional disqualifications, then the nomination form contains a print of section 44 of the Constitution, and the Electoral Backgrounder, entitled "Constitutional Disqualifications", was provided to all candidates for the 1998 federal election.

26.4 Finally, Mr Brunckhorst appears to conflate the *provisional* distribution of preferences conducted by the AEC on election night (the TCP count) with the activities of political parties in recommending to voters how they should distribute their preferences. The provisional TCP count is described by the AEC in paragraph 9.3.2 of submission No 88.

27 Submission No 79 – Antony Green

27.1 Mr Green makes two main points in his submission. The first is that the arguments put forward in favour of voluntary voting logically imply a need for optional preferential voting, and that the adoption of optional voting without adopting optional preferential voting at the same time would be logically inconsistent. His argument is clearly correct. Mr Green's second argument is that the Senate scrutiny should include a stage, after the initial distributions of surpluses, at which all candidates of parties which had less than half a quota would be excluded.

27.2 The only previous parliamentary elections in Australia conducted by the AEC which included such a threshold procedure were the A.C.T. elections of 1989 and 1992, held under the modified d'Hondt system. The operation of the threshold of 5.55…% of the vote was strongly criticised at paragraphs 3.11 to 3.25 of the AEC submission to the JSCEM of August 1989, entitled "Report on the Australian Capital Territory Legislative Assembly Election of 4 March 1989". In its subsequent Report, the JSCEM stated that it considered "that the 5.55…% threshold is arbitrary. It certainly has not proven to be any guarantee of stable government."

27.3 The problem with thresholds of this type is that the level at which they are set is essentially arbitrary, and the choice of one level over another cannot be justified except by reference to an outcome – presumably the greater or lesser limitation on the representation of minor parties – which it is supposed that one level or another will produce.

27.4 A consequence of such thresholds is that a body of opinion in the community may fail to be represented purely because votes in support of that opinion are divided among two or more parties, none of which reaches the threshold. Such an effect has long been regarded in Australia as arbitrary and undesirable. Indeed, it was for precisely that reason that the use of the first-past-the-post system at federal elections was abandoned in 1918.

27.5 A corollary of this is that a voter who supports a minority opinion may be forced to cast a vote with the primary aim of ensuring that at least one party in sympathy with that opinion will remain in the count; this will not necessarily be the party which he or she most favours. The presence of such votes in the count has a corrupting effect on it, since such votes do not represent the true wishes of the voters who cast them.

27.6 Much of the argument put forward by Mr Green relates not to the Senate, but to events at Upper House elections in NSW and South Australia.

It is notable, however, that the quota for election at NSW Upper House elections is lower than has ever been the case at a Senate election, and that party registration is clearly an easier process for minor parties contesting NSW State elections than for parties contesting federal elections.

27.7 Mr Green's concern is particularly motivated by the rise of "micro" parties at NSW elections. It could be argued, however, that even if voters do not know the specific policies of a micro party, they have at least made one clear decision, namely not to support the major parties. The election of a micro party representative in such cases is to that extent in keeping with the motivations of those who support such parties. The AEC has addressed the recent NSW State election experience and the registration of political parties later in this submission in response to a question by Senator Murray at the public hearings of 1 April 1999.

28 Submission No 83 – Malcolm McClure

28.1 The election petition filed by Mr McClure with the Court of Disputed Returns, and currently the subject of proceedings before that Court, has been mentioned in part 12.3 of submission No 88. It is noted that Mr McClure does not appear to have attached his draft "Electoral Amendment Act 1999" to his submission.

29 Submission No 86 – Arthur Tuck

29.1 In his submission, Mr Tuck says that "an unofficial group went to a lot of effort investigating the election of one very prominent now ex-Member of Parliament. They documented massive fraud and passed the information to the Electoral Commission who took no action. They found a great number of non-existent people were registered in caravan parks shortly before the election and they all voted. They found that many of the conscientious objecting Jehovah Witnesses voted. They found recently dead people still on the rolls voted. I can provide copy of this very detailed and comprehensive report if the committee wishes."

29.2 Mr Tuck may be referring to the Enterprise Council, and its purported investigation into electoral fraud in the Division of Dickson following the 1993 federal election, which is addressed above in response to submission No 68.

30 Submission No 92 – Suzanne Cavanagh (NTCLP)

30.1 In her submission, the Secretary of the Northern Territory Country Liberal Party (NTCLP), Ms Suzanne Cavanagh, makes a number of serious complaints and allegations about the conduct of the 1998 federal election in the Northern Territory, particularly in relation to assisted voting and remote mobile polling at Aboriginal communities. The AEC has already addressed some of these issues at parts 7.5 and 7.6 of submission No 88, but the further particulars now provided by Ms Cavanagh require a more detailed response. Senator Tambling of the NTCLP and Mr Barry Wakelin MP of the Liberal Party have made similar complaints and allegations about assisted voting and remote mobile polling in Aboriginal communities in submissions No 157 and 160 respectively, which are addressed later in this submission.

30.2 Ms Cavanagh concludes her submission in the following way: "At every election there have been concerns regarding the enforcing of the rules and regulations of voting, but this is the first time we have chosen to lodge an official request for a review of proceedings. We believe that those who would take advantage of the system have been encouraged by our silence in the past".

30.3 At the outset, it should be noted that: (a) the AEC has received no formal complaints from Aboriginal voters themselves about the conduct of assisted voting and remote mobile polling in the Northern Territory or elsewhere in Australia; (b) the AEC does not accept that there is any balanced or credible evidence to support generalised claims that assisted voting and remote mobile polling in Aboriginal communities has been conducted improperly or illegally, either at the last federal election or at previous federal elections; and (c) the NTCLP did not put its allegations about illegalities under the Electoral Act before the Court of Disputed Returns for judicial consideration following the 1998 federal election.

30.4 Ms Cavanagh says that the series of complaints and allegations about the conduct of the election as detailed in her submission are "limited to a few specific people", and that "the problem seems to be a lack of control in a few people". Ms Cavanagh makes two recommendations: (a) that section 234 of the Electoral Act be amended to parallel section 71 of the Northern Territory Electoral Act, which allows candidate and political party scrutineers to observe the actual casting of all assisted votes; and (b) that "there ought to be at least a cursory inquiry before employing staff for a job of such a political nature". These recommendations will be addressed in the course of responding to Ms Cavanagh's particular complaints and allegations below.

30.5 *Assisted Voting:* Part 7.5 of submission No 88 reviews section 234 of the Electoral Act, and the recent rejection by the Senate of proposed amendments that would have allowed candidate and political party scrutineers to observe the casting of assisted votes at federal elections. The proposed amendments would have paralleled the assisted voting provisions already in force for elections under section 71 of the Northern Territory Electoral Act, and would clearly have had the support of the NTCLP, but they were of serious

concern to both the AEC, for the reasons outlined in part 7.5 of submission No 88, and to representatives of Aboriginal communities.

30.6 In her submission, Ms Cavanagh complains that the strict terms of section 234 are not properly complied with by AEC staff in the provision of assisted voting by remote mobile polling teams visiting Aboriginal communities in the Northern Territory. That is, before allowing an assisted vote, section 234 requires that the "voter satisfies the presiding officer that his or her sight is so impaired or that the voter is so physically incapacitated or illiterate that he or she is not able to vote without assistance". Ms Cavanagh says that presiding officers do not satisfy themselves in this way before they allow an assisted vote, and that, "they allow anyone and everyone to have a vote assisted by anyone else".

30.7 AEC remote mobile polling teams are under the supervision of a 'team leader', who is responsible for the logistics of mobile polling in remote areas of Australia. The team leader is also the 'presiding officer' for the purposes of polling, to use the terminology of the Electoral Act, although they are more generally known as 'officers-in-charge' (OICs). Whilst section 234 of the Electoral Act requires the presiding officer to make the decision on whether to provide assisted voting in each case, section 203(5) of the Act allows any deputy presiding officer or assistant presiding officer to exercise all or any of the powers of a presiding officer, and this power to delegate is invoked regularly for the purposes of remote mobile polling in the Northern Territory.

30.8 In the manual provided to team leaders it is made clear that: "In all cases where an elector seeks help to complete the ballot paper, the elector must be directed to you (the team leader) unless you have delegated this role to another person(s)". In practice, such delegations are routinely made, so that where the requirements for assisted voting are likely to be extensive, as they generally are for mobile polling in remote Aboriginal communities, full and effective use can be made of all AEC polling staff in attendance. That is, Ms Cavanagh's assertion that "they allow anyone and everyone to have a vote assisted by anyone else" contains an element of truth, but is misleading in the context in which it is presented in her submission.

30.9 At a practical level, it should be apparent why delegation of the presiding officer's duties in relation to assisted voting are routinely made for remote mobile polling at federal elections. For example, at the last Legislative Assembly election in the Northern Territory, 13 of the 25 Northern Territory districts had 2 candidates, 8 had 3 candidates and 4 had 4 candidates. That is, there were a relatively small number of candidates for each district. In addition, the Legislative Assembly ballot papers contained a photograph of each candidate, so that voter recognition of preferred candidates was a simple task. As a consequence of these two factors, assisted voting at the Northern Territory Legislative Assembly election was not a complicated procedure requiring extensive questioning by polling staff to arrive at the preferred vote.

30.10 By contrast, for the 1998 federal election (and excluding the complications of the Statehood Referendum) there were 7 candidates for the

House of Representatives and 11 candidates for the Senate. Further, there were two separate and quite complex voting systems, and no photographs on the ballot papers to make candidate recognition easier. Without the power to delegate, the presiding officer on remote mobile polling teams would be in constant personal demand for assisted voting, to the detriment of the necessary supervisory role in managing the polling place.

30.11 Ms Cavanagh says that AEC staff give no serious consideration to the requirement of the law that persons other than AEC staff who provide assisted voting should be "appointed by the voter", and that "political activists trawl through the crowd, seeking voters to assist, and often remain in the polling booth for protracted periods of time assisting one voter after another." The complaint that the same person may assist more than one voter fails to acknowledge that in many remote communities there may be only a few people with language and literacy skills who are capable of providing assistance, and that these people are expected by the communities to provide that assistance to as many other members of the communities as are in need.

30.12 Further, in those communities where there may be a limited number of fully literate members, Aboriginal polling staff or Aboriginal scrutineers who can communicate in language, rather than non-Aboriginal polling staff or scrutineers, will usually be the next favoured option for those needing assistance. Finally, it is possible that the process of appointment of persons to assist is not always immediately visible or apparent to NTCLP scrutineers, especially if it takes place in language, but this should not lead to the automatic assumption that the appointment process is illegal or inappropriate.

30.13 *Remote Mobile Polling in the Northern Territory:* Remote mobile polling by the AEC in the Northern Territory for the 1998 federal election involved 21 Remote Mobile Polling Teams comprising 70 polling officials visiting 241 communities over a six-day period. Ms Cavanagh has made a number of allegations of illegal activities and apparent failure of procedures in remote mobile polling, that appear to relate to only two of those Teams.

30.14 *Remote Mobile Polling Team 15:* Ms Cavanagh makes the following claims: "On Remote Team 15 the presiding officer allowed coaching of voters within the 6 metre boundary and allowed ALP scrutineers to solicit votes inside the polling booth. On Remote Team 15 the paid AEC official and an ALP scrutineer assisted most voters in what was clearly a partisan way. At Papunya a paid AEC official spoke to persons in the line of voters, adjusted their How to Vote cards to have the ALP card on top and solicited votes for the ALP. The end result was that paid employees of the AEC assisted the ALP and secured votes on their behalf".

30.15 The Team Leader and a team member of Remote Team 15 have read Ms Cavanagh's submission and reject the allegations of illegal or improper activities. They are adamant that appropriate action was taken in response to each complaint from the NTCLP scrutineer *(name suppressed)*.

30.16 In relation to the allegation that an AEC employee assisted the ALP at the Papunya polling place by arranging how to vote cards for electors waiting in line to vote so that the ALP card was on top, both the Team Leader and the AEC local assistant at Papunya remember the complaint made at the time by the NTCLP scrutineer. The local assistant did leave the polling place for a cigarette, but claims she had no contact with voters waiting in line during this break. Immediately following the complaint, the Team Leader spoke with the local assistant to ascertain whether the complaint had any basis in fact. The local assistant is adamant that this alleged incident did not occur.

30.17 In the interests of balance, it is necessary to report that Team Leader of Remote Mobile Polling Team 15 has advised that the behaviour of the NTCLP scrutineer was aggressive and intimidating to voters, and that he seemed unable to accept that voters did not wish to be assisted by him. His complaints included the fact that assistance was given to voters in language rather than in English, and it was clear that he was unaware of or did not agree with federal electoral law on assisted voting, which does not allow party scrutineers to observe the casting of an assisted vote.

30.18 *Remote Mobile Polling Team 16:* The Team Leader of Remote Mobile Polling Team 16 has read Ms Cavanagh's submission and rejects the allegations of illegal or improper activities. However, the Team Leader reports that the team was late to some of the polling places; that the booth was not set up at some places as there were no electors present; and that at some of these polling places they did not stay the advertised length of time. The itinerary for Remote Mobile Polling Team 16 included 16 polling places, and visits were made at 14 of these. Of the two polling places not visited, it was known that there were no electors present at one, and there was reliable information that a visit to the other would risk the physical safety of the team.

30.19 The Team Leader has provided the following summary of the itinerary of Remote Mobile Polling Team 16:

Iwupataka	Visited and votes issued.
West Waterhouse	Visited and votes issued.
Wallace Rockhole	Visited and votes issued.
Hermannsburg	Visited and votes issued.
New 8 Mile	Not visited.

30.20 A total of 12 people are enrolled at New 8 Mile, the last stop on this part of the itinerary, but the traditional owner and the NTCLP scrutineer *(name suppressed)* advised the team not to visit because the electors were not present. Instead, a decision was made by the Team Leader to reopen Hermannsburg because there were electors present who had not voted the previous day. The ADRO in Alice Springs was not advised of this change to the itinerary However, following complaints from the NTCLP, Hermannsburg was closed after allowing all the electors in the booths to vote.

30.21 The team continued with the scheduled itinerary as follows:

Intyamangama	Visited. No one at community and no votes issued.
Tjamangkura	Visited and votes issued
Arkanputa	Visited and votes issued
Red Sandhill	Visited and votes issued (no scrutineers present)
Intjarrtnama	Visited and votes issued.
Kaporilya	Visited and no votes issued.
Ntakarra	Not Visited.

30.22 The Team Leader was advised by the President of Ntakarra at Hermannsburg on Thursday morning that residents at Ntakarra were drunk and it was dangerous to visit. This was confirmed by two Aboriginal scrutineers from the Central Land Council and the ALP, and later confirmed at Lyltjarra. The Team Leader contacted the ADRO in Alice Springs, who instructed that the visit to Ntakarra should not be made if a dangerous situation existed. The team continued with the scheduled itinerary as follows:

Lyltjarra	Visited and votes issued
Ilkarilalama	Visited. No one at community and no votes issued.
Ganjakwarra	Visited but out of order on itinerary . No Votes issued.
Gilbert Springs	Visited and no votes issued as electors had already voted at Hermannsburg.

30.23 Ms Cavanagh alleges that electors were disenfranchised by the action of the team in swapping the last two polling places on the itinerary. However, the only example given is of an elector named “Eli”. AEC records show that this person is enrolled as Ely (*name suppressed)*. The team did see and recognise Ely as an elector who had already voted at Hermannsburg, and this is confirmed by the record. The Team Leader reports that she does not believe that any electors were disenfranchised.

30.24 Again, in the interests of balance, it is necessary to report that the Team Leader of Remote Mobile Polling Team 16 has advised that she found the behaviour of the male NTCLP scrutineer to be imposing and intimidating, and her opinion was supported at the time by female Aboriginal voters and other staff. Further, the AEC was advised after the election that this NTCLP scrutineer made tape recordings of the conversations between team members and scrutineers without their permission or knowledge, and took photos in the Hermannsburg polling place without the approval or knowledge of the Team Leader.

30.25 *Railway Side* (*Tangentyere) Polling Place*: In part 7.6 of the AEC submission No 88, the AEC has already reported on the appointment of this static polling booth, but Ms Cavanagh has made further and more specific complaints that now require response. Ms Cavanagh says that, “Tangentyere Council is a body funded by the Federal Government (ATSIC) to administer funds and generally look after the needs of residents in twenty aboriginal town camps around Alice Springs. The body or its employees can hardly be considered non-political or bi-partisan when it comes to political issues given the Federal Government decision on Wik and the local referendum on Statehood. Persons employed at this place were working directly against the

NT Government policies and the CLP candidate before and during the election. These same people were given control and management of polling booths."

30.26 Putting to one side the surprising suggestion that persons working for organisations distributing government funding, or persons who might privately disagree with government policy, should be excluded from participation in the administration of federal elections, Ms Cavanagh provides no evidence to support her assertion that AEC staff were "working directly against … the CLP candidate … during the election". All staff employed by the AEC as polling officials are first required to make an official application which contains the standard AEC statement about political affiliations (Attachment 12), and then interviewed to assess their skills and qualifications, which may include familiarity with the electorate and ability to speak the local language. Finally, they must sign an Acceptance of Offer and Undertaking, which includes statements on political activity, disclosure of official information, and behaviour in the polling place.

30.27 Further, the suggestion that persons employed by the Tangentyere Council should not have been employed by the AEC as polling officials, because the Council may have disagreed with the Northern Territory Government on some issues, is similar to saying, for example, that the AEC should not have employed teachers as polling officials because they were members of the Australian Education Union (NT Branch), which had been in dispute with the Northern Territory Government. Without the traditional augmentation of AEC staff by teachers during an election period, the ranks of AEC polling staff would be considerably diminished. This same observation applies to the employment of Aboriginal people and those who work with Aboriginal people, particularly those with good language and literacy skills.

30.28 The polling officials employed by the AEC for the Tangentyere polling place have now read Ms Cavanagh's submission and have reported to the AEC that they feel personally insulted by its criticisms of their professional conduct. They say that they took their positions as polling officials with the AEC in order to be of assistance to the Aboriginal people that they service in their usual employment, and that they were at all times politically neutral in their conduct. They say that none of them had taken any action prior to or on polling day on any political issue; they are simply employees of the Tangentyere Council and should not be held personally responsible for any political views the Council may hold.

30.29 Ms Cavanagh says, "It is not obvious why this polling place was not called Tangentyere Council which is where it actually was located if it was a fixed booth. In the AEC's own records this polling booth is listed as the Railway Side mobile or Remote Mobile 22….". In fact, the proper name of the static polling place, as gazetted by the AEC, was Railway Side, and advertisements advising the locations of polling in the Northern Territory carried the following relevant entry under Polling Places: "Railway Side: Tangentyere Council Building, 3 Kidman St, Alice Springs." As Ms Cavanagh herself notes, the site was originally to be part of a mobile polling itinerary, but

because of complaints by the NTCLP, was eventually gazetted as a static polling place.

30.30 Because the gazettal of Railway Side as a static polling place was so near polling day, and the computerised results system had already been programmed, the computer was unable to accept the polling place as a static booth for the purposes of recording results. So that the count for the booth could be included in all publicly released results, and because it was still technically possible at that late stage to add or delete mobile polling teams, the static polling place of Railway Side was included as a *nominal* mobile result. This administrative arrangement was internal for the recording of the count only, and at no stage was Railway Side polling place ever appointed or treated as a site for mobile polling.

30.31 Ms Cavanagh makes a number of specific complaints about the conduct of the polling at the Railway Side (Tangentyere) polling place. However, it should be noted that the polling place was visited by the Assistant Divisional Returning Officer (ADRO) in Alice Springs eight times during polling day, and at each visit the ADRO made sure that voting was in accordance with the Electoral Act and AEC procedures. The ADRO reports that his comment at midnight to the NTCLP was along the lines of, “everyone has had a hell of a day!”

30.32 The claim by Ms Cavanagh that Mr William Tilmouth, who was not employed by the AEC, “helped in controlling the conduct of the voters outside the booth” is correct, but her criticisms are over-stated. The officer-in-charge (OIC) of the polling place, an Aboriginal woman with extensive electoral experience, reports that she advised Mr Tilmouth that his crowd control activities within the six-metre limit were not required, but that he did not desist. Mr Tilmouth apparently saw his self-appointed role as assisting in queue control during the busy hours of the morning, and it is worth noting that he successfully removed and/or pacified several drunk electors.

30.33 Ms Cavanagh says that, “Other unauthorized persons were allowed to remain within the polling booth…The presiding officer has been derelict in allowing persons who were not voters, polling officials or scrutineers to remain within the polling place”. Ms Cavanagh goes on to quote obscene language from a person who she says also assaulted a NTCLP party worker by spitting at her. This alleged incident occurred outside the six metre limit and was therefore not under the control of the OIC. Ms Cavanagh says that this person was allowed in the polling booth before it opened and during polling without any authority, and was not removed despite three specific complaints to the OIC by an NTCLP scrutineer.

30.34 The OIC reports that there was a drunk elector who entered the booth several times. This was the same person who was apparently involved in the incident involving spitting and obscene language. This person was eventually removed from the booth by an Aboriginal woman, a local assistant employed by the AEC, who spoke in language to him and persuaded him to leave.

30.35 Ms Cavanagh alleges that NTCLP scrutineers were selectively removed from Tangentyere polling place whilst other scrutineers were allowed to stay. As it happens, this incident took place during one of the eight visits to the polling place by the ADRO, and he reports that the decision of the OIC to remove two NTCLP scrutineers from the polling place had his full support. As there were two issuing points, only two scrutineers from each candidate were allowed in the polling place. On this occasion, the NTCLP had four scrutineers in the polling place. After two of them had complied with the request of the OIC to leave, one was allowed to return later with an appointment as scrutineer for the Yes case for the Referendum on Statehood.

30.36 In relation to the allegation that “Some paid employees failed to identify voters by asking the questions as set out in section 229 of the Electoral Act…”, the OIC reports that on occasion she did have to remind polling officials to ask the required questions (and it might be noted that this is occasionally identified as a procedural failing at other polling booths across Australia). Polling staff report that they did call some electors by their first name because they knew them through working in the bank at Tangentyere Council, but that despite this personal familiarity, they did ask the required questions as instructed.

30.37 Ms Cavanagh claims that “One aboriginal voter who was literate enough to read her own name in an electoral roll and indicate who she was to the official when the roll was upside down on the table was given an assisted vote. This person having been given an assisted vote then remained in the polling booth and assisted other voters”. The elector in question has been identified by the AEC (*name suppressed),* and according to the polling official who was in attendance, this elector is well known to the Tangentyere Council as she utilises their banking facilities. The polling official reports that the elector is on a disability pension and needed assistance to vote. It should be noted that the simple ability of a person to recognise her own name in print does not mean that a person does not need assistance in voting. Whilst it is true that this woman assisted one other voter, the polling official reports that it was to tell her partner, in language, not to worry as assistance was available.

30.38 Ms Cavanagh purports to quote the OIC at Tangentyere as saying to a voter, in the vicinity of NTCLP party workers, “the CLP have been complaining all day, but we have had a big victory here”. The OIC reports that she did say to a voter, who asked how it [the polling] was going, that the CLP had been complaining all day. She is adamant that she did not say, “but we have had a big victory here”.

30.39 Ms Cavanagh complains that scrutineers for the No case at the referendum were allowed to assist voters. The view taken by the AEC was that anyone appointed by a voter to give assistance, including NTCLP and ALP election scrutineers, and Yes and No case referendum scrutineers, was entitled to provide assistance to the voter with the completion of both referendum and election ballot papers.

30.40 Ms Cavanagh summarises her complaints about the Railway Side (Tangentyere) polling place in the following way: “There was no pretence here at being unbiased or impartial with the major thrust being to outnumber and harass the CLP officers and scrutineers…it is our view that that the AEC was manipulated for Party political reasons by people with enough influence to ensure that the strategy went ahead…”

30.41 In making this serious allegation of political bias, Ms Cavanagh does not say exactly who was supposedly manipulating the AEC, and does not provide any other clear evidence to sustain such an allegation, beyond implying guilt by association with other organisations and individuals in planning polling arrangements; making unsustainable claims of procedural malpractice by the AEC in the appointment of the polling place and the conduct of polling; and providing contestable accounts of the behaviour of a few individuals.

30.42 In the interests of balance, it is necessary to report that AEC staff at the polling place have reported that one particular NTCLP scrutineer *(name suppressed)* was continuously disruptive and intimidating inside the polling booth. As electors' names were being marked off the certified list of voters, it is reported that he knelt along side the electors, recording complaints about other unrelated issues. In the view of AEC staff, this behaviour was obviously intended to intimidate electors during the polling. The OIC asked this scrutineer twice to desist in his behaviour, but he continued.

30.43 When the ADRO entered the polling place during one visit, this same NTCLP scrutineer demanded that three sets of ballot papers not be placed in the ballot box because he objected to the assistance given. He argued, contrary to the provisions of the Electoral Act, that voters could not appoint whoever they wished to assist them. Eventually, the OIC asked this NTCLP scrutineer to leave the polling place, which he did.

30.44 *Admission of provisional votes:* Ms Cavanagh alleges that the processing of provisional votes by AEC staff in the Northern Territory was racially biased, because more attention was given to investigating the admissibility of the provisional votes of people with Aboriginal names than to investigating the admissibility of the provisional votes of people with “European” names.

30.45 Although many Aboriginal people have European names and are therefore easy to locate on the computerised Roll Management System (RMANS), some names, addresses and dates of birth may not be so easy to locate. It should be apparent to any objective observer that this is not an uncommon occurrence with Aboriginal people. Many Aboriginal people live in communities rather than at street addresses; many have more than one name (European or Aboriginal or a combination of both); and many do not know their exact date of birth or even the year of birth. RMANS is equipped with a number of sophisticated search engines (including ‘fuzzy matching’) to attend to such difficulties, so that Aboriginal people are able to exercise their franchise equally with all other voters in Australia.

30.46 The experience of AEC staff in the Northern Territory suggests that some NTCLP scrutineers were not familiar with the complex procedures involved in the preliminary scrutiny of provisional votes, all aspects of which have not been of interest at previous elections. It is possible that the increased interest in observing all these procedures, including follow-ups such as signature checks, at the 1998 federal election resulted from amendments to Schedule 3 of the Electoral Act just prior to the election by the *Electoral and Referendum Amendment Act 1998*.

30.47 The effect of these legislative amendments was to effectively bring the Northern Territory into line with the rest of Australia, by now allowing the admission of provisional votes where the elector moves from one subdivision to another subdivision but within the Division of the Northern Territory and is deleted from the roll by objection in error (see paragraphs 7.6.2 to 7.6.6 of submission No 88). However, it should be noted that these same amendments also prevent the reinstatement of the enrolment of such provisional voters, as still operates under specified conditions for the rest of Australia (see part 9.12 of submission No 88.)

30.48 The impact of the legislative amendments that now save more provisional votes in the Northern Territory from rejection was dramatic. For the 1996 federal election, there were 3,516 rejected declaration votes of which 2,529 were provisional declaration votes. At the 1998 federal election, there were 1,895 rejected declaration votes of which 980 were provisional declaration votes.

30.49 This significant decrease in the number of provisional votes rejected in the Northern Territory, or to put it another way, this significant increase in the number of provisional votes admitted (many of which would have been cast by Aboriginal electors) may have persuaded the NTCLP that the provisional votes of Aboriginal electors were given favoured treatment during the preliminary scrutiny in the Northern Territory. To the contrary, all provisional votes cast in the Northern Territory are now given equal treatment with provisional votes cast in the rest of Australia, and the problems that come with the identification of electors with difficult names are not confined to Aboriginal people.

30.50 The preliminary scrutiny process under Schedule 3 of the Electoral Act aims to match the personal particulars of the provisional voter as recorded on the face of the declaration envelope with a current or deleted enrolment record on RMANS. Where an exact matching record is found using the name and date of birth details from the declaration envelope, the admissibility of the provisional vote is easily confirmed.

30.51 If no exact matching record is found on RMANS, further search methods are used, including searches by variations to date of birth, surname and/or given names, and searches by address. A near match, or one where there is some doubt, is put aside for later comparison between the declaration

envelope details and a copy of the original electoral enrolment form, so that original personal signatures can be compared.

30.52 In support of her allegation of racial bias by the AEC in the preliminary scrutiny of provisional votes, Ms Cavanagh cites the case of a rejected provisional voter named “Shaun”. The AEC has examined all 980 rejected provisional declaration envelopes in the Northern Territory and has found that there were no rejected provisional votes with the christian name Shaun on the declaration envelope. An investigation of the rest of the rejected declaration envelopes showed that there were two rejected pre-poll declaration envelopes with the christian name “Shaun”. Further investigations have confirmed that these pre-poll votes were correctly rejected at the preliminary scrutiny.

39.53 Ms Cavanagh alleges that NTCLP scrutineers were prevented from observing all aspects of the preliminary scrutiny of provisional votes: “…votes from the other three baskets were subjected to further tests of eligibility at another place and another time before a final determination was made as to their status. This further process was done by more competent officers in other offices and could not be scrutinised by CLP scrutineers”. This is simply not the case, and Ms Cavanagh does record the assurance of the DRO for the Northern Territory to this effect.

39.54 During the preliminary scrutiny, declaration vote envelopes were divided into four categories after the first round of RMANS inquiries. There were scrutineers present at all times during this procedure and any questions and objections concerning admissibility were properly addressed by AEC staff. The envelopes placed in the ‘accepted’ basket were those matched against a deleted enrolment record and the envelopes were admitted to the further scrutiny. The envelopes placed in the ‘certified list’ basket were those for which a current enrolment record was found, which meant that the names did actually appear on the original certified list of voters. These names were then marked off the certified list and the envelopes were admitted to the further scrutiny. The envelopes placed in the ‘follow-up’ basket were those where the information was insufficient to determine admissibility and further investigation was required. The envelopes placed in the ‘rejected’ basket were those where a matching record could not be found on RMANS.

30.55 In some cases personal contact was made with the electors concerned to clarify information and in others, signature comparisons were made with copies of the original electoral enrolment forms. Depending on the outcome of the investigation, these envelopes then moved into the ‘accepted’, ‘certified list’ or ‘rejected’ basket. Contrary to Ms Cavanagh’s assertion, these further investigations were actually conducted within the Divisional Office by the same officers who were conducting the computerised RMANS inquiries. However, these officers worked shifts, split between concentrated searches on the computer screens, and the less stressful further investigations, involving elector contact and signature comparisons. This work pattern was explained to the NTCLP scrutineers at the time.

30.56 It should be noted that all envelopes that ended up in the 'rejected' basket were subjected to a second RMANS inquiry, and this was conducted by a different officer from the one who conducted the first check. This second check was made known to the NTCLP scrutineers who were in attendance at the time.

30.57 Finally, Ms Cavanagh complains that the AEC illegally admitted to the count certain ballot papers that were not initialled as required by section 215 of the Electoral Act, and/or were not of the colour required by section 209(3) of the Electoral Act. Ms Cavanagh may be unaware that section 268(2) of the Electoral Act provides the DRO with the necessary authority to admit the ballot papers in question to the count, as the NTCLP scrutineers were advised at the time.

30.58 In conclusion, the AEC does not believe that Ms Cavanagh has made out her case that assisted voting and remote mobile polling in Aboriginal communities, or the preliminary scrutiny of provisional votes, were conducted by the AEC in an illegal or improper manner in the Northern Territory at the 1998 federal election. Further, the AEC does not support the amendments proposed by Ms Cavanagh to section 234 of the Electoral Act in relation to assisted voting.

30.59 Allowing the representatives of political parties to invade the secrecy of the ballot, without the request or approval of the voter requiring assistance, would involve a selective diminution of the rights of some of the most disadvantaged people in our society, including not only Aboriginal people with language and literacy problems, but also people with physical disabilities such as blindness. Further, there are particular problems associated with allowing the disclosure of the personal voting behaviour of people who reside in small communities. Elsewhere in the world, electoral practices involving breaching the secrecy of the ballot have been condemned as opening the way to the politics of retribution (see for example paragraph 10.3.6 in submission No 88).

30.60 However, the AEC does suggest that one aspect of Ms Cavanagh's list of complaints and allegations deserves particular attention by the JSCEM. As Ms Cavanagh rightly points out, section 218(1) of the Electoral Act prohibits a scrutineer from (a) interfering with or attempting to influence any elector within the polling booth, or (b) communicating with any person in the polling booth except as is necessary in the discharge of the scrutineer's functions.

30.61 To date, the AEC has not interpreted this prohibition as applying to scrutineers who are appointed by a voter under section 234 of the Electoral Act to provide assistance in voting. However, the AEC acknowledges that a different interpretation is possible. The JSCEM might consider whether the Electoral Act should be clarified to expressly prohibit scrutineers from assisting in the casting of a vote. Such a change might have resource implications for candidates and political parties in providing scrutineers, as well as persons to assist in voting, at remote mobile polling. However, it might go some way to alleviating the concerns of the NTCLP about the conduct of assisted voting in Aboriginal communities at federal elections.

31 Submission No 94 – Una Gaff

31.1 The AEC is unable to comment specifically on the complaint by Ms Gaff relating to the time taken to deliver ballot materials from a small polling booth in the Division of Gwydir to the 'main' polling booth, as the names or locations of these booths are not provided. However, in general terms, there could be any number of perfectly justifiable reasons for the delivery of ballot materials taking up to three hours, including the following: an arrangement may have been made with the main polling booth not to deliver further materials until the count at the main booth was finished; the courier may have been picking up ballot materials from other smaller booths along the way; and there may have been any number of unpredictable delays such as transport failure and road difficulties.

32 Submission No 122 – E J Lockett

32.1 Mr Lockett proposes a number of changes to the rules governing Senate elections. He proposes abandoning the placing of ungrouped candidates together at the end of the ballot, and instead proposes that they be included as individuals in the draw for ballot positions. This would have the potential to increase the size of the ballot significantly. Mr Lockett would prefer, however, to use "full randomisation" in printing the positions of groups, individual candidates, and candidates within groups. This, again, would significantly complicate the printing of ballot papers.

32.2 Mr Lockett also suggests that above-the-line voters for the Senate be required to consecutively number boxes for all parties, groups and independents. This seems to indicate a misunderstanding of the ticket voting process: since voters, by placing a "1" in a ticket voting square, adopt a full preference ordering as their vote, there does not appear to be any point in requiring them to place numbers in additional squares above the line. Further, it is not clear how such votes would be counted.

32.3 Finally, Mr Lockett suggests that below-the-line voting be made simpler, and that individual candidates be permitted to lodge voting tickets, the aim in both cases being to decrease the advantage which grouped candidates are said to enjoy. This is a reasonable proposition, and any simplification of below-the-line voting would have much to recommend it.

33 Submission No 123 – Christine Scott

33.1 In relation to Ms Scott's complaints about the availability of scrutineer badges in the Division of Kennedy, the DRO has conceded that the allocation of scrutineer badges to polling places was less than adequate. He only became aware of this when it was too late to get additional supplies to polling places. However, OICs of polling booths were advised to make up badges, where necessary, from what resources they had. The problem will be rectified for the next election.

33.2 The problem of the unsealed box at Dalrymple Villa polling place was created when the OIC inadvertently broke the two plastic seals that were allocated to her. The DRO has reported that there was a witness with the box at all times. Where such situations occur, there are alternative means for sealing the boxes, such as security tape signed by the OIC and witnesses, and the OIC cocnerned will be specifically advised of this for future events.

33.3 In relation to the number of polling booths in Charters Towers, Mrs Scott does not appear to appreciate that once a polling place is gazetted, it remains a polling place until it is abolished, and that polling places are not re-appointed for each election. The polling places in Charters Towers were appointed when the population was far larger than it is now. A total of 4773 votes were taken at the six polling places in Charters Towers, compared to 2549 votes at the two Moranbah polling places referred to by Mrs Scott.

33.4 Greenvale was a mining community until the mid-1980s when the mine closed and it became a virtual ghost town. It is a polling place for State elections but not for federal elections. As commonality with State polling places is desirable, the DRO considered the possibility of creating a polling place at Greenvale and conducted an enrolment drive in the area in April 1998. He was able to secure about six enrolments only, with still less than 50 persons enrolled for the town of Greenvale. It was concluded there was insufficient justification for a polling place and 44 letters were posted to enrolled electors in the town on 28 April 1998 advising that there would not be a polling place at Greenvale, and inviting them to register as General Postal Voters.

33.5 However, the Queensland Electoral Commission (ECQ) decided to retain the polling place for the 1998 Queensland State election, and 83 votes were taken at that polling place. These votes would have come from the town, surrounding properties, and persons travelling between Charters Towers and Cairns. As there was significant property development and marketing of the area in the six months prior to the 1998 federal election, the DRO will examine whether a polling place for future federal elections is now desirable, especially if it continues to be a polling place for State elections.

33.6 Polling places are reviewed after elections and redistributions. The review is carried out in accordance with the AEC national resources policy where the benchmark for appointing metropolitan polling places is 1,000 to 1,200 votes and for rural polling places is 200 votes. When abolishing polling places, the benchmark is 100 votes, but the AEC also considers factors such as alternative facilities and commonality with State polling places where possible. The concerns raised by Mrs Scott about the number of polling places at Charters Towers, and the polling place at Mingela, will be considered at the next review of polling places in Queensland.

33.7 In relation to the distribution of how-to-vote cards at Charters Towers Hospital and Eventide Home, the DRO understands that party workers were not permitted by hospital administrators to go around to patients handing out how-to-vote material. However, under section 226(2A) of the Electoral Act,

candidates are able to supply issuing officers with how-to-vote material, and voters are advised of the availability of and given this material on request. Regardless of whether polling places continue to operate at Charters Towers Hospital and Eventide Home, the AEC will be ensuring that mobile polling facilities continue to be available to patients/residents in these establishments.

33.8 In relation to pre-poll voting facilities, the ECQ does provide for pre-poll voting at Court Houses. However, the AEC offers a general postal voting service to electors in rural areas who are not near a polling place. There are some 3,600 electors registered as General Postal Voters in the Division of Kennedy.

33.9 In relation to facilities for interstate voters, they are able to vote at AEC offices located at most major provincial centres throughout Queensland and also have the alternative of voting by post. In addition, interstate voting facilities are set up at centres, for example in tourist areas, where there is or is likely to be a reasonable demand. In the Kennedy Division, interstate voting facilities were available, on polling day, at Atherton, Camooweal, Cardwell and Mission Beach. It would be an expensive and unnecessary exercise to establish interstate voting facilities at every centre, as suggested by Mrs Scott.

34 Submission No 133 – Deane Crabb

34.1 *Method of election:* Mr Crabb argues that the use of proportional representation to elect the House of Representatives would have given a "fairer" result. This argument has been raised by the Electoral Reform Society of South Australia, and by the Proportional Representation Society of Australia, at most if not all JSCEM inquiries since 1983, and essentially reflects a particular view of the concept of "fairness" held by these organisations, that may not be shared by others.

34.2 *Voter Information:* Details of the extent of voter information provided by the AEC are at part 3 of submission No 88. In particular, contrary to Mr Crabb's claim that "Your Guide to the 1998 Federal Election" was not distributed widely, it was in fact provided to some seven million households in the fortnight before polling day, and the AEC has no reason to believe there were any special delivery problems in South Australia. In relation to the information on candidates, provided in an AEC publication for the 1997 Constitutional Convention election, there is no similar legislative requirement for federal elections.

34.3 *Division of Barker:* The polling arrangements made for Victor Harbour have been addressed above in response to submission No 66. On the Dukes Highway between Adelaide and Melbourne, in the Division of Barker, there were six polling places: Tailem Bend, Coomandook, Coonalpyn, Tintinara, Keith and Bordertown, and in Murray Bridge there were four polling places. Whilst there were facilities for interstate electors to vote at both Murray Bridge and Bordertown, there were no interstate polling facilities between the towns, which are approximately two hours travel time apart. However, anyone

travelling along the Dukes Highway would have passed through either if not both of those towns during the hours of polling.

34.4 There were long queues for absent voters at several polling places in the Division of Barker, and some people apparently left and returned later in the day. However, no polling place in Barker ran out of ballot papers. Several did exhaust supplies of envelopes, but they were either resupplied with envelopes or used ordinary envelopes. No electors were denied an opportunity to vote because of a lack of ballot papers or envelopes.

34.5 While it is quite possible that some voters may have been issued with ballot papers for an incorrect Division there is no evidence that this was at a greater level than at any other election. If someone was issued with an incorrect ballot paper, and was aware of it, they could have raised the matter with the issuing officer at the time rather than completing an incorrect ballot paper and placing it in the envelope.

34.6 *Division of Mayo:* The Division of Mayo had polling places at Stirling (2), Bridgewater, Hahndorf, Littlehampton, Mt Barker (2) and Callington. All the polling places listed for Mayo were easily accessible from the South Eastern Freeway between Adelaide and Murray Bridge. No reports were received of undue delays by absent voters and none of the listed polling places in either Barker or Mayo ran out of ballot papers or declaration envelopes.

34.7 *Division of Wakefield:* Twelve polling places on the Yorke Peninsula in the Division of Wakefield reported a shortage of ballot papers during the course of polling day: Corny Point, Edithburgh, Kadina (House of Representatives only), Marion Bay, Minlaton, Moonta, Moonta Mines, Pine Point, Port Victoria, Stansbury, Wallaroo and Warooka (Senate only). Of these twelve only two experienced considerable delays pending the arrival of additional ballot paper stocks: Corny Point and Warooka.

34.8 In all cases, the reason for the shortfall was the demand on absent voting caused by polling day falling on a long weekend in the middle of the school holidays. All twelve polling places were located in popular tourist locations and whilst estimated declaration votes were increased, demand exceeded expectations.

34.9 The following table shows actual 1993 and 1996 declaration votes, estimated 1998 declaration votes, and actual 1998 declaration votes, for the affected polling places:

Declaration Votes				
Polling Place	**1993 Actual**	**1996 Actual**	**1998 Estimate**	**1998 Actual**
Corny Point	61	77	120	202
Edithburgh	180	172	350	440
Kadina	146	155	350	336
Marion Bay	104	125	180	345
Minlaton	83	104	120	221
Moonta	365	366	520	842
Moonta Mines	28	28	55	120
Pine Point	73	78	100	188
Port Victoria	140	114	120	255
Stansbury	182	200	320	398
Wallaroo	342	320	450	642
Warooka	162	177	200	372

34.10 Estimating for absent votes in the Division of Wakefield included a provision for the high postal and pre-poll vote expected in metropolitan Divisions. This in effect should have reduced the overall issue of absent votes in country Divisions. Whilst it was possible to secure reasonably accurate data from caravan parks and other tourist accommodation providers on expected occupancy over the long weekend, estimates of ‘day trippers’ proved inadequate in some instances. This was particularly apparent at Port Victoria. At Pine Point and Moonta Mines, and electors trying to avoid the long queues at nearby large polling places, such as Ardrossan and Moonta, increased the absent vote.

34.11 The long delays at Corny Point and Warooka resulted from their location at the end of the Polling Place Liaison Officer routes. PPLOs supplied ballot papers to Corny Point, Edithburgh, Marion Bay, Minlaton, Pine Point, Port Victoria and Stansbury. Divisional staff supplied ballot papers to Kadina, Moonta, Moonta Mines and Wallaroo. Ballot papers were photocopied at Moonta and Warooka.

35 Submission No 140 – Cheryl Edwardes MLA

35.1 The proposal that the political parties come to an agreement to encourage the re-use of how-to-vote cards, and their printing on more environmentally appropriate paper, would be supported by the AEC. The AEC already has procedures in place for the recycling of all waste paper materials that remain at polling booths after elections.

36 Submission No 141 – Jim Lloyd MP

36.1 In relation to Mr Lloyd’s complaint about the level of provisional voting in the Division of Robertson, the AEC has reported the statistics in Attachment 25 to submission No 88. For comparative purposes, it might be noted that a detailed analysis of provisional voting in the Division of Eden-Monaro, for which the same general conclusions apply, is provided in response to issues raised at the public hearing of 1 April 1999, later in this submission.

36.2 Mr Lloyd says that "my staff had been working for the whole term of the Government to ensure that those rolls were in the best possible state at the time of the election. A habitation check was undertaken electorate wide in the months prior to the election. One would have expected that if the AEC were confident of the work undertaken in that check, then no correspondence would be considered outside those rolls." (It is assumed that the "habitation check" referred to by Mr Lloyd was the 1998 NSW Electoral Roll Review.)

36.3 It is not clear what Mr Lloyd means by "no correspondence would be considered outside those rolls", but Mr Lloyd does not appear to appreciate that the roll changes continuously right up until the close of the rolls for an election. A habitation check undertaken in the months prior to the election does not produce a final and static document, that stays the same until the close of rolls. In the context of the timing of enrolment checks, and Mr Lloyd's later complaints about return-to-sender mail and postal addresses, reference should be made to the response above to submission No 26 from Senator Reid. In relation to roll cleansing activities undertaken by the AEC, reference should be made to part 4 of submission No 88.

36.4 Mr Lloyd asserts that the preliminary scrutiny of provisional votes is totally unacceptable because his scrutineers were denied the right to be informed of the names and addresses of provisional voters. Mr Lloyd's scrutineers had the same rights as any other scrutineer in the Division of Robertson: they were entitled to observe and record the names and addresses of provisional voters as displayed on the declaration envelopes as they are checked against the computerised Roll Management System (RMANS) by AEC officers. After the election is completed, no Member of Parliament, or any other citizen for that matter, is entitled to be provided with lists of the names and addresses of electors who voted provisionally: such personal information is protected from disclosure by both the *Privacy Act 1988* and the *Freedom of Information Act 1992.*

36.5 Mr Lloyd's complaints about provisional voting are similar to those raised in submission No 161 from Dr Amy McGrath, and submission No 162 from the Liberal Party Secretariat, which are addressed later in this submission. In relation to the enrolment reinstatement of provisional voters, the AEC has recommended legislative changes in part 9.12 of submission No 88.

36.6 The AEC has addressed the issue of 'dead' voters in the Division of Robertson in part 10.2 of submission No 88. Mr Robertson is not correct in his assumption that five dead people voted, and he was advised accordingly on 12 April 1999 (Attachment 13).

37 Submission No 145 - Mark Roberts

37.1 The DRO for Gwydir has reported that the mobile polling schedule provided to all candidates did contain incorrect information as claimed by Mr Roberts. All candidates received the same incorrect schedule and the error

was not detected until late in the week of mobile polling, by which time it was too late to contact candidates. That is, no candidates or political parties were advised of the error, either by telephone or mail. It is possible that some political parties contacted the relevant institutions to directly confirm the times of polling.

37.2 On 12 November 1998, in response to a similar complaint to that raised here by Mr Roberts, the AEO for NSW wrote to the Gilgandra Branch of the One Nation Party apologising for the error in the mobile polling schedule, and advising that no candidates or parties received any special information not available to other candidates or parties.

38 Submission No 157 – Senator Grant Tambling

38.1 In his submission, Senator Tambling makes a number of complaints about the conduct of polling in the Northern Territory by the AEC, particularly in relation to assisted voting and remote mobile polling at Aboriginal communities. Many of Senator Tambling's complaints are similar to those made in submission No 92 by Ms Suzanne Cavanagh, the Secretary of the Northern Territory Country Liberal Party (NTCLP), which have been addressed earlier in this submission. Senator Tambling also recommends an investigation into 'gifts in kind' allegedly provided to Mr Warren Snowdon MP at the 1993 and 1998 federal elections, and raises again his concerns about the status of electors from the external territory of Christmas and Cocos (Keeling) Islands.

38.2 *Remote mobile polling and assisted voting in Aboriginal communities*: It should be noted in the context of any suggestions that the AEC was unduly influenced by any one political party in the selection of remote polling places in the Northern Territory, that the selection process involves input from both empirical data on official enrolment statistics, and anecdotal information on the distribution of the population. Enrolment statistics alone can not provide a reliable picture of the location of those people who live an itinerant existence, or must travel across the country at unpredictable times for cultural and spiritual reasons, or for sporting carnivals and other community gatherings. Valuable information on population movements is often obtained by the AEC from people and organisations who have local contacts and are familiar with community networks, including all candidates and all political parties. The AEC makes no apology for seeking the best information where it can on population movements, so as to ensure effective coverage of the 1,347,525 square kilometres of the Northern Territory.

38.3 Senator Tambling says that "Staff recruited by the Australian Electoral Commission to conduct mobile polling must be impartial, have no links with a political party and should be thoroughly vetted to ensure this is the case". As explained in response to submission No 92 above, all AEC polling staff employed across Australia are required to pass through the same level of scrutiny in relation to possible political affiliations. Senator Tambling then says "A change in procedures is required to make the checking of an applicant's

political affiliation mandatory and thorough." It is not clear what Senator Tambling has in mind, so the AEC is unable to offer any further comment.

38.4 Senator Tambling observes that at every federal election the Northern Territory records an extremely high number of assisted votes, and adds that "At some polling booths in remote areas it appears to be standard procedure for voters to receive assistance. This assistance is often provided by the same person repeatedly…". There is no reason to doubt the truth of this, but the conclusion drawn by Senator Tambling, that it "…appears to be an organised effort to gain the maximum number of votes for a particular party", is open to a number of interpretations. It is undeniable that many Aboriginal voters in remote areas of the Northern Territory appear to cast their votes for one particular political party, and that the same political party is able to deploy scrutineers and party workers at many remote polling places, but this need not be taken as indicating undue influence or electoral fraud.

38.5 Senator Tambling observes that "A person waiting just outside the door of a remote booth, repeatedly 'grabbing' voters and leading them to the ballot paper and indicating where it should be marked or marking the ballot paper with no request from the voter, is not how the process is expected to work". The AEC agrees with Senator Tambling that assisted voters must indicate their own preferences, but there is no evidence that such procedural failings are "common in the Northern Territory". Responses provided by the members of Remote Mobile Polling Teams in response to submission No 92 indicate that such generalised complaints lack balance and credibility.

38.6 Senator Tambling concludes that "Polling officials in many remote areas are not policing assisted voting in the correct manner and it is an aspect of the Electoral Act that is in need of urgent review". The AEC rejects any suggestion that polling officials at remote polling places did not apply the provisions of section 234 of the Electoral Act correctly. Further, as indicated in response to submission No 92 above, there is evidence from the reports of polling officials that some NTCLP scrutineers misunderstood section 234, assuming that it was in the same terms as section 71 of the Northern Territory Electoral Act. Amendments were recently proposed to the federal Electoral Act, that would have allowed candidate and political party scrutineers to observe the actual casting of all assisted votes, similar to section 71 of the Northern Territory Electoral Act. However, as reported in part 7.6 of submission No 88, the proposed amendments were not supported by the Senate.

38.7 Senator Tambling then suggests that "Failing a review of the Act, an independent team of polling officials from interstate is needed at the next Federal election to ensure that the process of assisted voting is carried out at all remote booths equitably". Assuming it were to be established that there is a real problem with assisted voting in the Northern Territory, and the AEC does not accept that there is, such an arrangement would remove all local experience and expertise from the remote mobile polling process, and severely impact on costs and efficiencies within the AEC.

38.8 If Senator Tambling and the NTCLP remain of the view that assisted voting requires greater accountability, then more scrutineers could be deployed by the party to observe assisted voting at all remote polling places, in order to gather solid evidence of any illegalities under the Electoral Act. In the final resort, it is always open to the NTCLP to petition the Court of Disputed Returns if it believes that it has the evidence necessary to sustain any allegations of illegalities in assisted voting.

38.9 *Irregularities on Remote Mobile Polling Team 16:* Senator Tambling says that "a serious and embarrassing administrative error involving mobile team sixteen took place during the election. Votes were not correctly recorded for each community visited, several communities listed to be visited were not and some communities that were visited had nobody vote. This resulted in the AEC, I am informed, having no record of votes cast at the communities visited". Some irregularities did occur on this mobile polling route, but as explained in response to similar criticisms in submission No 92, they were mostly in reaction to unpredictable logistical problems which do occasionally arise during remote mobile polling; they did not result in any elector known to the AEC losing the right to vote; and they did not have any impact on the validity of the count or the result.

38.10 Irregularities were discovered in the manual record of votes cast at several small sites along the route taken by Remote Mobile Polling Team 16. However, these irregularities in the manual record had no effective relationship to the transport and security of the ballot papers, or the official scrutinies and counts of those ballot papers, which were conducted with scrutineers in attendance. Nevertheless, and without making any inquiries of the AEC, the NTCLP chose to refer this matter directly to the AFP for investigation. When the AEC became aware of the AFP investigation, a meeting was held with the NTCLP to explain the problem. The NTCLP then withdrew the complaint to the AFP.

38.11 *Preliminary scrutiny of provisional votes:* Senator Tambling criticises the "laborious manner and excessive time" involved in the preliminary scrutiny of provisional votes, and claims that there were inconsistencies in the admissibility of provisional votes which seemed to rely on "the personal discretion of AEC employees". All AEC staff involved in the processing of provisional votes through the preliminary scrutiny were properly trained in July 1998, and additional training was given at the commencement of the scrutiny. As explained in response to submission No 92 above, AEC staff work on a continuous basis on various search screens on the computerised Roll Management System (RMANS), and many scrutineers may not understand what they are watching as provisional votes are processed. The AEC spends as much time as is necessary to verify the inclusion/exclusion of any particular declaration envelope, and cannot risk disenfranchising voters because of party or candidate frustration over the time taken to investigate and make reliable decisions on the admissibility of votes.

38.12 *Delays in production of polling booth statistics:* Because of the irregularities in the manual record of votes cast along the route of Remote Mobile Polling Team 16, there was a delay in the production of the Territory-wide statistics on votes cast at each mobile polling place. There were over 240 mobile polling places, and statistics have to be extracted manually from the OIC returns for each mobile polling team. As a general rule, these statistics are produced after AEC staff have dealt with more urgent priorities such as the various scrutinies, rechecks and counts, and the payment of 900 polling officials and casual assistants. On the other hand, there was no delay in the provision of the official results of the ordinary, postal, pre-poll and provisional counts, which were made available on the day of the count. The declaration of the poll for the Northern Territory took place without any undue delay on Friday 23 October 1998.

38.13 *Railway Side* (*Tangentyere) polling place:* The complaint by Senator Tambling that the Railway Side (Tangentyere) polling place was appointed by the AEC "against the advice of the Country Liberal Party and despite several protests against the inequity and impropriety of such a booth" has been addressed in part 7.6 of submission No 88, and further in response to submission No 92 above.

38.14 *Allegations of undeclared donations/gifts to ALP candidate:* Senator Tambling invites the JSCEM to investigate whether undeclared 'gifts in kind', as defined in the Electoral Act, were provided to Mr Warren Snowdon MP by the Northern Land Council at the 1998 federal election, similar to undeclared 'gifts in kind' he claims were provided to Mr Snowdon at the 1993 federal election. Despite noting that Mr Snowdon advised the AEC on 22 January 1999 that he was not aware of any 'gifts in kind' at the 1993 federal election, Senator Tambling concludes that "The ALP and Mr Snowdon failed to declare this substantial assistance on their candidate returns for the 1993 election. This failure is deplorable, inequitable and most importantly is a waste of Land Council, and thus Aboriginal people's resources on a political exercise".

38.16 The AEC has made inquiries into the allegations made in relation to the 1993 federal election, and upon the conclusion of those inquiries and the relevant Supreme Court case in the Northern Territory, will determine whether any further investigation is warranted. Beyond Senator Tambling's assertions in this submission, the AEC is not aware of any similar allegations in relation to the 1998 federal election.

38.17 *Christmas and Cocos (Keeling) Islands:* The issue of the status of electors on Christmas and Cocos (Keeling) Islands as part of the Northern Territory for federal electoral purposes was the subject of a submission by Senator Tambling, No 54 of 21 March 1996, to the previous JSCEM. The AEC responded in submission No 90 of 20 September 1996 (Attachment 14). The inclusion of external Territories in mainland Divisions for electoral purposes has been addressed by the AEC, in relation to the status of Norfolk Island, in submission No 139 of 21 December 1993, in submission No 30 of 30 July 1996, and in submission No 84 of 16 September 1996 (Attachment 15).

39 Submission No 160 – Barry Wakelin MP

39.1 In submission No 22 of 8 February 1999, Mr Wakelin said that he wished to present evidence at a later date to the JSCEM on the following three issues: (a) voting practices in remote and isolated areas, and the use of mobile polling teams by the AEC; (b) administration of the AEC, including the location of AEC offices and polling places, and the management of postal and absentee polling, and (c) opportunities to use flexible polling procedures in regional and rural Australia.

39.2 In submission No 160 and in oral evidence at the public hearing of 23 March 1999, Mr Wakelin provided detail on the following complaints and allegations with respect to the conduct of the federal election in the Division of Grey in South Australia:

- re-location of Grey Divisional office
- signage at Port Pirie
- location and advertising of polling facilities
- issuing of postal ballot materials to electors travelling overseas
- issuing of postal ballot materials to Fraser elector
- appointment of Salisbury polling place
- variations in special hospital mobile polling itineraries
- pre-poll voting at Roxby Downs
- remote mobile polling at Davenport Community
- costs of remote mobile polling in South Australia
- variations in remote mobile polling itineraries
- low informal voting rates in remote communities
- assisted voting in remote communities

39.3 The underlying theme of these complaints and allegations is that the AEC failed to conduct the election in the Division of Grey in a lawful, proper and efficient manner, and in particular, that the AEC concentrated too many of its resources on the provision of voting facilities to Aboriginal communities, at the expense of non-Aboriginal electors, such as those in mining communities and on pastoral properties. The AEC categorically rejects any suggestion that Aboriginal electors were serviced at the expense of non-Aboriginal electors in the Division of Grey, but remains concerned about Mr Wakelin's complaints and allegations of general mismanagement of the 1998 federal election in the Division.

39.4 The AEC notes that in response to a question from Senator Faulkner about hearsay evidence, at the public hearing on 23 March 1999 in the Hansard transcript page EM4, Mr Wakelin said that he had not raised his allegations of "improprieties" directly with the AEC, and said, "…I wanted to bring it to this committee first. I did not want to give the AEC the opportunity to prepare their case before I brought it to this committee". The AEC now provides the following detailed responses to all complaints and allegations raised by Mr Wakelin in his written and oral submissions to the JSCEM.

39.5 *Relocation of Grey Divisional office:* The Grey Divisional office was relocated on 9 June 1998 from Port Pirie to Port Augusta to improve service provision to electors in the Division of Grey. The 1996 Census showed a population of 125,129 for the Division. Of this population 55,842 (45%) lived west of Spencers Gulf and 33,709 (27%) lived in Port Augusta and to the north of the Gulf. The location of Port Augusta at the top of Spencers Gulf makes it the transport and communication hub of the west and north of the State and the Division of Grey.

39.6 The number of federal electors in the Division of Grey at 22 September 1997 was 83,546. Of these, 65.5% lived in Port Augusta or to the west and north of the city. When these electors commuted to Adelaide they passed through Port Augusta and many therefore relied on Port Augusta for Government service provision. The relocation also enabled the AEC to improve service provision to remote Aboriginal communities, because the State Department of Aboriginal Affairs, and ATSIC, also have offices located in Port Augusta. This information on the empirical basis for the relocation of the Grey Divisional office is already on the public record in a response to Mr Wakelin's Question on Notice No 2324 (*House of Representatives Hansard 17 November 1997 page 10601*).

39.7 On 30 May 1997, the AEC consulted with Mr Wakelin on the proposed relocation of the Grey Divisional office, and at that time he appeared to have no objection to the move. However, Mr Wakelin appeared to change his mind when the Mayor and the Chief Executive Officer of the Port Pirie City and Districts Council raised objections to the relocation with the AEC and the Special Minister of State, claiming that the relocation was based on subjective rather than empirical considerations, specifically, staffing problems in the Divisional office at Port Pirie. This claim has no foundation in fact.

39.8 *Signage at Port Pirie:* Mr Wakelin says that, following the relocation of the Grey Divisional office from Port Pirie to Port Augusta on 9 June 1998, no attempt was made to remove AEC signage left behind in Port Pirie, despite requests from his staff. Correspondence between Mr Wakelin and the Electoral Commissioner in February 1999 on this issue is at Attachment 16. It would appear that various misunderstandings were involved, including difficulties with other responsible agencies, vegetation growing over one of the signs, and problems in locating wiring and power sources.

39.9 *Location and advertising of polling facilities:* Mr Wakelin says that the AEC used "idiosyncratic methods" to advertise polling places in the Division of Grey, with only "partial lists" in the local press. Mr Wakelin may not be aware that the use of locality lists of polling stations in rural regions is standard practice for polling place advertisements, and experience suggests that it is the most efficient use of the resources allocated for this form of advertising.

39.10 Mr Wakelin says that the advertising of polling facilities in Port Pirie was incorrect. There was a problem in the advertising of the Risdon Park South polling place that the AEC made every attempt to rectify. A proofing error at the advertising agency led to the premises being incorrectly

advertised, and as soon as the mistake was identified, advertisements were placed with the local ABC radio station. The local television station had a short copy deadline and would not take the corrected advertisement. The former premises were sign-posted with a redirection sign to the new premises.

39.11 In relation to Mr Wakelin's complaint about the location of polling facilities in Port Pirie, the township has five polling places: Port Pirie South, Port Pirie West, Risdon Park East, Risdon Park South, and Solomontown. Two of these polling places changed locations between the 1996 and the 1998 federal elections after a review in July 1998. At Port Pirie South, the old premises, a church hall, had been sold and the new owners would not make it available for the election. In August 1998 the DRO found a suitable alternative at a college one kilometre away. At Risdon Park South, the old premises in the South Gymnasium were in poor repair and a better alternative was found in an adjoining street some 500 meters away. This was the polling place that was incorrectly advertised.

39.12 When polling place bookings were made after the announcement of the election, the Port Pirie West polling place at the TAFE college was pre-booked for a wedding and an alternative was found two streets (one kilometre) away at the Red Cross Centre. The new venue was much larger than the TAFE premises and the additional space was utilised to establish the Port Pirie Pre-Poll Voting Centre. The Red Cross Centre is located in the main street in the major shopping area, and it was also considered well placed for visitors attending the Port Pirie Country Music Festival on polling weekend.

39.13 It should be noted that the timing of the election on a long weekend during the school holidays led to a number of changes to polling place venues across South Australia, particularly in major rural and tourist areas, due the high incidence of country festivals, special race days, art festivals and weddings. Of the 81 static polling places used at the 1996 federal election, 13 of these had to be relocated because of prior bookings by others for the 1998 federal election period. These 13 polling places were relocated as close as possible to the original sites in the same towns.

39.14 *Issuing of postal ballot materials to electors travelling overseas:* Mr Wakelin complains that: "My office was privy to the concerns of numerous constituents who had applied for postal votes and had experienced significant delays or simply had not had their applications processed. This caused trauma for electors travelling overseas or otherwise operating to stringent timetables".

39.15 The writ for the election was issued on Monday 31 August 1998. The printing of all ballot papers, an operation which must be conducted under controlled conditions, took place as soon as possible after the close of nominations, and the draw for ballot paper position, on Friday 11 September 1998. The first delivery of ballot papers to Divisional offices, including to the Division of Grey, occurred on Sunday 13 September 1998. No Division, including the Division of Grey, was in a position to begin to process postal

vote applications until Monday 14 September, after the close of nominations and two weeks after the issue of the writ for an election.

39.16 About the time of the provision of postal ballot papers to the Division of Grey, a number of calls were received in the Divisional office from electors who were about to depart for overseas travel, and who had applied for a postal vote, but had not yet received their postal ballot papers. Many of these callers complained that they had received written notification from the AEC that they would be delivered their postal ballot papers on Monday 14 September. In fact, that was the day on which much of the postal ballot material was *posted* by the AEC, rather than *delivered* to its destination.

39.17 Through direct telephone contact with a number of these electors, it was discovered that the written advice in question had been sent from Mr Wakelin's office, without prior consultation with the AEC. Unfortunately, this initiative from Mr Wakelin's office raised unrealistic expectations of service amongst many electors that could not possibly be met by the AEC. The Grey Divisional office suggested a number of alternatives to these electors, for example, that they could cast a pre-poll vote at the time of their departure, or later at an overseas Embassy/High Commission, and on their return, they could destroy the postal ballot materials already in the post to them.

39.18 A total of 6,548 postal vote applications were issued by the Division of Grey throughout the postal voting period, and 4,860 of these applications were processed by COB Monday 21 September 1998. The remaining 1,688 applications were processed by COB Thursday 1 October 1998. There were 38 postal vote applications for the Division of Grey that could not be processed because they were received too late (35 from Roxby Downs). Of the 71 defective postal vote applications received for the Division of Grey, all applicants were offered alternative means of voting.

39.19 *Issuing of postal ballot materials to Fraser elector:* Mr Wakelin complains that one of his staff members, who was enrolled in the Division of Fraser in the Australian Capital Territory, applied for a postal vote through the Grey Divisional office, but the postal vote materials failed to arrive. When he called the Grey Divisional office to complain he was advised that he should cast a pre-poll vote. Mr Wakelin says that this staff member, on returning to Canberra, recovered the postal ballot materials, which had been sent to his enrolled address in the Division of Fraser, rather than the postal address he had nominated. Further, Mr Wakelin says that the postal ballot materials were for the Division of Grey rather than for the Division of Fraser.

39.20 The AEC notes that the staff member did in fact cast a vote for the federal election. After checking the counterfoils for the Whyalla Pre-Poll Voting Centre, the name of the elector has been identified (*name suppressed*). It is not possible for the AEC to determine whether postal ballot materials were issued to this elector for the Division of Grey or the Division of Fraser, but if the materials are still in the possession of the staff member, then they could be forwarded to the JSCEM for confirmation.

39.21 However, it can be confirmed that the postal ballot materials were posted to the enrolled address rather than the nominated postal address in the Division of Fraser. It is significant that the postal application form submitted by this elector was an old form, EF048 3/95, on which the enrolled address box and the postal address box are in reverse order to the current EF048 4/98. Of the 6,548 postal vote applications received in the Division of Grey, this was the only application form of this type processed. Given that the old form sent in by this elector had important address categories reversed, it is possible an error in the postal address was made by AEC staff during this very busy period.

39.22 *Appointment of Salisbury polling booth:* Mr Wakelin refers to the "mystifying" decision to appoint a polling place at Salisbury in Adelaide for electors from Bonython and Grey for the purposes of a sporting carnival in the area. The relevant correspondence between Mr Wakelin and the AEC is at Attachment 17. Consultations with the organisers of this event suggested that the establishment of this polling place would provide a service for significant numbers of Aboriginal electors, but as there were only 36 votes taken, it would appear in retrospect that the appointment was indeed unnecessary.

39.23 *Variations in special hospital mobile polling itineraries:* Mr Wakelin complains that the AEC chose to vary at short notice many of the times and dates of special hospital voting without notifying all interested parties, and suggests that the AEC approached planning as "an academic exercise without sufficient thought for interested organisations or persons".

39.24 A change was made to the itinerary for Special Hospital Team 7, six days prior to the commencement of the polling run. The change was made on the strong recommendation of the officer-in-charge, who was very concerned that insufficient time had been allowed at one of the establishments. On the night of 23 September a copy of the new itinerary was faxed to all candidates.

39.25 AEC records show that on 1 October, a member of staff from Mr Wakelin's Port Pirie office *(name suppressed),* called the Grey Divisional office to complain that she had sent scrutineers to Lealholme, only to be told that the itinerary had been changed. The staff member said that Mr Wakelin was most upset. The Grey Divisional office advised her that on 23 September, and as specified in the procedure manual, a fax had been sent to all candidates (including Mr Wakelin's Whyalla office) to advise them of the change to the itinerary, but a fax had not been sent specifically to Mr Wakelin's Port Pirie office. The staff member asked if there was proof that the message had been sent to Mr Wakelin's Whyalla office, and a file check confirmed the transmission.

39.26 The DRO for Grey then contacted a staff member in Mr Wakelin's Whyalla office *(name suppressed)*, and advised her that all candidates were faxed the relevant information on 23 September. There was no dispute about this fact from the staff member, and she admitted the fax might have been mislaid in her office.

39.27 *Pre-Poll voting at Roxby Downs:* Mr Wakelin claims that the lack of pre-poll voting facilities at the Roxby Downs mining community effectively disenfranchised hundreds of electors. As background, for the 1996 federal election, there were 81 static polling places in the Division of Grey, including one at Roxby Downs. In addition, 5 remote mobile polling teams, 9 special hospital teams, and 2 prison mobile teams, visited the remote areas of the Division of Grey in the two weeks prior to polling day. A mail service to Olympic Dam from Roxby Downs, where the postal agent from Olympic Dam travels to Roxby Downs to collect and deliver mail every day, ensured postal voting for the shift workers at that location was available at all times.

39.28 The DRO for Grey has reported that, following the 1996 federal election, there were no complaints or suggestions from either the miners, including the shift workers, or the employer organisations, at either Olympic Dam or Roxby Downs, that the polling arrangements in place for the 1996 federal election should be changed for the 1998 federal election.

39.29 However, the AEC had already decided prior to the election period to establish a pre-poll voting centre on polling day at Roxby Downs to cater for absent voting by the large number of interstate workers, and 371 pre-poll votes were issued. There was a shortage of House of Representatives ballot papers for five interstate Divisions, and a shortage of Senate ballot papers for two States, but polling officials were able to copy extras to allow all interstate people who presented on polling day to vote.

39.30 For comparative purposes, the pre-poll voting centres appointed to service remote areas of South Australia, and the number of votes taken, is shown as follows:

PPVC	**Votes taken**
Peterborough	57
Clare	70
Coober Pedy	85
Ceduna	174
Roxby Downs	371
Port Pirie	639
Port Lincoln	914
Whyalla (1 & 2)	969
Port Augusta	1944

39.31 The shift workers at Roxby Downs are aware of their shifts up to six months in advance, and postal voting was deemed appropriate in the circumstances. On the basis of this previous experience, and direct contact by the DRO with the co-ordinator of private contractors at Roxby Downs after the announcement of the election, 2,500 postal vote applications were forwarded to Roxby Downs. This was in addition to the 100 applications originally forwarded to the Roxby Downs Post Office. AEC records show that the only direct requests for additional pre-poll facilities at Roxby Downs during the election period came via a telephone call from a staff member in Mr Wakelin's Whyalla office, and one anonymous letter.

39.32 *Remote Mobile Polling at Davenport Community:* Mr Wakelin complains that "the unwillingness of the AEC to address genuine problems, such as those experienced in Roxby Downs, is in stark contrast to the commission's willingness to devote considerable resources and time to remote polling…[which]…intensively cultivates selected communities…". Mr Wakelin cites as an example, remote mobile polling conducted at "Davenport Reserve, a suburb of Port Augusta!"

39.33 Mr Wakelin might not have been aware of the reasons for this decision. Remote mobile polling was conducted at Davenport Community because the Aboriginal community resident there was moving north, and in the time taken to complete the move, they would have missed the Remote Mobile Polling Team at other remote polling locations near their destination. There were 113 votes taken at Davenport.

39.34 *Costs of remote mobile polling in South Australia:* Mr Wakelin says that he would be "most interested in any comparative examination of remote mobile polling costs (including electoral education services in remote areas) and other areas" - presumably in South Australia. Comparative costs for remote mobile polling in South Australia cannot be provided because the Division of Grey is the only declared remote Division in the State.

39.35 However, a remote area information campaign was conducted by the AEC just before the announcement of the 1998 federal election. The itinerary included visits to a number of new and established mining towns to inform electors of the arrangements for the election and to collect data on population changes in all remote areas in the Division of Grey.

39.36 *Variations in remote mobile polling itineraries:* In relation to Mr Wakelin's complaint about variations to remote mobile polling itineraries, there were good reasons for these changes, and they were made according to established procedures. The Team Leader of one Remote Mobile Polling Team has reported that when the Team arrived at Watura, the community adviser informed them that everyone was at a football carnival at Ernabella, which was to be visited later on the mobile polling itinerary. The Team then went to Pipalyatjara and the situation was the same. Consistent with the required procedures and section 227 of the Electoral Act, the Team Leader contacted the DRO and proposed a change to the itinerary, which was agreed. The Team then travelled direct to Ernabella, to catch all the voters there, rather than sitting at the other communities for the prescribed times with no electors present.

39.37 *Low informal voting rate in remote communities:* Mr Wakelin says that the low informal voting rate at remote Aboriginal communities demonstrates that these communities are given undue attention and resources by the AEC during polling, and he suggests that mobile polling services in remote Aboriginal communities be replaced by an "expanded postal voting system".

39.38 The conclusions drawn by Mr Wakelin are not accepted by the AEC. A high level of formal voting in any particular area or amongst any particular

group may indicate simply that the voters are well-informed and highly motivated, rather than indicating any unusual attention from the AEC. Further, and at a more objective level, much the same level of attention and resources is applied by the AEC to pre-poll voting and postal voting as to mobile polling, and pre-poll and postal voters also show low informal voting rates.

39.39 The informal voting rate for postal voting in the 1998 federal election in the Division of Grey was a low 1.1%. The informality rate for pre-poll and for remote mobile polling, for both the 1996 and the 1998 federal elections in the Division of Grey, was also very low:

	Formal		**Informal**	
	No of Votes	**%**	**No of Votes**	**%**
1996				
Remotes	1213	97.7	28	2.3
Pre-Poll	2070	97.4	55	2.6
1998				
Remotes	1361	97.7	32	2.3
Pre-Poll	4019	97.6	99	2.4

39.40 *Assisted voting in remote Aboriginal communities:* Mr Wakelin says that, “evidence suggests that there is at large a significant impression that the electoral process is in danger of being corrupted. I do not make such statements lightly but the integrity of the evidence presented to me demands that it be made public.” Mr Wakelin then goes on to cite his evidence as follows: “A number of residents have suggested to me that aboriginal voters were questioned as to their voting intentions and were openly encouraged to vote for the Australian Labor Party by polling officials. On occasion polling officials explicitly asked semi-literate voters if they ‘wanted to vote Labor?’ No other options were given. When concerned local residents tried to put a stop to this practice they were openly criticised by polling officials in a totally inappropriate manner.”

39.41 Mr Wakelin does not provide any names, places, times or other details to support these hearsay allegations, so that it is very difficult for the AEC to investigate his concerns and respond in detail. However, the Remote Mobile Polling Team probably relevant to Mr Wakelin’s complaint, Team No 1, has reported that voters were asked if they required assistance to vote and the majority did need some assistance. If they indicated a need for assistance, and there was no suitable person available to assist, then the polling officials provided the assistance.

39.42 No voters were encouraged by the polling officials to vote for any particular political party. The voters often took how-to-vote material into the polling place with them and the material was used as a reference or guide in determining their preferences. Many voters indicated their preference by pointing to ALP how-to-vote material. The level of assistance provided was in accordance with the Electoral Act, AEC policy and procedures, and the wishes of the voters. There were no complaints made to any members of the Remote Mobile Polling Team.

39.43 At the public hearings on 23 March 1999 at page EM4 of the Hansard transcript, when questioned by Senator Faulkner about whether any of the suggestions of improprieties were provided in writing, Mr Wakelin responded as follows: “It is hearsay, I suppose, in the purest form. But the people I am dealing with are quite reputable people; they are school principals, they are people of integrity whom I would trust. I have not pressed them to put it in writing, because I do not want to jeopardise or compromise their positions in those communities”.

39.44 The AEC has identified one of the school principals mentioned, because a formal complaint was received about the conduct of remote mobile polling. After an investigation by the AEC, the complainant was satisfied with the outcome, is now aware of the legislative provisions governing assisted voting for federal elections, and has offered assistance for future electoral events (Attachment 18).

39.45 Finally, at the end of his submission, Mr Wakelin asks three questions, and the following responses are provided:

(a) *What proportion of the votes cast at the remote polling stations in the Division of Grey were completed by polling officials on the direction of voters?* The AEC does not keep records of the numbers of assisted votes.

(b) *Which AEC staff assisted with the remote polling places? Were those staff full-time employees of the AEC?* There were no permanent AEC staff deployed to assist voters at remote mobile polling places. As is usual practice, casual staff were employed on Remote Mobile Polling Teams, and their contracts were for the duration of the itinerary.

(c) *What role did education officers have in the remote polling process? Was an education officer sent from Kadina to assist in the process? What was that officer’s directed role?* Prior to the announcement of the election, a field officer was recruited to undertake a remote area enrolment drive, to identify possible polling locations, and to establish community contacts. The itinerary included new and established mining communities and remote Aboriginal communities. There was no education officer sent from Kadina to assist the process.

40 Submission No 161 – Dr Amy McGrath

40.1 During the inquiry by the JSCEM into the 1996 federal election, Dr Amy McGrath filed 13 written submissions, alleging widespread and organised electoral fraud in the federal electoral system, and criminal conduct by the AEC in the administration of the Electoral Act (Attachment 19). Dr McGrath is the author of two books on electoral fraud, entitled "The Frauding of Votes" and "Corrupt Elections". The latter book has been critically reviewed by a former Electoral Commissioner, Dr Colin Hughes, and has been provided to the JSCEM as Attachment 27 to submission No 88. Dr McGrath is also the convenor of the H S Chapman Society, which campaigns for the introduction of limited vote tracing, addressed at part 10.3 of submission No 88.

40.2 In relation to the article included in the submission, entitled " Will there be corrupt and dubious practices in the November Referendum?", the AEC notes that this has already been published in the *Australian National Review* (Vol 3 No 9 of March 1999). Dr McGrath raises ten issues relating to electoral and referendum law, policy and procedures, which lead her to conclude that, "The forthcoming November 1999 referendum is even more certain to be swamped by dubious practice by both electors and officials than the 1997 Constitution Convention election." Similar issues are raised in the article entitled "Scrutineering in the Constitutional Convention Election", also included in the submission. Dr McGrath offers as solutions to these purported corrupt and dubious practices: limited vote tracing; a habitation review before the referendum; and prohibiting the enrolment reinstatement of provisional voters.

40.3 The AEC does not propose to address in detail every point raised by Dr McGrath in these articles, as they involve unsubstantiated attacks on the integrity and professionalism of the AEC; some quite outlandish suggestions of an international conspiracy to defraud the electoral system; and raise again many issues that have been dealt with in previous submissions to the JSCEM.

40.4 Suffice it to say here that Dr McGrath's complaints about the conduct of the 1997 Constitution Convention election, and in particular her complaint about her scrutineer being denied access to the Batch Control Room at the Sydney scrutiny centre (a small room where ballot papers were held prior to their allocation to data entry operators), were put before the Commonwealth Ombudsman, who concluded as follows:

> I have formed the view that the procedures for scrutiny of the poll for the Constitutional Convention by the AEC were reasonable and that there has not been defective administration. However, if the AEC is to ensure that all proceedings of the scrutiny are "open to the inspection of scrutineers", it should consider revised procedures for preparing bulk batches of ballot papers prior to them being entered into the computer system.

40.5 The 1998 Senate Central Scrutiny in New South Wales was conducted in a much larger and more convenient space than previously, allowing scrutineers entry into all areas, including storage areas, without obstructing or disrupting the complex physical operations involved in organising a

computerised scrutiny of some 4 million ballot papers. At the 1998 federal election, scrutineers appeared to be quite satisfied that they were able to observe all aspects of the scrutiny of the Senate ballot papers.

40.6 With respect to Dr McGrath's solutions to the dubious and corrupt practices she believes are likely to occur at the 1999 Referendum on the Republic: limited vote tracing has been addressed in part 10.3 of submission No 88; habitation reviews are no longer considered by the AEC, the JSCEM or the Government as the most effective means of roll cleansing, as discussed in parts 4.3 and 4.4 of submission No 88; and the AEC has already made recommendations for changes to the preliminary scrutiny of declaration votes and the enrolment reinstatement of provisional voters in part 9.12 of submission No 88 and in submission No 159.

40.7 In the article entitled "Outsourcing the Electoral Roll", included as part of the submission, Dr McGrath expresses her concerns at the way in which the Commonwealth Electoral Roll has been managed in the past, and is being managed now, on various computer mainframes. Dr McGrath may not be aware of the Government's commitment to outsourcing information technology across federal departments and agencies, and the contracting processes involved in the Cluster 3 arrangements that include the AEC, but if the JSCEM thinks it necessary, perhaps the Minister for Finance and Administration would be a more appropriate person to respond to these issues than the AEC. In this article, Dr McGrath also raises again the case of Mr Timothy Cooper, which was addressed by the AEC in submission No 128 of 24 January 1997 to the previous JSCEM (Attachment 20).

40.8 In the article entitled "Re-enrolment of voters during elections the flaws and failures in operation", included as part of the submission, Dr McGrath gives an extensive account of her researches into provisional voting. The complete correspondence with the Electoral Commissioner late last year, which is selectively quoted and misleadingly represented in this article, is reproduced at Attachment 21. The AEC has already made recommendations for changes to the preliminary scrutiny of declaration votes and the enrolment reinstatement of provisional voters in part 9.12 of submission No 88 and in submission No 159.

40.9 In relation to the article entitled "Reasons why the Joint Standing Committee on Electoral Matters should be concerned with the critique by Dr Amy McGrath OAM of the article by Dr C Hughes….", the AEC does not propose to enter into this debate. The AEC is confident that the former Electoral Commissioner would be quite amenable to being called before the JSCEM to answer for himself.

41 Submission No 162 – Liberal Party Secretariat

41.1 *Compulsory voting and public education:* The AEC notes that the Liberal Party has affirmed its opposition to the abolition of compulsory voting. In relation to public education programs, the lengths to which the AEC goes in ensuring that all electors are aware of how to cast a formal vote are detailed in part 3 of submission No 88 and attachment 01 to this submission, and the AEC runs special advertisements in Victoria to ensure elderly electors are properly informed about their rights and responsibilities at federal elections.

41.2 *Provisional TCP count:* This issue has been addressed in part 9.4 of submission No 88. The AEC was aware of previous results in a similar area to the Division of Mayo for the South Australian State election, but took the best guesstimate on the appropriate candidates for the provisional TCP count using all relevant data. There will always be the possibility that such TCP guesstimates are wrong.

41.3 *Constitutional disqualifications:* The Liberal Party Secretariat has expressed similar concerns about the disqualifications under section 44 of the Constitution as has the ALP Secretariat in submission No 163. It should be noted in relation to section 44(i) of the Constitution, and the foreign allegiance disqualification, that a petition disputing the election of Heather Hill on these grounds is currently proceeding before the High Court (see part 12.3 in submission No 88) and is due for a Full Bench hearing on 11-12 May 1999. The AEC suggests that the JSCEM await the decision of the Court on the interpretation of section 44(i) of the Constitution before recommending any changes to statutory law.

41.4 In relation to section 44(iv) of the Constitution, it is not clear what the Liberal Party Secretariat has in mind when urging “clarification” of the “constitutional definition” of the phrase ‘office of profit under the Crown’. For the 1998 federal election, the AEC published an Electoral Backgrounder entitled “Constitutional Disqualifications”, which reviewed the relevant High Court cases on section 44(iv), provided information on the resignation/reinstatement rights of public servants, and provided guidance for further research. Similar information was provided in relation to section 44(i) of the Constitution.

41.5 *Funding and Disclosure*: The Liberal Party Secretariat has recommended increasing the annual disclosure threshold for detailed disclosure of receipts in the annual returns of political parties from $1,500 to $10,000. The existing disclosure thresholds were first set when annual disclosures by political parties were introduced for the 1992/93 financial year.

41.6 The proposed lifting of the disclosure threshold has the potential to allow substantial donations to political parties to go undisclosed. For example, for parties with separate branches in each State and Territory a total of almost $90,000 (that is, nine separate donations of $9,999) could be received from the one person or organisation without being required to be disclosed by the party. Where persons chose to further split their donations, for instance across

family members or businesses, even larger donations could be made, effectively from the one source, and go undisclosed. For this reason the AEC does not support raising the disclosure threshold for receipts to $10,000.

41.7 The Liberal Party Secretariat makes the claim that the requirement for a donor to lodge disclosure returns merely duplicates the disclosure made by political parties and is therefore unnecessary. The introduction of annual returns by donors to registered political parties was seen as necessary to close a potential loophole in disclosure created by the introduction of a transaction threshold of $500. Parties are currently not 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). Without a separate donor return it would be open to a donor to donate any amount to a party without being disclosed as long as that donation was made in lots of less than $500.

41.8 In the June 1997 JSCEM Report it was concluded that “donors should be required to lodge separate returns while there remains a threshold below which amounts received by political parties do not have to be aggregated for disclosure purposes”. The AEC also believes that disclosures by donors to political parties must be retained to preserve the integrity of the current disclosure system.

41.9 The Liberal Party Secretariat proposes that, if the requirement for donors to political parties to lodge returns is retained, then the reporting period should be “equal to that applying for the lodgement by registered political parties of their annual financial returns - namely 20 weeks after the end of the relevant financial year”. In fact, donors already 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.

41.10 With the Christmas holiday period already limiting the opportunities the AEC has to contact and follow-up persons with disclosure responsibilities, any extension to these deadlines could not be supported without a further lengthening of the period until their public release (currently 1 February).

41.11 *Location of polling booths:* The AEC will, as a matter of course, review the provision of polling facilities in border areas before the next electoral event (see also the responses to submissions No 46 and No 133 above).

41.12 *Postal vote applications:* The issue of postal vote applications distributed by political parties has been addressed in part 8.6 of submission No 88. Postal vote applications could be received by fax in the same way, and under the same conditions, as is already provided for in relation to enrolment applications and nomination forms. However, it should be noted that large numbers of postal vote applications faxed to a Division within a short and very busy time frame could raise the same problems that are already experienced

in relation to the faxing of enrolment applications to Divisions around the close of rolls period.

41.13 *Canvassing for votes*: The AEC agrees that voters should not be prevented from receiving how-to-vote material as they enter any polling booth, and it is standard practice for Divisional Returning Officers (DROs) to seek the cooperation of private or public owners of any premises wherever polling is conducted. If political parties wish to have free access to special events for the purposes of canvassing for votes, then this is a matter for the parties themselves to take up with the event organisers at the time.

41.14 *AEC staffing policy:* The AEC already has policies and procedures in place to avoid the employment of those with an active involvement in political affairs, and to ensure that AEC staff discharge their duties in a politically neutral manner. The recommendation that members of some industrial unions be precluded from employment with the AEC would severely undermine the operational capacity of the AEC, particularly on polling day, and in the absence of any evidence that the political neutrality of the AEC has been compromised by unionised staff, would appear to be an unnecessary and burdensome restriction on one particular public service agency.

41.15 *Pre-poll voting:* The Liberal Party Secretariat cites “anecdotal evidence” that the AEC failed to communicate to all candidates the commencement of pre-poll voting, and claims that two pre-poll voting centres were opened in the Division of Hindmarsh earlier than the scheduled date, without notifying the sitting Member, Ms Chris Gallus MP.

41.16 The DRO for Hindmarsh reports that, at the time of the ballot paper draw on Friday 11 September 1998, all candidates or their representatives were provided with a list of polling places and the gazetted times of pre-poll centres. Ms Gallus did not attend the draw in the Division of Hindmarsh, but a representative attended on her behalf. The DRO reports that Ms Gallus made complaints about pre-polling to the DRO that were found to be without foundation (see transcript at Attachment 22).

41.17 The Division of Hindmarsh did not open two pre-poll voting centres earlier than the scheduled time. The pre-poll centre at Glenelg opened at the advertised time of 9.30 am on 15 September 1998, and the shared pre-poll centre at the Marion Shopping Centre, catering for the Divisions of Hindmarsh, Boothby and Kingston, opened at the same time.

41.18 *HTV material in polling booths:* The AEC addressed the issue of the HTV cards in polling booths in submission No 90 of 20 September 1996 (see Attachment 03).

41.19 *Media Blackouts:* The administration of the *Broadcasting Services Act 1992,* and the imposition of media blackouts, is not the responsibility of the AEC, but it is noted that Attachment F to submission No 163 from the ALP Secretariat appears to answer the concerns of the Liberal Party Secretariat.

41.20 *Election Results:* On election night, the primary responsibility of the AEC is to produce a definitive election result for the House of Representatives. Whilst it is appreciated that political parties are interested in booth-by-booth statistics in order to analyse their campaign successes and failures, these interests must remain a lesser priority for the AEC, in the wider context of focussing on the main event, and keeping the supporting IT systems operating in a cost effective manner.

41.21 On election night, the AEC published on its Internet site the aggregate results by Division, and within three days of election night, the results by polling booth were published on the Internet. Most of these results were as re-checked by Divisional staff, but in some cases, such as the Division of Dickson, the published results by polling booth were still unchecked.

41.22 *Remote scrutineering:* The Liberal Party Secretariat has recommended that scrutineers from registered political parties be provided with free access to travel on aircraft chartered by the AEC to transport mobile polling teams to remote areas of Australia. The AEC does not support this recommendation, and in particular, would object to the provision of free travel for scrutineers of registered political parties exclusively.

41.23 In submission No 110 of September 1993, the Liberal Party Secretariat recommended that: “The AEC …. assist on an equal basis wherever possible in expediting access to booths by party scrutineers in remote and isolated areas”. Recommendation 10 of the November 1994 JSCEM Report was:

> that the AEC, in consultation with the political parties, review procedures to ensure that access to polling booths in remote and isolated areas is equally available to scrutineers for all candidates contesting an election in a Division.

41.24 However, the Government Response of 21 September 1995 to recommendation 10 was as follows:

> Not supported. Administrative arrangements already require the AEC to advise candidates of remote mobile polling schedules and to carry how-to-vote cards where scrutineers are unable to reach all remote locations. This is the extent of the involvement the AEC should have in the canvassing activities of the candidates and political parties. The AEC should not be responsible for directly providing or in other ways ensuring that scrutineers have access to remote mobile locations, by for example providing transport. This should remain the responsibility of the political parties and candidates. The provision of transport facilities to remote polling places for scrutineers of all candidates would not be economically feasible.

41.25 The AEC Remote Mobile Polling Procedures Manual makes it clear that how-to-vote cards provided by candidates must be displayed by AEC mobile polling teams in a prominent position outside the boundary of remote polling places during polling hours, and must be collected up at the end of polling. It is also made clear that scrutineers are not allowed to travel with the mobile polling team. However, in genuine cases of medical or other emergency, travel assistance may be provided. The AEC believes that these

rules are appropriate and should not be subject to any amendment. The issues relating to assisted voting are addressed in part 7.5 of submission No 88, and further, in response to submission No 92 in this submission.

41.26 *Provisional voting:* Provisional voting was introduced to ensure that electors are not disenfranchised because of official errors on the rolls, and any move away from this general principle would probably result in a reduction in the franchise generally. Provisional voting statistics for the 1998 federal election are provided at part 8.10 and Attachment 25 of submission No 88. Changes to the preliminary scrutiny of declaration votes are recommended in part 9.12 of submission No 88 and in submission No 159.

42 Submission No 163 – Australian Labor Party Secretariat

42.1 The AEC notes that there are 18 recommendations made in this submission, and that there is a very large appendix to the submission, mostly consisting of documents relating to the Government-funded taxation reform advertising campaign, conducted just before the issue of the writs for the 1998 federal election, and addressed by the AEC in part 6.2 of submission No 88.

42.2 In a number of parts of this submission, such as in relation to section 44 of the Constitution for example, the ALP Secretariat has complained of failures by the AEC in the provision of information and advice, but has failed to acknowledge the existence of various AEC publications, provided direct to political parties, that dealt extensively with the issues raised. These will be addressed below in the order in which they appear in the submission.

42.3 *Funding and Disclosure:* The ALP Secretariat has recommended that the public funding scheme for registered political parties and candidates under the Electoral Act be returned to a strict reimbursement of proven campaign expenditure up to a maximum limit of the funding entitlement. The reason given for this proposed change is the desire to prevent any political party or candidate from seeking "to profit from the holding of an election".

42.4 The AEC does not believe that a reimbursement scheme prevents profits being realised on election funding. As discussed at part 11 of submission No 88, profits can be achieved by various means, all of which involve incurring expenditure that otherwise would not have been incurred, which is then either not actually paid or is simply donated back to the party. For example, instead of a printing firm offering a discount on the production of campaign material it might charge full price and then donate some or all of its fee back to the party. Either way the party or candidate has valid, documentary evidence of campaign expenditure that qualifies for reimbursement.

42.5 Similarly, services which would otherwise have been received on a volunteer basis or for a nominal fee are contracted for with the party or candidate. Such services might range from the campaign manager right through to polling day scrutineers and could even include candidates themselves. Such contracts are legally binding and clearly constitute

claimable campaign expenditure, but the contracts may never be paid out on or, again, some or all of the fee may be donated back to the party.

42.6 The AEC can see no way such arrangements can be prevented; the likely result is still that profits on election funding can be achieved. The experience under the former reimbursement scheme demonstrated that it was a rare occurrence when less than the full funding entitlement was paid to a political party.

42.7 The ALP Secretariat has also recommended that political parties and independent candidates/Senate groups be required to certify to the AEC the level of campaign expenditure expended, with the AEC then being required to audit that claimed expenditure. At the public hearings on 1 April 1999, Mr Gary Gray contended that such a reimbursement scheme "should not slow down the payment process to political parties".

42.8 While this may generally prove to be true for the large parties, it would not hold true for many small to medium sized parties and independents. Smaller parties usually run decentralised campaigns without the single large advertising accounts which the large parties can easily and quickly produce as evidence of their campaign expenditure. The experience of the AEC under the previous reimbursement scheme, where original supporting documentation was required to be submitted along with the claim for payment of election funding, was that many funding payments were made later than now occurs under the direct entitlement arrangement.

42.9 Those delays occurred both as a result of the parties and independents taking time to compile their supporting documentation, and because of the sometimes complex and time consuming task of verifying expenditure by the AEC. In such circumstances, it would be impossible for the AEC to meet the suggested timeframe of one week to verify claimed expenditure from the date of receipt of the certificate of expenditure as proposed by the ALP Secretariat.

42.10 The AEC does not, therefore, support a return to a reimbursement scheme for election funding. A reimbursement scheme would not prevent profiteering on election funding. It would, however, add significantly to the administration load on both the AEC and many political parties and independent candidates and it would be likely to delay payments by the AEC, especially those to smaller parties and independent candidates.

42.11 The ALP Secretariat has raised the prospect of removing duplicate reporting by political parties by examining means by which audited annual accounts could be lodged in place of annual disclosure returns. Section 314AB of the Electoral Act in fact already allows political parties to lodge audited annual accounts in a form approved by the AEC in substitution of annual disclosure returns. The AEC notes that it has not received any approaches to date from parties seeking to make use of this provision.

42.12 It should also be noted that amendments to the Electoral Act effected by the *Electoral and Referendum Amendment Act 1998* further simplified disclosure for political parties by removing the requirements to lodge electoral expenditure returns and also to disclose the detail of their expenditure in their annual disclosure returns.

42.13 The ALP Secretariat has recommended that disclosure move to a system of electronic lodgement of returns. The AEC supports this concept and believes that it offers significant advantages including facilitating the release of disclosure information onto the Internet. The option would, of course, have to remain for parties and individuals still to lodge their disclosure returns by traditional, paper-based methods.

42.14 While no feasibility study has been undertaken, on face value it would seem possible that a standard package could be developed that could interface with common commercial software, which the AEC could then provide to political parties and others. At this stage, the AEC could not make any meaningful estimate of the cost of development of such a system. If it is to be of a quality that makes its compatibility as wide as practical and encourages its use, however, the cost may be such that it would not be easily absorbed within current AEC funding levels.

42.15 *Special Polling Arrangements*: The AEC has addressed the provision of voting facilities for the special sporting and cultural events that occurred on polling day across the country in parts 3.2 and 7.2 of submission No 88, and in correspondence from the AEC to the ALP on the arrangements for these events, provided in Attachment D to the ALP Secretariat submission. The AEC went to considerable lengths, within the confines of the law and with due regard to some important practical considerations, in planning for these events in the short time available from the issue of the writs, and in publicly advertising the facilities made available.

42.16 Before polling day for the 1998 federal election, and because of the difficulties in the timing of the election, the AEC re-examined its polling place staffing and equipment allocations. Despite the forward planning undertaken by the AEC, in some areas even the enhanced allocations were insufficient, due to the essential unpredictability of elector movements and concentrations. Where necessary, additional staff and equipment was supplied to polling places on polling day. The election forecasting system for the resourcing of polling places is now under active review so that school holidays and cultural and sporting events can be better accommodated at future electoral events.

42.17 However, the ALP Secretariat has recommended that formal guidelines be developed by the AEC to govern the allocation of resources for such special events in the future, which would be published before each election, and which would be "disallowable instruments" subject to parliamentary scrutiny.

42.18 The AEC strongly opposes this recommendation. It assumes that before the election dates are announced and Parliament is dissolved, any

special events likely to occur on polling day can be known and planned for in advance; it contemplates an operational planning regime that would be completely unworkable given the many contingencies that arise in the few weeks leading into a federal election; and it would provide for the extraordinary intervention of the Parliament in the independent conduct of federal elections.

42.19 *Other Elections on Polling Day:* The ALP Secretariat raised the same issue in submission No 62 of 5 August 1996 to the previous JSCEM, and in response, the AEC reported on the successful conduct of ATSIC by-elections and the Tasmanian State election concurrent with the 1996 federal election, in submission No 90 of 20 September 1996 at Attachment 23. The AEC has also reported on the successful conduct of the 1998 Northern Territory Statehood Referendum concurrent with the 1998 federal election at paragraphs 1.5.7 to 1.5.8 of submission No 88. Whilst concurrent elections and referendums, the timing of which is entirely a matter for governments and not the AEC, have not proven to be a difficulty for the AEC to date, it is acknowledged that they may produce problems for political parties in their campaign activities.

42.20 The ALP Secretariat recommends that the JSCEM inquire into whether there is appropriate liaison between the AEC and State/Territory counterparts with respect to the conduct of overlapping elections, and that the AEC develop a strategy for ensuring that State officials receive appropriate training and information on federal and State electoral legislation. Whilst it is clearly not the responsibility of the AEC to train State electoral officials in their own legislation, the JSCEM may be assured that the AEC liaises extensively with its State and Territory counterparts at all times and at all levels, not the least through the Electoral Council of Australia, a body consisting of all federal/State/Territory Electoral Commissioners (or their equivalents).

42.21 On present indications, the AEC will be conducting the 1999 round of ATSIC Regional Council elections within four weeks of polling for the 1999 Referendum on the Republic, later this year. The AEC is already well advanced in planning the distribution of AEC resources and personnel to ensure that these national electoral events are conducted with the minimum of disruption to each other, and that the relevant electorates, and interested organisations and individuals, fully understand their rights and responsibilities under the respective laws.

42.22 *Media Blackout:* In relation to the provisions of the *Broadcasting Services Act 1992* ("Broadcasting Act") that govern the 'blackout period' for broadcast election advertisements, the AEC notes from Attachment F to the ALP Secretariat submission, that advice was properly obtained from the Australian Broadcasting Authority on 1 February 1996 about the Queensland State by-election for Mundingburra. The ALP Secretariat suggests that "information of this sort" should be included "as a matter of course" in AEC election manuals. Whilst it is not the role of the AEC to administer or interpret the provisions of the Broadcasting Act, and AEC manuals on electoral law are generally event non-specific in their coverage, consideration will be given to including the relevant provisions of the Broadcasting Act in future AEC

publications, in particular the Electoral Backgrounder entitled "Electoral Advertising".

42.23 *Pre-Poll Voting at Shopping Centres*: The ALP Secretariat recommends that the AEC "seek agreement, where appropriate, from the owners of the premises on which a pre-poll is located to ensure that no reasonable restriction is placed on the right of persons to distribute the customary election material or for voters to receive that material at or in the vicinity of the pre-poll". The AEC agrees that voters should be not be prevented from receiving how-to-vote material as they enter a polling booth, and it is standard practice for DROs to seek the cooperation of private or public owners of any premises wherever polling is conducted.

42.24 *Witnessing of Enrolment Applications:* In relation to the draft regulations for the Electoral and Referendum Amendment Bill 1999, the AEC would support any appropriate extension of the list of witnesses for enrolment applicants, to ensure that the franchise is available to all eligible citizens.

42.25 *Push Polling:* The AEC has addressed this issue in part 6.10 of submission No 88, and notes that the inquiry into push polling by the JSCEM in 1995 failed to report before the announcement of the 1996 federal election. The ALP Secretariat recommendation, that telephone and Internet communications involving political matter be banned in the three days leading up to polling day, begs the question of how conversations between citizens in the privacy of their own homes are to be monitored and policed.

42.26 As the AEC concluded in paragraph 2.2 of its submission No 7 of 13 July 1995 on push polling to the JSCEM:

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

42.27 *The Internet:* The AEC has reported on the success of the AEC Internet site in part 3.7 of submission No 88, and discussed the application of the Electoral Act to electoral advertising on the Internet in part 6.3 of the submission. During the 1998 election period the AEC advised that whilst the Internet is not expressly mentioned in the Electoral Act, all election advertising on the Internet should be in compliance with the electoral advertising provisions of the Electoral Act, where possible. The ALP Secretariat has said that, "the AEC should have provided political parties with some guidance on the matter in the lead up to both the 1996 and 1998 federal elections", and recommends that legal advice be sought from the Attorney-General's Department on the application of the Electoral Act to the Internet.

42.28 In part 12.7 of submission No 30 of 30 July 1996 to the previous JSCEM, at Attachment 24, the AEC went into considerable detail on what could be reasonably assumed about the application of the Electoral Act to the Internet, including providing to the JSCEM, on the public record, legal advice

from the Commonwealth Director of Public Prosecutions (DPP). The AEC also published an Electoral Backgrounder (No 5) entitled “Electoral Advertising”, on 17 July 1998, which was distributed to all candidates and political parties, and contained the following paragraphs, based on the same legal advice from the DPP:

> 11. The application of section 328 of the Act to the electronic publication of electoral advertising on the Internet has not yet been considered by the courts. However, the AEC considers that electoral advertising on the Internet should include the identification of those responsible for the material, in the same terms as prescribed by the Act.
>
> 25. The application of section 329(1) of the Act to the electronic publication of electoral advertising on the Internet has not yet been considered by the courts. However, the AEC considers that electoral advertising on the Internet should comply with section 329(1) of the Act.

42.29 The JSCEM should note when considering the ALP Secretariat recommendation to amend the Electoral Act and the Broadcasting Act to regulate Internet advertising, that the AEC is only able to respond to complaints about electoral matter on the Internet. It would be impossible for the AEC to actively monitor and regulate such material, given its increasing volume and range, and because such advertisements could easily be hosted by overseas communications platforms, which would probably put them technically beyond the reach of Australian law. The AEC therefore counsels caution at this stage in legislating to regulate electoral matters on the Internet.

42.30 *Privacy of Enrolment Information*: The ALP Secretariat raises an alleged breach of the Electoral Act at the 1996 federal election in relation to the apparent release of personal enrolment information in the Northern Territory, and recommends that the JSCEM inquire into any outstanding issues. This matter was investigated by the AFP at the time of the original complaint, and the DPP advised that there was no breach of the Electoral Act.

42.31 Subsequent consultations between the AEC and the Northern Territory Electoral Office have resulted in improved procedures for the provision of electoral roll information under the Commonwealth/Northern Territory Joint Roll Agreement, to ensure that it is always clear to the Northern Territory Electoral Office when such data provided by the AEC contains confidential information.

42.32 *Electoral Bribery:* The ALP Secretariat has raised the same issue of defining electoral bribery in section 326 of the Electoral Act that it raised at the 1990, the 1993, and the 1996 election inquiries. The first AEC submission in response, of 23 August 1994, is at Attachment 25. Recommendation 72 of the November 1994 JSCEM Report was, “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”.

42.33 The Report went on to say that, “If the clarification sought cannot be achieved without risking the effectiveness of the bribery provision, 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 federal parliamentary election, 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".

42.34 The Government Response to Recommendation 72 of the November 1994 JSCEM Report, at page 1263 of the Senate Hansard of 21 September 1995, was as follows:

> Supported. The AEC has already sought the advice as recommended by the Committee and the Attorney-General's Department has now advised that for various legal reasons including the creation of possible loopholes, and the existence already of prosecutorial discretion, it would not support an amendment to section 326 along the lines suggested by the Committee. Criminal law policy considerations indicate that the proposed amendment to section 326 would impair its effectiveness and is not justified in view of the low risk that conduct, involving the provision of small amounts of food etc to voters, would be prosecuted in the absence of any clear evidence that they were supplied with the intention of influencing the vote or political allegiance of the members of the public concerned.

42.35 In submission No 90 of 20 September 1996, the AEC responded to the ALP Secretariat submission No 62 of 5 August 1996, as it concerned electoral bribery, and the relevant extract from the AEC submission is at Attachment 26.

42.36 The ALP Secretariat has repeatedly expressed its concern as to whether "tea and biscuits" or "sausage sizzles" constitute electoral bribery, and the AEC has advised consistently on the basis of advice from the DPP, that such activities would not be prosecuted as a contravention of the Electoral Act. To reinforce this advice for the 1998 federal election, the AEC prepared an Electoral Backgrounder (No 6), entitled "Influencing Votes", which was distributed to all candidates and political parties, and which dealt with electoral bribery as follows:

> 9. …section 326 of the Act is directed to the giving or conferring or promising of any property or benefit, by a candidate, with the direct intention of influencing or affecting the way a person votes, by generating feelings of gratitude or obligation.
>
> 11. …where such hospitality has been provided, section 326 would not necessarily be contravened, because those responsible could claim that their intention was not to directly influence voters or to buy their political allegiance, but to offer hospitality to facilitate political discussion.

42.37 *Availability of Marked Roll:* This part of the ALP Secretariat submission, and recommendation 15, is not entirely clear. It is said that, "the current provision of the marked roll for physical observation 40 days after the poll seems to the ALP to involve an excessive level of resources when the ALP has the capacity to simply scan the rolls". The ALP then goes on to

recommend that candidates and political parties be provided with "an electronic version of the marked roll of electors who lodge a postal vote".

42.38 Section 189(3)(4) of the Electoral Act provides that all postal vote applications (except for silent elector applications) must be open for public inspection at the office of the DRO from the third day after polling day until the election can no longer be questioned. There is not, and never has been, any public access entitlement to the marked roll (or certified lists of voters) of postal voters. It has been long accepted that the marked certified lists of voters (postal or otherwise), which contain personal information about the voting behaviour of individual electors, should not be publicly available, and the provisions of the *Privacy Act 1988* and the *Freedom of Information Act 1982* reflect this principle.

42.39 However, the AEC does believe that the lists of postal vote applications, currently available for physical inspection at the offices of DROs under section 189(3)(4), could be provided electronically on request to political parties, and any other individual or organisation, and will investigate the costs of upgrading the necessary IT systems for the next federal election, if the JSCEM so recommends.

42.40 Secondly, the ALP Secretariat says that "it is the current policy of the AEC to provide a copy of the certified roll to candidates only and to not provide copies to political party organisations". Under section 91 of the Electoral Act political parties are provided with electronic versions of the roll on CD-ROM on a regular basis, including at the close of the rolls for an election. That is, the ALP Secretariat should already have electronic access to the rolls used at an election. If the ALP Secretariat believes that it would be more useful to have a printed copy of the close of roll information, such as is provided to candidates, then the AEC would have no objection to the Electoral Act being amended accordingly.

42.41 *Second Preference How-to-Vote Cards:* In relation to the distribution of second preference how-to-vote (HTV) cards by the Western Australian Liberal Party at the 1998 federal election, the ALP Secretariat expresses concern that, "despite the Liberal Party of Australia having being told to withdraw the how-to-vote card on election day … no prosecution flowed from this flagrant breach of the Act. The reason for the AEC's inconsistency of action has never been made clear". The ALP Secretariat goes on to recommend that the JSCEM ask the AEC to explain why it did not seek to prosecute the WA Liberal Party Director.

42.42 The AEC has explained in detail why the DPP recommended no prosecution in this matter, at part 6.8 of submission No 88, including providing the relevant extract from the DPP advice at Attachment 13 to that submission (which it is noted is also part of Attachment K to the ALP submission). Further discussion of the issues is also provided later in this submission in response to questions raised at the public hearings of 1 April.

42.43 To put it succinctly, on receiving complaints from the ALP and One Nation on polling day, the AEC was advised by Senior Counsel through the Australian Government Solicitor that the WA Liberal Party HTV cards in question might have been in breach of section 351 of the Act, and therefore sought and gained their voluntary withdrawal by the WA Liberal Party by around 4 pm that day. Subsequent legal advice from the DPP, on whether the matter should be pursued, was that the detailed terms of section 351 of the Act might not sustain such a prosecution. Accordingly, the AEC took no further action.

42.44 However, the AEC shares the concern of many of those who made submissions to this JSCEM (including many One Nation supporters), that second preference HTV cards do not appear to be properly regulated under the Electoral Act, and has made suggestions for changes to the electoral advertising provisions in submission No 88 at paragraphs 6.8.19 to 6.8.22. The JSCEM should also note that a Queensland State parliamentary inquiry is currently examining the same problem under the terms of the Queensland Electoral Act.

42.45 *Office of Profit under the Crown:* The AEC has addressed the constitutional disqualifications generally at part 5.4 of submission No 88. In its submission, the ALP Secretariat refers to recommendations on the issue of 'office of profit under the Crown' made in the December 1992 JSCEM Report, entitled "Ready or Not", and indicates that it is not aware that there has been any response to these recommendations. The relevant JSCEM recommendations from the 1992 JSCEM Report and the Government Responses in 1995 are at Attachment 27.

42.46 The ALP Secretariat goes on to say that it "does not support the disinterested position adopted by the AEC in respect to this matter, namely that candidates must rely on their own inquiries in order to determine whether they may validly seek election". This criticism of the AEC is not new: both the Liberal and ALP Secretariats have said the same at previous parliamentary inquiries. However, the ALP Secretariat has omitted to mention, or may be unaware of, a number of recent developments on the issue of constitutional disqualifications and the role of the AEC.

42.47 The August 1997 Report on an inquiry into section 44 of the Constitution by the House of Representatives Standing Committee on Legal and Constitutional Affairs concluded that:

> constitutional amendment is necessary to address the problems raised by the subsections. The Committee is well aware that amendments have little chance of succeeding at referendum unless there is bipartisan support for the proposals outlined in its report. We trust that such support will be forthcoming.

42.48 The Committee went on to examine the role of the AEC in the provision of legal advice on the constitutional disqualifications, and concluded as follows:

> The Committee agrees that the AEC should have no role in giving legal advice to candidates. The Committee recognises that the AEC's role in running elections must be protected from any criticism that it has given wrong advice. The Committee appreciates that AEC officials have no role in going behind a candidate's declaration that he or she is eligible to stand. If the AEC was required to perform such a function the election cycle would take months.

42.49 The Committee then recommended that, in addition to the Candidates Handbook, the AEC publish a booklet noting possible problem areas, which if relevant, should cause an intending candidate to consider seeking advice from his or her own legal advisers. For the 1998 federal election, the AEC published Electoral Backgrounder (No 4), entitled "Candidate Disqualifications", which contained information consistent with legal advice provided by the Attorney-General's Department, the Commonwealth Director of Public Prosecutions, the Department of Immigration and Multicultural Affairs, and the State/Territory electoral authorities. This Backgrounder was provided to all intending candidates, and otherwise distributed widely, including to political parties.

42.50 The Backgrounder provided as much advice as the AEC is able to give on constitutional matters (which is clearly limited in complex areas of legal interpretation that have not yet been given judicial consideration), and included practical advice on who to contact for further information on resignation/reinstatement rights for public servants, and who to contact for further information on renunciation of other nationalities. Finally, in paragraphs 37 to 41, the Backgrounder again spelt out why the AEC cannot, and should not, provide legal advice to intending candidates on whether the constitutional disqualifications apply to their personal circumstances.

42.51 The ALP Secretariat submission attaches copy of an article by Kathryn Cole of the Parliamentary Research Service (who was also the Secretary of the Legal and Constitution Affairs Committee mentioned above) about 'office of profit under the Crown', and commends it to the AEC and the JSCEM. It should be noted that this 1993 article, and another useful article prepared by the Parliamentary Library in 1992 about dual citizenship, are recommended further reading at the end of the AEC Backgrounder, and that the AEC has been facilitating the provision of these articles for a number of years to anyone interested.

42.52 *Foreign Nationality*: The ALP Secretariat expresses similar concerns on section 44(i) of the Constitution, as it has in relation to section 44(iv), and most of these are addressed above. However, the AEC takes exception to the statement in this submission that, "the fact that the issue was not clearly addressed by the AEC prior to the 1996 election resulted in at least two apparently successful candidates being clearly ineligible to sit in the Parliament". It is not clear which particular individuals the ALP Secretariat is referring to, but the AEC does not accept that it was primarily responsible for anyone failing the constitutional qualifications.

42.53 Firstly, the Electoral Act makes it clear that the AEC has no role in advising intending candidates on their qualifications to nominate, or in

rejecting nominations on constitutional grounds; secondly, the AEC has for many years published prominent warnings at the front of the Candidates Handbook about the constitutional disqualifications; and finally, the High Court, sitting as the Court of Disputed Returns, has not found in any of the relevant cases before it, that the AEC was in any way at fault.

42.54 In suggesting that the Government and the AEC should provide a straightforward process for renunciation, it is noted that the international implications of such a 'straightforward' process might require some consideration, and that guidelines on current renunciation procedures, to the extent that they can be known in the more common cases, are already addressed in the AEC Backgrounder.

42.55 The ALP and the Liberal Party Secretariats have both criticised the AEC trenchantly over the years for not doing the impossible in relation to the constitutional disqualifications. It is time that both major party Secretariats acknowledged that section 44 of the Constitution is not a problem that the AEC alone can or should resolve: a national referendum is needed to amend the Constitution so that the difficulties that currently face intending candidates are properly and finally addressed.

42.56 *Resigning from a Political Party*: The AEC has no comment on this recommendation to amend the Constitution, but suggests that if it is to be explored further it might be referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs.

43 Public Hearings of 1 April 1999

43.1 At the public hearings on 1 April 1999, the JSCEM received evidence from Mr Gary Gray and Mr Simon Banks of the ALP Secretariat, in relation to written submission No 163, and from the Electoral Commissioner and six other senior AEC representatives, in relation to written submissions Nos 88 and 159. In his opening address, the JSCEM Chairman, Mr Gary Nairn, said the following:

> A number of recurrent issues have emerged from the submissions so far received by the committee. The most serious issue relates to assisted voting in remote Aboriginal communities. Other submissions address issues related to political campaigns. Of particular concern to some are second preference how-to-vote cards and 'dear neighbour' letters.

43.2 The AEC has already addressed the related issues of assisted voting and remote mobile polling in Aboriginal communities in the Northern Territory, and Aboriginal voting at Tangentyere, in parts 7.5 and 7.6 of submission No 88, and in this submission in response to submissions No 92, No 157 and 160. The AEC is prepared to provide any further evidence required by the JSCEM at later public hearings, in Darwin if necessary. Second preference how-to-vote cards are addressed at part 6.8 of submission No 88, and in this submission in response to submission No 163, and later in this submission in response to a question from the JSCEM; and 'dear neighbour' letters are addressed in part 6.5 of submission No 88.

43.3 The issues raised by the ALP Secretariat at the hearing, at pages EM20 to 37 of the Hansard transcript, have been dealt with in this submission as part of the AEC response to written submission No 163. The following material is provided in response to queries raised by the JSCEM with the AEC at the hearings, at pages EM38 to 69 of the Hansard transcript, in the order in which they were raised. It should be noted that the AEC has made a further five recommendations for legislative amendment in this part of the submission.

43.4 *Disenfranchisement of electors*: Clarification was sought from Senator Faulkner, at page EM40 of the transcript, as to the number of electors that the AEC claimed in part 8.6 of submission No 88 were disenfranchised because of the handling by the major political parties of postal vote applications. For the sake of clarity, paragraph 8.6.29 of submission No 88 should be amended with the addition of the word "nationwide" after the word "disenfranchised" in the first sentence.

43.5 *Cost savings of four-year terms*: At page EM41 of the transcript, Senator Lightfoot asked the AEC to speculate on the possible cost savings that might arise if the Federal Parliament were to move to four-year fixed terms. The AEC emphasises that the following analysis and conclusions are speculative only, and are limited to data available from the establishment of the AEC in February 1984.

43.6 Since 1984 the AEC has been responsible for the conduct of six federal elections on the following polling days: 1 December 1984, 11 July 1987, 24 March 1990, 13 March 1993, 2 March 1996 and 3 October 1998. During this fourteen-year period, federal elections have taken place on average every 2.3 years. If the parliamentary term had been a fixed four-year term, instead of the present three-year non-fixed term, only four federal elections would have taken place during the same period, with the next federal election scheduled for December 2000.

43.7 Based on records held by the AEC and beginning in 1984, some $398,464,000 of government outlays has been expended on the conduct of six federal elections.

Year	General Costs ($M)	% of Total Cost	FAD Costs ($M)	% of Total Cost	Total Cost ($M)	Voter Turnout (% of enrolment)
1984	30 874	79.82	7,807	20.18	38 681	94.55
1987	38 859	79.05	10,299	20.95	49 158	94.34
1990	42 911	76.92	12,879	23.08	55 790	95.81
1993	49 288	76.95	14 761	23.05	64 049	96.22
1996	59 252	64.82	32 155	35.18	91 407	96.20
1998	65 458	65.87	33 921	34.13	99 379	95.33
TOTAL	**286 642**	**71.9**	**111 822**	**28.1**	**398 464**	

NB: General costs for 1998 election are an estimate only as final costs are not available

43.8 By contrast, it is estimated that a lesser amount of $243,295,000 of government outlays would have been expended during the same period under fixed four-year parliamentary terms, with elections being conducted in 1984, 1988, 1992 and 1996. This translates into a reduction of some $155,169,000 in government outlays over the 1984 to 1998 period. Based on the frequency of elections over this period, some 42% savings of annual costs would be achievable under a fixed four-year parliamentary term, and this translates to current savings of some $18,147,470 per annum in government outlays.

43.9 One of the significant cost outlays of a federal election is election funding paid to candidates, political parties and Senate groups, who obtain four percent or more of the formal first preference vote. Following an amendment to the Electoral Act in 1995, the base funding rate for both the House of Representatives and Senate votes is now the same. During the fourteen-year period from 1984 to 1998, these costs amounted to some $111,822,000 or 28.1% of the total election cost outlays.

43.10 As the amount to be paid in election funding is calculated by multiplying the number of formal first preference votes by the current election funding rate, there is a direct correlation between the number of electors who cast a vote and the government outlays expended on election funding. Without

speculating on the actual levels, if the existing legislative provisions for election funding remained in force, and compulsory voting were to be repealed, there would probably be a reduction in the level of government outlays. Such a reduction would result from a fall in the number of formal first preference votes, resulting from a lower voter turnout.

43.11 Following the introduction of compulsory voting for federal elections in 1925, voter turnout increased from 57.9% in 1922, to 91.3% in 1925, and has not fallen below 90% since that time. As can be seen in the table above, the voter participation rate for the fourteen-year period from 1984 to 1998 has averaged 95.4%. It is therefore reasonable to assume that the level of government outlays on election funding will remain relatively stable under the existing compulsory voting provisions.

43.12 *Provisional voting:* On page EM41 of the transcript, Mr Nairn expressed surprise, especially in relation to NSW provisional voting statistics, that the AEC concluded at part 8.10 of submission No 88 that nothing unusual had occurred at the 1998 federal election. The AEC has provided a more detailed analysis of provisional voting, including an analysis of the relevant statistics for the Division of Eden-Monaro, at Attachment 28.

43.13 In summary, this analysis of objection deletion action and provisional voting activity in the Division of Eden-Monaro, and the comparative analysis of the national statistics for the 1993, 1996 and 1998 federal elections, supports the conclusion made in part 8.10 of submission No 88, that there does not appear to have been any unusual activity occurring in relation to provisional voting at the 1998 federal election.

43.14 *Electoral Enrolment during election periods:* At page EM45 of the transcript, Mr Ferguson asked for the number of enrolments during the election period in each Division. Attachment 29 is a table entitled “Enrolment Cards Processed and Deletions by Federal Division for Close of Rolls 31/8/1998 to 7/9/98”, and shows the number of enrolment forms processed and deletions made for each Division for the close of rolls period from 31 August to 7 September 1998. This table contains minor differences from the table entitled “Enrolment Activity for the Election Period 31/08/98 to 7/08/98”, provided in Attachment 02 to submission No 88. The reasons are as follows.

43.15 As the first footnote to the table in Attachment 29 explains, it includes a small number of enrolments processed for persons who were not eligible to vote at the election because they enrolled as 17 year olds and their birthday was after 3 October 1998. Further minor differences between the tables arise because of the ‘maturing’ of electors who enrolled as 17 year olds before 31 August 1998 and who turned 18 during the close of rolls period. Neither table takes into account those electors who enrolled during the close of rolls period or before, and who turned 18 between the close of rolls and polling day.

43.16 As the second footnote to the table in Attachment 29 explains, in the case of the Northern Territory, the table at Attachment 02 to submission No 88 overstated by approximately 800 the number of transfers within the Division

due to double counting of enrolment transfers across subdivisional boundaries. A check on the RMANS computer code indicates that subdivisional transfers in the Division of Kalgoorlie are correctly reported.

43.17 *Return-to-Sender Mail:* On page EM47 of the transcript, Mr Forrest commented on the amount of return-to-sender mail he receives after constituency mail-outs. The AEC has addressed this issue above in response to submission No 26.

43.18 *Robertson 'Dead Voters':* On page EM49 of the transcript, Mr Ferguson asked whether the AEC has advised Mr Lloyd MP of the conclusion provided in paragraph 10.2.11 of submission No 88 in relation to five 'dead voters' in the Division of Robertson. The AEC advised Mr Lloyd in a letter dated 12 April 1999 at Attachment 30.

43.19 *Timing of Electoral Roll Reviews:* On page EM43 of the transcript, Mr Ferguson requested information on the time periods between Electoral Roll Reviews (ERRs) and the close of rolls for the 1996 and 1998 federal elections. ERR activity was completed some two months before the close of rolls on 5 February 1996 and one month before the close of rolls on 7 September 1998. The table below details the periods of ERR activity undertaken prior the conduct of these elections.

ERR Activity	**Prior to 1996 Election**	**Prior to 1998 Election**
NSW	Sept - Dec 95	Feb – Jun 98
VIC	Apr – Jul 95	Feb – May 98
QLD	Aug – Nov 94	Dec 96 – Mar 97 (CRU Trial) Aug – Oct 97 Jan – Feb 98
WA	Feb – Sept 95	Feb – Aug 98
SA	Mar – Oct 95	Mar – Jul 98 Aug 98 (CRU Trial)
TAS	Oct 94 – Mar 95	July – Sept 97 Jun 98 (CRU Trial)
NT	May – Dec 95	Apr – Aug 97 (targeted fieldwork) Feb – Aug 98 (full review)
ACT	Sept – Dec 95	Aug – Oct 97

43.20 It should also be noted that the timing of ERRs is influenced by the conduct of State/Territory elections, and the subsequent enrolment deletions from the objection action that follows these events. Enrolment deletions occurred as a result of objection action following Local Government and State elections prior to both the 1996 and 1998 federal elections. Further enrolment deletions occurred as a result of the 1997 Constitutional Convention election.

43.21 *Registration of Political Parties:* At page EM51 to 54 of the transcript, Senator Murray raised a number of issues in relation to the registration of political parties given the experience of the recent NSW State election (see also response to submission No 72 from Antony Green). He said, "there is a

belief in the political world that Independents and political parties are put up by another political party or organisation for tactical purposes during an election, to influence preference distribution or to disperse the vote or to confuse voters…" Senator Murray then asked the AEC to consider this issue.

43.22 The AEC believes that an effective means by which possible manipulation of the electoral system can be avoided is through a strengthened system of party registration at the federal level. In the lead up to the recent NSW State election, the *Daily Telegraph* newspaper published an article on 13 March 1999 entitled *Tougher controls for parties* which stated:

> Tough controls on political parties including hefty registration fees will be imposed following community disgust with the ballooning Upper House ballot paper.
>
> Premier Bob Carr last night told *The Daily Telegraph* he would lift registration fees from $500 to $3500 to prevent the "ridiculous state of affairs" being repeated.
>
> Opposition Leader Kerry Chikarovski, who described the biggest ballot paper in Australian history as "lunacy", also proposed an overhaul to discourage sham parties damaging the democratic process.

43.23 While these concerns are directed at the registration of political parties at the State level in NSW, their general thrust is also relevant to the federal level. The AEC, while confident that its current registration practices, including the current review of the continued eligibility of registered parties, already provide strong safeguards against the fraudulent registration of political parties, nevertheless believes that the party registration process could be strengthened further to safeguard the integrity of the scheme.

43.24 As reported in part 11 of submission No 88, the AEC is reviewing all non-parliamentary political parties registered before 1997, as well as a small number of parliamentary parties where their continued eligibility is not clear. The AEC believes that this administrative initiative is vital to the integrity of the Register of Political Parties and, as such, the AEC should be expressly authorised to undertake such reviews under the Act. This review power should entitle the AEC to specify the documentary evidence it requires political parties to produce in the course of the review. Failure to produce the required evidence should be a sufficient basis for the party to be deregistered.

Recommendation 1: That the Electoral Act be amended to expressly empower the AEC to:

(a) conduct reviews of the continuing eligibility of registered political parties;
(b) specify the documentation it requires parties to produce in support of their application for registration and their continued right to remain registered; and

(c) deregister a political party if it fails to produce the documentation requested by the AEC in support of its continuing right to remain registered.

43.25 The registration of a political party and any subsequent amendments to its registered name or abbreviation are services that currently are provided free of charge by the AEC. The Electoral Act requires such applications to be advertised in at least one major newspaper in each State and Territory, as well as the Commonwealth Gazette. These advertising costs alone exceed $5,000. The AEC believes that fees for these registration services should be introduced. A fee would encourage applicants to finalise details such as proposed party name before submitting their application, and would also help discourage frivolous applications.

43.26 It is recognised that it would be prohibitively expensive for many parties to bear the full cost of party registration services. However, a nominal fee for processing applications for registration and subsequent changes to the registered name or abbreviation of a party would not be onerous for a viable political party. The AEC has in mind a fee of $500, which, for a non-parliamentary party, would represent only $1.00 each for the minimum membership required for registration.

Recommendation 2: That a fee of $500 be required to accompany an application for the registration of a political party and an application to change either the registered name or abbreviation of a political party.

43.27 To be eligible for federal registration, political parties must have either 500 members or at least one member who is a member of a State, Territory or the federal parliament. The Act does not attempt to impose itself unnecessarily upon the internal structure and operations of political parties and, as such, it does not specify any conditions for recognising a person as a member of a political party. The terms and conditions of membership are left entirely to be set by the rules of individual parties.

43.28 Where the rules governing the conditions of membership of a party are vague, the status of persons as members of a political party can be left open to question. Members are not only crucial to the registration of a political party, they also have the power to deregister their party. In such situations it is essential that membership is able to be conclusively verified. The Electoral Act currently sets one condition upon party members in order for them to be recognised for party registration purposes, namely that the member must be entitled to enrolment to vote at federal elections. This does not prevent a party from having members who are not entitled to federal enrolment; it only prevents the party from using these members for federal registration purposes.

43.29 The AEC believes that the Electoral Act should clarify party membership status for party registration purposes by specifying additional

minimum conditions for the formal recognition of party members. Party membership should be recognised for registration purposes where:

- the person has been accepted as a member according to the party's own rules;
- a period of not more than 12 months has elapsed from the date the person joined or renewed party membership; and
- the person has paid a minimum annual membership fee of $5.00 in respect of that period.

43.30 As with the current provision requiring persons to be eligible for enrolment for federal elections in order to be recognised under the party registration provisions of the Act, these conditions would not limit political parties from having wider or less restrictive classes of membership such as life memberships or discounted memberships, but such classes may be irrelevant for party registration purposes.

> **Recommendation 3: That the definition of a member of a political party at section 123(3) of the Electoral Act be expanded to include the requirements that a person must have:**
>
> > **(a) been formally accepted as a member according to the party's rules;**
> > **(b) joined the party or renewed their membership within the previous 12 months; and**
> > **(c) paid a minimum annual membership fee of $5.00.**

43.31 At page EM52 of the transcript, Senator Bartlett expressed concern over the potential confusion caused to voters by the registered names of some political parties, that are not what they might appear to be, and referred to an example arising at the recent NSW State election:

> The Animal Liberation Party is one that comes to mind. It had no connection with the existing organisation. Obviously, at face value people would assume that the Animal Liberation Party would have something to do with the organisation Animal Liberation.

43.32 The federal party registration scheme has not experienced any such problems with 'front' parties to date. This is probably due to two important deterrent mechanisms built into the federal electoral system. Firstly, the Senate electoral system requires a higher quota for election than is required for the NSW Legislative Council; and secondly, there are stringent requirements for political party registration at the federal level, including the requirement for 500 members or a parliamentary member. The AEC considers that the existing deterrents in the Electoral Act, especially if enhanced by amendments suggested at recommendations 1, 2 and 3 above, are sufficient to prevent the federal party registration system being exploited by 'front' parties.

43.33 The Electoral Act does, however, allow a party to register both a name and an abbreviation, either of which may appear against endorsed candidates' names on ballot papers. Under the present provisions, the 'abbreviation' may be an alternative to, and may even be longer than, the registered party name. In effect, a party can register two, quite unrelated names. The AEC is of the view that a registered alternative name should be restricted to being an abbreviation of, or at least bear a meaningful connection to, the registered party name and that an alternative name should be no longer (either in terms of words or total characters and spaces) than the registered party name.

> **Recommendation 4: That the registered abbreviation of a political party be restricted to either an acronym, or a shortened version, of the party's registered name and it should be no longer overall than the registered party name.**

43.34 *The AEC and the JSCEM:* On page EM54 to 55 of the transcript, Senator Murray said the following:

> There are at least three members of this committee who are familiar with the Joint Parliamentary Committee of Public Accounts and Audit. The Auditor-General of his own volition will come to the committee and say, 'Here is a problem,' because the act requires him to do so, and the committee will respond. As far as I understand the Commonwealth Electoral Act, it does not place the same obligation on you to come to the committee as a statutorily established body. You have the same obligation to go to the minister. In your opinion, would the reactiveness to current events be improved, as it is for the Auditor-General to the public accounts committee, if you had the same legislative permission to approach this committee in the same way as you approach the minister? Perhaps you might like to give that further thought.

43.35 Section 7(1)(d) of the Electoral Act currently makes it one of the functions of the AEC to "provide information and advice on electoral matters to the Parliament, the Government, Departments and authorities of the Commonwealth …". While it is true, as Mr Nairn pointed out in response to Senator Murray at the hearing, that

> there is nothing to stop this committee at any stage throughout the term of the parliament asking the AEC to come in to discuss matters with us. In fact we have done that on several occasions

the question still arises of how the AEC could best raise with the Parliament, through the JSCEM, in accordance with the Electoral Act, a matter that might be outside the JSCEM's current terms of reference.

43.36 The AEC believes there is much to commend Senator Murray's proposal that steps be taken to ensure that there is at all times, and in relation to all issues, an appropriate mechanism which will enable the AEC to perform its statutory function of providing information and advice to the Parliament. This is particularly so on matters that might require a cooperative political

approach to emergent problems not immediately relating to the conduct of the last federal election.

43.37 The first paragraph of the resolution of appointment for the current JSCEM (see Extract from Votes and Proceedings No 11 of 3 December 1998) reads as follows:

> That a Joint Standing Committee on Electoral Matters be appointed to inquire into and report on such matters relating to electoral laws and practices and their administration as may be referred to it by either House of the Parliament or the Minister.

43.38 An amendment to include the words "or the Australian Electoral Commission" after the word "Minister" would have the desired effect.

> **Recommendation 5: That the resolution of appointment of future JSCEMs be broadened to empower it to consider, and report upon, any matters raised with it by the AEC pursuant to section 7(1)(d) of the Electoral Act.**

43.39 *Unanswered calls to the AEC:* On page EM58 of the transcript, Senator Faulkner asked whether unanswered calls to the AEC Call Centre at the 1998 federal election were successfully connected on a later date.

43.40 Discussions with the service suppliers indicate that it may be technically possible to determine the success rate of callers who initially received an engaged signal when they first called the AEC telephone enquiry service. However, it would be necessary to trace the 610,171 unsuccessful calls in order to determine who called again and how many times. The return call rate could only be determined if there was the ability to examine and record where the call originated from and the link pattern (through various exchanges) from point of origin to the AEC call centre, as well as which call centre took the call.

43.41 As these calls came from all over Australia and involve all exchanges, significant costs would be involved in pursuing this matter so the figures in paragraph 3.6.5 of submission No 88 will not be amplified. However, negotiations are underway with suppliers as to whether increased capacity will be available for subsequent call centre operations such as the 1999 Referendum.

43.42 *Senate ballot paper layout:* On page EM61 of the transcript, and in the context of part 7.3 of submission No 88, Senator Faulkner asked whether the NSW Electoral Office undertook any testing before introducing the new layout for the Legislative Council ballot paper at the NSW State election on 27 March 1999.

43.43 The NSW State Electoral Commissioner, Mr Ian Dickson, has advised that 'George Patterson Bates' provided a report to him entitled "Qualitative Research into the Legislative Council Ballot Paper – Final Report" on 23

March 1999. Mr Dickson has further advised that, with sufficient notice, he would be prepared to provide oral evidence on the NSW State election experience at a later public hearing by the JSCEM, if this would be of assistance.

43.44 *Multiple Postal Vote Applications:* On page EM63 of the transcript, Senator Faulkner said that he would like more detail on the administrative processes that the AEC undertakes when multiple postal vote applications are received. The AEC addressed this issue at paragraph 8.6.19 of submission No 88, and would be pleased to provide any further information required in oral evidence at any later public hearing.

43.45 *Greenfields Investigation:* On page EM64 of the transcript, Senator Faulkner asked for information on the AEC investigation into the Greenfields Foundation. Mr Cunliffe advised that it might not be appropriate for the AEC to provide such information to the JSCEM during the course of an investigation and indicated that he would take further advice. On 9 April 1999, the Electoral Commissioner wrote to the Chairman of the JSCEM advising that the AEC did not propose to provide any relevant material relating to an investigation that is still not concluded (Attachment 31).

43.46 *Second Preference HTV cards*: On page EM68 of the transcript, Mr Nairn asked what the difference was between the 1993 ALP Macquarie HTV card that Justice Gaudron decided in *Webster v Deahm* was not misleading or deceptive under section 329 of the Electoral Act, and the 1998 ALP Richmond HTV card, and the 1998 WA Liberal Party HTV card.

43.47 The 1993 ALP Macquarie HTV card is reproduced at Attachment 8 to submission No 88, and it will be noted that it is similar in appearance to the 1998 ALP Richmond HTV card reproduced at Attachment 11 to submission No 88. On the basis of Justice Gaudron's 1993 decision (quoted in Electoral Backgrounder No 5 at paragraph 37) the AEC was advised by the DPP that the 1998 ALP Richmond HTV cards were not misleading or deceptive under section 329 of the Electoral Act. Accordingly, any HTV cards of this type and appearance are unlikely to be investigated or prosecuted by the AEC under section 329.

43.48 By contrast, in relation to the 1998 WA Liberal Party HTV card reproduced at Attachment 12 to submission 88, the AEC received a complaint that it was in breach of sections 329 and 351 of the Electoral Act. After seeking legal advice from Senior Counsel through the Australian Government Solicitor on polling day, the AEC concluded that this HTV card might have been in breach of section 351 of the Act (but probably not section 329), and accordingly sought and obtained the voluntary withdrawal of the WA Liberal Party HTV cards by about 4 pm on polling day.

43.49 After polling day, the AEC obtained legal advice from the DPP, which is extracted in Attachment 13 to submission No 88, on whether a prosecution under section 351 of the Electoral Act was recommended. Despite the prior opinion of Senior Counsel on polling day that an application to the court for an

interlocutory injunction would be successful, the DPP advised after polling day that the current terms of section 351 of the Electoral Act would probably not have sustained a prosecution.

43.50 In the view of the AEC, the legislative policy behind section 351 requires attention before the next federal election. The complaints of the major political parties about the difficulties of legislative interpretation, and the complaints of minor political parties about second preference HTV cards, provide further support for this view. Accordingly, in part 6.8 of submission No 88, the AEC asked the JSCEM to consider possible amendments to the Electoral Act to ensure that the relevant provisions are clear in their meaning to all parties to the electoral process.

44 Attachments

Submission No 1 – Attachment 01

Sample correspondence from the AEC re information on Langer-style voting

Senator Bob Brown
GPO Box 404
HOBART TAS 7001

Dear Senator Brown

I refer to your letter of 11 September 1998 in which you ask what steps are being taken by the Australian Electoral Commission (AEC) to ensure that people are aware that a Langer-style vote will not be counted as formal as a result of the amendments made by the *Electoral and Referendum Amendment Act 1998* to the *Commonwealth Electoral Act 1918.*

The following is a list of information sources on Langer-style voting that have been or will be provided by the AEC before polling day on 3 October 1998.

(a) The enclosed “Your Guide to the 1998 Federal Election” will be distributed to every Australian household beginning this week. You will note that on page 4 there is a warning about Langer-style voting.

(b) The enclosed draft newspaper advertisement “Number Every Box” will be published in all metropolitan and major regional newspapers beginning on Tuesday 29 September. You will note that in the top right hand corner a Langer-style vote is marked as “wrong”.

(c) The enclosed “Electoral Newsfile” has already been distributed to all Members of Parliament and electorate offices, to about 5,000 other interested persons, including teachers and journalists, and is available from the AEC on request. You will note that at the bottom of page 3 information is provided about Langer-style voting.

(d) The enclosed Electoral Backgrounder No 7 on “Langer-style Voting” has already been distributed to all Members of Parliament and electorate offices, to other interested persons, and is available from the AEC on request.

(e) The AEC election enquiries telephone number, 13 23 26, has already dealt with many requests for information on Langer-style voting, and will continue to do so until polling day.

(f) The AEC Internet site, www.aec.gov.au, contains information on formal and informal voting, including the Electoral Backgrounder on “Langer-style Voting” in the “What’s New” area.

(g) AEC staff, including Divisional Returning Officers, have been informed of the changes, and are available to answer enquiries on Langer-style voting as required.

(h) The AEC Director Information, Mr Brien Hallett, has already completed a number of media interviews on Langer-style voting, and will continue to be available for such information sessions as required.

The AEC is very concerned to ensure that all electors are properly informed of their rights and responsibilities, and believes that these varied information sources should reach interested electors in one way or another, so that they do not inadvertently cast an informal Langer-style vote for the 1998 federal election.

Yours sincerely

Paul Dacey
Assistant Commissioner
Elections and Enrolment

15 September 1998

Submission No 8 - Attachment 02

Correspondence from AEC to HREOC re assisted voting for the visually impaired

Mr Chris Sidoti
Acting Disability Discrimination Commissioner
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 1042

Dear Mr Sidoti

COMPLAINT – MR JOHN MIDDLETON

I refer to your letter of 24 February in regard to a complaint by Mr John Middleton.

Mr Middleton alleges that he has been treated in a manner that constitutes a breach of his human rights and discrimination on the basis of his visual disability. In particular, Mr Middleton alleges that not being able to vote without assistance breaches his human right to vote by secret ballot and discriminates against him on the basis of his disability.

The Australian Electoral Commission is committed to ensuring that the electoral process is as accessible as possible to people with a disability. In regard to those with a visual impairment, the Commission works through and consults with peak bodies such as the Royal Blind Society. For example, for the 1998 Federal election, the Commission arranged for the Society to produce 3000 audio tape versions of the Householder Leaflet for the election. This leaflet contains a wide range of information on the election and was delivered nationally. In addition, the Society produced 160 computer disks, containing the same information, for personal computers adapted with screen readers and speech synthesisers.

To ensure that visually impaired people were aware of the existence of the materials, the Commission paid for appropriate advertising on Radio for the Print Handicapped and ensured that the material was promoted through its national telephone inquiry service. The Society also established, with Commission funding, a 1800 contact number for the election materials. In total, the Society distributed 2,742 copies of the audio tape.

The current polling place procedures allow for an assisted vote for people with a disability. While a small number of complaints from people with a disability are received each Federal election, most are from people with a mobility disability and very few are from people with visual impairment. As far as we are aware, the vast majority of people with a visual impairment are satisfied with the range of voting options and also the assistance provided when casting a vote. This has been reflected in our discussions with appropriate peak disability bodies and also in our election exit polls and surveys – where the concern expressed by Mr Middleton has not been raised (at least over recent Federal elections).

The response to your questions is as follows:

1. The procedure for assisting a visually impaired voter to complete a ballot paper is set out in the Polling Place Management Procedures Manual Pages 68-69. These pages, plus other relevant pages of the manual, are attached as Attachment A.

Pages 86-88 of the manual are part of the homework that is completed by polling place staff. Assistance to voters with a disability is also covered in face-to-face training provided to all staff filling polling place Officer In Charge positions.

The Commission also produces polling place manuals for use with remote mobile polling, other mobile polling (for example hospitals and nursing homes) and pre-poll polling. The wording in regard to voters with a disability is identical to that of the Polling Place Management Procedures Manual.

2. Section 234 and 234A of the Commonwealth Electoral Act 1918 is the relevant legislation that covers assisted voting for the visually impaired. This is attached as Attachment B.

3. You have asked the question "Please outline the steps taken by the AEC to ensure that visually impaired people can cast a secret ballot". In terms of a visually impaired voter three people – the voter, the polling official and a witness – are all aware of how the vote has been cast. The AEC does not, therefore, provide for a completely secret ballot for visually impaired voters. A visually impaired voter also has the option of casting a postal vote. With this option only one person would need to provide assistance.

4. While the Commission has no plans at present to alter the type of assistance offered to people with visual disabilities, it will continue to explore and find ways to better promote its full range of services to people with a disability, and improve those services wherever possible.

5. The Commission believes that its current procedures are reasonable, particularly given the very short notice (normally 33 days) for the conduct of Federal elections in Australia. The short notice provided presents significant difficulties in possible alternative voting methods.

While the Commission offers various options in terms of types of voting and assistance while voting, Mr Middleton's point is very clear – that he wants to be able to cast a secret ballot without any assistance.

Mr Middleton has suggested using computers in the Commission's Divisional Offices or other approved locations prior to or on election day. This suggestion, while not without merit, would require the Commission to acquire as a minimum 148 (at one per Divisional Office) additional personal computers and also appropriate facilities to install them so that they could be used without inconveniencing other voters or Divisional staff. This would inevitably raise the issue of why other voters could not also vote electronically. Should computer voting facilities for those with a disability be made available nationally on election day a minimum of 7600 personal computers (one per polling place) would be required plus an infrastructure to support them and relay results. As far as the Commission is concerned, the claim of "undue hardship" is a very real one.

Mr Middleton may not have considered the fact that the senate ballot papers in the larger States contain a large (possibly in excess of 60) number of candidates. Given that there is the option of above or below the line voting, explaining the ballot paper using audio on a computer, and then voting on the computer, would not be easy and might lead to an informal vote.

Apart from any "undue hardship", the Commonwealth Electoral Act does not allow for electronic voting and this would require significant changes to the Act. It is the

Commission's view that, unless there was considerable bi-partisan support for such a change and the willingness of the government of the day to accept significantly higher Federal election costs, any form of electronic voting is well into the future in the Australian context.

Although not suggested by Mr Middleton, on a few occasions in the past the issue of the Commission providing braille ballot papers has been raised. There has been informal discussion on this subject with peak blind organisations while making preparatory arrangements for Federal elections. Advice has been that this is not a practical proposition given the magnitude of the task, the available timeframe and the likely take-up rate. Attachment C is the election timetable for the 1998 Federal election (and this is typical of recent Federal election timetables). It should be noted that nominations for candidates closed on 10 September and election day was 3 October. What is not stated is that mobile and pre-poll voting commences 12 days prior to election day (in this instance on 21 September)– thus the Commission has only 10 days to print and distribute 156 different ballot papers throughout Australia.

A further suggestion in the past was that of some type of template that could be used as a guide. While some form of initial assistance may still be required, the voter would be able to actually complete the ballot paper in secret. Again there is the problem of a very short timeframe for production and distribution and any such template, particularly for a senate ballot paper, would be large and complex and likely to confuse the voter.

Mr Middleton mentioned that he has failed to get support on this matter from a broad range of political representatives in the past and that he has also approached the Joint Standing Committee on Electoral Matters (JSCEM). I note that Mr Middleton has made a submission to the current JSCEM inquiry into the 1998 Federal election.

Please contact Paul Anderson, the Commission's Access and Equity Officer, on 02-62714460 should you require further information on this matter.

Yours sincerely

Bill Gray
Electoral Commissioner
31 March 1999

Extract from AEC submission No 90 of 20 September 1996 re HTV cards

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.

Submission No 26 – Attachment 04

Extract from AEC submission No 91 of 3 August 1993 re RTS mail

14.4 Return to Sender MP Mail

14.4.1 This investigation centred on mail sent to electors in a marginal Division which was returned unclaimed. Details were provided to the AEC by a political party. The AEC has been conducting a thorough examination of this data as a case study of the nature of elector mail returned unclaimed to political parties, candidates and Members. Information provided by the party has been compared to the consolidated list of voters for the Division. Where the turned unclaimed mail was addressed to an elector at the address for which he/she appeared on the certified list for the election, the type of vote, place of voting and any subsequent re-enrolment by the elector is being examined. Samples of those electors who cast an ordinary vote, and all those electors who cast a declaration vote at a polling place outside this Division and have not subsequently re-enrolled elsewhere are being followed up by personal visit. While the study is not yet complete, a number of significant findings have emerged at this stage.

14.4.2 The first stage of the AEC's investigation strongly indicated that the mailing list was not derived from the close of roll data provided by the AEC. For example, of the 1,410 individual names that could be identified from the 1,035 generically addressed mail items (eg Mr & Mrs Jones, The Smith Family) which were "returned unclaimed", 346 (25%) were names that were not on the roll for the Division concerned as at the close of rolls for the election. Later discussions with the party concerned have confirmed that end-December 1992 enrolment data - data that was six weeks out of date - was used as the basis for the mailing. Given that the turnover rate of electors averages naturally around 20%, it would not be unusual for some 1,600 mail items to be returned unclaimed in an average Division if six week old enrolment data were used. The number actually returned - 1,035 - was significantly fewer than what would be expected with the normal turn-over of electors in the average Division.

14.4.3 Upon further investigation of those names (1,058) listed on the electoral roll for the particular Division, it was found that 224 (21%) did not vote at the election. This was much higher than the 3% non-voter rate for the Division as a whole and would indicate that these people were no longer living in the Division. They certainly played no part in the election. A further 17 had been noted prior to polling day as returning deletion from the electoral roll, generally because of death after the close of the roll. No vote was recorded for any of these names.

14 4.4 The remaining 817 electors voted in the election. Of these 608 cast an ordinary vote, of which 90% were cast in the same town, or a nearby town, as that for which the electors were enrolled. Given the rural nature of this particular Division, that would tend to indicate that those electors were still living at, or nearby, the address for which they appeared on the electoral roll. Investigations have shown that of those 608 ordinary voters, 74 re-enrolled in the period February to May 1993 for another address within the same Division.

14 4.5 The remaining 209 of the "unclaimed" electors voted by declaration - 124 absent, 36 postal, 47 pre-poll and 2 provisional. For all except the absent voters, this represents a similar percentage to that experienced in the Division as a whole. The proportion voting absent is significantly higher than for the Division as a whole - 12% as. against 5%. Amongst these absent voters from whose addresses mail was returned unclaimed, was a significant proportion (25%) who had re-enrolled in the

period between close of roll and end-May 1993. This was to be expected: included in this figure are electors who had moved to an address outside the Division either prior to the close of roll and were not yet entitled to re-enrol for their new address or had neglected to re-enrol, or had moved after the close of roll. In the AEC's experience, numbers of electors wait until polling day to advise of their changed address.

14.4.6 Additionally, the AEC believes, and officers of the party concerned have agreed, that a significant, but as yet unquantifiable proportion of electors will mark for return unsolicited mail received - often in the hope that this action will prevent further unsolicited mail from the same source.

14.4.7 Two points have become strongly evident from this study. Firstly, it has uncovered no evidence of fraudulent enrolment: the evidence examined has tended to reinforce the view that the enrolment system is operating as intended. Secondly, those electors from whom mail had been returned unclaimed had been enrolled for at least two months prior to the announcement of the election and generally have been longer term residents in this Division, that is they were not a close of rolls influx.

14.4.8 The AEC has in the past emphasised to political parties, Members and Senators the need to use only the most up-to-date enrolment information when mailing electors, due to the significant levels of on-going elector movement. To do otherwise unfortunately gives rise to unfounded allegations of gross inaccuracies or fraud in the rolls used at elections.

Extract from AEC submission No 120 of 10 November 1993 re RTS mail

Checks stimulated by mail returned unclaimed

136. The AEC already maintains quality control through analysis of mail returned unclaimed. Official AEC mail returned unclaimed will result in objection action being initiated by the AEC. There exists the possibility of requiring thorough investigation of all mail returned unclaimed from mailing by all, or particular, external bodies using electoral roll data. This could be in relation to all mailings, or to mailings at specific times – for example in the election period.

137. Significantly, analysis of mail returned from non-AEC mailings shows that much of this returned mail is the result of old address data being used for the mailing. In the one major analysis the AEC has undertaken of mail returned unclaimed fr4om a pre-1993 election political party mailing, end-of-December 1992 roll data were used for a March 1993 mailing. Of 1035 letters returned, 25% were addressed to electors whom the AEC had removed from the roll by the time of the mailing. Only a very small proportion (around 5%) were returned "not known at this address". Some mail was obviously returned because the recipients did not like the message, rather than because the recipient did not exist. Due to the age of the roll data used for this mailing, this returned mail was not relevant to close of roll enrolment activity. As acted information on returned mail from external sources cannot be acted on with confidence, corroborating information that an elector is no longer at an enrolled address is generally required before action in respect of enrolment is taken.

138. It is always open, of course, for those organisations who believe that mail returned unclaimed to them indicates that electors are no longer at enrolled addresses to institute objection action against these electors themselves, as provided for in subsection 114(1) of the Commonwealth Electoral Act 1918. Despite indications from certain organisations that mail returned unclaimed from their mailings indicates that electors are wrongly enrolled, there has been a dearth of such private objection action.

Correspondence from AEC to MPs re RTS mail

TO ALL SENATORS AND MEMBERS

RETURN TO SENDER MAIL ARISING FROM POSTINGS USING ELECTORAL ROLL DATA INFORMATION FOR MEMBERS AND SENATORS

As you are aware, the Australian Electoral Commission (AEC) provides the offices of Members and Senators with monthly updates to the electoral roll on floppy disc*. These updates include new electoral enrolments, amendments and transfers of enrolments. Over the last 2 years the volume of Members and Senators mail returned to sender by Australia Post (RTS mail) and subsequently forwarded to the AEC for investigation has increased.

To assist Members and Senators, the AEC is providing the following information on the procedures which will shortly be adopted by AEC Divisional staff to investigate returned mail.

1. On receipt of RTS Mail, Members are requested to forward the returned mail envelopes to the relevant AEC Divisional Office or, in the case of mail returned to Senators, to AEC State Head Offices.

2. AEC staff will check the enrolment details of addressees against the electoral roll provided that:

- the addressee's name (including given names) and address is shown in sufficient detail to allow a positive match with an entry on the electoral roll; and

- the returned envelope is marked with an official Australia Post "Return to Sender" stamp or with other clear information indicating that the addressee may have left their enrolled address.

3. In carrying out checks against the roll, AEC staff will terminate enquiries if they have prior information indicating that electors are correctly enrolled e.g. electors are temporarily overseas or enrolled for addresses where there are known mail delivery problems, including delays in the collection of mail from poste restante delivery addresses or where an incorrect postal address was used. In these cases the envelopes will be endorsed with the reason for the termination of investigations and set aside for return to the Senator or Member.

4. In those instances where preliminary checks indicate that an elector may have left their enrolled address, the AEC will make further enquiries by phone call to the elector's residence (particularly in remote areas) or by the posting of an enquiry letter, an example of which is at Attachment A.

5. Further action by AEC staff will depend on the nature of replies received from electors and on the endorsements noted on any resumed, unopened enquiry letter envelopes. In cases where the responses to the enquiry letters indicate that electors have permanently left their enrolled address (including no reply or returned unclaimed), official objection action under Part 9 of the *Commonwealth Electoral Act 1918* will be commenced.

6. Upon completion of all investigations for a batch of RTS mail, Members and Senators will be provided with information regarding the results of AEC enquiries. In cases where investigations take the form of an official enquiry letter, the AEC will retain the original RTS mail as evidence in support of ongoing enrolment action, and a summary listing the names of electors and the results of investigations will be provided (see Attachment B) RTS mail envelopes which were not subject to further investigation, i.e. an enquiry letter was not sent, will be returned with the summary listing.

In investigating reasons for the return of mail addressed to electors it is important to be aware that no matter how efficient and effective enrolment processes may be, there will always be electors whose enrolment details are not correct at a given moment and that this will result in a proportion of mailings being returned.

The basic reasons for this are twofold. First, on average around 15% of the Australian electorate changes address each year. This means that in a typical federal division with an enrolment of 78.000, almost 12,000 electors will change address each year, or about 1,000 per month.

Second, persons are obliged under the *Commonwealth Electoral Act 1918* to advise the AEC of a change of address when they have lived at a new address for one month (or 21 days if within the same division). They are not permitted to do so earlier. In practice, a fair proportion of people do not provide new enrolment addresses immediately after the relevant period has expired. Periodic electoral roll reviews address this problem to a limited extent and election roll closes also prompt a lot of people to update their enrolments.

Taking these two factors together it is clear that, on average, in excess of 1000 addresses in any list of electors for a division will be out of date at any given time. The enrolment records cannot be more accurate than this and Members and Senators should expect some mail to be returned. Rates of population movement may vary considerably between divisions, so the above numbers are only indicative of average levels of RTS mail. As well, the above figures apply only to mailings using up-to-date information. It is essential that the most recently available enrolment details (including postal address) are used for mailings and that printing arrangements do not unnecessarily delay posting. In order to minimise the volume of returned mail, Senators and Members are urged to mail correspondence within one week of receipt of the updated monthly enrolment data.

Further RTS mail problems may inadvertently arise from the reformatting of AEC roll data by Members' and Senators' offices to produce mailing lists with abbreviated given names and gender specific titles which are not provided by the AEC on their base data. The AEC cannot always investigate RTS mail where envelopes are, for example, addressed to a whole family or where individual electors cannot be clearly identified at the claimed address on the electoral roll.

Please contact the Australian Electoral Commission, Enrolment Section - Client Services Unit on 06 2714464 if you have any queries regarding the processing of address data supplied as part of the AEC's monthly update of enrolment information for Members and Senators. Further information regarding the handling and investigation of RTS Mail can be provided by AEC Head Offices in each State capital and Darwin or by individual Divisional Offices of the AEC.

Bill Gray
Electoral Commissioner

12 March 1995

** Note that monthly updates of electoral roll information is now supplied to Members and Senators on CD-ROM rather than on floppy disc.*

Extract from AEC submission No 90 of 20 September 1996 re by-elections

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”.

Extract from June 1997 JSCEM Report on subdivisional voting

2.45 In 1983 this Committee's predecessor, the Joint Select Committee on Electoral Reform, recommended that a voter be allowed to cast an ordinary vote at any polling place within his or her House of Representatives electorate (division), rather than being confined to a smaller subdivision. Under the old system, electors who arrived at a polling place outside of their enrolled subdivision - even if the subdivision was within their "home" division - had to either make their way to the subdivision or cast an absent vote. Usually there were several polling places within a subdivision; at the 1983 election (the last before the introduction of division-wide ordinary voting) 85 percent of subdivisions had enrolments of greater than 5000, and 43.12 percent had enrolments of greater than 10 000.

2.46 Concern is often expressed that division-wide ordinary voting has increased the potential for multiple voting, in that an elector's name is now on the rolls at all polling places within in a division. These concerns have led to calls for the reintroduction of subdivisional voting or the introduction of "precinct" voting, with an elector's name appearing on only one roll at one polling place.

2.47 Several submission writers cited the 1989 report of the *Inquiry into the Operations and Processes for the Conduct of State Elections*, prepared for the NSW State government by former State Electoral Commissioner Mr Ron Cundy and the current Commissioner Mr Ian Dickson. Messrs Cundy and Dickson noted (with reservations) that

Restricting electors to voting as ordinary voters at only one polling place could be expected to meet with a good deal of criticism. However, it is evident that the great majority of electors always vote at the same venue. In the Committee's opinion. any inconvenience imposed upon electors is outweighed by the benefit of virtually eliminating multiple voting.

2.48 The AEC, however, opposes precinct voting for the following reasons:

(a) the extent of apparent multiple voting in the same name can already be identified, through the post-election scanning of multiple marks on the certified lists of voters. The AEC and unsuccessful candidates, and persons qualified to vote in the relevant election, have recourse to the Court of Disputed Returns (discussed further in Chapter Nine) if they have reasonable grounds for believing that multiple voting has exceeded the elected candidate's winning margin.

(b) It is questionable whether polling officials and scrutineers would have sufficient knowledge of the population in a precinct of even 500 to 600 voters (the smallest size of precinct proposed in evidence to the inquiry) to be able to identify attempts at personation.

(c) There would be a major impact on the efficiency of the flow of voters through polling places, which would show up as substantially increased waiting times when queuing to vote. As noted at page 66 queuing has been of regular concern to Electoral Matters committees.

(d) A substantial increase in declaration voting (namely, absent voting from those electors not voting at their designated precinct) could be expected, which would “have the potential to delay the finalisation of election results”.

2.49 There is some substance in these administrative arguments. However the ability to travel to every polling place within an electorate, recording votes against the same name, causes as much disquiet about the integrity of the system as any other factor.

2.50 While the AEC expressed a case against precinct voting, it made no detailed comment on the possibility of restoring subdivisional boundaries similar in principle to those in place before 1984.

2.51 *Recommendation 7:*

that as part of the implementation plan referred to at Recommendation 1, the AEC prepare a detailed proposal for the reintroduction of subdivisional voting for future Federal elections. The proposal should consider a corresponding public awareness campaign (so that people are aware they may be disenfranchised if they fail to advise the AEC of a change of address across a subdivisional boundary, even when remaining within the same division).

Submission No 55 – Attachment 09

Extract from AEC submission No 90 of 20 September 1996 re computerised voting

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.

Submissions No 68 and 86 – Attachment 10

Extract from November 1994 JSCEM Report re the Enterprise Council

4.6 Dickson

4.6.1 Following the death of a candidate after the close of nominations, the House of Representatives election for Dickson in Queensland was deemed to have failed in accordance with section 180 of the Electoral Act. A supplementary election was held on 17 April 1993 and won by the Attorney General, the Hon. Michael Lavarch MP.

4.6.2 A Queensland-based organisation called the Enterprise Council submitted that the result in Dickson was "'manufactured", owing to:

- electors not residing at their enrolled addresses;
- non-existent or deceased electors at caravan parks;
- electors voting in the name of religious non-voters;
- multiple surnames enrolled at individual households;
- a high level of return-to-sender MP mail; and
- a high level of non-voting when compared with the State average.

4.6.3 The Enterprise Council charged that the AEC had acted improperly in seeking to not challenge the Dickson result in the Court of Disputed Returns.

4.6.4 The AEC responded to each allegation as follows:

- the only basis for alleging that electors were not at their enrolled addresses is a list of return-to-sender MP mail, and the Enterprise Council provides no evidence that any of the electors it refers to were not entitled to vote in Dickson;
- evidence put forward by the Enterprise Council does not address its proposition that electors at caravan parks "did not exist";
- of the three deceased electors referred to by the Enterprise Council, one died after the supplementary election, and no votes were recorded in the names of the other two;
- the Enterprise Council provides no evidence that any religious non-voters had votes cast in their names;
- the evidence put forward by the Enterprise Council relating to multiple surnames enrolled at households is severely flawed, by failure to explain why different surnames in a household should be regarded as indicating fraudulent enrolment, by factual errors, and by basic misunderstandings such as asserting that nine people were enrolled for one house. In fact, all nine had merely listed their enrolled address as Old Gympie Road, Dakabin (in common with many rural areas, there are no street numbers on this road);
- the accusation of a high level of return-to-sender MP mail is based solely on envelopes obtained in a dubious fashion from the office of the Liberal candidate. The envelopes have not been forwarded by the Enterprise Council to the AEC for investigation, despite such a request being made by the AEC nearly a year ago; and
- the lower voter turnout in Dickson compared with the State average reflects a long-standing pattern of a lower turnout for by-elections than for general elections.

4.6.6 Having examined both submissions, the Committee is satisfied that the evidence put forward by the Enterprise Council fails to substantiate its allegations.

This view would appear to be shared by the Liberal candidate in Dickson, Dr Bruce Flegg, who has advised the AEC that

> the Enterprise Council…in no way speak for me and I in no way support their misguided campaign.

4.6.6 The AEC did not act unreasonably in declining to challenge the Dickson result in the Court of Disputed Returns. The Committee therefore finds the Enterprise Council's accusation of political interference or improper collusion between the Commonwealth Government and the AEC to be unfounded.

Submission No 73 – Attachment 11

AEC correspondence with Neil Gillespie re ATSIC Regional Councillors

I refer to your facsimile letter of 8 December 1998, in which you seek support for an amendment to the law, presumably the *Commonwealth Electoral Act 1918*, to provide that ATSIC Regional Councillors are not required to resign in order to contest a federal election, but that if they do, such Councillors are able to resume their elected positions with ATSIC if they fail to gain election to the Federal Parliament. I apologise for the delay in replying to your letter.

To avoid any conflict of interest arising, section 44(iv) of the Constitution prevents anyone who "holds any office of profit under the Crown" from standing for or being elected to the Federal Parliament. The resignation and reappointment rights for federal public servants who wish to stand for election to the Federal Parliament are contained in the *Public Service Act 1922*, and similar legislation applies in the States and Territories for State/Territory public servants who wish to stand for election to the Federal Parliament (see paragraphs 29 to 36 in the enclosed Backgrounder). That is, the relevant legislation, in relation to the resignation and reappointment rights of public servants who wish to contest a federal election, is not the *Commonwealth Electoral Act 1918*.

I am unable to provide you with legal advice on the situation that applies in relation to ATSIC Regional Councillors who wish to contest a federal election (see paragraphs 37 to 41 of the enclosed Backgrounder). However, it may be that ATSIC Regional Councillors, being on the public payroll, would be regarded as holding an office of profit under the Crown. If so, then consideration might be given to making provision for resignation and reappointment rights for ATSIC Regional Councillors, if they do not already exist, in relation to candidacy for federal elections.

However, this is not a matter for the Australian Electoral Commission or the *Commonwealth Electoral Act 1918*. Instead, you might consider directing your concerns about the apparent lack of defined resignation and reappointment rights for ATSIC Regional Councillors to the ATSIC organisation itself, which is responsible for the *Aboriginal and Torres Strait Islander Commission Act 1989*. It would appear that this Act is the more suitable place for such rights as you are seeking to be included.

The second issue you raise is that of separate Aboriginal representation in the Federal Parliament. The appropriate forum for your concerns is the Joint Standing Committee on Electoral Matters at Parliament House, Canberra, which is currently inquiring into the conduct of the 1998 federal election, and will also be considering any suggestions for electoral reform. The JSCEM is currently in session, and you can contact the Secretary direct on ph: 6277 2374.

Yours sincerely

Paul Dacey
Assistant Commissioner
Elections and Enrolment

15 February 1999

AEC Statement on Political Affiliations

I, xxxxxx , have read the Terms of Employment and am prepared to perform the duties of the offered position, and agree to the terms of employment.

I declare that:

- I will not actively engage in political or electoral affairs during the period of my employment with the Australian Electoral Commission;
- I acknowledge the importance of the Commission and it's staff being seen to be, as well as being, completely impartial and politically neutral;
- I
  - will not disclose any official information acquired by me in the performance of my duties with respect to the vote of an elector in a manner that is likely to identify the elector;
  - will not interfere with or either directly or indirectly attempt to influence the vote of an elector;
  - will not communicate with any person the polling place except so far as is necessary in the discharge of my functions;

  and understand that to do so may be in breach of provisions of the *Commonwealth Electoral Act 1918*; the *Privacy Act 1988* and the Crimes Act 1914;

- I have read the Terms of Employment for Election Staff.

I consent to the release of my AEC employment history to other electoral bodies to enable them to approach me for employment as a polling official/election casual for elections held by these bodies. (Employment history includes: name, address, date of birth and other contact details; records of elections worked and positions held; and assessments of work performance by OIC/DRO). Yes/No

Signature and date

Submission No 141 – Attachment 13

Letter from AEO NSW to Jim Lloyd MP re dead voters

12 April 1999

Mr Jim Lloyd
Member for Robertson
61 Mann Street
GOSFORD NSW 2250

Dear Mr Lloyd

I refer again to the list of fifty-one electors supplied to the Australian Electoral Commission by Mr Lance Barrett of your office. Mr Barrett alleged that these electors were deceased, yet had voted at the Federal Election on 3 October 1998.

The Australian Electoral Commission takes all allegations of fraudulent enrolment and voting extremely seriously and investigates such allegations as a priority.

On 12 November 1998, Mr Barrett was advised by the then Acting Divisional Returning Officer for Robertson that the Commission's records indicated that, of the fifty-one electors on the list provided by Mr Barrett, five had voted at the Election.

I am now writing to advise you that each of the five people in question is alive and has maintained eligibility for enrolment in the Division of Robertson. There is therefore no evidence of fraudulent enrolment or voting activity by any of the persons named by Mr Barrett.

Yours sincerely

Frances Howat
Australian Electoral Officer for New South Wales

Extract from submission No 90 of 20 September 1996 re Christmas/Cocos

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.

Submission No 157 – Attachment 15

Extract from AEC submission No 139 of 21 December 1993 re Norfolk Island

On page 207 of the Hansard Transcript of the JSCEM hearings of 22 October 1993, Mr Melham suggested that it might be timely to revisit the legislative scheme for the enrolment of Norfolk Islanders under section 95AA of the Commonwealth Electoral Act 1918 (the Act).

2. Mr Melham was referring to the fact that Norfolk Islanders are able to enrol for any Division in Australia (except for the Divisions of Fraser and the Northern Territory) under a legislative scheme which is similar to that for itinerant electors under section 96 of the Act. It is apparent that, rather than taking up the option of enrolling in any Division in any State in Australia, the majority of Norfolk Islanders who enrolled and voted for the last federal election did so for the Division of Canberra. Attachment A provides details of current enrolment and voting statistics for Norfolk Islanders.

3. The original proposal by the Government, and the recommendation of the Australian Electoral Commission, was that all Norfolk Islanders enrol in the Division of Canberra, rather than dissipate their voting power over a number of Divisions around the country. The proposal had the twin advantages of being administratively and legislatively less complex, as well as providing for more effective representation for Norfolk Islanders. This option now appears to have effectively won the support of some 75 percent of Norfolk Islanders who have taken up their right to enrol and vote for federal elections.

4. Section 95AA of the Act provides that Norfolk Islanders may enrol in any Division in any State of Australia as long as they can establish a connection with that Division. This connection may be that they were last enrolled in that Division, or that they have next of kin in that Division, or that they were born in that Division, or that they have some other close connection with that Division. If there is no connection that can be established with a Division in State, then Norfolk Islanders are entitled to enrol for the Division of Canberra. Canberra was chosen as the “fall-back” Division because it is the only Territory Division that does not already have some administrative connection with an external territory for electoral purposes.

5. Section 95AA is probably the most complex provision in the Act and the density of legal language is in part related to the fact that during negotiations with the Norfolk Island Government it was agreed that the Division of Canberra not be named in the legislation. It therefore had to be described in the abstract in the most tortuous of legal language.

6. The historical background is briefly as follows. In 1976, in the Report of the Royal Commission into Matters relating to Norfolk Island, Mr Justice Nimmo recommended that the “residents of Norfolk Island be included in the electorate of Canberra in the Australian Capital Territory for the purposes of giving them representation in the Commonwealth Parliament”. The then Government decided not to adopt this recommendation, but to review it at a later date.

7. In 1991, a sub-committee of the House of Representatives Standing Committee on Legal and Constitutional Affairs reported on an Inquiry into the Legal Regimes of Australia’s External Territories and the Jervis Bay Territory. The Report was entitled “Islands in the Sun” and recommended that “the Commonwealth Parliament amend the Commonwealth Electoral Act 1918 to give optional enrolment rights to the people

of Norfolk Island; the electorate to which the voters would be attached to be determined on the advice of the Australian Electoral Commission".

8. The Australian Electoral Commission recommended to the Government that Norfolk Islanders be enrolled in the Division of Canberra. There were possible constitutional problems with enrolling Norfolk Islanders in a Division for a State, so a Territory Division was thought to be the only available option. And since the Territory Divisions of the Northern Territory and Fraser already administered external territories, the Division of Canberra was the obvious option. The Commission's recommendation was based on the simple democratic principle that Norfolk Island electors should vote in the one Division in order to maximise their representative power.

9. When it became known that the Government was intending to legislate for Norfolk Islanders to enrol and vote for the Division of Canberra, certain representatives of the Norfolk Island Government (NIG) approached the then Minister for the Arts, Sport the Environment and Territories, the Hon David Simmons MP, to put forward an alternative legislative scheme which would allow Norfolk Islanders to enrol and vote in any Division in Australia with which they could establish a connection. Negotiations proceeded over a period of more than a year during which time the Hon Wendy Fatin MP took over responsibility. The Australian Electoral Commission was involved in the negotiations in an advisory capacity only.

10. The NIG objection to the Government proposal was that Norfolk Islanders had no "community of interest" with the Division of Canberra. They instead proposed a scheme of enrolment similar to that for itinerant electors under section 96 of the Act. The Attorney-General's Department was again consulted on the constitutionality of enrolling Norfolk Islanders as people of a State. It was agreed that, with careful drafting, it would probably be constitutional to do so, and the legislation was then drafted in line with the NIG proposal, as agreed by Minister Fatin.

11. The Commission believes that the original grounds for the objection by NIG to enrolment in Canberra, that is, that there is no "community of interest" between Norfolk Island and the Division of Canberra, was misguided. The phrase was taken from section 66(3))b)(i) of the Act and refers to one of the factors which must be taken into account by Redistribution Committees.

12. There was no claim made in the Commission's original advice to the Government that there was any direct community of interest between Norfolk Island and the Division of Canberra. The Commission did subsequently advise that if "community of interest" was to become an issue it was more properly relevant to regard the Norfolk Islanders themselves as a "community of interest" within the Division of Canberra. This would mean that during any redistribution of the Australian Capital Territory, Norfolk Islander electors would always be moved en bloc where movement into a new Division was necessary.

13. In summary, the Commission would support any move by the Committee to reconsider the provisions relating to Norfolk Island in the Commonwealth Electoral Act 1918. The original claim by Norfolk Islanders that they should have some freedom of choice in their enrolment has resulted only in a dissipation of the voting power of Norfolk Islanders as a whole. The majority of Norfolk Islanders who have taken up their option to enrol have done so for the Division of Canberra and the Commission would support any recommendation by the Committee to legislate for all Norfolk Islanders who choose to enrol, to enrol only in the Division of Canberra.

Extract from AEC submission No 30 of 30 July 1996 re Norfolk Island

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

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

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

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

Recommendation No 4:

> The AEC recommends that section 95AA of the CEA be amended so that Norfolk Islanders may only enrol for the Division of Canberra, and that the JSCEM seek the views of the Department of Sport, Territories and Local Government on this recommendation.

Extract from AEC submission No 84 of 16 September 1996 re Norfolk Island

2.9.1 In the 1996 AEC submission No 30, at page S155, the AEC said that it remained of the view that Norfolk Islanders should be enrolled only for the Division of Canberra in order to maximise their voting power for the federal Parliament. Senator Minchin has suggested that Norfolk Islanders are already able to maximise their voting power if enough of them choose to enrol for the Division of Canberra, and asked that the AEC provide more detail to support its position.

2.9.2 On 21 December 1993 the AEC put a similar and lengthier submission on Norfolk Island enrolment to the previous JSCEM, and it is recommended that this 1993 AEC submission be re-examined in the light of the following further comments.

2.9.3 In its Report on the 1993 federal election, at page 145, the previous JSCEM recommended: "that section 95AA of the Electoral Act be amended so that Norfolk Islanders who choose to enrol may only enrol in the Division of Canberra" (recommendation No 69). In the Government Response of 21 September 1995 to the JSCEM Report, recommendation No 69 was deferred for further consideration. This

was in order to allow the Department of Environment, Sport and Territories to conduct negotiations with Norfolk Island on the JSCEM proposal. The AEC recommendation No 4 in submission No 30 to this JSCEM suggests that the Department of Sport, Territories and Local Government be invited to put its views on the proposed amendments.

2.9.4 The proposition that Norfolk Islanders be enrolled in the Division of Canberra dates back as far as 1976, when the Nimmo Royal Commission recommended that Norfolk Islanders be enrolled in the Division of Canberra; to 1991, when a parliamentary committee recommended that the extension of the franchise to Norfolk Islanders be done on the advice of the AEC; and to the 1993 JSCEM Report recommendation No 69.

2.9.5 In the negotiations leading up to the 1992 legislation, which extended the franchise to eligible Norfolk Islanders, the Norfolk Island Government representatives put the view that they had no “community of interest” with the proposed Division of Canberra, and that enrolment should be possible anywhere in Australia, under provisions similar to those for itinerant electors, with the Division of Canberra as a “fall-back” Division, not to be named as such in the CEA. As indicated in the 1993 AEC submission to the JSCEM, it is unfortunate that a misapplication by consultants to the Norfolk Island Government of the phrase “community of interest” has been allowed to cloud the issue in recent years. (see for example, R Wettenhall and P Grundy, “Norfolk Island and the Electorate of Canberra: Community of Interest?” Report to the Norfolk Island Government, Canberra, March 1992.)

2.9.6 The phrase “community of interest” was 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 is taken by the AEC to mean that if a Division contains a well-defined community (based on economic, social and regional interests) then that community should not be broken up and split across two Divisions, but remain intact in one Division.

2.9.7 From this perspective, the Norfolk Islanders themselves form a “community of interest” which should not be broken up by splitting that community across Divisions in any redistribution involving, for example, the Division of Canberra in the ACT. There has never been any suggestion that Norfolk Islanders have any economic, social or regional interests in common with any particular mainland Division, including the Division of Canberra.

2.9.8 The position of the AEC has been for many years that the community of Norfolk Islanders who choose to enrol for federal elections should enrol in one Division only, in order to maximise their representative power. To put this another way, every other community across Australia has a single Member of the House of Representatives who is responsible for their interests. The electors of the community of Norfolk Islanders should have the same right. By enrolling in many different Divisions, Norfolk Islanders are ensuring that no one voice speaks for their community interests in the Parliament, and as a consequence, they risk weakening their representative power (no matter what other benefits they may perceive).

2.9.9 On a final point, it is worth explaining why the Division of Canberra has been identified as the most appropriate Division for Norfolk Island electoral purposes. The Attorney-General’s Department expressed the view early in the discussions on Norfolk Island enrolment, that it might be legally questionable for all the people of

Norfolk Island to be classed as “people of a State” under the Constitution, which would be implied by any provision allowing Norfolk Islanders to enrol in a Division of a State. In the event, this doubt was addressed in the CEA by section 95AB, which, inter alia, obliges the Divisional Returning Officer (DRO) to accept that a Norfolk Islander seeking enrolment for a Division in a State is in fact one of the “people of a State” for the purposes of the Constitution. This “deeming” provision has not yet been judicially considered.

2.9.10 Given these early doubts about the constitutionality of enrolling Norfolk Islanders in a Division of a State, it seemed appropriate to look to inclusion in a Territory Division, which would not involve the same constitutional doubts. The Division of the Northern Territory already includes the external territories of Christmas Island and Cocos (Keeling) Islands, and the Division of Fraser in the ACT includes the internal territory of Jervis Bay. That left the Division of Canberra as the only other Territory Division which did not already include an external or internal territory, and so it became the only legal possibility for Norfolk Island.

2.9.11 With the recent redistribution of the ACT into three Divisions, there is of course no logical reason why the new Division of Namadgi should not be selected as the one Territory Division for Norfolk Island, except for the fact that there is some historical investment in the name of the Division of Canberra. That is, at any future ACT redistribution which might, for example, abolish one Division, it is likely that the Division of Canberra would stay as the name of one of the remaining Divisions. This means that if the Division of Canberra were to be named in the CEA as the Division for Norfolk Island enrolment, it is unlikely that it would require amendment to change the name following ACT redistributions in the future.

Correspondence between Barry Wakelin MP and Electoral Commissioner re signage

Mr. Bill Gray
Commissioner
Australian Electoral Commission
PO Box E201
Kingston ACT 2604

Dear Mr. Gray,

re: Former AEC office, Port Pirie

I write to express my frustration with the AEC's apparent unwillingness to address a significant problem associated with the move of the Division of Grey's electoral office to Port Augusta from its former site at Port Pirie.

That move was completed in February 1998 but there is a continuing problem with signage left in Port Pirie. Despite repeated requests made to Mr. Peter Pring, the AEC's property manager in Adelaide, prominent signage (floodlit at night!) remains in place at the former office site in Florence Street, Port Pirie.

Mr. Pring has previously assured my office (November 1998) that the signage has been removed despite the plain fact that it has not! The presence of the sign continues to cause significant irritation for members of the public seeking out what appears to them to be an operating AEC office, the present occupants of the site, and my staff who have been forced to deal with the problem.

I would appreciate immediate action to rectify this matter, beginning with the removal of the signage in Florence Street.

My thanks for your assistance in this matter.

Yours sincerely,

BARRY WAKELIN MP

4 February 1999

Mr BarryWakelin MP
Federal Member for Grey
Parliament House
CANBERRA ACT 2600

Dear Mr Wakelin

I refer to your letter dated 4 February concerning the removal of signage from the former AEC office site in Florence Street, Port Pirie. I sincerely regret the irritation and frustration you have experienced.

I have sought explanation from the South Australian Head Office and I am informed that there had been an understanding reached in December 1998 between Mr Pring and Mr Leigh Madigan, the Manager for Employment National, who are now the sole occupants of the building, that the sign would be removed.

On receipt of your letter (8 February), further contact was made with Mr Madigan and he again advised that the removal of the sign was imminent but had been delayed by the fact that the wiring of the signage was causing a technical problem which had to be addressed before its removal could be completed. It is my understanding that Mr Madigan has assured my officers that the sign will be removed later this week.

I will ensure that my officers report to me if the sign is not removed in line with the assurances given by Mr Madigan.

Again, my apologies for the concerns which you and your staff have suffered as a result of this saga.

Yours sincerely

Bill Gray

10 February 1999

Submission No 160 – Attachment 17

Correspondence between Barry Wakelin MP and AEO SA re Salisbury

Mr. Andrew Davies
Divisional Returning Officer (Grey)
Australian Electoral Commission
Fax: 08 8641 2082

Dear Mr. Davies,

re: Proposed alternative polling place at Salisbury, Adelaide

Thank you for your note informing me of your intention to establish this alternative polling place.

I would appreciate learning of the historical precedents in Grey for this approach.

Considering the scarce resources of the Australian Electoral Commission, and its requirement to organise polling places across the country, this decision is worrying. The participants at the sports carnival in question already have the opportunity to register their vote by postal vote, or by pre-poll vote in Port Augusta, Whyalla, Port Lincoln or Port Pirie, or at one of the mobile polling booths that will travel throughout the remote areas of the electorate prior to polling day. Presumably they will also have an opportunity to vote by declaration at polling booths throughout Adelaide on election day.

I am most concerned that all decisions honour the simple principle that all electors have the same, fair chance to cast a vote.

Yours sincerely,

BARRY WAKELIN MP

10 September 1998

Mr Barry Wakelin
Federal Member for Grey
PO Box 265
Whyalla SA 5600

Dear Mr Wakelin,

I write in response to your letter of 10 September about the shared polling booth in Salisbury.

The Australian Electoral Commission has a considered and careful approach to polling place identification. Some of the factors taken into account include historical factors, demographics, electoral boundaries, analysis of recent election voter trends and any special circumstances, which might apply to the particular election. Cost is also a consideration and voter access to polling booths is the priority.

In the 1988 referendum a polling booth was set up in the Keswick Army Barracks to cater for voters attending the Royal Show on polling day. In 1993 the Commission established a shared polling place in the CBD to cater for all voters who visit the city on polling day.

As you are aware the election this year is to be held on a long weekend during school holidays. It is also the weekend of the SANFL football final. An aboriginal sports carnval is planned for the same weekend in Salisbury.

We have therefore decided on a shared booth (Grey Bonython) in close proximity to the sports carnival to facilitate voting for the persons normally resident in Grey who might attend the sports carnival on polling day.

We see this as a service to voters and the overall election. The issuing of ordinary votes as opposed to declaration votes at the polling booth is simpler, less error prone and the votes can immediately be entered into the scrutiny. It is also cheaper.

If I can be of further help in this or any other matter please ask.

G Halsey
Australian Electoral Officer for South Australia

15 September 1998

Submission No 160 – Attachment 18

Correspondence between complainant and the AEC re assisted voting

Mr Jeff Halsey
Australian Electoral Office
Fax 0882312664

Dear Sir,

I write to express my concern regarding the Polling Booth held at (*name suppressed)* on 30th September 1998. While voting at 10:45am I clearly observed the following

1. How to vote papers stuck to the interior of one of the two polling booths.
2. Polling booths less than a metre from the waiting line of voters so that I could clearly see what each person voted.
3. An electoral officer completing voting slips for Anangu voters when the people understood English and where not physically impaired in any manner. I observed eight people treated in this manner. Some voters did not even speak during the polling process.
4. No person was scrutineering the process. Only (*name suppressed)* was assisting in the identification of the voters to be checked from the roll.
5. No prior notice of the Polling booth had been advertised to the community nor where there signs to let voters know that a polling booth had been setup.
5. I feet most upset that I should be ridiculed to other community members by the attending staff for reporting my concerns to the electoral office.

While I understand the problems of conducting an election in a remote area I believe that if this is a totally unsatisfactory situation. I believe that all electoral staff are trained and well paid to perform their function. I see no reason why the federal election should be compromised in this manner. I strongly suggest that community education needs to take place to ensure the integrity of our democratic system.

I ask you to investigate my claims and determine whether this is a wide spread practice in other Aboriginal communities because it has the potential to at very least look like an invalid election process.

Yours sincerely,

(*name suppressed)*

30 September 1998

Dear (*name suppressed*)

I am in receipt of your letter of 30 September 1998 which raises a number of concerns regarding the taking of votes at *(name suppressed).*

Mr Phillip Roberts, Director Industrial Elections Branch has investigated the matters raised in your correspondence. He has experience as a Divisional Returning Officer in the conduct of federal elections and as an Officer in Charge of a remote mobile polling team.

In relation to your first issue of the how to vote papers attached to the interior of the voting screens, I wish to advise that one of the polling officials is a current State Electoral Office employee who believed that these posters could be displayed. This is the case for State elections. As soon as the team was advised federal legislation did not allow the display of posters in voting screens the posters were removed. It is practice for remote polling teams to carry how to vote material supplied by the different political parties and these are made available to voters on request.

Your concern about privacy in the polling booth has been noted. I understand the Officer in Charge turned the screens around to provide improved privacy once you voiced your concern. The Commission will review these and other premises in *(name suppressed)* for future events and will secure premises that are more ideally suited for use as a polling place.

In Aboriginal communities electoral officials regularly assist in marking the ballot papers when requested. At *(name suppressed)* the officials were following instructions from the voters as to how they wanted the ballot papers marked and often the voters were pointing with their fingers to indicate their preference. This may explain the apparent lack of voter communication which you saw and which worried you.

Prior to the announcement of the federal election a field officer visited all remote communities to advise of voting procedures and ensure residents were correctly enrolled. A notice advertising the date and time for polling was placed in each community office and the itineraries were advertised on 23 September 1998 in the Advertiser, The Coober Pedy Times, The West Coast Sentinel and the Transcontinental. A “Polling Place” sign was attached to the window of the office facing the street and square. We note your suggestion to better utilise the local television network.

In terms of the personal comments made by the officials we are not in a position to assess those comments but we expect electoral officials to be helpful and courteous at all times. If this did not happen I sincerely apologise on behalf of the Commission. Our Customer Service Charter, copy enclosed, outlines the level of service that our clients can expect and I can assure you these expectations form part of our regular training.

The comments raised in your correspondence regarding the lack of scrutineers to oversee the democratic process are noted. Finally, we always review each electoral event and I can assure you your concerns will form part of the input to our review. Please feel free to contact me on the above telephone number if I can be of any further assistance.

K. Mousley (Area Manager)
8 October 1998

Submissions to the 1996 JSCEM from Dr Amy McGrath:

Submission No 29 of 26 July 1996 (JSCEM pS115)
Submission No 57 of 25 July 1996 (JSCEM pS410)
Submission No 69 of 3 August 1996 (JSCEM pS644)
Submission No 70 of 12 August 1996 (JSCEM pS647)
Submission No 75 of 27 August 1996 (JSCEM pS667)
Submission No 83 of 9 September 1996 (JSCEM pS1337)
Submission No 92 of 16 October 1996 (JSCEM pS1520)
Submission No 104 of 26 October 1996 (JSCEM pS1869)
Submission No 106 of 26 October 1996 (JSCEM pS1939)
Submission No 114 of 27 November 1996 (JSCEM pS2007)
Submission No 115 of 21 November 1996 (JSCEM pS2013)
Submission No 116 of 21 November 1996 (JSCEM pS2023)
Submission No 125 of 10 December 1996 (JSCEM pS2151)

Submissions to the 1996 JSCEM from the AEC in response:

Submission No 30 of 29 July 1996 (JSCEM pS129)
Submission No 84 of 16 September 1996 (JSCEM pS1346)
Submission No 90 of 20 September 1996 (JSCEM pS1451)
Submission No 97 of 23 October 1996 (JSCEM pS1692)
Submission No 98 of 23 October 1996 (JSCEM pS1722)
Submission No 99 of 24 October 1996 (JSCEM pS1835)
Submission No 100 of 24 October 1996 (JSCEM pS1840)
Submission No 108 of 14 November 1996 (JSCEM pS1946)
Submission No 118 of 3 December 1996 (JSCEM pS2051)
Submission No 128 of 24 January 1997 (JSCEM pS2266)
Submission No 129 of 7 February 1997 (JSCEM pS2271)
Submission No 135 of 7 May 1997 (JSCEM pS2371)

See in particular AEC submission No 97 of 23 October 1996
All AEC submission are available on the AEC Internet site (www.aec.gov.au)

Submission No 131 – Attachment 20

Extract from AEC submission No 124 of 24 January 1997 re Timothy Cooper

1.2 On 13 January 1997 the Secretary of the JSCEM, on behalf of the JSCEM Chairman, wrote to the Electoral Commissioner in the following terms:

> The Chairman has asked me to write to the AEC to seek the Commission's written comments on an article which appeared in the Sunday Mail on 29 December 1996. A copy is attached.
>
> The article relates to a "Hacker" gaining unauthorised access to the AEC's computer network prior to the 1993 election. This is a matter of concern to members of the Committee, especially as it may impact on the issue of electoral integrity. The Chairman is also surprised that this matter had not been brought to the Committee's attention by the AEC......

1.3 This submission responds to the question raised. The Sunday Mail article is attached.

2. Background

2.1 In the first week of January 1993, the AEC found that an intruder (or "hacker") had been able to gain unauthorised access to AEC computing facilities. It appears that this access was first gained through another organisation's computer. AEC officers responded with a range of counter-measures designed to minimise exposure to any further attacks, and to monitor any unauthorised activity. These counter-measures, conducted in consultation with the Defence Signals Directorate (DSD), the Australian Federal Police (AFP), Telecom, the Australian National Audit Office (ANAO), and the AEC computer suppliers, were effective.

2.3 Inquiries by the AEC, Telecom and the AFP led to a suspect being identified, seizure by the AFP of the suspect's computer, and ultimately, conviction of the suspect for a range of offences. The Director of Public Prosecutions (DPP) and the Australian Government Solicitor provided legal advice as necessary during this time.

2.4 Extensive investigations of the incidents by AEC officers acting with the assistance of the AFP, and full testing of AEC computer systems, revealed no material damage to the programs and data files maintained on AEC computers. No evidence was found of any unauthorised attempts to access the electoral roll data maintained by the AEC on the mainframe computer operated by the Department of Administrative Services. Similarly, no evidence was found of any unauthorised attempts to access the electoral roll data maintained by the AEC on the mainframe computer operated by the South Australian Government. Unauthorised access was identified as installation of trapdoors (now removed) into AEC systems, alteration of system logs to conceal the intruder's activities, and use of the AEC computer systems as a gateway into other organisations.

2.5 While the access by the intruder would have allowed entry to the AEC election and financial management systems, the AEC computer systems were used as gateways into other systems with which the AEC could be linked, rather than for any perceived benefit that might be gained from the AEC election and financial management systems or from data contained on the Commonwealth Electoral Roll. There was no indication that the intruder made any attempt to manipulate any of the

AEC electoral or financial systems or data. In any event, the AEC is satisfied that the counter measures precluded any future interference.

2.6 After the 1993 federal election the AEC undertook a full review of the security of its Information Technology systems, for which an external contractor was engaged. From this review a comprehensive set of Information Technology policies, security plans and implementation procedures were developed and put in place. A continual process of review was also established and an Information Technology Security Officer was appointed to administer security policies, plans, and implementation procedures. The success of these measures will be subject to further audit during 1997.

3. Response

3.1 The AEC did not raise the eventual conviction of the offender with the 1996 JSCEM because the events leading up to his conviction did not relate to the 1996 federal election. In addition, the investigation of the matter during 1993 and 1994 by the AFP and the AEC, under tight confidentiality, precluded any reporting of the matter to the 1993 JSCEM. The AEC was advised at the time that any publicity about the investigation could make the AEC a possible target for other intruders. Further, it was clear that the 1993 federal election was not in any way affected by this security breach. Nonetheless, the then Minister for Administrative Services, and his successor after the 1993 election, were both briefed on the incident.

Correspondence between Dr Amy McGrath and the AEC re provisional voting

October 29, 1998

Mr W Gray
Australian Electoral Commissioner
Australian Electoral Commission
West Block Offices
Parkes ACT 2600

Dear Mr Gray,

You will appreciate that the Electoral Act requires the electoral roll to be available for anone to peruse, but that there is no such roll available for public inspection in the case of voters reinstated on the roll during an election. Therefore I hereby request, under the Freedom of Information Act, the names and addresses of all electors reinstated on the Dickson Division electoral roll during the election just concluded, as a result of the preliminary scrutiny conducted on absent declaration votes, postal declaration votes, pre-poll declaration votes and provisional declaration votes issued to electors who declared their addresses as within that Division.

Could you supply the above information not merely as a total of reinstated votes of all categories, but separately in each of the four categories stipulated above, and photocopies of all envelopes with birthdates obscured if considered privileged information? Owing to time constraints under the Electoral Act, it would be appreciated if this information could be provided within 7 days.

Could you also indicate whether a full recount of votes was undertaken in the Dickson electorate and what is current AEC policy on whether such recounts arc undertaken or not?

Furthermore could you indicate to me whether any postal votes were returned outside their envelopes, as occurred in electorates during the 1996 election, to the Dickson electorate Divisional Returning Officer, and, if so, how many there were?

I will forward the original to this fax by express delivery tomorrow.

Yours sincerely

Dr Amy McGrath OAM
Convenor, H S Chapman Society

Dr Amy McGrath OAM
H S Chapman Society
PO Box 737
KENSINGTON NSW 2033

Dear Dr McGrath

I refer to your letter of 29 October 1998 in which you ask for certain information in relation to the 3 October 199S House of Representatives election for the Division of Dickson in Queensland.

You say that you require this information urgently in order to meet time constraints under the *Commonwealth Electoral Act 1918* ("the Electoral Act"), but unfortunately you do not specify which particular time period you have in mind. If you are referring to the 40 day period after the return of the writ for an election for the filing of a petition disputing that election under section 355(e) of the Electoral Act, you should be aware that the House of Representatives writs were resumed to the Governor-General on 29 October 199S, and that the 40 day period for the filing of petitions in the Court of Disputed Returns ends on 8 December 1998.

Under the *Freedom of Information Act 1982* ("the FOI Act"), you have requested the names and addresses of all electors reinstated on the electoral roll for the Division of Dickson as the result of the preliminary scrutiny conducted on absent, postal, pre-poll, and provisional declaration votes for that Division. You ask that this information be provided to you in lists of names and addresses under each category of declaration vote, and that photocopies of each declaration vote envelope in each category also be provided to you, with the birth-dates of electors obscured if necessary.

You would be aware that under the Electoral Act, the information you are seeking was available to all scrutineers during the preliminary scrutiny period in the Division of Dickson. Such access is provided to scrutineers during this period to enable candidates and their representatives to assess the integrity of the electoral process, and if necessary, to examine the information and assemble the particulars required to support any challenge to the election. Outside this period, the Electoral Act makes no provision for general access to the personal elector information contained on declaration envelopes.

After an election, the names and addresses of those electors whose enrolments have been reinstated as the result of the preliminary scrutiny process are added to the rolls, and this information is eventually included in the latest print of the roll, made publicly available by the Australian Electoral Commission (AEC) under section 90 of the Electoral Act. However, the enrolments reinstated to the rolls are not distinguishable from other new and amended enrolments on the additions lists.

With respect to your FOI request for information on reinstatements now that the election period is over, it is noted that you have tnot provided the required $30 application fee, or requested a waiver of that fee. However, even if you were to now amend your FOI request to address the matter of the application fee, the AEC would not be empowered to accede to your request, for a number of related reasons.

Firstly, electoral rolls, including "extracts" of electoral rolls, are documents expressly exempted from disclosure under section 47A of the FOI Act. Secondly, requests for information under the FOI Act can only be made with respect to existing documents.

Departments and agencies are not required by the FOI Act to create documents, or compile lists, in response to FOI requests.

Thirdly, the information contained on declaration envelopes, including the fact the elector cast a particular type of vote, or even whether a person voted at all, is personal information for the purposes of the *Privacy Act* 1988 (“the Privacy Act”). The AEC is bound by Information Privacy Principle 11 of the Privacy Act with regard to the disclosure of personal information.

As there is no legal requirement or obligation to disclose the information you have requested, before any such disclosure could occur, the AEC would be required to consult with each and every elector whose personal information is sought by you. Such a widespread consultation process, and the administration involved in the processing and collating of responses, would be an unreasonable diversion of the resources of the AEC under the circumstances.

Accordingly, the AEC is unable to provide you with the personal elector information on reinstated enrolments in the Division of Dickson that you have requested, but reiterates that such information was openly and properly available to scrutineers during the preliminary scrutiny period in that Division.

To assist you as far as the AEC is able in relation to this part of your request for information, I have enclosed a copy of the results for the Division of Dickson by vote type, including the four categories of declaration votes.

You have also asked whether a full recount of votes was undertaken in the Division of Dickson, and for information on the current AEC policy on when recounts are undertaken. There was no recount under section 279 of the Electoral Act requested or considered for the Division of Dickson after polling day.

However, as required by section 273(5)(a) of the Electoral Act, a fresh scrutiny of ballot papers was conducted in all House of Representatives Divisions after polling day, and this resulted in a number of ballot papers, that had been wrongly assessed as informal during counting at the polling booth, being admitted to the count as formal.
I
There was some media attention given in Queensland to those ballot papers that showed a preference mark for all but one of the candidates in the Division of Dickson. Under section 268(1)(c) of the Act, such House of Representatives ballot papers are “saved” from informality because it is assumed that the blank square represents the voter’s last preference. Such ballot papers were correctly re-assessed as formal during the Dickson fresh scrutiny, a process which is specifically designed to allow the correction of early counting errors.

In relation to your question about AEC policy on recounts, section 279 of the Electoral Act reads as follows:

> At any time before the declaration of the result of a House of Representatives election the Divisional Returning Officer may, on the request of any candidate setting forth the reasons for the request, or of the officer's own motion, and shall, if so directed by the Electoral Commissioner or the Australian Electoral Officer, recount the ballot-papers contained in any parcel or in any other category determined by the Australian Electoral Officer or the Electoral Commissioner.

You will note that section 279 is a discretionary power, and accordingly, any request for a recount is treated on the particular merits of the case provided. As a general principle, any request for a recount that did not plead a specific ground would probably be refused, and any request for a recount that did not show specific grounds for supposing that it could change the result of the election would probably be refused.

.

Finally, you ask how many postal votes were returned outside their envelopes to the Divisional Returning Officer for Dickson. There were four House of Representatives postal ballot papers and 37 Senate postal ballot papers returned outside their postal vote declaration envelopes.

Yours sincerely

Bill Gray
Electoral Commissioner

10 November 1998

November 10, 198S

Mr. B. Gray
The Electoral Commissioner
Australian Electoral Commission
PO Box E201 Queen Victoria Terrace
ACT 2600

Dear Mr. Gray,

I acknowledge a copy of your letter of today's day by fax, and would appreciate receipt of the original by ordinary post owing to the perishable nature of fax as soon as possible.

The legal and political implications of your reply will take some time to analyse, so I will make no other response in this area other than to say find it of the greatest interest and thank you for the detail therein.

However I would ask you to note that I am placing on public record in this letter that I did not ask for what you deem to be 'personal information' covered by the Privacy Act as to how these provisional voters voted or whether they voted, as implied by paragraph 4 of page 3 of your answer.

I only asked for what was <u>on</u> the envelope not <u>in</u> the envelope, and confined the request only to the name and address. I knew the envelope and the paper were always kept separate so the information on either was never linked. Therefore the implication in your sentence, that this is not so, is inexplicable.

I particularly take objection to parts of pararaphs 3 and 4 because they completely misrepresent the precise nature of what I requested.
They are
'The information contained on declaration envelopes, including the fact that an elector cast a particular type of vote, or even whether a person voted at all, is personal information … (para 30
and
'As there is no legal requirement or obligation to disclose the information you have requested before any such disclosure could occur…' (para 4)

I reiterate that I made no such request of the sort described in that part of the letter and I consider the implications should be unequivocally withdrawn.

Yours sincerely

Dr Amy McGrath OAM
H S Chapman Society

Dr Amy McGrath OAM
H S Chapman Society
PO Box 737
KENSINGTON NSW 2033

Dear Dr McGrath

I refer to your faxed letter of 10 November 1998 in which you complain that the precise nature of your request of 29 October 1998 in relation to reinstated enrolments for the Division of Dickson has been misrepresented. You state that you did not ask for information about the way in which electors voted, which you say would imply access to the ballot papers, but instead only asked for the names and addresses contained on the declaration envelopes.

In your letter of 29 October 1998 you asked for a list of all names addresses of electors reinstated to the roll for the Division of Dickson compiled within declaration vote categories, as well as photocopies of all relevant declaration envelopes, "with birth-dates obscured if considered privileged information".

Enclosed you will find a photocopy of a blank declaration envelope which shows the range of information that must be provided to the AEC by the elector, and the range of information that is added by AEC officials on the face of the envelope. The following words printed on the envelope are significant in relation to your request: "The personal information you give on this Declaration Vote envelope is used for electoral purposes only and may be viewed by authorised staff and scrutineers."

As explained in my tetter to you of 10 November 199S, the means by which a particular elector casts his or her vote would be discernible from the personal elector information contained on his or her declaration envelope. That is, if an elector's name and address was shown on a declaration envelope, then two conclusions might be drawn about the way in which that particular elector voted: firstly, that he or she did not cast an ordinary vote on polling day at a polling booth, and secondly, that he or she did cast either a postal, pre-poll, absent or provisional vote.

Further, whether a particular elector voted at all might be suggested by the absence of a name and address from the totality of the declaration envelopes for a Division, and could then be concluded by comparison with other elector information, such as the personal elector information on the marked certified lists of voters for that Division (which you did not request, but which have been requested in the past by others).

Finally, the fact that the enrolment of a particular elector was reinstated, indicating, for example, that he or she might have recently moved residence within a subdivision/Division, would be available from the information contained on the declaration envelope. It is noted that this information was the focus of your request.

As advised, the means by which a particular elector cast his or her vote, including whether his or her enrolment was reinstated, or whether that elector voted at all, is considered personal elector information.

As apparent from the attached photocopy, declaration envelopes also contain on their face not only names and addresses, which are available on the public roll, but other information, such as dates of birth (which it is noted you excluded from your request), addresses other than enrolled addresses, dates of moving residence,

phone numbers, and personal signatures. This information is also considered personal elector information.

The Parliament has decided that electors are entitled to privacy with respect to the personal information provided as a legal obligation to the AEC, as well as with, respect to their personal voting habits and behaviour, and the legislative scheme reflects this. The exception to this rule is the access provided during the election period for scrutineers to examine personal elector information. which allows for maximum transparency in the electoral process, and enables those who wish to challenge an election to gather the necessary information.

Yours sincerely

Bill Gray
Electoral Commissioner

12 November 1998

November 11, 1988

Mr. W. Gray
Electoral Commissioner
Australian Electoral Commission
PO Box E210
Kingston ACT 2604

Dear Mr. Gray,

Your letter of November 10 appears to refuse my key request for the number of reinstated enrolments on the electoral roll in each of the four categories - provisional, pre-poll, absent and postals. You have only supplied me with the figure for the first category - provisional.

The reason why you have not supplied me with this figure is by no means clear from your letter. Therefore I would be grateful if you could explain the whole process in detail from creating a supplemental roll to the printed version under Section 90 of the Electoral. In particular, could you answer the following?

1. Are re-instated enrolments in all four categories listed separately by category on a supplemental roll during preliminary scrutiny? Is there such a roll made then?
2. At what point is the 'additions list' of new and amended enrolments which you mention created (page 3, para 1).
3. At what point is the list of re-instated electors merged with 'new and amended enrolments' on the 'additions list?'
4. What steps are taken to verify re-instated voters during preliminary scrutiny as they are not on the electoral roll?
5. Are such re-instated declaration envelopes kept apart from all other postal, absent and pre-poll envelopes so that scrutineers can 'assemble the particulars' as you say they can?
6. What is the information you say 'scrutineers' can examine in this respect? A supplemental roll of names and addresses?
7. Why does the AEC report bury the total of re-instated pre-poll, postal and absent voters in the general total of voters voting by this means, when the two classes of voters are totally dissimilar? The former are not on the roll and thus cannot be checked, as against the latter who can be.
8. Is an electoral officer a proper witness to such claims?

I again request these figures.

Dr Amy McGrath OAM
Convenor
H S Chapman Society

Dr Amy McGrath OAM
H S Chapman Society
PO Box 737
KENSINGTON NSW 2033

Dear Dr McGrath

I refer to your faxed letter of 11 November 1998, and to previous correspondence of' 10 November and 29 October, concerning access to enrolment reinstatement information for the Division of Dickson.

In your latest letter, your first request is for the number of reinstated enrolments for the Division of Dickson by declaration vote category. You say that it is not clear to you why you were not supplied with the number of reinstated enrolments by declaration vote category in response to your first letter of 9 October. You were not provided with this information because you did not request it. Rather, under the provisions of the *Freedom of Information Act 1982*, you requested a list of names and addresses of reinstated electors by declaration vote category, and photocopies of relevant declaration vote envelopes, with birth-dates excluded.

It is noted that you are no longer seeking access to personal elector information in relation to reinstated enrolments in the Division of Dickson, but instead, statistical data by category of declaration vote. For the Division of Dickson, the statistical data on reinstated declaration voters has been compiled as you have requested: there were 48 enrolment reinstatements for absent voters, 2 enrolment reinstatements for postal voters, 18 enrolment reinstatements for pre-poll voters, and 140 enrolment reinstatements for provisional voters.

Your reference to having been provided already with statistics for provisional voters with reinstated enrolments for the Division of Dickson, but not statistics for reinstated enrolments in other declaration vote categories, is not clear. The table attached to my letter to you of 10 November 1998 showed the numbers of votes admitted to the scrutiny in all four categories of declaration votes for the Division of Dickson, including the numbers of provisional votes admitted to the scrutiny (201). It did not show the number of provisional votes for which enrolments were reinstated (140).

The explanation for any difference between the number of provisional votes admitted to the scrutiny and the number of provisional votes for which enrolments were reinstated in any Division, is that some voters are given a provisional vote at the polling booth because their name apparently cannot be found on the Certified List of Voters. Later it is discovered that their name was in fact on the List. That is, not all provisional votes admitted to the scrutiny result from reinstated enrolments.

Your second request is for a explanation of “the whole process in detail from creating a supplemental roll to the printed version under section 90 of the Electoral...” (presumably the *Commonwealth Electoral Act 1918* (“the Act”)), and in particular, responses to a series of linked questions relating to enrolment reinstatements, supplementary rolls, additions lists, preliminary scrutiny procedures, scrutineer access, reporting of statistics, and witnessing. As your questions appear to comprise the detail of the explanation you seek, the following responses are provided for your information:

1. Are reinstated enrolments in all four categories listed separately by category on a supplemental roll during preliminary scrutiny? Is there such a roll made then?

During the election period AEC officials maintain records which show details of those electors who were added to or deleted from the roll. Additions to the roll include reinstated enrolments arising from information obtained during the preliminary scrutiny of declaration votes. Records showing the details of electors who have been added to the roll are emergent documents which are compiled progressively, and the same information that is used to compile AEC records is available to scrutineers present in Divisional Offices during the preliminary scrutiny. There is no administrative requirement for the AEC records to show reinstated enrolments by declaration vote category.

2. At what point is the "additions list" of new and amended enrolments which you mention created (page 3, para 1).

The roll for any Division is amended on the computer on a daily basis by the addition of new and amended enrolments and the deletion of enrolments, as they arise. In each Division a Supplemental Roll, often described collectively as "the additions and deletions lists", containing details of these amended enrolments, is made available for public inspection as required by section 90 of the Act.

The Supplemental Roll is a compilation of periodically published "additions and deletions lists". In some Divisions these lists are published weekly, and in other Divisions they are published monthly, depending on the State or Territory. The main computerised roll, which is not available for public inspection, already contains the net result of the information published periodically in the additions and deletions lists which comprise the Supp1emental; Roll available in each Division.

After any election, the Supplemental Roll for a Division will include enrolment changes resulting from information provided to the AEC during and after the election period, as well as most of the reinstated enrolments for the election. (A small number of electors from these lists may have re-enrolled since polling day so that they cannot technically be "reinstated" to the current roll.) The reinstated enrolments are not separately identified on the Supplemental Roll available for public inspection.

3. At what point is the list of re-instated electors merged with 'new and amended enrolments' on the 'additions list'?

There is no particular point at which AEC records on enrolment changes are "merged" to the Supplemental Roll - it happens progressively with the publication of the periodical "additions and deletions lists".

4. What steps are taken to verify re-instated voters during preliminary scrutiny as they are not on the electoral roll?

The procedures are detailed in Schedule 3 of the *Commonwealth Electoral Act 1918* and Part 28 of the *Divisional Office Procedures (Election) Manual* (copies attached).

5. Are such re-instated declaration envelopes kept apart from all other postal, absent and pre-poll envelopes so that scrutineers can 'assemble the particulars' as you say they can?

No. However, scrutineers are able to view all declaration vote envelopes as well as the computer terminals that are used for the enrolment verification process. They

also have access to AEC officials for particular requests, where reasonable. Scrutineers are permitted to examine the details on all declaration vote envelopes, including those for reinstated electors, and closely watch the enrolment verification process undertaken by AEC officials.

6. What is the information you say 'scrutineers' can examine in this respect? A supplemental roll of names and addresses?

See above.

7. Why does the AEC report bury the total of re-instated pre-poll, postal and absent voters in the general total of voters voting by this means, when the two classes of voters are totally dissimilar? The former are not on the roll and thus cannot be checked, as against the latter who can be.

The AEC is not required by the Act to publish statistics on reinstated enrolments by declaration vote category. On the basis of the very low frequency of requests for such information, there would not appear to be a sufficient public interest in the subject to justify the costs of formally compiling and publishing the statistics. Those who have the most interest in the subject, the candidates at an election, may access the relevant information through their scrutineers at the time of the election.

8. Is an electoral officer a proper witness to such claims?

This question is unclear. There is no requirement for an electoral officer to "witness" an application by an elector for a declaration vote.

Enclosed is a copy of the Scrutineers Handbook for the 1998 federal election, and your attention is drawn to pages 18-20, where the rights and obligations of scrutineers at the preliminary scrutiny of declaration votes are detailed. The practices of scrutineers in obtaining information vary widely, and it is not for the AEC to advise scrutineers on how they should do their job, as long as they do not interfere with or obstruct AEC officials in the performance of their duties. However, the majority of scrutineers that AEC officials have contact with during the preliminary scrutiny are highly skilled individuals, who are well briefed on the procedures, and have a clear idea of what they should observe and how they should collect the information they might require.

The AEC has no reason to believe that the preliminary scrutiny procedures for declaration vote enrolment reinstatements in any way prevent or obstruct scrutineers from obtaining the information that they require to satisfy themselves and their candidates about the integrity of the electoral process.

Yours sincerely

Bill Gray
Electoral Commissioner

19 November 1998

November 16, 1998

Mr. B. Gray
Australian Electoral Commissioner
Australian Electoral Commission
PO Box E20 1
Kingston ACT 2604

Dear Mr. Gray,

Further to my recent letters requesting separate totals for re-instated voters casting postal, pre-poll absent and ordinary votes in the Dickson electorate for the last election, I write to make a further request on the subject of studying re-instated voters at election time.

I have now studied the article of Colin Hughes in a recent issue of the Journal of Politics and History in detail, which you quote in your letter to the Sydney Morning Herald of October 6 as an authority which you consider sound.

I have noted that he quotes a figure for re-instated voters (675) in the 1993 election for the seat of Macquarie but does not state whether it is a total for re-instated voters for all categories or for all ordinary votes admitted to the scrutiny. But even if the former, it is still very high compared to such voters pre-1984.

As it appears from this article you do retain these figures on file, I request the figure for all electorates in Australia both in sum and in the four categories; and the total number for all electorates as an aggregate in the October 3 election.

I believe this request is consistent with your charter to inform and educate the public.

Yours sincerely,

Dr Amy McGrath OAM FRSA
Convenor
H S Chapman Society

Dr Amy McGrath OAM
H S Chapman Society
PO Box 737
KENSINGTON NSW 2033

Dear Dr McGrath

I refer to your faxed letter of 16 November 1998 and to previous correspondence of 11 November, 10 November and 29 October, concerning access to enrolment reinstatement information for the Division of Dickson.

In my letter to you of 10 November, your original request under the *Freedom of Information Act 1982* for a list of all names and addresses of electors reinstated to the roll for the Division of Dickson, compiled within declaration vote categories, as well as photocopies of all relevant declaration envelopes with the birth-dates obscured, was refused because your request was for personal elector information. In my letter to you of 12 November, your complaint that your original request had been misrepresented was addressed, with an explanation that declaration vote envelopes contain personal elector information. In my letter to you of 19 November, statistics were compiled in order to provide you with the information you requested on reinstated enrolments by declaration vote category for the Division of Dickson, and an explanation of the relevant operational procedures was provided.

In your latest letter you make reference to the article by Dr Colin Hughes entitled, "The Illusive Phenomenon of Fraudulent Voting Practices: A Review Article" *(Australian Journal of Politics and History: Volume 44, Number 3, 1998, pp 471-91),* and in particular, you say that Dr Hughes "quotes a figure for reinstated voters (675) in the 1993 election for the seat of Macquarie", and then say that "[he] does not state whether it is a total for reinstated voters for all categories or for all ordinary votes admitted to the scrutiny".

It is assumed you are referring to the passage on page 483 of the article where Dr Hughes says, "In Macquarie 1996 675 provisional votes were admitted to the scrutiny". That is, Dr Hughes was referring to the 1996 federal election, not to the 1993 federal election, and was clearly referring only to provisional votes admitted to the scrutiny, not to reinstated votes for all declaration vote categories, or to ordinary votes admitted to the scrutiny.

From this passage in the article by Dr Hughes, you conclude that "you [the AEC] do retain these figures on file". The figure quoted by Dr Hughes for the Division of Macquarie at the 1996 federal election was published by the Australian Electoral Commission (AEC) in "Election 96 - Divisional Results - Volume 2 - New South Wales", copies of which are available from the AEC and in public libraries, either in print form or on CD-ROM (see attached extract).

You then ask for "the figure for all electorates in Australia both in sum and in the four categories; and the total number for all electorates as an aggregate in the October 3 election". You say that your request "is consistent with your charter to inform and educate the public".

Your request for the numbers of reinstated enrolments by declaration vote category for the Division of Dickson was granted and the statistics compiled, on the assumption that you required this information for specific purposes relating to the election in the Division of Dickson. I do not consider it appropriate to grant your most recent request, which would require a substantial diversion of resources for the AEC to specially compile the same statistics for all 148 Divisions across Australia, particularly as you have not indicated the reason for your request, beyond a generalised reference to the information and education responsibilities of the AEC.

The AEC will be complying with its charter to provide information and education on electoral matters by publishing the statistics for the 1998 federal election in the next few months, possibly early in the new year. This publication will contain the same statistics that were sourced by Dr Hughes for the 1996 federal election.

To assist you in your research, I have arranged for you to receive a complimentary set of the four print volumes plus CD-ROM of the 1998 election statistics.

Yours sincerely

Bill Gray
Electoral Commissioner

20 November 1998

Submission No 162 – Attachment 22

Transcript extracts from Election Journal of DRO Hindmarsh re Chris Gallus

16 September 1998: Chris Gallus complained that the Glenelg PPVC has been issuing votes on Tuesday 15 September. Someone had told her that it wasn't opening until Wed (she didn't know who had told her).

I told the people at the ballot paper draw publicly that it was opening on Tuesday. Gallus had a representative at the draw.

21 September 1998: Chris Gallus complained that the Pre-Poll Centre at Glenelg was open on Sat 19 September. I told her that it should not have been – I would check it out. I went to Glenelg and ascertained that it was not open.

Chris Gallus rang back later and advised her informant was incorrect (I take this as an apology).

Submission No 163 – Attachment 23

Extract from AEC submission No 90 of 20 September 1996 re concurrent elections

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.

…

3.27.16 *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.

Submission No 163 – Attachment 24

Extract from AEC submission No 30 of 30 July 1996 re the Internet

12.7 Internet Offences

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

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

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

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

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

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

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

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

12.7.7 It will be noted that while section 328 of the CEA, relating to the authorisation of electoral advertising, does not apply to the Internet, section 329, relating to misleading and deceptive electoral advertising, does apply to the Internet. The DPP

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

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

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

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

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

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

Submission No 163 – Attachment 25

Extract from AEC submission of 23 August 1994 re electoral bribery

1. At pages S 0551-0552 of Volume II and page S 0706 of Volume III of the bound submissions, the ALP and the Liberal Party respectively submitted that the elements of the offence of bribery in section 326 of the Act require review as there is uncertainty about the extent and the scope of the provision.

2. Neither the ALP nor the Liberal Party submissions make it clear why they believe that the Committee should review section 326 of the Act, except to mention “a level of legitimate uncertainty ... about the intent and scope of section 326” (Liberal Party), and “a need to clarify the bribery provisions of the Act to ensure that the normal processes of government and the unexceptional activities of candidates are not subject to potential legal challenge during or after election campaigns” (ALP). the ALP also adds that “we are not aware of any specific instances where this issue arose during the election campaign”.

3 However, during the JSC hearings of 15 November 1993, at page 10 of the transcript, Mr Gary Gray, National Secretary of the ALP, made the following point about electoral bribery:

> There are elements of modern campaigning which could, under a strict interpretation of the law, be regarded as sailing very close to the wind on the issue of bribery. All parties do it. It is simply an issue of offering a cup of tea or a biscuit at a public meeting. It is not bribery in any sense of the word. In fact, it is offering hospitality and facilitating political discussion and exchange.
>
> It is our view that those issues should be looked at with a view to assisting the political process, rather than having candidates innocently caught up in ridiculous charges of bribery or even in court cases. The cases in Western Australia and in the Adelaide by-election have shown that eminent people regard the issue of supply of such drinks and biscuits, and even a sausage, as not being bribery in any strict sense of the word and I think we should attack that directly through legislation."

4. It its 1993 written submission the ALP also mentioned that they made the same recommendation during the JSC inquiry into the conduct of the 1990 federal election. On pages S 437-438 of Volume III of the 1990 bound submissions (page 2 of the August 1990 JSC submission from the ALP) the following appears:

> In two respects, clarification is required in relation to the bribery provisions of the Act, to ensure that the normal processes of government and the unexceptional activities of candidates are not subject to potential legal challenge during or after election campaigns.
>
> As far as activities of Ministers and Government are concerned, the Act ought to make it clear that Ministers are not precluded from making announcements of, or implementing, routine Government decisions during election campaigns by these provisions of the Act
>
> As far as the campaigning of candidates is concerned the Act ought to make it clear that candidates are not precluded from providing normal or reasonable hospitality to constituents during election campaigns, in circumstances which