

Ms Beverley Forbes  
Secretary  
Joint Standing Committee on Electoral Matters  
Parliament House  
CANBERRA ACT 2600

Dear Ms Forbes

I refer to your email to me of 17 April 2000 in which you listed a number of issues on which you were seeking clarification by the AEC for the purposes of the JSCEM inquiry into the conduct of the 1998 federal election.

As requested, I met with you on 19 April to discuss some of the issues raised. However, in accordance with the AEC's preference for any evidence provided to the JSCEM to be transcribed where possible, this letter provides a record of the clarifications provided by me at that meeting, together with some further information and explanation.

If it is decided that this correspondence should become a formal submission to the JSCEM, then it would be appreciated if you could advise the AEC of the submission number and the date of publication clearance, so it can be placed on the AEC Website along with the other AEC submissions to this inquiry.

Yours sincerely

Paul Dacey  
Assistant Commissioner  
Elections and Enrolment

3 May 2000

## AEC RESPONSES TO ISSUES RAISED BY JSCEM

*1. Enrolment on the basis of address rather than Division – what this really means and the consequences of accepting this recommendation.*

The following references are provided and the relevant extracts are reproduced at **Attachments 1 to 5**.

- paras 51 to 57 of AEC submission No 120 of 10 November 1993 (1)
- pages 41 and 57 of the November 1994 JSCEM Report (2)
- paras 4.4.7 to 4.4.9 of AEC submission No 98 of 23 October 1996 (3)
- paras 2.63 to 2.66 of the June 1997 JSCEM Report (4)
- paragraphs 2.8 to 2.11 of AEC submission No 159 of 23 March 1999 (5)

*2. Proposed access to the electoral roll via the internet – what will be searched and why? Safeguards for preventing the downloading of segments or the whole of the roll.*

The following references are provided and the relevant extracts are reproduced at **Attachments 6 to 9**.

- part 6 of AEC submission of 9 March 1998 (6)
- part 4.7 of AEC submission No 88 of 12 March 1999 (7)
- part 9 of AEC submission No 176 of 4 May 1999 (8)
- AEC submission No 128 of 24 January 1997 (9)

Recommendation 9 of the June 1997 JSCEM Report was that the electoral rolls for a division or subdivision again be made available for inspection in local libraries and post offices. The Government Response of 8 April 1998 did not support this recommendation but instead concluded that the AEC should examine the cost and feasibility of placing electoral rolls on the Internet where they can be readily updated.

In part 6 of the 9 March 1998 AEC submission to the JSCEM entitled “Implementation Plan” (**Attachment 6**), the costs and feasibility of placing the electoral roll on the Internet were examined. In this submission, the proposal to put the roll on the Internet was limited to users searching for their own names and addresses to ensure they are correctly enrolled. This proposal would have required the user to provide a date of birth, for example, to enable access to personal enrolment details (along the lines of the New Zealand model – see attachment 4 to AEC submission No 88 of 12 March 1999).

However, further consideration by the AEC suggested that there should be no barrier to any user searching for the enrolment details of any other elector, assuming the user can provide the full name and the address or locality. This would be in line with the integrity principle of allowing maximum transparency in the compilation of the electoral rolls, and would in any case replicate the level of accessibility that is currently afforded by the printed rolls. Accordingly, in part 4.7 of AEC submission No 88 of 12 March 1999 (**Attachment 7**), recommendation 1 was made as follows:

That the publicly available Commonwealth Electoral Roll be provided on the AEC Internet site for name and address/locality search purposes, and that the Roll be provided in CD-ROM format with the same search facility to public libraries without Internet access, with regular updating.

The AEC has been advised by the Attorney-General's Department and the Privacy Commissioner that the legislation as it currently stands does not present any obstacle to placing the publicly available roll on the Internet. The reason for the AEC proposing to take administrative action to place the roll on the Internet is essentially to improve access to enrolment information that is as up-to-date as is reasonably possible. The section 89 prints of the roll every two to three years become seriously inaccurate over time, as do the six-monthly (approximately) microfiche rolls, and access to the monthly (approximately) computer printouts of the additions and deletions lists in Divisional offices is difficult for those who cannot personally attend those offices.

The AEC is concerned that the use of out-of-date printed rolls and the information derived from these can seriously mislead those concerned about electoral fraud. In the past this has resulted in unsubstantiated and alarmist allegations about roll inaccuracy at federal elections which has affected public confidence in the integrity of the electoral system (see for example, **Attachment 8**).

From a privacy perspective, it should be appreciated that the roll to be placed on the Internet would contain only names and addresses, the same information that is already publicly available in print and microfiche form. In relation to security concerns, the AEC will be ensuring, through the application of standard technical specifications for the Internet, that the roll could not be downloaded in whole or in part. Further, there would be no electronic link between the names and addresses placed on the AEC Website for public inspection, and the roll maintained separately by the AEC on RMANS, which contains private as well as public enrolment information.

It is also worth noting that there have been allegations of computer hacking raised with the JSCEM in the past but these have been wrongly conceived and considerably exaggerated, and do not indicate that there should be any serious problems at this stage in relation to the name and address roll on the Internet (**Attachment 9**).

In relation to any commercial misuse of roll information obtained from the Internet, the offence provision in section 91B of the Act does not yet cover the Internet. However, you would be aware that recommendation 53 of the June 1997 JSCEM Report was as follows:

That sections 89 to 92 of the Electoral Act, concerning improper use of roll information, be reviewed to take account of developments in computer technology. The existing entitlements of MPs and registered political parties should be maintained.

The AEC is currently reviewing the roll provisions of the legislation to take into account computer technology such as the Internet, and will be providing the JSCEM with a report in the next few months, as indicated to the Finance and Public Administration Legislation Committee on 8 February 2000 (Hansard F&PA 129). It is probable that, in one form or another, the AEC will be recommending an amendment to section 91B to make it an offence to misuse roll information obtained from the Internet.

If the JSCEM is concerned that any positive recommendation it might make in relation to placing the roll on the Internet would be put into effect by the AEC before the legislation is amended to prohibit the misuse of Internet roll information, then it is suggested that the JSCEM recommendation be made relevantly conditional. However, it should be appreciated that this could conceivably delay provision of the roll on the Internet for up to two years depending on the speed of passage of the legislation.

*3. Consequences of removal of the printed and microfiche version of the roll from sale.*

The AEC has made no formal recommendation that section 90(1) of the Act be amended to remove the requirement to make the section 89 printed roll available for purchase. In relation to the microfiche rolls, section 90(7) only requires that these be available for public inspection, not for purchase. However, the AEC decided a number of years ago to provide microfiche rolls for purchase in order to improve access to up-to-date enrolment information, as the microfiche are produced on a six-monthly basis and in a more compact form than the two-to-three yearly printed rolls.

The sale of enrolment information is an increasingly contentious issue that will be explored further in the AEC review of sections 89 to 92 of the Act (see above). In the meantime, in response to concerns about the sale of enrolment information that can be easily scanned and used for commercial purposes, and in anticipation of placing the roll on the Internet, the AEC Management Board decided at its March 2000 meeting to cease production of microfiche rolls for the purposes of sale. The microfiche rolls will remain available for public inspection, and the printed rolls will remain available for public inspection and sale.

*4. The AEC has recommended that it be given discretion to design the layout of the Senate ballot paper. What types of safeguards could the AEC put in place to ensure that the discretion was appropriate and the outcome appropriate?*

The relevant reference is part 7.3 of submission No 88 of 12 March 1999, where it is recommended that the Electoral Commissioner, not the AEC, be allowed a discretion in the layout of the Senate ballot paper (**Attachment 10**).

If the JSCEM is concerned about an inappropriate exercise of an independent discretion by the Electoral Commissioner (of which there are already a significant number in the legislation), then the JSCEM could consider the fixing the layout alternatives in the Schedule to the legislation in accordance with the NSW model as provided in attachment 15 to submission No 88.

*5. Conferring a benefit on electors re provision of food and drink at candidate functions – much has been written on this in the past. Is there anything further that can be done to clear up the wording and define what is meant? Eg explanatory section in the legislation.*

The bribery offence in section 326 should not be amended in relation to the provision of food and drink at candidate functions. The following references are provided and the relevant extracts are reproduced at **Attachments 11 to 16**.

- Part E of AEC submission No 153 of 23 August 1994 (11)
- Part 10.3 and recommendation 72 of November 1994 JSCEM Report (12)
- Government Response of 21 September 1995 to JSCEM recommendation 72 (13)
- paras 3.27.21 to 3.27.25 of AEC submission No 90 of 20 September 1996 (14)
- paras 7.70 to 7.74 of June 1997 JSCEM Report (15)
- paras 6 to 12 of AEC Electoral Backgrounder No 6 “Influencing Votes” (16)

It should be noted that the Electoral Backgrounders were distributed to all registered political parties and candidates before the 1998 federal election, so that parties would be in no doubt about the view taken by the AEC and the DPP in relation to the provision of food and drink at candidate functions.

The JSCEM might also be interested to read the article by the former Electoral Commissioner, Dr Colin Hughes, on the larger subject of electoral bribery, published in the Griffith Law Review (Vol 7, No 2, 1998) and copied at **Attachment 17**.

*6. Postmarking of postal ballot papers and AEC recommendation that date of witness signature be used rather than postal mark to determine if a postal vote was cast before the close of polling. Has the AEC got any figures on how often a witness signature could have been used effectively in this regard; and figures on number of voters that were disenfranchised by the use of the postmarking which was marked after the date of the ballot?*

The following references are provided and the relevant extracts are reproduced at **Attachments 18 to 24**.

- Part 8 of AEC submission No 115 of 19 October 1993 (18)
- paras 6.6.4 to 6.6.5 of November 1994 JSCEM Report (19)
- Part 7.5 of AEC submission No 30 of 29 July 1996 (20)
- Part 2.3 of AEC submission No 135 of 7 May 1997 (21)
- Paras 5.25 to 5.29 and recommendation 32 of June 1997 JSCEM Report (22)
- Government Response of 8 April 1998 to JSCEM recommendation 32 (23)
- Part 9.10 of AEC submission No 88 of 12 March 1999 (24)

As reported in AEC submission No 30 of 29 July 1996 at **Attachment 20**, in relation to the 1996 federal election, a survey of postal vote envelopes in the Division of Chifley indicated that 42% had no postmark and a further 5% had an illegible postmark. A substantial number of the 42% with no postmark would have been “Business Reply Paid” envelopes, which are not normally postmarked by Australia Post. If the JSCEM requires additional statistics for the 1998 federal election, it might consider suggesting appropriate Divisions for the survey.

However, it should be appreciated that, in addition to the use of “Business Reply Paid” envelopes rendering postmarking irrelevant, further new postal technologies, developed by Australia Post and adopted by the AEC, have now rendered the postmark almost obsolete as a workable statutory criterion for the acceptance of postal votes within time. Australia Post has now applied Delivery Point Identifiers (DPIDs) to approximately 90% of postal addresses in Australia. This means that in the despatch of postal vote materials to applicants, the AEC uses a barcoded DPID, and in the return processing of postal vote envelopes through most mail exchanges, a postmark is no longer necessary and is not applied.

That is, it is increasingly rare for postal vote envelopes returned to the AEC to carry postmarks, and it is increasingly the case that the AEC is unable to determine whether a late postal vote was posted within time, based on the postmark. The only useful indicator remains the date of the witness signature.

*7. The AEC has recommended the use of a questionnaire as part of the application form to prompt applicants to indicate why they require a postal vote. Has the questionnaire been developed? Can we see a copy? What consultation will there be with the committee on the questionnaire?*

The relevant extract, paragraphs 8.6.15 to 8.6.16 of AEC submission No 88 of 12 March 1999, is at **Attachment 25** (and note attachment 22 to submission No 88). It should be appreciated that the AEC is proposing to do no more than reproduce, in abbreviated form, the grounds for a postal/pre-poll vote as listed in Schedule 2 to the Act, with the addition of boxes beside each ground for the applicant to select and tick. This does not constitute a “questionnaire” in the usual sense of the word.

However, if the JSCEM wishes to view and comment on the proposed amended postal vote application form before gazettal as an “approved form” under section 184(1) of the Act, then this can be arranged through the Secretariat in due course.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1993 federal election  
and matters related thereto**

**EXTRACT FROM  
Submission No 120  
AUSTRALIAN ELECTORAL COMMISSION  
10 November 1993**

**Evidence: ppS0768-S0823**

## **THE PRACTICAL IMPLICATIONS OF VARIOUS MEASURES RELATING TO THE INTEGRITY OF THE ELECTORAL PROCESS**

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*Proof of address - require such proof to be provided either at the time an application for enrolment is lodged, or after the application is lodged but before the enrolment is effected.*

51. Checks of identity at various degrees of intensity can only provide levels of assurance that an application for enrolment or transfer of enrolment is being made by a person who, first, exists, and secondly, is in fact the person making the enrolment application. These checks provide no guarantee of the validity of this application for the address - and hence the particular Commonwealth Division, State district and Local Government Area - claimed by the applicant as his/her place of living.

52. Currently, applications for enrolment are checked, after an enrolment form has been received, against the file of valid street number ranges held on the AEC's Roll Management System (RMANS), and where the address claimed is outside number ranges currently known as valid, further checks are made on the address's validity (for example through local councils). Validity of addresses and their occupants is also checked during regular Electoral Roll Reviews. These checks are more difficult in rural areas where road numbering may be discontinuous or nonexistent, and where Electoral Roll Reviews are carried out by mail (due to the impracticality and expense of covering widely scattered residences by personal visit).

53. Two factors are of relevance in establishing proof of address: the validity of the address itself and the validity of the applicant's claim to be resident at that address.

54. Schemes for the checking, either at the time of application or prior to approving application details for entry on the roll, of the existence of the address claimed, include the following.

- A major redesign of the RMANS system so that individual addresses rather than elector names become the basis for enrolment records. The AEC has been investigating such a redesign. This approach could be expanded as resources permit to encompass a complete Geographic Information System holding national data (including known use - for example residential, park, commercial etc.) in "spot on the earth" format on all land parcels, and against which addresses claimed for enrolment could be matched and further checked against external records or by personal visit if not verified. It needs to be emphasised that this option represents a long term mechanism for improving the quality of enrolment verification checks, which would take time to implement properly.
- Verification of addresses claimed for enrolment against address data held by external agencies. Data held by land title bodies may be cumbersome to use as its format will often be different from the street address claimed by an elector. Records held by local government and utility authorities vary in format, quality and content. Access would need to be negotiated with the States. Planned computerisation of Australia Post address records may provide a more viable external verification of addresses in the medium to long term.
- Personal visit to addresses claimed for enrolment not already recognised as residential addresses by roll management systems. Resourcing of this approach, particularly in rural areas, would be expensive, and impracticable in roll close periods.

55. Schemes for checking residence at an address include the following.

- Personal visit to the claimed address and verification (through personal contact and presentation of proof of identity) that the applicant resides there - amalgamated with checks on validity of address where necessary. Again, resourcing of this approach, particularly in rural areas, would be expensive and processing of an enrolment would be halted until contact could be made with applicants. In this respect it is worth noting that at the last Electoral Roll Review, at 10% of residences no resident was home at the time of two visits by AEC representatives. This percentage could be expected to rise markedly if contact were required to be made with a particular person or persons.
- Requiring the provision of documents confirming residence at the claimed residential address, for example documents produced to confirm identity checks which also show the applicant's residential address. Unfortunately many common forms of identification do not show the bearer's address, or, if they do, may not be reissued or promptly updated on change of address. Other possible confirmatory documentation containing address data (for example rate notices) denotes ownership, not necessarily residence, and generally does not contain the names of all residents at an address.
- Requiring the production of a reference akin to an identification reference, which would confirm the residence of the applicant at the specified address. Such a reference would only be of much value if the referee was in a position to state that he or she had visited the applicant at the address specified, and had observed that the applicant was in residence there. Otherwise the referee would have to rely on hearsay evidence or secondary documentation, the problems with which have already been mentioned. It also needs to be noted that persons who have just moved to a new community are particularly poorly placed to find a person in the prescribed class of permissible referees who will be able to attest to any facts concerning them. While this could be overcome to some extent by prescribing broader classes of possible referees, the value of the reference system would thereby be diminished.

56. Database matching could also be used to assist in verifying the applicant's occupancy of an address claimed for enrolment. However the further the conditions for entry on the external database diverge from enrolment conditions, the less useful is this match, and the greater follow-up work generated by rejections or attempted matches. For utility records in particular, address information may relate to an owner rather than occupier or to someone not qualified for enrolment, and will very frequently only identify one occupant at a single address. Possible approaches include the following.

- Matching with high integrity databases containing name/address information. Here it needs to be noted that some high-integrity databases are not necessarily regularly updated with change of address details, and therefore would be of much less value for address checking than for identity checking. Even the Medicare database, which is often thought likely to contain relatively accurate address information, would be likely to hold out-of-date address records of persons who have not required medical services since changing address. If the AEC were granted "prescribed authority" status under section 130 of the *Health Insurance Commission Act 1973*, access to the Medicare database could, subject to privacy considerations, be granted. Planned computerisation of Australia Post address records may provide a more viable external verification of occupancy of addresses in the medium to long term if privacy requirements can be satisfied.
- Matching with databases containing less relevant matching information - for example electricity, telephone, banking records. Information on these records may not be updated promptly for changes of address, may not relate to actual occupiers of addresses, and generally will not cover all occupiers of addresses.

57. Methods of verifying address information provided by applicants for enrolment would generally result in delay in the enrolment process, in some cases additional to that imposed by identity checks - and it must be recognised that few databases will ever be 100% up-to-date, and none will be comprehensive in coverage, as was intended with the Australia Card. There would also be significant additional costs imposed by data matching and/or personal investigation.

**Extracts from the November 1994 JSCEM Report on the Conduct of the 1993 Federal Election**

Page 41: Proof of Address

4.3.26 The AEC checks applications for enrolment against valid street number ranges held on its on-line Roll Management System (RMANS). Further checks are conducted, for example through local councils, when an address claimed for enrolment is outside valid number ranges<sup>32</sup>. The AEC also conducts regular habitation reviews to verify the accuracy of enrolment information.

4.3.27 The AEC advised the Inquiry that there would be administrative difficulties and consequent expense if electors were required to provide documentary proof of address. Many documents (such as rates notices) provide proof of ownership, not residence, and generally do not contain the names of all residents at an address.

4.3.28 A preferable means of improving verification of residence would be a major redesign of RMANS, so that individual addresses rather than electors' names become the basis for enrolment records. The AEC has been investigating such a redesign; it believes that RMANS could eventually be expanded to encompass a complete system holding national data on all land parcels (including known use, such as residential, park or commercial) against which addresses claimed for enrolment could be matched and, if not verified, further checked.

4.3.29 Completion of such a redesign is still some time away, but the Committee nonetheless feels that an address-based system would prove to be a worthwhile advance on current practice.

Recommendation 19: that the AEC keep Parliament advised on progress in converting its on-line Roll Management System (RMANS) from a voter-based to an address based format.

Page 57: Objection for Non-Residence on the Basis of Address

4.4.34 When it is discovered during an electoral roll review that an elector has left his or her enrolled address (and the new address is not known) objection action is initiated by the AEC, on the assumption that the elector has left the Division. The DRO for Gellibrand informed the Inquiry that

we are making an allegation that the person is no longer living in the subdivision, yet all we basically know is that they have left the particular address that the review officers have been to. [We should] require that the people be objected to on the basis of what we know, which is that they have left the address, rather than on the basis of what we cannot prove [that the elector has left the Division.

4.4.35 The DRO drew attention to the problems current procedures pose for management of the joint rolls:

when we are talking about a person who has moved from one State electorate to another we end up taking them off the State roll and keeping them on the federal roll. Then we have the problem of trying to get them to re-enrol for the State electorate. It

is becoming a very messy business...If we were to enrol the people for their new address, we would not have that confusion; we would do it all in one.

4.4.36 The Committee can see the logic in the proposal that the basis for enrolment should be address rather than Division, but can also see a danger that electors who fail to keep their enrolled address up to date, but still reside within the same Division, could be disenfranchised. While the basis for public education should certainly be that people notify the AEC if they change address, the Committee does not believe that address rather than Division should be the basis for enrolment and objection action under the Electoral Act.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1996 federal election  
and matters related thereto**

**EXTRACT FROM  
Submission No 98  
AUSTRALIAN ELECTORAL COMMISSION  
23 October 1996**

**Evidence: ppS1722-S1832**

## **Enrolment and Voter Identification**

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4.4.7 The technical design of the RMANS system is elector based and does not provide efficient access to address data. Because of the limitations of this design, the AEC is currently changing the RMANS system to an address based system, which is scheduled for implementation in early 1997. Under this system every address in Australia, both inhabited and uninhabited, will be recorded; and in addition a land use code will be stored, so as to identify non-habitable addresses, such as cemeteries, service stations and schools.

4.4.8 There are a number of advantages in converting to an address based system. One obvious advantage is that the system will detect any enrolment anomalies. For example if an elector were to enrol in an address that was non-habitable, the system would provide appropriate information to the operator and ensure follow up action was undertaken. Similarly if a large number of electors were to enrol in a single dwelling then the system would indicate a possible problem. The address based system represents a significant technical development for improving the quality of the enrolment database, and is an essential pre-requisite for any large-scale data-matching.

4.4.9 In order to establish the address based system, geographical data must be obtained from a number of agencies. The AEC intends to obtain this information from State mapping authorities, using Geographic Information Systems which store street names and numbers, together with spatial identifiers, such as houses, flats, places of worship, or hotels. Nonetheless, it is anticipated that the AEC will be required to capture some of this data non-electronically, especially in rural areas, using rural road numbering.

**Extract from the June 1997 JSCEM Report on the Conduct of the 1996 Federal Election**

Address-based Roll Management System (RMANS)

2.63 The electoral roll is maintained on the AEC's on-line Roll Management System (RMANS). RMANS contains the names and addresses of electors as well as historical records of changes of address.

2.64 In its report on the 1993 Federal election the previous committee noted the difficulties in requiring documentary proof of address and stated that

A preferable means of improving verification of residence would be a major redesign of RMANS so that individual addresses rather than electors' names become the basis for enrolment records. The AEC has been investigating such a redesign: it believes that RMANS could eventually be expanded to encompass a complete system holding national data on all land parcels (including known use, such as residential, park or commercial) against which addresses claimed for enrolment could be matched and, if not verified, further checked.

Completion of such a redesign is still some time away, but the Committee nonetheless feels that an address-based system could prove to be a worthwhile advance on current practice.

2.65 The conversion of RMANS to an address-based system is now complete. Under this system every address in Australia, both inhabited and uninhabited, will be recorded. In addition a land use code will be stored, so as to identify non-habitable addresses such as cemeteries, service stations and schools:

One obvious advantage is that [this] system will detect any enrolment anomalies. For example if an elector were to enrol in an address that was non-habitable, the system would provide appropriate information to the operator and ensure follow up action was undertaken. Similarly if a large number of electors were to enrol in a single dwelling then the system would indicate a possible problem. The address based system represents a significant technical development for improving the quality of the enrolment database, and is an essential pre-requisite for any large-scale data-matching.

2.66 While there were some questions raised at the inquiry about the system and the tendering processes used by the AEC, the Committee welcomes the address-based system as a significant step forward. Welcome news also is that the AEC and South Australia, which has maintained its own electoral roll system, are working towards achieving a truly national roll system through the transfer of the State's electoral data onto RMANS.

**AUSTRALIAN ELECTORAL COMMISSION**

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

**ADMISSIBILITY OF PROVISIONAL VOTES**

**Canberra**

**23 March 1999**

....

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

- (a) an elector may enrol for an address within a Division within a State/Territory;
- (b) if the elector moves from that address, the elector is no longer entitled to be enrolled for that address, and may be removed by objection deletion; and
- (c) those electors who are removed from the Roll by objection deletion and who do not re-enrol, but claim a provisional vote will not have their vote counted unless they claim to be living at the address for which they were removed, that is “official error” is deemed to have occurred.

2.9 The issue of basing enrolment on address was the subject of AEC submissions to the 1993 and 1996 JSCEM inquiries. In the November 1994 Report, the JSCEM said that it could “see the logic of the proposal that the basis for enrolment should be address rather than Division”, but that it could “also see a danger that electors who fail to keep their enrolment address up to date, but still reside within the same Division, could be disenfranchised”.

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

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

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

- (a) that if an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general federal election; and
- (b) that if an elector moves outside their enrolled Division, but remains within the State/Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS**

**EXTRACT FROM**

**ELECTORAL REFORM IMPLEMENTATION PLAN**

**Recommendation 1 of the JSCEM Report: That the Australian Electoral Commission prepare a comprehensive implementation plan on the Committee's proposed measures to improve the integrity of the enrolment and voting process, and report back to the Committee by the end of 1997.**

**AUSTRALIAN ELECTORAL COMMISSION  
9 March 1998**

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## **6 Access to the Rolls**

### **Recommendation 9 - Enhanced public access to the Rolls**

#### 6.1 Background

##### 6.1.1 Recommendation 9 states:

That electoral rolls for a division or subdivision again be made available for inspection in local libraries and Post Offices.

6.1.2 The JSCEM believes that increased public access to the electoral roll will add to its integrity by allowing members of the public to examine and, if required, object to the content of their roll.

6.1.3 The recommendation suggests making rolls available in libraries and post offices, but the reality is that rolls in printed format are not only expensive, but will be infrequently updated in this format and therefore the purpose is defeated. This point is made also by the Privacy Commissioner with respect to the details of those electors whose address details are to be removed from the Roll (see below). The cost of producing and printing Rolls for every division suitable for allocation to libraries and post offices with updates each six months is estimated at \$396,000 per annum.

6.1.4 Furthermore, objection action by members of the public following inspection of the Rolls is almost unheard of.

6.1.5 However, access to the Rolls is fundamental to the integrity of the Roll, and the AEC suggests that a more open approach be taken.

#### **6.2 Proposal**

6.2.1 The AEC proposes that printed Rolls not be available outside AEC offices, due to their cost of production, and because they are quickly out of date. Out of date Rolls in the public arena can only lead to difficulties and would be very misleading. It should be noted that the printed Roll in AEC offices is computer printed by the AEC, and would not be suitable for production of mass copies for circulation.

6.2.2 The AEC proposes that Rolls be made available in electronic form. This format precludes their availability at Post Offices, but lends itself to public libraries. It is noted that the Roll in electronic format (ELIAS) is also available in Members' and Senators' electorate offices, and accordingly, access by the public to the Roll in those offices could also be encouraged.

6.2.3 It is envisaged that the AEC's Internet home page include a searchable/browseable electoral roll, so that individuals may check their details in this way. Many public libraries may have Internet access, and this could be made available to the public. Where access is not available in this way, the AEC would explore possible ways of providing Roll data to the public by making available to public libraries a CD-ROM containing electoral roll data, probably for the relevant state. This would be similar to the Rolls on CD-ROM made available to Members and Senators, except that the CD Roll would only contain the relevant State or Territory Roll rather than the whole of Australia. This has an impact on costs.

6.2.4 Such CD-ROM versions of the roll could be supplied to libraries on a regular basis, say quarterly or biennially, depending on cost. The Internet Roll could be frequently updated.

6.2.5 However, there should be protection against the commercial use of the information.

6.2.6 It is also recommended that this issue be included in the review of section 89 through to 92 of the CEA - see recommendation 53.

### **6.3 Impact on AEC administration**

6.3.1 The main impact will be in producing and distributing the CD's on a regular basis, and in updating the Internet Roll. This impact would include an additional staffing requirement to manage the process.

#### *The Roll on the Internet*

6.3.2 The Roll on the Internet is the favoured option. Eventually it would have the greatest exposure, and have the least impact on resources. Costs are based on the assumption that the Internet Roll would be updated each six months. Note, each additional update will cost an additional \$3,000. The estimated cost is:

- development time 3 months
- development cost \$170,000
- ongoing annual costs \$62,000

#### *The Roll on CD in public libraries*

6.3.3 There would be an initial programming cost to set-up the system, and an ongoing cost to produce and distribute the CDs. The National Library has advised that there are approximately 1,500 public libraries in Australia, many of which would have Internet access. It is proposed that only those libraries without Internet access for the public would receive the CD version. As this net figure is not known at this time, the following costs assume none have that access. For the purpose of the following estimates, it is also assumed that a new set of Rolls would be provided at 6 monthly intervals. It is assumed that the CD Roll will only contain the relevant State or Territory Roll, not the whole of Australia, which means that only a single CD is required to be produced and despatched. The estimated cost is:

- development time 3 months
- development cost \$20,000
- ongoing annual costs \$50,000

### **6.4 Impact on electors and voters**

6.4.1 There will be a greater access to up to date Rolls.

### **6.5 Impact on Joint Roll Arrangements**

6.5.1 There would be no impact on these Arrangements.

## **6.6 Consultation comments**

6.6.1 The Privacy Commissioner makes a specific comment regarding this recommendation. She says:

Serious consideration would also need to be given to how the roll will be updated if it is being made available in a large number of locations. It is important that there are procedures in place to update the Roll on a regular basis, particularly when changes are required because an individual has requested that their name be removed from the Roll because they believe that their personal safety, or that of their family, is at risk.

6.6.2 A copy of the Privacy Commissioner's comments is at Attachment 6.

**AUSTRALIAN ELECTORAL COMMISSION**

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

**EXTRACT FROM  
THE CONDUCT OF THE 1998 FEDERAL ELECTION**

**Canberra**

**12 March 1999**

## 4.7 Public Access to the Roll

### 4.7.1 Recommendation 53 of the June 1997 JSCEM Report was:

that sections 89 to 92 of the Electoral Act, concerning improper use of roll information, be reviewed to take account of developments in computer technology. The existing entitlements of MPs and registered political parties should be maintained.

4.7.2 An extensive legislative and policy review of these enrolment provisions of the Electoral Act is currently underway, and the AEC will provide a supplementary submission to this JSCEM as time permits.

4.7.3 In the meantime, this submission makes an early recommendation to facilitate the provision of the Commonwealth Electoral Roll on the AEC Internet site, in order to improve public access to enrolment information as soon as possible. Such an innovation would allow electors, wherever electronic communications are available in Australia, to check the correctness of their personal enrolment information; to check the correctness of the enrolment of other persons for objection purposes; and to investigate for themselves any suspicions of fraudulent enrolment for the purposes of a petition to the Court of Disputed Returns.

4.7.4 It is proposed that the inquirer should be able to search the Internet roll by name and address/locality, a similar form of public access to that already available in the printed rolls and telephone directories. A downloadable enrolment form is available on the AEC Internet site to allow anyone whose name cannot be found on the roll to print out the form, fill it in and deliver it (by other means) to the AEC. It would not be possible to print out, copy, or alter the Internet roll in any way.

4.7.5 The New Zealand Electoral Commission already has an Internet roll in operation, but requires the inquirer to provide a birth-date in addition to the name and address, thereby limiting public access to 'own' enrolment information (see Attachment 04). In the view of the AEC, the Internet roll in Australia should be more accessible than this, allowing the enrolment of other electors to be checked for objection and petition purposes. In this way, the Internet roll would serve the important democratic function of allowing citizens to confirm for themselves that the roll is as accurate as possible, in the same way as the printed roll already does, but in a less convenient way.

4.7.6 Over recent years, access to enrolment information by registered political parties and parliamentarians has been gradually increased through successive amendments to the Electoral Act, and through improvements in electronic data provision. For example, the Electoral Act now entitles registered political parties and parliamentarians to request at any time from the AEC a tape or disc containing the name, address and gender of all relevant enrolled electors. In practice, the AEC provides CD-ROMS containing a complete enrolment history on every relevant elector to all registered political parties and parliamentarians on a monthly basis, free of charge.

4.7.7 It is generally understood that parliamentarians and registered political parties gradually enhance their enrolment databases with other information on electors that may come to their attention (see, for example, Part 8.6), so that these databases, held in the headquarters of political parties or in the electorate offices of parliamentarians, become very powerful tools for targeting political campaign activities, such as elector mail-outs. The Electoral and Referendum Amendment Bill 1998, currently before the Parliament, would require the AEC to additionally provide to all parliamentarians and registered political parties,

date of birth and salutation information on each elector, so as to further refine the targeting of political campaign advertising.

4.7.8 By comparison, over recent years, the public at large has been less well serviced in relation to access to the rolls. The AEC is required under section 89 of the Electoral Act to provide, for public access and sale, a hard-copy bound print of the rolls at least once during the period of two years after the commencement of the first session of the Parliament after a general election, and to provide supplemental rolls as necessary. These printed rolls are made available for public access at AEC Divisional Offices and public libraries, where they have become an important part of the historical record.

4.7.9 However, because of population mobility and the rapid computerised processing by the AEC of new enrolments and transfers, the printed rolls are obsolete the moment they are printed. Although costs are recovered to some extent by the sale of these printed rolls at \$25/Divisional roll, it has long been recognised that the section 89 printed rolls represent an increasingly inefficient and ineffective means of providing public access to the rolls.

4.7.10 In practice, electors who wish to investigate the rolls, either to check their own enrolments or those of family or friends, or to prepare for objection action against the enrolment of other electors, or to prepare evidence for a petition to the Court of Disputed Returns, will need to look at not only the printed rolls, but also the supplemental rolls, or the 'the additions and deletions lists' as they are known generally, which are made available on a weekly to monthly basis for public inspection in each Divisional Office. The AEC also provides the rolls on microfiche for viewing and for sale on a six-monthly basis, but these suffer the same time-lapse problems as the printed rolls.

4.7.11 This means that public access to roll information is presently a tiresome and difficult process, involving the comparison of hard-copy or microfiche roll information with the more recent information from the supplemental rolls held in Divisional Offices. Those who live in remoter areas of Australia, without ready access to a Divisional Office, are doubly disadvantaged.

4.7.12 The provision of the Commonwealth Electoral Roll on the Internet has already gained the nominal support of the Government. Recommendation 9 of the June 1997 JSCEM Report was: "That electoral rolls for a division or subdivision again be made available for inspection in local libraries and Post Offices." However, the cost of increasing the distribution of printed rolls as recommended was estimated to be in the order of \$396,000 per year. Accordingly, on 8 April 1998, the Government Response was: "Not supported. The Australian Electoral Commission to examine the cost and feasibility of placing electoral rolls on the Internet where they can be readily updated."

4.7.13 On 9 March 1998, the AEC made a submission to the previous JSCEM responding to the first recommendation of the June 1997 JSCEM Report, which was; "that the AEC prepare a comprehensive implementation plan on the Committee's proposed measures to improve the integrity of the enrolment and voting process...". Part 6 of the March 1998 AEC submission explored the provision of the Internet on the Roll.

4.7.14 On the basis of that submission, it is proposed in this submission that the AEC Internet site include the Commonwealth Electoral Roll with a name and address/locality search facility. Public libraries with Internet access would be able to link to the AEC Internet site, but where the Internet is not available, the AEC could provide a CD-ROM containing the electoral rolls for the relevant State/Territory, and with the same search facility.

4.7.15 The Attorney-General's Department has advised that this proposal would be legally permissible under the current terms of the Electoral Act, and that such provision would not conflict with the *Privacy Act 1988*, as the rolls are already a publicly available document. However, the Privacy Commissioner has commented that:

Serious consideration would also need to be given to how the roll will be updated if it is being made available in a large number of locations. It is important that there are procedures in place to update the Roll on a regular basis, particularly when changes are required because an individual has requested that their name be removed from the Roll because they believe that their personal safety, or that of their family, is at risk.

4.7.16 In the light of these comments by the Privacy Commissioner in relation to the necessity for regular updates of the information provided, it has been concluded that monthly updates of the Internet roll and the CD-ROMs to libraries would be in the public interest. This could be done in conjunction with the monthly update of the same information provided to the parliamentarians and registered political parties.

4.7.17 It is estimated that for monthly updates of the Internet roll the development costs would be \$120,000, the annual running costs would be \$40,000 and the maintenance costs would be \$42,000. It is proposed, however, that the frequency of updating not be expressly provided for in the Electoral Act, so as to allow for any technical problems or other contingencies that might arise from time to time.

Recommendation 1: That the publicly available Commonwealth Electoral Roll be provided on the AEC Internet site for name and address/locality search purposes, and that the Roll be provided in CD-ROM format with the same search facility to public libraries without Internet access, with regular updating.

**AUSTRALIAN ELECTORAL COMMISSION**

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

**AEC RESPONSES TO OTHER SUBMISSIONS AND TO HEARINGS**

**Canberra**

**4 May 1999**

....

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.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1996 federal election  
and matters related thereto**

**EXTRACT FROM**

**Submission No 128  
AUSTRALIAN ELECTORAL COMMISSION  
24 January 1997**

**Evidence: ppS2265-2269**

## **1. Preamble**

1.1 This supplementary submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its "Inquiry into the 1996 Federal Election", as advertised on Saturday 22 June 1996 in all major national newspapers. The submission is supplementary to the major AEC submission, "The Conduct of the 1996 Federal Election" presented to the JSCEM on 29 July 1996.

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.

**AUSTRALIAN ELECTORAL COMMISSION**

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

**EXTRACT FROM  
THE CONDUCT OF THE 1998 FEDERAL ELECTION**

**Canberra**

**12 March 1999**

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### 7.3 Senate Ballot Paper

7.3.1 For the 1998 federal election 1,106 candidates stood for election to the Senate, compared to 908 Senate candidates for the 1996 federal election, representing an increase of some 22%. This was despite an amendment to the Electoral Act in 1998 which increased the deposit for nomination for the Senate from \$500 to \$700, and increased the number of nominees required by independent candidates from 6 to 50 persons (see Part 5.2).

7.3.2 The AEC is concerned that the trend of increasing numbers of persons nominating for Senate elections will have an increasingly detrimental impact on production costs and efficiencies for the Senate ballot paper, and on its size and appearance. Schedule 1 of the Electoral Act specifies one format for a Senate ballot paper only and there is no provision for the AEC to adopt an alternative format to accommodate changing circumstances.

7.3.3 The Senate ballot paper has already reached the limitations of paper width for efficient production purposes, and has reached the limit of acceptable point size standard for the printing of candidates and group names to be legible. The only viable variation to the format to maintain efficiencies in the production and cost of ballot papers and other election equipment, such as declaration vote envelopes and ballot boxes, is to extend the depth of the Senate ballot paper, allowing vertical layering of the candidate names.

7.3.4 It is noted that for the pending NSW State election on 27 March, there are 91 registered groups, 36 political parties and up to 300 candidates nominating for the NSW Legislative Council, contesting 21 upper house seats. The NSW State Electoral Commissioner has observed that the upper house ballot paper “will look like a tablecloth...It will be a real challenge just to get it in the polling booth, but I am sure the people of NSW will rise to the occasion just as they have before.” As now permitted under the NSW legislation (see Attachment 15), the NSW Legislative Council ballot paper will be a triple-decker arrangement, to avoid producing a ballot paper in the conventional horizontal layout, which would be over two metres wide.

Recommendation 11: The AEC recommends that the Electoral Act be amended to allow the Electoral Commissioner a discretion in the layout of the Senate ballot paper.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1993 federal election  
and matters related thereto**

**EXTRACT FROM**

**Submission No 153  
AUSTRALIAN ELECTORAL COMMISSION  
23 August 1994**

**Submission not bound for publication by JSCEM**

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## **E. ELECTORAL OFFENCES - 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.

9. 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. In 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 could not reasonably be regarded as seeking to bribe those constituents in relation to their vote.

5. The December 1990 Federal Election Report of the Joint Standing Committee on Electoral Matters made no recommendations on the matter of bribery.

6. There have been no major cases of electoral bribery brought before the courts in the entire history of federal parliamentary elections. However, it is worth noting the comments made in Report No 3 of the Joint Standing Committee on Electoral Matters in May 1989, the "Inquiry into the Conduct of the 1987 Federal Election and 1988 Referendums". At pages 107-108, paragraphs S.41-8 47, the following comments were made by the Committee:

During the course of the Committee's examination of the 1987 election the AEC provided the Committee with legal opinions on the application of s226 of the Electoral Act in relation to a NSW case, *Scott v Martin*, which was heard in the NSW Court of Disputed Returns

The case resulted from a challenge to the election of the Labor candidate for the NSW division of Port Stephens at the 1988 State election. The candidate, Robert Martin, had in the two weeks before the election presented cheques to a number of community groups on behalf of the NSW Government. Eleven payments were made totalling \$37,500.

Needham J, sitting as the Court of Disputed Returns, found Mr Martin had contravened s.147(a) of the Parliamentary Electorates and Elections Act 1912 (NSW), which prohibits bribery. Mr Martin's election was declared invalid.

The Attorney-General's Department was of the opinion that a candidate in a Commonwealth election who repeated the conduct' considered in *Scott v Martin* would contravene s.326(2) of the Electoral Act and stated:

... all political parties are on notice as a result of *Scott v Martin* in that the distribution of Government funds to community groups may be seen as bribery.

The Attorney-General's Department further remarked that:

there seems to be no reason why a donation made to a community group should not, in an appropriate case, be considered as bribery. A donation to such a group may have as much effect on the votes of members of the group as donations to individual members.

The Committee notes these remarks. However, it would be up to a court to interpret s.326(2) of the Electoral Act, and it could interpret s.326(2) to exclude the distribution of Government funds.

At this time the Committee has not examined the application of s.326(2) in detail and therefore makes no recommendation on the matter. Nevertheless, the Committee is concerned that Government assistance to community groups should be construed as bribery under s. 326(2) of the Electoral Act. The Committee believes the Government should review the matter.

7. In relation to the 1988 Adelaide by-election mentioned by Mr Gary Gray at the 1993 JSC hearings, and which concerned an invitation by the ALP party organisation to a Bicentennial Barbeque to meet senior ALP representatives, the Commission took formal legal advice following an official complaint from the Liberal Party. The Director of Public Prosecutions advised the Australian Electoral Commission that the institution of proceedings for a breach of section 326 was not warranted.

8. At the 1993 federal election, the Commission received a number of electoral bribery complaints concerning a cut-price petrol campaign sponsored by the National Party, and the sale of 'Fightback petrol' by a Liberal candidate. On the advice of the Director of Public Prosecutions the Commission did not institute proceedings for breaches of section 326.

**Extract from November 1994 JSCEM Report**

Definition of Bribery

10.3.1 Section 326 of the Electoral Act makes bribery an electoral offence. The provision states that

a person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind, whether for the same or any other person, or  
give or confer, or promise or offer to give or confer, any property or benefit of any kind on the understanding that a vote, candidature or candidate's position in a Senate group voting ticket is likely to be influenced.

10.3.2 The ALP and the Liberal Party both submitted that this definition causes uncertainty; for example, as to whether or not an unexceptional activity such as a candidate offering someone food or drink could constitute "bribery" within the meaning of the Act.

10.3.3 The Committee agrees that the Act should preferably be amended to make clear that activities of the type described do not constitute bribery. It might be feasible, for example, to specify a minimum monetary value in the bribery provisions, and/or to exclude food and drink.

Recommendation 72: 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.

10.3.4 If the clarification sought cannot be achieved without risking the effectiveness of the bribery provisions, the Committee agrees that amendments should not be considered. There have been no major cases of electoral bribery brought before the courts in the entire history of federal parliamentary elections, and the chances of a candidate being charged and prosecuted for the sorts of trivial activities mentioned by the Labor and Liberal parties would appear to be slight.

**Extract from Government Response of 21 September 1995 to 1994 JSCEM Report**

Recommendation 72: Supported. The AEC has already sought the advice 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 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.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1996 federal election  
and matters related thereto**

**EXTRACT FROM**

**Submission No 90  
AUSTRALIAN ELECTORAL COMMISSION  
20 September 1996**

**Evidence: ppS1451-S1503**

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

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

The Committee agrees that the Act should preferably be amended to make clear that activities of the type described do not constitute bribery. It might be feasible, for example, to specify a minimum monetary value in the bribery provisions, and/or to exclude food and drink.

Recommendation 76: that the AEC report back to the Committee on amendments to section 326 of the Electoral Act, relating to bribery, that would more clearly define the scope and intent of the provision.

If the clarification sought cannot be achieved without risking the effectiveness of the bribery provisions, the Committee agrees that amendments should not be considered. There have been no major cases of electoral bribery brought before the courts in the entire history of parliamentary elections, and the chances of a candidate being charged and prosecuted for the sorts of trivial activities mentioned by the Labor and Liberal parties would appear to be slight.

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

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

As well as determining whether any criminal prosecutions should be brought and whether anyone should face misconduct charges, Mr Carruthers will also be considering the bribery law in Queensland. The submissions made to him and his comments during the inquiry suggest that there are at least two unsatisfactory aspects of the law. The first is that it does not sufficiently explain to politicians or voters the difference between conduct that should be considered a normal part of the political process and that which should be recognised as bribery and a criminal offence. The second is the seriousness which should be attached to such criminal behaviour, as reflected in the penalties applied upon conviction.

The problem of differentiating between ordinary political promises and political bribes has been addressed under Commonwealth law. As with the Queensland law, it makes it illegal to ask for, receive or obtain, any “property or benefit or any kind” in order to influence a person’s vote, candidature or support for or opposition to a candidate or party at any election. But the Commonwealth law includes a proviso that

this does not apply “in relation to a declaration of public policy or a promise of public action”.

Those additional words may arguably be implied in the description of the offence under the Queensland law as “bribery”: the law would not make sense otherwise. But they should be there for all to see - particularly the adjective “public” which excludes secret deals.

The second aspect is the penalty, which currently stands at a fine of just over \$6,000 or imprisonment for two years. Under Queensland law, that means a hearing before a magistrate. That hardly seems appropriate for an offence which involves a serious attack on the democratic process. At the very least a politician convicted on an offence of electoral bribery should be automatically barred from holding parliamentary office for a set period.

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

**Extract from June 1997 JSCEM Report**

Electoral Bribery

7.70 Section 326 of the Electoral Act states that

a person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind, whether for the same or any other person.  
or  
give or confer, or promise or offer to give or confer, any property or benefit of any kind

on the understanding that a vote, candidature or candidate's position in a Senate group is likely to be influenced. The penalty specified in the Act is \$5000 or imprisonment for two years, or both. Section 326 does not apply to a declaration of public policy or a promise of public action.

7.71 The ALP submitted to both the 1993 election inquiry and this inquiry that section 326 should be amended, to clearly exempt routine campaign activities:

The section was of concern to a large number of individual ALP candidates in respect to both their own activities and in some instances actions of their opponents...The difficulty [that] arises for all candidates is to determine at what point the extension of a courtesy, such as the provision of a cup of tea and a biscuit, becomes the giving and conferring of "any property or benefit of any kind.

7.72 While the previous committee recommended that section 326 be examined, it cautioned that

If the clarification sought cannot be achieved without risking the effectiveness of the bribery provisions, the Committee agrees that amendments should not be considered. There have been no major cases of electoral bribery brought before the courts in the entire history of federal parliamentary elections, and the chances of a candidate being charged and prosecuted for the sorts of trivial activities mentioned by the Labor and Liberal parties would appear to be slight.

7.73 On the advice of the DPP, the AEC has consistently held that the provision of tea and biscuits and the conduct of "happy hours", to use examples cited by the ALP, are not direct attempts to influence or affect votes and therefore do not amount to electoral bribery. Encouraging people to meet a candidate and make their own decision as to who to vote for is distinguished from offering incentives to vote in a specific way.

7.74 The ALP did not offer an alternative to the current bribery provisions. The Committee does not recommend any amendment to section 326 of the Electoral Act.

**Extract from Electoral Backgrounder No 6, entitled “Influencing Votes”, 17 July 1998**

**Electoral Bribery**

6. Section 326 of the Act provides that a person cannot ask for or obtain, or give or confer, any property or benefit that is likely to influence the vote of an elector at a federal election. The electoral bribery offence does not apply to declarations of public policy or promises of public action. The maximum penalty for a contravention of section 326 is \$5,000 or imprisonment for two years, or both.

7. There is some uncertainty about the scope of section 326, and on its face, the provision could arguably cover a wide range of factual circumstances. However, there is some judicial guidance provided by cases decided in State Supreme Courts on similar provisions in State legislation. In the *Woodward v Maltby* case a candidate at the 1958 Victorian State election distributed books of matches to electors which bore a printed invitation to vote for him. The Victorian Supreme Court held that before the offence of electoral bribery could be held to apply in this case, it would have to be demonstrated that there was an intention by the candidate to induce the voter to vote for him by means of the gift, as distinct from the advertisement on it.

8. In the *Scott v Martin* case, the New South Wales Supreme Court found that a candidate had committed electoral bribery under the relevant State legislation because he had presented cheques to a number of community groups on behalf of the State Government in the two weeks before the 1988 State election. The Court found that the candidate intended to induce the members of the community groups, to which he distributed money, to vote for him by creating feelings of gratitude on their part. That is, the distribution of government funds to community groups was found to constitute electoral bribery.

9. These authorities suggest that 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.

10. The majority of complaints concerning section 326, that are made to the AEC during election periods, relate to the provision of hospitality in the form of tea and biscuits or sausage sizzles, for example, at events organised by political parties and candidates in local communities. After the 1993 federal election, the major political parties suggested to the parliamentary Joint Standing Committee on Electoral Matters (JSCEM) that section 326 be amended to exclude the provision of hospitality such as tea and biscuits or sausage sizzles during election campaigns. The JSCEM recommended in its report that:

The AEC report back to the Committee on amendments to section 326 of the Electoral Act, relating to bribery, that would more clearly define the scope and intent of the provision. If the clarification sought cannot be achieved without risking the effectiveness of the bribery provisions, the Committee agrees that amendments should not be considered. There have been no major cases of electoral bribery brought before the courts in the entire history of parliamentary elections, and the chances of a candidate being charged and prosecuted for the sorts of trivial activities mentioned by the Labor and Liberal parties would appear to be slight.

11. The AEC advised the JSCEM that section 326 of the Act cannot be amended to expressly exclude the provision of hospitality, such as tea and biscuits and sausage sizzles, without risking the overall effectiveness of the bribery provision. 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.

12. It should be noted that if a candidate is elected and the Court of Disputed Returns finds that the candidate has committed, or attempted to commit, bribery, the Court must declare the election of the candidate void under section 362 of the Act.

**Attachment 17**

**Colin A Hughes, "Electoral Bribery", Griffith Law Review, Vol 7, No 2, 1998**

(see attached)

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1993 federal election  
and matters related thereto**

**EXTRACT FROM**

**Submission No 115a  
AUSTRALIAN ELECTORAL COMMISSION  
19 October 1993**

**Evidence: ppS0723-S0733**

## **PROPOSED TECHNICAL AMENDMENTS TO ELECTORAL LEGISLATION**

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### **8. POSTMARKING OF POSTAL VOTES**

8.1 Schedule 3(7) of the Act provides that where an envelope containing a postal ballot-paper is postmarked later than polling day, “the vote marked on that ballot-paper shall be taken not to have been recorded prior to the close of poll”.

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

8.3 A recent sample of postal vote envelopes in one Division indicated 42% had no postmark at all and a further 5% had an illegible postmark. In the case of those envelopes with no (or an illegible) postmark which were received after polling day, it is AEC policy that the date of the witness on the postal vote certificate shall be used to determine whether the vote was recorded on or before polling day.

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

**Extract from November 1994 JSCEM Report**

Postmarking of Postal Votes

6.6.4 Schedule 3(7) of the Electoral Act provides that the postmark shall be used to determine the date when a postal vote was cast. The AEC submitted that this provision should be repealed, given that postmarks are becoming steadily less common. Of a recent sample of postal vote envelopes in one Division, 42 percent had no postmark at all, and a further five percent had an illegible postmark.

6.6.5 The AEC's preferred solution is to rely instead on the witness's signature to determine when a postal vote was cast. The Committee, however, considers a postmark to be a more reliable form of verification, and therefore believes that Schedule 3(7) should be retained while postmarks are still available on a substantial proportion of postal vote envelopes.

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1996 federal election  
and matters related thereto**

**EXTRACT FROM**

**Submission No 30  
AUSTRALIAN ELECTORAL COMMISSION  
29 July 1996**

**Evidence: ppS129-S265**

## **7.5 Postal Vote Envelopes - Postmarking**

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

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

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

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

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

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

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

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

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

7.5.8 In December 1995, the AEC received a letter from Senator Minchin enquiring about the procedures for acceptance of postal vote certificates, including the relationship to the postmark, and suggesting that the AEC “impress upon Australia Post the necessity for all mail to be postmarked to ensure that all valid postal votes at the next federal election are counted”. In reply, the AEC advised Senator Minchin of the agreement with Australia Post and reminded him of the conclusion of the previous JSCEM to the AEC recommendation in 1993. Senator Minchin then advised that he would look forward to the matter being raised with the next JSCEM as it should have been examined more closely the first time.

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

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

**Recommendation No 18:**

**The AEC recommends that paragraph 7 of Schedule 3 of the CEA and paragraph 7 of Schedule 4 of the RMPA, with respect to the postmarking of postal vote envelopes, be repealed.**

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
Inquiry into all aspects of the conduct of the 1996 federal election  
and matters related thereto**

**EXTRACT FROM**

**Submission No 135  
AUSTRALIAN ELECTORAL COMMISSION  
7 May 1997**

**Evidence: ppS2371-S2413**

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### **2.3 Postmarking of Postal Vote Envelopes**

*At p 58 of the 29 July submission, the AEC calls for a repeal of the provisions related to postmarking of postal vote envelopes. How many postal votes received after polling day were not accepted because of a non-existent or illegible postmark?*

2.3.1 At page 58 of the AEC submission No 30 of 29 July 1996 recommendation 18 is as follows:

The AEC recommends that paragraph 7 of Schedule 3 of the CEA and paragraph 7 of Schedule 4 of the RMPA, with respect to the postmarking of postal vote envelopes, be repealed.

2.3.2 Since reporting on this matter in submission No 30 the AEC has conducted no additional surveys on postmarking. However, information from operational areas indicates that mail articles are still being received by the AEC with either no postmark or an illegible postmark.

2.3.3 The AEC maintains the view that to use a postmark test for admittance of postal votes to the further scrutiny is unreliable and may be disenfranchising voters. The decision as to whether postal votes should be admitted to the further scrutiny as being within time should be made on the basis of an elector signature and a witness signature on the declaration, dated prior to the close of polling day.

**Extract from June 1997 JSCEM Report**

The Return of Postal Votes

5.25 The Electoral Act allows a period of 13 days after the close of polling for the late receipt of postal votes. Bathurst City Council submitted that the close of postal votes should occur at the close of ordinary polling, to eliminate “significant delays” in the declaration of polls. Mr Bruce Martin submitted that the close of postal votes should occur at 5pm on the next business day after polling day, but with a freecall facility for ordering a postal vote.

5.96 However, 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.

5.27 Also, the Electoral Act requires that a DRO examine the postmark on a postal vote envelope to determine whether the vote was cast before polling day. The AEC has advised that postmarking is no longer a sufficiently reliable indicator of when a postal vote was actually recorded.

In preparation for the 1996 federal election, the AEC negotiated with Australia Post for the postmarking of the AEC’s mail [however] eligible electors continue to be disenfranchised through no fault of their own For example, in the Division of Chifley...the percentage of postal votes not postmarked for the 1996 federal election was 59% and a further 20% had an illegible postmark.

5.98 The postmarking requirement should be repealed. The date of the witness’s signature should be used to determine if a postal vote was cast before the close of polling.

5.99 Recommendation 32:

that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 7 of Schedule 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

**Government Response of 8 April 1998 to JSCEM recommendation 32**

Supported. However, the Government believes that this provision should only be used in the event of the postmark being illegible or non-existent.

**AUSTRALIAN ELECTORAL COMMISSION**

**EXTRACT FROM  
SUBMISSION TO THE JOINT STANDING COMMITTEE  
ON ELECTORAL MATTERS**

**THE CONDUCT OF THE 1998 FEDERAL ELECTION**

**Canberra**

**12 March 1999**

....

## 9.10 Postmarking

9.10.1 Clause 7 of Schedule 3 to the Electoral Act requires that an envelope purporting to contain a postal ballot paper that bears a postmark after polling day be rejected at preliminary scrutiny. Recommendation 32 of the previous JSCEM was as follows:

that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

9.10.2 An amendment was made to paragraph 3 and paragraph 4 of the relevant schedules by the *Electoral and Referendum Amendment Act 1998*, but the effect of the amendment makes little difference to the pre-existing provision, other than to make explicit that the witness date can be used if there was no postmark – an administrative arrangement carried out by the AEC in any case.

9.10.3 Many electors receiving postal votes assume they cannot vote before polling day, and consequently post the envelope on polling day. However, Australia Post does not work on Saturdays or Sundays in most centres and the elector is disenfranchised although they have voted correctly. The reliance on the postmarking provision is archaic, dating back to when the then Post-Master General's department was open on a Saturday.

**Recommendation 22: that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 4 of Schedule 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling.**

**AUSTRALIAN ELECTORAL COMMISSION**

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**THE CONDUCT OF THE 1998 FEDERAL ELECTION**

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8.6.15 To ensure that potential postal vote applicants who utilise the political parties as a conduit to the AEC are consistently advised of the qualifications for postal voting, the AEC will be gazetting a postal vote application form that includes the relevant advisory information on postal vote qualifications. This will mean that the political parties will be required under the Electoral Act to reproduce not only the actual postal vote application form but also the information on qualifications.

8.6.16 Further, the AEC will consider making the “approved” postal vote application form similar to the postal vote application Form 13 approved by the NSW Electoral Commission for the purposes of NSW State elections (see Attachment 22). In the relevant part of the NSW approved form, the applicant must actually tick off the reason why the applicant requires a postal vote, from a list of the permitted reasons in the legislation. This would provide a further assurance that the applicant is indeed qualified for a postal vote for federal elections.