AUSTRALIAN ELECTORAL COMMISSION

SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

THE CONDUCT OF THE 1998 FEDERAL ELECTION

Canberra

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CONTENTS

1 INTRODUCTION

1.1 Preamble

1.1.1 This major submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its "Inquiry into the 1998 Federal Election", as advertised on 23 January 1999 in all major national newspapers. The submission reports on the overall conduct of the 1998 federal election, and makes a number of recommendations for amendments to the *Commonwealth Electoral Act 1918* ("the Electoral Act") and the *Referendum (Machinery Provisions) Act 1984* ("the Referendum Act") in order to improve technical aspects of the conduct of federal elections and referendums.

1.1.2 In the lead up to the announcement of the 1998 federal election by Prime Minister John Howard on 30 August 1998, political analysts and commentators were predicting a very close election and an unusually antagonistic election campaign:

> "I do know ….this is going to be the toughest, most difficult, most complex, hardest to call election that we've seen in a long, long time." *(John Sharp, National Party MP and former Transport Minister, interviewed on ABC radio, 15 June 1998)*
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> "It will be the most dangerous, difficult to predict and uncharacteristic election since World War II. It will be completely atypical of modern electioneering, as the campaigns of all parties will be fragmented to the point of being fought individually on some fronts in each of the 148 electorates." *(Dennis Shanahan, Australian, 4 July 1998)*
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> "…it is going to be a very nasty and very dirty next few months." *(Alan Ramsay, Sydney Morning Herald, 11 July 1998).*
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> "…party strategists are readying for what may be not only the closest election in recent memory, but also the most unpredictable and difficult to manage." *(Richard McGregor, Weekend Australian, 1 August 1998).*

1.1.3 Despite these predictions, from an administrative and operational viewpoint, the AEC is able to report to the JSCEM that the 1998 federal election was successfully conducted, to the overall satisfaction of the major stakeholders. As reported by the Electoral Commissioner, after polling day on 3 October 1998, in the AEC in-house journal:

> Conducting a federal election is one of the largest peace-time activities that any nation undertakes. Between late August and early October we mobilised some 12 million voters who attended nearly 8,000 polling places. In a country as geographically large and diverse as Australia this was a considerable achievement of which we can all be proud. The fact that most citizens participated in the democratic process without incident or inconvenience, is a tribute to the professionalism and dedication of AEC officers. (*Scrutiny, No 41, October 1998)*

1.1.4 In the period between the 1996 federal election and the 1998 federal election, the AEC conducted the 1996 elections for the Aboriginal and Torres Strait Islander Commission (ATSIC); the 1997 election of delegates to the 1998 Constitutional Convention; some hundreds of industrial elections and other non-parliamentary elections (conducted on a user-pays basis); and provided assistance for overseas elections. In the coming year, the AEC expects to have responsibility for the conduct of the 1999 ATSIC elections, and the 1999 Referendum on the Republic.

1.2 Supplementary Submissions

1.2.1 On 3 February 1999, Senator Helen Coonan, the Deputy Government Whip in the Senate, launched a campaign to reform the electoral system for the Senate, with a speech entitled “The Senate: Safeguard or Handbrake on Democracy?”. The Australian Democrats have responded with their own campaign to reform the electoral system for the House of Representatives. The AEC will put a preliminary submission to the JSCEM on the electoral machinery issues that might arise, if so requested.

1.2.2 The referendum on the Republic, currently scheduled for November 1999, has already raised novel issues relating to the form and content of the question(s) to be put to the people, the funding of the Yes/No cases, and the possibility of a separate Government advertising campaign. Possible amendments to the Referendum Act have already been publicly canvassed. The AEC will provide a supplementary submission on the machinery aspects of the Republic Referendum, if so requested.

1.2.3 Recommendation 53 of the June 1997 Report of the JSCEM was: “that sections 89 to 92 of the Electoral Act, concerning proper 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.” That review is currently in progress, and as time permits the AEC will provide a supplementary submission to the JSCEM with recommendations for legislative amendment to bring the provisions relating to access to enrolment information into line with current computer technology.

1.2.4 The AEC would also appreciate the opportunity to provide supplementary submissions in response to submissions from other organisations and individuals, where important issues are raised that require further information and analysis. For example, the AEC hopes that any allegations that are made of fraudulent enrolment and voting at the 1998 federal election will be subjected to detailed inquiry by the JSCEM, particularly at the public hearings, and the AEC will provide any relevant evidence and analysis in supplementary submissions as required.

1.2.5 As has occurred at previous inquiries, the AEC expects to provide late submissions on the nine petitions currently before the Court of Disputed Returns; and on dual and multiple voting, when the majority of prosecutions have passed through the courts.

1.2.6 Finally, a report on the 1998 federal election, for public information purposes, entitled "Behind the Scenes", will shortly be published and provided to all members of the JSCEM. A separate report on election funding and disclosure matters will be provided to Parliament later this year as required by section 17 of the Electoral Act.

1.3 The Joint Standing Committee on Electoral Matters

1.3.1 The JSCEM, and its predecessor the Joint Select Committee on Electoral Reform, have inquired into the conduct of all federal elections since the AEC was established in February 1984. Over this period, and as the result of particular problems thrown up at each federal election and referendum, various amendments to the Electoral Act and the Referendum Act have been unanimously recommended by the JSCEM, supported by the Government, and enacted by the Parliament. This process has, over time, ensured that electoral and referendum legislation remains relevant in its application to contemporary circumstances.

1.3.2 The JSCEM also provides a democratic forum at the highest level for citizens to voice their concerns about the electoral process and the conduct of elections; provides an important political forum for parliamentary representatives to find agreement in order to avoid deadlocks in the legislative process; and stands as a model of transparency and accountability on the international stage.

1.3.3 On 1 June 1998 the House of Representatives Standing Committee on Procedure tabled in Parliament a report entitled "*Ten Years on: A Review of the House of Representatives Committee System*". Recommendation 1 of the report was, that the JSCEM should not be reappointed in the 39th Parliament. The AEC is pleased to note that the recommendation of this committee for the abolition of the JSCEM was not supported by the Government.

1.4 Issue of the Writs

1.4.1 After the announcement of the 1998 federal election on Sunday, 30 August 1998, and the dissolution of Parliament on Monday, 31 August 1998, the Governor-General and the State Governors issued the federal election writs, in response to a request from Prime Minister John Howard. The following dates were specified in the writs:

Issue of Writs	Monday 31 August 1998
Close of Rolls	Monday 7 September 1998
Close of Nominations	Thursday 10 September 1998
Polling Day	Saturday 3 October 1998

1.4.2 Following the election, the eight election writs for each of the States and Territories for the House of Representatives were returned to the Governor-General on 29 October 1998. The writs for each of the States and Territories for the Senate were returned to the Governors of the States and the Governor-General respectively, in the following order:

Queensland	23 October 1998
South Australia	26 October 1998
Western Australia	27 October 1998
New South Wales	29 October 1998
Victoria	29 October 1998
Tasmania	29 October 1998
Australian Capital Territory	29 October 1998
Northern Territory	29 October 1998

1.4.3 Petitions to the Court of Disputed Returns must be filed within 40 days of the return of the writ for the relevant State/Territory/Division election. Nine petitions were filed within the statutory time period (see Part 12.3).

1.4.4 In July 1998, the *Electoral and Referendum Amendment Act 1998* amended Part XII of the Electoral Act to reduce by one day the minimum time from issue of writs to close of nominations: from 11 days to 10 days. At the same time, an extra day was allowed between close of nominations and the declaration of nominations. These changes did not result in any overall change to the minimum period from the issue of the writs to polling day, which remained at 33 days. In 1998, the Government chose the minimum election period available under the Act.

1.4.5 Between the announcement of the election on Sunday 30 August and the issue of the writs on Monday 31 August, it was discovered that the parallel legislation in some States, which provides the timetable for the issue of the writs for the Senate by the respective State Governors, had not been amended to come into line with the amended federal legislation. This could have resulted in severe disruption to the election timetable preferred by the Government, with different polling days, for example, being set in some States.

1.4.6 However, negotiations during Monday 31 August, including the provision of urgent legal advice from the Attorney-General's Department to the effect that section 9 of the Constitution would override any conflicting State legislation, eventually persuaded the relevant State administrations to advise their Governors that the Senate writs could be properly issued in accordance with the preferred federal timetable. The Commonwealth Government has since drawn to the attention of the State Governments the need for amendments to their Senate legislation to come into line with the Electoral Act on the timing of the issue of the writs by the Governors of the States.

1.5 Significant Features of the Election

1.5.1 ***Voter Turnout.*** At the 1998 federal election, 95.34% of the 12,154,050 enrolled electors voted. This is slightly less than the 96.20% who voted in 1996, but is in keeping with the broad trend of a turnout rate higher than 90% since compulsory voting was introduced in 1924. The turnout rate was probably affected by the timing of the election on a long weekend in New South Wales, South Australia and the Australian Capital Territory, and school holidays in some parts of the country.

1.5.2 ***Public Awareness Campaign***. The AEC again conducted a wide ranging and effective public information campaign which involved advertising, public relations, publications and a telephone inquiry service. Enhancements to hardware, software and procedures enabled the telephone inquiry service to respond to 533,451 calls during the 1998 election period compared to 317,799 calls at the 1996 election.

1.5.3 ***AEC Internet Site***. On election night, approximately 85,000 people visited the enhanced AEC Internet site and obtained results at a Divisional, State and national level. Following polling day, these results were updated at least daily, and polling place figures were made available. In the period between the announcement of the election on 30 August 1998 and the end of the year, there were more than 269,000 page views of the AEC Internet site and more than 200,000 people visited the Virtual Tally Room, with an average session length of 17 minutes. These figures reflect a very high level of usage for a government Internet site.

1.5.4 ***Computerised Senate Scrutiny***: In November 1997 the AEC used a new computerised scrutiny system to process the counting of votes for the election of delegates to the 1998 Constitution Convention. This election was based on a proportional representation electoral system, with a non-compulsory postal voting system, and with a turnout less than half that of a normal federal election, thereby proving an important test of the computerised scrutiny system in preparation for the election of Senators at the forthcoming federal election. The *Electoral and Referendum Amendment Act 1998* amended the Electoral Act to allow for a computerised Senate scrutiny at the 1998 federal election and all future federal elections.

1.5.5 The computerised scrutiny system was successfully applied at the 1998 federal election to process the counting of votes for the election of Senators for the States and Territories. The system, which inputs and verifies the information on each Senate ballot paper and determines formality, was explained to and endorsed by the major political parties, and investigated and approved by the Auditor-General, prior to implementation of the 1998 legislative amendments. A large number of PCs were temporarily installed in AEC offices in each State and Territory to allow for the input and verification. When all the information on the Senate ballot papers had been entered, the system then distributed preferences resulting in the election of the Senators for each State and Territory.

1.5.6 ***Results on the Night***. The computerised election night system collected and transmitted progressive voting information to members of the media and others in the National Tally Room on election night. The system also provided data feeds to the major television networks and Australian Associated Press, as well as providing terminals for the Prime Minister and Leader of the Opposition. The election night system did not experience any difficulties during the course of the night and provided sufficient quality and quantity of data to enable the ABC to predict by 8.00 pm EST that the Government had been returned to office. For the first time, the AEC provided election results using the "Virtual Tally Room" on the AEC Internet site, which was updated simultaneously with the National Tally Room in Canberra.

1.5.7 ***Northern Territory Statehood Referendum***. On 17 July 1998, the AEC was requested by the Department of the Prime Minister and Cabinet to examine a proposal that the Northern Territory Referendum on Statehood be conducted in the Northern Territory on the same day as polling day for the next federal election. During August 1998, AEC officers stationed in Darwin worked with the Northern Territory administration on the detail of the arrangements that would enable the two polls to be conducted together, and assisted with the necessary amendments to the draft Northern Territory referendum legislation. Regulations were also made under the Electoral Act to enable the use of federal election equipment at the referendum.

1.5.8 The poll for the federal election, at the same time as a Territory referendum, provided new challenges in a short time period for the AEC, but in the event there were no major operational problems, and no significant disruption or confusion in the electorate.

1.5.9 ***International Visitor Program.*** The 1998 federal election was the second occasion the AEC has conducted a major international visitor programme, this time, involving 32 participants from Bangladesh, Fiji, Hong Kong, Indonesia, Lesotho, New Zealand, Papua New Guinea, Samoa, the Solomon Islands, South Africa, Sri Lanka, Thailand and Tonga. Visitors were required to provide their own financial support, except for any interstate travel which was funded by the AEC. The list of participants is at Attachment 01.

1.5.10 The programme consisted of detailed briefings on all aspects of the administration and conduct of elections, culminating in the observation of polling and the conduct of the preliminary scrutinies. The programme was highly successful in promoting mutual understanding of electoral administration and good government practice. It also provided an excellent opportunity to strengthen regional relationships.

2 ELECTORAL LEGISLATION

2.1 Introduction

2.1.1 The AEC entered the 1998 federal election period with amending legislation only just passed by the Parliament in July 1998, and, in retrospect, with little more than a month before the announcement of the election to redesign policies and procedures, to provide necessary staff training and new public information, and to prepare relevant manuals and publications, in order to accommodate the amended laws. As most of the amendments were "technical" in nature, and were originally recommended by the AEC to the previous JSCEM, the problems of implementation were not insurmountable and the law was applied consistently and appropriately and to the satisfaction of stakeholders.

2.1.2 The previous JSCEM, at page 114 of its June 1997 Report, unanimously supported a proposal to amend the Constitution to provide for four year parliamentary terms, but stopped short of endorsing a fixed polling day. In the absence of a fixed polling day for federal elections (as operates in some States and Territories, and in many other countries), risks are minimised in the conduct of federal elections where amendments to electoral legislation are passed relatively early in the legislative program. This is always conditional of course, on the speed at which the JSCEM is able to report on the conduct of the previous election, and to make its recommendations for legislative change, and the speed at which the Government responds and introduces its proposed legislation.

2.1.3 Within this context of an indeterminate polling day, a pattern has emerged over the years in the process of making legislative amendments to the Electoral Act. After each federal election, each new JSCEM makes a number of recommendations for changes to the law, some unanimously supported by members of the JSCEM, and some recommended only by the majority government members, with dissent recorded by the minority opposition members.

2.1.4 The unanimous recommendations made by each JSCEM for changes to the Electoral Act tend to form a 'technical' Bill introduced early in the parliamentary cycle, which is usually passed relatively speedily into law. This is then followed by a 'reform' Bill introduced later in the parliamentary cycle, which contains those matters of interest and concern to the majority government members of the JSCEM, but which may have raised dissent among minority opposition members. The prospects of complete and unamended passage for the second reform Bill in each parliamentary cycle are generally not high.

2.1.5 For example, the first, technical, Bill of the 37th Parliament became law in December 1995, about one year after the November 1994 JSCEM Report on the 1993 federal election, and about one month before the announcement of the 1996 federal election. The second, reform, Bill of the 37th Parliament lapsed with the announcement of the 1996 federal election. This second Bill in

fact contained many non-contentious elements, which had been held over from the first Bill, such as the computerisation of the Senate scrutiny, but the Bill failed to gain support because of the addition of various contentious amendments by the opposition parties in the Senate, such as 'truth in advertising', and removal of the franchise from prisoners.

2.1.6 The first, technical, Bill of the 38th Parliament became law in July 1998, about one year after the June 1997 JSCEM Report on the 1996 federal election, and about one month before the announcement of the 1998 federal election. The second, reform, Bill lapsed at the 1998 federal election. This Bill was reintroduced after the 1998 federal election, and is currently before Parliament, with the opposition parties registering their disagreement with many of its provisions.

2.1.7 From the purely operational perspective of the organisation that must implement the amended legislation, it would be of great concern to the AEC if reform Bills, where they propose radical reforms rather than machinery changes to the federal electoral system, were to gain parliamentary passage into law just prior to a federal election. The technical Bills contain many measures recommended and/or supported by the AEC itself, so that the problems of their implementation in the short period usually available before the next federal election are not insurmountable. However, should a reform Bill be passed by the Parliament, with only a month to spare before an election, the problems of implementation could be profoundly disruptive.

2.1.8 The AEC notes the words of Mr Petro Georgiou MP of the Liberal Party, during the second reading debate on 2 December 1998 on the Electoral and Referendum Amendment Bill 1998, currently before the Parliament:

> Separating the contentious from the non-contentious in the area of electoral reform…has enabled us to progressively and continuously improve Australia's electoral machinery. An electoral system has emerged which, in terms of its inclusiveness, integrity and fairness, is … the best that responsible parliamentarians can devise (*House of Representatives Hansard, p 923).*

2.1.9 The AEC also notes the comments of Senator Robert Ray of the ALP during the second reading debate on 15 February 1999 on the Electoral and Referendum Amendment Bill 1998, currently before the Parliament:

> This government has had two electoral bills so far. The first one really fits the description of a bipartisan bill. We all virtually agreed with what they put in it. I think it was sensible for the government to divide that bill from its more contentious bill because the other one was able to go through in time to operate at the last federal election. I must commend the Electoral Commission – and I hope this will be passed on – for getting the Senate results by computerisation this time. It was a revelation. They were much quicker and easier to follow. I think they did a terrific job in getting those results out*…(Senate Hansard, p 1808)*

2.1.10 And later, Senator Ray said the following:

> …I want to finish on one other note that is not in this bill. When people reflect on our Electoral Act and our electoral system, I want them to think back on the reforms brought about in the 1980s as to the distribution of electoral boundaries, because it is in this area when you look around the globe you see that Australia, at a national level, leads the world. I would say that we have the fairest redistribution system – or redistricting, as they call it in the US – anywhere around the globe. It was basically a combined effort between the Labor Party, the Liberal Party and the Democrats at the time to bring in a whole series of reforms – and it was independent people doing this – that, in the end, has given us this particular system.
>
> When you look at the problems that exist even today in the United Kingdom, with malapportionment, to gerrymandering in the US, to arguments right around the globe about the drawing up of boundaries, you will see that those reforms put in place in the 1980s still stand the test of time today. They are still the best anywhere around the globe. This shows that this parliament, when it applies itself in a bipartisan way, can produce legislation that is envied by others (*Senate Hansard, p 1809*).

2.1.11 It would appear to be generally agreed that continuous reform of the federal electoral system is a fundamental and necessary aspect of our democracy, a process which demands a high degree of unanimity of purpose from all sides of the political spectrum.

2.2 Electoral and Referendum Amendment Act 1998

2.2.1 The *Electoral and Referendum Amendment Act 1998*, which received Royal Assent on 17 July 1998, contained a number of significant technical amendments to the Electoral Act and the Referendum Act. This amending Act was an amalgamation of the Electoral and Referendum Amendment Bill 1995, which failed to obtain passage before the 1996 election, and the Commonwealth Electoral Amendment Bill 1996, which was prepared but not introduced, and some recommendations from the most recent JSCEM. The majority of the provisions in the amending Act were recommended in the November 1994 JSCEM Report entitled "*The 1993 Federal Election*", the December 1995 JSCEM Report entitled "*Electoral Redistributions*", and the June 1997 JSCEM Report entitled "*The 1996 Federal Election".*

2.2.2 The Electoral and Referendum Amendment Bill 1997, which became the amending Act in July 1998, was introduced into the House of Representatives on 3 December 1997 and was passed by the House, with Government amendments, on 24 March 1998. The Bill was then introduced into the Senate on 30 March 1998 as the Electoral and Referendum Amendment Bill 1998. It was passed by the Senate on 30 June 1998, again with Government amendments. The Bill was then returned to the House of Representatives and passed on 1 July 1998. The Act received Royal Assent on 17 July 1998, a little over a month before the announcement of the 1998 federal election.

2.2.3 The *Electoral and Referendum Amendment Act 1998* amended the Electoral Act and the Referendum Act to provide the following (in major part):

- enable the AEC to delegate to staff its powers to supply and charge for goods and services and provide that such goods and services may be supplementary or an alternative to those already supplied under the Joint Rolls Arrangements between the Commonwealth and the States; and to delegate its powers under any law;
- allow for the provision of the gender of electors for the purpose of approved medical research and public health screening surveys and for members, Senators and registered political parties;
- improve the enrolment objection process by allowing relatives and friends who do not live in the same subdivision as electors of unsound mind to apply for their removal from the roll on medical advice and without the payment of an objection deposit;
- allow political parties and candidates to print postal vote applications incorporating campaign material, provided that the postal vote application form as approved by the AEC (and which is completed by the elector) is reproduced exactly;
- allow for electors whose enrolment has been objected to, to be removed from the roll in the period between the issue of the writ for an election and the close of rolls;
- ensure that the personal details of silent electors will not be disclosed to persons inspecting applications for postal votes;
- allow the AEC the option to use the more up-to-date method of security printing of ballot papers instead of using watermarked ballot papers.
- disallow canvassing in and around hospitals that are polling places on polling day and in special hospitals during the five days before and including polling day;
- enable the AEC to conduct the Senate scrutiny using a computer process;
- extend the two-candidate preferred count, as conducted in polling places on polling night, to the fresh scrutiny and declaration votes scrutinies, as conducted later by the Divisional Returning Officers and for the election of candidates based on a two-candidate preferred count;
- enable the release of confidential elector data to State and Territory electoral administrations;
- allow that the determination of State and Territory representation entitlements shall fall due in the thirteenth month after the first meeting of the House of Representatives rather than the tenth month;
- bring the membership of the Redistribution Committee for the Australian Capital Territory into line with an equivalent body for a State;
- provide that comments and objections in relation to a redistribution are made available for public scrutiny in a manner similar to suggestions;
- relax the tight constraints on electoral variations between electorates, to allow ‘community of interest’ factors to be properly considered;
- allow greater opportunity for the public to object to proposed boundaries;
- allow Australians living overseas for career or employment purposes, to apply within two years of departure, for enrolment (under similar criteria to those in place for itinerant electors) and to obtain eligible overseas status for a period of six years;
- reduce the nomination period by one day (to not less than 10 days or no more than 27 days), with the declaration of nominations to be held 24

hours after the close of nominations, but still retain the minimum 33 day and maximum 58 day election period;

- increase the number of signatures required in support of a nomination by a candidate not endorsed by a registered political party from six to fifty;
- increase the deposit for nomination from $250 to $350 in the House of Representatives, and from $500 to $700 in the Senate;
- enable electors to vote immediately outside a polling place if the Presiding Officer is satisfied that, because of physical incapacity, the elector cannot enter the polling place. Scrutineers to be invited to observe this process;
- remove section 329A which made it an offence to advocate the marking of a ballot paper other than in accordance with the instructions on the ballot paper. The amendment of related provisions effectively removes the possibility for voters to make a formal optional preferential vote;
- allow that the declaration of the poll proceeds based on the result of the two candidate preferred count where, on the basis of first preference votes, the exclusion of all but two candidates for a House of Representatives Division is inevitable;
- remove the requirement for registered political parties to lodge returns of electoral expenditure;
- allow registered political parties to lodge their audited accounts in place of the annual return, subject to (a) the accounts containing a level of detail consistent with Part XX of the Electoral Act, and (b) the format of the accounts being approved by the AEC;
- replace the references to Queen's Dominions with a reference to Commonwealth of Nations;
- provide that in Divisions in which subdivisions are proclaimed, a provisional vote cast by an elector who has moved to a different subdivision without notifying the AEC may be included in the scrutiny provided the elector is still living in the Division;
- enable an authorised officer to issue a notice to an organisation requiring the production of documents to assist in determining whether the organisation has a financial disclosure obligation as an associated entity;
- allow the High Court, sitting as the Court of Disputed returns, to remit the whole of a petition to the Federal Court;
- allow the High Court, sitting as the Court of Disputed Returns, to conditionally remit part of a petition to the Federal Court or a Supreme Court; and
- require the Court of Disputed returns to make its decision on a petition as quickly as is reasonable in the circumstances.

2.3 Electoral and Referendum Amendment Bill (No. 2) 1998

2.3.1 The Electoral and Referendum Amendment Bill (No. 2) 1998, which contains the electoral reform measures recommended by the majority members of the previous JSCEM, was introduced into the Senate on 14 May 1998. The Bill was referred to the Senate Finance and Public Administration Legislation Committee on 27 May 1998. The majority report of that Committee, which was presented to the Senate on 23 June 1998, recommended that the Bill be agreed to without amendment.

2.3.2 The major provisions of the Reform Bill were designed to:

- require that new electors must produce one original form of identification at the time of enrolment;
- provide that a person witnessing an enrolment application must be an elector in a prescribed class of persons;
- provide that all electors must notify the AEC of a change of address within one month of moving;
- reduce the time period between the issue of the writ and the close of the rolls. The roll would close at 6pm on the day of the issue of the writ for new enrolments. Existing electors would have three working days to update their enrolment details;
- allow for the provision of date of birth and salutation details of electors to Members, Senators and registered political parties. These details may be used for research into electoral matters;
- provide that any person serving a sentence of imprisonment is not entitled to enrol or to vote;
- provide that only the Presiding Officer at a polling place may assist electors in marking their ballot papers;
- provide that the preliminary scrutiny of declaration votes may commence on the Monday prior to polling day;
- with regard to receipts of political parties, raise from $500 to $1500 the threshold for counting individual amounts received;
- provide that political parties are required to disclose a total amount of $5000 or more, rather than the current $1500, received from a person or organisation during a financial year; and
- increase from $1500 to $10000 the amount above which a donor to a registered political party must furnish a return for a financial year.

2.3.3 The Reform Bill lapsed when Parliament was dissolved on 31 August 1998. However, it was reintroduced in the House of Representatives on 26 November 1998 after the 1998 federal election, and was passed by the House on 3 December 1998. The Bill was then introduced into the Senate on 7 December 1998, but was not debated before the end of the 1998 sittings.

2.3.4 Debate resumed on the Reform Bill in the Senate on 15 February 1999 and the following proposed amendments in the Bill were defeated:

- reduce the time period between the issue of the writ and the close of the rolls. The roll would close at 6pm on the day of the issue of the writ for new enrolments. Existing electors would have three working days to update their enrolment details;
- provide that any person serving a sentence of imprisonment is not entitled to enrol or to vote;
- provide that all electors must notify the AEC of a change of address within one month of moving;
- provide that only the Presiding Officer at a polling place may assist electors in marking their ballot papers;
- increase from $1500 to $5000 the amount above which a political party must disclose the details of the source of its receipts.
- increase from $1500 to $10000 the amount above which a donor to a registered political party must furnish a return for a financial year.

2.3.5 A Government amendment to the Bill to allow postal voting material to be delivered by means other than post was passed by the Senate, and the following Opposition amendments were also passed by the Senate:

- amend the disclosure period covering gifts received and used to incur expenditure for a political purpose from a specific defined period to “any time”;
- broaden the definition of an associated entity from one which operates wholly or mainly for the benefit of a registered political party to one which operates wholly or to a significant extent for the benefit of a registered political party;
- require donors to political parties to also disclose in their returns the details of all gifts they received and used in whole or in part to make their donation;
- prohibit the receipt by registered political parties, candidates and Senate groups of loans of $1,500 or more other than from recognised financial institutions unless certain specified details such as the source and terms and conditions of the loan are recorded;
- amend the definition of “amount” for the purposes of annual disclosures to include a loan as well as gifts and bequests;
- require that where a loan is disclosed in an annual return as an amount received, details of that loan must also be disclosed.

2.3.6 The amended Reform Bill then passed the Senate on 18 February 1999, and was returned to the House of Representatives on the same day, where it presently remains.

2.4 Regulations

2.4.1 *The Electoral and Referendum Regulations (Amendment), Statutory Rules 1997 No 411*, were gazetted on 24 December 1997 and amended Regulation 7 and Part 2 of Schedule 2 of the Electoral and Referendum Regulations ("the Regulations"). Schedule 2 lists the Commonwealth Departments and Authorities to which the AEC may release confidential electoral enrolment information. The amendment to Regulation 7 omitted 'a prescribed authority' and substituted 'an authority mentioned in Schedule 2', and the amendment to Schedule 2 added three authorities.

2.4.2 *The Electoral and Referendum Regulations (Amendment), Statutory Rules 1998 No 57*, were gazetted on 8 April 1998 and amended Schedule 2 of the Regulations. Schedule 2 lists the Commonwealth Departments and Authorities to which the AEC may release confidential electoral enrolment information. The amendment omitted Part 1 of Schedule 2 and substituted a new Part 1, and, in Part 2 of Schedule 2, omitted one authority and added another.

2.4.3 *The Electoral and Referendum Regulations (Amendment), Statutory Rules 1998 No 296*, were gazetted on 7 September 1998 and added regulation 40 to the Regulations to enable the use of the same polling booths, ballot boxes and other facilities and machinery arrangements for both the 1998 federal election and the 1998 Northern Territory Statehood Referendum.

3 PUBLIC AWARENESS

3.1 Introduction

3.1.1 The AEC followed its normal procedure at federal elections of conducting an extensive public awareness campaign for the 1998 federal election. The major components of the campaign were the national advertising and public relations campaigns, a national telephone inquiry service, and a major public information program which included printed materials and an enhanced AEC Internet site.

3.1.2 Notable improvements to the effectiveness of the public awareness campaign since the 1996 federal election included:

- greater access for electors from a non-English speaking background to an improved telephone interpreting service;
- enhancements to the computerised election management system (ELMS) allowing more effective responses to inquiries regarding polling places;
- a major upgrade of computer equipment and software resulting in the processing of increased numbers of telephone inquiries.

3.1.3 The total cost of the public awareness campaign is estimated to be $11.6 million (subject to confirmation when final invoices for post-election publications have been finalised).

3.2 Special Events

3.2.1 A significant aspect of the 1998 federal election was that polling day was on a long weekend, and over school holidays in some States/Territories. This meant that there were major cultural and sporting events in some areas that required special arrangements and facilities. A list of these events and special arrangements was published on the AEC Internet site and in some cases specific advertising was undertaken. For example, mobile billboards were used *en route* to the Bathurst 1000 race and the Philip Island Grand Prix to alert electors to the availability of voting facilities.

3.2.2 The AEC encouraged electors to vote before they arrived at these events, and is aware of some criticism that polling facilities were not provided inside the venues. However, practical and legal considerations (such as the payment of admissions charges and the sale of alcohol) had to be taken into account. In all cases, the AEC believes that electors were provided with adequate facilities to vote. The following three special events are mentioned as examples of the arrangements put in place by the AEC across the country to ensure electors were able to cast their vote for the federal election.

3.2.3 ***The Perth Royal Show*** in Western Australia was held in the week leading up to polling day, and a jointly funded and staffed AEC and Western Australian Electoral Commission booth was provided to encourage enrolment and raise awareness of the federal election. At this booth, there were 396 enrolment forms collected and 311 taken away; there were 829 enrolment

inquiries handled; and 8,391 people took part in a mock election. A full page advertisement was placed in the *West Australian* newspaper on Thursday 1 October which read: “A special message to those going to the Royal Show on Saturday 3 October: Don’t forget to vote!” Accompanying text recommended voting before attending the Show on polling day, or a pre-poll vote if unable to attend on polling day. Declaration vote facilities were also increased in the polling booths close to the Royal Show grounds.

3.2.4 ***The Livid Music Festival*** in Queensland, organised by Radio Triple J – Rock Enrol, has been an annual event for the past decade, and the AEC was already committed to providing an information booth to encourage enrolment, before it was known that the Festival would coincide with polling day. Radio Triple J then assisted with the promotion of voting arrangements by community service announcements on numerous occasions in the weeks leading up to polling day. The AEC went to further lengths to ensure that electors were advised of voting arrangements, including placing advertisements in the *Sunday Mail* and in music event magazines such as *Scene*, *Rave* and *Timeoff*. Press releases were distributed to *Quest* newspapers, and to all metropolitan radio stations, and voting arrangements were advised on the AEC Internet site.

3.2.5 ***The Narla Football Knockout*** was held at Nambucca Heads in New South Wales on polling weekend, and accordingly, the numbers of declaration vote issuing points at the Nambucca Heads Entertainment Centre polling booth and at polling booths in adjacent towns were increased for polling day. A pre-poll centre was operated at the Entertainment Centre from Wednesday 30 September through to polling day, and this service was advertised in the *Koori Mail* on 23 September.

3.3 National Advertising Campaign

3.3.1 The advertising agency, Whybin TBWA and Partners (formerly Box Emery and Partners) was appointed under the supervision of the then Office of Government Information and Advertising (OGIA) in 1994.

3.3.2 To obtain value for money, the campaign developed by that agency in 1994 has been used with minor modifications at three national elections (1996 and 1998 federal elections and the 1997 Constitutional Convention election). Apart from a new youth enrolment television commercial produced for the 1998 election, all material was re-used with minor modifications from 1996. It is expected that most aspects of this campaign (with the exception of the formality ads) will be re-used again at the forthcoming 1999 Republic Referendum.

3.3.3 All advertising was prepared and ready for a possible early election by July 1998. However, final details such as dates could not be included until the announcement of the election. Following that announcement on Sunday 30 August 1998, final production of the advertising campaign was concluded and the first television enrolment commercials went to air in each capital city that

night. The AEC was particularly pleased with the efforts of its suppliers in achieving this result.

3.3.4 The national advertising campaign was divided into three phases, namely enrolment, voting services and formality. All three phases used television, press and radio. Of the national campaign media budget, 55% was spent on television, 16% on radio and 28% on press (percentages rounded down). Material appeared in all major metropolitan and regional television, press and radio outlets. In addition, there was a significant amount of non-campaign, or local, press advertising, which included statutory advertising such as notification of the receipt of the writs and the location of polling places.

3.3.5 All aspects of the national advertising campaign were translated into various languages. The AEC advertising agency engaged Cultural Perspectives of Sydney to advise on the choice of languages and to translate press and radio materials. Advertisements were translated into 18 languages for newspapers, 23 languages for radio (plus additional 15 languages for indigenous radio) and seven languages for television. The television advertisements were translated by the Special Broadcasting Service (SBS).

3.3.6 Expenditure on ethnic press and radio media outlets accounted for 7.3% of the media budget. While OGIA/GCU has a 7.5% benchmark for standard Government campaigns, this figure does not have to be met if the size of the total media buy means that effective reach can still be achieved. The AEC believes that this was the case considering the size of the election campaign media buy, and the fact that ethnic radio accounted for 38% of the total campaign radio buy. In addition, the lead times and publication dates of some ethnic newspapers made the placement of advertisements difficult, particularly for the enrolment phase.

3.3.7 The AEC also undertook a remote area education campaign in selected areas of Queensland, Western Australia, South Australia and the Northern Territory. Commencing in July 1998, a total of 11 AEC staff visited remote communities and provided information about enrolment and voting procedures. Specific press advertising was also created to promote awareness of the Northern Territory Statehood referendum and published in appropriate newspapers circulating in the Territory.

3.3.8 To evaluate the effectiveness of the public advertising campaign, the AEC commissioned Eureka Strategic Research of Sydney to undertake concept testing of the youth enrolment television commercial and tracking research of the advertising campaign. As part of the tracking research, Eureka also undertook a post election survey to discover perceptions of AEC service levels. The results of the concept testing were used to refine the youth enrolment commercial and the results of the tracking research and post election survey proved favourable.

3.3.9 By the conclusion of the campaign, Eureka had determined that all three phases of the AEC advertising campaign had succeeded in reaching the

majority of Australian electors. The enrolment and formality phases of the AEC campaign reached 4 in 5 electors, while the voting services campaign reached 3 in 5 electors.

3.4 Voting Guide

3.4.1 The AEC delivered an information leaflet entitled *Your Guide to the Federal Election* to more than seven million households nationally in the fortnight before polling day. The Guide was similar in content to that delivered in 1993 and 1996, but the format was redesigned. It contained information on the correct methods for completing ballot papers, State/Territory specific information regarding AEC Divisional Office addresses, and messages in 15 languages promoting the AEC language-specific interpreting service. In Western Australia, Queensland and the Australian Capital Territory, maps showing post-redistribution electoral boundaries were also included.

3.4.2 Following a small number of complaints at the 1993 election that the Guide had been delivered with party political material, in 1996 the Guide was shrink-wrapped in plastic. Nonetheless, the AEC received a handful of similar complaints in 1996. Accordingly, in 1998, the same shrink-wrapping was used and the AEC approved a form of words to be provided by the contractor to each distributor. This message stressed the importance of political neutrality to the AEC and a warning that the Guide package was not to have other material added to it.

3.4.3 There was one complaint by the ALP that political material had been inserted into the plastic wrapping at Prospect in South Australia. The contractor wrote to the ALP taking full responsibility for the problem. This is a significant improvement over the six instances of tampering that the AEC is aware of at the 1996 election. The remaining complaints involved allegations of the Guide being found in various quantities in parks and other public places. All complaints were followed up with the relevant contractors and further distribution was undertaken where necessary.

3.4.4 The AEC commissioned the Royal Blind Society to produce 3,000 taped versions of the Guide to ensure that blind and other print-handicapped electors had appropriate access to the information. In addition, the Society produced 160 computer disks for PCs adapted with screen readers and speech synthesisers. These facilities were promoted with paid advertising on Radio for the Print Handicapped (RPH) and public relations activities. The Society posted 2,742 tapes to clients on its mailing list and established an 1800 telephone number which other electors could call to obtain the tape or disk.

3.4.5 Because of the tight timelines involved in producing these cassettes, the AEC decided not to include candidate lists, and received at least one complaint from an elector regarding this. The AEC will review this matter prior to the next election but believes that delaying production until the declaration of nominations could compromise effective production and distribution of this service.

3.4.6 Information on assisted voting for electors with a disability was included in the taped Voting Guide and was available through a special 1800 inquiry number operated by the Royal Blind Society. The AEC endorses a suggestion from the Royal Blind Society that the information on assisted voting be communicated to a wider audience through the overall public relations campaign conducted by the AEC.

3.5 Public Relations Campaign

3.5.1 In concert with its extensive public advertising campaign, the AEC conducted a public relations campaign during the course of the 1998 federal election. A public relations consultancy based in Sydney, Michels Warren, was first appointed to assist the AEC in this regard in 1992 and reappointed in 1995. A review of the account was undertaken in early 1998 with the assistance of the then Office of Government Information and Advertising (OGIA). Following that review, Michels Warren was again invited to perform this work for the AEC.

3.5.2 Major activities included the targeting of media releases and story ideas to key media personnel, arranging photo opportunities to promote enrolment and voting, and providing background briefings for the media. At the request of the Department of Foreign Affairs and Trade, senior AEC staff briefed representatives of the foreign media in Sydney and the Diplomatic Corps in Canberra during the campaign.

3.5.3 The AEC also undertook an extensive publications program in the period leading up to the election and after polling day. Major publications included:

- *National Boundaries Map*
- *Electoral Atlas* (joint project with the Parliamentary Library)
- *Candidates* and *Scrutineers Handbooks*
- *1998 Election Night Guide*
- *Electoral Newsfile* (seven issues related directly to the election)
- *Electoral Backgrounders*
- *Divisional Profiles*

3.5.4 In addition, a range of publications are being prepared for distribution following the election and include:

- *Results Map*
- *Electoral Pocketbook*
- *Behind the Scenes* (Election Report)
- *Official Election Statistics*

3.5.5 While most of these publications have become standard issue at recent elections, the *Electoral Backgrounders* were a new venture. The *Backgrounders* provided a discussion of the legal and operational aspects of

various topics in which the political parties, candidates, commentators and the public at large have shown a particular interest, such as compulsory voting, multiple voting, section 44 of the Constitution, Langer-style voting, and electoral advertising. Sets of these *Backgrounders* were included in information kits provided to candidates, journalists, academics, political commentators, and other interested clients at the election.

3.6 National Telephone Inquiry Service

3.6.1 Following the establishment of the AEC national telephone inquiry service number (13 23 26) prior to the 1996 federal election, this facility was heavily promoted in AEC advertising and public relations during the 1998 federal election.

3.6.2 The inquiry line operated daily during the election period (including week-ends) and remained open later on key days such as close of rolls and at other times when there was high demand. Callers phoning the inquiry number at times when the service was not operational, such as late at night, received recorded messages relevant to the particular phase of the election period, the hours of operation of the service and information about the AEC Internet site. Improvements in technology and management meant that the rate of calls could be monitored and problems predicted or resolved more promptly than in the past.

3.6.3 Following the successful trial of an overflow call centre at the Constitutional Convention election in 1997, a similar facility was established in Canberra for the 1998 election. This facility comprised 32 answering points staffed in two shifts. The majority of calls concerned enrolment status, pre-poll voting and how and where to vote.

3.6.4 Staff in the national overflow centre in Canberra trialed a computerised desk-top package to enable operators to identify information more effectively and therefore handle more calls. This resource is being evaluated with a view to national use by all AEC call centres at the 1999 Republic referendum. In addition, enhancements to the AEC computerised election management system (ELMS) meant that AEC inquiry line operators could handle calls from anywhere in Australia on the location of pre-poll voting centres and polling places. This meant that the service could be operated on weekends with all calls being directed to one or two locations, resulting in improved and cost effective client service.

3.6.5 The telephone inquiry service responded to 533,451 calls during the election period compared to 317,799 calls at the 1996 election. However, while the AEC was able to answer more calls, the level of demand also increased and the number of unanswered calls (or calls receiving an engaged signal) increased from 310,825 calls in 1996 to 610,171 in 1998. Investigations are under way to determine how many of these unanswered calls did successfully connect to the inquiry service on a later attempt.

3.6.6 While the AEC is reviewing its procedures and infrastructure to improve performance in the area of unanswered calls, Telstra has advised that 7,000 operators would be required to handle all the calls attempted on close of rolls day. The logistics and resources required to establish and train such a large number of operators would be prohibitive. The AEC will also review its promotion of the inquiry number and has raised this issue as part of a post-election debriefing with the advertising agency.

3.6.7 Following a trial at the Constitutional Convention election in 1997, the AEC commissioned the Victorian Interpreting Service (VITS) in Melbourne to establish an ongoing telephone interpreting service comprising 15 language specific lines, and a sixteenth non-specific line, to assist electors who do not speak English. Approximately 6,000 electors used this facility during the 1998 federal election and it is being used for other elections conducted by the AEC.

3.7 AEC Internet Site

3.7.1 Prior to the 1996 federal election, the AEC established an Internet site to disseminate information on AEC publications, services and skills, lists of contacts, and statistical data on the 1993 and 1996 federal elections.

3.7.2 The Internet site was reviewed and comprehensively enhanced prior to the 1998 federal election to provide increased access to electoral information. The site featured virtually all AEC publications, search facilities for electors to identify their enrolled Divisions, lists of polling places, and enrolment and postal voting application forms. A Canberra based company, The Electronic Dimension, was commissioned to redesign the AEC Home Page and host the Internet site.

3.7.3 In addition, an on-line results facility called the 'Virtual Tally Room' was established to provide access to election results on polling night and beyond. This was a significant logistical challenge in that the raw data from the AEC computerised election management system (ELMS) was provided to the Internet site and recalculated to reflect ELMS tables. This was necessary because ELMS is not directly compatible with the Internet. To handle the anticipated load and to spread the risk of possible technical failure, three servers were established, in Sydney, Melbourne and Canberra respectively.

3.7.4 On election night, approximately 85,000 people visited the AEC Internet site and obtained results at a Divisional, State/Territory and national level. Following polling day, these results were updated at least daily and polling place figures were also made available. The number of 'hits' on the AEC Internet site is estimated at over 2 million for election night and the week after. In the period between the announcement of the election on 30 August and the end of 1998, there were more than 269,000 page views of the AEC Internet Home Page and more than 200,000 people visited the Virtual Tally Room. The average session length was 17 minutes. This is a very high level of usage for a government Internet site.

3.7.5 Approximately 58.6% of users were from within Australia, 19.65% were from overseas and 21.73% of users were of unknown origin. In addition, the on-line results facility proved to be a more efficient way of providing results to the media in the post-election period, as journalists following close seats could access results as updates occurred rather than waiting for AEC staff to fax updates at specified times. The AEC is continuing to update its Internet site page and will review the operation of the Virtual Tally Room to improve access for the 1999 Republic Referendum.

4. ENROLMENT

4.1 Introduction

4.1.1 One of the most important statutory responsibilities of the AEC is the continuous maintenance of the Commonwealth Electoral Roll, in conjunction with State and Territory electoral authorities, under section 84 of the Electoral Act and the various Joint Roll Arrangements between the Commonwealth and State/Territory governments.

4.1.2 The integrity of the Commonwealth Electoral Roll is an essential element in the conduct of free and fair elections, and the AEC continues to enhance its systems and procedures to ensure that enrolment is properly accessible to all citizens seeking to exercise their democratic rights and responsibilities, and that the integrity of the Roll is not compromised by electoral fraud.

4.2 Close of Rolls

4.2.1 The rolls for the 1998 federal election closed on Monday 7 September 1988, as specified in the writs. Between the issue of the writs on 31 August 1998 and 7 September 1998, the AEC received a total of 351,913 enrolment forms. Processing of these enrolments into the AEC computerised roll management system (RMANS) was completed by the evening of 9 September 1998. The forms received included new enrolments, re-enrolments, and transfers of enrolment. Enrolments were processed for 64,014 persons who had not previously been on the roll. Additionally, 7,714 electors were deleted from the roll during this period due to death or as a result of duplicate deletion or objection action. The enrolment transactions for the close of rolls period are at Attachment 02.

4.2.2 At the close of rolls for the 1998 federal election there were 12,056,625 electors enrolled to vote, an increase of 401,435 persons or 3.4% over the enrolment for the 1996 federal election. Of this increase, 8,958 were electors who turned 18 years of age on or before polling day and who were provisionally enrolled to vote at the close of rolls.

4.2.3 The number of electors enrolled by State/Territory (including provisional electors) for the 1998 federal election is as follows:

State/Territory	7 September 1998
NSW	4,031,749
VIC	3,056,887
QLD	2,177,556
WA	1,140,845
SA	1,006,398
TAS	329,751
ACT	208,684
NT	104,755

National Total **12,056,625**

4.2.4 The increase in the number of electors (including provisional electors) at the close of rolls for the past three federal elections is as follows:

1998	**1996**	**1993**
12,056,625	11,655,190	11,348,967

4.2.5 Enrolment by Division at the close of rolls for 1998 federal election is at Attachment 03. This table includes provisional enrolments for 17 year olds who turned 18 up to and including polling day.

4.2.6 The performance of the new computer communication network and RMANS was to specifications and no significant delays or problems were encountered. The high level of performance achieved during the roll close period and subsequent post election enrolment processing was due to system enhancements that took place prior to the announcement of the election (see Part 9.8). In addition, AEC enrolment processing was given the highest priority on the Computer Science Corporation mainframe computer shared with the Department of Finance and Administration.

4.3 Address Register

4.3.1 Allegations of electoral fraud are made at every election and frequently raise the possibility of, for example, a large number of organised individuals transferring their enrolments *en masse* into marginal Divisions to vote in a particular way; or a large number of organised individuals voting in a particular way for more than one address, for the same address, or in other names, in marginal Divisions. Needless to say, it is unlikely that such highly organised conspiracies, of necessity involving hundreds of individuals, would remain undetected.

4.3.2 Whilst such alleged activities have never been proven, to the satisfaction of the AEC, the JSCEM, or the Court of Disputed Returns, to have occurred to the degree necessary to affect the result of an election, nevertheless concerns remain in some quarters that the AEC is unable to detect or investigate such activities. This is despite the many administrative and legislative checks and balances that exist within the electoral system, and the continual enhancements that are being made to enrolment procedures and processes.

4.3.3 A major enhancement to RMANS was the move to an address-based enrolment system, known as the RMANS Address Register, introduced in 1997 and further developed during 1998. Prior to the introduction of the Address Register, addresses claimed for enrolment needed only to fit known streets and localities. The confirmation of addresses by the AEC is now more strictly controlled, as each known address is now recorded separately on the Register, whether or not the address is occupied by electors.

4.3.4 As well as identifying each separate address, the Register lists a range of attributes for each address including a land use code, occupancy status, an enrolment limit, the last review date, and whether the address is habitable and 'active', that is, valid for enrolment. Provision has been made to store additional geographic data and related locality information against addresses and to include an enrolment turnover indicator. In cases of 'inactivated' addresses, such as demolished or incomplete habitations in a new area, enrolment cannot take place until the address is 'activated'.

4.3.5 The use of the Address Register has not yet been completely integrated into enrolment processing, but the quality of data on the Register is gradually being improved and procedures are being developed so that AEC staff can make full use of the Register when enrolling electors. Current address data integrity activities include the matching of all addresses held by the AEC with the Australia Post National Address File. At the Divisional level, staff are continuing to apply Rural Road Numbers, where available, to country addresses.

4.3.6 The AEC is now able to build an enrolment history for all residential addresses that were on RMANS at the Address Register conversion in 1997, or have since been created. Over time, the AEC will increasingly be able to identify addresses that are incorrectly described or duplicated on the Register, those that have a high number of enrolments and/or an abnormally high turnover of electors, and those that have two or more groups of electors resident with different family names. Such exceptions will be examined by Divisional staff for follow-up, including fieldwork if appropriate, at the time of enrolment or as part of new roll review procedures.

4.3.7 The RMANS Address Register is an increasingly powerful tool available to the AEC to detect and deter fraudulent enrolment, enabling staff to check the validity of addresses and to take follow-up action when claims on enrolment forms are at variance with the information on the Register, such as in cases of possible suspicious enrolment at any particular address.

4.3.8 For example, on 7 September 1998 Mr Charlie Taylor, the General Secretary of the Northern Territory Country Liberal Party complained to the Australian Electoral Officer for the Northern Territory in the following terms:

> As campaign manager for the Country Liberal Party in this election campaign, I seek your advice on any incidence of apparently excessive numbers of people from a single address, or non-existent addresses attempting to enrol and vote in the Northern Territory. My concern is based on reports that the organisers of the anti-mining protest at Jabiluka have adopted a strategy of encouraging itinerant protesters to enrol and vote during their visit to the Northern Territory. This is part of an overall strategy to maximise the Green/ALP vote at this election, as both parties promise to block further development of the Jabiluka mine.
>
> People identifiable as anti-Jabiluka protesters appear to frequent the area around your office, where enrolments can be physically lodged, and groups have visited the offices of local MLAs to pick up enrolment forms. On Friday,

> August 28, a group of a dozen or so requested enrolment forms from a Member's office, and a spokesman mentioned he had been lucky to find a flat in Coconut Grove so they could all give the address to satisfy residential requirements for voting in the Northern Territory. Hence my letter to you, and would appreciate any advice once your staff have had the chance to assess the bona fides of potential voters in this election.

4.3.9 Because of recent enhancements to RMANS such as the Address Register, the AEC is now able to identify those addresses where the number of numbers of electors exceed a set limit. Accordingly, in response to Mr Taylor's complaint, a review of enrolments in the suburb of Coconut Grove was undertaken, and the investigation revealed no abnormalities in any single dwelling in this area.

4.4 Continuous Roll Update

4.4.1 Following a recommendation of the 1993 JSCEM, section 92 of the Electoral Act was amended by the *Electoral and Referendum Amendment Act 1995* to allow for continuous roll updating by the AEC on a more precisely targeted and cost-effective basis than the previous two-yearly national door-knocks. In 1995-96 the then Australian Joint Roll Council commissioned a report from Australian Strategic Planning on the effectiveness of existing roll review procedures and options for moving to continuous roll updating.

4.4.2 As a result of that report, trials were undertaken in Queensland during 1996-97 using change of address data provided by Australia Post. This trial demonstrated that continuous roll updating procedures were effective, especially if used in conjunction with the RMANS Address Register. In April 1997 an extensive mail-out to 'vacant' addresses (known addresses on RMANS at which there is no current enrolment) resulted in an estimated 240,000 enrolments being received, as well as a significant volume of address information used to update the Address Register. A separate national mailing at this time, using Australia Post change of address information, resulted in further enrolments, and highlighted some problems in the use of external data.

4.4.3 During 1998 the AEC undertook investigations with the State/Territory Joint Roll partners, through the Continuous Roll Update Implementation Steering Committee (CISCO) of the Electoral Council of Australia, into the implementation of continuous roll update as a complete replacement for the two yearly habitation review. This work included a further posting to 'vacant' addresses in Tasmania and South Australia, the successful negotiation with Australia Post of a business agreement for the use of residential Change of Address information, and the development of RMANS systems and reports for use by Divisional staff. Separate initiatives were undertaken by a number of the State/Territory electoral authorities during 1998 to collect enrolments forms as part of other civic transactions such as motor vehicle license renewals and electricity connections.

4.4.4 The AEC is committed to the full implementation of continuous roll update commencing in the first half of 1999, a decision endorsed by the State/Territory electoral authorities. The AEC is currently preparing

procedures and materials for this early start. Full use will be made of the exception reporting available from the RMANS Address Register and the experience with mailing based on vacant house and change of address data. Targeted fieldwork will be undertaken to confirm address information and enrolment details, particularly in areas of high elector turnover. In addition, the AEC has commenced negotiations with other federal departments and agencies for access to change of address information, and will contact relevant State/Territory government departments and agencies as appropriate.

4.4.5 The Government has demonstrated strong support for the principle of continuous roll update in its response to the June 1997 JSCEM Report, and during debate in December 1998 on the *Electoral and Referendum Amendment Bill 1998*. This support is part of the overall commitment of the Government, as understood by the AEC, to ensure that the Commonwealth Electoral Roll maintains the highest level of integrity that is reasonably possible, and is increasingly resistant to fraudulent enrolment activity.

4.5 South Australian Roll Management

4.5.1 As a result of negotiations between the AEC and the South Australian State Electoral Office, the joint Commonwealth and State Roll for South Australia was transferred from the existing State enrolment system (EAGLE) to RMANS on 18 August 1997. RMANS was used for the first time for the close of rolls for the 1997 South Australian State Election, and subsequently for all enrolment processing in that State including for the 1997 Constitutional Convention election and the 1998 federal election. This change has resulted in savings in enrolment processing as the national roll is now held on a single enrolment database. The efficiency of roll maintenance has accordingly improved, particularly in relation to transfers of enrolment between South Australia and the rest of Australia.

4.6 Year 2000 Compliance

4.6.1 At the beginning of 1998 the AEC commenced programming and testing to ensure that RMANS is Year 2000 compliant. The RMANS production database was converted on 17 August 1998 and was subsequently used for the extraction of roll products for use at the 1998 federal election. All other AEC computer infrastructure systems (hardware, system software) are being upgraded and tested. The AEC is currently well on track for Year 2000 compliance and the upgrading and testing is scheduled for completion by July 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.

4.8 Enrolment from overseas

4.8.1 Section 94A of the Electoral Act, inserted by the *Electoral and Referendum Amendment Act 1998*, enables a person, who is not currently enrolled but would be eligible to enrol if resident in Australia and who is now resident overseas for the purpose of career or employment (or that of their spouse), to apply to the Australian Electoral Officer for a State/Territory for enrolment for a Division in that State/Territory, provided that the person left Australia within the previous two years and intends to return to live in Australian within the subsequent six years.

4.8.2 Section 94 of the Electoral Act, separately provides for currently enrolled electors to register as Eligible Overseas Electors. However, section 94(1B) provides that: “An application that is made after the elector ceased to reside in Australia must be made within 1 year after the day on which the elector ceased to reside in Australia”. The difference in qualifying period for Enrolment from Overseas (2 years) and registration as an Eligible Overseas Elector (1 year) caused problems at the close of rolls for the 1998 federal election.

4.8.3 Difficulties were experienced in determining the maximum time an applicant could have been outside Australia and still be entitled to enrol to vote. If an elector is enrolled when they leave Australia they only have one year to register as an Eligible Overseas Elector, whereas a person who is not enrolled when they leave Australia has two years to enrol from overseas and gain similar status as an Eligible Overseas Elector.

Recommendation 2: That section 94(1B) be amended to allow a period of two years for an elector to register as an eligible overseas elector after they have ceased to reside in Australia.

4.9 Change of Name – Review Rights

4.9.1 Under section 105(1)(b) of the Electoral Act the Divisional Returning Officer (DRO) may alter the name or address of an elector on the Divisional roll for which he or she is responsible. Female electors who marry or divorce, for example, may have their family name changed on the roll by simply submitting an enrolment application form with the new personal details. Other electors may change their names by Deed Poll for many legitimate reasons, such as for example, to anglicise their names, for safety reasons, or to record a colloquial name variation from John to Jack, for example.

4.9.2 Electors have every right to change their names and have their new names registered on the Commonwealth Electoral Roll if they can establish to

the satisfaction of the DRO that the new name is a reasonable change, such as for those reasons those detailed above, or, where there is some doubt as to the genuineness of the name change, that the new name has, at the very least, been accepted generally in the community. The rejection by the DRO of an application for a name change on the roll can often become a problem if the DRO does not believe that the name change is genuine.

4.9.3 The AEC has advice from the Attorney-General's Department that decisions made by the DRO to alter the roll under section 105(1)(b) cannot be appealed to and reviewed by the Australian Electoral Officer for the State/Territory, or the Administrative Appeals Tribunal. By contrast, Part X of the Electoral Act establishes such review rights for the majority of the important decisions by the DRO on enrolment matters. The AEC believes that such review rights should be available at all levels of the enrolment process.

4.9.4 The AEC recommended to the previous JSCEM that the Electoral Act be amended to allow a review by the Australian Electoral Officer, and by the Administrative Appeals Tribunal, of a decision by a DRO under section 105(1)(b) of the Electoral Act. This would simply have provided for the same due process to operate that is available for other similar decisions under the Act. The previous JSCEM made no recommendation to this effect, and it may be that the issue was overlooked in the context of the related matter of politically or electorally significant names appearing on the roll and on ballot papers.

4.9.5 The AEC puts forward this recommendation to the JSCEM once again, on the basis that it simply allows the same due process to occur in relation to the alteration of names on the roll, as occurs in relation to all other enrolment transactions.

Recommendation 3: The AEC recommends that Part X of the Electoral Act be amended to allow a review by the Australian Electoral Officer, and by the Administrative Appeals Tribunal, of a decision by a DRO under section 105(1)(b) of the Electoral Act.

4.10 Change of Name for Nomination

4.10.1 At page 76 of the June 1997 JSCEM Report, the concerns raised by the AEC about the increasing number of names with electoral and political significance that are appearing on the roll and on ballot papers, were dismissed with the following comment: "…the Committee believes that the AEC's concerns are overstated….DROs already have the discretion to reject clearly frivolous applications".

4.10.2 Unfortunately, this is not strictly correct. There is no provision in the Electoral Act that specifically empowers a DRO to reject a "frivolous" name change, although the DRO will not proceed with an enrolment application unless appropriate documentation supporting the use of the changed name is provided.

4.10.3 There has been an instance, mentioned in AEC submission No 30 of 29 July 1996 to the previous JSCEM, where a DRO did not process an application from an individual who wanted to be enrolled under a changed name because the elector appeared to be mentally confused. The DRO simply refused to process her application under the circumstances; the elector's application was not formally rejected under any provision of the Electoral Act.

4.10.4 If an individual is able to demonstrate that their new name is generally accepted in the community, and that various government and non-government instrumentalities have accepted their new name for transaction purposes, including the Registrar of Births, Deaths and Marriages for the purposes of a Deed Poll, then the DRO has no option but to add the new name to the roll (or make an alteration to the existing one under section 105(1)(b)), even if it is obscene or defamatory, or carries a distinct electoral or political significance.

4.10.5 As a consequence, names of dubious origin, structure and meaning are increasingly appearing on the roll for the sole purpose of nomination and the eventual appearance on the ballot paper for election purposes. Some of these names constitute whole grammatical sentences that produce real problems of storage on RMANS, and printing on the restricted space available on ballot papers, particularly the smaller House of Representatives ballot papers.

4.10.6 This has clearly become a problem that should not be put aside any longer. At the 1998 federal election, for example, the following individuals stood unsuccessfully for election (including in the Prime Minister's own electorate):

- Mr Prime Minister Piss the Family Court-Legal Aid (Bennelong NSW)
- Mr Justice Abolish Child Support and Family Court (NSW Senate)
- Mr Bruce The Family Court Refuses My Daughter's Right to Know Her Father (Queensland Senate)

4.10.7 Each of these individuals were able to meet the legal and procedural requirements for enrolment, or alteration of name, on the Commonwealth Electoral Roll. That is, they were able to provide documentary evidence that they had community acceptance for these names, as they were known to various government and non-government departments and agencies under these names. Most significantly, each of these individuals had obtained a name change by Deed Poll through the relevant State/Territory Registrar of Births, Deaths and Marriages. It was not possible, under the Electoral Act as it stands, and under the pendant policy guidelines, for the AEC to deny enrolment to these individuals.

4.10.8 However, the decision on 18 December 1998 by a Victorian Magistrate, Ms B Cotterell, in the case *Prime Minister John Piss the Family Court and Legal Aid v Electoral Registrar for the State District of Carrum*, may provide further stimulus for a reconsideration of this issue by the JSCEM.

4.10.9 The individual concerned, Mr John Zabaneh, decided to abandon his family name, retain his first name John as a middle name, and adopt the new surname “Piss the Family Court and Legal Aid”. Mr Zabaneh was able to effect a change of name on the Victorian State Electoral Roll (similar in effect to section 105(1)(b) of the federal Electoral Act). However, he failed to effect a change of name with the Victorian Registry of Births Deaths and Marriages under section 25 of the *Births Deaths and Marriages Registration Act 1996* (“the BDM Act”). The Registry refused his application for a name change on the basis that: (a) the expression is not a “name”, alternatively, (b) the expression is a “prohibited name” as it is offensive and/or contrary to the public interest within the meaning of section 3(1) of the BDM Act.

4.10.10 Section 122(1)(a) of the *Victorian Constitution Act Amendment Act 1958* allows a Victorian State Electoral Registrar to correct any mistake that has been made in entering a name on the Victorian State Electoral Roll. The Registrar, Mr Lang, concluded that a mistake had been made in changing Mr Zabaneh’s name on the Victorian State Electoral Roll to “Prime Minister John Piss the Family Court and Legal Aid” because (a) the expression is not a “name”, alternatively, (b) Mr Zabaneh had not legally changed his name to the expression at issue.

4.10.11 When the Victorian Electoral Registrar corrected his mistake by changing the name back to John Zabaneh, he noted the following:

> (a) that the Registry of Births Deaths and Marriages had not accepted the name change at issue,
> (b) that there was evidence that this and similar expressions constituted political statements or sentences that are not accepted by society as constituting names, and
> (c) that Mr Zabaneh had not demonstrated that he had adopted his new name by repute or usage.
> (d) the documentary evidence provided by Mr Zabaneh was inconsistent. It included a Victorian Driver’s Licence, a Tax File Number Advice, a Medicare Statement of Claim, and a letter from Vicsuper, all of which used variations and abbreviations of the expression.

4.10.12 Mr Zabaneh challenged the decision of the Electoral Registrar to correct his name change on the Victorian State Electoral roll. The Magistrate upheld the decision of the Electoral Registrar on the following basis:

> I have reached the conclusion that the words used by the applicant do not constitute a name within the conventions of the State of Victoria at the present time. I base my decision on the facts that:
>
> > The name is a grammatical string, a factor which is acceptable in many other cultures, but not in this one at this time;
> > In addition, in relation to the adoption of the phrase as a name, the fact that it is not clearly divisible into name and surname results in there being no consistent use of any one version of the name in the documentation tendered in support of the Applicant’s adoption of the words as his name.

> I further find that the words which purport to be the Applicant's name have not been sufficiently adopted, it is, in the words of Lord Justice Upjohn: "an operation which necessarily takes time. When some time has elapsed, the person who was formerly known as x becomes ordinarily known as y. He must then use that name upon all occasions." In this instance, I do not have the evidence that this operation has taken place. The time elapsed is relatively short.
>
> I had no evidence of the use of the name socially, and all the evidence I had of its use in contact with Government bureaucracies and other bodies indicated that the name was neither understood nor used in its correct form, and each adopted a different variation. It is the very nature of the construct which impedes its adoption as a name. It is impossible from the evidence to say exactly what the Applicant is known as.
>
> I accept there may be valid reasons for the Applicant to have chosen the words he has chosen to use as his name, but he has chosen words which fall way outside what is accepted as a name in this state: a grammatical string which forces the hearer to try to obtain some meaning from it, which has meaning in that it consists of the names of institutions well known in this community combined with the title of the highest political office in this country and a word that is not used in polite society. I can find no breach of the Applicant's rights in refusing to use or register the name he has chosen.
>
> It is not reasonable to force other people in the community, or institutions to grapple with this phrase as a name, and the evidence illustrates the difficulties in doing so.
>
> For those reasons, I find that the phrase PRIME MINISTER JOHN PISS THE FAMILY COURT AND LEGAL AID is not a name, even if it were it has not been sufficiently adopted, and that there was a mistake made by Mr Lang in registering the phrase as a name pursuant to s 116(1) of the Act, and this mistake is thus subject to correction pursuant to s 122(1)(a) of the Constitution Act Amendment Act 1958, and therefore the Electoral Registrar for the district of Carrum was lawfully entitled to correct that mistake by reinstating the Applicants original name on the roll. I dismiss the Application.

4.10.13 As a consequence of this decision, the enrolled name remains as Zabaneh on the Victorian roll (the AEO Victoria is currently considering the implications of the decision for the federal roll). It is important to note in this case that the Victorian Registrar of Births, Deaths and Marriages did not accept the original application for a name change, and that the individual concerned had been inconsistent in using the expression with other government departments and agencies. Under the policy guidelines pendant to the federal law, a DRO is left with little choice but to accede to a request for a name change on the roll, when BDM Registrars in other States allow such expressions to become names, and when the individuals concerned are a little more careful and consistent in their dealings with other government departments and agencies.

4.10.14 However, the Magistrate's decision in this case does suggest some guidance for possible amendments to the Electoral Act. For example, the Act

might be amended to expressly exclude any name that appears inappropriate under legal criteria to be drafted by the AEC in consultation with the Office of Parliamentary Counsel. These legal criteria would be developed having regard to relevant existing State/Territory legislation and recent Court decisions.

4.10.15 There would be proper concerns in those circumstances where a person with a genuine but on the face of it, dubious, name change was unfairly excluded from enrolment. In order to protect the civil rights of such individuals, any decision by a DRO to deny enrolment or to refuse to effect an alteration to the roll would be reviewable in the first instance by the AEO and then by the Administrative Appeals Tribunal, as outlined in Part 4.10 above.

Recommendation 4: that the Electoral Act be amended to allow the DRO to refuse to enrol or to change the enrolment of any person who claims a name change that is considered inappropriate, in accordance with legal criteria to be drafted in consultation with the Office of Parliamentary Counsel.

4.11 Redistributions

4.11.1 The redistribution of electoral boundaries in South Australia, New South Wales and Tasmania will take place in 1999. These redistributions are triggered by section 59(2)(c) of the Electoral Act which provides for a redistribution to commence within 30 days of the expiration of 7 years since the State was last redistributed. South Australia, New South Wales and Tasmania were last redistributed on 17 January 1992, 31 January 1992, and 1 April 1992, respectively.

4.11.2 The 1999 redistributions commenced on 10 February 1999 in South Australia, and on 26 February 1999 in New South Wales. The redistribution in Tasmania is due to commence by 1 May 1999, although a date is still to be set. Written suggestions for the South Australian redistribution were invited on 17 February 1999, and for New South Wales on 17 March 1999. Suggestions for Tasmania will be invited early in May 1999.

4.11.3 The redistributions are expected to be completed in South Australia by October 1999, in New South Wales by December 1999, and in Tasmania by November 1999.

5 NOMINATION

5.1 Introduction

5.1.1 At the close of nominations at 12 noon on Thursday, 10 September 1998, a total of 1438 candidates had nominated for the 1998 federal election: 329 candidates for the Senate and 1109 candidates for the House of Representatives. (For the House of Representatives, this figure includes the candidates who nominated for the supplementary Newcastle election, rather than for the earlier 'failed' election). There were 1039 male candidates and 399 female candidates.

5.1.2 The steadily increasing numbers of candidates nominating for parliamentary elections at the federal and State/Territory levels are causing increasing problems for electoral administrations and for voters. From the electoral administration perspective, some ballot papers are now so large that they scarcely fit inside the voting compartments, and are becoming increasingly difficult to fold effectively to fit inside declaration envelopes.

5.1.3 The recent rise in nomination deposits and the requirement for 50 nominees for independent candidates at the federal level does not appear to have stemmed the flood of nominations, and there is some evidence emerging in the pending NSW State election that not all nominees are genuine, and that some new minor parties may be no more than 'fronts' for larger political parties seeking to maximise their second preference vote (see also Part 6.8). The impact on voter convenience is anecdotal, but many are dissatisfied with having to cast preferences for an increasing number of relatively unknown candidates.

5.2 Nomination Deposit

5.2.1 In submission No 91 of 2 August 1993, the AEC recommended that the Senate nomination deposit be increased from $500 to $1,500, and that the House of Representatives nomination deposit be increased from $250 to $750. The nomination deposits had not risen since 1983, and were not sufficiently high to dissuade the increasing numbers of candidates who had little chance of being elected. Whilst the AEC strongly supports the important democratic right of any citizen to offer himself or herself as a candidate for federal election, and does not wish to see this right affected by onerous financial requirements under the Electoral Act, reasonable increases in deposits should encourage potential candidates to realistically assess the level of support they would require to be elected, and to have their nomination deposit returned.

5.2.2 The November 1994 JSCEM Report did not agree with the AEC proposal for an increase in the nomination deposit, and instead, recommended that the Electoral Act be amended so that the number of nominees required in support of independent candidates for the House of Representatives and the Senate be increased to 100 and 500 eligible electors

respectively, and that nominees print their names and addresses as well as signing the nomination form.

5.2.3 The Government Response was to reject the JSCEM recommendation on the grounds that increasing the number of nominees would disadvantage independent candidates without a large organised party structure, and particularly independent Senate candidates in the smaller States/Territories. It was concluded that such a requirement would also place an insupportable, burden on AEC staff in having to do enrolment checks on all nominees signatures, especially where nominations are lodged close to the close of nominations.

5.2.4 In submission No 30 of 29 July 1996, the AEC raised the issue of nomination deposits again with the JSCEM, recommending that section 170(3) of the Electoral Act be amended to increase the deposit for nomination for the House of Representatives from $250 to $500 and to increase the deposit for nomination for the Senate from $500 to $1000.

5.2.5 In the June 1997 JSCEM Report it was recommended that the House of Representatives nomination deposit be increased from $250 to $350, and the Senate nomination deposit be increased from $500 to $700. In addition, the JSCEM recommended that that the number of nominees required in support of a nomination by a candidate not endorsed by a registered political party be increased from six to 50. These amendments were effected by the *Electoral and Referendum Amendment Act 1998* and were in force for the 1998 federal election.

5.2.6 The AEC publicised the changes to the nomination requirements as widely as possible in the period available before the 1998 federal election, including in the Candidates Handbook and in a media release on 7 September 1998. Independent candidates appeared to be aware of and able to accommodate the new requirement for 50 nominees, although many thought it was a discriminatory imposition on non-party candidates. A nomination was rejected in Victoria because only 47 nominees were obtained, a nomination was rejected in Western Australia because only 44 of the 50 signatories were eligible, and a public complaint was made in a press release by Mr Philip Nitschke, independent candidate for Menzies (see Attachment 05).

5.2.7 The new requirement for 50 nominees for independent candidates produced no significant problems of an administrative nature for the AEC at the 1998 federal election. However, the 50 nominees requirement and the rise in nomination deposits does not appear to have slowed the rate of increase in number of candidates, and the AEC remains concerned about the impact on the size of the Senate ballot paper and the declaration envelope (see Parts 7.3 and 8.4).

5.3 Nomination Period

5.3.1 Prior to the 1998 federal election, under section 156 of the Electoral Act, nominations closed at 12 noon, on a day that was not less than 11 days, or more than 28 days, after the issue of the writ for the election. Immediately after the close of nominations the AEC was required, under section 176 of the Electoral Act, to publicly declare the nominations, and the draw for positions on the ballot paper then took place at AEC offices around the country.

5.3.2 In 1993, the AEC recommended that the nomination period under section 156(1) of the Electoral Act be amended so as to reduce the nomination period by one day (that is, to a minimum of 10 days and a maximum of 27 days), with the public declaration of the nominations set for 24 hours after the close of nominations. This would allow an additional day for AEC staff to check the validity of last-minute nominations. Section 176 of the Act was also recommended for amendment to provide for the declaration of nominations to be made 24 hours after the close of nominations.

5.3.3 The 1993 JSCEM rejected this recommendation: "The Committee does not favour a 24 hour gap, and instead recommends that nominations close at 12 noon and be declared at 5 pm." The four Coalition members of the 1993 JSCEM, together with the Australian Democrat member and the Greens member, dissented, and no changes to the Electoral Act were made for the 1996 federal election.

5.3.4 However, the issue was revisited by the 1996 JSCEM, in response to a further submission from the AEC, and in its June 1997 Report the JSCEM concluded at page 75: "This committee believes that the AEC's proposal is sensible and should be adopted. A minimum nominations period of 10 days, rather than 11, will still allow candidates ample time to get their forms to the AEC". Recommendation 42 of the June 1997 JSCEM Report was as follows:

> that sections 156(1), 176 and 213(1)(a) of the Electoral Act be amended to reduce the nomination period by one day (to not less than 10 days or more than 27 days), with the declaration of nominations to be held 24 hours after the close of nominations. Sections 211 and 211A of the Act (which refer to the "closing" of nominations) should be amended, so that Senate candidates and groups still have 24 hours after the declaration to advise the AEC of their desired preference distributions.

5.3.5 Recommendation 42 was put into effect by the *Electoral and Referendum Amendment Act 1998* and was in force for the 1998 federal election. The extra period between the close of nominations and the declaration of nominations has significantly improved the administration of the nomination process.

5.4 Section 44 of the Constitution

5.4.1 Candidates intending to nominate for election to the federal Parliament must ensure that they are qualified, and not disqualified, to stand for election under the provisions of the Electoral Act and section 44 of the Constitution. The constitutional disqualifications that most commonly arise are in section 44(i), relating to dual citizenship; and in section 44(iv), relating to office of profit under the Crown. The purpose of these subsections is to protect the parliamentary system by disqualifying candidates and members of Parliament who are at risk of allowing conflicts of loyalty to affect their performance.

5.4.2 The July 1997 Report of the Representatives Standing Committee on Legal and Constitutional Affairs recommended that the AEC publish a booklet noting possible problem areas, which if relevant, should cause an intending candidate to consider seeking advice from his or her own legal advisers. The AEC already publishes a Candidates Handbook which provides essential information for candidates on the electoral process, but for the 1998 federal election, the AEC also provided all intending candidates with an Electoral Backgrounder on section 44 of the Constitution, which detailed in particular the implications for public servants and dual citizens.

5.4.3 It is not the role of the AEC to provide legal advice to intending candidates on the application of section 44 of the Constitution to their personal circumstances. Intending candidates needing legal advice must consult their own lawyers. This is a long-standing position, and is based on the legal framework of the Electoral Act, on practical considerations relating to the nomination process, and on the conclusions of parliamentary committees that have inquired into this issue.

5.4.4 The House of Representatives Standing Committee on Legal and Constitutional Affairs also considered the role of the AEC in advising intending candidates on section 44 of the Constitution, and concluded in its 1997 Report that:

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

5.4.5 It would appear that there is increased community awareness of the implications of section 44 of the Constitution for the conduct of federal elections, and this has been accompanied by increasing calls for a national referendum to amend section 44, in newspaper editorials and press statements (for example, see Attachment 06).

5.4.6 The AEC received a number of complaints about candidates nominating for election while allegedly disqualified under section 44 of the Constitution. In all cases, the AEC advised that the election would proceed on the basis of declarations by candidates in their nomination forms that they

were not disqualified. Where complainants claimed they had evidence to the contrary, it was suggested they should consider a petition to the Court of Disputed Returns after the election.

5.4.7 Despite all the warnings provided by the AEC in its publications in the lead up to the 1998 federal election, the election of Heather Hill of Pauline Hanson's One Nation Party to the Senate for the State of Queensland has been challenged by two petitioners in the Court of Disputed Returns on the grounds that her election was contrary to section 44(i) of the Constitution in relation to foreign allegiance. The petitioners have alleged that Senator-elect Hill held dual citizenship with the United Kingdom at the time of her nomination. The petitions are still before the Court and therefore *sub judice* (see Part 12.3).

5.5 Group Voting Tickets

5.5.1 Section 211(1) of the Electoral Act provides for the lodgement of group voting tickets (GVTs) with the AEC within 48 hours after the close of nominations for the election, that is, for the 1998 federal election, by 12 noon on Saturday 12 September 1998.

5.5.2 After the close of the GVT lodgement period, Mr Brendan Griffin, the Registered Officer for the Abolish Child Support/Family Court Party, requested a review of the decision of the Australian Electoral Officer for Tasmania (AEO Tas) to reject an amended GVT for the Tasmanian Senate, which was not lodged before 12 noon on the Saturday. Although there is no statutory provision for a formal review of decisions by AEOs in relation to the lodgement of GVTs (for obvious reasons relating to the election timetable), the matter was investigated by the AEC and the decision of the AEO Tas was supported (see Attachment 07).

5.5.3 While the AEO Tas acted appropriately under the circumstances, the JSCEM might wish to consider an amendment to the Electoral Act to make it explicit that GVT statements may be amended or withdrawn up to the closing time for their lodgement, but that such amendment or withdrawal may only be made by the person who lodged the original statement. It follows that should a GVT statement be withdrawn, a different statement may then be lodged before the closing time. If a GVT statement is withdrawn, and a new statement is not lodged for the group, the group will not have a GVT square printed on the Senate ballot paper.

> **Recommendation 5: That section 211 of the Electoral Act be amended to allow for the amendment or withdrawal of GVT statements up to the closing time for lodgement of such statements; that such amendment or withdrawal may only be made by the person who lodged the original statement; that a further statement may be lodged, prior to the closing time, following the withdrawal of an original statement by any of the persons eligible to do so under section 211(6); and that should a GVT statement be withdrawn, and a new statement not be lodged**

for the group prior to the closing time for lodgement, the group will not have a GVT square printed on the ballot paper.

5.6 Return of Nomination Deposit

5.6.1 Section 167(3) of the Electoral Act provides that the registered officer of a registered political party in a State/Territory may make a 'bulk' nomination of all candidates for the House of Representatives from that political party in the State/Territory. This means in practice that a bulk nomination deposit is paid by the registered officer to cover all candidates so nominated.

5.6.2 Sections 166(1)(b)(ii), 168 and 169 provide for the nomination of Senate candidates by the registered officer of a registered political party, for the grouping of the candidates, and for the registered officer to request the name of the party be printed on the ballot paper, respectively. In practice, it is generally the registered officer, on behalf of the party, who also pays the nomination deposit for the Senate candidates in the group.

5.6.3 After a House of Representatives election, and assuming the candidates received the requisite number of first preference votes under section 173(1)(b), then section 173(2) provides that the nomination deposit must be returned to the person who paid it, usually the registered officer of the political party, rather than to each individual candidate. This process for the House of Representatives works well in practice.

5.6.4 It is proposed that a similar process for the return of the nomination deposit be applied with respect to Senate groups. That is, where the nomination deposit is paid by a person other than the candidate, the deposit be returned, if applicable, to the person who paid it. The recommended amendment reflects the wording of section 173(2) in relation to the House of Representatives.

Recommendation 6: That section 173 of the Electoral Act be amended to provide that where a candidate is one of a group in a Senate election, and the nomination deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it.

5.7 Death of a Candidate

5.7.1 On 2 October 1998, the day before polling day for the 1998 federal election, Ms Kaye Westbury, the nominated Democrat candidate for the Division of Newcastle, passed away. Under section 180 of the Electoral Act, Ms Westbury's death resulted in a technical failure of the Newcastle House of Representatives election, and as a consequence a supplementary election for Newcastle was held after polling day for the rest of the country.

5.7.2 The writ for the Newcastle supplementary election was issued on 15 October, the close of nominations was on 29 October, polling day was on 21

November, and the writ was returned by 27 January 1999. The supplementary election was conducted, as required by the Electoral Act, on the same roll that was closed for the general election on 7 September 1998. Whilst there were no major problems encountered in the conduct of the Newcastle supplementary election, the death of a candidate does raise some further issues for consideration.

5.7.3 Section 177(4) of the Electoral Act provides that the withdrawal of consent by a candidate who is included in a bulk nomination does not affect the nomination of all other candidates. Similarly, section 180(3) provides that if a candidate, who is included in a bulk nomination, dies before the declaration, the nomination of the other bulk nominated candidates is not affected. However, it is unclear whether another candidate can be substituted in the bulk nomination for the candidate who has died or withdrawn consent.

5.7.4 Section 177 allows candidates to withdraw their consent to nomination up until the close of nominations. Had that candidate been endorsed by a party, that had not lodged nominations in bulk, the party would be able to substitute a new candidate. Similarly, where a candidate dies before the close of nominations, section 156(2) provides that the close of nominations shall be extended by one day, presumably to allow a party to nominate a replacement candidate.

5.7.5 It would appear appropriate that parties who have nominated their candidates in bulk should also be able to substitute another candidate in the bulk nomination where a candidate withdraws consent or dies. However, the substitution should only be possible up to the close of nominations (not the close of bulk nominations).

> **Recommendation 7: That sections 177 and 180 of the Electoral Act be amended to allow, up until the close of nominations, for the substitution of another candidate for a Division in a bulk nomination, where a candidate for that Division in a bulk nomination dies or withdraws their consent to act.**

5.7.6 Section 156(2) provides for the close of nominations to be taken to be one day later where a candidate dies before the close of nominations. Section 180 provides for the course of action should a candidate die after the declaration of nominations. However, there is no remedy where the candidate dies between the close of nominations and the declaration of nominations.

5.7.7 Prior to amendments enacted in 1998, nominations were declared immediately after the close of nominations. However, the declaration of nominations now takes place 24 hours after nominations close. That is, where a candidate dies before declaration, an opportunity is provided for another candidate to come forward.

5.7.8 An amendment should be made to section 156, by substituting “12 o’clock noon on the day fixed by the writ as the date of nomination” with “the declaration time”. Further, section 156 should be amended to allow for a two

day delay to the close of nominations. This is because the declaration time is 24 hours after the close of nominations, and as a result, the death of a candidate immediately before the declaration time would leave insufficient time for another candidate to be nominated.

Recommendation 8: That section 156(2) of the Electoral Act be amended to provide that where a candidate dies after being nominated and before the declaration time, that the day fixed as the date of nomination be taken to be the second succeeding day after the day so fixed.

6 POLITICAL CAMPAIGNS

6.1 Introduction

6.1.1 In the months leading up to a federal election, political parties, parliamentarians, prospective candidates, and interest groups gradually increase the volume of their political messages so as to turn the voting public towards consideration of their platforms and causes. Pre-election campaigning by political parties and prospective candidates may take the form of door-to-door canvassing, direct mail to individual electors, and articles and appearances in the radio, press and television media. In addition, government-funded advertising, in the lead up to the issue of the writs (the timing of which is only in the knowledge of the government) has increased noticeably just prior to recent State and federal elections.

6.1.2 At the issue of the writs, the election timetable is set, and political campaigning becomes a highly organised and pressurised activity, leaving very few electors untouched. Tensions may rise as those involved in the campaigns 'test the envelope' of the electoral law governing their activities, at the same time as filing many complaints with the AEC about the not too dissimilar activities of their political opponents. This is particularly so in relation to the printing, publication and distribution of how-to-vote (HTV) cards during the election period.

6.1.3 During the election campaign period the AEC must respond to a multitude of complaints and allegations from all quarters, to the effect that the electoral law in relation to political campaign advertising is being held in contempt, actively breached, or totally ignored. Many complaints relate to matters that are entirely outside the purview of the AEC, including for example, the use of parliamentary allowances, truth in political advertising, push polling, and various alleged breaches of the Constitution. Many other more legitimate complaints relate to the campaign activities of the major political parties, who nevertheless, generally understand well the limits of the law.

6.1.4 The majority of formal complaints received by the AEC from the major political parties, usually directly from their campaign headquarters, are in relation to electoral advertising, in particular, unauthorised or misleading advertisements and HTV cards. For the 1998 federal election, the AEC published an Electoral Backgrounder entitled "Electoral Advertising" which was distributed widely to candidates and political parties in an attempt to ensure that all parties were properly advised of the general aspects of the law they are obliged to observe.

6.1.5 In the Backgrounder, the AEC explained the current state of the law with respect to the authorisation of electoral advertising, and advised that section 328 of the Electoral Act is designed to ensure that anonymity does not become a protective shield for irresponsible or defamatory statements in electoral advertising, where there is no legal recourse for those whose interests may have been damaged by such statements.

6.1.6 In those instances where the advertisement does not comply strictly with the Act, but where the form or content of the advertisement clearly indicates the identity of those responsible, the AEC does not move immediately to prosecution, but draws the requirements of the Act to the attention of those responsible to ensure future compliance with the Act. At the 1998 federal election, the AEC was able to resolve all complaints under section 328, with the advice and assistance of the Commonwealth Director of Public Prosecutions (DPP), without recourse to the courts.

6.1.7 In addition, in the Backgrounder, the AEC explained the current state of the law with respect to misleading and deceptive electoral advertising, and advised that section 329 of the Act is not intended to regulate the content of political messages directed at influencing the choice of preferred candidates by voters, but rather to regulate publications and broadcasts that are directed at influencing the way in which the ballot paper is actually marked.

6.1.8 The Backgrounder also explained that precedent case law on misleading HTV cards suggests that certain HTV cards that appear at first glance to be issued by one political party, but in fact are issued by another political party seeking second preference votes from the supporters of the first political party, may not in fact breach the Act in certain defined circumstances. At the 1998 federal election, the AEC was able to resolve all complaints under section 329, with the advice and assistance of the DPP, without recourse to the courts.

6.1.9 A further provision of the Act, section 351, which relates to the publication of matter regarding candidates, came under scrutiny during the 1998 federal election. Section 351 is a relatively obscure provision that appears at first reading to have a significant bearing on the printing, publication and distribution of second preference HTV cards. However, the DPP has advised that its historical origins indicate a relatively narrow application. The AEC was able to resolve all complaints under section 351, with the advice and assistance of the DPP, without recourse to the courts.

6.1.10 The AEC accepts that political parties and candidates are under great pressure to target their advertising and their HTV cards as effectively as possible, and that disagreements will arise with the application of the governing legislation. Although the legislation operated satisfactorily at the 1998 federal election, the AEC believes that there is now an opportunity for the JSCEM to give some attention to the underlying policy issues relating to second preference HTV cards, and to consider possible improvements.

6.2 Government-funded Advertising

6.2.1 In a submission to the previous JSCEM, the AEC reported on a complaint made on the day before the issue of the writs for the 1996 federal election by Mr Andrew Robb, the then Federal Director of the Liberal Party, in relation to the authorisation of government-funded advertising. Mr Robb complained that various booklets and pamphlets printed, published and distributed by certain government departments and agencies on behalf of the then ALP Government, in particular, policy statements entitled "Our Land, "Our Nation", and "Young Australia", were not properly authorised as required by section 328 of the Electoral Act.

6.2.2 The DPP advised the AEC that although the documents might have been technically in breach of the Electoral Act because they did not carry the name and address of the authoriser and the name and place of business of the authoriser at the end of the documents, it was apparent on the face of the documents that they were published by the various government departments responsible for these policy areas. Accordingly, prosecution was not recommended, and the AEC did no more than bring the issue of government-funded advertising before the issue of the writs to the attention of the previous JSCEM, which made no recommendations for change.

6.2.3 On 20 August 1998, prior to the issue of the writs for the 1998 federal election, Senator John Faulkner of the ALP filed a complaint with the AEC that the government-funded taxation reform advertisements in the lead-up to the 1998 federal election were in breach of section 328 of the Act in relation to authorisation, and section 329 of the Act in relation to misleading and deceptive advertising.

6.2.4 Senator Faulkner claimed that the authorisation on the taxation reform advertisements was misleading and deceptive as the advertisements did not contain Commonwealth Government policy, but instead a taxation policy that the Coalition would introduce if it were to be returned at the federal election. On 24 August 1998, and twice on 26 August 1998, Senator Faulkner provided the AEC with further material to be added to his original complaint.

6.2.5 The AEC took the view that the newspaper advertisements relating to taxation reform, which appeared with the word "Advertisement" at the top, and with the words "Authorised by N. Minchin, for the Commonwealth Government, Parliament House, Canberra." at the bottom, contained "electoral matter" as defined in section 4(1) and (9) of the Act, and accordingly sought advice from the DPP as to whether any breach of the Act might be disclosed.

6.2.6 The DPP advised that the newspaper advertisements in question did not appear to be in breach of the Electoral Act, as they contained the authorisation details required by section 328 of the Act, contained the heading "Advertisement" as required by section 331 of the Act, and did not contain misleading and deceptive matter relating to the casting of the vote under section 329 of the Act. The AEC took the further view that the taxation reform

advertising broadcast on radio and television did not fall within the authorisation requirements of section 328 of the Act because section 328 applies to *printed* "electoral matter" rather than to *broadcast* "political matter". That is, the authorisation of radio and television advertising was more properly the responsibility of the Australian Broadcasting Authority under the provisions of the *Broadcasting Services Act 1992*.

6.2.7 On 30 August 1998, Professor David Flint, the Chairman of the Australian Broadcasting Authority (ABA), is reported to have said the following on this matter: "The ABA's role is not to determine who should pay for the advertisements, it is to ensure that the public knows who authorised it." Effectively, the view of Professor Flint on broadcast "political matter" was in accordance with the view of the AEC on printed "electoral matter".

6.2.8 On a related issue, the AEC also received complaints that Coalition candidates at the 1998 federal election were publishing newspaper advertisements highlighting their campaign by reference to the distribution of government funding from the Federation Fund to local enterprises and other relevant activities. The AEC liaised with the Department of Communications and the Arts, responsible for the Federation Fund, and confirmed that all advertisements containing electoral matter must be properly authorised.

6.2.9 Despite the conclusions drawn by the AEC that the taxation reform advertisements were not in breach of the Electoral Act, and by the ABA that the campaign advertisements were not in breach of the *Broadcasting Services Act 1992,* the issue did not die down during the election period, and discussion and debate continued through the media on the probity of the taxation reform advertising campaign.

6.3 Internet Advertising

6.3.1 The AEC received advice from the DPP at the 1996 federal election that the authorisation requirements for electoral advertising in section 328 of the Electoral Act probably do not apply to electoral advertising on the Internet, because the section makes no express reference to electronic advertising, and appears thereby to be confined to print advertising. In some contrast, section 329, which prohibits misleading and deceptive advertising, expressly includes advertisements that are broadcast on television and radio (although no specific mention is made of the Internet).

6.3.2 The AEC received no major complaints in relation to Internet advertising at the 1998 federal election, but it should also be noted that the AEC does not actively monitor all Internet communications that might contain electoral matter. It would be impossible for the AEC to actively monitor or regulate such material, given its increasing volume and range, and because such advertisements could easily be hosted by overseas communications platforms, which would probably put them technically beyond the reach of Australian law.

6.3.3 The AEC recommended to all who requested information on the application of the Electoral Act to electoral advertising on the Internet at the 1998 federal election, that although the law does not explicitly so require, such advertisements should be authorised, in order to prevent the mischief that arises from anonymous advertising. The same considerations apply to the other election advertising provisions of the Electoral Act.

6.4 Address of Authoriser

6.4.1 The AEC received a number of queries during the election period as to whether the address of the authoriser as required on electoral advertisements by section 328, refers to a residential address only, and whether an office or electorate address would comply. Others queried whether a street name and suburb was sufficient, or whether the street number was required as well as the street and suburb name. The AEC took the view that section 328 could include an electorate office, for example, as well as a residential address, but that in any case it does require the *full* address, including the street number. However, this should be clarified in the legislation with a definition of "address".

Recommendation 9: That section 328 of the Act and section 121 of the Referendum Act be amended to define "address" as the full address, including the street number, the street name, and the suburb/locality.

6.5 "Dear Neighbour" letters

6.5.1 The AEC received a number of complaints about the mass distribution of "Dear Neighbour" letters into letter boxes in whole suburbs or towns/localities, usually by local volunteer party workers, in support of various candidates. For the most part, these complaints were based on a misunderstanding of the operation of section 328(3)(c) of the Electoral Act. "Dear Neighbour" letters need not be addressed to a specific individual; do not need to be identified as originating with a particular political party or interest group; and do not need to carry the name and place of business of the printer. However, they do require the name and address of the sender of the letter.

6.5.2 The AEC received an unusual number of complaints from residents in the Australian Capital Territory about "Dear Neighbour" letters in support of the election of Senator Margaret Reid of the Liberal Party, which did not contain the full addresses of the various senders who signed the letters. These complaints were referred to the Australian Federal Police (AFP) for investigation, as it appeared that some of the signatories of the letters might have been inventions, and that the letters might have been intended to be anonymous in origin. This would clearly be contrary to the intention of the legislation.

6.5.3 After interviewing the Director of the A.C.T. Liberal Party, the AFP concluded that the various individuals who signed the letters and supplied their names and addresses but not the street numbers of their residences, did

in fact exist and lived at the street names provided on the letters. The AFP and the AEC concluded that the A.C.T. Liberal Party had been sufficiently warned about the requirements of the Electoral Act, and took no further action. However, recommendation 9 above in relation to the definition of "address" in section 328, would assist in ensuring that in future such "Dear Neighbour" letters are authorised in a consistent manner.

6.5.4 The AEC also received a complaint about a "Dear Neighbour" letter signed by Ms Bernadette Clancy in support of the election of Ms Fran Bailey MP of the Liberal Party in the Division of McEwen. Ms Clancy claimed in a letter to the local newspaper that she did not give her authority for the letter of endorsement. The AEC requested further information from Ms Bailey, and from the complainant, even though no formal complaint had been made by Ms Clancy herself to the AEC.

6.5.5 Ms Bailey explained that Ms Clancy had been advised that her letter of endorsement might be used in the election campaign; that Ms Bailey had apologised to Ms Clancy as soon as she became aware of her concerns; that Ms Clancy was apparently under some emotional stress as the result of a serious illness in her family; and that some changes might have been made to the content of the letter by volunteer workers in Ms Bailey's office, but these changes did not alter the overall message of the letter.

6.5.6 In the circumstances, and in the absence of any formal complaint from Ms Clancy herself, the AEC decided not to take this matter any further, but has ensured that Ms Bailey is now fully aware of the requirements of the Electoral Act in relation to the authorisation of electoral advertising.

6.6 Unregulated Electoral Advertising

6.6.1 The AEC received inquiries about whether the Electoral Act required the following to be authorised (assuming they contain "electoral matter"):

- advertisements projected in theatres;
- advertisements on electronic billboards;
- advertisements in sky-writing.

6.6.2 In each case the AEC took the view that without express mention in section 328, it is unlikely that such advertisements containing electoral matter were intended by Parliament to be authorised under the Electoral Act, particularly as it appears section 328 is intended generally to cover only printed advertisements (with the single exception of electoral video recordings as defined in section 328(6)). However, the AEC did advise that, where it is reasonably possible, it is in the public interest to provide proper authorisation, particularly during the election period.

6.7 Heading to Electoral Advertisements

6.7.1 Section 331 of the Electoral Act, which requires any published article or paragraph containing electoral matter to contain the heading "advertisement", was amended by the *Electoral and Referendum Amendment Act 1998*. Previously, section 331 applied only to paid newspaper advertisements. The 1998 amendment extended the requirement to articles and paragraphs containing electoral matter and published in any "journal", defined as "a newspaper, magazine or other periodical, whether published for sale or for distribution without charge".

6.7.2 The drafting of the 1998 amendment may not accurately reflect the intention of the Parliament. The requirement for the heading "advertisement" now applies to *any* electoral matter published in a newspaper or magazine, including for example, newspaper editorials, and commentary and opinion by newspaper journalists. These are the clear terms of the provision as it now stands in the Act, despite the fact that the heading to section 331 still reads "Heading to electoral advertisements", and despite the words of the Explanatory Memorandum to the 1998 amending Act:

> These items repeal and substitute section 331(1) to provide that as well as newspapers it applies to other periodical newsheets and magazines that accept paid *advertisements* and that it applies to *advertisements* containing electoral matter whether inserted "for reward" or free of charge by the owner or editor of the publication. The word "newspaper" is replaced with "journal" in subsection 331(2) and "journal" is defined in new subsection (3). *(emphasis added)*

6.7.3 The AEC believes that to remove any doubts that section 331 is meant to apply only to advertisements, and not to all electoral matter in newspapers and magazines, a further clarifying amendment is required.

> **Recommendation 10: That section 331 of the Electoral Act and section 124 of the Referendum Act be amended to remove any doubt that the requirement to provide a heading "advertisement" on all electoral matter in journals applies only to advertisements containing electoral matter.**

6.8 Second Preference How to Vote Cards

6.8.1 For the purposes of this discussion, second preference HTV cards are those authorised by one political party (in practice so far, either the ALP or the Liberal Party), seeking the second preferences of the supporters of the minor political parties (in practice so far, the Australian Democrats, and more recently, One Nation), in House of Representatives elections.

6.8.2 The AEC has received complaints that second preference HTV cards from the major political parties are misleading and deceptive because they advocate a first preference vote for a minor political party candidate, and therefore appear at first sight to be the official HTV cards of that minor political party. However, such HTV cards also advocate a second preference vote for

the major political party candidate (which is unlikely to be the official preference order of the minor political party). Such HTV cards carry the authorisation of the major political party in small print at the end of the document, so they comply with the authorisation requirements of section 328 of the Act.

6.8.3 There are two sections of the Electoral Act that are relevant to such complaints. Section 329(1) of the Act makes it an offence during the election period to print, publish or distribute any matter or thing that is likely to deceive an elector in relation to the casting of a vote. Section 351(1)(b)(ii) of the Act makes it an offence for any person, who, on behalf of an association, league, organization, and without the written authority of a House of Representatives candidate, to announce or publish anything that expressly or impliedly advocates or suggests that that candidate should receive a first preference vote.

6.8.4 In order to describe the problems that arose in relation to second preference HTV cards at the 1998 federal election, it is necessary to provide some history from previous elections. After the 1993 federal election, an unsuccessful Liberal Party candidate for the Division of Macquarie petitioned the Court of Disputed Returns on a number of grounds, including the alleged illegality of an ALP HTV card, which was directed to Democrat voters and sought their second preferences for the ALP candidate, Maggie Deahm (Attachment 08). Justice Gaudron decided that the second preference ALP HTV card for the Division of Macquarie was not in breach of section 329(1) of the Electoral Act (*Webster v Deahm (1993) 116 ALR 222)*.

6.8.5 At the 1996 federal election, the AEC received a complaint that an ALP HTV card distributed in the Division of Gilmore in New South Wales was in breach of section 329(1) of the Act (Attachment 09). Although the AEC received advice from the DPP that the 1996 ALP HTV card for Gilmore might be misleading and deceptive, and thereby in breach of section 329(1) of the Act, on the further advice of the DPP following an investigation by the Australian Federal Police (AFP), the AEC did not proceed to prosecution, for the following reasons.

6.8.6 During the AFP investigation of this matter, Mr Eric Roozendaal, the then Assistant General Secretary of the ALP in NSW, is reported to have stated that: “we have been advised by our lawyers that such a card does not contravene any section of the [Act] and its distribution is a lawful electoral activity”. Further, the authoriser of the 1996 Gilmore ALP HTV card in question, Mr John Della Bosca, is reported to have said the following when questioned about his view on its legality:

> The wording of the how to vote card is based on that used in the 1993 federal election in the Division of Macquarie, and which was specifically referred to by Justice Gaudron, in Webster v Deahm (1993) 116 ALR 223 at 229/230. The how to vote card was produced for the same purpose as that previously used in the 1993 federal election, being to encourage Democrat voters to give their second preference to the ALP candidate. I believe the intention is manifested

in the wording and does not mislead and is issued for the ALP and as such is authorised by me.

6.8.7 These statements by the NSW ALP officials are relevant in relation to 329(5) of the Act which provides a defence to a prosecution for a breach of section 329(1) of the Act in the following terms: “In a prosecution of a person for an offence against subsection (4) by virtue of a contravention of subsection (1), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.”

6.8.8 Despite not proceeding to prosecution, the AEC was concerned to ensure that all political parties were aware that there was at least an issue as to whether such second preference HTV cards as the 1996 ALP HTV card for Gilmore might be in contravention of section 329(1) of the Act, and accordingly, on 1 May 1998, published Electoral Backgrounder No 3, entitled “Misleading and Deceptive Electoral Advertising – “Unofficial How-to-Vote Cards”. This Backgrounder was distributed in a letter dated 7 May 1998 to the federally registered officers of the ALP, the Liberal Party, the National Party, and the Australian Democrats, in preparation for the 1998 federal election.

6.8.9 On 17 July 1998, after the passage of (unrelated) amendments to the Act, the AEC published a further series of Backgrounders, including Backgrounder No 5, entitled “Electoral Advertising”, which discussed the operation of section 328 in relation to authorisation of electoral advertising; incorporated the main message of Backgrounder No 3 on section 329 of the Act and second preference HTV cards; and made mention of section 351 of the Act.

6.8.10 On 15 September 1998, after the decision was handed down in the challenge in the Queensland Court of Disputed Returns to second preference HTV cards distributed in the District of Mansfield at the 1998 Queensland State election (‘the Mansfield case’), the AEC obtained legal advice from Senior Counsel which reinforced the advice already received from the DPP, to the effect that the 1996 ALP HTV card for Gilmore could be found by a court to be in breach of section 329(1) of the Act.

6.8.11 Following the decision by Justice Mackenzie in the Mansfield case, and just prior to the 1998 federal election, the AEC obtained further advice from the DPP on Senior Counsel’s advice, and wrote to the federally registered officers of the ALP, the Liberal Party, the National Party, and the Australian Democrats. The letter from the AEC, dated 25 September 1998, outlined the elements of the Mansfield decision, and indicated that certain second preference HTV cards in federal elections (like the 1996 ALP HTV card for Gilmore) might still be found by a court to be in breach of the Act (Attachment 10).

6.8.12 On polling day, 3 October 1998, and after polling day, the AEC received complaints about second preference NSW ALP HTV cards distributed in some Divisions in New South Wales. The AEC concluded that

the 1998 ALP HTV card for the Division of Parramatta, which was the same in format as the 1998 ALP HTV card for the Division of Richmond at Attachment 11, was similar to the HTV card that Justice Gaudron, in *Webster v Deahm,* decided was not in breach of section 329(1) of the Act, and accordingly took no further action.

6.8.13 On polling day on 3 October 1998, the AEC received complaints about second preference HTV cards distributed by the WA Liberal Party in at least four Divisions in Western Australia (Attachment 12). The AEC obtained advice from Senior Counsel on polling day that these cards might be in breach of section 329(1) and section 351(1)(b)(ii) of the Act, and accordingly the AEC sought and obtained the voluntary cessation of distribution of these second preference HTV cards by about 4 pm on polling day.

6.8.14 After polling day, the AEC received further complaints about the second preference WA Liberal Party HTV cards, and sought advice from the DPP on whether offences under the Act were disclosed. Following consideration of the DPP advice and further advice from Senior Counsel, the AEC concluded there was good reason for believing that a prosecution for breach of section 329(1) of the Act and/or section 351(1) of the Act might *not* succeed, and accordingly the AEC advised the complainants and the WA Liberal Party that no further action would be taken.

6.8.15 The DPP advice is not for general release, but it is of interest that the DPP looked closely at the legislative history of section 351 of the Act to come to its conclusion that there was no offence disclosed by the second preference WA Liberal Party HTV cards under this provision. The relevant part of the DPP advice is reproduced at Attachment 13, and in the context of the discussion about the historical origins of the provision, the following paragraph is of interest:

> It is apparent from the Parliamentary debate on this section that the intention of the legislators was to address the *detriment* to candidates from the unauthorised endorsement of candidates *by associations etc outside the major political parties*, as such endorsement generated a suggestion of an association between the candidate and the organisation (*emphases added*).

6.8.16 That is, in the view of the DPP, there would be some doubt in any court proceedings as to whether the second preference HTV cards that have been at issue between the major and the minor political parties at the 1996 and 1998 federal elections would be in breach of section 351. (The only previous consideration of the operation of section 351 was at the 1987 federal election, and the result was a technical amendment to the provision that has no direct bearing on the discussion here.)

6.8.17 The issue of second preference HTV cards is obviously a vexed one under the current legislation. It would appear that, as decided by Justice Gaudron in *Webster v Deahm*, section 329(1) of the Act in its current form may not apply to some of the second preference HTV cards now increasingly in use at federal elections. Further, it appears that section 351 of the Electoral Act was never intended to cover second preference HTV cards as they are

currently issued by major political parties, but is in fact restricted to a narrow set of historical circumstances.

6.8.18 However, the recommendations of Justice MacKenzie in the Mansfield decision, in relation to the Queensland legislation, are instructive and might provide an avenue for further consideration of the federal legislation:

> The fact that issues of the kind involved in this case have had to be determined by this Court suggests that something should be done to minimise the possibility of them arising again. An inexpensive measure which neither limits solicitation of preferences nor inhibits freedom of debate would be to require all cards distributed with a view to obtaining second and subsequent preferences to bear on their face (and on each face if it is double sided) the name of the party on whose behalf or on whose candidate's behalf it is distributed. Where it is issued by person who is not a party candidate, the fact that he or she is an independent should be stated. Such information should be required to be printed in type of a size which is sufficiently large to be easily read and is not overwhelmed by other printing on the card.
>
> If this is done, there would be little room for the kind of confusion alleged to have occurred in this case to occur again. In view of its inexpensive nature and simplicity of implementation, and the fact that it promotes the ideal of voters being fully informed before they decide whether to give a second or subsequent preference and, if so, to whom, consideration should be given to amending the Electoral Act accordingly. Since, on the evidence of the how to vote cards of all of the parties contesting the election, there is no practical problem about including the party's name prominently on the card, it is difficult to see any reason why there should be any objection to its implementation.

6.8.19 If the JSCEM is of the view that second preference HTV cards should continue to circulate at federal elections, but that they should be better identified to avoid misleading voters, then the JSCEM might consider whether the authorisation provision in the Electoral Act, section 328, should be amended to put into effect the recommendation of Justice McKenzie, and what the detailed wording of such an amendment should be.

6.8.20 For example, section 328 could be amended to require that, in addition to the standard authorisation requirements, any electoral advertisement that recommends a second or later preference vote for a candidate from another political party, or an independent candidate, must contain at the top of the advertisement, the name and address of the person authorising the advertisement, and the political party where applicable, in no less than 12 point font.

6.8.21 If this were to be agreed, then the JSCEM might then consider whether the legislative policy behind section 351, as discussed in the DPP advice, properly reflects contemporary political realities and whether its original intention has not become obscure and irrelevant. If section 328 were to be amended to reflect Justice MacKenzie's recommendation for the improved identification of second preference HTV cards, then section 351 could be repealed to avoid any further confusion.

6.8.22 On the other hand, the JSCEM might conclude that second preference HTV cards should be prohibited altogether, and that section 351 does not properly provide for such an express prohibition in its current form. Section 351 could be completely recast to remove its historical intention as described in the DPP advice, and replaced with a more contemporary prohibition. This would mean, at the very least, that any mention of "association, league, organisation or other body of persons" would be replaced with "another political party or candidate". Further detailed re-drafting of section 351 would be required, and if the JSCEM requests, the Office of Parliamentary Counsel could be approached for advice.

6.8.23 The Legal, Constitutional and Administrative Review Committee of the Queensland Legislative Assembly is currently inquiring into the implications of Justice Mackenzie's decision in the Mansfield case for Queensland electoral law in relation to second preference HTV cards. The Committee is likely to hand down its report during this session of the JSCEM inquiry.

6.9 Truth in Political Advertising

6.9.1 Section 329(1) of the Act makes it an offence during the election period to print, publish or distribute any matter or thing that is likely to deceive an elector in relation to the casting of a vote. This provision was considered by the High Court in *Evans v Crichton-Browne (1981) 147 CLR 169* in which it was held:

> that the words "in or in relation to the casting of his vote" refer to the act of recording or expressing the elector's political judgment, eg, in obtaining and marking and depositing it in the ballot box, and not to the formation of that judgment.

6.9.2 This means that only published or broadcast material which provides misleading or deceptive information about obtaining and marking and depositing a vote in the ballot box would be a breach of section 329 of the Act. Section 329 is not intended to regulate the political content of publications and broadcasts that are directed at influencing voters.

6.9.3 Over the past decade, the AEC has consistently advised the JSCEM that any regulation of the 'truth' of political debate would be unwise and unworkable. However, during debate in late 1995 in the Senate on the Electoral and Referendum Amendment Bill 1995 the Australian Democrats moved an amendment to introduce 'truth in advertising', which was supported by the then Coalition Opposition, but was not supported by the then ALP Government. The Bill was returned to the House of Representatives, where the Government rejected the amendment. The Bill was returned to the Senate and eventually lapsed at the 1996 federal election.

6.9.4 Further consideration was given to this issue during the hearings of the JSCEM into the conduct of the 1996 federal election, when the possibility of

introducing a version of the South Australian section 113 into federal law was canvassed. In the June 1997 JSCEM Report it was recommended that:

> the Electoral Act and the Broadcasting Act be amended to prohibit, during election periods, "misleading statements of fact" in electoral advertisements published by any means. (Recommendation 47)

6.9.5 The Government Response to the JSCEM recommendation, which was tabled in the Senate on 8 April 1998, was as follows:

> Not supported. The Government firmly believes that political advertising should be truthful in its content. However, any legislation introduced to enforce this principle would be difficult to enforce and could be open to challenge.
>
> Previous committees have found that it was not possible to legislate to control political advertising and that voters, using whatever assistance they see fit from the media and other sources, remain the most appropriate arbiters of the worth of political claims.

6.9.6 Effectively, it would appear that the Liberal/National Coalition and the ALP have now signalled their intention not to press for or support 'truth in advertising' for federal elections, whether modelled on the South Australian legislation or in some alternative form.

6.10 Push Polling

6.10.1 There is no standardised or dictionary definition of the term 'push polling'. It is usually used by the media and political parties to describe (mostly telephone) polling by a political party during election campaigns in which the questions are slanted so as to elicit a negative reaction to the opposing political party from respondents. That is, the purpose of push polling is not to sample community opinion on current issues, as it purports to do, but rather to plant negative attitudes about political opponents in the minds of respondents - to 'push' the respondents towards a point of view. If this is done during the 'media blackout' in the few days before polling day, then the risk of media scrutiny and possible injunctive action will be minimised.

6.10.2 In this sense, it is sometimes regarded as a form of misleading or deceptive electoral advertising, although the AEC has no legislative responsibility to regulate push polling, and has no particular knowledge of the techniques or personalities involved, beyond the analyses provided by the media. In some cases, wrongful or biased information contained in the questions may amount to defamation of political opponents, which may be prosecuted under section 350 of the Electoral Act, and under the common law of defamation.

6.10.3 The AEC received no formal complaints of push polling at the 1998 federal election, although the former Queensland National Party Senator Bill O'Chee did issue a media release on 16 September 1998, entitled "Labor's Push Polling Referred For Investigation", concerning a letter and

written questionnaire sent by ALP Senator Brenda Gibbs to electors in the Division of Hinkler.

6.10.4 Senator O'Chee claimed that the letter and questionnaire amounted to push polling, and was a "blatant example of the Labor Party's dirty tricks department at work, using push polling to scare the elderly and the vulnerable". Senator O'Chee said that the questionnaire should have been separately authorised under section 328 of the Act, and that he had referred the matter to the AEC for investigation.

6.10.5 The AEC did not receive any such referral from Senator O'Chee. On the basis of the information contained in his media release, it is by no means clear that a breach of section 328 of the Act did in fact occur in relation to the questionnaire, or that the covering letter, which apparently contained some errors of fact relating to Telstra, would have come within the accepted understanding of the term push polling.

6.10.6 The AEC notes that a detailed examination of push polling at Australian elections was broadcast on the ABC Radio National program "Background Briefing" on 28 February 1999.

7 VOTING

7.1 Voter Turnout

7.1.1 At the 1998 federal election, 95.34% of the 12,154,050 enrolled electors voted. This is slightly less than the 96.20% of enrolled electors who voted in 1996, but is in keeping with the broad trend of a turnout rate higher than 90% nationally since compulsory voting was introduced for federal elections in 1924.

7.2 Ballot Paper Shortages

7.2.1 The slightly lower national voter turnout was probably the result of the timing of the election on the first October weekend, which was also a long weekend in New South Wales, South Australia and the ACT. Further, there were school holidays, and major sporting and cultural events in many parts of the country (see Part 3.2). These factors suggest that there may have been many voters away from their usual polling booths.

7.2.2 Although the impact of these factors on the national voter turnout at the election was relatively minor, the random and unpredictable translocation of many voters around the country meant that the estimates made by the AEC for stocking polling booths with ballot materials were in many cases inadequate, and some booths ran out of ballot papers during polling day. Where shortfalls occurred, ballot papers were photocopied and declaration envelopes were hand-prepared, until such time Polling Place Liaison Officers (PPLOs) arrived with extra ballot materials. There were some minor queuing problems as a result in the busiest booths (Attachment 14). It is unlikely that any voter who attempted to vote unsuccessfully because of ballot paper shortages would be prosecuted.

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.

7.4 Group Voting Ticket Information

7.4.1 Section 216 of the Electoral Act requires that group voting tickets registered for the purposes of a Senate election be prominently displayed, in a poster format, at each polling booth. Because the group voting ticket (GVT) poster for each State/Territory must contain representations of the Senate ballot paper with the preferential voting allocations of each registered political party with a group voting ticket, the size of the poster makes it both difficult for AEC officials to handle and display, and difficult for voters to consult conveniently. For example, there were five GVT posters for NSW, which on display in a polling booth covered an area of 3 metres by 1 metre.

7.4.2 This display problem is exacerbated by the non-standard design of the 8,000 polling booths across Australia that are rented or hired for polling day at an election. Some polling booths may be in buildings with awkward internal spaces with permanent furniture fittings and limited display opportunities. Overseas polling booths can have their own unique display problems. Further, for those electors who do not cast a vote in a polling place, it is impractical and expensive to post group voting ticket posters to each individual voter, so that alternative access arrangements must be made with the AEC for those who seek GVT information.

7.4.3 For such reasons, the AEC is of the view that the GVT poster should be discontinued, and instead, group voting tickets should be produced in a booklet format. And rather than the Senate ballot paper format, it would be preferable for there to be a simple column arrangement with candidate names down the left side and party/group name and ticket number across the top, with the preferences shown accordingly in each column. This was the format used successfully for the 1997 election ticket booklet for the election of delegates to the 1998 Constitutional Convention. The GVT booklet would be

much easier to display in the polling booth, could be provided on request to voters for easy consultation, and could be posted to voters who are unable to attend a polling booth.

> **Recommendation 12: The AEC recommends that section 216 of the Electoral Act be amended so that group voting ticket information can be provided in booklet format rather than in poster format.**

7.5 Assisted Voting

7.5.1 As for previous elections, assisted voting was available at the 1998 federal election under section 234 of the Electoral Act for any voter who was unable to vote without assistance because of illiteracy, impaired vision, or physical incapacity. The terms of the Act are that a voter may nominate a person to assist, and this is usually the preferred choice for many Aboriginal and Torres Strait Islander voters with language and literacy difficulties, who may nominate a 'friend' from the community to assist. Alternatively, where another person is not nominated by the voter to assist, the Presiding Officer may assist, in the presence of any political party or candidate scrutineers at the polling booth (when a Presiding Officer assists, and there are no scrutineers, a polling official or another person appointed by the voter must be present).

7.5.2 At the public hearings held by the previous JSCEM on 13 September 1996, Mr Nick Dondas, of the Northern Territory Country Liberal Party and then the Member for the Northern Territory, said the following at page 89 of the Hansard transcript:

> In a normal situation where people are getting assisted votes, the candidates' scrutineers are called by the presiding officer of the polling booth to say, 'I am assisting somebody to vote,' and somebody is called from the parties to observe the technique and the procedure. So everybody knows that it is fair and above board. That is fine. That is how it should be.
>
> But in the territory, there is the capacity for a 'friend' to keep on wandering people in from the community and help them with a vote. Obviously because they declare their friendship to the presiding officer, or the returning officer, there is no scrutiny by the candidates' representatives in this. So that makes it very, very difficult. If somebody in a small community has a 'friend' and he is wandering 60 or 70 people through the polling booth during that period, it certainly has some impact….
>
> If the presiding officer is going to allow assisted votes, he should be the one who conducts the procedure for an assisted vote for people who are illiterate, incapacitated or whatever the case may be. But, at this stage, that process where it is set up for the returning officer to help people can be bypassed by a 'friend'.

7.5.3 The ‘friend’ to whom Mr Dondas referred in 1996, may well have been a Community Electoral Assistant (CEA), an Aboriginal volunteer community worker attached to the now defunct Aboriginal and Torres Strait Islander Education and Information Service (ATSIEIS). The CEAs were resident in and respected by their community; trained by ATSIEIS to understand enrolment and voting procedures and to pass this knowledge on to others in the community; and were people who understood the cultural norms and practices of the community, including, for example, the ‘skin’ relationships that prevent some members of a community having direct contact with some other members of the community, and in some cases, individuals from outside the community.

7.5.4 In the June 1997 Report of the previous JSCEM it was concluded, as the result of testimony from Mr Nick Dondas and Senator Grant Tambling, both of the Northern Territory Country Liberal Party, that “the assisted voting provisions are open to abuse”. The previous JSCEM then made the following recommendation, without dissent from the non-government JSCEM members:

> that in relation to assisted voting, section 234(1) of the Electoral Act be repealed, and section 234(2) be amended to allow any polling official (rather than a “presiding officer”) to assist a voter.

7.5.5 The Government Response of 8 April 1998 was as follows:

> Supported. However, there should be no amendment to section 234(2). The Government believes that the only person able to complete the ballot paper, other than the eligible voter, should be the presiding officer*. (Senate Hansard, p 1662)*

7.5.6 The Electoral and Referendum Amendment Bill (No. 2) 1998 (the Reform Bill) proposed amendments to section 234 of the Electoral Act, as described in the Explanatory Memorandum:

> to provide that only the Presiding Officer at a polling place may assist electors in marking their ballot papers.

7.5.7 The Explanatory Memorandum to the Bill did not make it explicit that the proposed amendments, by only allowing the Presiding Officer to provide assistance, and by removing the provision for a ‘friend’ to assist, would have had the consequence of allowing political party and candidate scrutineers to be present when every assisted vote is cast. This would have meant that political party and candidate scrutineers would have had access to the voting choices of anyone casting an assisted vote, including many Aboriginal people, the blind, the physically disabled, and those with language and literacy difficulties, anywhere in Australia.

7.5.8 During the second reading debate on the Bill in the House of Representatives on 2 December 1998, Mr Laurie Ferguson MP signalled that the ALP would be opposing the proposed amendment:

> The measures [the Government] will initiate in this next parliament include a move to toughen up on provisional voting and an attempt to try to reduce the degree to which people can assist voters – once again, a very partisan initiative that they are foreshadowing. Regarding provisional voting, they have apparently made some analysis that the people in this category vote very strongly for Labor. They are very disturbed about the outcome in the Northern Territory so they are now going to bring in measures to reduce the participation of Aboriginals once again by not allowing them to be helped by other people. (*House of Representatives Hansard, p 930)*

7.5.9 However, during the second reading debate on the Bill in the Senate on 15 February 1999, Senator John Faulkner signalled that the ALP would be supporting the proposed amendment:

> There are a number of minor and non-controversial measures that will be supported by the opposition. They include: items dealing with assisted voting….(*Senate Hansard, p 1803)*

7.5.10 In the Senate on 18 February 1999, when the Bill was in the Committee of the Senate, Senator Brown of the Greens signalled his intention to vote against the proposed amendments to assisted voting, and was joined by Senator Bartlett of the Democrats, and Senator Faulkner of the ALP, who advised that they had received representations from the Aboriginal community on the negative impact of the proposed amendments. In the event, the proposed amendments to section 234 of the Electoral Act were defeated in the Senate, with the suggestion that they be submitted to the JSCEM for further consideration.

7.5.11 On the basis of the experience at the Tangentyere polling booth in the Northern Territory at the 1998 federal election (see Part 7.6 below) it might be suggested to this JSCEM that section 234 of the Electoral Act be repealed and replaced by a provision similar to section 71 of the Northern Territory Electoral Act, which is reproduced at Attachment 16. The Northern Territory legislation provides that if a person needs an assisted vote then the Presiding Officer, or another official directed by the Presiding Officer, may assist the voter, in the full view of political party and candidate scrutineers.

7.5.12 For the same reasons as advanced by the Aboriginal community in relation to the proposed amendments to section 234 in the Electoral and Referendum Amendment Bill (No. 2) 1998, such an amendment would be of concern to the AEC. Whereas assisted voters, Aboriginal and non-Aboriginal, may feel relatively comfortable sharing their vote with a nominated 'friend', they may not feel so comfortable having their vote disclosed to political party and candidate scrutineers, particularly in small communities. Such a change to the assisted voting provisions would represent a significant weakening of the secrecy of the ballot for many of the most disadvantaged members of the community.

7.5.13 It has also be suggested that the nominated 'friend' might remain to facilitate assisted voting, but with the addition of the Presiding Officer or other polling official in attendance to strictly ensure the integrity of

the process. However, the effectiveness of such a process in many circumstances would be limited by the language abilities of those officials. That is, in some Aboriginal communities, as well as in metropolitan areas with high non-English speaking populations, it is difficult to see how polling officials who only understand English could monitor conversations between voters and their 'friends' in another language.

7.5.14 The worst case scenario is that assisted voters could be targeted for special treatment after an election, if the way their vote was cast was recorded or remembered by party scrutineers of any political persuasion. Section 323 of the Electoral Act prohibits scrutineers from breaching the secrecy of the ballot, but breaches of this provision are obviously very difficult to monitor. The AEC is of the view that the federal legislation relating to assisted voting is operating properly as the Parliament originally intended and should be left unamended.

7.6 Aboriginal voting in the Northern Territory

7.6.1 There were complaints made to the AEC by the Northern Territory Country Liberal Party concerning the delivery of voting services to Aboriginal voters in the Northern Territory at the election. On 21 December 1998 the following news item was broadcast on ABC radio in the Northern Territory:

> ***Newsreader**:* The Country Liberal Party has decided not to challenge the federal election result for the Territory's sole House of Representatives seat. But it doesn't intend letting its complaints about mobile polling and the location of at least one polling booth go unanswered. It plans to take the matter up with a Federal Parliamentary Committee.
> ***Reporter**:* Soon after the official declaration of the Territory results for the October election, the Country Liberal Party hinted at a challenge against Warren Snowdon's thousand vote win. The deadline for a challenge has passed, with the Party deciding it would have been a waste of time.
> ***Unidentified:*** The size of the vote, the size of the loss, was too much to be overcome. Although there are some things about the election we're unhappy about.
> ***Reporter**:* Concerns over mobile polling will now be taken to the Federal Parliamentary Committee on electoral matters, with the CLP arguing for a change to the legislation.
> ***Unidentified**:* We think the assisted votes should be assisted by paid electoral staff, not assisted by anybody who happens to be there.
> ***Unidentified 2**:* I would hope that the Joint Standing Committee will reject submissions for change. The Commonwealth Act is better than the Northern Territory Act when it comes to the way voters get assistance.
> ***Reporter**:* The CLP is also talking about inviting the Committee, chaired by its former President, Liberal MP Gary Nairn, to Alice Springs to inspect the site of a static booth at the Tangentyere Council offices. The Party complained about incidents at the booth, including officials being spat at and the Director of the Central Land Council dropping his trousers twice.

7.6.2 There are a number of issues raised here, which will be dealt with in turn, beginning with the recent legislative changes that affected the Northern Territory. After the 1996 federal election, the AEC submitted to the previous

JSCEM that many Northern Territory electors were being unfairly disenfranchised, relative to the rest of Australia, because of the law governing the reinstatement of the enrolment of provisional voters who move between subdivisions within a Division (see part 4.10 of AEC submission No 30 of 29 July 1996).

7.6.3 The 1996 Snowdon petition to the Court of Disputed Returns failed to establish that the AEC had erred in law in refusing to reinstate the enrolments of provisional electors who had moved between subdivisions within the Division of the Northern Territory (*Snowdon v Dondas (1996) 70 ALJR 864* – see AEC submission No 96 of 23 October 1996). However, it was apparent that the legislation, which the court concluded was correctly applied by the AEC, was nevertheless anomalous, and the June 1997 JSCEM Report recommended as follows:

> that the Electoral Act be amended to allow the reinstatement of provisional voters where an elector has moved between subdivisions in the Northern Territory or Kalgoorlie, but has remained within the relevant division.

7.6.4 The Government Response of 8 April 1998 was reported as follows:

> Supported in principle. The amendment should reflect that the provisional votes be admitted, but that these voters should be required to re-enrol in the normal way. (*Senate Hansard, p 1662)*

7.6.5 The *Electoral and Referendum Amendment Act 1998* amended the Electoral Act to remove the anomaly as it applied to the Northern Territory, as described in the Explanatory Memorandum:

> provide that in Divisions in which subdivisions are proclaimed, a provisional vote cast by an elector who has moved to a different subdivision without notifying the AEC may be included in the scrutiny provided the elector is still living in the Division.

7.6.6 As a consequence, provisional votes in the Northern Territory are now treated the same as in the rest of Australia, so that where the elector has moved between subdivisions within the Division of the Northern Territory, and their enrolment has been deleted in error, their votes are admitted to the count at an election. This means that many Aboriginal voters, who vote provisional in the Northern Territory because of difficulties or misunderstandings with their enrolled addresses, were ‘re-enfranchised’ for the 1998 federal election.

7.6.7 The second issue raised in the interview quoted above is that of assisted voting in the Northern Territory, specifically, for Aboriginal voters. This has been dealt with in Part 7.5 above. The third issue raised in the interview quoted above is mobile polling in the Northern Territory, and the location of the static polling booth at the Tangentyere Council Chambers (Railway Side) at 3 Kidman Street, Alice Springs.

7.6.8 It has long been accepted practice that mobile polling will be conducted in remote areas of Australia, and that many of these mobile polling booths

service mainly Aboriginal voters who have language and literacy difficulties. For the 1998 federal election, which in the Northern Territory was complicated by the addition of a third ballot paper for the Statehood Referendum, the Australian Electoral Officer for the Northern Territory (AEO NT) decided that mobile polling should be introduced for the town camps in Alice Springs, because many Aboriginal voters from the camps are reluctant to attend the static polling booths in the town, and mobile polling would be an effective way of ensuring those people with language and literacy problems were able to discharge their duty to vote with the appropriate assistance.

7.6.9 The AEC makes no apology for seeking to provide the same convenient service to Aboriginal voters as it does for non-Aboriginal voters, and mobile polling at the town camps in Alice Springs and elsewhere would have been an effective way of meeting this objective.

7.6.10 However, following a complaint by the Northern Territory Country Liberal Party (NTCLP) about the proposed gazettal of mobile polling for the town camps, the AEC obtained legal advice to the effect that "remote" mobile polling as it is described in the Electoral Act might not be interpreted by a court to include mobile polling in an urban location such as Alice Springs. As a consequence, the AEC scrapped the mobile polling preparations for the town camps, at very late notice, and instead gazetted a static polling booth in the most convenient location to service those Aboriginal voters from the town camps in Alice Springs.

7.6.11 This location was the Tangentyere Council Chambers (Railway Side) in Alice Springs. The Tangentyere Council is the organisation responsible for the town camps and the Council Chambers building is a natural gathering centre for Aboriginals from those camps. The AEC rented one of the Tangentyere Council buildings as a static polling booth on polling day, in precisely the same way the AEC rents or hires other council chambers or town halls as static polling booths in locations convenient to voters anywhere else in Australia.

7.6.12 As with any other polling booth in Australia, the polling booth was available to any eligible voter for the purpose of casting a vote, and any display material of a politically partisan nature was removed prior to polling day. However, on 29 September 1998, the President of the NTCLP, Ms Suzanne Cavanagh, strongly objected to the gazettal of the Tangentyere Council Chambers as a static polling booth in a letter to the AEO NT, Mr Kerry Heisner, on the following grounds, in part:

> It is normally accepted that polling booths, static or otherwise, are held on 'neutral' ground. We do not consider that the Tangentyere offices are neutral ground, either in reality or perception. Even today I am advised that various 'anti-Government' material, both Federal and Territory, and 'anti-Statehood' material is displayed at the premises – hardly neutral ground. In fact, the politically-charged nature of the Tangentyere Council premises would seem to preclude its use as a polling booth under AEC regulations….

> It seems the reason for placing the booth at Tangentyere can only be to provide a special booth for Aborigines. I note there is a normal polling booth within a kilometre and that Tangentyere Council is basically in an industrial area.
>
> I support the use of mobile polling in remote areas and note they generally service Aborigines, however, in culturally diverse towns where there is already sufficient polling places, it seems that to provide one group with a special polling place will lead to calls for special booths for various ethnic, interest or minority groups at future elections. We object to the proposition of polling booth based on race or interest.
>
> While I have every confidence that AEC staff will maintain their usual standard of fairness within the polling precinct, I am also concerned that outside the areas there is greater opportunity for inappropriate pressure to be provided to voters, particularly if one group of voters avoids the area because they do not consider they are welcome or that it is not an area for them to vote.

7.6.13 On the same day, 29 September 1998, the AEO for the NT replied to Ms Cavanagh of the NTCLP, in the following terms (in part):

> ….In your complaint you state that 'anti-government' and 'anti-statehood' material is displayed. However, an officer from the Australian Electoral Commission has visited the Council building and no election/statehood material is now being displayed to the public.
>
> Polling places are established on a needs basis. Northern Territory voters for this election are required to complete three ballot papers and obviously this process will take longer to complete with more voters requiring assistance than during previous elections. With this in mind the establishment of this booth will assist a group of voters that may require more assistance than other voters. Also, as you are aware, polling places on polling day are open to all electors and Railway Side is no exception. The Australian Electoral Commission, in accordance with the Act, will maintain the usual standard of fairness within and up to 6 metres from the entrance (as nominated by the Officer in Charge) of the polling place.

7.6.14 The objectives of the AEC in the provision of polling facilities to voters is to allow the greatest degree of participation in the election that is possible. What may appear to be 'neutral ground' to one group of voters, may not appear to be so for another group of voters. For example, Aboriginal voters in Alice Springs may not necessarily regard the Alice Springs Town Council Chambers, which was gazetted as a static polling booth, as 'neutral ground', in the same way that the NTCLP may not regard the Tangentyere Council Chambers as 'neutral ground'. Moreover, the assumption that polling booths are required to be situated on 'neutral ground' is not a convention recognised by the AEC or implicit in the Electoral Act.

7.6.15 In the event, the Tangentyere (Railway Side) static polling booth took 356 ordinary votes and 67 declaration votes on polling day, which alone justified its existence. In addition, officers-in-charge of other polling booths in Alice Springs expressed their appreciation for the reduced strain on their voter

assistance resources as the result of the gazettal of the Tangentyere (Railway Side) static polling booth.

7.6.16 The fourth issue raised in the interview quoted above is the complaints made by the NTCLP about "incidents at the [Tangentyere] booth, including officials being spat at …". On 23 October 1998, Mr James Noonan, a solicitor instructed by the NTCLP, wrote to the AEO NT in the following terms (in part):

> …the selection of the Tangentyere Council Chambers as a static polling booth (against our client's objections) resulted in events which appear to constitute offences by some AEC officers under the Commonwealth Electoral Act. Further, the conduct of some AEC officers appears, on our instructions, to have had the effect of influencing the voters of electors. Our client is also most concerned that mobile polling procedures resulted in electors being denied the opportunity to vote. Particulars of these matters will be put to you by way of official complaint in due course…

7.6.17 The AEO NT responded to Mr Noonan on 23 October 1998, in the following terms (in part):

> …I am very concerned about the lack of specificity in these allegations and regard such generalised allegations about the integrity of AEC officials very seriously. I urge you to place further and better particulars of your client's complaints before myself or the Electoral Commissioner with the utmost despatch…

7.6.18 Mr Noonan did not respond to the request of the AEO NT for further details on the complaint, and as noted in the interview quoted above, the NTCLP decided not to challenge the Northern Territory election by petition to the Court of Disputed Returns. However, Ms Cavanagh of the NTCLP did write a detailed letter of complaint to the Special Minister of State, Senator Chris Ellison, the Minister responsible for electoral matters, on 5 January 1999.

7.6.19 There were a number of 'incidents' at the Tangentyere (Railway Side) polling booth, but the officer-in-charge (OIC) of that booth, an Aboriginal woman with extensive polling experience over six major electoral events, reported that the most disruptive of these 'incidents' related to the questionable behaviour of the NTCLP scrutineers, particularly in relation to the conduct of assisted voting.

7.6.20 It appears that at least some of the NTCLP scrutineers assumed the assisted voting provisions of the Northern Territory Electoral Act were the same as for federal elections. That is, under section 71 of the Northern Territory Electoral Act, scrutineers are permitted to observe all assisted votes being cast, whereas, under the federal Electoral Act, scrutineers are only permitted to observe an assisted vote being cast if the Presiding Officer is assisting, not when a 'friend' is assisting. The Northern Territory legislation governing the conduct of the Statehood referendum also reflected the federal legislation for assisted voting.

7.6.21 The OIC of the Tangentyere polling booth provided a written report to the AEO NT on the events on polling day, and made particular mention of the behaviour of the NTCLP scrutineers. The AEC has not reproduced the entire report because the names of some well-known Northern Territory identities are included. For the purposes of this submission it is sufficient to quote relevant extracts in order to provide some balance to the complaints and allegations made by the NTCLP and its representatives against AEC officials and their interpretation of their statutory responsibilities.

7.6.22 The OIC of the Tangentyere polling booth reported that the NTCLP scrutineers were "constantly rude, intrusive and argumentative" and "constantly standing in the way of voters wanting to cast a vote". At one point, one of the NTCLP scrutineers sought to enter a voting compartment where an Aboriginal voter was being assisted by a friend. The OIC was only able to stop the NTCLP scrutineer from interfering in this process by showing him the manual instructions on assisted voting, at which point the scrutineer left the polling booth and did not return. The OIC also reported that she had to ask two of the four NTCLP scrutineers inside the Tangentyere polling booth at one point to leave because they were not properly nominated as scrutineers for the federal election by candidates.

7.6.23 The OIC was obviously under considerable pressure during polling day as the result of the behaviour of the NTCLP scrutineers. Her report says, "At no time was any AEC official rude to voters or scrutineers. I as OIC did not lose my cool or lose control of the situation…I felt I was straight to the point and polite to scrutineers". Nevertheless, "I had the distinct feeling before polling began the CLP were out to sabotage the booth as they were constantly rude to AEC officials and other scrutineers, they were constantly complaining throughout the day about petty issues that had nothing to do with AEC officials, they just wanted the booth closed."

7.6.24 On the basis of the OIC's report, and the conclusions of the AEO NT, the AEC rejects any allegation that AEC officials at the Tangentyere polling booth breached the Electoral Act, interfered with voting, or denied anyone the vote, as charged in Mr Noonan's letter of complaint on behalf of the NTCLP.

7.6.25 The final issue raised in the interview quoted above is: "the Director of the Central Land Council dropping his trousers twice". This incident took place outside the perimeter of the Tangentyere polling booth, and out of sight of polling officials. It did not constitute an offence under the Electoral Act.

7.6.26 In summary, the AEC believes that the polling at the Tangentyere polling booth in the Northern Territory was conducted properly under the terms of legislation, and in a manner appropriate to the circumstances. Although the polling was conducted under highly pressurised conditions, the tally of 356 ordinary votes and 67 declaration votes should be regarded as a success, and a credit to the polling officials and the voters involved.

7.7 Penalty Notices

7.7.1 In relation to penalty notices for failure to vote, section 245(3) of the Electoral Act requires that a penalty notice be sent by post or other means to the latest known address of an elector whose name appears on a list prepared under section 245(2). After the despatch of the first penalty notice, the DRO may receive information or advice that the elector no longer lives at the original address, and it would make sense for the DRO to then be able to send the second penalty notice under section 245(6) to the latest known address *at that time* for the elector in question, rather than to the "latest known address" at the time the first penalty notice was despatched. Further, the second notice currently requires that the notice be sent by post. The second notice should also be able to be sent by means other than post.

7.7.2 If the principle of sending correspondence to the latest known address of the elector is agreed, then similar amendments should be made in relation to the sending of enrolment objection and determination notices under Part IX of the Electoral Act. In addition, the principle of having the option to use means other than post for the delivery of official electoral correspondence and notices should also be extended to enrolment objection and determination notices.

> **Recommendation 13: That in relation to penalty notices for failure to vote, section 245(6) of the Electoral Act and section 45(6) of the Referendum Act be amended to allow the DRO to send, by post or other means, the second penalty notice to the latest known address of the elector at the time of the despatch of the second penalty notice, and that in relation to enrolment objection notices and enrolment determination notices, Part IX of the Act be similarly amended as appropriate, to allow for despatch of the notices, by post or other means, to the latest known address of the elector at the time of despatch.**

8 DECLARATION VOTING

8.1 Introduction

8.1.1 Because voting is compulsory for federal elections, it is essential that all voters are provided with access to voting facilities, wherever they are in Australia, and to a reasonable degree, overseas. For this reason, the Electoral Act provides for a number of ways of casting a vote, alternative to casting an ordinary vote at a polling booth. Collectively, these alternative ways of casting a vote are known as declaration voting.

8.1.2 Declaration voting involves the completion by the voter of a form known as the declaration certificate, which is printed on the face of the declaration envelope (Attachment 17). The declaration voter then casts a vote and the ballot papers are sealed inside the declaration envelope. After polling day, the declaration envelopes containing the ballot papers are not opened until the voter eligibility details on the declaration certificate are verified by the AEC.

8.1.3 Voters who know that they will be outside their home State or Territory on polling day, or who know they will not be able to attend a polling booth on polling day, may cast a **postal vote** before polling day by making a written postal vote application to the relevant Divisional Returning Officer (DRO). If it is in order, the DRO posts to the voter the postal ballot papers and a declaration envelope, on which the voter makes a declaration as to eligibility. There are various qualifications specified in Schedule 2 of the Electoral Act for postal voting, but electors overseas, prisoners, and patients in hospitals and nursing homes, are obvious clients for this form of declaration voting.

8.1.4 Voters registered as **General Postal Voters** have ballot papers and declaration envelopes posted to them by the relevant DRO automatically as soon as ballot papers are printed, without the need to make a written postal vote application. Another form of declaration voting, the **pre-poll vote**, is available under the same specified conditions as for postal voting, but without the need for a postal vote application. However, pre-poll voters must attend a pre-poll voting centre, such as a Divisional Office, or an Australian Embassy or High Commission overseas. Interstate voters within Australia may also cast a pre-poll vote on polling day at a pre-poll voting centre.

8.1.5 On polling day, any voter who is not able to attend a polling booth in their home Division, may cast an **absent vote** at a polling booth in any other Division **in the same State or Territory.** Any voter whose name cannot be found on the Certified List of Voters for their home Division may cast a **provisional vote**. Such voters might include those voters whose names have been removed in error from the roll by objection action, and are therefore not on the Certified List of Voters, but who in fact still reside at the same address; or in rare cases, those voters who present at the polling booth to find their name already marked off the Certified List of Voters.

8.1.6 After polling day, all sealed declaration envelopes must pass through the **preliminary scrutiny** process, during which the voter eligibility details as

recorded on the certificate on the face of the declaration envelope are checked against the Commonwealth Electoral Roll. It is only when and if the voter details are verified that the declaration envelope is opened, face down to preserve the secrecy of the ballot, and the folded ballot papers removed and added to the further scrutiny (also known as the 'count').

8.2 Declaration Vote Statistics

8.2.1 Of the 11,587,353 formal votes cast at the 1998 federal election, 2,074,065 or 17.9% were by declaration vote. Of the total formal votes cast at the election, 488,671 or 4.22% were postal votes, 692,377 or 5.98% were pre-poll votes, 776,859 or 6.70% were absent votes, and 116,158 or 1% were provisional votes.

8.2.2 Detailed below is a profile of declaration voting trends since the 1993 federal election. While the total number of formal declaration votes cast is yet to exceed 17.9% of the total number of formal votes cast, it is apparent that the number of electors voting by declaration is increasing (see also Parts 8.6, 10.2, and 10.7).

	1993 federal election	**1996 federal election**	**1998 federal election**
Declaration Votes:			
Absent votes	642 857 (6.02%)	657 539 (5.82%)	776 859 (6.70%)
Provisional votes	58 750 (0.55%)	105 091 (0.93%	116 158 (1.00%)
Pre-poll votes	352 217 (3.30%)	434 841 (3.85%)	692 377 (5.98%)
Postal Votes	306 496 (2.87%)	359 604 (3.18%)	488 671 (4.22%)
Sub-Total	1 360 320 (12.74)	1 557 075 (13.78%)	2 074 065 (17.90%)
Ordinary votes	9 314 485 (87.26)	9 737 404 (86.22%)	9 513 288 (82.10%)
Total Votes	10 674 805 (100%)	11 294 479 (100%)	11 587 353 (100%)

8.3 Pre-Poll Ordinary Voting

8.3.1 The AEC recommended to the 1993 and 1996 JSCEMs that the Electoral Act be amended to allow those voters who qualify for a pre-poll vote to be able to cast an ordinary vote instead of a declaration vote if they are able to attend a pre-poll centre in their home Division. This would mean that such voters would be immediately marked off the Certified List of Voters for their home Division, and the consequence would be a reduction in the time delay associated with the processing of declaration votes through the preliminary scrutiny to verify eligibility: a reduction in the administrative load and the costs associated with the issuing, sorting, and collating of declaration votes, and faster election results. Pre-poll ordinary voting for the home Division is already in operation for Victorian State elections.

8.3.2 In rejecting the AEC recommendation for pre-poll ordinary voting for the home Division in 1993, the then JSCEM commented that pre-poll ordinary voting would encourage and endorse the trend towards an ever-increasing proportion of the vote being cast before polling day. In rejecting the same AEC

recommendation in 1996, the then JSCEM accepted that pre-poll ordinary voting for the home Division would be more efficient for both the AEC and the voter, but concluded that, as a matter of principle, an ordinary vote should only be available when voting in the home Division on polling day.

8.3.3 In the light of the significant increase over the past two elections in the level of postal voting before polling day, as the result of legislative amendments supported by the major political parties to facilitate the distribution and collection of postal vote applications by political parties, it would appear that the argument that voting before polling day should not be encouraged is in some disarray. Furthermore, it is not apparent to the AEC that allowing pre-poll votes to be cast as ordinary votes for the home Division would necessarily increase the number of voters seeking a pre-poll vote. Such voters would still have to find a pre-poll voting centre and provide a legitimate reason for not being able to vote on polling day.

8.3.4 The provision of an ordinary pre-poll vote for the home Division would represent no more than an administrative simplification, with attendant time and cost efficiencies, to remove the need for the preliminary scrutiny of voter declarations made for the home Division. It would not represent any obvious encouragement to voting before polling day, or any change in the criteria for obtaining a pre-poll vote.

Recommendation 14: that the Electoral Act and the Referendum Act be amended to allow pre-poll voters in their home Divisions to cast an ordinary vote.

8.4 Double Enveloping

8.4.1 Before the 1993 federal election, the AEC developed a postal vote declaration envelope with a 'privacy flap', in response to concerns about the secrecy of voter details passing through the mail on the face of postal vote declaration envelopes returned by voters to the AEC. The privacy flap covered the declaration certificate printed on the face of the envelope containing the ballot papers. The Electoral Act then required that the declaration certificate must be printed on the outside of the postal vote envelope returned to the AEC.

8.4.2 However, that design response to the strict requirements of the legislation was not entirely successful. Some postal vote declaration envelopes were returned to the AEC with the ballot papers inserted between the privacy flap and the envelope itself, thus invalidating the vote. At the 1996 federal election, Australia Post also reported incidents where postal vote declaration envelopes had split while being processed through the mail sorting machines. The privacy flap may have been to some degree responsible for this.

8.4.3 The 1996 JSCEM accepted that the postal vote declaration envelope needed urgent attention, and recommended that the Electoral Act and the Referendum Act be amended to allow double enveloping, by deleting the

requirement from these Acts for the declaration certificate and the return address of the Divisional Returning Officer to be printed on the envelope into which the ballot papers are placed. This change to allow double enveloping was effected by the *Electoral and Referendum Amendment Act 1998*, and was in force for the 1998 federal election.

8.4.4 The AEC believes that, generally speaking, the double enveloping system for postal voting is an advance on the previous single envelope with a privacy flap, because the privacy of the voter is now properly protected, and because double enveloping is not susceptible to the same splitting problems during mail sorting. However, it is clear that many voters are not yet familiar with the double enveloping system for federal elections and it may take some time for the system to settle in.

8.4.5 Attachment 18 shows that of the total postal votes issued, 5.22% of Senate postal ballot papers and 2% of House of Representatives postal ballot papers were returned to the AEC outside the declaration envelope but within the exterior Business Reply Paid envelope addressed to the relevant Divisional Returning Officer. These postal ballot papers were classified as informal and were not entered into the count.

8.4.6 On receipt of this material at the 1998 federal election, the AEC confirmed with the Attorney-General's Department that all ballot papers returned outside the declaration envelopes could not be entered into the count, despite the voter eligibility being confirmed on the accompanying declaration envelope. The AEC will be reassessing the artwork for postal vote certificates in order to make the instructions to electors for double enveloping more prominent.

8.4.7 It might be noted from Attachment 18 that more Senate ballot papers were returned outside the declaration envelope (5.22%) than House of Representatives ballot papers (2%), and that the more populous the State, and the more Senate candidates standing for election, the larger the number of Senate ballot papers so returned. That is, it would appear that this sort of voter error is positively correlated with the size of the Senate ballot paper. Voters probably experienced more difficulty in folding and inserting the larger Senate ballot papers into the declaration envelopes.

8.4.8 The increasing size of the Senate ballot paper is of concern to the AEC and is addressed in Part 7.3, but in this context, it might be considered whether the declaration envelope should be increased in size. However, this would have a significant impact on the cost of elections by increasing envelope production costs and postage costs for declaration voting.

8.4.9 Alternatively, the JSCEM might consider whether a clear voter error, such as returning ballot papers outside the declaration envelope but still within the Business Reply Paid envelope, could be overcome by allowing the AEC the discretion to enter such votes into the count if the accompanying declaration envelope passes the preliminary scrutiny. This might suffice as a holding operation to save the franchise for those voters who have made a

mistake in enveloping their ballot papers, until the electorate becomes more familiar with double enveloping at federal elections.

> **Recommendation 15: that section 194 and Schedule 3 of the Electoral Act and related provisions in the Referendum Act be amended to allow for those postal ballot papers that are delivered or returned to the AEC outside the postal vote certificate envelope, but within an outer envelope addressed to the relevant DRO, to be admitted to further scrutiny if the accompanying postal vote certificate envelope passes through the preliminary scrutiny**.

8.5 Postal Ballot Papers

8.5.1 Under the provisions of the Electoral Act and the Referendum Act, ballot papers used for one type of declaration voting, namely postal voting, are required to be separately identified and overprinted with the words “postal ballot paper”. The AEC is therefore required to estimate in advance the demand for postal voting, and to produce two separate quantities of ballot papers: postal, and ordinary for all other purposes. If the AEC estimate is not accurate, and this is becoming increasingly difficult, the result may be either an over or under supply of postal ballot papers issued to Divisions and to polling booths.

8.5.2 The original reason for distinguishing ballot papers in this way (and absent ballot papers were also distinguished in earlier times) was to ensure proper reconciliation of all ballot materials. However, strict procedures are in force for the issue of postal vote materials and for the accounting of all postal ballot papers during production, issue and receipt, so that the actual identification of such ballot papers is now unnecessary.

8.5.3 The AEC has concluded that administrative and cost efficiencies could be gained by the production of only one type of ballot paper for all types of votes. This would allow a greater degree of accuracy in forecasting ballot paper requirements and would facilitate the more timely production and supply of ballot papers.

> **Recommendation 16: that section 209(5) of the Electoral Act and section 25(4) of the Referendum Act be deleted so as to allow the same ballot paper to be used for all forms of voting.**

8.6 Postal Vote Applications

8.6.1 The AEC has expressed its concerns to the last two JSCEM inquiries about the increasing practice by the major political parties, since the 1993 federal election, of widely distributing postal vote applications across Divisions, in the absence of any requests for such a service by the electors themselves (see history at Attachment 19). These concerns are summarised as follows.

8.6.2 In the first place, it would appear that many electors who would ordinarily present at a polling booth on polling day are increasingly availing themselves of the postal voting facility. The AEC is not convinced that many of these postal vote applicants are strictly qualified to apply for a postal vote under section 183 and Schedule 2 of the Electoral Act. That is, instead of being a fall-back facility for those electors who might experience difficulty in attending a polling booth on polling day, postal voting may be evolving into the method of voting of first choice because of its undoubted convenience. This is not in accordance with the original intentions of the Electoral Act, which recognises ordinary voting at the polling booth on polling day as the standard method of voting at federal elections.

8.6.3 In the second place, the blanketing of Divisions with postal vote applications by those major political parties with the resources to do so, means that many electors are delivered with two or more postal vote applications. For some electors, this might suggest that they can avail themselves of more than one vote, and as a consequence more than one postal vote application from the same elector eventually arrives at the AEC for processing. This results in a significant increase in administrative workload for Divisional staff to ensure that they issue only one set of ballot papers and a declaration envelope to each postal vote applicant.

8.6.4 In the third place, electors may be mislead into believing that their postal vote applications are sent directly to the AEC for processing, because it is not generally made clear on the return envelope that the address is actually for a political party office and not the AEC. Any elector who completes a postal vote application provided by a political party, and returns it to the party office address provided, is providing that political party with access to their personal details, and possibly, an indication of political support. The AEC believes that many postal vote applicants may be doing this unknowingly. This is despite the fact that attached to the applications, or enclosed with them, is political party campaign material directed at encouraging the elector to eventually vote for that particular party. Many electors in these circumstances may simply assume that, despite the attached/enclosed political campaign information, the address on the return envelope belongs to the AEC.

8.6.5 The AEC is not privy to the use made of the personal information on postal vote applications processed by the political parties, but it is a fair assumption that the political parties record the personal details of, and probable political support from, those individual electors. Further, it is a fair assumption that this personal information is then added to the enrolment

databases and used to refine political campaign strategies, such as direct mailing. It would appear that this practice is increasingly becoming an integral part of the campaign machinery of the major political parties, that have the financial resources to organise the mass distribution of postal vote applications, particularly in marginal Divisions.

8.6.6 In the fourth place, in the time period allowed for the receipt of postal vote applications by the AEC, political parties tend to send bundles of applications through to AEC offices (not always the Divisional offices) in unpredictable pulses, so that rather receiving a steady stream of applications that can be properly managed, Divisional Offices may receive many hundreds of postal vote applications on one day and none for the next week. The processing inefficiencies that result, and the strains placed on the management of the issuance of ballot papers and declaration envelopes should be obvious.

8.6.7 In the fifth place, despite the reassurances regularly received from political parties engaged in this practice, there is a real risk that political parties holding large numbers of postal vote applications may lose or misplace some or all of these, or send them to the AEC after the deadline for receipt of postal vote applications, and thus disenfranchise some voters. Political parties may also deliver them so close to the deadline that the AEC is unable to process them in time, and provide ballot materials to applicants. If a group of electors is disenfranchised because a political party has lost, or delayed sending to the AEC, their postal vote applications, then an election result could be subject to challenge in the Court of Disputed Returns.

8.6.8 In the sixth place and finally, a significant increase in postal votes cast at an election, particularly in marginal Divisions, will have the inevitable consequence of slowing down the processing of declaration votes and the final declaration of the result in a Division. Unlike ordinary votes, declaration votes are not counted on polling night, and where the result is close, it may be a number of weeks before a conclusion is reached. Those who are frustrated by the slowness of the count in marginal Divisions might conclude that in many cases this is not attributable to any inefficiencies in AEC procedures, but rather to the actions of the major political parties in widely promoting the postal voting facility.

8.6.9 The AEC reiterates these general concerns about postal vote applications distributed by political parties, in relation to the particular problems experienced at the 1998 federal election. The *Electoral and Referendum Amendment Act 1998* inserted into the Electoral Act the following provision, which was in operation for the 1998 federal election:

> 184AA Application form for postal votes
>
> (1) An application form for a postal vote may be physically attached to, or form part of, other written material issued by any person or organisation.
>
> (2) For the purposes of the Copyright Act 1968, if a person other than the owner of the copyright in the application form for a postal vote reproduces the

application form, the person is not taken to have infringed the copyright in the application form.

8.6.10 This provision represents a recognition and acceptance by the Parliament that postal vote applications will be distributed by persons and organisations other than the AEC, which nevertheless holds the overall statutory responsibility for the proper conduct of postal voting. As an extension of this, it also represents a watering down of the Commonwealth's primary claim to copyright in the postal vote application form.

8.6.11 With respect to the 1998 federal election, it is not possible to separate out the impact of holding the election on a long weekend and school holidays in many States/Territories (with the expected increase in postal voting), and the impact of the blanket distribution of postal vote applications across Divisions by both major political parties (with the expected increase in postal voting), on the significant overall increase in postal voting at the 1998 federal election.

8.6.12 However, the statistics are extraordinary. There were 606,991 postal vote applications processed for the 1998 federal election, compared to 414,163 postal vote applications processed for the 1996 federal election, which represents an increase of 47% over the 1996 federal election. Further, since the 1993 federal election there has been a 68% increase in postal vote applications processed (see Attachment 20). On the basis of these statistics, it is worth questioning whether all those who utilised the postal vote applications provided by the political parties were in fact entitled to cast a postal vote.

8.6.13 The postal vote application is an "approved" form under section 184(1) of the Electoral Act, and this is defined in section 4(1) of the Act as "approved by the Electoral Commission by notice published in the Gazette." The approved postal vote application form as produced by the AEC has attached to it a considerable amount of relevant information, including the qualifications for applying for a postal vote. It is difficult for a potential applicant to avoid reading the attached information and this ensures that applicants are actually qualified to apply. (Attachment 21).

8.6.14 When the political parties reproduce the approved postal vote application form they are not required to have attached to it the relevant qualifications to guide the potential applicant, as these are not part of the AEC approved form. Instead the approved postal vote application form reproduced by a political party may only have attached to it political party campaign material encouraging the elector to support that party. This means that many electors who receive postal vote applications from the political parties may not appreciate that qualifications for postal voting do exist, and may simply assume that they are entitled to cast such a vote because they have been delivered with an unsolicited application form.

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.

8.6.17 Not only did the number of postal vote applications processed at the 1998 federal election increase by 47% over the previous election, indicating a significant trend away from ordinary voting on polling day and towards declaration voting before polling day, but the blanketing of Divisions with postal vote applications from both major political parties resulted in considerable confusion in the electorate, with multiple postal vote applications from the same electors being received at Divisional Offices. These multiple postal vote applications were obviously processed through each of the major political parties, unbeknownst to each other, and each political party forwarded their ‘own’ postal vote applications from the same elector through to the AEC.

8.6.18 On receipt of more than one postal vote application from the same elector, the Electoral Act does not explicitly allow Divisional staff to decide not to issue more than one set of voting materials to the same person. Any voter who sent in more than one postal vote application may have assumed on receipt of more than one set of voting materials from the AEC that they were somehow entitled to cast more than one vote. If multiple votes are returned to the AEC, the legislation dictates that those votes must enter the count, if they pass through the preliminary scrutiny. If there are sufficient numbers of multiple votes to exceed the winning margin in an election, then the AEC would consider a petition to the Court of Disputed Returns.

8.6.19 However, the AEC recognised this problem developing early in the postal voting period (from 31 August to 1 October), and took administrative steps to address the problem. On 9 September 1998, all staff were issued with an instruction to contact by telephone or in person any multiple postal vote applicant, and advise them of the law relating to multiple voting. The multiple applicant was then to be asked whether they wished to proceed with the multiple applications, or plump for one of them, so that they would then be issued with only a single set of voting materials. In those cases where the elector could not be contacted or did not understand or appreciate the approach from Divisional staff, multiple sets of voting materials were issued, accompanied by a letter warning about the penalties for multiple voting.

8.6.20 The AEC believes that this rapid response with an administrative solution to the problem of possible widespread multiple voting stimulated by the mass distribution of postal vote applications by the major political parties may have saved a number of marginal Divisions from a challenge in the Court of Disputed Returns. However, an amendment to the Electoral Act might now be considered to permit this administrative response at the 1998 federal election to be reflected in the legislation for future elections.

Recommendation 17: that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to require the Divisional Returning Officer to consult with multiple postal vote applicants, in order to avoid the issuance of multiple sets of postal voting materials.

8.6.21 A further amendment to the Electoral Act, to prevent the entry of any declaration vote into the count after the preliminary scrutiny, might also be considered. The 1997 election of delegates to the Constitutional Convention, which was conducted entirely by postal voting, provides a legislative model for disallowing at the preliminary scrutiny any further declaration certificate envelopes from the same voter, once the first received declaration certificate envelope has been processed.

8.6.22 Section 97(10) of the *Constitutional Convention (Election) Act 1997* provides as follows: "if two or more certificate envelopes have been received in the name of one elector, the DRO must decide which one (if any) of the envelopes should be accepted for further scrutiny. The DRO must exclude all those not accepted for further scrutiny." In effect, the first received declaration vote envelope from a voter will contain the only votes that will be entered into the count from that voter. For federal elections, this should apply not only to postal votes, but to other declaration votes, such as pre-polls, absents and provisionals.

Recommendation 18: that the relevant declaration voting provisions of the Electoral Act and the Referendum Act be amended to reflect the purpose of section 97(10) of the *Constitutional Convention (Election) Act 1997* in relation to the disallowance at the preliminary scrutiny of all but one of any multiple declaration certificate envelopes from the same voter.

8.6.23 By adopting this provision from the Constitutional Convention Act into the Electoral Act, and allowing the rejection of all but one of multiple declaration certificate envelopes at the preliminary scrutiny, the further effect might be that political parties will be encouraged to return 'their' postal vote applications as soon as possible to the AEC, to ensure that the voters concerned are issued with and return an 'early' vote to the AEC.

8.6.24 The detour of postal vote applications through political party offices is effected by the reply paid envelope provided to the applicant by the political party in the same package as the approved postal vote application form and any attached/enclosed party campaign material. The AEC sighted

many examples of reply paid envelopes on which the return address was not distinguished as a political party office, and which appeared to suggest an 'official' destination, namely the AEC.

8.6.25 For example, otherwise unidentifiable reply paid envelopes provided for the return of postal vote applications were addressed as: "Reply Paid No 66, Postal Vote Applications, PO Box 66, Deakin West ACT 2600", or: "Reply Paid Post 490, Postal Vote Officer, Electorate of Eden-Monaro, PO Box 490, Queanbeyan 2620". To the uninitiated, such addresses might suggest at first glance that the postal vote applications were travelling directly back to a postal voting centre at the AEC, rather than to a political party office. In order to avoid any allegation of deliberate deception arising, it might be prudent for the return address on such envelopes to clearly state that the destination is to be a political party office.

8.6.26 It is noted that for the pending NSW State election, the postal vote application form reproduced for distribution by the political party at Attachment 22, has the return address clearly identified as "Liberal Party NSW Division", rather than the ambiguous "Postal Vote Applications" or "Postal Vote Officer" used for the 1998 federal election in the examples provided above.

Recommendation 19: That the Electoral Act and the Referendum Act be amended to provide that reply paid envelopes provided to postal vote applicants by political parties be identified by the political party name printed on the face of the envelope as part of the return address.

8.6.27 Because the political parties ensured that their postal vote application forms were distinguishable from the official AEC postal vote application forms, it is possible to comment on the rate of return of postal vote applications from the political parties to the AEC, and the impact on AEC operations. The marginal seat of Eden-Monaro is often regarded as a litmus seat, and is used for the purposes of this analysis and comment.

8.6.28 The total number of official AEC postal vote application forms received by the Eden-Monaro Divisional Office was 1,567, and they were received at a steady rate over the period 31 August to 1 October. By contrast, the total number of political party application forms received by the Divisional Office was 3,872, and these were received in distinct surges over the same period. For example, from 31 August until 10 September, no political party application forms were delivered to the Divisional Office, but on a single day, 11 September, 1,380 political party application forms were delivered. No further political party application forms were delivered until 16 September, when 1,159 were delivered. Thenceforth the rate of delivery was relatively stable, averaging around 120 per working day.

8.6.29 The AEC has evidence that 130 electors were disenfranchised because their political party postal vote applications were received too late by the AEC to allow the issue of voting materials. Further, at least 44 electors

have advised the AEC, through non-voter notices and direct complaints, that they filled out political party postal vote applications, but did not receive voting materials from the AEC, suggesting that those applications may not have been forwarded on to the AEC by the political parties.

8.6.30 Finally, there were numerous instances where it was necessary for Divisional officers to either liase directly with staff at political party offices to ensure the prompt delivery of the postal vote applications, or alternatively for a Divisional officer to collect the applications from the political party office. There is a danger that this direct association between Divisional staff and political party office staff could be interpreted by some as compromising the neutrality of the AEC.

8.6.31 In summary, the AEC recognises that it is unlikely that the major political parties would agree to a reversion to the pre-1993 situation where postal voting was entirely managed by the AEC. However, the JSCEM is asked to recognise the fundamental changes to voter behaviour that may be occurring in response to the mass distribution of unsolicited postal vote applications; the significant risks of disenfranchisement that are developing; and the detrimental impacts on the efficiency of AEC operations, and to consider whether this is the direction in which the federal electoral system should be evolving.

8.7 Spoilt Postal Ballot Papers

8.7.1 Section 238 of the Electoral Act provides for the issue of replacement ordinary ballot papers and replacement ballot papers “placed in an envelope”. Replacement may only be made by the officer issuing the ballot paper and upon that officer being satisfied that the ballot paper was spoilt and being handed back to the officer. This provision appears to be designed for ballot papers issued at a polling place or a pre-poll voting centre. It does not cater for postal voting, although it has been interpreted for use in that situation. There should be an explicit provision for the re-issue of postal ballot materials to replace spoilt, lost and non-delivered postal ballot papers, on written application from the elector.

Recommendation 20: that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to allow for the replacement issue of postal ballot materials to replace spoilt, lost or non-delivered postal ballot papers, on written application from the elector.

8.8 Antarctic Voting

8.8.1 There is the need for a minor amendment to the Electoral Act and the Referendum Act in relation to voting in the Antarctic. At present, Antarctic electors put their ballot papers into a ballot box, and following the close of the poll, the ballot box is opened by an Assistant Returning Officer, who then electronically transmits the information to the Australian Electoral Officer designated by the Electoral Commissioner. The AEO then transcribes

the particulars onto postal ballot papers, completes the accompanying declaration envelopes, and despatches the materials to the appropriate Divisional Returning Officer for processing.

8.8.2 In accordance with the existing provisions of the Electoral Act and the Referendum Act, Antarctic votes are processed as postal votes. It would be more appropriate for them to be processed as pre-poll votes because Antarctic electors cast their votes, by attendance, at an Antarctic station, which is a polling booth for the purposes of the election. Antarctic electors do not make a postal vote application.

Recommendation 21: that the relevant provisions of the Electoral Act and the Referendum Act be amended as necessary to allow for those votes cast by Antarctic electors to be processed as pre-poll votes rather than as postal votes.

8.9 Overseas Postal Voting

8.9.1 Section 193 of the Electoral Act, which provides for the authorised witnessing of postal vote declarations outside Australia, was amended by the *Electoral and Referendum Amendment Act 1998*, to replace the term "Queen's dominions" with "Commonwealth country" in reference to the specified persons who can act as authorised witnesses. At the time of the election, available stocks of AEC postal vote applications still referred to the "Queen's dominions" for authorised witnessing, and voters who inquired about the new class of authorised witnesses for postal voting were provided with the correct information as at Attachment 23.

8.9.2 Ballot papers were despatched overseas between 2 and 15 September 1998 to enable pre-poll and postal voting to begin at some 99 overseas voting posts. Some 179,000 House of Representatives and 93,000 Senate ballot papers were distributed to overseas voting posts. A complete list of overseas posts and the number of votes cast at each post is provided at Attachment 24.

8.9.3 The timing of the election also resulted in a record number of votes, 65,086, cast at overseas voting posts. This represents an increase of 18,779 or 41% more than the total number of votes cast at the 1996 federal election. London continued as the largest overseas post where 20,690 declaration votes were cast, an increase of 6,764 or 49% more than the number of votes cast at the 1996 federal election. Similarly, Hong Kong was the second largest overseas post, where 10,680 declaration votes were cast, an increase of 3,019 or 39% more than the 1996 federal election.

8.9.4 As for the 1996 federal election, the AEC sent an officer to London and Hong Kong to assist consular staff from the Department of Foreign Affairs and Trade with pre-poll and postal voting.

8.10 Provisional Voting

8.10.1 The purpose of provisional voting is to ensure that those electors whose names may have been removed from the roll in error by the AEC, are not disenfranchised when they present to vote at the polling booth and their names are not on the Certified List of Voters. The declaration provided by provisional voters is checked against the Commonwealth Electoral Roll before such votes are entered into the count, and in some circumstances, the enrolments of such voters is reinstated (see Part 9.12).

8.10.2 The provisional voting statistics for the 1998 federal election are presented at Attachment 25, and are compared with the same statistics for the 1996 federal election (with marginal Divisions at both elections identified). Of the 11,587,353 formal votes counted at the 1998 federal election, 116,158 were provisional votes, representing 1% of the total.

8.10.3 There were 182,573 provisional votes issued and received by the AEC, and 116,158 provisional votes counted by the AEC. Of the total provisional votes issued and received, 66,415, or 36.38%, were not counted because of failure to pass through the preliminary scrutiny, where voter eligibility is checked. The statistics demonstrate that there does not appear to be any unusual activity occurring in relation to provisional voting.

9 ELECTION RESULTS

9.1 Introduction

9.1.1 The delivery of federal election results is of necessity a complex and time-consuming process, although recent legislative changes have improved the time frames within which results can be delivered, in the absence of countervailing external factors beyond the control of the AEC. There are also a number of important checks and balances built into the electoral system that require specified time periods and procedures in order to deliver an accurate and legally sustainable outcome.

9.1.2 However, the AEC is often the target of public criticism in the period following polling day for failing to deliver an earlier result in closely contested Divisions, despite the fact that proper procedures must be followed in the time frames set by the legislation. These procedures are described below in general terms as background to the later description of particular aspects of the delivery of results at the 1998 federal election.

9.2 Scrutineers

9.2.1 One of the most important guarantees of transparency and accountability in the delivery of election results is the oversight of all AEC procedures by scrutineers appointed by candidates. Scrutineers are entitled to observe every step of the various scrutinies and counts, and to object if they believe that procedures are in error. Decisions on such objections are taken by senior AEC officials and in the majority of cases are resolved to the satisfaction of scrutineers. Where a scrutineer is dissatisfied, and believes that the result of the election was affected by an adverse decision, then a candidate is entitled to petition the Court of Disputed Returns after the return of the writ for the election.

9.2.2 The practices of scrutineers in obtaining the information they require to inform their candidates on the progress of the count may vary widely, and it is not for the AEC to advise scrutineers on how they should conduct themselves, as long as they do not interfere with or obstruct AEC officials in the performance of their duties. The majority of scrutineers that AEC officials have contact with are highly skilled and experienced individuals, who have a clear idea of what they should observe during the various scrutinies and counts and how they should collect the information they require.

9.3 House of Representatives Results

9.3.1 On election night, and immediately after the close of polling at 6 pm, AEC officials do a formality check on the preference markings on all House of Representatives ballot papers. For those ballot papers that have passed the formality check, they are then sorted to first preferences, and the results conveyed to the Divisional Office, where the first preference counts for all polling booths are collated at the Divisional level. In very ‘safe’ Divisions, where one House of Representatives candidate receives considerably more

first preference votes than any other candidate, this first preference count, delivered from the polling booths, provides an early and unequivocal result.

9.3.2 However, in many Divisions the first preference count does not provide an immediate result, and rather than wait for a full distribution of preferences after election night, the legislation provides for a "provisional" scrutiny, generally known as the 'two-candidate preferred' or 'TCP' count. Before polling day, the AEC provides all Divisional Returning Officers (DROs) with the names of the two leading candidates for each Division who, on the basis of historical voting trends, are most likely to be the real contenders to win the election in each Division. The DRO provides this information to the Officer-in-Charge of each polling booth in sealed envelopes to be opened after the 6 pm close of polling, as the basis for the TCP count. Second and later preferences on all House of Representatives ballot papers are then sorted to these two 'preferred' candidates, thereby providing an early indication of the winning candidate.

9.3.3 On the next day, Divisional offices are generally occupied in sorting the returns of election materials and arranging for declaration vote exchanges between Divisions, but in marginal Divisions, or 'close seats', where there will be pressure for an early outcome, the AEC provides additional staff and material resources to enable the fresh scrutiny of House of Representatives ballot papers from the polling booths to commence immediately, concurrently with the immediate commencement of the preliminary scrutiny of declaration votes.

9.3.4 The fresh scrutiny of ordinary votes cast at polling booths is designed to ensure that decisions on the formality of ballot papers and the count of first preference votes made by AEC officials at the polling booths on election night were the correct decisions. It is at this stage, for example, that decisions on the formality of ballot papers may be overturned and new results for first preference votes for that Division advised. These new results are the proper legal substitutes for the first result that emerged from the polling booths on election night.

9.3.5 In the meantime, the preliminary scrutiny of declaration votes commences after polling day, and where a close result is expected, this may be as soon as the day after polling day. The preliminary scrutiny is designed to ensure that the eligibility of each declaration voter is confirmed by comparison of the personal voter details on the declaration certificate with the Commonwealth Electoral Roll, before the ballot papers are entered into the count. The preliminary scrutiny procedures apply to all declaration votes: absent votes, pre-poll votes, postal votes, and provisional votes.

9.3.6 The Electoral Act allows 13 days for the receipt of postal votes after polling day, to allow for mail to arrive from remote areas of Australia, and overseas, and the preliminary scrutiny process will continue until the last admissible declaration vote is received. This means that in a close contest, where a result has not been delivered by the first preference count on polling night, the TCP count on polling night, or the fresh scrutiny result afterwards,

the final result for a Division may be dependent on the rate of receipt of the outstanding postal votes, up to a fortnight after polling day. Where a large number of postal votes have been cast for a Division, then the result will be delayed commensurately (see Part 8.6).

9.3.7 When the last postal vote has been received, and all declaration envelopes for the Division have been passed through the preliminary scrutiny, then the ballot papers are entered into the further scrutiny and the final count is concluded. A full distribution of preferences is undertaken as a final check, and the declaration of the poll takes place. However, in those Divisions where the final result is clearly apparent from the TCP count on election night, and the uncounted declaration votes could not alter that result, then as the result of amendments to the Electoral Act in 1998, the declaration of the poll can take place much earlier, on the basis of the TCP count. The full distribution of preferences in these Divisions will then occur later after the receipt of all postal votes.

9.3.8 At any time before the declaration of the poll, any candidate may request a recount of all ballot papers. However, a recount will only be directed by the Electoral Commissioner (or the relevant Australian Electoral Officer) where proper reasons are provided and where there are specific grounds for supposing that a recount could change the result of the election.

9.4 Two Candidate Preferred Count

9.4.1 The TCP count was conducted successfully at the 1998 federal election, providing candidates with an early indication of the likely winner in most Divisions. However, in a few Divisions it became apparent that the selection by the AEC of the two preferred candidates, on the basis of historical trends, was incorrect. To avoid misleading observers on possible outcomes, the AEC invoked a program known as ‘Maverick’ in the Election Night System, which suppressed any further publication of TCP data for those affected Divisions. This occurred for three Divisions at the 1998 federal election: Bendigo, Lowe and Moore. After election night, the AEC also invoked Maverick for another seven Divisions: Hunter, Calare, Wide Bay, Mayo, Curtin, Kalgoorlie and Moore. In these cases, the publication of results was suspended until a full distribution of preferences had taken place, and a clear winner found.

9.4.2 Despite these few exceptions, the TCP count provided a valuable early indicator of the result in the majority of Divisions. With the declaration of the poll on the basis of the TCP count now permitted under the legislation, successful candidates can now claim an early victory and move on to their elected responsibilities immediately. For example, the Divisions of Gellibrand and Lalor in Victoria were declared as early as six days after polling day, on 9 October 1998, and many other Divisions were declared by 27 October 1998. The supplementary election for Newcastle was declared on 1 December 1998 on the basis of the TCP count.

9.5 Close Seats Management

9.5.1 In some marginal Divisions it may be very difficult to select the correct two candidates for the TCP count without first proceeding to a partial or full distribution of preferences. This situation occurs most often in three-cornered contests (where there are three candidates who could win, rather than the usual two), or where the order of exclusion of candidates unlikely to win cannot be determined with any certainty. In these circumstances, marginal Divisions are described as “close seats” (Attachment 26) and special arrangements are put in place by the AEC to manage the count and to provide progressive results.

9.5.2 In these close seats, the fresh scrutiny was commenced on the Sunday morning after polling day, instead of waiting for the Monday start that operated in other less critical Divisions. Priority was given to the processing and delivery of declaration votes for all close seats received at the Overseas Postal Voting Centre. The preliminary scrutiny, further scrutiny, and fresh scrutiny of declaration votes was conducted concurrently with the fresh scrutiny of ordinary votes, and additional staffing and material resources were made available for this concentrated effort to occur.

9.5.3 It became evident during the post polling day period, as the result of criticisms aired in the media about the slowness of the count in some close seats, that not all interested parties were fully aware of the legislative requirement for a fresh scrutiny of all ordinary ballot papers counted at the polling booths on election night. For example, in the Division of Dickson, many ballot papers with the last square blank were incorrectly assessed at the polling booths on election night as informal, and did not enter the count. At the fresh scrutiny following election night, these ballot papers were correctly reclassified as formal under section 268(1)(c) of the Electoral Act and entered into the count, thus changing the progressive results.

9.5.4 Further, many of those critical of the apparent slowness of results in critical Divisions, did not seem to be aware of the 13 day period for the receipt of postal votes, and the necessary effect this has in close seats on the speed at which a final result can be reached. In very close seats, a result may not be known for a fortnight after polling day, when the last postal vote has been received and processed through the preliminary scrutiny.

9.5.5 A major impact on the speed of the count in many Divisions at the 1998 federal election was the unusually high number of postal votes cast, as described in Part 8.6 of this submission. This significant increase in postal voting at the election, stimulated by the mass distribution of postal vote applications by the major political parties and the timing of the election during school holidays and over a long weekend, meant that in many close seats the count could not be concluded until the full thirteen day period for the receipt of postal votes had passed.

9.5.6 The 13 day period for the receipt of postal votes ended on Friday 16 October 1998. The Electoral Commissioner has a discretionary power to extend this period if it is believed that a significant number of postal votes may be delayed in the post, particularly from overseas, but no such determination was made with respect to the 1998 federal election There were a number of outstanding votes from one overseas post, Lagos, but these could not have effected the result of any election. The parcel contained 15 pre-poll votes for twelve Divisions: Canberra (2), Greenway (1), Sydney (1), Bowman (2), Fadden (1), Makin (2), Wakefield (2), Higgins (1), Jagajaga (1), Curtin (1), Forrest (1) and one postal vote for the Division of Tangney.

9.6 Bass Recount

9.6.1 Section 279 of the Electoral Act provides the Electoral Commissioner or the Australian Electoral Officer with a discretionary power to direct a recount, and any request from a candidate for a recount is treated on the particular merits of the case provided. As a general principle, any request for a recount that did not plead a specific ground would probably be refused, and any request for a recount that did not show specific grounds for supposing that it could change the result of the election would probably be refused.

9.6.2 The AEC had already prepared in advance for a possible recount in the Division of Bass in Tasmania because of the history of this Division as a very close seat, and put special arrangements in place to ensure there would be no delays in reaching a result. In the event, the Australian Electoral Officer exercised his discretion, without a formal request from any candidate, to direct a recount in the Division of Bass.

9.6.3 By 8 October 1998, almost every vote held in the Bass Divisional office had been passed through the fresh scrutiny. The majority of interstate postal and pre-poll votes were received in Hobart on 9 October and delivered to the Divisional office by special courier later that afternoon. Following the preliminary scrutiny, these postals and pre-polls were counted on Saturday 10 October, and at that stage the winning margin was less than 60 votes.

9.6.4 The winning margin was further reduced to one vote, before the count of absent votes and some late declaration votes from Queensland and overseas took the margin back up to 16 votes on Monday 12 October. The recount of all ballot papers then took place on 13 October and the final result for the Division of Bass was declared at 1.30 pm on 21 October 1998.

9.7 Senate Results

9.7.1 On election night, Senate ballot papers are checked for formality, and the first preference (above the line) count is done after the TCP count for the House of Representatives. As the Senate is elected on a proportional representation system that requires the striking of a numerical quota based on the total number of votes cast, it is not possible to begin the Senate distribution of preferences until all votes, including postal votes, have been

received, although the formality check of ballot papers begins soon after polling day.

9.7.2 In the past, the Senate scrutiny could take up to two months in the larger States such as New South Wales. However, with the passage of amendments to the Electoral Act in 1998, the Senate scrutiny is now computerised, allowing the delivery of all Senate results for the 1998 federal election between 23 and 29 October, about three weeks after polling day, which is a significant improvement on the past (see also paragraph 2.1.9).

9.7.3 There is obviously no TCP count for Senate elections, and nor is there a fresh scrutiny as for the House of Representatives, although there is a recheck of all Senate ballot papers when they are received at the Senate Scrutiny Centre in each State/Territory. However, the same preliminary scrutiny of declaration votes must occur for the Senate as for the House of Representatives (ballot papers for both Houses are returned in the same declaration envelope), and there are similar provisions for recounts and the declaration of the poll.

9.7.4 The AEC recognises that whilst scrutineers can observe the first preference counts and the preliminary scrutiny of declaration votes for the Senate in exactly the same way as for the House of Representatives, the computerised Senate scrutiny process has changed the traditional physical access that scrutineers have had in the past to the striking of the quota and the allocation of preferences for the Senate: this now occurs 'inside' the computer, and for obvious reasons, it is not possible to provide scrutineers beforehand with copies of the programs used to run the system, although reports on the computerised scrutiny in progress are made available, and assistance in interpretation provided as requested.

9.7.5 However, in the year leading up to the legislative amendments that made the computerised Senate scrutiny possible, the AEC ensured that the major political parties and any other interested parties were fully briefed on the computer program and relevant procedures, with the provision of demonstration runs on dummy ballot papers. The first real test of the computer program was at the proportional representation Constitution Convention election in 1997, where it was considered an outstanding success in delivering early results. The Auditor-General was invited to investigate the computer program to be used for the Senate scrutiny, and before the 1998 federal election cleared the program for application at any federal election.

9.7.6 The computerised Senate scrutiny system inputs and verifies the information on each Senate ballot paper and determines formality, and a large number of PCs were temporarily installed in each State and Territory to accommodate this. When all the ballot paper information had been entered, the system then distributed preferences resulting in the election of the Senators for each State and Territory. There was a considerable saving in staff and time using this system.

9.7.7 The progress of the Senate count produced some complaints which were mainly based on a misunderstanding of the procedures necessary. Following polling day, a re-check of all Senate ballot papers was required under the Electoral Act and the AEC computerised Senate scrutiny system was used as part of this process. This meant that all Senate counting re-commenced from a 'nil balance' and no advance on the polling night figures was available for some time. This situation is similar to previous elections where even though a manual count was conducted, a recheck of ballot papers meant that the AEC started from a 'nil balance' after polling night.

9.7.8 Procedural modifications will be considered by the AEC to provide more effective access to meaningful Senate results in the weeks following polling day. It should be noted, however, that as a quota cannot be struck until at least the thirteenth day following polling day, when all postal votes are in, figures released before then may not, on their own, necessarily provide meaningful information.

9.8 Election Night Result

9.8.1 Recommendation 67 of the June 1997 JSCEM Report was: "that if regionalisation does not proceed, the government provide special project funding as a matter of urgency to enable replacement of the information technology used in AEC divisional offices." As a consequence, the AEC developed a plan to replace both the telecommunications network and hardware equipment prior to the 1998 election. Coincidentally, at the same time, the Government released its initiative in connection with outsourcing of government Information Technology. The AEC mainframe, midrange and desktop computer systems together with telecommunication services were subsequently successfully outsourced to Computer Sciences Corporation (CSC) in June 1998.

9.8.2 CSC provided a new telecommunication network for the AEC, which was used in the conduct of the 1998 election. In addition all offices were re-equipped with new PCs and printers. Staff were trained in the use of the new equipment as it was progressively installed. The previous network and old equipment remained for contingency purposes. Prior to the election the new system underwent rigorous testing and the AEC was satisfied that it was far more reliable than the outdated and volatile network that was proving difficult to maintain and increasingly unable to cope with increased data traffic. The new system was used for the 1998 election period and proved very reliable and robust.

9.8.3 The new computerised election night system and the new telecommunications network established by CSC collected and transmitted progressive voting information to members of the media and others in the National Tally Room on election night. The system also provided data feeds to the major television networks and Australian Associated Press, as well as providing terminals for the Prime Minister and Leader of the Opposition.

9.8.4 The election night system did not experience any difficulties during the course of the night and provided sufficient quality and quantity of data to enable the ABC to predict by 8.00 pm EST that the Government had been returned to office. For the first time, the AEC provided election results using the Virtual Tally Room on the Internet, which was updated simultaneously with the National Tally Room in Canberra.

9.9 National Tally Room

9.9.1 For the 1998 federal election the National Tally Room (NTR) returned to its normal location at Exhibition Park in Canberra. There was greater representation from the media at the NTR than at any previous election. The construction phase of the NTR was a smooth process, aided considerably by the fact that AEC NTR and computing staff had briefed all the television networks and other major media organisations prior to the election being announced. The AEC provided greater access to its election night system to the media than has previously been the case, with many media organisations having either dedicated terminals or data feeds.

9.9.2 The AEC had in place various fail-safe measures to ensure that, in the event of computer or other problems, the results would still get through. Communication links were duplicated through different Telstra exchanges, there was a duplicate power supply to the NTR building, and there was a facsimile and telephone manual back-up system in the event of full or partial computer failure. The full computer and back-up systems were tested during the AEC rehearsal night on the Thursday prior to election night. Security at the NTR comprised both uniformed and non-uniformed security and police officers, with the Australian Federal Police conducting a bomb search on the afternoon of election day.

9.9.3 On election night the NTR operated smoothly and experienced very few problems. For example, some media organisations provided NTR media passes for political party members or politicians who were appearing on their programs. These people were denied access to the political party area as they did not have the appropriate passes.

9.9.4 On the night at the NTR, there were approximately 400 members of the radio and print media, 300 members of the television media, over 100 political party representatives, 130 AEC and other staff, and a group 30 overseas electoral officials. During the evening, 2500 members of the public also visited the NTR. The total cost of the NTR was approximately $450,000.

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.

9.11 Signature of Witness

9.11.1 Paragraph 8 of Schedule 3 of the Electoral Act provides that an envelope purporting to contain an absent, pre-poll or provisional vote does not necessarily fail to meet the requirement of paragraph 6 of Schedule 3, if it is not witnessed, provided that the voter's name appears on the record made under section 232(2) or 200G. However, paragraph 8 goes further to provide: "if neither of these requirements are met, [the vote may be admitted] if the DRO is satisfied that the Ballot Paper was properly issued".

9.11.2 To implement this provision it is necessary for the receiving (or home) Divisional office to forward a certificate (EF41) requesting that the issuing Division check the declaration vote counterfoil. This process is time consuming and unnecessarily complicated, and can lead to delays in the scrutiny.

9.11.3 Furthermore, there is no evidence of an issuing Division ever failing to ratify the issue from the checked counterfoils. This is primarily because declaration votes are accounted for from issue in the polling place, on return to the Divisional office, through the declaration vote exchange, and to the check-count at the home Division. Consequently, there is no opportunity for the input of bogus declaration votes. However, there are occasions when a

counterfoil cannot be checked. For example, it is virtually impossible for a check of counterfoils on pre-poll votes issued at an overseas post. According to paragraph 8 of Schedule 3, where a counterfoil cannot be checked, it is for the Divisional Returning Officer to be satisfied that the vote was correctly issued. This last point is important, because the major factor in determining whether the vote can be admitted, when not signed by a polling official, is whether the vote was correctly issued.

9.11.4 Further, it seems incongruous that all those declarations not signed by an official must be checked against counterfoils, yet those for which a counterfoil is not found, it is simply left to the DRO to decide. That decision is almost invariably based solely on whether the counterfoil has been otherwise completed correctly, and has been received through the correct channels. Therefore, it appears superfluous that the counterfoil check is made at all. It is recommended that paragraph 8 of Schedule 3 be amended accordingly.

Recommendation 23: that paragraph 8 of Schedule 3 of the Electoral Act and paragraph 8 of Schedule 4 of the Referendum Act be amended so that it is not necessary to check if the voter's name appears on the records made at the time of issue of a declaration vote to determine admissibility of the vote. Rather, it should be sufficient that the DRO is satisfied that the ballot-paper was properly issued.

9.12 Reinstatement of Provisional Voters

9.12.1 The process for the preliminary scrutiny of declaration votes is contained in Schedule 3 of the Electoral Act. The processes have been amended over time and have grown to be cumbersome and complex. The AEC has two main concerns with the procedures as they are currently drafted.

9.12.2 The first is the complex nature of determining the admissibility of provisional votes (that is, the votes of persons who were not on the Certified List of Voters at the time of voting), and the second is the requirement to reinstate to the roll the name of a provisional voter whose vote is admitted, regardless of whether the voter actually lives at the address stated, or within the subdivision claimed. In relation to the determination of the admissibility of provisional votes at the preliminary scrutiny, the AEC is considering providing a supplementary submission dealing with this issue.

9.12.3 In relation to the reinstatement of the enrolment of provisional voters, the AEC is concerned that where an elector has been removed by objection under sections 116 and 118 of the Electoral Act, and the elector then casts a provisional vote and claims to have moved to an address within the subdivision (effectively the Division) of previous enrolment, the DRO is required to reinstate that elector to that address and admit the vote. The notice of determination of the admissibility of the declaration vote must be sent to the elector, but in many cases it is either returned unclaimed or with a notation that the person is not living at that address. The DRO then has to

again take objection action under sections 116 and 118 to remove the elector from the roll for that address. And so the cycle continues.

9.12.4 Clearly, many of these reinstated electors are not living at the address they claim as their enrolled address, and may not have lived there for some years. In effect, the AEC is obliged to incorrectly update the Roll, which loses a measure of integrity in the process.

9.12.5 The simplest solution is to not require reinstatement if admitting the provisional vote. Enrolment action should be taken, but reinstatement of the elector to the roll should be conditional on a roll review exercise that demonstrates that the elector is living at the address. That is, the simple move to break the nexus between admitting the vote and reinstatement of enrolment does not affect the franchise, but does improve the accuracy of the roll.

9.12.6 It might be noted that the outcome of the recommendation is essentially the same as the result of specific amendments made by the *Electoral and Referendum Amendment Act 1998,* which provided for the same provisional vote admissibility rules to apply to the Divisions of the Northern Territory and Kalgoorlie as for other Divisions in Australia (see Part 7.6).

Recommendation 24: that the nexus between the admission of provisional votes and reinstatement of the enrolment be broken by repealing sections 105(4) and (5) of the Electoral Act.

9.13 Declaration of the Poll

9.13.1 Section 284 of the Electoral Act should be amended to allow a declaration of the poll to take place other than in the Divisional Office where nominations were received. This would then be in line with the Senate and enable the DRO to cater for all candidates, party workers and the media who wish to attend. There were problems in a number of Divisions at the 1998 federal election with appropriate space to declare the poll, and in one Division it had to be held on the veranda of the office.

Recommendation 25: that section 284 of the Electoral Act be amended to allow the declaration of the poll to take place elsewhere than at the place of nomination.

10 FRAUDULENT ENROLMENT AND VOTING

10.1 Introduction

10.1.1 In July 1998, just prior to the 1998 federal election, the AEC published an Electoral Backgrounder on "Multiple Voting", which was widely distributed to candidates, political parties, interested organisations and individuals, as well as being posted on the AEC Internet site. The Backgrounder explained the checks and balances that exist in the electoral system to ensure that any instances of multiple voting are detected, investigated, and prosecuted as necessary.

10.1.2 For the 1998 federal election, the AEC detected no widespread and organised electoral fraud that could have affected the result in any Division, particularly any marginal Division. Before the election, there were some instances of enrolment fraud in north Queensland, which were detected by the AEC, investigated by the AFP, and prosecuted. From the 1998 election, there were some cases of individuals who appear to have voted more than twice, and therefore possibly with deliberation. These cases are currently under investigation, and will be prosecuted as appropriate.

10.1.3 There were many more cases of apparent dual voting at the election, but, as the Backgrounder explained in general terms, a substantial number of these are the result of scanning errors or official errors, and are resolved after investigation by matching with apparent non-voters. Many other dual voting cases are explained by genuine voter confusion, relating to the elderly and infirm, or those with literacy or language difficulties. In such cases, it is not in the public interest to prosecute.

10.1.4 A small number of prosecutions for multiple voting have occurred following the last four federal elections, and these have often involved individuals who have deliberately set out to defraud the system to show up its alleged weaknesses. The AEC is still in the process of investigating dual and multiple voting at the 1998 federal election, and in due course, a submission will be provided to the JSCEM, providing the same statistical analysis as was provided for the 1996 federal election, including details on prosecutions.

10.1.5 Since 1984, a parliamentary inquiry has been held into the conduct of every federal election. At each of these inquiries the possibility of fraudulent enrolment and voting has been investigated, and each time it has been concluded that no evidence was available to support allegations that widespread and organised electoral fraud had occurred to such an extent that the result of any of those elections was in doubt.

10.1.6 The June 1997 Report on the previous JSCEM inquiry into the 1996 federal election concluded that: "the inquiry did not reveal improper enrolment or voting sufficient to affect any result at the election." However, the majority Government members of the previous JSCEM also concluded that there was some "disquiet in sections of the community about the potential for

fraud", and that certain measures to tighten enrolment procedures should be implemented. As a consequence the Electoral and Referendum Amendment Bill (No. 2) 1998 (the Reform Bill), currently before Parliament, proposes amendments to the Electoral Act to effect these changes (see Part 2.3).

10.2 Division of Robertson

10.2.1 The AEC has expressed its concerns to previous JSCEMs about unsubstantiated allegations of fraudulent enrolment and voting gradually achieving the status of fact over time because they are left unchallenged or unquestioned, and are subsequently used as grounds for calling the entire electoral system into disrepute. The AEC makes every attempt to investigate such allegations and report its findings to the Parliament or the Courts as appropriate, but in many cases the conclusions are either ignored or misunderstood.

10.2.2 The 1993 Webster petition to the Court of Disputed Returns, for example, in which an unsuccessful Liberal Party candidate, Mr Alasdair Webster, challenged the election of Ms Maggie Deahm, on various grounds including fraudulent enrolment and voting, is still being cited in some quarters as providing evidence of electoral fraud. In fact, the Court dismissed the case, with costs against the petitioner, after the AEC tabled the results of a detailed three month investigation which demonstrated conclusively that there was no substance to the petitioner's allegations.

10.2.3 A current example of an unsubstantiated allegation of electoral fraud that appears to be in the process of achieving the status of fact is the allegation made by Mr Jim Lloyd, Member for Robertson, that five dead people appeared to have voted in his electorate at the 1998 federal election. During the second reading debate on the Electoral and Referendum Amendment Bill (No. 2) 1998 on 2 December 1998, Mr Lloyd said the following:

> Despite the fact that there are roll reviews, despite the fact that we have ensured, as best we can, that the integrity of the roll is correct, at the last federal election the AEC advised me that 149 people in my electorate voted twice – and in fact, two people were very keen and voted three times. You wanted evidence? There is evidence from the AEC….
>
> Investigations are currently being undertaken into that occurrence. They want evidence? They will get more evidence. Here is a letter from the Australian Electoral Commission. To ensure that there was integrity of the roll and that they were up to date, we asked the commission to investigate a list of 46 people who unfortunately died within the period of time from the writs being issued until election day. The AEC did check that list of 46 people – and five electors who died appeared to have voted at the 1998 federal election. That is the reason for our needing these reforms, and we need to go further. (*House of Representatives Hansard, p 934*)

10.2.4 On 4 December 1998, Mr Lloyd appeared on a local radio station on the Central Coast and said the following:

> ***Newsreader:*** Evidence of fraud during the recent federal election has prompted calls for wide-sweeping changes to the Electoral Act. Robertson MP, Jim Lloyd, says we must have confidence in our voting process.
> ***Reporter:*** Australia's democratic voting system has a strong international reputation. Local investigation after the October federal poll has confirmed it was not infallible.
> ***Jim Lloyd:*** The Electoral Commission has advised me that a hundred and thirty-nine people appear to have voted twice at the last federal election in Robertson; that ten appear to have voted three times.
> ***Reporter:*** The Electoral Commission also found that, on some occasions, their vote was recorded under the name of a dead person. Jim Lloyd says the system clearly needs to be improved and he's supporting calls for identification to be provided when people apply to vote.

10.2.5 About a month before making these statements in the Parliament and on radio, a Mr Lance Barrett from Mr Lloyd's electorate office in the Division of Robertson had contacted the Robertson Divisional Office on 4 November 1998 and asked for a list of all electors who voted and where they voted. He informed the AEC officer that he had a list of approximately 60 names of deceased electors which he said another person had told him had voted. Mr Barrett was advised that the *Privacy Act 1988* prevented the AEC providing him with the names of all electors and where they voted, but that the AEC would be very interested in investigating his list of deceased electors.

10.2.6 On 5 November, Mr Barrett supplied the Robertson Divisional Office with a list of 51 names, all allegedly deceased persons who had voted at the election. Mr Barrett also asked for the numbers of multiple voters, and was advised that there were 151 apparent multiple marks on the Certified Lists for the Division, which were in the process of being investigated to eliminate scanning errors, official errors, and those cases in which it is not in the public interest to prosecute (such as dual voting involving the elderly and infirm and those with language and literacy difficulties).

10.2.7 On 12 November, the acting Divisional Returning Officer (a/g DRO) for Robertson wrote to Mr Barrett with the following information:

> As a result of our investigations into the list of deceased electors it has been confirmed that 46 were non-voters, and the remaining 5 electors appear to have voted at the Federal Election held on Saturday, 3 October 1998.

10.2.8 On 13 November Mr Barrett contacted the a/g DRO and asked for the names of the 5 electors who had voted, but this was request was denied on privacy grounds. Mr Barrett indicated he would contact the NSW Register of Births Deaths and Marriages to determine whether any people on his list were in fact deceased as he suspected.

10.2.9 On 25 November Mr Barrett contacted the a/g DRO to ask about the outcome of the multiple voting investigations, and was informed that they were still not finalised. Mr Barrett informed the a/g DRO that Mr Lloyd was currently in Parliament debating the credibility of the electoral rolls, and asked

whether the a/g DRO had yet received any media inquiries, to which the reply was no.

10.2.10 On 2 and 4 December Mr Lloyd appeared on the local radio station providing information about the level of "multiple voting" in his electorate, using the statistics provided to him by the a/g DRO of the *multiple marks* on the certified lists (which are still under investigation). This same information appeared in the local newspaper in a small article published on 11 December. On 4 December Mr Lloyd raised his allegation in Parliament that 5 dead people appeared to have voted in his Division.

10.2.11 In fact, the NSW Registrar of Births Deaths and Marriages has not advised the AEC that the 5 electors in question, who did vote at the 1998 federal election, are deceased, as that office routinely does with any deceased electors. Further, as a result of recent roll review activities, the AEC was able to confirm the existence of all 5 electors. The AEC does not wish to name these individuals in a public submission as this would constitute an invasion of privacy, but if requested, can supply those names to the JSCEM on a confidential basis for the purposes of a private hearing.

10.2.12 Since the 1996 federal election, Mr Lloyd's office has regularly provided the Robertson Divisional Office with return-to-sender mail that he has received as the result of his constituency mail-outs, accompanied on a regular basis with lists of allegedly deceased electors. In no case has any evidence emerged of fraudulent enrolment or voting activity.

10.2.13 In the February 1999 issue of the "*Australian National Review*" a letter was published from Mr Bruce Kirkpatrick of Darling Point NSW, the current President of the H S Chapman Society. Mr Kirkpatrick was expressing his support for the proposed enrolment identification procedures currently before Parliament in the Electoral and Referendum Amendment Bill (No. 2) 1998, and provided the following as an example of the sort of electoral fraud that he indicated the Bill is designed to address:

> In November 1998, an investigation in a NSW electorate found 52 people on that roll had died before the October election but five had voted!

10.2.14 The AEC appreciates Mr Lloyd's ongoing interest in the integrity of the electoral system, and welcomes the opportunity to investigate any suspicions that he might have of electoral fraud in the Division of Robertson. However, the AEC is concerned that the 5 or more 'dead' voters from the Division of Robertson will take on a life of their own in future publications about electoral fraud, despite the facts of the matter.

10.2.15 In this context, the AEC endorses the analysis and conclusions of a former Electoral Commissioner, Dr Colin Hughes, in an article entitled "*The Illusive Phenomenon of Fraudulent Voting Practices*", published in the Australian Journal of Politics and History (Vol 44, No 3, pp 471-91) at Attachment 27.

10.3 Limited Vote Tracing

10.3.1 On polling day for the federal election, 3 October 1998, the following editorial appeared in the *Sydney Morning Herald* newspaper (in relevant part):

> Today, with people casting their votes for MPs to the Federal Parliament, the nation participates in a ritual that creates a civil and pleasant community. We have only to look at less fortunate nations where a change of government comes from the barrel of a rifle or from the dictatorship of one party to see the benefits that Australia enjoys from people taking for granted the integrity and validity of their secret vote. There is a necessary connection between a successful society and a society (such as Australia's) that allows for the decisive participation of its citizens to confirm a government for another term or to bring in the loyal opposition to take up its mandate.
>
> We are – unfortunately - not good at remembering our history. Few people, therefore, will have heard of Henry Samuel Chapman, a judge, Colonial Secretary, Attorney-General of Victoria and a radical who drafted the world's first effective secret ballot legislation. This ballot became known in Australia as the "Victorian ballot" and in the United States where Chapman's concepts gained widespread acceptance as the "Australian ballot".
>
> Chapman's ballot system was for a limited secret ballot that allowed votes to be traced, if they were contested. This system was superseded in Australia by the absolute secret ballot which was first put in place in South Australia in 1857. On the face of it, the South Australian reform seems to be an improvement. But is it? According to a pamphlet written for the H.S. Chapman Society by Charles Copeman: "This absolute secret ballot system fails to deter fraud, as votes cast are quite untraceable after the election. The limited system is traceable, with court-supervised scrutiny, and thereby the extent of fraudulent voting can be assessed."
>
> After every election, there are accusations by candidates from all sides of politics about vote-rigging, electoral rorts and mistakes. Although these accusations are generally investigated, nothing seems to stop similar accusations being made at succeeding elections. Nothing is more certain, for instance, than that there will be accusations and questions asked by disgruntled candidates concerning the proper conduct of the ballot in today's election…..
>
> H.S. Chapman's system for a limited secret ballot should, perhaps, be modernised and reinstated. It is used in Britain where voting rorts are harder to pull off, it seems, than in Australia.

10.3.2 The most authoritative recent commentary on the advantages and disadvantages of 'limited vote tracing', as proposed by the H S Chapman Society, is in Volume 1 of the Fourth Report of the United Kingdom Home Affairs Committee on Electoral Law and Administration, published on 10 September 1998.

10.3.3 In this report, the Committee recommended a number of electoral reforms for the United Kingdom that parallel systems and procedures

already in operation in Australia, such as a rolling register for enrolment; allowing electors to vote at any polling booth in a constituency; the introduction of pre-poll voting; no voter identification; and the establishment of a permanent and independent Electoral Commission. The Committee explained the procedures for limited vote tracing in the United Kingdom as follows:

> 103. One of the existing measures in place to discourage and address impersonation is the vote tracing mechanism. Because the mechanism to some extent breaches the principle of ballot secrecy, and because the problem it seeks to address is …. generally thought to be very minor, it has been argued by some that it should be discontinued.
>
> 104. The system is designed to enable a fraudulently cast ballot paper to be identified and discounted, if appropriate, to be replaced by a valid vote. To achieve this, the electoral registration number of the voter is noted on the counterfoil of the ballot paper. Since the ballot paper number is recorded on both the paper itself and the counterfoil, it becomes possible to trace the ballot paper submitted by a particular voter by locating the counterfoil on which the voter's registration number has been written, from which the number of the ballot paper issued to that person can be found and thus the ballot paper itself identified.
>
> The counterfoils and ballot papers are secured and stored after the close of the ballot and may by law only be opened, so as to enable the vote tracing to be operated, pursuant to an order from an electoral court pursuant to a complaint. A court may order this if it is satisfied that a vote has been fraudulently cast (whether because of a case of impersonation or, potentially, because of bribery), and if it thinks appropriate because the result of the election could be affected. The vote, once identified, can them be subtracted from the declared total. In certain circumstances it is also possible for the discounted vote to be replaced by a valid vote.
>
> If a registered voter has found, on attempting to cast a vote, that a vote has already been cast in their name, the presiding officer may give to him or her a fresh ballot paper of a different colour, which is stored separately (a 'tendered' vote). It is not counted in the main count, but if an election court so orders, it may be subsequently counted in place of a disallowed vote.

10.3.4 That is, limited vote tracing offers no improvement over the Australian electoral system in the detection and prevention of impersonation at the polling booth. What it does offer is a different *remedy* after the election. With limited vote tracing, assuming it has already been established that impersonation has occurred and the individuals concerned can be identified, impersonated votes can be traced and removed, the tendered vote substituted, and a new result declared by the Court. In the Australian electoral system, assuming it has already been established that impersonation has occurred and the individuals concerned can be identified, and there are sufficient fraudulent votes to have affected the election result, the Court of Disputed Returns has the option to void the election result, and a by-election follows.

10.3.5 However, in examining the history and operation of limited vote tracing the UK Committee concluded that, given that the procedure has not been fully invoked since 1911, and given concerns that civil liberties might be abused in the absence of a secret ballot, limited vote tracing should be abandoned:

> 105. A recent report on this issue by the Electoral Reform Society and Liberty indicated no case of the full vote tracing procedure being used since 1911 at a national election, though it has occasionally come into play at local elections because the majorities at such elections are very much smaller. This lack of use is not surprising; vote tracing is likely to arise only in a rare combination of circumstances, namely where the result of an election is extremely close, a case of impersonation (or bribery) can be proved, and one of the parties to an election is prepared to risk the expense of an election court to challenge the result.
>
> 106. The issue is consistently raised – often following a General Election – as to whether this system is an unreasonable breach of the fundamental principle that the ballot should be secret. It has been alleged, although without hard evidence, that the process has been abused by the security services in order to identify potential subversives. In written evidence to the Committee, the Minister has stated "In practice, there are stringent controls on the sealing and storage of ballot papers and counterfoils after the election and I am not aware of any proven cases of unauthorised search of the stored documents. I know of course of the claims that have been made of systematic abuse on the part of the security services, but no evidence has been produced to support these claims….".
>
> 107. Of course, this statement by the Minister does not rule out the possibility that the system has been abused. It might also be argued that, given how rarely the vote tracing mechanism appears to have been used, it is anyway unnecessary and could profitably be ended. Nevertheless, it is likely that it forms at least a small deterrent to would-be impersonators. The joint study of the issue by the Electoral Reform Society and by Liberty failed to produce an agreed view on the issue. Liberty argued that the system played little part in the prevention of impersonation, which should be addressed by other means, and that concerns about possible abuse of the system by state agencies outweighed the other considerations; they therefore concluded that the system should be abandoned. **We concur with Liberty's view**.

10.3.6 The Australian electoral system would not be enhanced or improved by limited vote tracing. It is noteworthy that an experienced international electoral expert, Mr Ron Gould, the Assistant Chief Electoral Officer of Elections Canada, had the following to say in 1996 on the subject of limited vote tracing:

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

It can be argued that, of course, in wonderfully democratic countries like Australia, New Zealand and the U.K., this kind of abuse of secrecy of the vote would be inconceivable. Unfortunately, situations do change and in certain circumstances, security requirements are used to justify all sorts of invasions of personal privacy (*extract from AEC submission No 91 of 23 October 1996)*.

11 FUNDING AND DISCLOSURE

11.1 Introduction

11.1.1 Since the 1996 federal election the disclosure provisions of the Electoral Act contained in Part XX, were amended by the *Electoral and Referendum Amendment Act 1998*, as detailed in Part 2.2 of this submission. The primary amendments were to abolish electoral expenditure returns by political parties and abolish disclosure of the details of expenditure in annual returns by political parties and associated entities.

11.2 Disclosure Returns

11.2.1 Election disclosure returns are currently being received and will be made available for public inspection on Monday 22 March 1999 (24 weeks after polling). The disclosure returns for the Newcastle supplementary election become available for public inspection on 10 May 1999.

11.3 Funding Entitlements

11.3.1 The calculations of public funding entitlements for the 1998 federal election and Newcastle supplementary election have been finalised and a total of $33,920,787.43 paid to party agents and independent candidates. These amounts are detailed at Attachment 28.

11.4 Funding and Disclosure Report

11.4.1 Section 17(2) of the Electoral Act requires the AEC to provide a report on the operation of Part XX of the Electoral Act, relating to funding and disclosure, at each federal election. The Funding and Disclosure Report for the 1998 federal election is expected to be furnished to the Special Minister of State for tabling in Parliament later this year, and will be made available to the JSCEM at that time.

11.5 Election Issues

11.5.1 In discussing the laws relating to election funding and disclosure on 5 February 1999, Wallace Brown, national affairs commentator for the *Courier Mail*, summarised the two major issues that caught the attention of political and electoral analysts at the 1998 federal election:

> In the case of public funding, it is obvious that some parties and people are making money out of the system. They received $1.62 for each first preference vote they got in the 1988 election and yet did not have to prove the money had been spent during the campaign. Thus the One Nation party spent about $1.3 million on its campaign but received $3 million in public funding. Yet the system, introduced by the Hawke government, was meant to provide re-funding for candidates, nothing more.
>
> In the case of private (for which mainly read corporate) donations, it is interesting that some corporate donors, wanting to ensure they back the

> winner, give money to both the main political parties, though the bulk of corporate money has gone to the Coalition.
>
> But at issue is when a donation is not a donation but is called a loan. Thus we have the strange case in which Ron Walker effectively and personally paid back $4.65 million in Liberal Party debt to the National Australia Bank in 1997, then assigned the debt the party owed him to a trust called the Greenfields Foundation, which is being paid back at $100,000 a year interest free.
>
> Is this really a loan, a transferred debt, or a gift in which the sources should be revealed? It may well be that everything is above board. But it is a pity the Australian Electoral Commission has declined to press for further details. It is in the public, political and democratic interest.

11.5.2 Prior to the 1996 election, election funding operated as a strict reimbursement of campaign expenses for those parties or independents who received at least 4% of the formal first preference vote. The AEC would examine original documentation evidencing campaign expenditure incurred and then pay the lesser amount of proven expenditure or the funding entitlement. The funding scheme was amended after the 1993 election to the present system of automatic entitlement.

11.5.3 It should be noted, however, that throughout the operation of the system of reimbursement it was a rare occurrence that payments totalled less than the full entitlements. The expected funding entitlement would be incorporated into the campaign budgets of those who expected to qualify. Indeed, the reimbursement scheme was not even a guarantee that profits could not be made on election funding. Contracts could be entered into which evidenced election related expenditure as having been incurred, but did not have to be paid on. Such contracts could be for services which would otherwise be provided on a volunteer basis. Even where contracts and expenses were paid in full there was nothing to prevent the recipient donating some or all of that money back to the party or candidate.

11.5.4 On the basis of previous experience, the AEC believes that a return to a funding system based on reimbursement of campaign expenses would realise little if any savings but would simply reimpose another layer of administration and cost. It would, in many cases, also delay the payment of funding entitlements compared to the present system.

11.5.5 In the case of the Greenfields Foundation, the AEC has already publicly stated its position, as follows:

> We have yet to make a determination as to whether or not it is an associated entity within the meaning of the definition given under the Act. We have yet to satisfy ourselves one way or the other. (*Finance and Public Administration Legislation Committee, 9 February 1999, Hansard p 204*)

11.5.6 At the time of the submission, the AEC has not finalised its enquiries into all the issues surrounding the Greenfields Foundation. The AEC appreciates the public interest shown in this matter and hopes to be in a

position to comment further as part of its Funding and Disclosure Report which will be tabled in Parliament later this year.

11.6 Review of the Register of Political Parties

11.6.1 The AEC seeks to ensure that only those political parties that continue to be eligible for federal registration are allowed to remain registered. A review is currently being undertaken of all parties registered before 1997 that do not have a current member sitting in any federal, State or Territory parliament. The AEC is also reviewing parties which lost their parliamentary members at the 1998 federal election and parties which were registered on the basis of having a State member of parliament where the parliamentary list records that person as belonging to a differently named party.

11.6.2 In the review the AEC requests parties to supply a current copy of their constitution and evidence of either 500 members entitled to vote at federal elections or a member of a federal, State or Territory parliament. The standard of documentation required and the verification undertaken by the AEC is the same as if the party were first applying to register. In instances where parties fail to provide the requested documents or the AEC is unable to verify a party's continued entitlement to registration, the AEC will initiate deregistration action.

11.7 Democratic Party Structures

11.7.1 The AEC is aware of public discussion that has been taking place on requiring political parties to meet 'democratic principles' in order to qualify for formal registration and, as a result, election funding. There have been some suggestions that the AEC should assume a role in regulating the structures and activities of political parties. These discussions have, to date, tended to focus on the rights of members of political parties and preselection processes, but have not, in the main, otherwise been specific.

11.7.2 The Electoral Act as it currently stands does not attempt to impose itself upon the structure or internal operations of political parties. Parties are regulated by their own constitutions and rules. Citizens are free to join, or leave political parties, and, subject to the individual constitutions and rules, to participate in any political party.

11.7.3 The AEC notes however that the constitutions of many registered political parties are scant, and inadequately address the internal functioning of membership-based organisations. For instance, the methods by which persons are accepted into a party as members, and their rights, responsibilities and even the length of their membership, are rarely specified. In many of the less well established parties the constitutions are silent on primary functions such as preselection of candidates and appointment of office holders.

11.7.4 As the Act stands, it would not be appropriate for the AEC to attempt to impose its interpretation of a 'democratic structure' on political

parties or to play an active role in the internal operations of political parties. Nor does the AEC at present consider that it should have a far-reaching and intrusive role along these lines. However, some of the current deficiencies in the formal operation of some political parties, primarily stemming from their having scant constitutions, do have administrative implications under the Act (for example, determining who can be counted for registration purposes as a party member when this is not defined by the party itself). The AEC intends to discuss these issues in greater detail in its Funding and Disclosure Report later in the year.

11.8 Filing of Party Constitutions

11.8.1 During the Committee stage of the Electoral and Referendum Amendment Bill (No 2) 1998 proposals were put forward to make copies of party constitutions available for public inspection and have parties lodge updated versions of their constitutions with their annual disclosure returns following each federal election. While these proposals were not accepted by the Senate, it was suggested they be considered by the JSCEM.

11.8.2 The AEC does not oppose such proposals, although making copies of party constitutions available for public inspection has limited relevance to the administration of either the party registration or funding and disclosure provisions of the Act.

11.8.3 On a practical level, it would be more appropriate to have either the Secretary or the Registered Officer of the party lodge copies of the constitution, as the position of Party Agent, which has responsibility for lodging disclosure returns, has no responsibility under the Act for matters associated with the party constitution. Further, if the intention is to ensure that party constitutions available for public inspection are always up to date, updated versions should be lodged following any amendments. This would be similar in practice to the State and Territory laws governing Unincorporated Associations which are required to lodge updated copies of their constitutions upon making any amendments.

11.8.4 Finally, there would have to be an element of compulsion to enforce compliance with any such provision. For instance, failure to lodge an updated version of a party constitution within a set time period could be subject to an automatic financial penalty, again as applies under various Unincorporated Associations legislation.

11.9 Annual Returns of Commonwealth Departments

11.9.1 Section 311A of the Electoral Act requires the principal officer of each Commonwealth Department to attach a statement to its annual report setting out particulars of all amounts paid by, or on behalf of, the Commonwealth Department during the financial year to: (a) advertising agencies; (b) market research organisations; (c) polling organisations; (d) direct mail organisations; (e) media advertising organisations; and the persons

to whom those amounts were paid. Any amount less than $1,500 need not be reported.

11.9.2 This provision was inserted in the Electoral Act by an Opposition amendment to section 20 of the *Political Broadcasts and Political Disclosures Act 1991*, during the passage of that legislation through the Senate in 1991. The AEC has no role in administering this provision other than as a reporting agency like any other.

11.9.3 It is noted that, generally speaking, the requirement for agency heads to prepare annual reports, the guidelines which the reports must comply with, and the requirement for Parliamentary tabling of annual reports, all derive from section 25 of the *Public Service Act 1922*. The AEC understands that the Joint Committee of Public Accounts and Audit (JCPAA) is expected to review a range of issues concerning the requirements for the preparation of annual reports during the life of the current Parliament.

11.9.4 In the light of this, and in view of the way the provision has operated to date, the AEC believes that section 311A should be removed from the Electoral Act and that it would be more appropriate for the JCPAA review also to consider the continuing relevance of and need for any continuing similar requirements as part of its broader review of annual report requirements.

Recommendation No 26: that section 311A be deleted from the Electoral Act and that the continuing need for requirements along the lines of those contained in the section be referred to the Joint Committee of Public Accounts and Audit (JCPAA) during the course of its broader review of agency annual report obligations.

12 ELECTION LITIGATION

12.1 Introduction

12.1.1 For the 1998 federal election, the overall level of litigation, including injunctions, petitions, and prosecutions, was no greater than that which occurred at the 1996 federal election. A summary of all electoral litigation arising at the 1998 federal election is given below, followed by recommendations as to how the legislative arrangements relating to the various responsibilities of the officers and organisations involved in federal electoral litigation might be amended.

12.2 Injunctions

12.2.1 ***The Bryant Application on 'Langer-style' voting:*** On 9 September 1998, Mr Joseph Bryant instituted proceedings in the High Court Registry in Sydney against the Commonwealth, challenging the validity of section 125 of the *Electoral and Referendum Amendment Act 1998*, which amended section 240 of the Electoral Act, consequent upon the Langer litigation at the 1996 federal election. Section 240 of the Act provides for full preferential voting at federal elections. The basis of Mr Bryant's challenge is that section 125 of the amending Act is contrary to sections 7 and 24 of the Constitution, which require that senators and members "shall be directly chosen by the people".

12.2.2 On 28 September 1998, under section 44 of the *Judiciary Act 1903*, Justice McHugh of the High Court remitted the claim for injunctive relief in the summons to the Federal Court. Mr Bryant sought an urgent hearing of the summons because he thought it important that the situation be clarified and corrected before polling day on 3 October 1998.

12.2.3 On 30 September 1998, Mr Bryant appeared unrepresented before Justice Wilcox of the Federal Court, and the Solicitor General, David Bennett QC, appeared on behalf of the Commonwealth. Mr Bryant submitted that the amendments made to the Act to reinforce the requirement for full preferential voting, subsequent on the Langer litigation in 1996, did not in fact render a 'Langer-style' vote informal, as claimed by the AEC in its election advertising. Mr Bryant submitted that that a 'Langer-style' vote (that is, a House of Representatives ballot paper marked 1, 2, 3, 3, 3, … etc) should be counted as formal by the AEC.

12.2.4 On 30 September 1998, Justice Wilcox of the Federal Court ordered that the summons filed by Mr Bryant be dismissed, and that he pay the costs of the Commonwealth. Justice Wilcox said the following (in part) in his decision:

> …It seems to me the advice that has been given to voters by the Electoral Commission about the effect of a Langer-style vote is correct. The application for interlocutory relief must be dismissed……

12.2.5 On 13 October 1998, Mr Bryant appealed the decision of Justice Wilcox, on the grounds of alleged errors in law. On 20 October 1998, Justice Tamberlin of the Federal Court dismissed the appeal and ordered that Mr Bryant pay costs of the Commonwealth. Mr Bryant has since issued a Notice of a Constitutional Matter under section 78B of the *Judiciary Act 1903,* and on 22 October 1998 the Commonwealth filed a Defence and Demurrer with the High Court in relation to the original statement of claim filed by Mr Bryant.

12.2.6 ***The Hodgetts application on Independent Senate candidates****:* On 1 October 1998 Mr Douglas Edwin John Hodgetts filed an Application in the Federal Court Registry in Brisbane against the AEC, challenging the fact that independent Senate candidates are not permitted a group voting ticket on the Senate ballot paper. Mr Hodgetts sought an injunction on the grounds in his Application of "discrimination and undemocratic procedure that independent Senators be allowed on the top of the ballot paper. Under existing procedure voters would have to number 1 – 57 consecutively. This at the very least cause confusion and possibly result in an undemocratic outcome e.g. the 1996 informal ballot paper found 41.69% due to defective numbering".

12.2.7 On 2 October 1998 Justice Dowsett of the Federal Court dismissed the Notice of Motion filed by Mr Hodgetts, and ordered that he pay the costs of the AEC. Justice Dowsett said the following in his decision (in part):

> Mr Hodgetts says, and there is, I suppose some justification for the view, that the second method [of marking a Senate ballot paper below the line] is much more complex than the first method, and that independent candidates will suffer because they do not have the benefit of being able to participate in the first voting method. While that may be so, it seems that two members of the High Court sitting as the Court of Disputed Returns have upheld the validity of the process….
>
> Whilst those decisions may not be binding in the way that a decision of the full High Court would be, they are decisions on legislation in the current form. In the case of McKenzie, the decision has stood for over 10 years, and I see no reason to doubt its correctness. In the circumstances, I find it difficult to see any serious question to be tried as to the validity of the ballot paper in its present form.

12.2.8 Mr Hodgetts then proceeded with his substantive application, basing his case on a provision in the Universal Declaration of Human Rights requiring fair elections. On 16 February 1999 Justice Dowsett of the Federal Court dismissed the substantive application with costs against Mr Hodgetts.

12.2.9 ***The Skyring application on legal tender and nomination deposits:*** On 15 September 1998 Mr Alan George Skyring filed an Application for an Order of Review in the Brisbane Registry of the Federal Court seeking a declaration that payment of the nomination deposit in a form other than gold coin is null and void, and consequently all nomination deposits

which purported to be legal tender are also null and void. Mr Skyring also sought compensation by way of damages and costs.

12.2.10 On 5 November 1998 Mr Skyring unsuccessfully attempted to file a petition in the Brisbane Registry of the High Court disputing the election of John Colinton Moore as member of the House of Representatives for the Division of Ryan.

12.2.11 On 23 October 1998 Justice Dowsett of the Federal Court dismissed a Notice of Motion from Mr Skyring that the solicitor representing the AEC be no longer heard on the basis that he was a "vexatious litigant". His Honour also adjourned the application by the AEC to have the Skyring proceedings struck out as an abuse of process to 4 December 1998. Because a constitutional matter was raised in the Skyring application, His Honour determined that notices to the Attorneys-General of the Commonwealth were required under section 78B of the *Judiciary Act 1903*. At the hearing on 4 December Justice Dowsett dismissed Mr Skyring's application and awarded costs against him.

12.2.12 Mr Skyring then entered an appeal from the interlocutory decision of Justice Dowsett dismissing his Notice of Motion to have the AEC solicitor removed from the matter. Mr Skyring also entered an appeal from the final decision of Justice Dowsett dismissing his Application for an Order of Review. On 16 February 1999, Justices Spender, Cooper and Tamberlin of the Federal Court dismissed the appeals with costs against Mr Skyring.

12.3 Petitions to the Court of Disputed Returns

12.3.1 An election for a Division for the House of Representatives or for a State or Territory for the Senate may be challenged by a petition to the High Court of Australia sitting as the Court of Disputed Returns, under Part XXII Division 1 of the Act. The period for filing a petition with the Court is 40 days after the return of the writ for the relevant election. Petitions must set out the facts relied on, with sufficient detail; contain a prayer for the relief or remedy sought; be signed by a candidate at the election or by a person qualified to vote at the election; be signed by two witnesses; and be accompanied by a deposit of $500 as security for costs.

12.3.2 The following nine petitions were filed with the Court, challenging one House of Representatives election and six Senate elections. As these matters are currently before the Court, and as in each petition the AEC is either named as respondent, or will seek leave to appear in an *amicus curiae* role, no comment will be made in this submission about the issues that are now *sub judice*. However, when the cases have concluded, the AEC will provide a supplementary submission to the JSCEM on the various outcomes.

12.3.3 ***The Sue (Queensland Senate) petition (Sue v Hill, No S179 of 1998)***: A petition was filed on 1 December 1998 in the Sydney Registry of the High Court by Mr Henry (Nai Leung) Sue against the election of Senator-elect Heather Hill of Pauline Hanson's One Nation Party. The AEC has sought

leave to appear in an *amicus curiae* role in order to provide submissions on the facts of the election and issues of relief or remedy, and is probable that the Attorney-General for the Commonwealth will intervene on the constitutional issue. The grounds of the petition are that:

> As at the date of her nomination, the Respondent was under an acknowledgment of allegiance, obedience, or adherence to a foreign power, or was a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power within the meaning of section 44(i) of the Constitution. The foreign power is Britain. As such the Respondent was incapable of being chosen or of sitting as a Senator.

12.3.4 The petitioner, Mr Sue, has asked the Court to order that the AEC conduct a recount of the Queensland Senate ballot papers to determine which candidate should take Senator-elect Hill's place as a Senator.

12.3.5 ***The Sharples (Queensland Senate) petition (Sharples v Hill, No B49 of 1998)***: A petition was filed on 2 December 1998 in the Brisbane Registry of the High Court by Mr Terry Patrick Sharples against the election of Senator-elect Heather Hill. The AEC has sought leave to appear in an *amicus curiae* role in order to provide submissions on the facts of the election and issues of relief or remedy, and is probable that the Attorney-General for the Commonwealth will intervene on the constitutional issue. The grounds of the petition are that:

> The respondent is a person who at all material times for the purposes of the Federal Election falls within Section 44(i) of the Constitution, as a citizen of a foreign power, namely, the United Kingdom of Great Britain and Northern Ireland. As she did not renounce that citizenship and took no steps to divest herself of any continuing allegiance to such foreign power prior to her nomination as a Senate candidate for the Federal Election she was incapable of being chosen as a Senator in the Australian Parliament.

12.3.6 The petitioner, Mr Sharples, has asked the Court to declare the election of Senator-elect Hill void, and order that a writ be issued be issued for an election to fill any vacated Senate position.

12.3.7 ***The Ditchburn (House of Representatives Division of Herbert) petition (Ditchburn v DRO for Herbert, No B50 of 1998)***: A petition was filed on 7 December 1998 in the Brisbane Registry of the High Court by Mr Donald Kenneth Ditchburn against the election of Mr Peter Lindsay as Member for the Division of Herbert. The grounds of the petition, *inter alia,* are that various sections of the Electoral Act that provide for full preferential voting are in conflict with section 24 of the Constitution, which provides that members must be "directly chosen", and section 30 of the Constitution, which provides that "each elector shall vote only once".

12.3.8 The petitioner, Mr Ditchburn, has asked the Court to make a declaration as to the validity of the provisions of the Act relating to full preferential voting, and to annul the election of Mr Lindsay as the Member for Herbert.

12.3.9 ***The Ditchburn (Queensland Senate) petition (Ditchburn v AEO for Queensland, No B47 of 1998)***: A petition was filed on 30 November 1998 in the Brisbane Registry of the High Court by Mr Donald Kenneth Ditchburn against the election of all Senators for Queensland. The grounds of the petition, *inter alia*, are that various sections of the Electoral Act that provide for group ticket voting are in conflict with section 7 of the Constitution, which provides that senators must be "directly chosen by the people of the State".

12.3.10 The petitioner, Mr Ditchburn, has asked the Court to make a declaration as to the validity of the provisions of the Act relating to group ticket voting, and to annul the election of all Senators for the State of Queensland.

12.3.11 ***Five Identical Senate Petitions***. The following five petitions are identical in form and substance; were filed by non-incumbent and unsuccessful independent Senate candidates; and challenge the Senate elections in four States and one Territory on the grounds that such candidates were denied media coverage; and that the non-availability of the group voting ticket facility disadvantages independent Senate candidates. All petitioners have sought leave of the Court to have the petitions dealt with collectively as a "class action".

12.3.12 ***The McClure (Victorian Senate) petition (McClure v the AEC, No M119 of 1998*)**: A petition was filed on 8 December 1998 in the Melbourne Registry of the High Court by Mr Malcolm McClure against the election of the Senators for Victoria. The petitioner, Mr McClure, has agreed that his petition should be heard first as a 'test case' for the other four identical petitions, and is seeking a declaration that the Senate election for the Northern Territory is void and that none of the Senate candidates returned was duly elected.

12.3.13 ***The Polke (Northern Territory Senate) petition (Polke v the AEC, No D14 of 1998***): A petition was filed on 2 December 1998 in the Darwin Registry of the High Court by Mr Jonathan Polke against the election of the two Senators for the Northern Territory. The grounds of the petition and the relief/remedy sought by the petitioner are the same as for the McClure petition.

12.3.14 ***The Heathorn (Tasmanian Senate) petition (Heathorn v the AEC, No H9 of 1998*)**: A petition was filed on 8 December 1998 in the Hobart Registry of the High Court by Mr Lauriston Brownell Heathorn against the election of the Senators for Tasmania. The grounds of the petition and the relief/remedy sought by the petitioner are the same as for the McClure petition.

12.3.15 ***The Vaughan (New South Wales Senate) petition (Vaughan v the AEC, No S188 of 1998***): A petition was filed on 7 December 1998 in the Sydney Registry of the High Court by Mr Adrian Rex Vaughan against the election of the Senators for New South Wales. The grounds of the petition and

the relief/remedy sought by the petitioner are the same as for the McClure petition.

12.3.16 ***The Garcia (Western Australian Senate) petition (Garcia v the AEC, No P58 of 1998***): A petition was filed on 7 December 1998 in the Perth Registry of the High Court by Mr Roderick David Garcia against the election of the Senators for Western Australia. The grounds of the petition and the relief/remedy sought by the petitioner are the same as for the McClure petition.

12.4 Prosecutions

12.4.1 No major prosecutions under the offence provisions of the Electoral Act had been initiated at the date of this submission, although a number of investigations are in progress. The AEC expects to provide, as at previous inquiries, a late submission to the JSCEM on dual and multiple voting prosecutions, after they have moved through the courts.

12.5 Responsibilities in Electoral Litigation

12.5.1 Under section 383(1) of the Electoral Act, the Electoral Commission (the three-member body constituted under Part II of the Act), is empowered to apply for an injunction. Just prior to the 1998 federal election, this power was delegated to the Electoral Commissioner, for reasons of speed and convenience in the heat of an election campaign. It is not unusual for an injunction application to be under consideration on polling day itself, with only hours to spare, in relation to the distribution of how-to-vote cards that might be in breach of the Electoral Act, for example. Locating, and consulting with the other members of the Electoral Commission had produced difficulties in practice in the past.

12.5.2 It might be noted in this context, that in section 359 of the Electoral Act, which enables the AEC to enter an appearance in proceedings before the Court of Disputed Returns, it is the Electoral Commissioner who is properly provided with this responsibility, rather than the three-member Electoral Commission.

12.5.3 By contrast, under section 357(1A) of the Act, the Electoral Commission may petition the Court of Disputed Returns when a Divisional Returning Officer gives notice of a tied vote, under section 274(9C); and under section 357(1), the Electoral Commission is entitled to file a petition on its own initiative, disputing an election. The decision to petition the Court of Disputed Returns should clearly remain with the three-member Electoral Commission, rather than being devolved to the Electoral Commissioner, particularly as the time frames for such decisions are not usually critical.

12.5.4 Further consideration of the operation of the injunctive power might be given to section 383(11), which provides that injunction applications must be made to the Supreme Court of a State or Territory. The AEC understands that references to the jurisdiction of the Supreme Courts have

remained unchanged in the Electoral Act since the early years of Federation, before the establishment of the Federal Court of Australia.

12.5.5 Although the AEC has no criticism of decisions of the Supreme Courts in recent years on injunction applications, it would undoubtedly be more appropriate for injunction applications relating to federal elections to be decided by the Federal Court of Australia, rather than by State and Territory Supreme Courts. The added practical advantages would be that similar injunction applications, say in relation to similar how-to-vote cards being distributed in different States, could be heard simultaneously in the one court venue, and that decisions of a single court might be expected to show greater consistency in the interpretation of the law over time.

12.5.6 Recent 'cross-vesting' legislation has allowed the Federal Court to be substituted for the Supreme Court where specified in federal legislation, but this may not be immediately apparent to candidates and electors who are consulting the Electoral Act for the first time. A single, clearly defined, court jurisdiction would reduce confusion and doubt as to the appropriate venue for parties (other than the AEC) who are usually working to very restricted time frames and sometimes without legal advice.

12.5.7 In this context, it is worth noting that section 354 of the Electoral Act, which permits the High Court, sitting as the Court of Disputed Returns, to remit a petition for trial to a lower court (while retaining jurisdiction over relief/remedy), until recently only permitted the High Court to remit federal election petitions to the Supreme Court of a State or Territory. The *Electoral and Referendum Amendment Act 1998* added the Federal Court, in addition to the Supreme Courts, to section 354 of the Act, recognising that the Federal Court would normally be considered the most appropriate venue to try federal election petitions, otherwise than in the primary court, the High Court.

12.5.8 However, similarly as for the injunctive power, the AEC cannot see any good argument for retaining the jurisdiction of the Supreme Courts in relation to federal election petitions. Remittance of federal election petitions to the Federal Court only, would encourage consistency in the interpretation of the law, and streamline the necessary formalities.

12.5.9 Finally, consideration should be given to the deletion of section 382 of the Electoral Act, which provides, *inter alia*, that: "The Electoral Commissioner shall, in every case where the Crown Law authorities so advise, instituted legal proceedings against any person committing an offence against this Act". This provision no longer performs any sensible function since the establishment of the office of the Commonwealth Director of Public Prosecutions, with which the AEC routinely liaises on possible offences and prosecutions under the Electoral Act, in accordance with the *'Prosecution Policy of the Commonwealth*".

12.5.10 The Electoral Commissioner has never been instructed by "the Crown Law authorities" (not defined in the Act) to institute legal proceedings against any person or organisation, and it would be very unlikely that the

Attorney-General or his Department would issue such an instruction, particularly as it might immediately be questioned as a challenge to the independence of the AEC. A parallel provision was recently removed from the *ATSIC Act 1989*, on the advice of the AEC, for the same reasons.

12.6.11 The following recommendations in relation to responsibilities for electoral litigation under the Electoral Act are made:

Recommendation 27: that in section 354 of the Electoral Act, "Federal Court of Australia" be substituted for the "Supreme Court of the State or Territory".

Recommendation 28: that in section 383 of the Electoral Act and section 139 of the Referendum Act, "Federal Court of Australia" be substituted for the "Supreme Court of the State or Territory".

Recommendation 29: that section 382 of the Electoral Act be deleted.

13 COSTS OF THE ELECTION

13.1 As at 10 February 1999 the expenditure on the 1998 federal election was $61,004,584 excluding $33,835,837 for public funding. Using Close of Rolls enrolment as the basis, the expenditure to 10 February 1999 was $5.06 per elector or $7.87 including public funding.

Expenditure to 10 February 1999

Advertising	8 721 799
Election Statistics & Results	59 738
Elector Leaflet	1 463 302
Public Info Materials & support	1 300 372
Ballot paper production & associated printing	2 626 005
Cardboard Equipment Production	2 623 240
Certified Lists	898 885
Computer Support Services	8 924
Corporate Services Administration	40 634
Divisional Offices	36 741 628
Forms & Equipment	1 918 721
Funding & Disclosure	29 439
National Tally Room	351 548
Operational Administration	1 006 373
Overseas Voting	363 317
Payment System	26 189
Prosecutions	389
Resources Monitoring	48 184
Scanning Centre	348 989
Senate Scrutiny	911 667
Storage & Distribution	9 413
Training of Polling Officials	779 084
Election Allowances	726 744
SUB-TOTAL	**61 004 584**
Public Funding	33 835 837
TOTAL	**94 840 421**

Comparative figures for previous elections:

	1984	**1987**	**1990**	**1993**	**1996**	**1998**
	$	**$**	**$**	**$**	**$**	**$**
Average Cost per elector Actual Cost	3.13	3.75	4.02	4.11	5.08	5.06
Constant Prices (Dec 1984 Base)	3.13	3.05	2.68	2.54	2.87	2.80
Constant Prices (Mar 1998 Base)	5.65	5.51	4.84	4.58	5.18	5.06

14 SUMMARY OF RECOMMENDATIONS

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.

Recommendation 2: That section 94(1B) be amended to allow a period of two years for an elector to register as an eligible overseas elector after they have ceased to reside in Australia.

Recommendation 3: The AEC recommends that Part X of the Electoral Act be amended to allow a review by the Australian Electoral Officer, and by the Administrative Appeals Tribunal, of a decision by a DRO under section 105(1)(b) of the Electoral Act.

Recommendation 4: that the Electoral Act be amended to allow the DRO to refuse to enrol or to change the enrolment of any person who claims a name change that is considered inappropriate, in accordance with legal criteria to be drafted in consultation with the Office of Parliamentary Counsel.

Recommendation 5: That section 211 of the Electoral Act be amended to allow for the amendment or withdrawal of GVT statements up to the closing time for lodgement of such statements; that such amendment or withdrawal may only be made by the person who lodged the original statement; that a further statement may be lodged, prior to the closing time, following the withdrawal of an original statement by any of the persons eligible to do so under section 211(6); and that should a GVT statement be withdrawn, and a new statement not be lodged for the group prior to the closing time for lodgement, the group will not have a GVT square printed on the ballot paper.

Recommendation 6: That section 173 of the Electoral Act be amended to provide that where a candidate is one of a group in a Senate election, and the nomination deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it.

Recommendation 7: That sections 177 and 180 of the Electoral Act be amended to allow, up until the close of nominations, for the substitution of another candidate for a Division in a bulk nomination, where a candidate for that Division in a bulk nomination dies or withdraws their consent to act.

Recommendation 8: That section 156(2) of the Electoral Act be amended to provide that where a candidate dies after being nominated and before the declaration time, that the day fixed as the date of nomination be taken to be the second succeeding day after the day so fixed.

Recommendation 9: That section 328 of the Act and section 121 of the Referendum Act be amended to define “address” as the full address, including the street number, the street name, and the suburb/locality.

Recommendation 10: That section 331 of the Electoral Act and section 124 of the Referendum Act be amended to remove any doubt that the requirement to provide a heading “advertisement” on all electoral matter in journals applies only to advertisements containing electoral matter.

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.

Recommendation 12: The AEC recommends that section 216 of the Electoral Act be amended so that group voting ticket information can be provided in booklet format rather than in poster format.

Recommendation 13: That in relation to penalty notices for failure to vote, section 245(6) of the Electoral Act and section 45(6) of the Referendum Act be amended to allow the DRO to send, by post or other means, the second penalty notice to the latest known address of the elector at the time of the despatch of the second penalty notice, and that in relation to enrolment objection notices and enrolment determination notices, Part IX of the Act be similarly amended as appropriate, to allow for despatch of the notices, by post or other means, to the latest known address of the elector at the time of despatch.

Recommendation 14: that the Electoral Act and the Referendum Act be amended to allow pre-poll voters in their home Divisions to cast an ordinary vote.

Recommendation 15: that section 194 and Schedule 3 of the Electoral Act and related provisions in the Referendum Act be amended to allow for those postal ballot papers that are delivered or returned to the AEC outside the postal vote certificate envelope, but within an outer envelope addressed to the relevant DRO, to be admitted to further scrutiny if the accompanying postal vote certificate envelope passes through the preliminary scrutiny.

Recommendation 16: that section 209(5) of the Electoral Act and section 25(4) of the Referendum Act be deleted so as to allow the same ballot paper to be used for all forms of voting.

Recommendation 17: that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to require the Divisional Returning Officer to consult with multiple postal vote applicants, in order to avoid the issuance of multiple sets of postal voting materials.

Recommendation 18: that the relevant declaration voting provisions of the Electoral Act and the Referendum Act be amended to reflect the purpose of section 97(10) of the *Constitutional Convention (Election) Act 1997* in relation to the disallowance at the preliminary scrutiny of all but one of any multiple declaration certificate envelopes from the same voter.

Recommendation 19: That the Electoral Act and the Referendum Act be amended to provide that reply paid envelopes provided to postal vote applicants by political parties be identified by the political party name printed on the face of the envelope as part of the return address.

Recommendation 20: that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to allow for the replacement issue of postal ballot materials to replace spoilt, lost or non-delivered postal ballot papers, on written application from the elector.

Recommendation 21: that the relevant provisions of the Electoral Act and the Referendum Act be amended as necessary to allow for those votes cast by Antarctic electors to be processed as pre-poll votes rather than as postal votes.

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.

Recommendation 23: that paragraph 8 of Schedule 3 of the Electoral Act and paragraph 8 of Schedule 4 of the Referendum Act be amended so that it is not necessary to check if the voter's name appears on the records made at the time of issue of a declaration vote to determine admissibility of the vote. Rather, it should be sufficient that the DRO is satisfied that the ballot-paper was properly issued.

Recommendation 24: that the nexus between the admission of provisional votes and reinstatement of the enrolment be broken by repealing sections 105(4) and (5) of the Electoral Act.

Recommendation 25: that section 284 of the Electoral Act be amended to allow the declaration of the poll to take place elsewhere than at the place of nomination.

Recommendation No 26: that section 311A be deleted from the Electoral Act and that the continuing need for requirements along the lines of those contained in the section be referred to the Joint Committee of Public Accounts and Audit (JCPAA) during the course of its broader review of agency annual report obligations.

Recommendation 27: that in section 354 of the Electoral Act, "Federal Court of Australia" be substituted for the "Supreme Court of the State or Territory".

Recommendation 28: that in section 383 of the Electoral Act and section 139 of the Referendum Act, “Federal Court of Australia” be substituted for the “Supreme Court of the State or Territory”.

Recommendation 29: that section 382 of the Electoral Act be deleted.

ATTACHMENTS

International Visitor Programme Participants

Mr Walter Rigamoto Supervisor of Elections Office of the Supervisor of Elections Fiji	Mr Philip Funifaka Commissioner Solomon Islands Electoral Commission
Mr Sakiasi Cagica Principal Electoral Officer Office of the Supervisor of Elections Fiji	Mr Peter Mothle Chief Director Democracy Development Independent Electoral Commission South Africa
Ms Suzie Naisara-Grey Senior Information Officer Office of the Supervisor of Elections - Fiji	Ms Bridgitte Backman Communications Independent Electoral Commission South Africa
Mr Wing Li Chief Electoral Officer Deputy Chief Electoral Officer Registration and Electoral Office Hong Kong	Allan Campbell Manager CEO Affairs Independent Electoral Commission South Africa
Mr Siu Chung Chow Deputy Chief Electoral Officer Registration and Electoral Office Hong Kong	Mr Howard Sackstein Chief Director Delimitation Independent Electoral Commission South Africa
Ms Shirley Yung Principal Assistant Secretary of the Constitutional Affairs Bureau of the Government of the Hong Kong Special Administrative Region	Mr Abrie Griesel Independent Electoral Commission South Africa
Dr Ramlan Surbakti University Airlannga Indonesia	Mr Pierre Dalton Independent Electoral Commission South Africa
Mr Muflizar KIPP Indonesia	Mr Desmond Lockey Chairman of the Portfolio Committee Department of Home Affairs South Africa
Dr Abdullah Alatas Fahmi Member Dewan Perwakilan Rakyat Indonesia	Mr Dayananda Dissanayake Commissioner of Elections Officer of the Commissioner of Elections Sri Lanka
Mr J.M. Khaebana Electoral Commissioner Independent Electoral Commission of Lesotho	W.P. Sumanasiri Assistant Commissioner of Elections District Elections Office Sri Lanka

Mr M. Mokhochane Deputy Director of Elections Independent Electoral Commission of Lesotho	A.G. Dharmadasa Assistant Commissioner of Elections Elections Office Sri Lanka
Mr Rex Au Assistant Commissioner Finance & Administration Electoral Commission of Papua New Guinea	Mr John Thomson Executive Officer Projects Ministry of Justice New Zealand
Mr Poevare Tore Provincial Electoral Officer Gulf Province Electoral Commission of Papua New Guinea	Mr Simi Tekiteki Supervisor of Elections Prime Ministers Office Tonga
Dr Fetuao Toia Alama Chief Electoral Officer - Samoa Office of the Registrar of Electors and Voters and Chief Electoral Officer	

Visitors to Newcastle Supplementary Election

Khun Prapaporn Agamanon Consultant to the Chairman for International Affairs Thailand	Mr M.D. Firoz Alam Deputy Secretary Election Commission Secretariat Bangladesh
Khun Komchan Lausakul Director Division of the General Election Administration Office of the Election Commission Thailand	Mr S.M. Ezharul Hoque District Election Officer Election Commission Secretariat Bangladesh
Mr Aziz Ahmed Chowdhury Additional Secretary Election Commission Secretariat Bangladesh	

Enrolment – Attachment 02

(see attached)

Enrolment Activity for the 1998 Federal Election Close of Rolls Period (31/08/98 to 7/9/98)

	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Total
ENROLMENT TRANSACTIONS									
Additions to the Roll - New Enrolments	22,408	15,156	9,116	6,323	6,950	1,426	1,633	1,002	64,014
Reinstatements	0	0	0	0	0	0	0	0	0
Re-enrolments	30,343	21,577	12,952	6,031	9,520	5,184	1,769	1,800	89,176
Transfers into Divisions - Intrastate	21,139	19,154	14,002	6,472	8,697	1,884	696	0	72,044
Interstate	5,523	4,191	5,683	1,850	2,123	619	1,552	1,267	22,808
Intradivisional Movement/Amendment	21,705	18,190	14,675	6,867	10,351	5,646	2,817	2,439	82,690
No Change Enrolments	8,596	5,186	2,118	1,225	2,827	590	325	314	21,181
TOTAL ENROLMENT FORMS PROCESSED	109,714	83,454	58,546	28,768	40,468	15,349	8,792	6,822	351,913
DELETION TRANSACTIONS									
Objections	303	129	62	120	158	2	18	10	802
Deaths	2,891	1,427	899	742	413	134	104	44	6,654
Duplications	34	87	67	17	35	9	1	8	258
TOTAL DELETIONS PROCESSED	3,228	1,643	1,028	879	606	145	123	62	7,714

Enrolment by Division at Close of Rolls for the 1998 federal election

(includes provisional enrolments for 17 year olds who turned 18 up to and including polling day)

NEW SOUTH WALES

BANKS	79,625	LOWE	81,150
BARTON	82,246	LYNE	81,300
BENNELONG	83,167	MACARTHUR	90,862
BEROWRA	85,439	MACKELLAR	80,498
BLAXLAND	79,703	MACQUARIE	80,920
BRADFIELD	80,330	MITCHELL	82,196
CALARE	77,137	NEWCASTLE	77,327
CHARLTON	85,321	NEW ENGLAND	73,624
CHIFLEY	81,116	NORTH SYDNEY	86,882
COOK	79,763	PAGE	79,045
COWPER	78,140	PARKES	79,096
CUNNINGHAM	76,544	PARRAMATTA	78,108
DOBELL	81,849	PATERSON	81,181
EDEN-MONARO	77,685	PROSPECT	77,211
FARRER	74,336	REID	81,941
FOWLER	89,181	RICHMOND	86,664
GILMORE	78,091	RIVERINA	78,787
GRAYNDLER	84,458	ROBERTSON	79,596
GREENWAY	85,391	SHORTLAND	77,871
GWYDIR	72,185	SYDNEY	85,433
HUGHES	87,303	THROSBY	78,233
HUME	74,637	WARRINGAH	78,089
HUNTER	76,193	WATSON	80,891
KINGSFORD-SMITH	79,447	WENTWORTH	81,620
LINDSAY	83,254	WERRIWA	80,683

VICTORIA

ASTON	84,512	HOTHAM	87,626
BALLARAT	80,864	INDI	81,461
BATMAN	88,134	ISAACS	78,670
BENDIGO	83,185	JAGAJAGA	85,645
BRUCE	84,224	KOOYONG	83,537
BURKE	79,448	LALOR	80,548
CALWELL	86,521	LA TROBE	78,699
CASEY	79,674	MCEWEN	80,839
CHISHOLM	84,668	MCMILLAN	81,120
CORANGAMITE	79,406	MALLEE	80,238
CORIO	80,957	MARIBYRNONG	81,813
DEAKIN	82,874	MELBOURNE	87,768
DUNKLEY	81,059	MELBOURNE PORTS	82,231
FLINDERS	81,996	MENZIES	80,957
GELLIBRAND	84,159	MURRAY	82,662
GIPPSLAND	80,364	SCULLIN	82,622
GOLDSTEIN	86,544	WANNON	80,551
HIGGINS	84,207	WILLS	86,618
HOLT	80,486		

QUEENSLAND

BLAIR	73,981	KENNEDY	83,680
BOWMAN	80,281	LEICHHARDT	79,568
BRISBANE	88,550	LILLEY	85,790
CAPRICORNIA	80,142	LONGMAN	75,568
DAWSON	83,390	MCPHERSON	81,916
DICKSON	79,567	MARANOA	82,555
FADDEN	79,030	MONCRIEFF	81,104
FAIRFAX	75,761	MORETON	85,297
FISHER	75,380	OXLEY	78,933
FORDE	76,440	PETRIE	84,261
GRIFFITH	86,005	RANKIN	77,614
GROOM	79,852	RYAN	83,255
HERBERT	83,783	WIDE BAY	77,776
HINKLER	78,077		

WESTERN AUSTRALIA

BRAND	76,733	MOORE	76,988
CANNING	79,456	O'CONNOR	83,227
COWAN	76,681	PEARCE	80,871
CURTIN	84,985	PERTH	83,671
FORREST	81,814	STIRLING	84,376
FREMANTLE	84,440	SWAN	82,649
KALGOORLIE	81,901	TANGNEY	83,053

SOUTH AUSTRALIA

ADELAIDE	81,506	KINGSTON	87,886
BARKER	84,059	MAKIN	89,182
BONYTHON	77,783	MAYO	90,255
BOOTHBY	80,877	PORT ADELAIDE	81,532
GREY	82,360	STURT	79,306
HINDMARSH	83,095	WAKEFIELD	88,557

TASMANIA

BASS	65,833	FRANKLIN	65,680
BRADDON	62,364	LYONS	68,594
DENISON	67,280		

AUSTRALIAN CAPITAL TERRITORY

CANBERRA	104,968	FRASER	103,716

NORTHERN TERRITORY

NORTHERN TERRITORY	104,755

New Zealand Roll on the Internet

(see attached)

Nomination – Attachment 05

Press release of 7 September 1998 by Mr Philip Nitschke, independent candidate for Menzies

Legislation passed in the Australian Senate on June 30, was described by independents standing in the coming federal election as a cynical exercise by the major parties aimed at making it much harder for independent candidates. There are currently 8 independents in the House of Representatives, representing over a million Australians. The Electoral and Referendum Amendment Bill made changes to the electoral Act that disadvantaged independent candidates. The number of signatures from voters in the electorate required for a valid nomination for an independent has now increased from six to fifty. The legislation left unaltered at one, the number required for candidates from a major party. Other changes included an increase in nomination fees, and the removal of the 'Langer option' that allowed a voter to indicate their first choice, but to deny the allocation of any preference.

It was claimed the collection of 50 nominations from voters in an electorate could represent a significant problem for many independents. The changes had not been publicised and it was predicted that a number of independents would find, on presentation, that their nominations were deemed invalid. Nominations close on Thursday 10th September. Dr Philip Nitschke, standing as an independent in the Melbourne suburban seat of Menzies, against Kevin Andrews, the Liberal backbencher whose private members bill overturned voluntary euthanasia legislation in Australia, said: 'This is a cynical attempt by the major parties to squeeze out independents, an undemocratic and cowardly move by the members of the political clubs interested only in consolidating their own privilege. When we see powerful forces combining to crush the remaining few voices of independence, our democracy is in crisis.' In the Senate these changes were passed with almost no debate, only Green senator Bob Brown spoke against them. Dr Nitschke said that he had arranged for a "mass signing" to be carried out at his Menzies campaign office, 319 High St, Lower Templestowe on Tuesday 8th at 12.00."

Nomination – Attachment 06

Press release of 6 September 1998 by The Greens entitled "How Many Candidates will be Disqualified? Crossley Renounces Citizenship and Calls for Referendum on s 44 of the Constitution".

Greens Senate candidate for Tasmania Louise Crossley today renounced her British citizenship in order to nominate for election, as required under Section 44 of the Constitution, and called for a referendum to change it. "Even though I have been an Australian citizen since 1985, I have to give up my British citizenship so I can stand for Parliament. There are about 5 million Australians with dual citizenship who face the same dilemma if they want to stand for election. As well, section 44 of the constitution bans 1.4 million teachers, posties and other public servants from standing for Parliament unless they resign from their jobs. This is patently unfair.

We should have been having a referendum with this election to fix the problem. But successive Liberal and Labor governments have refused to act and in June failed to allow debate on Greens Senator Bob Brown's 'Right to Stand for Parliament' bill. As a result, Australia is denied the services of a huge pool of talented potential politicians from amongst migrants who have demonstrated their commitment to Australia by becoming Australian citizens, but are nonetheless reluctant to totally sever their ties with their country of origin. Some, indeed, cannot do so.

Section 44 of the Constitution is anachronistic and discriminatory. It should have been changed years ago and I will work to fix it if I am elected", Dr Crossley said. "In my own case there is the added absurdity that, when the Constitution was written, all Australians were British citizens, but it is British citizenship that I have to renounce", Dr Crossley added.

Report on lodgement of GVT statement by the Tasmanian Abolish Child Support/Family Court Party.

On Friday 11 September 1998, a GVT statement was lodged with the AEO Tas for the purposes of the Tasmanian Senate election by the Tasmanian Deputy Registered Officer of ACSFCP, Mr Ian Hickman. Mr Hickman was known to the AEC as the number one candidate for the ACSFCP in Tasmania, and the person shown on the nomination form as the person who would be lodging the GVT statement for the ACSFCP in Tasmania. The AEO Tas concluded that this GVT statement had been correctly lodged as required under section 211(1) of the Act.

At about 11.15 am on Saturday 12 September the Deputy AEO Tas, Mr Alex Stanelos, received a phone call from Mr Justice Abolish Child Support and Family Court (Mr JAC), who was the Deputy Registered Officer for the ACSFCP in Victoria. Mr JAC indicated that he wished to amend the GVT statement provided by the Deputy Registered Officer for ACSFCP in Tasmania, Mr Hickman, and requested a copy of the GVT statement that had already been lodged by Mr Hickman and accepted by the AEO Tas.

On the reasonable assumption that the only person who had the authority to amend the ACSFCP GVT statement for Tasmania was the Deputy Registered Officer for ACSFCP in Tasmania, Mr Hickman, the Deputy AEO Tas requested a form of written identity from Mr JAC and a formal request for the material he was seeking, before actioning his request. The identification and formal request from Mr JAC was finally received by the Deputy AEO Tas at 11.41 am on Saturday 12 September.

In the intervening period, the AEO Tas had indicated to Mr JAC, who was using a fax/phone, that he was not prepared to provide the material in question to Mr JAC without appropriate clearance from Mr Hickman. With some difficulty, Mr Hickman was contacted by the AEO Tas and provided his agreement, and the material was faxed to Mr JAC by the AEO Tas at 11.54 am on Saturday 12 September.

Following these exchanges, the AEO Tas did not receive the whole of the amended GVT statement from Mr JAC before 12 noon on Saturday 12 September, as required by section 211(1) of the Act. In addition, the amended GVT statement from Mr JAC contained incorrect preference numbering, so that even if the amended GVT statement from Mr JAC had been received before 12 noon, it would have been rejected.

The AEO Tas therefore exercised his authority under the Act and properly rejected the amended GVT statement provided by Mr JAC, leaving the original GVT statement, provided by Mr Hickman, correctly and within time, to stand. During this period just prior to and just after the 12 noon deadline, he was receiving and dealing with telephone calls and faxes from Mr Griffin, Mr JAC and Mr Hickman, all demanding lengthy and concentrated attention, at the same time as he was attempting to discharge his responsibilities to other candidates and parties in a measured fashion.

It would appear, in summary, that the AEO Tas acted appropriately and professionally in a complicated and stressful situation, and did his best to accommodate the demands of various officers of the party. His rejection of the amended, but incorrectly numbered, GVT statement, provided outside time by the Victorian Deputy Registered Officer of ACSFCP, was an action taken within his own

statutory powers, and was not contrary to the strict requirements of the Act with respect to the lodgement of GVT statements.

The complainant, Mr Griffin, was advised that if he was dissatisfied with the decision of the AEO Tas, then any candidate or voter at the Tasmanian Senate election was entitled, under Part XXII of the Act, to file a petition disputing the election result with the Court of Disputed Returns within 40 days of the return of the writ for the Tasmanian Senate election. No such petition was filed.

1993 Macquarie ALP HTV card

THINKING OF VOTING DEMOCRAT?

If you're casting your No 1 Vote
for the Democrat candidate
be sure to give your No 2 Vote
to the Labor Candidate

Maggie Deahm

Number all squares

Your preferences will count

Maggie Deahm will stop the GST

1996 Gilmore ALP HTV card

(see attached)

Letter from the AEC to Registered Officers of Political Parties re the Mansfield Decision on 25 September 1998

I refer to my letter of 7 May 1998, in relation to a complaint about an ALP how-to-vote (HTV) card in the Division of Gilmore at the 1996 federal election. You will recall that the Australian Electoral Commission (AEC) provided you with a copy of Electoral Backgrounder No 3, entitled "Misleading and Deceptive Electoral Advertising – "Unofficial How-To-Vote Cards", in relation to section 329 of the *Commonwealth Electoral Act 1918* ("the Act").

This letter is to advise you of the decision of 21 September 1998 in *Re Carroll v Electoral Commissioner for Qld and Reeves* and the further views of the AEC on the lawfulness of unofficial HTV cards, in the context of the 1998 federal election.

In *Re Carroll,* Mackenzie J of the Queensland Supreme Court, sitting as the Court of Disputed Returns, considered two unofficial Pauline Hanson's One Nation HTV cards distributed by the ALP in the recent Queensland State election for the district of Mansfield. Mackenzie J found that the unofficial HTV cards were not, by themselves, likely to mislead an elector in relation to the way of voting at the election for the purposes of the Queensland *Electoral Act 1992*.

The official One Nation HTV cards were purple with white writing and had a photograph of Pauline Hanson on one side, and the One Nation candidate, Mr Harris-Gahan on the other side. They did not suggest which candidate should receive a second preference vote. The cards suggested that electors vote for the One Nation candidate and "then number other squares if you wish." The court noted that Queensland State elections are conducted under a system of optional preferential voting, in contrast to federal elections, which are conducted under a system of full preferential voting.

The unofficial HTV cards were orange with black writing, or black with orange writing, and without photographs. The cards were addressed to electors considering voting for One Nation Party, who "did not want Joan Sheldon back", or who "did not want Joan Sheldon back for 3 more years". The unofficial HTV cards suggested that these electors give their first preference vote to the One Nation candidate and their second preference to the ALP candidate. One of the cards had a depiction of a ballot paper indicating only how an elector's first and second preferences should be allocated, with the other preferences unnumbered. The other unofficial HTV card did not have a depiction of a ballot paper. At the bottom of both the unofficial HTV cards were words stating that the ALP had authorised the cards.

It is an offence under section 163(1) of the Queensland *Electoral Act 1992* to distribute misleading electoral material as follows:

> "A person must not, during the election period for an election, print, publish, distribute or broadcast anything that is intended or likely to mislead an elector in relation to the way of voting at the election."

This is very similar to s329(1) of the *Commonwealth Electoral Act 1918* which provides:

> "329. (1) A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or

> authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote."

Mackenzie J applied the law stated by the High Court in *Evans v Crichton-Browne* (1981) 147 CLR 169, which remains the leading case on misleading electoral material. As the Electoral Backgrounder No 3 explained, the High Court there distinguished between an elector formulating a political judgment about which candidate to vote for, and "the act of recording or expressing the elector's political judgment in obtaining and marking a ballot paper and depositing it in the ballot box".

The High Court held that only material that would mislead an elector in relation to the act of recording his or her political judgment in marking a ballot paper, fell within the scope of section 329(1). Thus, misleading electoral advertising aimed merely at persuading an elector to vote for a particular candidate or party did not fall within section 329(1). An erroneous statement about the operating hours of the polling booth so that an elector missed out on the opportunity to vote would, however, infringe section 329(1). More relevantly to the lawfulness of unofficial HTV cards, the High Court also said that a statement that a person who wished to support a particular party should vote for a particular candidate, when that candidate in fact belonged to a rival party, might also breach section 329(1).

In *Re Carroll,* Mackenzie J noted that the unofficial cards he was required to consider were not similar in colour or design to the official One Nation HTV cards. He therefore distinguished the unofficial One Nation from the cards that were considered in *Bray v Walsh* (1967) 15 SASR 293 which was discussed in Electoral Backgrounder No 3. He found that they were not materially different from material held by Gaudron J in *Webster v Deahm* (1993) 116 ALR 222 not to have breached section 329(1) of the *Commonwealth Electoral Act 1918*.

He noted, however:

> "……this is not a case where the material distributed is directly contradictory of the how to vote card of the party whose voters' second preference is solicited".

He concluded that, <u>on the facts of the case</u>, the unofficial HTV cards, by themselves, were not likely to mislead an elector in relation to the way of voting at the election, contrary to section 163(1) of the Queensland *Electoral Act 1992*.

The AEC has now obtained advice from senior counsel on the lawfulness of unofficial HTV cards in general, on Electoral Backgrounder No 3, and the decision in *Re Carroll's case*. As indicated in the Backgrounder, and on the basis of this advice, the AEC considers there may be circumstances where, in the context of a federal election with full preferential voting, the distribution of unofficial HTV cards purporting to be associated with a political party, but recommending an allocation of preferences in a manner different from that endorsed by the party's official HTV card, could contravene section 329(1) of the *Commonwealth Electoral Act 1918*.

Where the AEC becomes aware of the distribution of unofficial HTV cards that it considers are likely to mislead an elector in relation to the casting of a vote, the AEC will consider either taking immediate civil action to restrain distribution of the cards, or referring them to the Commonwealth Director of Public Prosecutions for possible prosecution, or both.

1998 Richmond ALP HTV card

(see atttached)

1998 Stirling LP HTV card

(see attached)

Extract from legal advice to the AEC from the Director of Public Prosecutions on 12 November 1998

……

Section 351 provides:

(1) If, in any matter announced or published by any person, or caused by any person to be announced or published, on behalf of any association, league, organization or other body of persons, it is, without the written authority of the candidate (proof whereof shall lie upon that person):

> (a) claimed or suggested that a candidate in an election is associated with, or supports the policy or activities of, that association, league, organization or other body of persons; or
>
> (b) expressly or impliedly advocated or suggested:
>
> > (i) in the case of an election of Senators for any State – that a voter should place in the square opposite the name of a candidate on a ballot-paper a number not greater than the number of Senators to be elected; or
> >
> > (ii) in the case of an election of a Member of the House of Representatives - that that candidate is the candidate for whom the first preference vote should be given;

that person shall be guilty of an offence.

Penalty:

> (a) if the offender is a natural person - $1,000; or
> (b) if the offender is a body corporate - $5,000.

(2) Where any matter, the announcement or publication of which by any person without the written authority of a candidate would be an offence against subsection (1) on the part of that person, is announced or published by or on behalf of, or with the support of, any association, league, organization or other body of persons, every person who was an officer thereof at the time of that announcement or publication shall be deemed to be guilty of an offence against subsection (1).

(3) For the purposes of this section, where any matter purports expressly or impliedly to be announced or published by or on behalf of, or in the interests or with the support of, any association, league, organization or other body of persons, the matter shall, in the absence of proof to the contrary, be deemed to be announced or published by or on behalf, or with the support, of the association, league, organization or other body of persons.

(4) Nothing in the foregoing provisions of this section shall apply to or in relation to any announcement or publication made or authorized by any bona fide political party or by any bona fide branch thereof respecting a candidate who, by public announcement, has declared his or her candidature to be a candidature on behalf of or in the interests of that party.

(5) The person whose name and address appears at the end of any matter as the person who authorised the matter under section 328, in the absence of evidence to the contrary, is taken to have announced or published the matter, or caused it to be announced or published, for the purpose of this section.

Section 351 - Legislative History

This section (previously known as section 181A) was added to the Act by section 21of Act No. 19/1940 (Commonwealth Electoral Act 1940). Section 181A was in similar terms to section 351 but did not contain sub-section (5) and the penalty was $100 and/or 3 months imprisonment.

The enactment of this section followed the introduction and withdrawal of an earlier proposed section addressing the publication of matter regarding candidates. In seeking to ascertain the intention of the legislators as to the scope of the enacted section 181A it is necessary to trace this earlier proposed section 181A.

On 23 November 1939 Senator Foll, Minister for the Interior, in the Second Reading speech for the Commonwealth Electoral Bill 1939 indicated to the Senate (at page 1508) that he proposed to include an amendment to the bill in order to meet a request made by a number of members of Parliament in relation to organisations which advertise in the press, or issue tickets on which are included names of certain candidates without the permission of the candidates concerned.

Senator Foll indicated this practice was very often unfair to candidates and the amendment was to make it an offence to include on any ticket the name of a candidate without the permission of that candidate.

In moving on 1 December 1939 the new clause be inserted in the bill (at page 1825) Senator Foll stated the reason for the amendment was to:

> "…..safeguard the position of candidates who, without their authority, may be selected by certain organisations and advertised as their endorsed candidates. When that is done without authority it may result in harm to individual candidates…".

The earlier proposed section 181A provided;

(1) Any person who, without the written authority of the candidate (proof whereof shall lie upon that person) -

> (a) announces or publishes, or causes to be announced or published, any matter claiming or suggesting directly or indirectly that a candidate in an election is associated with, or supports the policy or activities of, any association, league, organization, or other body of persons; or
>
> (b) in any matter announced or published or caused to be announced or published by him on behalf of any association. League, organization or other body of persons, expressly or impliedly solicits votes for a candidate,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

Subsections (2)(3) and (4) were in substantially similar terms to the subsections later enacted.

It is noteworthy that Senator Collings, the Leader of the Opposition, (at page 1827) specifically raised How-to-vote cards issued by the Communist Party that "blazons forth 'Vote 1 for the Labour man and No 2 for our candidate'". The point was made that these were seized upon by opponents of the Labour party to show the communist party was linked to the Communists. Senator Collings also referred to the temperance party and the Protestant Labour party which issued tickets complaining: "It tells the people to vote for certain candidates. Those candidates are immediately in trouble with electors who are not protestants" (or the non-temperence vote).

Senator Collings stated; "This amendment is designed to make that sort of thing impossible."

In the debate concern was expressed by several Senators about the breadth of the proposed section. In particular, there was a concern that paragraph (b) would preclude political parties, for example the Labour Party, issuing pamphlets urging people to mark their ballot papers 1, 2, 3, for the Labour candidates, and 4, 5, 6 against candidates of either of the other two parties, as this would be soliciting votes and would breach the section.

A query was raised whether the section applied to newspapers (at page 1828). Senator Foll stated the section was limited to "any association, league, organisation, or other body of persons, *outside of the usual political parties*, which advocates the claims of certain candidates. It does not refer particularly to newspapers".

Senator Foll insisted the section was designed to prevent an outside body from selecting three candidates and advertising their names in the press as its selected candidates without first having obtained authority to do so and nothing in the amendment would prevent a political party from circulating pamphlets setting out how the people should record their preferences on the ballot paper. Senator Foll said he understood the draftsman considered the words "solicit votes" to mean soliciting 1, 2, 3 for the Senate and voting 1 for candidates in the House of Representatives.

This did not allay the concerns of the Honourable Senators and eventually Senator Foll withdrew the proposed amendment.

On 21 May 1940 a new clause, in largely the form of the section enacted, was introduced into the House of Representatives by Mr Nock, the Assistant Minister.

Mr Nock stated:

> "This clause is designed to protect candidates from disabilities that might conceivably follow from action by unauthorised bodies. An amendment to the same effect was considered by the Senate last session and appeared to be generally acceptable, but as some doubts were expressed as to its practical applicability in the form then submitted, the amendment was withdrawn for re-drafting."

There was debate about the effect of the section on support by well-wishers for candidates and if the how to vote cards of parties would be affected. Mr Nock (at page 1059) emphasised the section prohibited a Communist organisation recommending that another candidate should be placed first on a House of Representatives ballot paper or to recommend 1, 2, 3, for the Senate without the

consent of those candidates, and that candidates were amply protected by paragraph 4 in relation to announcements or publications made or authorised by a bone fide political party in respect of its own candidates.

Mr Nairn (at page 1062), in the absence of the Attorney-General, sought to explain the purpose of the clause. He referred to newspapers, stating the section applied to newspapers, but said if newspapers recommended a vote for a candidate it did so at its own risk. He stressed the prohibition was to "prevent an association or any persons from sponsoring a candidate who does not wish that support. That is the sole purpose of this clause and is its only effect".

Mr Nairn commented that candidates would welcome support from any newspaper, except perhaps a Communist journal, and it would be unlikely any prosecution would be launched, because no exception would be taken to newspaper support.

Mr Sheehan asserted it was a dangerous clause. Mr Nairn replied (at page 1063):

> "It may be a dangerous clause for those who belong to the wrong organisation. Should any matter be published purporting to be issued on behalf of an association, the law will presume that the publication was in fact authorised by that association until the contrary is proved. That is the substance of the provision and I think its real purpose is to prevent persons, newspapers and associations from sponsoring candidates who have no wish for their support."

A slight amendment was made to paragraph 1(b)(ii) to make its meaning clear, namely:

> " …in the case of an elector of a member of the House of Representatives – that that candidate is the candidate for whom the preference vote should be given."

In the Senate, on 23 May 1940 debate focussed on How-to-vote cards. Senator Foll (at page 1176) emphasised the section had no bearing on "vote thus" cards issued by political parties and was designed to prevent organisations from issuing advertisements or publishing in any way that any candidate at the elections is its candidate, unless it first secured the consent of that candidate, saying:

> "This provision is designed to curb the activities of a number of unauthorised bodies which do not run candidates for election to the Senate, but nevertheless claim that they represent certain schools of political thought. Under this provision such organisations will be prohibited from advertising, as they have done in the past, that a certain candidate is their candidate, unless they first secure the authority of the individual concerned to use his name in this way. *The provision does not affect the distribution of preferences as between candidates of genuine political parties*."

Senator Foll stated, in relation to newspapers, that no objection would be taken by any candidate to any newspaper advocating electors to vote for him so there would be no difficulty whatever about a newspaper obtaining a candidate's consent (at page 1179).

Subsequent amendments

S 181A(1) - Amended by s 3 of Act No, 93/1966 to convert the penalty amount to decimal currency.

S 181A - Renumbered to s 351 by Act No. 144/1983.

S 351(1) & (4) - Amended by Act No. 24/1990 for a gender word change.

S 351 - Amended by Act No. 167/1991. Added subsection (5). The second reading speech states that the amendments were to give effect to the recommendations of the Joint Standing Committee on Electoral Matters following its inquiry into the conduct of the 1987 Federal Election and 1988 referendums (Report no. 3 of May 1989) at page 66-8.

The Committee recommended section 351 be amended:

- to delete the requirement to prove a matter is published on behalf of any association, league, organisation or other body of persons ,(as this may be difficult to prove) and;

- to provide that the person whose name is printed as the authoriser of a how-to-vote card is deemed to be the publisher.

The Committee's first recommendation was not reflected in an amendment.

The Explanatory Memoranda states that subsection (5) was inserted to provide that for the purpose of the section, a person whose name is printed as its authoriser will be deemed to have published it, in the absence of evidence to the contrary and that this closes a loophole under which the authorisation details shown are, for the purposes of prosecution documentary hearsay – thereby rendering the provision unenforceable.

The second reading speech indicates the bill modified the provisions of section 351 relating to the publication of matter regarding candidates to enhance its enforceability.

Discussion

It is apparent from the Parliamentary debate on this section that the intention of the legislators was to address the detriment to candidates from the unauthorised endorsement of candidates by associations etc outside the major political parties, as such endorsement generated a suggestion of an association between the candidate and the organisation.

It appears in some instances the detriment referred to may have been intended, or in others, the endorsement may not have been with the intention of causing detriment to the candidate but nevertheless it may have caused a detriment, as persons who did not agree with the views of the association may have been discouraged from voting for the candidate.

The Parliamentary debate revolved around groups such as the Communist and Temperance Parties although the breadth of the drafting of the section would appear to potentially encompass political parties.

The focus of the section is on *endorsement* by and *association* with organisations. It concerns matter announced or published *on behalf of* any association, league, organisation or other body without the written authority of the candidate. It is not directed to material published by a person in a personal capacity, and would not, for example, prohibit individuals writing letters on their own behalf in support of a candidate without that candidate's knowledge.

The proof of offences is assisted by subsection (3) that deems officers of any association etc guilty of an offence where matter is published on behalf of, or with the support of the association. Subsection (5) provides the person who is stated to have authorised the matter is taken, in the absence of evidence to the contrary to have announced or published, or caused it to be, for the purpose of the section.

During the debate an example of a HTV card by the Communist party was given that advocated a first preference vote: "Vote 1 Labor Party Vote 2 Communist Party." The background to the example was the assertion that cards had been issued by the Communist Party that deliberately advocated a first preference vote for Labor with a second preference vote for the Communist party allegedly in an attempt to cause *detriment* to the Labor candidate by reason of an association created by the card.

As recognised in the debate, this type of card, suggesting a first preference vote, clearly falls within the section and would breach the section if published without the written authority of the candidate……

Ballot Paper Stock Problems at Polling Places

(see attached)

BALLOT PAPER STOCK PROBLEMS AT POLLING PLACES

NEW SOUTH WALES

DIVISION	POLLING PLACE	REASON FOR SHORTAGE	ACTION TAKEN	OTHER COMMENTS
FARRER	Albury High, Albury North, Holbrook	Border location with large numbers of NSW voters voting before entering Victoria	Photocopies were made until PPLOs could restock the polling place	
GILMORE	Bawley Point, Burrill Lake, Erowal Bay, Gerringong, Kiama South, Lake Conjola, Milton, Sanctuary Point, Ulladulla	School holidays and long weekend resulting in greater than anticipated absent voting	Photocopies and hand written ballot papers and declaration envelopes were made until PPLOs could restock the polling place with both ballot papers and declaration envelopes	As queues were extensive a number of voters chose not to wait and either attempted to vote later or elsewhere. Some polling staff did take names of voters who could no longer wait to vote. The delay in resupplying polling places did not exceed 1.5 hours
GRAYNDLER	Dulwich Hill	High number of voters from neighbouring Division (Sydney)	No delays experienced	
GWYDIR	Nil * see other comments			9 polling places had to photocopy ballot papers to maintain supply to electors.
LOWE	Nil * see other comments			6 polling places had significant absent voting and needed ballot paper resupply, but no delays
MACARTHUR	Bowral	Inundation of absent voters due to long weekend was greater than anticipated	Ballot papers transferred from pre-poll centre in Bowral until PPLO arrived with extra supplies	

MACQUARIE	Blackheath, Blaxland East, Bligh Park, Comleroy Road, Ebenezer, Faulconbridge, Glossodia, Hazelbrook, Katoomba, Katoomba Street, Kurrajong, Lawson, Leura, Leura Central, Medlow Bath, Mount Riverview, Mount Victoria, Richmond, Richmond North, Springwood,Springwood South, Wentworth Falls, Windsor, Winmalee and Woodford	The election was on a long weekend in school holidays and coincided with the Bathurst car race. The number of voters staying in the Division or travelling through on polling day could not be determined with accuracy	Deliveries of additional supplies were made by both PPLO and Divisional Staff. In addition to these deliveries a number of OICs, with access to photocopiers, made copies when needed to meet demand	
MITCHELL	Nil * see other comments			10 Polling places had significant resupply to met absent voting. No polling place ran out of papers, but there were delays in absent vote issue due to volume of voters
NORTH SYDNEY	Lane Cove West	Unexpected demand in last 30-45 minutes of polling	Resupply from Divisional Office with minimal delay to voters	
PAGE	Palmers Island	Greater turnout than anticipated due to school holidays	OIC photocopied sufficient ballot papers (30)	

PARKES	Parkes and Parkes Hospital	Both booths took greater number of ordinary votes than anticipated due to relocation of another booth in the town	Additional ballot papers provided by another booth in the town and the PPLO	
PATERSON	Nil * see other comments			OICs photocopyied absent ballot papers rather than using ordinary ballot papers
RIVERINA	Coolamon, Kooringal, Leeton, Mangoplah, Parkview, Tallimba, Wagga Wagga	The election was on a long weekend in school holidays. The number of voters staying in the Division or travelling through on polling day could not be determined with accuracy	Additional ballot papers provided by PPLO. No booth actually ran out of ballot papers	
SHORTLAND	Norah Head	Long weekend during school holidays with increased absent vote beyond forecast	OIC photocopied sufficient ballot papers, until PPLO arrived with resupply	
	Cecil Hills	Inundation of absent voters due to long weekend was greater than anticipated	Ballot papers transferred from Hoxton Park and PPLO resupplied	
	Glenfield Park	New booth, number of electors under-estimated	Additional ballot papers provided by PPLO	
	Hillston,Griffith & Narrandera	A number of special functions not known to the DRO were held in those locations, affecting voter numbers	PPLOs resupplied the booths	
	Marrickville Prepoll Voting Centre	High number of voters from Victoria (Higgins and Melbourne) and Leichhardt (Qld)	No delays experienced for Victorian voters. Qld ballot papers ran out late in the day from unexpected influx of voters. Qld voters experienced 30 minutes delay	

	Moama, Tumbarumba	Popular holiday destination	Photocopies were made until PPLOs could restock the polling place.	
	Wallacia	Polling place ran out of ballot papers at 5.50pm due to larger voter turn out than expected	PPLO unable to reach polling place before close. Voters sent to surrounding polling places that had ballot papers	

QUEENSLAND

BOWMAN	Divisional Office Pre Poll Voting Centre	Higher than expected NSW voters.	14 NSW ballot papers had to be photocopied at the end of the day.	No major delays to voters.
DAWSON	Cannonvale	Polling place had been relocated and took far higher than expected votes. Holiday resort and school holidays contributed to higher numbers of voters in the area.	Ballot papers were transferred from nearby polling place. There was a delay of 10 to 15 minutes for some voters in the polling place at the time.	
FAIRFAX	Noosa Heads PPVC Tewantin PPVC	Significantly higher than expected voters from NSW and Victoria on the Sunshine Coast.	Additional ballot papers delivered by PPLO and Divisional staff.	Reported delays of up to 20 minutes waiting for delivery of additional ballot papers.
FISHER	Buderim Garden Village	A new polling place created close by did not reduce the voters as expected, and this polling place had a far higher than expected turnout. Delivery of ballot papers from the Divisional office was hampered by vehicle problems, resulting in ballot papers not arriving before the polling place ran out of ballot papers.	Up to 70 voters went to the nearby Mooloolaba polling place to vote. Additional ballot papers were received from the Divisional office after vehicle problems were overcome.	

	Kuluin	Significantly more voters than expected, turned up at this polling place.	About 60 ballot papers were photocopied until extra ballot papers were delivered by the PPLO.	No reported delays for voters as photocopies kept up to voting.
	Maroochydore PPVC	This interstate voting centre ran out of NSW Senate ballot papers towards the end of the day. This is a popular holiday resort and a higher number of NSW voters than anticipated voted at the centre. The middle of school holidays in NSW made it difficult to predict voters.	45 NSW Senate ballot papers were copied.	Delays were experienced waiting for photocopies. The number of NSW voters on the Sunshine Coast was overwhelming.
GRIFFITH	Bulimba	This polling place ran out of Lilley ballot papers only. Caused by a high number of voters catching the ferry across the river and voting – the polling place is close to the ferry.	Ballot papers were delivered by hand from the Divisional office. A few minutes delay only by a few Lilley voters while waiting for ballot papers to arrive.	
HINKLER	Clinton Miriam Vale	Higher than expected absent voters from other Divisions, caused by school holidays.	Absent ballot papers were photocopied.	No delays to voters.
KENNEDY	Cloncurry	Special event – cowboys football day was catered for, but situation exacerbated by a number of voters coming in from mines to vote.	OIC photocopied Senate ballot papers.	Minor delays to some voters while ballot papers photocopied.
LEICHHARDT	Cairns PPVC	Ran short of NSW and Vic Senate ballot papers because of higher than expected interstate voters during school holidays.	Ballot papers were photocopied by the Divisional Office.	Minor delays only as the Divisional office was able to keep photocopies, in the main, up to the voting.
	Cooktown	Shortage of absent ballot papers for some booths.	OIC photocopied ballot papers.	Minor delays only for some voters waiting for photocopies.
	Port Douglas PPVC	Popular tourist resort hit very hard with interstate voters – much higher than predicted turnout.	OIC had to photocopy both declaration envelopes and ballot papers (about 500 ballot papers)	Long delays experienced at this centre. Voter turnout for this school holiday period unpredictable.

LONGMAN	Bribie Island	Significantly higher than expected voters from NSW and Victoria on the Sunshine Coast, exacerbated by a golfing event in the area.	Extra ballot papers were delivered by the PPLO.	Only one voter was delayed 10 minutes while additional ballot papers were being delivered.
OXLEY	Richlands	Ordinary ballot papers ran out a few minutes before 6pm. Higher than expected voter turnout. Inexperienced OIC did not use option of absent ballot papers or advise DRO/PPLO in time.	Two voters missed out on voting. Non-voting action will not proceed.	OIC given advice on handling similar situations in future. DRO reports an excellent job apart from the handling of this situation.
PETRIE	Bald Hills	New polling place created close by did not attract voters. The polling place took considerably more votes than expected.	Additional ballot papers were delivered by the PPLO.	There was a short delay for some voters – maximum of 10 minutes.
WIDE BAY	Rainbow Beach	Shortage of absent voters due to higher than expected visitors during school holidays.	Additional ballot papers collected from nearest polling place at Tin Can Bay, and ballot papers photocopied until additional ballot papers arrived.	Minimal delays experienced by some voters waiting for photocopies.
	St Helens	More than expected voters probably caused by relocation of another polling place. Polling place ran out of ballot papers close to 6pm.	Additional ballot papers delivered by PPLO.	A few voters had to wait 10 to 15 minutes to vote.

SOUTH AUSTRALIA

BOOTHBY	Darlington	Ran out of ballot papers at 5.45pm due to a rush of absent voters when the Marion Shopping Centre closed at 5pm	Additional ballot papers were supplied from the Divisional Office with minimal delay	
WAKEFIELD	Port Vincent	Polling place is a holiday resort and ran out of Senate ballot papers during the afternoon due to high number of absent voters	Voters experienced a 45 minute delay until additional ballot papers were supplied by the PPLO.	450 votes were recorded which was 91% more than the previous election and 61% higher than the number of votes forecast

WESTERN AUSTRALIA

STIRLING	Yokine West	Polling place was relocated one kilometre north of usual location due to unavailability of usual premises	Voters experienced some delays and one elector could not wait and left	Polling place was resupplied at 2 pm and 4.30 pm

NSW Senate Ballot Paper Regulations

(see attached)

Section 71 of the Northern Territory Electoral Act

71. Assistance of certain persons

(1) If a voter satisfies the presiding officer of a polling place that the voter is so physically incapacitated that he or she is unable to vote without assistance or is illiterate, the presiding officer shall, or shall direct an officer to:

(a) enter an unoccupied polling booth with the voter;
(b) mark the voter's ballot-paper in accordance with the instructions of the voter; and
(c) fold and deposit the voter's ballot-paper in a ballot-box.

(2) If the presiding officer of a polling place is satisfied that the physical incapacity or illiteracy of a voter is such as will not enable the voter:

(a) to communicate the voter's instructions for marking his or her ballot-paper to the presiding officer or an officer under subsection (1); or
(b) to verify that his or her ballot paper will be marked in accordance with his or her instructions, the presiding officer may permit a person appointed by the voter
(c) to assist the voter in accomplishing the matters referred to in paragraphs (a) and (b); and
(d) to be present while the ballot-paper of the voter is marked, folded and deposited in accordance with subsection (1).

(3) For the purposes of this section, it shall be a sufficient indication of a voter's instructions if the voter or the person appointed by the voter under subsection (2) presents to an officer referred to in subsection (1) a piece of paper or card, whether or not a recognisable how-to-vote card, containing a list of names of all candidates and indicating an order of preference for them, and the officer is satisfied that the piece of paper or card reflects the wishes of the voter.

(4) An officer who:

(a) pursuant to this section is required to mark the ballot-paper of a voter; and
(b) marks the ballot-paper of the voter otherwise than in accordance with instructions given by the voter or, in a case where subsection (2) applies, by a person appointed by the voter,

is guilty of an offence.

Penalty: $2,000 or imprisonment for 2 years.

(5) A person, appointed under subsection (2) by a voter, who causes the ballot-paper of the voter to be marked by an officer otherwise than in accordance with the instructions of the voter is guilty of an offence.

Penalty: $2,000 or imprisonment for 2 years.

(6) A candidate's representative or a person, appointed under subsection (2) by a voter, shall not disclose to any person anything relating to the vote of a voter voting under this section.

Penalty: $2,000 or imprisonment for 2 years.

Nothing in this Act, other than section 61 or 77(11), shall prevent a candidate's representative from being present, if he or she so desires, while the ballot-paper of a voter is marked, folded and deposited in accordance with this section.

Declaration Voting- Attachment 17

Australian Electoral Commission Declaration Vote Certificate Envelope

(see attached)

Declaration Voting – Attachment 18

Postal Votes Returned outside Declaration Envelopes

House of Representatives:

STATE OR TERRITORY	TOTAL POSTAL DECLARATION ENVELOPES RECEIVED	NO. OF HOUSE OF REPRESENTATIVES POSTAL VOTES OUTSIDE DECLARATION ENVELOPES	% OF HOUSE OF REPRESENTATIVES POSTAL VOTES OUTSIDE DECLARATION ENVELOPES
NSW	187725	5539	3.0
Victoria	135373	2536	1.9
Queensland	104428	2054	2.0
Western Aust.	32814	327	1.0
South Aust.	60088	391	0.7
Tasmania	14111	59	0.4
ACT	10490	17	0.2
NT	3194	45	1.4
TOTAL	**548223**	**10968**	**2.00**

Senate:

STATE OR TERRITORY	TOTAL POSTAL DECLARATION ENVELOPES RECEIVED	NO. SENATE POSTAL VOTES OUTSIDE DECLARATION ENVELOPES	% SENATE POSTAL VOTES OUTSIDE DECLARATION ENVELOPES
NSW	187725	13734	7.3
Victoria	135373	8061	6.0
Queensland	104428	5396	5.2
Western Aust.	32814	644	2.0
South Aust.	60088	620	1.0
Tasmania	14111	97	0.7
ACT	10490	7	0.1
NT	3194	59	1.8
TOTAL	**548223**	**28618**	**5.22**

Background on postal vote applications distributed by political parties

In submission No 91 of 2 August 1993 to the JSCEM the AEC said the following:

> 8.2.1 For many years the use of the AEC's postal vote applications by political parties for their campaigning purposes has caused concern. Prior to the 1993 election parties made costly and increasing requests for such applications. Very few of the application forms so issued were used by electors.
>
> At the 1993 election the issue surfaced in high profile when the Liberal Party copied and distributed postal vote application forms on a mass scale. (The AEC had been advised by the Attorney-General's Department that nothing in the CEA would proscribe this.) The Labor Party did something similar, but on a much smaller scale.
>
> The action of the Liberal Party, in particular, resulted in public perception (and Court criticism) of possible association between the AEC and a political party. Moreover, rather than a Divisional Office address, their application forms had as their return address the Liberal Party offices which then forwarded them to the AEC for processing. This two stage process posed a danger and could have resulted in some electors being disenfranchised.
>
> 8.2.2 Unless checked, this process is likely to become even more widespread and could result in increased and improper use of postal voting facilities which will add to election costs and possibly delay election results.
>
> 8.2.3 In the circumstances the AEC considers that the CEA should be amended to prevent the general reproduction and distribution of AEC postal vote application forms.
>
> 8.2.4 If the JSC does not agree with the proposal in paragraph 8.2 3 the AEC believes that at the very least it should be made clear that forms must be returned direct to the DRO.
>
> 8.2.5 In association with this the JSC is asked to endorse the AEC position that it will not provide PVA forms at a level above those prevailing in the past to individual candidates and parties for their campaign use. (The AEC's current policy is that up to 500 forms can be provided to a candidate and up to 5,000 to a party in a State, on request and subject to availability, for those electors with a genuine need for postal votes.)
>
> 8.2.6 The AEC subsequently sought legal advice on the matter of copyright as this was not considered when it was concluded that the Liberal Party could not be prevented on the basis of the CEA from reproducing and distributing the form in the lead up to the March 1993 election. The advice is that copyright subsists in the AEC postal voting forms and is vested in the Commonwealth. This would entitle the AEC to seek injunctions to prohibit unauthorised copying and distribution of the forms. There would still be a policy issue as to whether this course should be followed but it may be preferable to put the matter beyond doubt by the proposed amendment in paragraph 8.2.3 (above).

8.2.7 The AEC recommends that the CEA be amended as proposed in 8.2.3 (above) and, failing that, to ensure that any postal vote application must be made and addressed to a DRO (and not to party campaign offices or candidates).

The November 1994 JSCEM Report on the conduct of the 1993 federal election concluded that while reproduction of postal vote application forms by political parties should continue to be permitted, it should not be possible for reproductions of the applications to be incorporated into political party campaign literature, and the majority 1993 JSCEM recommended as follows:

> Recommendation 43: That the Electoral Act be amended to prohibit a postal vote application form, or a reproduction thereof, being incorporated with material issued by any body other than the AEC.

The November 1994 JSCEM Report went on to say that lodging an electoral document should be a direct process between the elector and the AEC. However, if an elector lodges an electoral document with the AEC through a political party the elector should not be disenfranchised for doing so. The only nominated return address on a postal vote application form should be that of the appropriate AEC office, with any form sent to the AEC through a political party to still be considered valid. The majority 1993 JSCEM therefore recommended as follows:

> Recommendation 44: that the Electoral Act be amended as necessary so that a postal vote application form and associated material sent to electors shall nominate only the appropriate office of the AEC as the return address for that application form.

The dissenting report from the coalition members of the 1993 JSCEM, Senator Nick Minchin, Mr David Connolly MP, Senator John Tierney and Mr Michael Cobb MP, was as follows:

> We dissent from recommendations 43 and 44 (page 92) which would have the effect of banning political parties from incorporating a postal vote application form in their own publicity material and nominating a party address for the return of that application form.
>
> At the 1993 election the Liberal Party incorporated a partial reproduction of the postal vote application form in party publicity which nominated a Liberal Party return address. This was partly because of the failure of the AEC to satisfy the demand for official postal voting forms.
>
> The majority have accepted the arguments of the AEC that the neutrality of the AEC might in some way be compromised by association of official forms with party publicity, or that a failure on the part of a political party to send the completed form on to the AEC might disenfranchise an elector.
>
> Neither of these arguments is at all persuasive. If an elector chooses to send a postal voting form through a political party this should be regarded as no different from sending it, as thousands do, through a relative or friend. If all parties were to adopt the practice of incorporating the form in their publicity, as it is now open for them to do, there would be no danger of the AEC being identified with a particular party. Nor is the suggestion that a political party would disenfranchise electors or certain electors anything more than insulting.

The Government Response to the two majority recommendations of the November 1994 JSCEM Report, on page 1259 of the Senate Hansard of 21 September 1995, was to defer the response for further consideration. In the event, no amendments were made to the Electoral Act before the 1996 federal election.

Following the 1996 federal election, the AEC again submitted that amendments to the Electoral Act were required in relation to postal vote applications distributed by political parties. In submission No 30 of 29 July 1996, the AEC said the following (in part):

> 7.4.2 The AEC is becoming increasingly concerned at the potential for voters to be confused about the procedures for applying for a postal vote, and the possibility of a developing public perception that it is the political parties who are somehow responsible for the conduct of postal voting at federal elections rather than the AEC.
>
> 7.4.3 At the past two federal elections the major political parties have blanketed some marginal Divisions with vast numbers of postal vote applications either printed by themselves, or provided by the AEC. In many cases the return address for the postal vote application has been the party campaign offices rather than the AEC, and this has led to a significant risk that some voters will be disenfranchised by this detour and time delay through party political offices, for the recording of voter details for campaign purposes.
>
> 7.4.4 The AEC is also concerned that such practices by the political parties are encouraging voters to cast postal votes unnecessarily, thus increasing the number of declaration votes, the administrative load in their processing, the cost of the voting process, and slowing down the finalising of results…..
>
> 7.4.8 In the lead-up to the 1996 federal election, the AEC sought an injunction to prevent the Victorian Branch of the Liberal Party from infringing Commonwealth copyright by printing, publishing and distributing, without authority, a version of the official postal vote application form. The Liberal Party then cross-filed to prevent the Commonwealth asserting its copyright. The Federal Court decided that the Commonwealth had copyright in the postal vote applications forms, but could not, because of the particular circumstances of this case, enforce that copyright (Baillieu and Poggioli v AEC and the Commonwealth, VG 10 of 1996, 22 January 1996, Sundberg J, Federal Court, unreported).
>
> 7.4.9 The AEC remains of the view that the current practice of political parties of printing and distributing large numbers of postal vote applications, enclosed with party campaign material, and forwarded through party campaign offices for the purposes of constructing voter profiles for campaign purposes, is detrimental to the overall good conduct of federal elections.
>
> Recommendation No 16: The AEC recommends that the CEA and the RMPA be amended to prohibit a postal vote application form, or a reproduction thereof, being incorporated with material issued by any body other than the AEC.
>
> Recommendation No 17: The AEC recommends that the CEA and the RMPA be amended as necessary so that a postal vote application form and associated material sent to electors shall nominate only the appropriate office of the AEC as the return address for that application form.

In the June 1997 JSCEM Report on the conduct of the 1996 federal election, the following was concluded:

> 5.9 The major political parties produce copies of the AEC's official postal vote application form, and send the copied forms with political material to the electors. The AEC expressed concern to the previous committee about first, the potential for the AEC to be seen as aligned with a political party, and second, a supposed potential for electors to be disenfranchised by delays in the return of completed forms to the AEC.
>
> 5.10 While the committee did not adopt the AEC's preferred solution – namely, a complete ban on the reproduction and distribution of postal vote application forms by political parties – it did recommend a ban on the forms "being incorporated with material issued by any body other than the AEC", and on a return address other than an AEC office being nominated. However the government deferred consideration of the recommendations and legislative amendment did not proceed.
>
> 5.11 The AEC resubmitted to this inquiry the previous committee's two recommendations, as did the ALP (on the proviso that the AEC distributes more original forms to candidates). However, the Liberal Party stated
>
> > The Electoral Act should acknowledge the legitimate role of political parties in facilitating postal voting by providing electors with application for postal vote forms….The Party recommends the role of political parties in distributing postal vote application forms be formally recognised, and that possible limitations, like copyright, on the reproduction of the forms be removed.
>
> 5.12 The reference to copyright is presumably in response to legal action initiated by the AEC in the lead-up to the 1996 Federal election. The AEC had sought an injunction to prevent the Victorian Branch of the Liberal Party from infringing copyright by printing, publishing and distributing a version of the official postal vote application form. The Liberal Party then cross-filed to prevent the Commonwealth asserting its copyright. The Federal Court decided that the Commonwealth had copyright in the forms but could not, because of the peculiar circumstances of the case, enforce that copyright.
>
> 5.13 Parties should be able to provide postal vote application forms with political material. However, the application form should not be incorporated into another document with political literature, but should be a stand-alone replica of the official form. This matter should be clarified in the Electoral Act, notwithstanding the protection provided by copyright legislation.
>
> 5.14 Recommendation 30: that the Electoral Act and the Referendum Act be amended to make clear that a postal vote application form sent to an elector must be the official AEC form or an exact replica, and must not be incorporated into another document with material issued by a body other than the AEC.
>
> 5.15 Where electors have chosen to make use of a political party's services, obviously the party has every incentive to promptly return the completed application forms to the AEC. There is no need to stipulate that the nominated return address must be that of an AEC office.

The Government Response to Recommendation 30 of the June 1997 JSCEM Report, as reported on page 1663 of the Senate Hansard of 8 April 1998, was as follows

> Not supported. The amendment should provide that the approved postal vote application may be incorporated into another document with material issued by a body or person other than the AEC, such as a political party or candidate. However, the postal vote application must be in the approved form. An amendment has been moved to the Electoral and Referendum Amendment Bill 1997.

Declaration Voting – Attachment 20

Postal Vote Applications Processed

(see attached)

Postal Vote Applications Processed: 1993

By: / For:	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	OS	TOTAL
NSW	104432	988	1569	352	298	188	618	140	3613	112198
VIC	1414	90413	1287	380	358	252	193	157	2552	97006
QLD	1565	826	74818	239	177	159	170	143	1737	79834
WA	473	275	308	20437	141	77	42	91	1167	23011
SA	445	336	324	184	27835	49	68	151	782	30174
TAS	187	229	189	70	60	9416	38	28	195	10412
ACT	469	159	156	35	31	17	5165	10	750	6792
NT	125	82	131	59	93	15	13	2097	115	2730
TOTAL	109110	93308	78782	21756	28993	10173	6307	2817	10911	362157

Postal Vote Applications Processed: 1996

By: / For:	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	OS	TOTAL
NSW	112106	1128	1674	432	314	155	379	142	3505	119835
VIC	1447	104256	1441	624	357	213	141	219	2899	111597
QLD	1596	1108	84887	418	259	181	135	210	1812	90606
WA	422	459	393	29105	168	112	45	153	1399	32256
SA	445	460	383	270	31428	69	57	187	865	34164
TAS	191	192	213	108	45	14685	12	29	156	15631
ACT	503	163	181	61	26	29	4927	22	564	6476
NT	145	119	183	103	138	12	10	2775	113	3598
TOTAL	116855	107885	89355	31121	32735	15456	5706	3737	11313	414163

Postal Vote Applications Processed: 1998

By: / For:	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	OS	TOTAL
NSW	200238	837	1931	530	358	89	450	944	4562	209939
VIC	1382	141519	1904	736	379	130	90	384	3591	150115
QLD	1662	616	108159	460	245	82	92	517	1890	113723
WA	444	249	440	34812	171	43	46	268	1692	38165
SA	438	321	465	240	61453	32	35	209	994	64187
TAS	248	193	353	152	80	13702	28	90	179	15025
ACT	515	88	166	53	24	12	10445	66	733	12102
NT	127	67	142	74	96	6	18	3097	108	3735
TOTAL	205054	143890	113560	37057	62806	14096	11204	5575	13749	606991

Postal Vote Applications Processed: % Change from 1993 to 1996

By: / For:	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	OS	TOTAL
NSW	7%	14%	7%	23%	5%	-18%	-39%	1%	-3%	7%
VIC	2%	15%	12%	64%	0%	-15%	-27%	39%	14%	15%
QLD	2%	34%	13%	75%	46%	14%	-21%	47%	4%	13%
WA	-11%	67%	28%	42%	19%	45%	7%	68%	20%	40%
SA	0%	37%	18%	47%	13%	41%	-16%	24%	11%	13%
TAS	2%	-16%	13%	54%	-25%	56%	-68%	4%	-20%	50%
ACT	7%	3%	16%	74%	-16%	71%	-5%	120%	-25%	-5%
NT	16%	45%	40%	75%	48%	-20%	-23%	32%	-2%	32%
TOTAL	7%	16%	13%	43%	13%	52%	-10%	33%	4%	14%

Postal Vote Applications Processed: % Change from 1996 to 1998

By: / For:	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	OS	TOTAL
NSW	79%	-26%	15%	23%	14%	-43%	19%	565%	30%	75%
VIC	-4%	36%	32%	18%	6%	-39%	-36%	75%	24%	35%
QLD	4%	-44%	27%	10%	-5%	-55%	-32%	146%	4%	26%
WA	5%	-46%	12%	20%	2%	-62%	2%	75%	21%	18%
SA	-2%	-30%	21%	-11%	96%	-54%	-39%	12%	15%	88%
TAS	30%	1%	66%	41%	78%	-7%	133%	210%	15%	-4%
ACT	2%	-46%	-8%	-13%	-8%	-59%	112%	200%	30%	87%
NT	-12%	-44%	-22%	-28%	-30%	-50%	80%	12%	-4%	4%
TOTAL	75%	33%	27%	19%	92%	-9%	96%	49%	22%	47%

Postal Vote Applications Processed: % Change from 1993 to 1998

By: / For:	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	OS	TOTAL
NSW	92%	-15%	23%	51%	20%	-53%	-27%	574%	26%	87%
VIC	-2%	57%	48%	94%	6%	-48%	-53%	145%	41%	55%
QLD	6%	-25%	45%	92%	38%	-48%	-46%	262%	9%	42%
WA	-6%	-9%	43%	70%	21%	-44%	10%	195%	45%	66%
SA	-2%	-4%	44%	30%	121%	-35%	-49%	38%	27%	113%
TAS	33%	-16%	87%	117%	33%	46%	-26%	221%	-8%	44%
ACT	10%	-45%	6%	51%	-23%	-29%	102%	560%	-2%	78%
NT	2%	-18%	8%	25%	3%	-60%	38%	48%	-6%	37%
TOTAL	88%	54%	44%	70%	117%	39%	78%	98%	26%	68%

Declaration Voting – Attachment 21

Australian Electoral Commission Postal Vote Application

(see attached)

Declaration Voting – Attachment 22

NSW Liberal Party Postal Vote Application (NSW State election)

(see attached)

Commonwealth Countries for Authorised Witnesses to Overseas Postal Vote Applications

Country	Capital	Country	Capital
Antigua & Barbuda	St John's	Mauritius	Port Louis
Australia	Canberra	Mozambique	Maputo
Bahamas	Nassau	Namibia	Windhoek
Bangladesh	Dhaka	New Zealand	Wellington
Barbados	Bridgetown	Nigeria	Abuja
Belize	Belmopan	Nauru (Special Member)	Nauru
Botswana	Gaborone	Pakistan	Islamabad
Britain	London	Papua New Guinea	Port Moresby
Brunei Darussalam	Bandar Seri Begawan	St Kitts & Nevis	Basseterre
Cameroon	Yaoundé	St Lucia	Castries
Canada	Ottawa	St Vincent & the Grenadines	Kingstown
Cyprus	Nicosia	Samoa	Apia
Dominica	Roseau	Seychelles	Victoria
Fiji	Suva	Sierra Leone	Freetown
The Gambia	Banjul	Singapore	Singapore
Ghana	Accra	Solomon Islands	Honiara
Grenada	St George's	South Africa	Pretoria
Guyana	Georgetown	Sri Lanka	Colombo
India	New Delhi	Swaziland	Mbabne
Jamaica	Kingston	Tanzania	Dodoma
Kenya	Nairobi	Tonga	Nuku'alofa
Kiribati	Tarawa	Trinidad & Tobago	Port of Spain
Lesotho	Maseru	Tuvalu (Special Member)	Funafuti
Malawi	Lilongwe	Uganda	Kampala
Malaysia	Kuala Lumpur	Vanuatu	Port Vila
Maldives	Malé	Zambia	Lusaka
Malta	Valletta	Zimbabwe	Harare

Overseas Postal Voting

LOCATION	COUNTRY	VOTES	LOCATION	COUNTRY	VOTES
Almaty	Kazakstan	18	Malta	Malta	446
Amman	Jordan	60	Manchester	UK	712
Ankara	Turkey	78	Manila	Philippines	765
Apia	Western Samoa	113	Mexico City	Mexico	77
Athens	Greece	1 015	Milan	Italy	164
Atlanta	USA	82	Moscow	Russia	119
Auckland	New Zealand	1 204	Mumbai	India	73
Bali	Indonesia	377	Nagoya	Japan	77
Bandar Seri Begawan	Brunei	166	Nairobi	Kenya	81
Bangkok	Thailand	927	New Delhi	India	232
Beijing	China	603	New York	USA	1 350
Beirut	Lebanon	481	Nicosia	Cyprus	148
Belgrade	Yugoslavia	111	Noumea	New Caledonia	122
Berlin	Germany	300	Nuku'alofa	Tonga	88
Bonn	Germany	397	Osaka	Japan	263
Brasilia	Brazil	18	Ottawa	Canada	274
Bridgetown	Barbados	11	Paris	France	1 180
Brussels	Belgium	180	Phnom Pehn	Cambodia	223
Budapest	Hungary	202	Pohnpei	Micronesia	19
Buenos Aires	Argentina	128	Port Louis	Mauritius	135
Butterworth	Malaysia	66	Port Moresby	Papua New Guinea	802
Cairo	Egypt	262	Port Vila	Vanuatu	104
Cape Town	South Africa	119	Pretoria	South Africa	125
Caracas	Venezuela	13	Rangoon	Burma	58
Colombo	Sri Lanka	327	Riyadh	Saudi Arabia	304

Damascus	Syria	72	Rome	Italy	686
Dahka	Bangladesh	75	San Francisco	USA	566
Dubai	United Arab Emirates	131	Santiago	Chile	301
Dublin	Ireland	882	Sao Paulo	Brazil	18
Frankfurt	Germany	73	Sapporo	Japan	18
Fukuoka City	Japan	37	Sendai	Japan	32
Geneva	Switzerland	357	Seoul	Korea	178
Guangzhou	China	366	Shanghai	China	719
Hamburg	Germany	17	Singapore	Singapore	2 425
Hanoi	Vietnam	246	Stockholm	Sweden	400
Harare	Zimbabwe	128	Suva	Fiji	554
Ho Chi Minh City	Vietnam	734	Taipei	Taiwan	892
Hong Kong	Hong Kong	10 680	Tarawa	Kiribati	47
Honiara	Solomon Islands	129	Tehran	Iran	38
Honolulu	USA	138	Tel Aviv	Israel	185
Islamabad	Pakistan	119	The Hague	Netherlands	433
Istanbul	Turkey	129	Tokyo	Japan	924
Jakarta	Indonesia	876	Toronto	Canada	449
Johannesburg	South Africa	39	Vancouver	Canada	686
Kathmandu	Nepal	51	Vienna	Austria	411
Kuala Lumpur	Malaysia	959	Vientiane	Laos	127
Lagos	Nigeria	0	Warsaw	Poland	161
London	UK	20 690	Washington DC	USA	1 173
Los Angeles	USA	620	Wellington	New Zealand	634
Madrid	Spain	273	**TOTAL**		**65 086**

Provisional Votes Issued and Received (*marginal seats)

New South Wales

Division	1996	1998	Division	1996	1998
Banks	* 688	829	Lowe	* 1296	* 1541
Barton	* 1479	1791	Lyne	967	1338
Bennelong	775	1205	Macarthur	990	* 1424
Berowra	680	833	Mackellar	1059	1391
Blaxland	1706	1958	Macquarie	1059	* 1283
Bradfield	528	631	Mitchell	528	925
Calare	752	1328	Newcastle	947	1088
Charlton	796	1212	New England	1306	1285
Chifley	1419	2016	North Sydney	1303	1823
Cook	700	1117	Page	* 1173	* 1556
Cowper	1359	1473	Parkes	998	* 1093
Cunningham	611	763	Parramatta	* 1019	* 1656
Dobell	* 918	* 1608	Paterson	* 706	* 1079
Eden-Monaro	* 907	* 1673	Prospect	1009	1761
Farrer	540	1113	Reid	933	1523
Fowler	2102	3062	Richmond	1680	* 1831
Gilmore	1040	* 1257	Riverina	932	1359
Grayndler	2035	2598	Robertson	* 1054	1485
Greenway	* 893	1440	Shortland	802	906
Gwydir	1017	1336	Sydney	2954	3758
Hughes	633	* 715	Throsby	990	1233
Hume	349	853	Warringah	1131	1411
Hunter	740	1273	Watson	1300	1719
Kingsford-Smith	1200	1973	Wentworth	1766	2033
Lindsay	* 1011	* 1462	Werriwa	907	1396
			NSW TOTAL	**53687**	**73416**