

**AUSTRALIAN ELECTORAL COMMISSION**

**SUPPLEMENTARY SUBMISSION TO  
THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
INQUIRY INTO  
THE INTEGRITY OF THE ELECTORAL ROLL**

**AEC RESPONSES TO ROLL ACCESS SUBMISSIONS**

**Submission No 73 of 23 February 2001**

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## **1. Introduction**

1.1 This supplementary submission from the Australian Electoral Commission (AEC) is provided to the Joint Standing Committee on Electoral Matters (JSCEM) in response to the "Inquiry into the Integrity of the Electoral Roll", as advertised on 9 September 2000.

1.2 The first AEC submission, No 26 of 17 October 2000, is published, with the attachments, on the AEC website at [www.aec.gov.au](http://www.aec.gov.au). A supplementary submission, entitled "AEC Responses to 15 November Hearings and Questions on Notice", was filed with the JSCEM on 9 February 2001, and other supplementary submissions are being filed progressively.

1.3 This supplementary submission responds to issues relating to public access to the Electoral Roll, raised in eight written submissions to this JSCEM inquiry. In the first AEC submission, No 26 of 17 October 2000, the AEC provided an overview of roll access issues in part 9 (The Commonwealth Electoral Roll), part 10 (The Roll Management System (RMANS)), and in part 11 (Continuous Roll Updating (CRU)).

## **2. Submission No 3 – John Ure – 25 September 2000**

2.1 Mr John Ure, on behalf of the National Missing Persons Unit (NMPU) of the Australian Bureau of Criminal Intelligence, asks the JSCEM to consider whether nationally accredited non-government organisations, concerned with tracing missing persons, should be provided with special access to microfiche copies of the Electoral Roll, containing name, address and date of birth information. Mr Ure says it would be of considerable advantage in their work to have their own copies of reasonably up to date microfiche versions of the rolls, sorted alphabetically for each State and Territory, and including personal elector information such as dates of birth.

2.2 Under section 90 of the Electoral Act, a non-government organisation concerned with tracing missing persons is entitled, as is any other person or organisation, to inspect or purchase the latest prints of Divisional rolls. It will be recalled that the AEC advised the JSCEM in part 3 of submission No 257 of 3 May 2000, that while the microfiche copies of the Roll remain available for public inspection as required under the Electoral Act, the production of microfiche copies of the Roll for the purposes of sale was stopped in March 2000, given there was no clear legislative basis for the sale of microfiche Rolls, and in response to increasing privacy concerns about the commercial exploitation of enrolment information.

2.3 However, the AEC has recommended that the publicly available Roll be published on the Internet with monthly updates (see part 4.7 of submission No 88 of 12 March 1999 and part 2 of submission No 257 of 3 May 2000). Recommendation 11 of the June 2000 JSCEM Report on the 1998 Federal Election supported the AEC recommendation subject to JSCEM acceptance of an "AEC internet issues paper" (see part 9 for further discussion). The Government Response to the JSCEM recommendation is yet to be tabled.

2.4 The proposed use of the rolls by the NMPU is not encompassed by the purpose for which personal elector information is collected by the AEC under the terms of the Electoral Act, that is, to establish a public roll of those people eligible to vote at elections for the Federal Parliament (and by agreement at most State and local government elections). Neither is it one of the permitted purposes, inserted in the Electoral and Referendum Regulations in recent years, which relate mainly to Commonwealth activities in the protection of revenue and the prosecution of crime.

2.5 If personal elector information, such as date of birth, is made available to organisations for purposes unrelated to the electoral process, it is possible that an increasing number of electors will avoid electoral enrolment because of the decreasing personal privacy entailed. This in turn means that the Electoral Roll could suffer a decline in accuracy. In general, the AEC is opposed to proposals that seek to expand the permitted uses for personal elector information, because a reduction in the completeness and accuracy of the Electoral Roll is a likely outcome.

### **3. Submission No 11 – Paul Johnstone – 7 October 2000**

3.1 In his submission, Mr Johnstone says that, given it is compulsory for Australian citizens to provide their names and addresses for the Electoral Roll, individuals and organisations should be prohibited from using electors information for commercial or other purposes. Alternatively, Mr Johnstone suggests that electors be given the option of not having their details appear on the Electoral Roll.

3.2 The AEC shares Mr Johnstone's concern about the commercial use of publicly available elector information and does not support or condone such use (see part 3 of submission No 257 of 3 May 2000 for example). However, the AEC is unable to agree with Mr Johnstone's proposal that an elector's inclusion on the publicly available Electoral Roll be optional, for the following reasons as explained in part 9 of submission No 26 of 17 October 2000:

9.2.1 The most important means for maintaining the integrity of electoral rolls, and in deterring and detecting enrolment fraud, is the transparency of those rolls. It is a universally agreed democratic principle that electoral rolls should not be hidden documents administered in secret, but should be open and accessible to all citizens, so that they can check their own enrolments and those of others, and make complaint and seek amendment if any errors or inaccuracies are discovered...

3.3 It might be noted that section 104 of the Electoral Act provides that where the personal safety of an elector (or elector's family) would be at risk, an application can be made that the elector's address not be entered on the roll. The AEC believes that to extend the silent enrolment facility to all electors would contradict the principle of transparency in a publicly available Electoral Roll.

#### **4. Submission No 15 – Ian Woods – 10 October 2000**

4.1 Mr Ian Woods, on behalf of the Australian Bankers Association (ABA), has asked the JSCEM to consider whether it should be provided with special access to microfiche copies of the Electoral Roll, containing name and address information, as well as on-line access to the Internet Roll, if and when it eventuates. In fact, the ABA has never been provided by the AEC with direct access, by microfiche or otherwise, to the "complete" rolls, containing personal enrolment information, under the current legislative provisions, although they might have purchased the microfiche version of the public roll in the past.

4.2 As the AEC advised the JSCEM in part 3 of submission No 257 of 3 May 2000, whilst the microfiche copies of the Roll remain available for public inspection as required under the Electoral Act, the production of microfiche copies of the Roll for the purposes of sale was stopped in March 2000, given that there was no clear legislative basis for the sale of microfiche Rolls, and in response to increasing privacy concerns about the commercial exploitation of enrolment information.

4.3 However, the AEC has already recommended that the publicly available Roll be published on the Internet with monthly updates (see part 4.7 of submission No 88 of 12 March 1999 and part 2 of submission No 257 of 3 May 2000). Recommendation 11 of the June 2000 JSCEM Report on the 1998 Federal Election supported the AEC recommendation subject to JSCEM acceptance of an "AEC internet issues paper". The Government Response to the JSCEM recommendation is yet to be tabled. There is no intention of allowing on-line (or interactive) access to the Internet version of the Electoral Roll; it would be a read-only service so that electors can check public enrolment information.

4.4 In general terms, the proposed use of the rolls by the ABA is not consistent with the purposes for which the Electoral Roll is maintained under the Electoral Act.

## 5. Submission No 31 – Brian Hughes – 8 October 2000

5.1 In his submission, Dr Hughes expresses his concern about the “misuse of the AER for profit” and states his preference that the Electoral Roll “only be used for scientific research”. The AEC commented on the use of the Electoral Roll in part 9.2 of submission No 26 of 17 October 2000, as follows:

9.2.1 The most important means for maintaining the integrity of electoral rolls, and in deterring and detecting enrolment fraud, is the transparency of those rolls. It is a universally agreed democratic principle that electoral rolls should not be hidden documents administered in secret, but should be open and accessible to all citizens, so that they can check their own enrolments and those of others, and make complaint and seek amendment if any errors or inaccuracies are discovered. Part IX of the Electoral Act allows for objections to the enrolment of any elector by any other elector, as well as extensive appeal procedures for both parties.....

9.2.7 Part VI of the Electoral Act provides for public access to the Commonwealth Electoral Roll. The AEC recently recommended to the JSCEM, at Attachment 22, that public access to the elector names and addresses on the Commonwealth Electoral Roll be facilitated by publication on the Internet, with monthly updates, so as to improve the transparency of the Roll. This would allow electors to more conveniently 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. The June 2000 JSCEM Report agreed with the AEC recommendation, subject to further research (recommendation 11).

9.2.8 The Commonwealth Electoral Roll is maintained by the AEC on the computerised Roll Management System (RMANS), which contains publicly available name and address information on some 12.2 million electors. The Electoral Roll also contains private enrolment information on electors, as provided by them at the point of enrolment, such as gender and date of birth information, for internal cross-checking purposes. The use of this private enrolment information is subject to the *Privacy Act 1988*, to exemptions in the *Freedom of Information Act 1982*, and is controlled by penalties for misuse contained in the Electoral Act. Private enrolment information is made available to other departments and agencies under strict conditions (currently under legislative review), for purposes such as law enforcement and medical research, and to registered political parties and Members of Parliament, for constituency purposes.

9.2.9 For further information on the privacy aspects of access to enrolment information, Attachment 23 reproduces an AEC submission provided to the House of Representatives Standing Committee on Legal and Constitutional Affairs on 12 May 2000 in relation to its inquiry into the Privacy Amendment (Private Sector) Bill. Recommendation 13 of the Committee’s June 2000 Report was that political parties or representatives should not be permitted to sell or disclose personal information collected in the course of their duties to anyone not covered by the draft exemptions provided in the Bill. The September 2000 Government Response did not accept this recommendation

on the grounds that it might restrict freedom of political communication, and because there are penalties already available in the Electoral Act for misuse of private enrolment information.

5.2 The AEC is aware that the publicly available electoral roll information (names and addresses) is probably being used for a range of mostly commercial purposes that are not consistent with the intention of the Electoral Act. The AEC does not condone the commercial use of the Electoral Roll, and is considering the best way to prevent inappropriate use, while retaining the necessary transparency of electoral information. It may be that the sale of the rolls should cease altogether, but this would require amendments to the Electoral Act, after further consideration by the JSCEM.

## **6. Submission No 32 – S A J Maiden – 25 October 2000**

6.1 This submission is similar to submission No 3, which the AEC has responded to in part 2 above.

## **7. Submission No 34 – Matthew Ridgeway – 27 October 2000**

7.1 In his submission, Mr Ridgeway recommends increased restrictions on the availability of the Electoral Roll and a severe reduction in the transparency of the Roll. The AEC has commented on the use of the Roll in response to submission No 31 at part 5 above.

## **8. Submission No 37 – Judy Raymond – 13 October 2000**

8.1 The submission from Ms Judy Raymond, on behalf of the Department of Family and Community Services, seeks access to personal elector information not currently permitted under section 91(9) and (10) of the Electoral Act, in particular, the elector's date of enrolment. The Department also seeks supply of "additional items, such as enrolment date, which were previously available...". The Department lists the additional items as postal address, State, enrolment date, and occupation.

8.2 On 8 September 2000, Centrelink made a similar request direct to the AEC and the AEC responded on 20 September 2000. The following is an extract of the AEC response:

In your letter, you request that the Australian Electoral Commission (AEC) continue to provide Centrelink with State Indicator, Enrolment Date, Occupation and Postal Address details, which have been excluded from the new record layout for electronic downloads to Schedule 2 agencies.

As result of questions raised in Parliament concerning the supply of elector information by the AEC to prescribed authorities, the AEC completely reviewed the provision of all such information to all persons. This review included obtaining legal advice concerning what details could and could not

be provided. In a nutshell, the legal advice was that the AEC could not provide details that were not specifically set out in the legislation. The only details, with some restrictions, set out in the legislation are name, address, date of birth, gender and occupation. Therefore, the AEC is unable to accede to your request to continue providing Centrelink with any additional information.

Further, the AEC is no longer able to provide prescribed authorities, including Centrelink, with occupation details as this information is no longer collected for federal enrolment purposes. This information ceased to be collected by the AEC after discussions with the Privacy Commissioner in which the AEC was advised that it should not collect information which was not necessary for enrolment purposes....

8.3 In general, the AEC opposes any extension of the uses to which electors' personal information may be put (or the nature of that information) because such extensions decrease the privacy which should be available to electors. The extension may contribute to lessening the completeness and accuracy of the Electoral Roll as a greater number of citizens may be reluctant to make their personal information available willingly and without coercion.

8.4 That said, if the extension in the type of information to be available under subsection 91(9) of the Electoral Act was restricted to include just the date of enrolment and State indicator, that would not be a significant extension of the dissemination of personal elector information.

## **9. Submission No 42 – Privacy Commissioner – 6 November 2000**

9.1 The Privacy Commissioner makes a number of specific recommendations in his submission and they are responded to in turn, as follows:

*Recommendation 1. That the Electoral Commission's inquiry into sections 89-92 of the Electoral Act be given the highest priority and that the findings of the review be taken into account in strengthening privacy protections governing the electoral roll.*

9.2 The background to this matter is as follows. Recommendation 9 of the June 1997 JSCEM Report, following the 1996 federal election, was "that electoral rolls for a division or subdivision again be made available for inspection in local libraries and Post Offices". The Government Response of 8 April 1998 to this recommendation 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".



9.3 The Government Response to the June 1997 JSCEM Report was tabled a month after the AEC had provided the results of such an analysis to the JSCEM as part of a submission entitled "Implementation Plan" of 9 March 1998 (which was itself a response to recommendation 1 of the June 1997 JSCEM Report). Accordingly, the AEC did not see any need to provide any further analysis at that time.

9.4 Recommendation 53 of the same 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". This recommendation was supported in the Government Response of 8 April 1998.

9.5 The section 89-92 review, including coverage of the legislation governing public access to the enrolment information and the related Internet issues, was not progressed during the conduct of the 1998 federal election, the 1999 Referendums, the 1999 ATSIIC elections, and the ensuing JSCEM inquiry into the conduct of the 1998 federal election. The AEC advised Senate Estimates early in 2000 that the section 89-92 review was underway, but it has again been de-prioritised for the duration of the current JSCEM proceedings into the Integrity of the Electoral Roll, pending any relevant recommendations.

9.6 The AEC formally addressed the issues involved in publishing the Roll on the Internet in its submissions to the JSCEM inquiry into the 1998 federal election, in part 4.7 of submission No 88 of 12 March 1999, and parts 2 and 3 of submission No 257 of 3 May 2000, and formally recommended that the Roll be published on the Internet.

9.7 Recommendation 11 of the June 2000 JSCEM Report, following the 1998 federal election, was: "Subject to the JSCEM acceptance of matters raised in the AEC's internet issues paper, 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. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll." The Government Response has not yet been tabled in the Parliament.

9.8 The AEC has assumed that the "Internet Issues Paper", mentioned in recommendation 11 of the June 2000 JSCEM report represents the "section 89-92 review", arising out of recommendation 53 of the previous JSCEM.

9.9 The previous JSCEM did not specifically require the AEC to report back to it on the “section 89-92 review”, and the current JSCEM has not specifically required the AEC to report back to it on the “Internet Issues Paper”. Further, given the reservations arising from the probity of the AEC dealing directly with the JSCEM without a specific reference (see paras 5.135-5.136 of the June 2000 JSCEM Report), it has been concluded that the AEC should publish a Research Report on these matters.

9.10 This AEC Research Report, entitled “Review of the Legislation governing Access to Enrolment Information”, will constitute the section 89-92 review in progress, identified as the “Internet Issues Paper” by the current JSCEM, and will follow on from part 6 of the 1998 “Implementation Plan”, and the 1999 submissions from the AEC to the JSCEM on publishing the Roll on the Internet. Limited consultation will take place on an exposure draft, including with the Privacy Commissioner, prior to release of the Report. It will be published on the AEC Website and will cover all the legislative issues that have arisen in recent times in relation to access to enrolment information, as well as making a series of public recommendations for legislative amendment and administrative change as necessary. Copy will be provided to the Minister, the JSCEM, and the Privacy Commissioner, for consideration.

9.11 It is noted that at page 156 of the June 2000 JSCEM Report the ALP minority members of the JSCEM dissented from recommendation 11 as follows: “We believe that Recommendation 11 should be deferred until the AEC reports on Part VI of the Act and the issues arising from the recent illegal release of electoral roll information. The Opposition will be closely examining privacy implications arising from the AEC internet issues paper.”

*Recommendation 2. That as a short-term measure, the Commission either restricts or stops making the roll available for sale in printed form. That in the long-term, Parliament consider imposing the same end-use restrictions on electoral information, whether it is provided electronically or in printed form.*

9.12 Section 90 of the Electoral Act provides that the latest print of the rolls should be available for public inspection and purchase, and the JSCEM might consider whether the rolls should continue to be provided for sale under the legislation, particularly since the provision of the rolls on the Internet would improve access for electoral purposes. However, in the view of the AEC it would be inappropriate to cease sale of the roll prior to it being made available on the Internet.

9.13 The AEC does recognise the problems that arise with the misuse of the printed rolls for commercial and other purposes. Further, the AEC recognises that the printed rolls, published once in the life of a parliament, become rapidly dated and are not effective for their real purpose, which is to allow electors to check the enrolments of others to ensure the integrity of the rolls.

9.14 In order to address these problems, the AEC recommended, in part 4.7 of submission No 88 of 12 March 1999, and in part 1 of submission No 257 of 3 May 2000, that the Roll be published on the Internet with monthly updates. This was supported only conditionally in recommendation 11 of the June 2000 JSCEM Report, and there was a dissenting report. The Government Response is awaited.

9.15 The AEC supports the Privacy Commissioner's recommendation, that the Electoral Act be amended so that end-use restrictions apply to all information extracted from the Electoral Roll, whether inspected in an AEC office, purchased as a printed copy, accessed on the Internet, or provided in electronic format. This will be considered as part of the "Review of the Legislation governing Access to Enrolment Information" referred to above in response to the first recommendation. It should be noted however that it is anticipated there could be practical difficulties with enforcement of such end-use restrictions especially where the misuse does not involve a clear transaction with an identified recipient.

*Recommendation 3: In order to maintain adequate protection of individual privacy, legislative measures be considered, which provide greater transparency in relation to the disclosure practices of the Commission. The Electoral Act could confer individuals with a right to obtain information about all disclosures made by the Commission to third parties. Consideration should also be given to providing individuals the right to have deleted all information derived from the electoral roll, where it has been collated into other databases unless it is for law enforcement or national security purposes. This would enable individuals to exercise some control over their personal information in the hands of those third parties.*

9.16 The AEC already publishes information on the disclosure of enrolment information, on the back of the Electoral Enrolment Form, for example, in accordance with the requirements of the *Privacy Act 1988*. The AEC also provides this information in the Personal Information Digest, which is published by the Office of the Privacy Commissioner, in accordance with Privacy Principle 5 of the *Privacy Act 1988*.

9.17 The AEC does not disagree that there should be a right of redress for individuals whose enrolment information is mismatched or becomes otherwise corrupted by a third party, after disclosure to it by the AEC. However, any legislation based on this recommendation should place the responsibility on the third parties, and not on the AEC.

*Recommendation 4: In order to achieve an appropriate balance between the privacy rights of individuals and the ability of political parties and individuals to contribute to the democratic process, individuals should be conferred the right to access records held by political parties and to obtain correction or deletion of that information. Individuals should also be allowed to know when and to whom political parties have disclosed information to third parties. Use or disclosure by political parties for commercial purposes of data, derived from the electoral roll, should be prohibited.*

9.18 The AEC supports this recommendation. At Attachment 23 to submission No 26 of 17 October 2000 is copy of an AEC submission of 12 May 2000 to the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into the Privacy Amendment (Private Sector) Bill, in which the AEC said the following:

- All eligible electors in Australia are required to provide personal information to the AEC under the compulsory enrolment provisions of the Electoral Act.
- Public access to name and address information on the Commonwealth Electoral Roll is a statutory right, and is essential for maintaining public confidence in the integrity of the electoral system.
- Registered political parties and Members of Parliament are provided, as a statutory right, with personal elector information, including name, address, postal address, salutations, date of birth and gender, in electronic form on a monthly basis.
- Personal elector information obtained by political parties from the AEC is merged with personal information obtained from other sources to build powerful electronic databases for electoral campaign purposes.
- The major political parties have intervened in the postal voting process, with the result that some electors are being disenfranchised, and some electors are not aware that the personal information on their postal vote applications will be added to political party electronic databases.
- The use of personal elector information for purposes other than those prescribed under the Electoral Act is generally prohibited, but a real risk remains that the information contained on the electronic databases of political parties could be misused without detection.
- Allowing political parties to continue to maintain electronic databases containing personal information on 12 million Australian electors, without allowing electors to check their own personal information, must be regarded as a serious privacy issue.

9.19 Recommendation 13 of the Legal and Constitutional Affairs Committee June 2000 Report was that political parties or representatives should not be permitted to sell or disclose personal information collected in the course of their duties to anyone not covered by the draft exemptions provided in the Bill. The September 2000 Government Response to this Report did not accept this recommendation on the grounds that it might restrict freedom of political communication, and because there are penalties already available in the Electoral Act for misuse of private enrolment information. However, it should

be noted that these penalties only apply to information supplied to them by the AEC under the roll access provisions of the Electoral Act and not to information they have obtained from, for example, postal vote applications.

*Recommendation 5. That consideration be given, possibly through a broad public inquiry, to reviewing and updating the privacy protection of information held in public registers.*

*Recommendation 6. Subject to the review proposed in recommendation 5, consideration should be given to amending the Privacy Act to ensure that all public registers maintained by government agencies are excluded from the definition of “generally available publications” in order to ensure that they are subject to all obligations under the IPPs.*

9.20 In the case of the AEC, if the “public registers” to which these recommendations refer include the publicly available version of the Electoral Roll containing names and addresses, then improved privacy protection would appear to be unnecessary (in the context of possible end use restrictions on purchased rolls). The transparency of the Roll must remain paramount as discussed above.

9.21 If the “public registers” refers to the personal enrolment information held on the AEC Roll Management System RMANS, then it should be acknowledged that this database is already secured according to federal government security protection standards (see part 2 of the submission filed on 9 February 2001). The disclosure of personal elector information to third parties by the AEC is done in accordance with the strict provisions of the Electoral Act and with the appropriate Safeguard Agreements (see section 91AA for example). This personal elector information does not constitute a “generally available publication”.