CHAPTER 6

THE POLLING

The Polling

6.1 Part XVI of the Electoral Act provides for the operation of the polling. Section 203, headed 'arrangements for polling' provides that the Divisional Returning Officer having established that a poll is required shall make all the necessary arrangements. Section 205 prohibits, except that where the Electoral Commissioner is satisfied that intoxicating liquor will not be sold, the use of licensed premises for the purposes of the polling. Sections 206 and 207 provide that each polling booth shall be supplied with ballot boxes and that there shall be separate voting compartments. The presiding officer at the polling booth is provided with a certified list based on the Roll for the Division signed by the Divisional Returning Officer.

Ballot Papers

6.2 The forms to be used for ballot papers are prescribed in schedules to the Electoral Act. The Act specifies that the ballot paper for the House of Representatives shall be green and for the Senate white. Further prescription concerning the form of ballot papers for absent and postal ballot papers is contained in the Act.

6.3 *Prior to 1966, the Electoral and Referendum Regulations* prescribed that at the time a declaration vote ballot paper (absent, postal or section) was withdrawn from its envelope at the preliminary scrutiny, both ballot paper and envelope were to be given a number so that in the case of dispute, the ballot paper could be withdrawn at a later stage from the scrutiny. This required the use of distinctive absent, postal and section vote ballot papers. Because it was felt that the pre-1966 procedure could prejudice the secrecy of electors' votes, the practice of numbering was discontinued. Since 1966, therefore, the need for having distinctively identified declaration vote ballot papers has disappeared.

6.4 Section 209 of the Act currently provides that absent-vote and postal-vote ballot papers shall be so headed and shall bear printed directions for their use. Sub-regulation 68(1) of the Electoral and Referendum Regulations requires that a ballot paper used for voting pursuant to sections 192, 235, 236 or 237 of the Act shall have the appropriate section number included in the heading, but there is no provision for any instructions to appear on the ballot paper. The elimination of written instructions caused no difficulties at the 1984 election.

6.5 The AEC submitted that the integrity of the ballot would not suffer from the adoption of a system of having only two papers - one for postal votes and one for all other purposes, and a number of advantages would accrue -

- section 237 votes are cast in very small numbers so that, while the way in which 'silent' electors have voted cannot be deduced from the official returns, it is possible for a scrutineer to be able to tell how the 'silent' electors have voted - but only because their ballot papers are distinctively labelled;

- the removal of the requirement to alter headings on ballot papers would lead to an improved service for electors voting under sections 192, 235, 236 and 237;

- there would be a substantial saving of time and resources at all stages from printing to accounting for the ballot papers;

- both the training and work of polling officials would be simplified, and

- a printed ballot paper may be available more frequently for use by absent voters and therefore the possibility of electors being inadvertently disenfranchised through being issued with hand-written ballot papers incorrectly made out as regards names of candidates would be minimised.

6.6 Isolated cases occur where provisional voters deposit their ballot papers in the ordinary box. The present system affords an opportunity for retrieval which would not exist under the proposal. However the occurrence is not frequent and the benefits to be gained probably outweigh the small potential problem. The Committee, therefore, recommends -

Recommendation 60

6.7 **That there should be only two forms of ballot papers: one for postal votes pursuant to a written application and another for all other purposes.**

Senate Ballot Papers

6.8 The AEC submitted that when there are more than 8 candidates in a group or the candidates not in a group exceed 8 in number that a further column should be started containing approximately half the number of candidates. If necessary further columns can be added as additional multiples of 8 occur. The power would only be exercised where to leave the candidates in one column would unreasonably distort the size of the ballot paper.

6.9 The AEC also sought legislative clarification of its power to split the ungrouped candidates into columns as required.

6.10 The proposal that a group of candidates should be split was not supported by the Committee. However, the proposal that columns of ungrouped candidates should be split was supported. The Committee recommends -

Recommendation 61

6.11 That a column of grouped candidates not be split. The AEC should be authorised to split ungrouped candidates into more than one column only when the size of the column exceeds that of the longest column of grouped candidates, creating further columns no longer than the longest column of grouped candidates.

Group Voting Tickets

6.12 Section 210 of the Electoral Act provides for the ordering of grouped and ungrouped candidates on the ballot paper as determined in the manner prescribed in section 213.

6.13 Following the recommendation made by the Joint Select Committee on Electoral Reform in its first report a system of group voting for Senate elections was implemented for the first time in 1984. Under this arrangement where candidates apply under section 168 to have their names grouped, for the purposes of the ballot for the Senate in a particular State, they may lodge under section 211, within 48 hours of the close of nominations, a statement in writing with the Australian Electoral Officer for the State stating that they wish voters in the election to indicate their preferences in relation to all the candidates in the election in an order specified in the statement. All candidates in the proposed group are required to sign the statement. Sub-sections 211(2) and (3) extend the arrangement to enable grouped candidates to lodge 2 or more orders of preference whereupon the preferences are distributed equally between the nominated orders of preference.

6.14 The AEC drew to the Committee's attention the following matters.

Lodging of Tickets

6.15 Under the provisions of section 211 of the Electoral Act two or more candidates for a Senate election who are to be grouped on the ballot paper may, within 48 hours of the close of nominations, lodge with the Australian Electoral Officer for the relevant State or Territory a written statement, signed by each member of the group, setting out up to three preference orderings to constitute the group's group voting ticket or tickets.

6.16 Where a group lodges two or three group voting tickets, each of those tickets must order all members of that group in the same way, and show higher preferences for the group's members than for any candidates who are not members of the group.

6.17 Group voting tickets were in fact lodged in each State and both Territories, as follows:

TABLE 11

State/Territory	No. of Candidates	No. of Groups	No. of Groups which Lodged Tickets	No. of Tickets Lodged
NSW	40	9	7	8 (DEM 2)
VIC	36	8	8	9 (DEM 2)
QLD	28	7	7	9 (DEM 2, NDP 2)
WA	28	7	7	8 (DEM 2)
SA	37	10	10	12 (DEM 2, GRP F 2)
TAS	16	5	5	9 (DEM 3, NDP 2, HARR 2)
ACT	10	5	5	9 (REF. FIRST 3, DEM 2, NDP 2)
NT	7	3	3	4 (DEM 2)

6.18 It can be seen that rights under the new provisions were used extensively by Senate groups. Indeed only two groups did not lodge tickets. The new ticket voting provisions had been publicised in the Candidates Handbook issued by the AEC in September 1984, and dealt with in detail during discussions between AEC officers and officials of the major parties held early in 1984.

Acceptable Preference Orderings

6.19 There are 2 anomalies in or arising in the context of section 211. At present there is no requirement that a group's ticket or tickets order members of the group in the same order as that in which they are to appear on the ballot paper. In fact, Group H in South Australia (the Pensioner Party of Australia)

lodged a ticket which gave a first preference to the candidate placed second in the group on the ballot paper. The Committee were of the view that the determination of preferences was a matter and right of the group and that no change should be made to the present position.

6.20 Second, while in a case where a group lodges two or three tickets, there is a requirement that higher preferences be shown for members of the group than candidates not in the group, there is no such requirement in a case where a group lodges only one ticket - so that in theory it would be possible for a group to lodge a single ticket on which its members received the lowest preferences of all.

6.21 Both of these anomalies give rise to the possibility that voters may be given a false impression of the effect which the casting of a ticket vote will have.

6.22 Recent South Australian legislation, which introduced ticket voting for both the House of Assembly and the Legislative Council, provides that any ticket lodged by a group must order its members in their ballot paper order and rank them above all other candidates. The Committee recommends -

Recommendation 62

6.23 **That section 211 of the Electoral Act be amended to require a party lodging a single group voting ticket to rank members of the group above all other candidates.**

The 48 Hour Deadline

6.24 The AEC reported that it had held discussions with all of the 4 major political parties from which it had emerged that no significant problems had been experienced with the need to lodge the documentation within the 48 hour deadline. The AEC pointed out, however, that the timetable for the 1984 election was less rigorous than might be expected in future elections. for instance, the timetable allowed 3 extra days than the minimum of 33 days provided under the Electoral Act.

6.25 The discussions indicated that the provisions of section 211 could be modified to simplify somewhat the process of lodging tickets. Particular attention was drawn to the requirement that a ticket, when lodged, must be signed by all members of the group. In theory this could give rise to the logistical problem of assembling all the group's candidates in the relevant capital city in the 48 hours between close of nominations and the deadline for lodging tickets. In practice, this problem was solved in most cases by having the relevant forms signed by all Senate candidates well before the close of nominations, with the shape of the tickets being determined subsequently by party officials. In at least one case, however, where the party involved did not regard this as an acceptable approach, considerable difficulties were experienced in bringing all the candidates together from different parts of the State.

6.26 The AEC advised the Committee that a candidate for a political party had made a complaint that the AEC had failed to notify it of the opportunity to lodge a group ticket. The AEC pointed out that the procedure had been explained in all its literature distributed to candidates and that it could not be held responsible if candidates failed to take the steps necessary to avail themselves of the opportunity provided under the legislation. The lodging of tickets, like the lodging of nominations, is an optional act on the part of candidates, for which the AEC is not, and cannot be, responsible. The Committee entirely supports the AEC's perception of its roll in such cases. The Committee recommends -

Recommendation 63

6.27 That the Electoral Act be amended to provide that any of the following be allowed to sign the statement required by section 211 -

(a) the registered officer or the deputy registered officer of the party or parties in cases where the group is endorsed by a registered party or parties, or

(b) the first in the group in the case of all other groups, or

(c) a person nominated or authorised by the group to do so on its nomination form.

Single Candidacy (group ticket)

6.28 Under section 211 only those candidates included in a group pursuant to section 168 may lodge a statement that they wish voters in the election to indicate their preferences in relation to all candidates in the election in an order specified in the statement. The Committee considers that where an incumbent Senator standing for election or re-election wishes to lodge a statement under section 211 he should be able to do so. Consistent with Recommendation 62, the candidate shall rank himself ahead of all other candidates. The Committee accordingly recommends -

Recommendation 64

6.29 **That the Electoral Act be amended to permit an incumbent Senator who is a candidate for election or re-election to the Senate to lodge, under section 211 of the Electoral Act, a statement recommending preference ordering in relation to candidates in the election. The candidate shall rank himself ahead of all other candidates.**

The Display of Posters

6.30 Section 216 of the Act provides:

> (1) Where ... a group of candidates in a Senate election has a group voting ticket, or 2 or 3 group voting tickets, registered for the purposes of that election, the Australian Electoral Officer shall cause a poster showing that ticket or those tickets to be prominently displayed at each polling booth.
>
> (2) Where there are 2 or more tickets to be shown in a poster in accordance with sub-section (1), their relative positions on that poster shall be determined by lot.

The purpose of this poster is to enable an elector, when considering the casting of a ticket vote, to identify the preference ordering or orderings which he will be adopting.

6.31 A number of problems arose at the 1984 election with the design, wording, printing and hanging of this poster, all of which subsequently attracted criticism.

Position of Ticket

6.32 One major defect in the poster flowed from the requirement in section 216(2) that the relative positions of tickets on the poster should be determined by lot. The overall result was that the order of tickets on the poster did not correspond to the order of groups on the ballot paper.

6.33 The requirement that relative positions be determined by lot precluded treating two tickets lodged by the same group as one ticket for the purposes of allocating positions, and the result was that in some cases a group's tickets were widely separated on the poster. Where this happened, each ticket was identified by a number e.g. (1 of 2), (2 of 2).

6.34 The net effect of these two problems was that electors had considerable difficulty in seeing any connection between the poster and the Senate ballot papers with which they were issued. A partial solution, which has the support of the State Branches of the 4 major parties is to amend the Act to provide -

Recommendation 65

6.35 **That section 216 of the Act be amended to provide that -**

> **(a) the order of tickets down the columns on the poster shall correspond to the order on the ballot paper of the groups lodging them, with the proviso that no group's tickets shall be spread over two columns, and**

(b) where a group lodges two or three tickets, the group itself shall specify the relative order in which they are to appear.

Wording of the Poster

6.36 The text at the head of each poster was as follows:

'GROUP VOTING TICKETS

Listed below are the Group Voting tickets lodged by the various parties and groups.

If you use the group voting provisions available to you, your preferences will be distributed as shown below. Where a Party or Group has lodged 2[or 3] Group voting tickets, the total number of Group ticket votes received by that Party or Group will be distributed as evenly as possible in accordance with those Group tickets.

For instruction on how to mark the Group voting section of your ballot paper, see poster 'HERE'S HOW TO MAKE YOUR MARK AND MAKE IT COUNT', displayed in each voting compartment.'

6.37 This text has been criticised as being verbose and opaque. It would appear, however, that the statement which gives rise to the greatest difficulty is that purporting to explain the effect of voting by the ticket method where 2 or 3 tickets have been lodged - and its complexity would appear to be a function of the underlying complexity of the system. While the AEC has been giving further attention to the wording of this text, current thinking is that there is little that can be done to effect a simplification.

6.38 Similar comments have been made about the AEC'S advertising of the new Senate ballot paper. It has been said that while the advertising may have assisted electors in formally completing the ballot paper, it did little to assist them in their understanding of the group voting ticket system and how it would operate at the scrutiny.

6.39 There has been a suggestion that for future elections the AEC publish all group voting tickets in newspapers in the days preceding polling day. Apart from the AEC being seen to be engaging in party political advertising, the cost of such an exercise would be considerable - particularly, if 'prime space' was to be bought. The AEC said that it would need far more evidence of its usefulness before taking this course.

6.40 The AEC and the 4 major parties agree that, to make the preference orderings shown on group voting tickets understandable to voters, they should be displayed in facsimile ballot paper format.

6.41 The size of the posters also occasioned difficulty. There were many complaints that the poster was too small. Where very large sheets of paper were used there was difficulty in finding a suitable place to hang them in the polling area. Although the AEC invited the Committee to make suggestions for overcoming these problems, the Committee felt it was not well equipped to do so. While appreciating the difficulty, it considers that the AEC will have to decide how the preference ordering is to be displayed and the size of the posters in consultation with the political parties.

6.42 The Committee took the view that it was up to the AEC to decide how the preference ordering was to be displayed and the size of the posters.

6.43 Numerous complaints were received after the election that the posters had not been displayed or were not 'prominently displayed' in each polling booth. While some of the latter complaints flowed from the misapprehension that the posters were required to be displayed in each voting compartment, there nevertheless seem to have been too many instances in which the written instructions supplied to polling staff were not followed. In at least one case, the poster was not hung because the Presiding Officer feared that he might have to answer questions arising from it. The solution lies in emphasising very clearly during the training of polling officials the need to ensure that the poster is properly displayed.

6.44 The Committee felt that the poster should be displayed in a position which afforded most easy access to the public.

Legality of the Provisions

6.45 Shortly before the election the High Court was asked to rule on the constitutionality of the group voting ticket provisions. The plaintiff, Cyril John McKenzie - a candidate for the Senate election in Queensland - argued that the provisions of the Electoral Act relating to the grouping of Senate candidates on ballot papers, group voting tickets, and the identification on the ballot paper of political affiliations of candidates were unconstitutional.

6.46 In delivering the opinion of the Court, the Chief Justice stated:

> The question that now falls for decision is whether the provisions of the Act to which I have referred are open to objection on constitutional grounds. The plaintiff submitted, first, that electors who use the simplified system of voting will be voting for parties and not for candidates and that this will contravene s.16 of the Constitution which provides for the qualifications of a senator: it is right to say that the electors voting at a Senate election must vote for the

individual candidates whom they wish to choose as senators but it is not right to say that the Constitution forbids the use of a system which enables the elector to vote for the individual candidates by reference to a group or ticket. Members of Parliament were organized in political parties long before the Constitution was adopted and there is no reason to imply an inhibition on the use of a method of voting which recognizes political realities provided that the Constitution itself does not contain any indication that such a method is forbidden. No such indication, relevant to the present case, appears in the Constitution.

The second principal ground taken by the plaintiff is that it offends general principles of justice to discriminate against candidates who are not members of established parties or groups. Section 7 of the Constitution provides, amongst other things, that the Senate shall be composed of senators for each State directly chosen by the people of the State. I am prepared to assume that s.7 requires that the Senate be elected by democratic methods but if that is the case it remains true to say that 'it is not for this Court to intervene so long as what is enacted is consistent with the existence of representative democracy as the chosen mode of government and is within the power conferred by s.51(xxxvi)' of the Constitution to use the words of Stephen J. in Attorney-General (Cth); Ex rel. McKinlay v. The Commonwealth (1975) 135 C.L.R. 1, at pp. 57-58.

6.47 His Honour, in dismissing the proceedings, concluded:-

In my opinion, it cannot be said that any disadvantage caused by the sections of the Act now in question to candidates who are not members of parties or groups so offends democratic principles as to render the sections beyond the power of the Parliament to enact.

Draw for Ballot Paper Positions

6.48 Section 213 of the Electoral Act provides that where a person is required to determine the order of the names of candidates or of groups in ballot papers to be used in an election the person shall follow the procedure the section then goes on to prescribe. Before 1983 positions on the Senate ballot-paper were allocated by a draw: those for the House of Representatives were allocated alphabetically.

6.49 As a result of the 1983 amendments, positions on the House of Representatives ballot paper are allocated to the candidates by draw. The pre-1983 arrangements, under which Senate groups and candidates drew for their positions on the ballot paper by random allocation, was preserved.

6.50 On the recommendation of the first Committee on Electoral Reform, the draw procedure was changed to one of double randomisation, in which two draws take place. In the first, each candidate (or group) is allocated a number. The order in which the candidates' numbers come up in the second draw determines their order on the ballot paper.

6.51 Section 213 of the Act requires, inter alia, that numbered balls of equal size and weight be placed in a spherical container, and that a blindfolded officer of the Australian Public Service take the balls, or cause the balls to come, from the container one by one, and pass each ball to another officer of the Australian Public Service, who is to read out the number on the ball.

6.52 The AEC suggests two possible amendments to section 213. The first would delete the requirement for the involvement of 'officer(s) of the Australian Public Service' and instead provide for their functions to be performed either by any person, or, if the involvement of those in government employment is seen as conferring legitimacy on the process, by a person employed either permanently or temporarily by the Commonwealth or a State or by a Commonwealth or State instrumentality. In section 165A of the Victorian Constitution Act Amendment Act 1958, which adopts the Commonwealth provisions in substance, it is the 'returning officer's assistants' who are required to be involved.

6.53 The second amendment would delete the requirement for the person involved in the draw to be blindfolded, in cases where the apparatus in use is such that there is no possibility of that person exercising any control over which balls come from the container. (The barrels currently used do not satisfy this requirement.) This would eliminate possible absurdity caused by the unnecessary use of blindfolds. The Committee agrees with these proposals and recommends -

Recommendation 66

6.54 **That the requirement for the involvement of officers of the APS in the draw for ballot paper positions be deleted and replaced by a requirement that the person be a permanant or temporary employee of either the Commonwealth or of a State or of a Commonwealth or State instrumentality. The requirement for the person involved in the draw to be blindfolded should be deleted in cases where the apparatus used for the draw is such that there is no possibility of that person exercising any control over the order in which the balls come from the container.**

Political Affiliations on Ballot Papers

6.55 Before the legislation was amended in 1983 party affiliations were not shown on the ballot paper. This occurred for the first time in the 1984 General Elections. Section 214 of the Electoral Act provides that where a candidate or a group in an election is registered and the name of a political party is entered in the Register of Candidates in relation to that candidate or group, that name shall be printed next to the name of that candidate or group on the ballot paper. The section also deals with composite group names.

6.56 Sub-section 214(3) provides for the word 'independent' to be placed on the ballot paper next to non party candidates who have so requested.

6.57 The AEC reported that the inclusion of party affiliations on ballot papers worked well. It raised two matters. The Electoral Act should provide as the Committee has recommended in relation to the registration of political parties that the printing of political affiliations on the ballot paper be standardised. The AEC suggests that full upper case in respect of the top half of the Senate ballot paper, and lower case with the first letter of each word capitalised in respect of the lower half, would be appropriate. The Committee considers full upper case only should be used. The latter format is also considered suitable for House of Representatives ballot papers.

6.58 The AEC suggests the Committee consider the need for a provision, where two or more registered parties wish to jointly endorse a Senate group, that there be an agreed composite of those parties' registered names or abbreviations printed on the ballot papers. Consistent with the registration provisions of the Electoral Act, such an agreed composite would be limited to six words and be limited to the use of the words contained in the registered names or registered abbreviations. The Committee recommends -

Recommendation 67

6.59 That in the printing of political affiliations on ballot papers full upper case be used in respect of both halves of the Senate ballot paper. Similarly, in printing party affiliations on House of Representatives ballot papers full upper base should be used.

Scrutineers

6.60 Occasionally scrutineers complain to polling officials that another candidate has exceeded his permissible quota of scrutineers in a polling booth. The Presiding Officer can have difficulty in determining or remembering which scrutineer represents which party while electors also are often unsure as to the status a particular person in a polling booth might have when he is (apparently) exerting authority. To prevent dispute the AEC

submitted that all scrutineers should be required by the Act to wear a badge stating that they are scrutineers. The Committee considers that some form of identification for scrutineers is desirable such as a cardboard label with the AEC logo, with the individual's name and the party he represents, initialled on the back by the Divisional Returning Officer. The Committee recommends -

Recommendation 68

6.61 **That there should be a form of identification to be worn by scrutineers at the polling place.**

6.62 Section 220 of the Electoral Act provides that the polling shall be conducted as follows:

> (a) Before any vote is taken the presiding officer shall exhibit the ballot box empty, and shall then securely fasten its cover;
>
> (b) The poll shall open at 8 o'clock in the morning, and shall not close until all electors present in the polling booth at 6 o'clock in the afternoon, and desiring to vote, have voted;
>
> (c) The doors of the polling booth shall be closed at 6 o'clock in the afternoon and no person shall be admitted after that hour to the polling booth for the purpose of voting;
>
> (d) At the close of the poll the presiding officer shall, in the presence of the poll clerk and of any scrutineers who may be in attendance, publicly close, fasten, seal, and take charge of the ballot box, and with the least possible delay forward it for the purposes of scrutiny, and it shall on no account be opened except as allowed by this Act:
>
> Provided that, where the scrutiny is proceeded with immediately after the close of the poll at the polling booth at which the votes are taken, it shall not be necessary for the presiding officer to publicly close, fasten, or seal the ballot box as required by paragraph (d).

6.63 Closing of the polls at 6 pm rather than 8 pm worked well at the 1984 election. However, there have been some claims that closing the polls at 6 pm effectively reduced the hours of polling available to some electors by 8 hours rather than just 2 since many people were engaged in sporting or other activity. It should be noted that there are still four hours of polling available to these electors and the Committee does not endorse these claims.

6.64 Section 221 declares that:

(1) In the case of a Senate election, an elector shall only be admitted to vote for the election of Senators for the State or Territory for which he is enrolled.

(2) In the case of a House of Representatives election, an elector shall only be admitted to vote for the election of a member for the Division for which he is enrolled.

6.65 The section also declares that for most purposes the Electoral Rolls in force at the time of the election shall be conclusive evidence of the right of each person enrolled to vote as an elector.

Division-wide Ordinary Voting

6.66 Section 222 provides that an elector is entitled to vote at any polling place for the Division for which he is enrolled or to vote as an absent voter, on making a declaration in an approved form, at any other polling place within the State or Territory for which he is enrolled.

6.67 Division-wide ordinary voting was introduced for the first time at the 1984 General Election. This innovation was designed to facilitate voting by electors whose place of residence may have been closest to a polling booth in a Subdivision other than the Subdivision for which they were enrolled. Prior to the 1984 election these electors were required to cast absent votes although they were still in their 'proper' Division. On the other hand, there were fears expressed by some prior to the election that ordinary voting across Divisions could lead to an increase in dual voting. These fears, however, were unfounded.

Reduction in the Number of Subdivisions

6.68 Amendment of the Electoral Act to provide for Division wide ordinary voting cleared the way for the abolition of Subdivisions as far as is practicable. Following the 1984 redistribution, therefore, Subdivisions were retained only as required by the joint roll arrangements in force with New South Wales, Victoria, South Australia and Tasmania (and for similar reasons in the Division of the Northern Territory) and for the purposes of the registration of general postal voters and remote area mobile polling in a handful of Divisions in Queensland and Western Australia. The AEC no longer regards Subdivisions as appropriate building blocks for the purposes of mini-redistributions and the Committee recommends at collection that the Australian Bureau of Statistics Census Districts be substituted. The reduction in the number of Subdivisions achieved is set out in the following table.

TABLE 12

STATE	PRE 1984 REDISTRIBUTION			POST 1984 REDISTRIBUTION		
	NO. OF DIVISIONS	NO. OF SUB DIVISIONS	AVERAGE PER DIVISION	NO. OF DIVISIONS	NO. OF SUB DIVISIONS	AVERAGE PER DIVISION
NSW	43	509	11.84	51	359	7.04
VIC	33	355	10.76	39	181	4.64
QLD(a)	19	192	10.11	24	27	1.13
WA (a)	11	74	6.73	13	14	1.08
SA (b)	11	66	6.0	13	84	6.46
TAS	5	70	14.0	5	29	5.80
ACT	2	-	-	2	-	-
NT (c)	1	25	25.0	1	27	27.0
TOTAL	125	1291	10.33	148	721	4.87

(a) In Queensland and Western Australia Subdivisions have only been declared in some Divisions (three in Qld., one in W.A.) to facilitate the registration of general postal voters and remote area mobile polling, and for the purposes of column 6 an undivided Division is treated as a Subdivision.

(b) On 14 March 1985 the Number of Subdivisions was reduced to 69 making an average per Division of 5.30.

(c) The Division of the Northern Territory is divided into Districts which are treated as Subdivisions; these simply adopt the boundaries of the 25 Northern Territory Legislative Assembly Divisions. The other two Districts are the Territories of Cocos (Keeling) Islands and Christmas Island which are incorporated into the Division of the Northern Territory for federal electoral purposes.

6.69 Following a recommendation made by the original Committee in its First Report, it is now no longer an offence for an elector to fail to notify a change in his place of living, provided that his new place of living remains in the same Subdivision as that for which s/he is enrolled. Even before the AEC proceeded to reduce the number of Subdivisions the lack of an enforceable duty on the elector to correct his enrolment details gave rise to problems. With larger Subdivisions or no Subdivisions at all, these problems will increase. The consequences of this include the greater prospect of the Rolls becoming outdated and the potential disenfranchisement of some electors at future redistributions.

6.70 The AEC invited the Committee to reconsider the 1983 decision to remove the penalty for failure by an elector to advise his change of address within a Subdivision. Alternatively, there would be a need for Divisional Returning Officers to have the power, beyond that currently conferred by section 105 of the Act, to correct the Roll in certain circumstances.

6.71 The Committee is of the view that it would be more appropriate to re-introduce a penalty. The Committee recommends -

Recommendation 69

6.72 **That the Electoral Act be amended to re-introduce a penalty for the failure by an elector to advise his change of address within a Subdivision. The penalty should be commensurate with the penalty for failure to enrol.**

Mobile Polling (Hospitals)

6.73 Sub-section 222 (2) provides that, where a hospital is a polling place, an elector is not entitled to vote at that polling place otherwise than in accordance with section 224 unless an appropriate person on the staff of the hospital has agreed to permit electors generally to vote at that polling place or unless the elector -

(a) is attending the hospital as a patient or as a genuine visitor of a patient; or

(b) performs functions or duties in the hospital.

6.74 Section 224 provides that, where a hospital is a polling place, the presiding officer may make arrangements with an appropriate person, or appropriate persons, on the staff of the hospital for the votes of patients in the hospital or in part of the hospital to be taken under the section in an election. This applies where -

(a) a patient in the hospital or part of the hospital, as the case may be, is -

(i) in the case of a by-election - entitled to vote in that election; or

(ii) in any other case - an elector for the State or Territory in which the hospital is situated;

(b) under the arrangements, the vote of the patient may be taken; and

(c) the patient wishes so to vote.

6.75 The 1984 election was the first federal election at which mobile polling was employed (satisfactorily in the main) although the Committee's attention was drawn to some features of the relevant provisions which gave cause for concern.

Campaign Literature in Hospitals

6.76 Since hospitals where polling is conducted are deemed to be polling booths the Electoral Act provides that campaign literature may be supplied by candidates to the general office of a hospital and that it must then be made available to patients on request. In 1984 some instances came to light of patients being unable to obtain the literature of some parties or candidates and even of candidates being unable to lodge campaign material at all, though generally the scheme worked well. From discussions with all State branches of the major political parties, however, there were enough allegations of abuse to suggest that additional measures may be required.

6.77 The main point of immediate concern is that the current provisions stop short of allowing the mobile polling team to take how-to-vote material to the patient. Consequently great reliance is placed on the integrity of the relevant hospital staff and in view of the allegations mentioned above this seems to be a little unrealistic. A similar provision to that obtaining in respect of remote area mobile polling, where the team is able to take how-to-vote cards to the voter, should be inserted into the legislation, and generally there is party support for this. The Committee recommends -

Recommendation 70

6.78 **That the Electoral Act be amended to provide that scrutineers accompanying mobile polling teams in hospitals should be permitted to distribute electoral material including how-to-vote cards.**

Notice of Hospital Visits

6.79 Where mobile polling is to be conducted in a special hospital, the Divisional Returning Officer is required to post up a notice before 4.00 pm on the day before that on which polling at that hospital is to commence, setting out the name of the hospital and the dates and times of the proposed visit. While endeavours were generally made to provide more notice whenever possible, parties were still left with insufficient time in some cases to ensure that a supply of campaign literature (including how-to-vote cards) was available at the hospital office and to arrange for scrutineers to be present. Particular problems on this occasion resulted from the election following closely upon the redistribution, severely curtailing time available for planning. Of necessity the declaration of special hospitals and the times and dates of visits were notified simultaneously. In the future special hospitals will be declared well in advance and as much notice as possible given of the visits. However it seems

reasonable to provide that one week rather than one day's notice be given subject to the Divisional Returning Officer having the right (as does a mobile polling team leader in remote areas) for reasonable cause, to notify any variations by 4.00 pm on the day before the visit, and that there be an obligation to notify candidates accordingly - an appropriate contact point could be indicated on the nomination form. The Committee recommends -

Recommendation 71

6.80 That in respect of mobile polling in hospitals one week rather than one day's notice be given subject to the Divisional Returning Officer having the right (as does a mobile polling team leader in remote areas) for reasonable cause, to notify any variations by 4 pm on the day before the visit, and that there be an obligation to notify candidates accordingly. An appropriate contact point could be indicated on the nomination form.

Remote Areas

6.81 Mobile polling was employed for the first time in a federal election in November-December 1984, under the terms of the Electoral Act, as amended in 1983/84. Section 227 of the Electoral Act now provides for mobile polling in remote localities. Mobile polling in gazetted remote subdivisions can take place in 12 days prior to polling day and on polling day itself. In 1984 it operated in New South Wales, Queensland, Western Australia, South Australia and the Northern Territory. Drawing on earlier experience of mobile polling in elections for local legislatures in the Northern Territory and Western Australia, the object of the legislation is to enable the AEC to send a number of teams out in the 12 days before the general polling day - 1 December in the 1984 election - to collect the votes of small groups of people enrolled at isolated localities.

6.82 This method of carrying out the poll had been employed before, in Western Australia in the Kimberley area in the State election early in 1980 and in the Northern Territory, under Territory electoral legislation, in 1980 and 1983. The North Australia Research Unit of the Australian National University had been given official observer status by the Northern Territory Electoral Office for the two latter elections and it was invited by the AEC to provide official independent observers for the mobile polling in Queensland, Western Australia and the Northern Territory for the 1984 federal election. One run in the Northern Territory extended into South Australia but it was not observed.

6.83 The general approach in planning mobile polling is to design a 'run' from a base, such as Mt Isa in Queensland, to one or more remote places at each of which a small number of voters are expected. The Act specifies in section 227 that

(4) The Electoral Commission -

(a) may, subject to sub-section (5), by notice published in the Gazette, determine the places, days and times of visits to be made by a team for the purposes of this section; and

(b) shall take such steps as it thinks fit to give public notice of those places, days and times.

(5) A day determined under sub-section (4) shall be any of the 12 days preceding polling day, polling day, or a day to which the polling is adjourned.

A matter of concern to the AEC is that the legislation does not currently state explicitly that a mobile polling team in remote localities may take votes after 6 pm. Although this may be implicit, the matter should be put beyond doubt and the Committee recommends -

Recommendation 72

6.84 That the Electoral Act should make express provision to permit mobile polling teams in remote localities to take votes after 6 pm except on polling day itself.

6.85 The people at each place would be advised by public notice beforehand that on such and such a day a small team would arrive to take votes between specified hours. In the 1984 election, the 'run' out from Mt Isa was by plane and on the day of the election - Saturday, 1 December - but most other places were visited before 1 December, in the 12 day period laid down in the Electoral Act. Most of the runs were made by plane, but a few were made by truck or truck and plane or by helicopter.

6.86 A mobile polling team, consisting of a leader and one or two other officials, would be equipped with the normal paraphernalia of polling all of which would be transported with them in the plane, truck or helicopter to the designated locality known in the Act as a 'Station'. Once arrived there, they would select a site for setting up the tables, the voting cubicle and the ballot box and rope it off if necessary. This site might be in the open air under a tree, on a verandah, in a schoolroom, or any other place thought to be suitable.

6.87 On these matters the Act provides in section 227 that:

at any time when a team is at a station for the purposes of taking votes under this section in an election

(a) the team shall have -

(i) ballot-boxes, ballot-papers, group voting tickets registered for the purposes of the election and such other things as are necessary for the votes of electors to be taken at the station; and

(ii) the 'how-to-vote' cards (if any) supplied to it by the candidates;

(c) for the purposes of, and in connection with, the taking of votes under this section -

(i) the station shall be deemed to be a polling place;

(ii) the building, structure, vehicle or enclosure used by the leader for the purposes of taking votes under this section shall be deemed to be a polling booth at that polling place; and

(iii) the leader shall be deemed to be the presiding officer at that polling booth.

6.88 In general, the procedures relating to the polling in any place are applicable in the mobile polling places. Team leaders as presiding officers are required to care for the ballot boxes in a prescribed way (s.227(10) to put specified questions to the voters (s.229) and to provide assistance to the voters in certain circumstances (s.234). In the event, NARU's observers were present at polling in 40 out of 95 scheduled polling places and one extra polling place in the Northern Territory, at 7 out of 9 in Queensland and at 8 out of 10 scheduled stops and one extra stop in Western Australia.

6.89 It was observed in the NARU report that:

- there are problems in locating suitable polling officials in sufficient numbers;
- there are benefits in including where possible Aboriginal persons in mobile polling teams;
- though locations where between 10 and 50 voters were to be expected were targetted on the mobile polling runs, often less than 10 or even none, or alternatively many more than 50, were found on arrival. In the latter situation voting often became rushed in order that the team could comply with its schedule, and

- the location of polling places was often less than ideal, mainly due to local insistence that a particular location was to be preferred for cultural reasons - congestion sometimes ensued.

6.90 These and other minor problems pointed to in the NARU report were partly seen as teething troubles and partly seen as intrinsically incapable of solution. One potential problem NARU identifies, however, relates to assistance to physically incapacitated or illiterate voters. This matter is considered by the Committee at para 6.120 to 6.125 of this chapter.

6.91 The Department of Aboriginal Affairs considers that there are a number of ways to improve Aboriginal participation in the electoral process. These include:

- Aboriginal polling staff with local knowledge to be trained by the AEC;
- more use to be made of Aboriginal polling staff who can ensure Aboriginal voters are aware of their right to seek assistance;
- sub-section 229 (1) of the Electoral Act to be amended to simplify questions to be put to each intending voter and provide opportunity for explanation or translation as required;
- advice of Aboriginal community organisations to be sought when considering staffing and location of polling booths;
- ensure voters are aware that 'how-to-vote' cards can be used to indicate voting intention;
- mobile polls to have flexible routes which can be modified according to needs of the area;
- standardisation of the spelling of tribal names by qualified consultants; and
- provisions to be made for ballot papers for both Houses to include photographs of candidates.

6.92 The Committee sought advice on these matters from Dr Peter Loveday of the NARU team who subsequently gave evidence at a public hearing in Canberra on 20 February 1986.

Location and Training of Aboriginal Polling Officials

6.93 On this question Dr Loveday commented that to find the Aborigines who are willing and able to help is sometimes a problem. Here the people, as operatives in the field - the team

leaders - have to rely on the Commonwealth Employment Service or other contacts, other whites usually, as sources of information, and these people are sometimes mistaken.

6.94 Another point is that Aboriginal people sometimes cannot go to particular places on an electoral polling run. There may be tribal reasons for that, or family quarrels, or they may be apprehensive about contact with white people with whom they are in a state of hostility. So it is a chancy business unless you have people who have been trained over an extended period and have had previous association with the AEC. To pick up officials on the ground while you are doing an election is sometimes a somewhat frustrating business.[1]

6.95 However, Dr Loveday was emphatic that the work of the mobile teams was considerably assisted by the presence of Aboriginal people on the teams. First, they are of indispensable help in sorting out mistakes in pronunciation, in the spelling of names and in the finding of names on rolls. Assisting voters is another very important function that they can carry out. Translations are necessary for white people or for Aborigines if the Aborigines are not too clear about what is going on.

6.96 As well as these matters Dr Loveday said that Aboriginal members of a team were able to provide reassurance, either silent or verbal to the voters who are shy or afraid. They provide local knowledge concerning local leaders and the movement of people, to the team and leaders. The Committee concluded that the effectiveness of mobile polling is dependent on the presence of Aboriginal people on the team with knowledge of local people, their customs and languages. The Committee recommends that -

Recommendation 73

6.97 Every effort should be made to recruit and train Aboriginal people to participate in the mobile polling process at future elections.

6.98 A matter that was noted by the NARU team, the AEC and the Department of Aboriginal Affairs was the confusion resulting from the strict application of sub-section 229(1) of the Electoral Act which requires certain questions to be put to an elector to establish the entitlement to the franchise. If these questions are put in the strict form prescribed in the legislation the elector (particularly Aboriginal electors) can become confused. The Committee agrees with Dr Loveday that the legislation should be framed to provide polling officials with greater flexibility. The AEC has raised this matter in more general terms and we consider it at para 6.16 to 6.18 of this Chapter.

6.99 Dr Loveday in his evidence addressed the question raised by the original Committee in its first report of establishing identity and place of living for Aboriginal electors. There are difficulties both in establishing name and place of living which cannot be overcome in the context of the

rigid questions prescribed in sub-section 229(1). Aboriginal people are often known by European names which they use where it seems appropriate for them to do so and, also, by Aboriginal tribal names among their own people. Similarly, on the death of a person, a taboo arises on the use of that person's name which would apply to people of the same name which raises problems for both enrolment and voting. It was the view of Dr Loveday that no attempt should be made to impose on Aboriginal voters an obligation to enrol in more than one name as this is not an obligation imposed on voters of European descent.

6.100 In relation to place, a difficulty can occur from the fact that Aboriginal places of living are not as finite as those of electors otherwise on the roll. For instance an elector may give a place of living such as a station property which might well straddle electorates. There is, therefore, a need to locate the elector more precisely. This, again, is not a problem if the Electoral Act is amended to meet the need to explain, to follow up the giving of the question, and to translate where translation is necessary.

6.101 In relation to suggestions that communities should be consulted about location of polling places and other aspects of electoral administration it was Dr Loveday's view that consultation would not be appropriate. Rather, it was necessary to ensure the presence in all Aboriginal communities of sufficient trained local people to be available at election times.

6.102 Dr Loveday agreed with DAA that the legislation should permit mobile polling teams to be flexible in regard to the routes they take and that the teams should ensure that voters are aware of their right to use how-to-vote cards to indicate voting intention. He did not, however, agree that the spelling of tribal names should be standardised.

Mobile Polling in Declared Remote Subdivisions

6.103 The AEC has suggested that declared remote Divisions rather than declared remote Subdivisions be made the basis of mobile polling. The adoption of this suggestion is consistent with the Committee's recommendations 52 to 56 regarding the Register of General Postal Voters. The Committee recommends -

Recommendation 74

6.104 **That the Electoral Act be amended to provide for remote area mobile polling in declared electoral Divisions rather than declared remote Subdivisions.**

Polling Place Staffing

6.105 The Committee agreed to the submission by the AEC that the legislation should be amended to delete reference to the office of 'poll clerk' which no longer existed. It stressed, however, that this should not result in the upgrading of other polling officials with its consequent costs. The Committee recommends -

Recommendation 75

6.106 **That in sections 203 and 204 of the Electoral Act and elsewhere in the legislation where the term 'polling clerk' appears it should be deleted and replaced with the term 'polling official'.**

6.107 The AEC has suggested that in polling booths having 5 or more issuing points there should be a Deputy Presiding Officer. It points out that in such booths one of the Assistant Presiding Officers of necessity acts as a defacto Deputy who assists in the organisation of those larger booths, helps oversee the scrutiny and in the completion of the booth returns and acts as substitute Presiding Officer as required. The AEC feels that this should be recognised in the legislation and the Committee recommends -

Recommendation 76

6.108 **That the Electoral Act be amended to make provision for Deputy Presiding Officers in polling booths having 5 or more issuing points.**

Absent Vote

6.109 Section 222 provides that on polling day an elector is entitled to vote at any polling place for the Division for which he is enrolled, or to vote as an absent voter, on making a declaration on an approved form, at any other polling place within the State or Territory for which he is enrolled. This provision reflected the previous Committee's recommendation for an ordinary vote to be cast at any Subdivision within the Division for which the elector is enrolled. This measure resulted, as expected, in a reduction of the absent vote as revealed in the table reproduced below -

TABLE 13

STATE	1980	1983	1984
NSW	268473	253754	256423
VIC	128911	132438	137787
QLD	113295	113269	102332
WA	51245	77190	58479
SA	45734	50880	46649
TAS	17340	28403	15006
ACT	NIL	NIL	2967
NT	3048	3178	NIL
TOTALS	628046	659112	619643
% of Total Vote	7.4%	7.77%	6.65%

*

6.110 When absent votes are dealt with at a counting centre the Assistant Returning Officer provides written advice to each Divisional Returning Officer in the State of the number of envelopes bearing absent voters' declarations to be delivered to him. This results in thousands of advice notices being placed in the postal system almost simultaneously. In New South Wales alone it is theoretically possible to have around 110,000 of these cards in the postal system at one time.

6.111 The AEC sought an amendment to require the Assistant Returning Officer to provide written advice to his Divisional Returning Officer of the number of absent votes cast at their booths and of the Divisions within the State for which the votes were cast. The Divisional Returning Officer in turn would then be required to advise every other Divisional Returning Officer in the same State or Territory of the number of absent votes to be forwarded to him. This amendment should reduce the number of advice notices to less than 3000 in New South Wales. The Committee recommends that -

Recommendation 77

6.112 **The Electoral Act be amended to require each Assistant Returning Officer to provide written advice to his Divisional Returning Officer of the number of absent votes in respect of each Division in that State or Territory cast at his booth; and**

that the Divisional Returning Officer in turn be required to advise every other Divisional Returning Officer in the same State or Territory of the number of absent votes to be forwarded to them.

6.113 The AEC has also sought a corresponding amendment to the provisions relating to the handling of the absent votes themselves. At present the Assistant Returning Officers for a Division forward to their Divisional Returning Officer as many sealed parcels intended for other Divisional Returning Officers in the State or Territory, as there are advice cards floating around. The Divisional Returning Officer is required to simply forward them on - and accordingly (apart from the volume of small sealed parcels in the system) there is no occasion to check the work of the Assistant Returning Officer to detect errors early.

6.114 The Committee agrees that it is essential that Divisional Returning Officers have the oportunity to check the work of their Assistant Returning Officers and to identify those that may not be performing up to acceptable standards. It recommends -

Recommendation 78

6.115 The Electoral Act be amended so as to require each Assistant Returning Officer to send to his Divisional Returning Officer all the absent votes from his booth; require the Divisional Returning Officer to compare the absent votes received from the Assistant Returning Officer with the advice received from the Assistant Returning Officer; and require the Divisional Returning Officer to distribute the absent votes to the other Divisional Returning Officers in the State or Territory directly, or deliver them to another person to be dealt with under sub-section 228(3) (which was introduced in 1984) - namely, to be processed through the Central Absent Vote Exchange for his State or Territory.

Questions to Voters

6.116 Section 229(1) of the Electoral Act provides that the presiding officer shall ask 3 questions of an elector before issuing ballot-papers. They are:

(a) What is your full name?

(b) Where do you live?

(c) Have you voted before in this election? - or - Have you voted before in these elections? (as the case requires).

Subsequent questions may be asked if there is a need for clarification of question (b).

6.117 We have already noted that question (c) gave rise to difficulties for mobile polling teams in remote localities in that it was capable of being misunderstood by traditionally oriented Aboriginal electors. The AEC recognised the difficulty and in the submission on the matter proposed that the legislation enable the polling official to vary the wording to suit the circumstances. The Committee is of the view that the requirement to ask question (c) should be deleted. Rather than the legislation prescribing, as it now does, specific questions to be put to all voters it would be sufficient for section 229(1) simply to state that the presiding officer shall establish the identity and place of living of an elector. As well as Aboriginal voters it is likely that other electors not fluent in English would also be perplexed by the questions as they are currently phrased. The Committee recommends -

Recommendation 79

6.118 **That section 229(1) of the Electoral Act be amended to delete the requirement that the presiding officer should ask specific questions of an elector and be replaced with a requirement that the officer establish the identity and current place of residence of the elector.**

6.119 Section 230 provides that formal errors on the Roll shall not warrant rejection at any polling of any claim to vote . if, in the opinion of the presiding officer, the voter is sufficiently identified. Section 231 enshrines the right of any person enrolled to cast a vote. Section 232 requires that the presiding officer mark the Roll to indicate that the elector named has voted and record the name of all absent voters. Section 233 preserves the right of the electors to vote in private.

Assistance to Voters

6.120 The AEC raised a number of issues regarding assistance to voters under section 234 of the Electoral Act. Sub-section 234(1) provides that if a voter satisfies the presiding officer that his sight is so impaired or that he is so physically incapacitated or illiterate as to be unable to vote without assistance, the presiding officer shall permit a person appointed by the voter to enter an unoccupied compartment or booth with the voter and mark, fold and deposit the voter's ballot paper for him. In other words, the voter is permitted to bring to the polling place a person to assist him to cast his vote.

6.121 Sub-section 234(2) deals with the situation where the voter does not nominate his own assistant. The presiding officer in the presence of scrutineers or, if none are present, another polling official, shall mark etc the ballot paper for him. Sub-section 234(3) permits the voter to indicate to the presiding officer the manner in which he wishes his ballot paper marked by presenting a how-to-vote card or other written indication of his voting intention. Sub-section 234(4) relates to the marking of absent voting papers (the presiding officer to complete the declaration witnessed by a scrutineer or another polling official).

6.122 Under sub-section 234(1) the voter can nominate a scrutineer to assist him whereupon there is no requirement for the assistance to be observed. The AEC regards it as inconsistent that assistance by polling officials should be observed but that of scrutineers not. It proposes that the legislation should be amended to provide that where a person, previously unknown to the voter such as one of the scrutineers at the booths, is nominated by the voter as his assistant, then, the assistance should be observed by either a polling official or another person recommended by the presiding officer.

6.123 The official observers of mobile polling in remote locations in their report raised a number of difficulties they had perceived in regard to assisting Aboriginal electors voting at the mobile booths. The NARU report noted that a very high proportion of these voters sought assistance. They expressed some misgiving about the role of scrutineers in providing assistance. Their comments should be understood in the light of earlier comments about the possibility of these particular voters being confused about the status of people, like scrutineers, accompanying the team. While there was no evidence of malpractice on the part of scrutineers at the polling places observed by the NARU team the NARU observers were critical of the arrangement. **The Committee does not consider that these difficulties warrant any change to the legislation.**

6.124 Two other matters were also raised for the Committee's consideration. First, the NARU team noted that it was only possible to assist a large number of Aboriginal voters because the illiteracy/disability requirements of sub-section 234(1) were liberaly applied. If the provision were stringently applied so that electors were required to prove their illiteracy/disability to the presiding officer the result would be delays and disruption of the electoral process and the denial of the right of assistance to many Aboriginal voters. The AEC received a complaint from the State branch of an unnamed political party that too much help was given to Aboriginal voters. The suggestion was that this had resulted in many electors casting valid votes who might otherwise have voted informally. In commenting on the proposal the AEC stated that the branch has submitted that -

> if an Aboriginal attends to vote and 'gives an instruction' to the person rendering assistance which if complied with without question would render the vote informal, it is no concern of polling officials to ascertain if that is his wish.

The State branch refuses to accept that there is a real distinction to be drawn between 'assisting' to the point of extracting a particular preference order which may well be objectionable and giving an elector such assistance as may be necessary in order to enable him to vote according to his wishes which is unimpeachable. AEC polling officials are instructed to do the latter. The Committee recommends -

Recommendation 80

6.125 That an elector should be assisted to cast a vote if that is his wish. The assistance provision should continue to be interpreted liberally.

Provisional and Declaration Voting

6.126 Under section 235 of the Electoral Acrt a person claiming to vote at an election whose name cannot be found on the certified list of voters for the division may cast a provisional vote if he signs a declaration in an approved form. The voter marks his ballot paper and folds it in the usual fashion. It is then returned to the presiding officer who places it in the declaration envelope in the presence of the voter and such scrutineers as are present, addresses it to the Divisional Returning Officer for the Division and deposits the sealed envelope in the ballot box. The envelope is then despatched when the ballot box is opened. On receipt of the envelope the Divisional Returning Officer who, without opening the envelope, shall first ascertain from the declaration whether the elector is entitled to vote as claimed and deal with the ballot accordingly and make such correction to the Roll as is necessary. Senate ballot papers are admitted to the scrutiny where the voter was enrolled for a Division within the State or Territory other than the one for which he voted.

6.127 Under section 236 a voter whose name has been marked off the certified list of voters can claim a declaration vote. A person whose address is not shown on the Roll may have his vote recorded if he makes a declaration of address on the envelope under section 237.

6.128 An elector spoiling a ballot paper may apply for a replacement under section 238. Sections 239 and 240 relate to the manner of marking ballot papers for the Senate and the House of Representatives.

Adjournment of the Polling

6.129 The Electoral Act makes provision for the polling to be adjourned where polling is interrupted by riot or storm, tempest, flood and similar occurrences. Electors who had not already voted for the sub-division in question may vote at the adjourned poll.

Compulsory Voting

6.130 Section 245 provides that it shall be the duty of every elector to record his vote at each election. The Divisional Returning Officer is required to prepare a list of the names and descriptions of electors enrolled for the Division who have not voted which, by virtue of sub-section 245(3) becomes prima-facie evidence of that fact. The section then goes on to require the Divisional Returning Officer to send a notice to voters who

failed to vote calling on them to show cause why proceedings for failing to vote at the election without valid and sufficient reason should not be instituted. The fine that may be imposed by the AEC is between $2 and $4. The maximum fine a court can impose is $50. Antarctic electors, eligible overseas electors and itinerant electors are exempt from the provision.

6.131 Where an elector's reply to the notice indicates that his reason for not voting may be regarded as valid and sufficient no further action is taken. Where the Divisional Returning Officer is not satisfied that the reason given may be regarded as valid and sufficient, the Electoral and Referendum Regulations require him to so advise the elector and give him the opportunity of having the matter determined by the Australian Electoral Officer for the State or the Courts. If the elector opts for the matter to be dealt with by the Australian Electoral Officer he is generally required to lodge a deposit of $4 against any penalty that may be imposed. In practice most penalties equate to the deposit lodged although in some States (more than others) the Australian Electoral Officers graduated the penalties from $2 - $3 - $4.

6.132 The AEC reported to the Committee that a significant number of non-voter notices were issued to electors who had actually voted. The AEC explained that the issue of these notices resulted from the following causes -

- failure of the polling official to mark off the elector on the certified list, and
- faint or incomplete markings on the certified lists used in the polling booths leading to a failure to mark the elector's name off the master list.

6.133 The total number of non-voter notices issued was 487 584 and, as at 30 June 1985, the number of electors who replied that they had in fact voted was 61 297 (12.6%). The following table indicates the position State by State.

TABLE 14

State	No. Non-voter Notices	No. Asserting Vote (as at 30.6.85)	%
NSW	187 495	32 032	17.1
VIC	101 289	12 257	12.1
QLD	94 104	6 860	7.3
WA	40 509	3 406	8.4
SA	35 917	3 207	8.9
TAS	10 139	1 747	17.2
ACT	7 780	1 062	13.6
NT	10 351	726	7.0
AUST	487 584	61 297	12.6

6.134 The Committee was satisfied with measures suggested by the AEC to overcome this problem, namely, systematic training of polling officials and the use of fluorescent pens to mark the certified lists. Another factor which caused some problems at this election was the first use of certified lists covering the whole Division.

6.135 An experimental start has been made on the computerisation of this task. A number of Divisions in Queensland used a pilot program to carry out the compilation of their non-voters lists and it appears that this may have reduced the error rate considerably. The South Australian State Electoral Commissioner has been conducting experiments for the development of a scanner to read marked certified lists. Should it be possible to develop such equipment another means of reducing error would be available.

6.136 It is hoped that once computerisation is fully developed and used Australia wide the incidence of voters who receive non-voters notices in error will be considerably reduced. Until a scanner is developed, however, the AEC will continue to conduct call backs from the polling booth certified lists.

6.137 The AEC reported that the earlier 6 pm close of the poll was given as a reason for failure to vote by only 3.1% of voters who replied to the non-voter notices.

Penalty for Non-voting

6.138 The AEC submitted that the penalty of $2 - $4 that an Australian Electoral Officer may impose under the Electoral and Referendum Regulations for a failure to vote without a valid and sufficient reason is ridiculously low. It doesn't even cover the cost of the outwards correspondence.

6.139 Following acceptance of the Joint Select Committee's First Report recommendations that penalties be increased[2] the maximum fine a court could impose was increased to $50. Prior to that a court could only impose a fine in the range of $2 - $10.

6.140 The new maximum fine that may be imposed by a court represents a 5 fold increase over the old maximum and the AEC sought the Committee's concurrence to a similar increase in the administrative penalty - that is from $4 to $20.

The AEC further submitted that the new administrative penalty be an expiation fee of $20 similar in nature to an 'on-the-spot' fine and argued -

> What we have in mind is that the current non-voter process (i.e. of seeking a reason for not voting; determining whether it is valid and sufficient; etc through to imposing a $2 - $4 penalty) be

replaced by the issue of an infringement notice. The notice would tell the elector that according to our records he has not voted and that he may dispose of this matter by payment of $20 or, alternatively, by having the matter dealt with in court. It follows that if the elector paid up no further action would be taken as the matter would be deemed to have been expiated. There would be provision on the back of the form for the elector to complete if he believes he had a valid and sufficient reason for not voting; or if he in fact voted; or if he wants to have the matter dealt with by a court.

6.141 The position under State legislation with respect to administrative penalties for failure to vote without a valid and sufficient reason is -

TABLE 15

STATE	MINIMUM	MAXIMUM	'GOING RATE'
NSW(a)	$4	$10	$5
VIC (post 1984)	-	$50	Not yet established *
(pre 1984)	-	$10	$5
(local govt.)	-	$20	More often than not $20
QLD	-	$10	$10
WA	-	$5	$5
SA(c)	-	-	-
TAS	$4	$10	$4
NT(b)	-	-	-

(a) NSW fines are under review.

(b) in the NT there is no provision for administrative penalties. The courts may impose fines of up to $100 - the average is $35 plus costs of $25.

(c) South Australia has an expiation fee system similar to that proposed above. The current expiation fee is $5 but this is under review.

6.142 The majority of the Committee agrees with the AEC argument that the administrative penalty recoverable from an elector who fails to vote should be increased to $20. It is, however, opposed to enforcement by means of an expiation or 'on the spot' system. The Committee recommends -

Recommendation 81

6.143 That the administrative penalty associated with the enforcement of the compulsory voting provision of the legislation should be raised to $20.

Objection to Voting on Religious Grounds

6.144 The Committee received submissions from members of religious groups proposing that the Electoral Act should be amended to include an exemption from compulsory voting for those with religious views which prohibit them from voting. The AEC also submitted that such an exemption be provided. It pointed out that it currently accepted conscientious objection on religious grounds as an excuse for failing to vote. Provisions exist in some State electoral legislation providing for such an exemption. Such an amendment would bring the Electoral Act into line with the legislation in force in all States (except Tasmania) and in the Northern Territory. In these jurisdictions the offence of failing to vote without a valid and sufficient reason is usually qualified by an inclusive definition of 'valid and sufficient reason'. The AEC suggested that it would otherwise regard it as desirable to cease accepting religious objection to voting as a 'valid and sufficient reason' for failure to vote.

Recommendation 82

6.145 That there be inserted in paragraph 245(12)(a) which provides as follows:

> **Every elector who -**
>
> **(a) fails to vote without a valid and sufficient reason for such failure ...**
>
> **shall be guilty of an offence.**

A provision along the lines of:

> **In this section the words 'valid and sufficient reason' shall include an honest belief on the part of an elector that abstention from voting is part of his religious duty.**

Voting in Antarctica

6.146 As a result of a recommendation of the Committee on Electoral Reform, the Electoral Act was amended in December 1983 to enable Australians in Antarctica to vote in federal elections if they chose to do so. Those working in Antarctica and enrolled in Australian Electoral Divisions could enrol as Antarctic Electors and cast their votes according to normal procedures under the supervision of appointed Antarctic Returning Officers. These votes would then be transmitted to electoral officials in Australia.

6.147 This facility was available for the 1984 General Election enabling eligible Australian National Antarctic Research Expedition (ANARE) personnel to vote.

6.148 The following table indicates the use made of the provision in the 1984 General Election.

TABLE 16

ANTARCTIC ENROLMENT AND VOTING, 1984 ELECTIONS

State	Antarctic Electors Enrolled		Votes cast in Antarctica	
	No. of Divisions	No. of Electors	No. of Divisions	No. of Electors
New South Wales	14	17	12	15
Victoria	12	14	10	12
Queensland	3	5	2	4
Western Australia	5	5	0	0
South Australia	4	5	4	5
Tasmania	2	8	2	8
A.C.T.	2	2	2	2
Northern Territory	1	1	1	1
Total	43	57	33	47

6.149 The Department of Science made a submission to the Committee on the operation of the provision in 1984. The Department said -

> ANARE personnel in Antarctica at the time of the General Election comprised three main groups:
>
> . those who had been there over the 1984 winter (from late 1983, early 1984) and were due to return to Australia early in 1985;

- those who had recently arrived and were to stay over the 1985 winter, and

- those who were in Antarctica over the 1984/85 summer period only.

6.150 In all 219 personnel were at Antarctic stations at the time of the election. Thirty-one of these (or 14%) chose to enrol as Antarctic Electors. These figures dissect as follows:

	No. Enrolled	% Enrolled
1984 winterers	24	11
1985 winterers	5	2
summerers	2	1
TOTAL	31	14

6.151 The Department offered the following explanation as to why the opportunity to enrol and vote was not taken up by more of the personnel:

> Time of Election - as the election occurred at about the time the 1985 winterers and summerers were to leave for Antarctica some may have cast postal votes in Australia while others may not have anticipated being at their stations at the time of the election.
>
> Unfamiliarity with Process - Despite efforts at providing information, difficulties inherent in Antarctic communication and the newness of the procedure combined to make some personnel suspicious of it. It is expected that this will diminish as voting becomes an accepted part of ANARE operations.
>
> Lack of Information - Due to communications limitations, the only news ANARE personnel receive is a summary from AAP. Some may have felt that, in the absence of the normal wide media coverage of issues, policies and candidates, they were unable to make a responsible decision and hence did not register. There is no solution to this problem in the short term.

6.152 Because the Headquarters of the Antarctic Division of the Department of Science are located at Kingston in Tasmania and the communication centre for the four Australian Antarctic stations is established there, and also because all expeditioners assemble in Hobart for a period of several weeks before their departure to the stations, the AEC Head Office in Tasmania co-ordinated applications for enrolment as Antarctic electors and arrangements for taking the poll.

6.153 Contact with the four stations is by radio and telex and to a limited extent by facsimile machine. Two of the stations have no direct link. This means relaying telex transmissions from another of the stations to these two. Radio contact is subject to weather conditions which, at times, makes it impossible to contact some of the stations for hours. Despite this, radio is still the best method of communication as it allowed discussion and resolution of unclear points during the process of transmitting instructions and receiving the coded particulars of the poll.

6.154 Section 250 of the Electoral Act requires the Australian Electoral Officer for a State (in the case of a Senate Election) or the Divisional Returning Officer (in the case of a House of Representatives Election) to cause to be transmitted, to each Antarctic station at which there are resident Antarctic electors enrolled for his State or Division, directions for the preparation of ballot-papers, and the names, and particulars of those Antarctic electors.

6.155 Because of the difficulties involved in each Divisional Returning Officer and each Australian Electoral Officer communicating from each State to the four Antarctic Returning Officers, the information from each State was forwarded to the AEC's Head Office in Hobart, at which point a single list covering all States and Divisions was prepared and transmitted via the Antarctic Division to the four Antarctic Returning Officers.

6.156 The AEC made a proposal for amendment to the provisions relating to the receipt of polling details so that the transcription of the detail of Antarctic votes on to ballot papers is streamlined that it can be performed by a single designated Australian Electoral Officer. In this case it would be the Australian Electoral Officer for Tasmania where the coordination of the activities takes place, rather than having a requirement that the Australian Electoral Officer for Tasmania, on receiving those details, then forwards them on to each individual Australian Electoral Officer for transcription. The Committee recommends -

Recommendation 83

6.157 **That section 250 of the Electoral Act be amended to provide that transcription of votes communicated from Antarctica be performed by one designated Australian Electoral Officer (who should be the Australian Electoral Officer for Tasmania).**

6.158 The AEC also raised the possibility of amending the Act to enable voting facilities to be provided on ships transporting official expeditioners to and from the Antarctic. The AEC noted that while 57 persons were registered as Antarctic electors at the 1984 election, only 47 had voted. The subsequent inquiries revealed that this situation had arisen because a number of

Antarctic electors who had anticipated voting at Casey Station were prevented from doing so because the MV Icebird on which they were travelling was ice bound and thus delayed in its voyage.

6.159 The Committee noted that an amendment along these lines was a logical extension from the present provision and would, e.g. cover Antarctic electors on board ships stuck in the pack ice miles from the permanent bases.

Recommendation 84

6.160 That the Electoral Act be amended to extend present voting facilities for Antarctic electors to cover them while on ship to and from Antarctica.

6.161 The AEC has also drawn attention to the fact that the Electoral Act as currently drafted could arguably require the provision of a voting facility at the short term summer stations, such as Edgeworth David, which will become a feature of the Australian Antarctic program. The Department of Science has advised the AEC that it might not be possible for a number of practical reasons to provide for voting at the summer stations - the main problem being one of communications.

6.162 The AEC has observed that since the obligation is to provide voting facilities at Antarctic 'stations' as defined, the definition could be amended in such a way as to make it clear that the obligation to provide voting facilities only arises in respect of the existing permanent stations and such other stations as the Electoral Commissioner determines. When the practical problems of providing voting facilities in short term summmer stations is overcome, or as new permanent stations are established, the franchise can be extended accordingly.

Recommendation 85

6.163 That the Electoral Act be amended to make it clear that the obligation to provide voting facilities at an Antarctic station only arises in respect of the existing permanent stations and such other stations as the Electoral Commissioner determines.

Endnotes

1. Transcript of Evidence at page 1579.

2. Joint Select Committee on Electoral Reform - First Report - September 1983 at paras. 13.1 to 13.3.

CHAPTER 7

THE SCRUTINY

7.1 Section 263 of the Electoral Act provides that the result of polling shall be ascertained by scrutiny. Section 264 provides for the appointment by candidates of scrutineers to represent them at the scrutiny. Provision is made in section 265 that the scrutiny commence as soon as practicable after the closing of the poll, that duly appointed scrutineers and persons approved by the officer in charge of the scrutiny may be present; all proceedings at the scrutiny shall be open to the inspection of the scrutineers; and that the scrutiny may be adjourned from time to time as may be necessary until the counting is complete.

Scrutiny of Absent Votes

7.2 Section 266 of the Electoral Act prescribes the procedure to be followed in the scrutiny of absent votes. Sub-section 266(6) provides for the admission at the preliminary scrutiny of unattested absent declaration envelopes if, before the declaration of the poll, the Divisional Returning Officer for the Division in which the declaration was made certifies that the name of the elector appears on a record of absent voters made by a presiding officer under sub-section 232(2). Should a polling official have made two errors - failed to attest the elector's signature and failed to add the elector's name to the appropriate list - then the elector is disenfranchised, contrary to the spirit of the Electoral Act which is to give an elector a vote despite any polling official error.

7.3 The Committee enlarges on the consequences in Chapter 9 where it discusses the federal implication of Varty v. Ives, a decision in the Court of Disputed Returns for the Electoral District of Nunawading at the 1985 Victorian State Election. The Committee recommends -

Recommendation 86

7.4 That sub-section 266(6) of the Electoral Act be amended to allow absent ballot papers to be admitted for further scrutiny notwithstanding a lack of attestation, providing the Divisional Returning Officer or Assistant Returning Officer is satisfied that it was properly issued. Similar provision should be made in respect of the admissibility of all provisional and section declaration votes.

7.5 The amendment would confer upon the Divisional Returning Officer a power similar to that which he already exercises in relation to otherwise unauthenticated ballot papers.

Informal Ballot Papers

7.6 Final results of the count for the House of Representatives election in 1984 confirmed that the informal vote recorded at the election was several times larger than at any previous election. Observers of Australian elections had become used to a high level of informal voting for Senate elections over the years. However, the informal vote for the House of Representatives had remained relatively stable at a percentage below 3 percent of total votes cast in the election. At the 1984 General Election the informal vote was recorded at 6.38 percent of the vote cast. The level of informal voting for the Senate at the 1984 General Election was, conversely, much lower than it had been at previous elections, a result attributed in the main to the introduction the simplified group voting system.

7.7 Two theories for this sharply increased informal vote were current in the immediate aftermath of the election. The first perceived in it an explanation for the lower than expected support the Government received at the election. This conclusion was drawn from the initial figures which recorded a higher level of informality in safe government seats than in opposition seats. The other theory perceived it as a protest vote against the Government - a conclusion drawn from scrutineeer reports on an increase in the number of deliberately spoiled papers.

7.8 The Committee has had the benefit of two research studies by the AEC on the informal vote, respectively, for the House of Representatives and the Senate. The report on the informal vote for the House of Representatives was available in May 1985[1] and was, necessarily, tentative in its conclusions in the absence of final analysis for the Senate and referendums results.

House of Representatives Report

7.9 The informal vote for the House of Representatives rose from 2.1 percent at the 1983 election to 6.4 percent in 1984 - an increase of 4.3 percent. The AEC in its report compared the 1984 result for the House with the 1983 election. Analysis of the result in the 4 House of Representative elections previous to 1983 indicate that the informal vote in each compared very closely. Any variation in the level of informal voting in a State or Territory from one election to the next rarely approached 1 percent for the House of Representatives.[2] The following table taken from the AEC Report shows the increase over time and the distribution of the informal vote between States.

TABLE 17[3]

Informal Voting by State and Territory
for the House of Representatives 1974-84 (%)*

	1974	1975	1977	1980	1983	1984
NSW	1.66	1.87	2.26	2.36	2.16	5.75
VIC	2.11	1.96	2.85	2.70	2.20	7.59
QLD	1.38	1.27	1.53	1.76	1.30	4.43
WA	2.52	2.30	3.30	2.69	1.98	7.08
SA	2.81	2.40	3.38	2.79	2.67	8.26
TAS	1.77	1.85	2.60	2.64	2.30	5.87
ACT	1.53	1.67	2.38	2.15	2.21	4.72
NT	2.81	3.25	3.46	4.91	4.40	4.62
AUS	1.92	1.89	2.52	2.45	2.09	6.38

* Including missing and discarded ballot papers 1974-83

7.10 Although there were substantial variations in the level of the informal vote between States in 1984, such variations had been apparent in the previous elections. The increase at the 1984 elections was not proportional to the previous levels measured. The AEC commented that any explanation of the level of informal voting in 1984 will have to allow for both the starting level and level of increase. Variations between Divisions were also considerable and randomly spread. The categories of informal vote were:

Categories of informality	National figure
Blank ballot papers	16.8%
Ballot papers with writing, lines or scribble only	7.5%
Ballot papers with symbols (ticks and crosses) used	30.7%
Ballot papers with defective numbering	44.6%

7.11 Commenting on these the AEC reported that although blank ballot papers had increased numerically since the previous survey in 1977 from 66, 394 to 98, 817, they had, as a proportion of the total informal vote declined from 32.4% to 16.9%. The Report concluded that blank papers and those with unidentifiable scribble could not be equated with a 'protest vote'. It was equally possible to infer that the voter had not been able to cope with the complexity of the task as to conclude that s/he had wished to register a protest.

7.12 Papers bearing writing or scribble, the least numerous of the categories, similarly increased numerically (30, 707 to 44, 174) but declined proportionally by half (15%, to 7.5%)

7.13 Ticks and crosses as a proportion of the total informal vote more than quadrupled in 1984. In the 1949 and 1977 ballot papers surveys informal votes in this category had been roughly one fifth of the informal vote total. In numerical terms, over the 1977 survey, the 1984 total rose from 43, 525 to 180, 253 - close to a third of the total.

7.14 The largest category continued to be defective numbering. It comprised ballot papers marked with a single figure which then failed to extend the remaining preferences as the voting system for the House of Representatives required. Compared with the 1977 survey the informal ballot papers in this category rose from 45, 153 to 261, 582, a sixfold increase, or, a rise from about one quarter of the informal vote to about one half of it.

7.15 The AEC reported[4] that there was little variation in the distribution of the categories of informal voting among the States. It noted that the incidence of ticks and crosses in NSW was especially high and in Queensland the proportion of blank ballot papers was especially low. In Queensland, however, the proportion of defective numbers was higher than in the other States.

7.16 In regard to the variation between Divisions, the AEC reports that while the size of, and increase in, the informal vote varied from State to State, the proportion of informal ballot-papers in each electoral Division which fell into each of the major categories of informality was more uniform than the extent of socio-economic and political variation among the Divisions. The proportion of people in any particular group of electors who will render their ballot papers informal appears to be associated with an inter-related set of socio-economic and demographic factors.

Political Impact

7.17 In order to determine whether the result of the election was affected by the high informal vote the AEC attributed a first preference intention to those ballot papers where such an inference could be drawn (those bearing ticks and

crosses and those bearing defective numbering). On the basis of a study of 14 Divisions which were marginal in 1984 the AEC concluded that, although the number of votes credited to the leading candidates would have altered, the winner would not have been different.

7.18 There were more first preferences for the ALP in that part of the informal vote, but inclusion of these ballots in the count would not have affected the result in a single Division and would have reduced the overall swing against the ALP by less than 0.5 of a percent.[5]

7.19 The AEC analysed the statistical data of the informal vote in 1984 against demographic data from various sources in an attempt to establish whether an underlying socio-economic propensity to vote informal could be extrapolated from the data so compared. One of the inferences drawn from this analysis was that the propensity to vote informal correlated more highly with the State or Territory in which the informal voter resided than any other factor. Apart from this the AEC was only otherwise able to conclude that 'Informal voting was highest in those Divisions which contain higher proportions of manual workers and more persons not fluent in English'.[6]

Senate Report[7]

7.20 The AEC concluded:

> It is immediately apparent that the intended reduction in informal voting for the Senate was achieved, down from 9.9% of all ballot papers at the previous election to 4.3%, a reduction of 5.6% and a return to the level prevailing with a first-past-the-post voting system prior to 1919. But at the same time the informal vote for the House of Representatives rose as previously described as did the level of informal voting on the 2 referendum questions. It had been 1.8% for the fourth, and worst-performing in respect of the informal vote, of the 4 questions put at the most recent referendum, that held in 1977. In 1984 it was 4.8% on the first question and 6.7% on the second. What had been gained in reduction of informal voting for the Senate was lost for the House of Representatives and the referendum questions.
>
> Some 9,330,731 ballot papers were issued for the Senate election of which 8,894,100 were formal and admitted to the count (95.3% of the total). Excluded from the count, and declared informal, were 397,996 ballot papers or 4.3 percent of the total issued. The remainder were reported missing

or discarded. Of the 8.9 million formal ballot papers 85.7 percent used the group voting method and the remaining 14.3 percent voted by the traditional expression of preferences.[8]

7.21 Referring to comparative statistics for previous Senate elections the AEC reported that while the movements in informal voting for the Senate had been more volatile than for the House of Representatives the trend was relatively stable compared to the dramatic change from 1983 to 1984. The following table from the Report illustrates this -

TABLE 18[9]

Informal voting for the Senate 1974-84
by State and Territory (%)*

	1974**	1975**	1977	1980	1983**	1984
NSW	12.31	9.74	9.59	9.38	11.09	5.24
VIC	11.13	8.11	9.11	11.15	10.69	3.67
QLD	6.00	8.27	7.96	9.24	8.57	2.72
WA	10.39	10.79	8.17	9.92	7.84	4.16
SA	11.38	9.95	10.39	8.72	8.77	5.02
TAS	11.21	9.88	7.09	7.46	7.42	5.69
ACT	-	3.70	3.14	2.77	3.26	3.18
NT	-	7.15	6.49	7.32	4.68	2.81
AUS	10.77	8.99	9.00	9.65	9.87	4.28

* Includes missing and discarded ballot papers 1974-83

** Double dissolution election

7.22 The introduction of the new 'group ticket' method of voting had the most profound effect on the Senate Election in 1984. The informal vote among those choosing the group voting option was only 0.73% of the total informal vote. This was due in most cases to the elector marking more than one of the boxes. Only 14 percent of electors chose the traditional expression of preference method but of these, 15.4 percent cast informal

ballots. There were also 333,807 voters who used both options. In the majority of cases these ballots were formal. The Australian Electoral Commissioner, Dr Hughes, observed -

> it is significant perhaps that a number of electors as large as that believed that it was possible or appropriate to have a go at two parts. In the event, only a tiny proportion, about 10 percent, used the apparent opportunity to vote on two different options to indicate a different set of preferences for one party on one and for a different party on the other.[10]

7.23 The AEC stressed that a high proportion of those electing the traditional method still used party how-to-vote cards. This was because some parties discouraged their voters from adopting the new voting method while others left the choice open. The choice of whether to use the group voting method varied considerably among the States. Divisions won by the coalition revealed less use of the new method than did those won by the ALP.

Categories of Informality

7.24 In examining the reasons for voting informal at the Senate election 1984 the focus is on far fewer ballot papers than formerly: a mere 397,996 of 9,330,731 cast. The Report analyses these using the same categories as reported earlier in regard to the informal vote for the House of Representatives.

7.25 There were 110,719 blank ballot papers: about the same percentage of Senate informal blanks per Division as House of Representatives informal blanks. The AEC re-affirmed that it could not be assumed that the increase in blanks could be equated with a protest vote as the increase could equally be attributed to an inability to cope with the complexity of voting.

7.26 The category specifying writing, scribble, and other unacceptable markings was confined to the lower part of the ballot paper. Some 30,056 ballot papers were placed in this category, 7.55% of all informal ballot papers and 0.32% of all ballot papers. Here again there had been a modest increase in the proportion of informal ballot papers.

7.27 Ballot papers rendered informal because of ticks and crosses numbered only 23,139 or 5.81% of informal ballot papers and 0.25% of all ballot papers. The AEC reported that there would appear to have been a reduction in this category of informality, for there had been 51,311 ballot papers excluded in 1977 for the use of ticks and crosses, 7.01% of the informal total and 0.60% of all ballot papers.

7.28 The principal cause of informality by those electors using the full expression of preference method of voting continues to be defective numbering.

7.29 Defective numbering had been the principal cause for the disqualification of Senate ballot papers at earlier elections. One remedy provided by the 1983 amendments was the introduction of formality criteria to preserve ballot papers which made a limited number of mistakes; 70,311 ballot papers were saved by these changes in 1984, the equivalent of the vote of an entire Division. However a great many still failed: 25,085 because the lower part of the ballot paper showed 2 or more first preferences, 7,315 because although the elector had managed to number at least 90% of the squares other numbering errors had been made, and 140,993 because of failure to number at least 90% of the squares, that is to express preferences for at least 90% of the candidates offering. The failures were the voting equivalent of 2 and a half Divisions.

7.30 In total 243,704 electors made numbering errors on their ballots, but because of the changed formality rules now contained in the Commonwealth Electoral Act only 173,393 ballot papers were rendered informal. These were respectively 2.62% and 1.87% of all ballot papers, whilst the 70,311 saved by the changed formality rules constituted 0.76% of all ballot papers. The ballot papers rendered informal by defective numbering were 43.57% of all informal ballot papers.

7.31 Put in what is probably the most digestible form, in 1977, 571,114 ballot papers or 6.68% of all ballot- papers were rendered informal because of defective numbering, whilst in 1984 only 173,393 ballot papers or 1.87% of all ballot papers were rendered informal because of defective numbering. A small (15%) part of the difference, 0.76% of all ballot papers, is attributable to the change in the formality rules which now allow a small number of errors and the balance may be attributed to the introduction of a simpler method of voting as an alternative.

Partisan Advantage

7.32 The AEC then proceeded to examine the question of partisan advantage that might be inferred from this situation. The information available for analysis on this question is limited.

> What is certain is that 153,767 ballot papers which were held informal because of defective numbering bore an identifiable first preference, thereby providing a fairly strong indication of the electors' intention. These divide into ALP 54,535, coalition parties 63,057, Democrats 12,085, Nuclear Disarmament Party 11,885, Call to Australia 4,988, and other groups and candidates 7,010 (including Senator Brian Harradine Group in Tasmania 667 and Referendum First Group in the ACT 129).[11]

7.33 If the informal ballot papers so identified had been admitted to the count the effect on the result would have been so slight to have been insignificant.

7.34 The AEC concluded from its analysis that there was no significant advantage or disadvantage to any party consequent upon the disqualifications of ballot papers for defective numbering. However, if viewed as percentages of pools of informal ballot papers then it will be seen that the proportions of incorrectly numbered ALP full preference papers is greater than the proportion of coalition informal papers in this category. The AEC concludes that:

> Had as many coalition voters used the group ticket voting option as extensively as ALP voters did, then it appears probable that some modest advantage for the coalition parties would have appeared in the numbers of ballot papers lost by informality.[12]

Remedial Action

7.35 Reverting to the House of Representatives informal vote it will be recalled that two major problems were identified. the first was the high incidence of the use of symbols (ticks and crosses); the second was a greatly increased incidence of defective numbering.

House of Representatives Election

7.36 It can be concluded from the AEC study that a large part of the problem was due to confusion in the minds of voters caused by the introduction of the new system of ticket voting for the Senate. When combined with the requirement to vote also for two referendum questions it is clear that electors were called upon to discharge a more than usually complex electoral task at the 1984 General Election: to vote in three elections using 4 different methods of voting. There is some suggestion, also, that this confusion was exacerbated by the publicity campaign mounted by the AEC on the 'new ticket' voting system. The publicity effort was geared to getting this message across and may have insufficiently stressed the fact that the system for the House of Representatives was unchanged. It is thought that voters might have concluded that the single number acceptable for the Senate ticket was also acceptable for the House (particularly as affiliations appeared on ballot papers for the first time). Post-election research revealed that a significant proportion of the population did not understand basic facts concerning the bicameral nature of the Parliamentary system. A media campaign's success will be limited when its target is such a large segment of the population as all qualified electors. An inference that could be drawn from this conclusion is that the cost of such a campaign may not be warranted if the group likely to fall outside its scope is the very group whose voting behaviour it is sought to correct.

7.37 The lesson of the 1984 election was digested by the Victorian State Government which mounted an extensive campaign before the February 1985 State election. Levels of informality held at around or slightly below that for previous State elections. However, it is significant that this campaign was unable to reduce the informal vote below the traditional 2/3 percent. An inference, supported by evidence from other sociological surveys on the impact of media campaigns is that there is a small proportion of the population unreachable by even the most sophisticated and intensive media propaganda. The result in the Scullin by-election was encouraging in that informal voting for that federal seat reverted to around the pre-1984 average. This was due in part to a campaign by the AEC directed personally at the voter by a communication through the post. In the South Australian State Election there were similarities to the 1984 General Election. The Legislative Council ballot paper had been altered in 1985 along the lines used for the Senate ballot paper and for the same purpose, to reduce the high level of informal voting occasioned by the number of preferences required. But, with hindsight of the 1984 federal experience, the amending legislation passed in South Australia in 1985 sought also to accommodate electors who tried to apply the simplicity and convenience of the group ticket option to the House of Assembly ballot paper as well by 2 provisos: first that a tick or a cross on that ballot- paper should be the equivalent of the number 1, just as it was on the Legislative Council ballot paper, and second that 'voting tickets' might be registered by candidates for the House of Assembly in which case a ballot paper marked with only the number 1 (or its equivalent tick or cross) for that candidate would be deemed to have been marked in accordance with that voting ticket. The AEC reported that comparable changes to the Electoral Act would have saved approximately three-quarters of the House of Representatives informal ballot papers in 1984. The expression of preferences part of the Legislative Council ballot paper continue to require a full set of preferences (unlike the Senate's 90%), but allowed a tick or a cross to be deemed to be a number 1 - provided that the full set of numbered preferences then followed. At the Statewide level, informal voting for the Legislative Council fell from 10.1% to 3.7% and for the House of Assembly from 5.8% to approximately 3.5%. However, it also raised a query as to whether ticket voting for the House would be constitutional, as to deem a vote for candidate 'A' to be a preferential vote for other candidates as well could infringe the requirement that the member be 'directly chosen by the people'.[13]

7.38 In regard then to the high incidence of single preference papers and the use of symbols, it is reasonable to assume that this problem will be amenable to a media campaign. The Committee thinks that the AEC should again use the direct communication approach that was so successful at the Scullin by-election. It is not persuaded that much is to be gained from a beefed-up media campaign attempting to reach all voters. The Committee recommends -

Recommendation 87

7.39 That the AEC prepare and mail to all registered electors material explaining the voting system for the Senate and the House of Representatives, the date of the election, polling hours, polling places, and information concerning the rights of electors regarding postal voting, pre-poll voting and absentee voting, and any other relevant information during the run-up to the next general election.

7.40 In the long term the best hope for improving voter understanding of the electoral system is through an enhanced education program. Two school based projects are in preparation, one under the auspices of the AEC, the other of the Parliament, directed at improving knowledge of basic facts concerning the political system. The AEC media campaign for the next election should stress the difference between the voting systems for the House of Representatives and the Senate. The media campaign should also emphasise the difference between the two options for voting for the Senate, explaining the advantages of the group voting option to those wishing to vote for the party ticket. At the same time it should explain the alternative to those wishing to retain control over the allocation of preferences and the danger of informality unless the formality rules are scrupulously observed. It is to be hoped that these steps will at least reduce the level of informality for the House of Representatives back to its traditional 2/3 percent.

Recommendation 88

7.41 That the AEC conduct an intensive media campaign in the run-up to the next election designed -

(a) to explain to electors, who wish to vote the party ticket, how to use the group ticket voting system,

(b) to explain to those wishing to retain control over the allocation of preferences the importance of observing the formality requirements scrupulously if they wish to avoid the danger of casting an informal vote, and

(c) to emphasise the difference between the voting system for the House and for the Senate.

Senate Election

7.42 Clearly, the introduction of group voting for the Senate has had the desired effect of significantly reducing the proportion of the informal vote at Senate elections. There is scope for further improvement if all the political parties adopt a more positive attitude to the new system in their campaign literature. Beyond that, further improvement would only result

through a change in formality requirements for the completion of the extension of preference requirement. The conclusion of the AEC was:

> independence of judgement ought to be encouraged by further steps 'to ensure that electors who wished to cast a valid vote were assisted in having that vote considered valid' and that the modest 15%, and probably diminishing, minority who do not opt for their party's group ticket should be assisted to be as effective as possible in their voting by still easier formality criteria.[14]

7.43 As noted the formality requirements were relaxed in 1983 to a requirement to mark 90 percent of the preferences.

7.44 Dr Hughes stated in his evidence to the Committee:

> There are 173,000 still left with defective numbering. That compares with a figure of around 571,000 the last time a comparable analysis was made and so it is clear that the group ticket method has taken away a lot of the defective numbering problem. Of that 173,000, about 90 percent are accounted for by a lack of numbers up to the sixth preference and so it is not a case of fading in the stretch of a long completion of a ballot paper but dropping out very early in the piece. I think that is particularly significant when one looks at possible options for reducing the informal vote - for example, reverting to an earlier method of marking the Senate ballot paper or what is currently in use, as for example, in the Tasmanian House of Assembly, of a number of the order of twice the vacancies to be filled; if it be six it would still have 90 percent of informal ballot papers falling short of that modest target. Obviously, if you change the rules and people know that they had to put only six, maybe some more would do it, but there is not a great deal of encouragement, I would suggest, in the way they numbered in 1984 to suppose that even a reduction in the numbering requirement of that extent would reduce the informal vote very considerably. If the objective is to reduce the informal vote of that 15 percent who attemped the expression of preferences still further, then I think it is likely to be achieved only by a very drastic rethinking of the expression of preferences concept to see whether it is necessary to extract more than the individual voter wants himself or herself to offer.[15]

7.45 Research Report 1/86 also discusses the possibility of technological methods of voting as a means of overcoming the problem but concludes that the options that exist are too expensive or unsuitable to suggest that this is a profitable line of inquiry for the immediate future.[16]

7.46 The arguments of the AEC persuaded the Committee that any further relaxation of the formality rules would need to be extensive to make an appreciable impact on what remains of the informal vote for the Senate. There was also the question of whether, having gone as far as it has in assisting electors who wish to cast a valid vote, the Commonwealth should go even further. On one view of the matter relaxation of the rules to the extent regarded by the AEC as necessary to make an impact, would imperil the integrity of the proportional voting system. According to this view there must be limits to the extent to which the rules of the system should be relaxed to meet the needs of a diminishing proportion of electors unable to cope with it.

7.47 If this view is accepted then it would be quite proper to see the system of voting for the Senate as providing an elector with a clear choice of either registering support for the ticket of his chosen party and avoiding the inconvenience and pitfalls inherent in fully extending the preferences, or, ranking the candidates in accordance with his/her individual choice and taking the risk of infringing the rules of the system and having his vote excluded from the scrutiny.

7.48 If this view were to be accepted then there would seem to be little point in making minor concessions to such voters to save their votes from informality and the system should revert to requiring a full expression of preferences.

7.49 If on the other hand the view taken is that the purpose of the election is to enable the majority to make a decision in the election then every effort should be made to give effect to an electors voting intention. It would seem to follow from this view that the system should not require the voter to express more preferences than s/he actually has. Under most systems of proportional representation the electors are not required to express preferences beyond twice the number of places to be filled in the election. Some systems in operation require even less than this. Given this fact it is not a tenable argument that the rules of proportional representation require a full extension of preferences. A requirement that an elector must indicate a preference for every candidate on the ballot creates an obstacle preventing many voters from registering any choice at the election and therefore detracts from the system, that is if one of its aims is perceived as registering the view of the majority of all eligible electors as to their choice of rulers.

7.50 The Electoral Act now requires the voter to mark at least 90 percent of preferences for a valid vote. Also the changes that permitted departures from a perfect sequence of preferences. The majority of the Committee concluded that these formality rules should not be changed.

Scrutiny of Votes in Senate Elections

7.51 There were two recommendations made by the Committee in its 1983 report that particularly affected the Senate scrutiny procedures that operated at the last election. The first was that the random sampling process for the distribution of surplus ballot papers which had operated since 1948 should be replaced by the fractional transfer system as used at Tasmanian State elections since approximately 1907. The second was that, in the distribution of the surplus ballot papers of a candidate elected at a later count than the first, all the ballot papers ever received by that candidate should be regarded as eligible for transfer as part of the candidate's surplus, not just those ballot papers received by the candidate at the count at which he or she was elected. As a matter of drafting, the approach taken in reconstructing the old section 135 of the Act was to pick up as closely as possible the full schedule of the Tasmanian Electoral Act.

7.52 This included a provision which could have caused difficulty at the last election and has the potential to do so in the future. The main features of the scrutiny which contribute to its length and complexity are -

(a) all ballot papers remain in the scrutiny throughout, unless exhausted or set aside as a result of a candidate's being elected with exactly a quota;

(b) an elected candidate's surplus is distributed by transferring every ballot paper held by that candidate at a fractional value, according to the next available preference shown on it;

(c) a ballot paper transferred at a fractional value maintains that value unless it is distributed as part of another elected candidate's surplus;

(d) the ballot papers of an excluded candidate are distributed at separate counts for each 'parcel' of ballot papers received at each earlier count, and the number of counts required to exclude a candidate thus tends to increase arithmetically as the scrutiny proceeds, and

(e) an elected candidate's surplus votes are distributed at separate 'sub-counts' for each 'parcel' of ballot papers received at each earlier count. This is a procedure not required by section 273, but rather undertaken administratively; the view was taken when devising procedures for handling ballot papers that where they were already in separate parcels, errors in counting might be simpler to trace if each of those parcels was counted separately.

7.53 The major feature of this schedule is that, in the distribution of the votes of a candidate who is being excluded, a separate count of ballot papers is required for each earlier count at which that candidate received ballot papers. A particular function of that is that the number of counts required to exclude a candidate increases more or less exponentially as the scrutiny proceeds.

7.54 This gives rise not only to considerable practical difficulties in conducting the scrutiny because of the huge number of counts involved, particularly in the larger States, but also that it gives rise to the possibility that a person motivated by malice could take the opportunity to sabotage the entire process by causing the nominations of an exceptionally large number of candidates. These difficulties were identified by the AEC in its submission on Senate scrutiny procedures. The AEC concluded that the difficulties could be overcome by the adoption of two distinct options. The proposals put forward by the AEC were -

(1) Combined Transfer Value

7.55 The 'combined transfer value' option would provide that all ballot papers received at the same transfer value would be distributed at one count.

7.56 As a result of the adoption of the transfer value option, the maximum number of possible counts per exclusion would be equal to the number of vacancies being filled. Most importantly, the number of counts required per exclusion would remain essentially fixed as the scrutiny proceeded. Thus the vulnerability of the system to an extraordinarily large number of nominations would be significantly lessened, and just as importantly, there would be a considerable reduction in the time taken to complete the scrutiny.

(2) Bulk Exclusion

7.57 Under the 'bulk exclusion' option, if certain limiting criteria were met, a number of candidates could be excluded as one. This would occur over a reduced number of counts either by transferring the ballot papers received by the group of candidates at each count at a separate count, as at present, or by combining all the ballot papers of the same transfer value under the proposed 'combined transfer value' option outlined above. Ballot papers would be transferred straight to the next available preference among the continuing candidates.

7.58 The Principle involved was described, thus:

> If the total of the votes of the two or more candidates lowest on the poll together with any surplus votes not transferred is less than the number of votes credited to the candidate next above these, the returning officer may at the same

count exclude the aforesaid two or more candidates lowest on the poll, provided that the exclusion of these candidates shall not reduce the number of continuing candidates below the number of vacancies to be filled.

7.59 The two options detailed would work independently to reduce the length and complexity of the Senate scrutiny. The combined transfer value option would be applicable throughout the scrutiny and would achieve a very significant reduction in the number of counts necessary for each exclusion, particularly in the latter stages of the scrutiny. The bulk exclusion option offers the possibility of reducing the number of counts and the number of ballot paper movements. Although it could operate independently of the combined transfer value option, its best application would be in association with it. The Committee believes that amendments to the present scrutiny provisions to allow both options would achieve the desired improvement of the system and recommends -

Recommendation 89

7.60 **That in order to simplify the procedure at the Senate scrutiny the present system should be modified by the introduction of the combined transfer and bulk exclusion options.**

7.61 Difficulties with the Senate scrutiny procedures were also identified by other witnesses.

7.62 Mr J F Wright of the Proportional Representation Society offered the following criticisms of the senate scrutiny procedures -

(a) A possibility exists for a ballot paper to become non-transferable at any stage of the scrutiny after the counting of first preferences. The correct procedure in transferring a surplus in any such case is to leave non-transferable papers in the quota of the elected candidate and transfer the surplus by means of the papers showing further preferences for continuing candidates. Sub-section 273 (9) of the Electoral Act should therefore provide for the divisor in the calculation of the transfer value to be the number of ballot papers showing first preference for the elected candidate and a further preference for a continuing candidate.

(b) The provision (sub-section 273 (12)) for transferring surplus votes of candidates elected after receiving votes from other candidates is defective. The effect of sub-section 273 (12) gives equal electoral effect to ballot papers that had different values as received by the elected candidate. There are two possible approaches to

dealing with this problem. One would be to revert to the previous practice of considering only the papers in the last parcel received by an elected candidate in transferring any surplus. The alternative is to take note of the actual values of the papers as received by the elected candidate. That means that it is possible to define the value of each parcel as a component of the total of the votes.

7.63 Proposals were also put forth by Mr Haber, a witness who appeared with the Australian Democrats NSW Branch. Mr Haber's document embodies three distinct proposals for changes to the current Senate scrutiny system -

> that the procedure for transferring surplus votes be altered so as to ensure that ballot papers which are set aside as exhausted during a surplus distribution are given a transfer value of zero and therefore are not 'carried over' to Table II of the standard Senate Scrutiny Sheet as 'exhausted votes';
>
> that another aspect of the same procedure be modified so as to eliminate so-called 'loss by fraction' at surplus distributions, and
>
> that in distributing the surplus votes of a candidate elected at a later count than the first, the various ballot papers of the elected candidate should not all be distributed to the continuing candidates at the same transfer value, but should be distributed at a transfer value related to that at which the elected candidate received them.

7.64 These proposals were analysed by the AEC at the Committee's request. The AEC were opposed to them all. The response of the AEC is reproduced in the Transcript of Evidence.[17] However, it is worth quoting the following statement from the response:

> (2) The preliminary point should be made that proportional representation systems of scrutiny can be no more than devices to provide, first, for the representation within a legislature of a reasonable cross-section of views and, second, for the representation of political groups in approximate proportion to their support within the electorate. Provided that two or more systems satisfy these broad criteria, there is very little basis for arguing that one is better than another, and the choice between any two must rest on the criterion of ease of practical

implementation. No process whereby the complex preferences of millions of voters are agglomerated into an election result in which six candidates are successful and the rest are not can be said to be definitely 'correct' or 'accurate'.

(3) In addition, the Commission would reject as fallacious the proposition that there exist real but unobservable entities called 'vote values' which it is the duty of the system to reflect in the formulae laid down for the calculation of 'transfer values'. To base predictions for legislative change on such a proposition would be to give overriding normative significance to what is merely a metaphor which has been used in the past to describe the mathematics of proportional representation systems.

(4) Furthermore, it should be noted that the changes proposed to the current system by Mr Haber, though minor, would, if implemented either together or individually, give rise to the possibility of a result different from that which the current system would produce. However, in the Commission's view, the current system and the system which would be produced by the adoption of Mr Haber's proposals both satisfy the broad criteria laid down in paragraph 2 above. For that reason it cannot be seriously asserted that the result produced by one would be any more legitimate than the different result which the other would produce in certain restricted circumstances.

7.65 It concluded:

The whole thrust of the Commission's approach to the review of section 273 has been to seek amendments which will expedite, simplify and render more robust the scrutiny of Senate votes, while maintaining consistency with the broad criteria laid down in paragraph 2 above (these criteria are set out in paragraph 7.65 above). Mr Haber's proposals all lead in the opposite direction, and would tend to complicate and lengthen Senate scrutinies, with no attendant benefits.

Finally, the Commission would point out that there are overall benefits to be gained from having an electoral system which is simple for all participants in the political process (including

parties and candidates, the media, and the voters themselves) to understand. On this basis, again, the modifications of the current system proposed by the Commission are preferable to those put forward by Mr Haber.

7.66 The Committee agrees with the AEC's assessment and does not support Mr Haber's proposals. However, the Committee does support another proposal put forward by the Proportional Representation Society. The Electoral Act as amended in 1983 contains no provision for deferring the transfer of surpluses where this would not affect the outcome. A provision for deferment in the Act before amendment was invoked on several occasions. While there may not be many occasions when such a provision would save a significant amount of time, it would probably be worth having the provision so that it could be invoked in the appropriate cases. The Committee recommends -

Recommendation 90

7.67 **That the Electoral Act should be amended to make provision for deferring the transfer of surpluses where this would not affect the outcome of the election.**

Procedure at the Conclusion of the Scrutiny

7.68 At the conclusion of the scrutiny for the 1984 election, three different procedures were followed after the election of the last Senator by quota. These were -

- to cease the scrutiny immediately upon the election of the last Senator and not complete the exclusion in progress at the time (ACT, WA, Qld, Vic),
- to continue the scrutiny after the election of the last Senator in order to complete the exclusion in progress at the time, distributing ballot papers to the remaining candidate(s) and the exhausted pile, as appropriate (NSW), and
- to continue the scrutiny after the election of the last Senator as above, but by distributing ballot papers to the remaining candidate(s), the exhausted pile and the last elected Senator (SA, Tas).

The argument for ceasing the scrutiny immediately is that under current procedures hundreds of further counts may be necessary to complete the exclusion. The numbers of counts required after the election of the last candidates in NSW, SA and Tasmania were 518, 169 and 47 respectively. Those 518 counts in NSW took 7 hours and cost approximately $3 500 consisting of 250 casual man hours and 50 establishment man hours, and $500 premises costs. It could be argued that those counts are not at all necessary considering

that the purpose of the scrutiny has been fulfilled with the election of the last Senator. In Tasmanian State elections it is the usual practice for the scrutiny to cease immediately upon the election of the last Member and, any further counts of an exclusion in progress at that time, are only performed when it becomes necessary to fill a vacancy by the recount process. The Committee recommends -

Recommendation 91

7.69 **That the Senate scrutiny should cease upon the election of the last Senator to be chosen for the State or Territory.**

Provisional Voting

7.70 A major achievement of the 1983 amendments was to take away from presiding officers a discretion, which they arguably possessed previously, to refuse an elector a provisional vote in certain circumstances. This amendment had the advantage of smoothing transaction of business at polling booths, where previously instances of open conflict between polling officials and scrutineers were not unknown. It is now the case that whenever an elector claims to vote at an election and his name is not on or cannot be found on the certified list of voters for that division, he may claim a provisional vote. Where he does so, the legislation requires that he be furnished with a statement setting out his rights under section 235 of the Electoral Act and the steps that will be taken should he elect to proceed.

7.71 There were a number of minor difficulties associated with the preliminary scrutiny of provisional votes. Sub-section 235(6) requires the Divisional Returning Officer to establish in the first instance whether a voter claiming a provisional vote was omitted from the certified list 'by reason only of an error or mistake by an officer'. If either is the case, both House of Representatives and Senate ballot papers are admitted. If it transpires that the voter was enrolled for another Division in the same State, his Senate vote can be admitted to the further scrutiny even though his House of Representatives vote must be rejected. Nevertheless, there was a considerable increase in the number of provisional (section) votes admitted to the scrutiny, as the following table indicates.

TABLE 19

State	House of Reps and Senate Admitted	House of Reps and Senate Admitted	Provisional Votes Cast (a)	House of Reps and Senate Admitted	Senate admitted, House of Reps disallowed	TOTAL
NSW	5930	4771	25100	7297	3125	10422
VIC	3925	4587	18723	5837	2996	8833
QLD	2368	2383	32586	7376	5679	13055
WA	2051	1991	7705	1838	1210	3048
SA	1092	690	5062	1665	888	2553
TAS	486	350	3519	1480	354	1834
ACT	329	310	1989	1116	72	1188
NT	475	452	2294	223	-	223
TOTAL	16656	15534	96978	26832	14324	41156
% of Total Votes	0.2%	0.17%	N/A	0.29%	0.15%	N/A

(a) The number of provisional votes cast at previous elections is not available.

7.72 Unless both ballot papers are admitted for further scrutiny, the Act requires that the voter be given written advice to that effect. Many voters complained that they were not on the Roll for the correct Divisions. This was due, in many cases, to errors made by the AEC when adjusting rolls after the re-distribution and were caused by the pressure that officers of the AEC were under to complete this process speedily.

7.73 A difficulty brought to the Committee's attention occurs where a person's name has been removed from the Roll under the objection process and it transpires, on the basis of evidence provided by the elector at the poll, that the name was wrongly removed. Technically the removal of the name occurred as a result of officer error although the officer at the time acted quite properly and in accordance with the Electoral Act. At least this is the tenor of legal advice to the AEC. There is a clear problem for the Divisional Returning Officer to determine whether such a case is one of officer error and to do so could involve time in

tracing the objection through records over several elections. The AEC reported that in practice this just cannot be done, particularly where the Divisional Returning Officer would be forced to seek information which predates the microfiche produced under the current enrolment maintenance system. To overcome this problem it is necessary to place a limit on the obligation imposed on the Divisional Returning Officer to check previous records.

7.74 The AEC pointed out that similar considerations also apply to postal and absent votes under sections 200 and 235. These enable the absent or postal vote of an enrolled voter to be admitted to the count if that voter would, had he attended at a polling booth, have cast a valid provisional vote. The Committee recommends -

Recommendation 92

7.75 **That, where the voter's name is not on the Electoral Roll by error or mistake of an officer, a provisional vote or declaration vote should only be admitted if the error has occurred since the election before the last election; where there has been a redistribution between these two elections, since the redistribution; or, where there has been a redistribution following the last election since the redistribution.**

7.76 The AEC also raised the question whether it should be obliged to inform all declaration voters whose votes had not been admitted to the scrutiny of that fact. The Committee recommends -

Recommendation 93

7.77 **That the Electoral Act be amended to oblige the AEC to inform all those who vote by declaration why their ballot papers have not been admitted to the scrutiny.**

Elimination of Non-Country Centres

7.78 Non-counting centres are those where the ballot papers are not counted on election night at the polling place where they were recorded but are transported to another centre to be counted. At the 1984 election less than one quarter of all polling places were non-counting centres and under 10% of these took less than 50 votes.

7.79 Sub-regulation 73(3) of the Electoral and Referendum Regulations stipulates that the ballot papers taken from a ballot box may not be counted if they number less than 100 but must be reserved for later inclusion in the scrutiny. The origins of this provision are hard to trace but presumably lie in the supposed preservation of secrecy in sparsely populated locations. This is not particularly seen as a barrier to repeal since at all State elections, where virtually all polling places are counting centres, no threat to secrecy is apparent even where as few as 8 votes are counted.

7.80 The AEC wishes to adopt a policy where all polling centres will be counting centres. The advantage would be quicker figures in rural electorates on polling night and better security of the ballot papers. The Committee supports this policy and recommends:

Recommendation 94

7.81 **That sub-regulations 73(3) and (4) be amended to provide that all polling booths be counting centres unless the Australian Electoral Officer for the State or Territory determines otherwise.**

Recheck of all House of Representatives Ballot Papers

7.82 Under the current provisions of the Electoral Act if a candidate in a House of Representatives election has received an absolute majority of the formal votes cast that candidate is elected. Where a candidate has an absolute majority according to the figures supplied to the Divisional Returning Officer there is no authority to recheck, as a matter of course, the information provided by Assistant Returning Officers on polling night before the poll is declared. By way of contrast, there is a specific requirement for a fresh scrutiny of all Senate ballot papers to be conducted - and in practice, there are 2 such rechecks done.

7.83 The lack of a specific requirement to perform a recheck prior to declaring the House of Representatives poll is significant. The results of scrutinies conducted by Assistant Returning Officers at polling booths on polling night are often in error to a minor degree. These errors result from tired polling officials being put under pressure to produce results quickly.

7.84 Thus the results of these scrutinies cannot reasonably be expected to be completely accurate. However under current provisions they are published and the AEC is committed to their inaccuracies for future information and survey results. Invariably when a Divisional Returning Officer is directed to carry out further scrutinies for information or survey purposes he is confronted with irreconcilable differences between published figures and what he finds to be fact.

7.85 Funding of political parties for elections is based upon the number of first-preference votes a candidate or group receives. The inaccuracies that can occur as described in the preceding paragraph can effect the entitlement to funds received under these provisions and in 1984 the subsequent discovery of such errors necessitated recalculation of entitlements, often involving minimal amounts, causing embarassment to the AEC and inconvenience to political parties.

7.86 The introduction of House of Representatives rechecks as a matter of course would also enable Divisional Returning Officers to monitor better the extent to which polling officials have absorbed the messages directed at them during their training.

7.87 The Committee is also of the view that the Act should be amended to require a distribution of preferences, once commenced, to be completed. At the moment there is no requirement for a distribution of preferences to be continued once a candidate has attained an absolute majority. The Committee recommends -

Recommendation 95

7.88 **That the Electoral Act be amended to provide for a fresh scrutiny to be conducted by each Divisional Returning Officer of all House of Representatives ballot papers included in the count before any candidate is declared elected. A distribution of preferences once started should be completed and an amendment should be made to section 277 to enable a two-party or other distribution of preferences to be conducted at any time.**

Markback of Certified Lists Prior to Preliminary Scrutinies of Declaration Votes

7.89 *There was some uncertainty as to whether a declaration* vote is admissible where the elector is marked off as having cast an ordinary vote. The AEC reported that subject to the normal checks they are admitted. The Committee had to consider whether something should be done about it.

7.90 The AEC proposes that a 'markback' be completed prior to the preliminary scrutiny of all declaration votes. The 'markback' is the procedure whereby all markings of electors who voted at polling booths on polling day are transferred to one certified list to determine a list of apparent non-voters and of possible dual voters. Under current arrangements the markback procedure is often not finally completed until after declaration votes *have been admitted to the scrutiny and the poll has been* declared. This situation seems to be undesirable when the votes of possible dual voters, where one such vote was a declaration vote and the other was an ordinary vote, are both admitted to the count. The Committee accordingly recommends -

Recommendation 96

That the Electoral Act should be amended to require -

(1) a 'markback' of the certified lists to be completed before any declaration votes undergo preliminary scrutiny - it should be a condition of the admissibility of such votes that the ballot papers contained in any declaration envelope shall be admitted for further scrutiny only provided that the check roll (master certified list) was not marked in any way to indicate that ballot paper(s) have already been received from that elector, and

(2) that the declaration votes set aside would only be admitted to the scrutiny by direction of the Court of Disputed returns - on being satisfied that the elector had not in fact voted.

7.91 A comparable provision already exists in respect of postal ballot papers returned in declaration envelopes bearing postmarks that include a date after polling day: see sub-section 200(7). The impact of this proposal would be to delay the scrutiny of all declaration votes until after the markback was completed and after the check roll was annotated to record the fact that the elector had voted by declaration. The time required to mark the check roll could take up to 5 days plus and only then could the scrutiny of declaration votes commence. All concerned would have to accept this situation. Any attempt to rush the markback will be self-defeating in that it will produce a totally unreliable check roll and would also result in the incorrect dispatch of numerous non-voter notices.

7.92 The Electoral Act should also be amended to clarify the right of scrutineers to attend the preliminary scrutiny of all declaration votes. Under the Act at present the right is only clear in respect of postal votes. The Committee recommends -

Recommendation 97

That the Electoral Act be amended to ensure the right of scrutineers to attend the preliminary scrutiny of all forms of declaration votes.

7.93 The AEC also proposed and the Committee agrees that as part of the implementation of these proposals -

Recommendation 98

A provisional scrutiny of preferences shown on ordinary votes should take place before the completion of the markback.

7.94 This provision would help candidates and AEC staff by giving considerable information on the way preferences will be distributed. In this way all concerned could focus on the preliminary scrutinies of declaration votes at the relevant time and thus avoid the need to reconstruct such scrutinies after the event under the provisions of the Freedom of Information Act, as happened in the Division of Forde for the 1984 election.

Divisional Returning Officer's Statement

7.95 Once a Divisional Returning Officer has declared a candidate elected he is required by sub-section 284(1) of the Act to transmit to the Electoral Commissioner a statement setting out the result of the election and the name of the candidate elected. This is a direct result of having a single writ for each State or Territory.

7.96 The provision as it now stands can have the effect of delaying the declaration of the poll where the outstanding ballot papers are too few to affect the result. The Committee recommends -

Recommendation 99

That the Divisional Returning Officer make out a statement after the declaration of the poll setting out the name of the candidate elected, and make out a separate statement setting out the result of the election once all admissible ballot papers have been counted.

Referendums

7.97 The AEC raised with the Committee issues that arose concerning the formality of certain referendum ballot papers under the Referendums (Machinery Provisions) Act 1984.

7.98 Sample ballot papers were supplied upon which the AEC sought the Attorney-General's Department's advice as to formality. The papers are reproduced at Appendix E . Under section 24 the voter is required to write 'Yes', or, 'No' in the space provided but effect is to be given to a ballot paper according to a voter's intention so far as the intention is clear (sub-section 93(8)).

7.99 The sample ballot papers at Appendix E reveal the problems of applying the formality provisions referred to above.

7.100 The Attorney-General's Department advised as follows:

> Sample Ballot Paper 'I': The votes marked on sample paper 'I' are both, in its view, formal. The issue is whether the voter's intentions are clear despite his use of a tick and a cross. Although ticks and crosses are both methods commonly used to show approval or indicate a view or preference a distinction may be drawn between them when they are juxtaposed, as in this example. In such a case, a tick denotes approval and a cross disapproval. Of course, this view presupposes that in the construction of one referendum vote, regard may be had to another vote on the same piece of paper. Nothing in the Act precludes such a view. The proposition that each vote must be considered in isolation has no statutory basis.
>
> Sample Ballot Paper 'II': The votes marked on sample paper 'II' are both, in its view, formal. The first issue is whether the answers given by the voter in the spaces provided are rendered

ineffective by the slogan scrawled over the paper. The problem appears to be dealt with by paragraph 93(1)(d) of the Act. It may be implied from this provision that writing inscribed by a voter on a ballot-paper would not, in the absence of an express prohibition, necessarily render the ballot-paper informal though the writing may not be authorised by the Act or regulations. The inscription would invalidate the ballot-paper only if it enables the voter to be identified or renders illegible or uncertain the voter's answer to the referendum questions so as to make his intention unclear. The slogan scrawled over sample paper 'II' does not obscure the elector's vote and it does not enable him to be identified. On this assumption, the remaining issue is whether the voter's handwritten 'NEVER' in the space opposite the first referendum question may be regarded as disapproval of the proposed alteration to the Constitution. In its view, it could.

Sample Ballot Paper 'III': The first vote marked on sample paper 'III' is, in its view, formal and the second vote is informal. The first vote is formal because it clearly indicates the voter's approval of that referendum proposal. The second vote ('NO DAMS', with 'NO D' inside and 'AMS' outside the space provided on the ballot-paper) is informal because it seems the voter's intention was to express a view on the 'No Dams issue' rather than answer the referendum question.

Sample Ballot Paper 'IV': The votes marked on sample paper 'IV' are both, in its view, informal. The first vote is 'NO DAMS' with the 'NO' inside and the 'DAMS' outside the space provided on the ballot-papers. The voter has clearly answered the first question in the manner prescribed by s.24; however, he has also incorporated his answer in a slogan. The voter may have had two equal intentions and answered this way because he wanted to be clever and economical. Whatever his reason, his vote is ineffective because it conveys no clear intention. The answer to the second referendum question ('I GUESS SO') conveys uncertainty. To the extent that it intimates approval, it does not do so in a categorical manner. Such intimation is too weak to qualify as a clear approval of the referendum proposal.

Sample Ballot Paper 'V': The votes marked on sample paper 'V' are both, in its view, formal. The first vote is formal because it indicates approval in the prescribed manner and is not

rendered illegible or uncertain by the 'NO DAMS' sticker. The second vote ('DITTO') is formal because it clearly implies approval. 'Ditto' means 'as above' and, in this example, refers to the 'Yes' given in answer to the first question. As previously stated, there is no authority for the proposition that each vote must be considered in isolation.

Sample Ballot Paper 'VI': The first vote marked on sample paper 'VI' is, in its view, informal and the second vote formal. The first vote ('NOT SURE') is informal because the answer conveys indecision and uncertainty. The second vote ('OH NO') is formal because the answer is equivalent to 'No'.

7.101 The Committee was asked to consider whether some legislative clarification of the formality criteria is not now necessary, in particular whether two or more votes may be considered in association or must be considered in isolation and what interpretation should be given to ticks and crosses if they are to be accepted as formal votes at all. It is the view of the Committee that a 'Yes' or 'No' written inside the square is a formal vote. The Committee considered the various ballot papers reproduced at Appendix E and recommends -

Recommendation 100

7.102 **That the Electoral Act be amended to clearly provide that only unequivocal 'YES' and 'NO' answers should be regarded as formal.**

Coloured Ballot Papers to Distinguish Referendum from other Ballots and Separate Ballot Boxes

7.103 Two suggestions have been raised. One is that there should be a statutory requirement concerning the colour of the referendum ballot paper to ensure that it is clearly distinguishable from a Senate or a House of Representatives ballot paper being used on the same day. Such a requirement already exists where the same ballot-boxes are to be used for elections and referendums. The AEC does not consider a broader requirement to be strictly necessary - in that it would always seek to use a distinctive colour, but sees no objection to its introduction. The other suggestion is that a separate ballot-box for referendum ballot papers should be prescribed. The AEC's view is that confusion at the exit from the polling place is likely to be increased by multiplying the number of specialised ballot-boxes and in the confusion ballot papers will be taken away and how-to-vote cards put in ballot-boxes. It prefers developing considerably larger ballot-boxes than those presently in use, with if need be two slits, into which all ballot papers being used that day will be placed. Almost inevitably there will be some ballot papers in the wrong boxes anyway, and sorting is

necessary. It would be better to sort all ballot papers into their appropriate categories and minimise the risk of their being lost from the count entirely.

Cases for and Against Referendum Proposals

7.104 Sub-section 11(1) of the Referendum (Machinery Provisions) Act requires the Electoral Commissioner to cause to be printed and posted to each elector a pamphlet containing the arguments in favour of and against the proposed law for the alteration of the Constitution. The arguments are statements consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted for or against the proposed law. In 1984 the AEC received complaints relating to apparent bias in the pamphlet on 3 grounds:

(i) the authors of the cases against the proposed laws did not take up their full entitlement of 2,000 words, and the affirmative case was conspicuously longer.

(ii) the authors of the case for the proposed laws provided a text in which more use was made of typeface variations, and.

(iii) the authors of the case for the proposed laws reproduced something like a how-to-vote card for voting 'Yes' and the authors of the case against did not.

7.105 The Committee could see no basis on which the Electoral Commissioner could seek to censor the presentation of either case. However, he could make it clear the arguments for and against are as they were supplied to him.

7.106 Sub-section 11(4) of the Referendum (Machinery Provisions) Act provides that:

> 'The Commonwealth shall not expend money in respect of the presentation of the argument in favour of, or the argument against, a proposed law except in relation to -
>
> (a) the preparation, printing and distribution of the pamphlets referred to in this section, or the preparation and distribution of translations into other languages of material contained in those pamphlets;

7.107 This was taken by the AEC to prevent it preparing a spoken presentation of the material contained in the pamphlets for blind electors. Representations as to the desirability of such being made available were received from an association of the blind. The Committee recommends -

Recommendation 101

7.108 That sub-section 11(4) of the Referendum (Machinery Provisions) Act be amended to add to the exception - the preparation and distribution of presentations of material contained in the pamphlets for the visually impaired.

Endnotes

1. The Australian Electoral Commission - Research Report 1/85 - Informal Voting 1984 House of Representatives: Report - AGPS, Canberra 1985.

2. Ibid., page 29.

3. Ibid., Table 4.2 at page 29.

4. Ibid., at page 35.

5. Ibid., at page 55.

6. Ibid., at page 62.

7. The Australian Electoral Commission - Research Report 1/86 Informal Voting 1984 Senate: Report - AGPS, Canberra 1986.

8. Ibid., at page 113.

9. Ibid., Table 4.2 at page 20.

10. Transcript of Evidence at page 1541.

11. The Australian Electoral Commission - Research Report 1/86 - op. cit. at page 47.

12. Ibid., at page 64.

13. Ibid., at page 66.

14. Ibid., at page 68.

15. Transcript of Evidence at page 1542.

16. The Australian Electoral Commission - Research Report 1/86 - op. cit. at pages 69 to 71.

17. Transcript of Evidence at page 1319.

CHAPTER 8

ELECTION FUNDING AND FINANCIAL DISCLOSURE

8.1 The first report of the original Joint Select Committee on Electoral Reform of September 1983 recommended the introduction of electoral funding and financial disclosure. The Committee's report, Chapters 9 and 10, canvassed a range of options based on the existing scheme in NSW and overseas schemes brought to its attention and submissions received in the Inquiry.[1] After preliminary discussion of the merits of the concept of public funding and financial disclosure the Committee put forward a proposal with the following features:

Election Funding

- Public funding should, initially at least, be limited to assisting parties in the electoral process rather than providing for on-going party maintenance. The scheme funds election campaign expenses only. (Although, as was noted in the report, this has the effect of providing relief for the parties' maintenance funds).

- The funding is disbursed on the basis of votes gained at elections. The Committee considered this an equitable basis to disburse taxpayers funds as broadly reflecting the support the several parties standing candidates have with the community. The basic unit of funding is an amount per vote.

- The first Committee emphasised the desirability of administrative simplicity. This led it to favour a system of funding the central organisation of political parties rather than its constituent parts. The subsidies are calculated and allocated according to fixed rules to preclude the possibility of preferential treatment.

- Assistance should be given only to those parties which have demonstrated in general elections that they can command a significant level of support. The Committee recommended that to qualify for funding a party or a candidate must achieve a threshold or a minimum proportion of valid first preference votes cast in the election. In fixing this threshold the Committee accepted the argument that funding should be related to the return of the deposit. Only those candidates or groups receiving 4 percent or more of the formal first preference vote were to be eligible for public funding.

- There should be no public control over the ways in which the parties use the subsidies but that the funds received must not exceed election related expenditure.

- That each party or group or independent nominate one person as accountable for receipt and expenditure up to the amount claimed of public moneys. In other words, the proposal introduced the concept of the political agent. It recognised that the majority of party workers in elections would remain voluntary but that an official such as a State secretary would be the party's agent and as such accountable for public funds.

- That the scheme be run by the AEC.

Financial Disclosure

8.2 Disclosure, like registration, is linked to Electoral Funding. The coalition parties opposed the concept of funding and disclosure but accepting that the two are linked recognised that disclosure of sources of funding must go hand in hand with any system of public funding. Funding having been limited to expenditure on election campaigns, financial disclosure was likewise limited. The scheme proposed by the Committee had the following features -

- That donations designated for federal election purposes in excess of $200 to a candidate or constituency organization and donations to a party in excess of $1000 be required to be disclosed and the donor identified.

  The total amount of donations received by a candidate, constituency organisation or party to be disclosed. Donations and their source are not required to be disclosed where they are made specifically for a State or Territory election or to a party maintenance or administrative expenditure fund and not used for federal election campaign purposes.

- Donations made anonymously are not to be accepted and, where rejection is impossible, to be forwarded to the AEC and subsumed in the consolidated revenue fund.

- Donations not made specifically to registered parties but made with the aim of influencing the outcome of the election to be subject to the disclosure provisions.

- Where bodies are established as 'fronts' to receive donations the AEC was to be vested with the power to investigate the origins of the funds and of the 'front' organisation. Unless one individual can be identified as the source of a donation made by a 'front' organisation the gift is to be treated as an anonymous gift.

- Donations in kind be attributed a monetary value and be disclosable.

- That the disclosure system be administered by the AEC.

- Persons responsible for filing returns of election expenditure to be clearly identified and that agents be appointed by all eligible to receive funding and responible for making disclosure. It was recognised that the same agent could be appointed for purposes of both funding and disclosure. A candidate should have the option of appointing an agent or providing returns himself.

- The period for which returns should be furnished to run from proclamation of the election date until polling day with returns to be furnished within 15 weeks of polling day for candidates and 20 weeks for organisations.

- All media should be required to furnish returns of the time or space provided to candidates, parties and other groups in the election, the amounts charged, and the provision of any free or discounted time and space together with particulars of the person authorising the material.

- Disclosure provisions should be supported by fines and penalties for non-compliance.

- The value of goods and services provided for the electors but not paid for in the election period to be disclosable.

- Any person making a knowingly false declaration or refusing to comply with the disclosure provision to be ineligible to hold the position of agent again.

- The obligation to make a return should continue and accumulate until the obligation has been discharged.

8.3 These proposals were largely acceptable to the Government and were included in the Commonwealth Electoral Legislation Amendment Act 1983 and are now Part XX of the Electoral Act. The first election to which the funding and disclosure provisions applied was the 1984 General Election. The AEC has made two reports to Parliament on the operation of the Funding and Disclosure Provisions; in September 1985[2] and August 1986.[3] In both reports the AEC made a number of recommendations for amendments subject to the approval of this Committee.

8.4 The Election Funding and Financial Disclosure Scheme is administered by the AEC. A funding and disclosure section has been set up in the AEC's head office in Canberra for this purpose. The funding and disclosure section also administers Part XI, Registration of Political Parties and Part XII, Registration of Candidates. A contact officer to handle inquiries has been nominated in each State head office of the AEC and its Darwin office. In administering the scheme the AEC reported that it has adopted an approach of seeking co-operation in the operation of the scheme with those affected by its provisions. It has stressed an even handed, helpful and pliable approach in its administration based on consultation. In this respect its approach is similar to that adopted by those administering similar schemes in Canada and the USA.

Proposals for Amendment to the Funding and Disclosure Provisions

8.5 As previously mentioned election funding and financial disclosure is covered by Part XX of the Electoral Act. The AEC proposed a range of amendments for the consideration of the Committee.

Interpretation

8.6 Section 287 contains definitions relevant to Part XX. The AEC in its Interim Report on Election Funding and Financial Disclosure[4] proposed that a definition of 'an advertisement relating to the election' be inserted in this provision because, at the 1984 elections, there was difficulty in determining whether particular advertisements were subject to the reporting requirements of section 305 (Expenditure incurred for political purposes) and sub-section 309 (4) (returns of electoral expenditure incurred without the authority of a political party). It appears that there was disagreement between the AEC and the peak associations representing broadcasters and publishers as to the meaning of 'advertisement relating to the Election'. The associations argue that an advertisement should only refer to a paid advertisement. The AEC takes the view that the disclosure provisions were meant to apply to paid and unpaid advertisements because, in the Act sub-section (287(1), broadcast was defined to include ABC and SBS. The Committee agreed that advertisement should be defined in the Electoral Act and proposes the following definition -

Recommendation 102

8.7 That Part XX of the Act be amended to provide that -

(a) an advertisement relating to the election is any advertisement broadcast, published, printed, displayed or distributed during the election period, whether or not consideration was given, which was intended or likely to affect voting in the election, and

(b) without limiting the generality of paragraph (a), an advertisement shall be taken to be intended or likely to affect voting in an election if it included any matter which contained an express or implicit reference to or a comment on:

(i) the election;

(ii) the Government, the Opposition, a previous Government or a previous Opposition;

(iii) a State or Territory Government or Opposition, present or previous;

(iv) a Commonwealth, State or Territory politician, present or previous;

(v) a political party (or branch or division of a political party), a candidate or Senate group contesting the election, or

(vi) an issue submitted to or otherwise before the electors at the election, and

that corresponding amendments be made to section 328 which requires election advertisements to be authorised, section 332 which requires the authors of election articles etc to be identified, and section 305 which defines electoral expenditure for the purposes of expenditure disclosure provisions.

Definition of 'election period'

8.8 The AEC in its Interim Report[5] noted that the definition of 'election period' for the purposes of returns required to be furnished by broadcasters and publishers was inconsistent with the related requirement to furnish referendum returns under the Referendum (Machinery Provisions) Act 1984 and section 322 of the Electoral Act concerning the 'relevant period' applicable to electoral offences. The 'election period' is now defined as the period from the issue of the writ to the expiration of polling day. In the other cases referred to the period ends at the latest time on polling day that an elector in

Australia could enter a polling booth for the purpose of casting a vote. The Committee agrees with the AEC that consistency is desirable and recommends -

Recommendation 103

8.9 That the definition of 'election period' be amended so that it ends at the expiration of the polling rather than at the expiration of polling day.

Registration of Candidates

8.10 In Chapter 4 at Recommendation 40 the Committee recommended that the provisions of the Electoral Act relating to the registration of candidates and groups should be repealed. Consequent on this recommendation it is necessary to amend the Act to delete references in it to a register of candidates.

Recommendation 104

8.11 That amendments be made to sub-sections 287(1); 294(1),(2), (3), (5); 295(3), (4); 299(2), (3), (4); section 301; sub-sections 304(3)(a); 319(3), (4); as necessary to delete all references to the registration requirements relating to candidates and groups.

Political Party and State Branch of a Political Party

8.12 In its Interim Report the AEC recommended minor changes to interpretations of political party and 'State Branch of a party' to cover both those parties operating in one State or Territory only and those operating in more than one but not structured on a federal basis. It later withdrew its original proposal concluding that only two amendments are required to bring about the change in interpretation desired. The Committee endorses the new proposal and recommends -

Recommendation 105

8.13 That interpretations be provided in sub-sections 287(1) and (4) so that a reference to a political party in Part XX includes a reference to a party that operates in one State or Territory only, and a reference to a State branch in relation to a political party includes a reference to the State or Territory operations of a party that operates in more than one State or Territory but does not have a federal structure.

Lodgment of Claims and Filing of Returns

8.14 Sub-section 287(2) provides that where a claim is to be lodged, a notice is to be given or a return to be furnished to the AEC the claim etc. shall be taken as lodged if it is posted to the AEC at its address in Canberra. This means that there is

no fixed deadline for receipt of claims and returns nor is there clear proof that the claim etc. was posted or when it was posted unless certified post was used. The Committee supports the AEC proposal[6] and recommends -

Recommendation 106

8.15 **That sub-section 287(2) be amended so that a person entitled to lodge a claim or required to furnish a return shall do so by causing the claim to be lodged or the return to be furnished at the principal office of the AEC in Canberra.**

Party Agent

8.16 Section 288 makes provision for the appointment of agents by political parties and section 289 makes similar provision for candidates and groups. A candidate who fails to appoint an agent is presumed to be his own agent and the candidate whose name appears first in a group is presumed to be the agent in the absence of an appointment by the group. Where there is no appointment by the Federal of State branch of a political party of an agent in force, the Electoral Act, sub-section 288(3), deems the national or State secretary of a political party or of its State branch to be the agent for the purposes of the legislation. The AEC reported that while there were no major problems with these provisions it was clear that there was potential for problems to come about where a specific appointment of an agent was not made and it was necessary to rely on the presumption regarding the State secretary. For instance, in a number of cases the party has 2 positions - Director/Administrator and Secretary - and the duties of 'secretary' as defined in sub-section 287(1) of the Act are divided between them. In these cases, a judgement had to be made as to which office-holder's duties more-nearly fit the definition.

8.17 This led the AEC to conclude[7] that the appointment of an agent should be made mandatory. This view was reinforced by an advising obtained from the Attorney-General's Department. Its advising dated 5 November 1985 dealt with the situation in which two persons were acting jointly as co-ordinators of the State Branch of a Party and shared the duties of 'secretary'. The Attorney-General's Department stated that at any one time only one person may be 'secretary' of a party or branch within the meaning of Part XX of the Electoral Act. The advising indicated further that the AEC might need to be satisfied that the party 'secretary' had been validly appointed or elected under the party's rules or constitution and that any notice of appointment or revocation of appointment of an agent had been validly effected under those same rules before it accepts such a notice.

8.18 The Committee recommends -

Recommendation 107

(a) That section 288 be amended so that a political party be required to appoint an agent in every State or Territory in which it operates and, if it has a federal structure, an agent of its national organisation.

(b) That the AEC be required to keep a register to be known as the Register of Agents of Political Parties and State Branches of Political Parties.

(c) That an appointment of agent shall take effect when the Commission enters the name and address of the agent in the Register. An entry in the Register shall be conclusive evidence of an appointment which shall continue to have effect until the agent's name and address are expunged from the Register where -

- the agent dies, or
- the agent gives the Commission written notice of his resignation (in which case the Commission would be required to notify the party or branch which would have to make a new appointment), or
- the party or branch revokes the appointment by giving written notice to the Commission and makes a new appointment, or
- the agent is convicted of an offence against the funding and disclosure provisions (in which case the party or branch would have to make a new appointment).

(d) That all references to the 'secretary' of a party or branch be removed from Part XX.

(e) That the appointment of a candidate's or unendorsed group's agent be made in respect of a particular election. (The Electoral Act refers to an election and cannot accommodate, without confusion, a situation where the agency is assumed to continue beyond the election period).

(f) That there be a deadline beyond which no notification of an appointment of a candidate's or unendorsed group's agent would be accepted. For any particular election this might be the close of nominations. (This is necessary to ensure that the agent is in office at the time relevant to the performance of his function).

(g) That the State or Territory agent of a registered political party should automatically be the agent of the Senate group endorsed by the party. However, the agent would not be required to file a separate return on behalf of the group. He would include these in the overall return for the party. A consequent amendment would require the agent to make a party return even if it were a nil return.

Requisites for Appointment

8.19 An appointment as agent is ineffective unless the appointee is a natural person who has attained 18 years of age, and the notice of appointment is signed by the Secretary of the party or branch or by the members of the group where the application is made by Senate candidates seeking to be grouped and the name and address and age of the appointee is provided and that person signs the form. The AEC submitted that the requirement to state the age of an appointee is intrusive and unnecessary. While the Committee agrees in general with this view it notes that it is a requisite that the agent be of the age of 18. The provision should be amended to require a declaration that the proposed appointee is over the age of 18. The Committee recommends -

Recommendation 108

8.20 That the requirement to state the age of a person appointed as agent be deleted and replaced by a requirement that the application for appointment declare that the proposed appointee is over the age of 18 years.[8]

8.21 Sub-section 290(2) provides that an agent convicted of an offence against the electoral funding and disclosure provisions is not eligible to continue in office or be re-appointed.

8.22 Section 291 relates to the procedure for revoking an appointment as agent and section 292 with the situation upon the resignation or death of an agent whereupon the party or group appointing the agent is required to notify the AEC of the death or resignation.

Election Funding

8.23 For the purposes of Division 3, sub-section 293(1) defines election expenditure in relation to an election as any expenditure incurred in connection with the election campaign whether or not incurred in the election period. Under sub-section 293(2) a vote for a member of a group, for funding purposes, is deemed a vote for the group.

8.24 Sub-section 293(3) declares that electoral expenditure in relation to an election incurred on the authority of a candidate endorsed by a registered political party is to be deemed electoral expenditure incurred by the State branch of the party where the party is organized on the basis of the State or Territory where the candidate stood. The provision needs to be amended so that it is clear that a State branch of a party includes a reference to a party that operates in only one State or Territory. The Committee recommends -

Recommendation 109

8.25 **That an interpretation be provided in section 293 to apply to Division 3 of Part XX so that a reference to a State branch of a party includes a reference to a party that operates in one State or Territory only and to the State or Territory operations of a party that operates in more than one State or Territory but does not have a federal structure.**

General Entitlement to Funds

8.26 Section 294 prescribes the election funding entitlement. For each first preference vote given to a candidate in a House of Representatives election an amount of 60 cents is payable. An eligible candidate or group in a Senate election is entitled to receive 30 cents where the polling was held on the same day as the polling for a House of Representatives election; 45 cents per vote at any other Senate election.

8.27 The AEC raised with the Committee representations that it had received that the amount payable per vote in a Senate election should be the same for a concurrent election as for a half Senate election held on its own.[9]

8.28 The proposal was not supported by the Committee for, as it will be recalled, in making its original recommendation the first Committee used as the basis for determining the amount payable as funding the cost of posting to an elector a mailed communication. It was determined that on current postage rates it would cost 90 cents to send three mailed communications to an elector in a House of Representatives/half Senate election. On this basis the ratio of two mailed communications (60cents) for the House of Representatives and one (30 cents) for the Senate was determined to be a reasonable basis to distribute the available funds. **The Committee sees no reason to disrupt the principle then determined. The distinction between Senate elections held separately and Senate elections concurrently held with House of Representatives elections should be retained with the rate for concurrent elections remaining at an amount per vote based on the standard rate for postage.**

8.29 The AEC pointed out to the Committee that sub-section 294(2) at present provides that the lower rate of public funding payable in respect of a Senate vote applies when a Senate election is held on the same polling day as a House of

Representatives election. If a single by-election was held on the same day as a Senate election, however, the lower rate would apply. To correct this anomaly the AEC proposes and the Committee agrees that it was intended that the lower rate was to apply only when the Senate election was held together with a general election for the House of Representatives. The Committee accordingly recommends -

Recommendation 110

8.30 **That an amendment be made to sub-section 294(2) so that the lower rate of public funding payable in respect of a Senate vote should apply only when a Senate election is held concurrently with a general election for the House of Representatives.**

Claims

8.31 Section 295 sets out the procedure to apply for claiming election funding. Claims in respect of candidates standing on behalf of registered parties are to be made by the party agent only. Registered candidates claim through their agents. For groups, the agent of the group claims. Where the group was endorsed by a party the claim is made by the party agent. Where two parties endorse the group the agents for both must make the claim.

8.32 A claim for payment is required to be made in the approved form and accompanied by information concerning -

- for a State branch of a registered party, the total electoral expenditure incurred by the branch
- for a candidate, the expenditure incurred by the candidate
- for a group, the expenditure incurred by the group.

The claim is to be lodged within 20 weeks of polling.

8.33 There is no authority in the Electoral Act for the AEC to accept a late claim. A provision enabling the New South Wales Election Funding Authority to accept a late claim has existed in that State's Election Funding Act since 1984.

8.34 The AEC advised the Committee that a formal defect in the appointment of an agent by the Queensland Branch of the Nuclear Disarmament Party led to the determination by the Attorney-General's Department that no valid claim had been made with the result that the party was prevented from making a claim for funding for the 1984 General Election. An ex gratia payment was eventually made. However, the AEC points out that this embarrassing inconvenience could have been avoided if it had had

the power to extend the period for lodging a claim. Although the circumstances described above could not again occur if the Committee's recommendation is adopted, there could be a period during which a party did not have an agent i.e. between the death or resignation (notified directly to the AEC) of an agent and a new appointment by the party. If the deadline for lodging claims occurs during this period, a party could miss out on public funding through being unable to lodge its claim. There may also be other unforeseen circumstances affecting a party's ability to lodge a claim by the deadline.[10] The Committee recommends -

Recommendation 111

8.35 **That the AEC should be empowered to grant an extension of time for lodging a public funding claim in a particular case if it is satisfied that proper reasons exist justifying the extension.**

8.36 In its Interim Report the AEC drew attention to the fact that at the last election the amount paid to the political parties on the formulae which required them to provide evidence of expenditure of the amount claimed was $7,806,778. If the parties had been funded simply on the basis of votes received it would have been $7,811,459. The AEC advised that the administrative costs associatied with policing the reimbursement scheme were of the order of $8,500 i.e. it would have cost the AEC less to pay out on the entitlements.

8.37 This led the AEC to ask whether the requirement to lodge returns of expenditure should be dispensed with. **The Committee sees value in the parties having to account for their expenditure to qualify for funding. The Committee also notes that the returns provide valuable information concerning expenditure on federal elections.**

8.38 The AEC reported that one of the groups standing candidates for the Senate at the 1984 General Election, Grey Power, having polled 17,530 first preference votes or 0.6 percent of the total number of first preference votes disputed the finding of the AEC that this was insufficient to meet the threshold requirement for funding.[11] The AEC advice was later confirmed by an opinion of the Attorney-General's Department. Call to Australia (Fred Nile) Group which received 109,046 first preference votes or 3.6 of the total for NSW, made a claim for *ex gratia* payment by the Government which was rejected. The AEC reported to the Committee the view of those disappointed applicants for public funding that the threshold requirement was unjust and unfair. The Committee considered whether it should recommend removal of the threshold requirement. **The first Committee on Electoral Reform had equated the threshold at a minimum of 4 percent of the total of first preference votes received with the requirement for forfeiture of deposit by a candidate. The Committee regards this policy as equitable and consistent and sees no reason to recommend that it be changed.**

8.39 Grey Power disagreed with the AEC's advice that sub-section 297(2) prevented a payment being made. It claimed that the meaning of sub-section 297(2) of the Act is affected by sub-section 293(2) which deems a vote 'given for a candidate who was a member of a group in relation to the election' to 'have been given not for the candidate but for the group'. It argued that for the purposes of computing the 4% in sub-section 297(2) the only votes to be taken into account are those for candidates who are not members of any group - for, if they are members of a group, votes cast for them are under sub-section 293(2) to be deemed not to be votes cast for a candidate. The AEC,[12] whilst noting that this argument was not an accurate view of the law in the opinion of the Attorney-General's Department, submitted that the position should be put beyond doubt by an amendment. The Committee agrees and recommends -

Recommendation 112

8.40 **That sub-section 297(2) be amended so that there is no doubt that a group must poll at least 4% of the total number of formal first preference votes cast in the election before being eligible to claim public funding.**

8.41 The AEC reported[13] on certain difficulties that resulted from its inability to remedy minor mistakes in its own administration and that of the parties. The AEC had to make adjustments to final payment of public funds following the issue of revised funding figures. It requested an express provision to be inserted in the Electoral Act to enable it to revoke its original determination and make a new determination and where necessary recover any overfunding as a debt due to the Commonwealth.

8.42 It is also recommended that a provision be included in the Electoral Act to enable the AEC to revoke a determination (and in appropriate cases recover the payment pending a fresh determination) where it has reason to believe that the original determination should be reviewed. The Committee recommends -

Recommendation 113

8.43 **That the Electoral Act be amended to provide that where the AEC finds that more or less should have been paid, it shall revoke its original determination of a public funding claim and make a new determination specifying the amount that should have been paid; and that a provision be included to enable the AEC to revoke a determination of a claim where it has reason to believe that the original determination should be reviewed.**

8.44 In its Final Report on Election Funding and Financial Disclosure the AEC, at paragraphs 3.1.to 3.4 describe a situation which arose in Queensland where electoral funding was paid to the Queensland branch of the Nuclear Disarmament Party and received on its behalf by a person who had not been legally appointed the

agent of the party. An amount of $19,003.21 was paid to this person by way of electoral funding entitlement for the party. It was later established that no valid claim for funding had been made or could be made. Waiver of recovery of $17,146.67 was sought and approved. The AEC sought to recover the remaining $1,836.54 on behalf of the Commonwealth from the person who had received the public funding on behalf of the party. Without commenting on the merits of the particular case which has its own peculiarities the Committee wishes to stress that it was never the intention of the scheme that private individuals should be liable personally for debts due to the Commonwealth in respect of moneys received on behalf of a registered political party.

Enforcement of Sanctions

8.45 Provision is made in the Electoral Act for the recovery of certain moneys as a debt due to the Commonwealth. (This includes public funding moneys and unlawful gifts.) The Attorney-General's Department advised that the AEC[14] was not authorised under the legislation to initiate recovery action. Recovery action has therefore to be initiated by a ministerial Department. Since the AEC was deliberately established as a body independent of ministerial control it is inappropriate that it should be obliged to operate through ministerial Departments when taking action under the Electoral Act. The Committee recommends -

Recommendation 114

8.46 **That the Electoral Act be amended to provide that, where in the Act it is provided that a debt is due to the Commonwealth under the Act, the AEC be empowered to effect recovery on behalf of the Commonwealth.**

Returns by a Senate Group Endorsed by a Registered Party

8.47 The Electoral Act currently requires the agent of a Senate group to furnish a return detailing gifts received by members and details of the group's electoral expenditure. The AEC noted in its report that where a Senate group is endorsed by a registered party it is rare for the group to receive donations or incur expenditure in that capacity - these are received or incurred by the party on the group's behalf, not personally by its members. Consequently there was a high rate of nil returns by the Senate groups endorsed by major parties. In the case of smaller parties or unregistered parties, where it was common for the party only to stand a group for the Senate, the parties found it difficult to separate expenditure on groups from other relevant expenditure. This led to the same expenditure being reported in both the returns for the group and the returns for the party as a whole. This led the AEC to conclude[15] that the requirement for separate group returns on behalf of groups endorsed by political parties was redundant and confusing for the parties. The Committee agrees with this assessment and recommends -

Recommendation 115

8.48 **That for a Senate group endorsed by a registered political party, there be no requirement to furnish a return of details of gifts received or a return of electoral expenditure on behalf of the group. The State (or Territory) party agent would be required to include in the party returns details of any gifts received by the group and any electoral expenditure incurred by members of the group. (Consequently, there would be no need for provisions for appointment of agents of Senate groups endorsed by registered political parties.)**

8.49 The reporting of campaign committee gifts and expenditure caused some confusion. It was unclear whether such expenditure should be reported by candidates or by the party agent. From discussions the AEC[16] has had with party officials it is apparent that the parties themselves would prefer to make the returns rather than require candidates to do so. The Committee has no objection to this arrangement and recommends -

Recommendation 116

8.50 **That, in the case of candidates and groups endorsed by registered political parties, gifts received and electoral expenditure incurred by the candidates' (or groups', if applicable) campaign committees should be reported in the parties' returns rather than in the returns furnished on behalf of the candidates or groups.**

Disclosure of Gifts

8.51 *Division 4 of Part XX* deals with the obligation to disclose gifts. Section 303 distinguishes between gifts received by candidates, gifts received by candidates as members of Senate Groups, and gifts received by State branches of registered parties and section 304 requires returns to be lodged.

8.52 The returns to be furnished on behalf of parties, candidates and Senate groups under section 304 of the Act cover the following periods -

(1) party returns cover gifts received during the whole period between elections - the period begins the day after polling day in the previous election and ends on polling day in the current election;

(2) returns on behalf of 'continuing' candidates also cover gifts received during the whole period between elections - the period begins the day after polling day in the previous election and ends on polling day in the current election;

(3) returns on behalf of 'new' candidates cover gifts received in the period which begins on the day of announcement of candidacy or day of nomination (whichever is the earlier) and ends on polling day in the election, and

(4) returns on behalf of Senate groups cover gifts received in the period which begins on:

(a) the day the group applied for registration as a group in the case of a registered group, or otherwise

(b) the day on which the group made a claim to be grouped in the ballot papers

and ends on polling day.

A return of details of gifts received had to show the total number and total value of all gifts received during the period covered by the return, and to identify donors of gifts of $1000 or more to a party or Senate group or $200 or more to a candidate.

8.53 Sub-section 304(5) implements the intention that only donations for election expenditure are to be disclosed. In the case of a gift made to a political party or State branch on condition that it be used for a purpose other than a purpose related to an election the donation is exempt from disclosure.

8.54 The AEC in its Interim Report[17] recommended changes to the disclosure period so that it would end in future 6 or 8 weeks after polling day rather than on polling day itself. This is because parties receive gifts after polling day relating to the election just completed. Under present legislation, some gifts received for use in a particular election will not be disclosed until the return following the next election and certain gifts received after polling day by a candidate who does not stand again, will never be disclosed. The AEC reported that there was a varied reaction by political parties to this proposal. Although the principle was accepted some favoured a shorter extension period of 30 days rather than 6 or 8 weeks. The Committee recommends -

Recommendation 117

8.55 **That the disclosure period relating to returns of details of gifts received furnished on behalf of political parties, candidates and Senate groups be from 30 days after polling day in one election to 30 days after polling day in the next election.**

8.56 The AEC raised for the Committee's consideration whether the disclosure period for a candidate who was an unsuccessful candidate in the previous election should begin on the day of the announcement of candidacy rather than polling day in the previous election as is currently the case. It raises this suggestion because of the unlikelihood of an unsuccessful candidate receiving donations in the period between winding up the unsuccessful campaign and announcing a candidacy for the next. **The Committee does not consider that any change to the present provision is warranted.**

8.57 The AEC noted, with respect to the requirement for the return to set out the total number of gifts received that it would be administratively more convenient for the requirement to be to list donors. Under present provisions, gifts made by a person over the whole of the disclosure period are aggregated to determine whether or not details relating to the donor have to be disclosed (see sub-section 304(6)), yet gifts by the same person are regarded as separate gifts for the purpose of disclosing the total number of gifts received. It would be clearer if gifts by the same person were aggregated for both purposes. The Committee therefore recommends -

Recommendation 118

8.58 **That the present requirement to set out in a return the total number of gifts received be replaced by a requirement to set out the total number of donors.**

Gifts by Unincorporated Associations and Trusts

8.59 For the purpose of those provisions of the Electoral Act relating to disclosure of gifts a definition of 'person' is not provided. Section 22 of the Commonwealth Acts Interpretation Act 1901 provides:

> In any Act, unless the contrary intention appears -
>
> (a) 'Person' and 'party' shall include a body politic or corporate as well as an individual....

This definition would apply as there is no contrary intention in the Electoral Act to exclude its application.

Trusts

8.60 Advice from the Director of Public Prosecutions was obtained to the effect that -

> A trust is not an individual, a body politic or a body corporate. It has no separate legal existence and, in my view, is not a person for the purpose of sub-section 304(4) of the Act....

He advised that a return should name the trustee(s) as the 'person' who made the gift.

Unincorporated Associations

8.61 The Director of Public Prosecutions advised:

> ... it is my view that an unincorporated association, which is not a legal entity, cannot be a 'person' for the purposes of that provision.
>
> An unincorporated association is in the eyes of the law no more than the aggregate of its individual members. If a gift is made to a political party by an unincorporated association, the gift is made jointly by the members of the association. Compliance with sub-section 304(4) probably requires that when a gift is made by an unincorporated association the name and address of each member of that association must be disclosed.

He added -

> The membership of unincorporated associations is often large and fluctuating and it may be difficult to determine whether a particular individual is a member at any given time. The cost to a political party of identifying and naming all members of an unincorporated association may exceed the value of the gift....
>
> Strict enforcement of sub-section 304(4), and section 306 dealing with anonymous gifts, could have the practical effect of preventing political parties from accepting gifts from unincorporated associations ....

8.62 The Director does not favour prosecuting people for failing to comply with onerous requirements unless there is a clear public interest in doing so.

8.63 The AEC recommends[18] that, in the case of a gift by an unincorporated association, disclosure of the name of the unincorporated association and of the names and addresses of the members of the managing body, however described, be sufficient compliance with the requirement to disclose the name and address of the 'person' making the gift. A legislative amendment to sub-section 304(4) (and a consequential amendment to paragraph 305(3)(b)) would be required to give effect to this recommendation. In addition, section 306 would need to be amended to provide that no gift of $1,000 or more to a party or Senate group, or $200 or more to a candidate, may be received from an unincorporated association unless the names and addresses of the members of the managing body are known.

8.64 For clarification purposes, the AEC recommends in respect of a gift by a trust that sub-section 304(4) (and paragraph 305(3)(b) be amended so that disclosure is required of the name of the trust and of the name and address of the trustee. It recommends that section 306 be further amended to provide that no gift of $1,000 or more to a party or Senate group, or $200 or more to a candidate, may be received from a trust unless the name and address of the trustee is known. The Committee accordingly recommends -

Recommendation 119

8.65 That sub-section 304(4) be amended so that, in the case of a gift by an unincorporated association, disclosure of the name of the unincorporated association and of the names and addresses of the members of the managing body, however described, be sufficient compliance with the requirement to disclose the name and address of the 'person' making the gift (a consequential amendment to paragraph 305(3)(b) would be required). In addition, section 306 be amended to provide that no gift of $1,000 or more to a party or Senate group, or $200 or more to a candidate, may be received from an unincorporated association unless the names and addresses of the members of the managing body are known.

Recommendation 120

8.66 That in respect of a gift by a trust, sub-section 304(4) (and paragraph 305(3)(b)) be amended so that disclosure is required of the name of the trust fund and of the name and address of the trustee and that section 306 be further amended to provide that no gift of $1,000 or more to a party or Senate group, or $200 or more to a candidate, may be received from a trust unless the name and address of the trustee is known.

Expenditure Incurred for Political Purposes

8.67 Section 305 imposes reporting requirements on persons (other than parties or candidates) who incur 'expenditure for a political purpose in relation to an election', which includes making a gift to a political party, candidate or Senate group. The section requires a person who incurs 'expenditure for a political purpose' of $1,000 or more during the election period, and uses a gift of $1,000 or more received during the same period to incur that expenditure, to furnish a return disclosing that gift. Making a gift to a political party on condition that it be used for a purpose other than a purpose related to a Commonwealth election is excluded from the definition of 'incurring expenditure for a political purpose in relation to an election'. The concept of 'incurring expenses for a political purpose in relation to an election' includes campaigning in the election in support of or in opposition to a political party; publicly expressing views on the issues in an election; the making of a gift to a political party, a candidate or a group of candidates; or the making of the gift to another person on the understanding that that person or another on his behalf 'will apply the gift

directly or indirectly' for any of the purposes comprised in the concept of 'incurring expenditure for a political purpose in relation to an election'.

8.68 The effect of these provisions is that persons who incur 'expenditure for a political purpose in relation to an election' including making gifts to political parties' campaign funds, are not required to furnish returns under section 305 of the Act if they -

- incur the expenditure (for example, make the gifts) outside the election period, that is, before the issue of the writ(s) or after polling day, or
- do not use gifts of $1,000 or more received between the issue of the writ(s) and polling day to incur the expenditure.

8.69 The disclosure requirements of section 305, therefore, are more limited than those applying to political parties which have to disclose gifts received during the whole period between elections.

8.70 The AEC reported[19] that returns received and inquiries following the 1 December 1984 elections revealed instances of organisations making large gifts to political parties prior to the commencement of the election period (issue of writs) and of organisations making large gifts within the election period but sourcing the funds other than by gifts received during the election period. The AEC concluded that those organisations it investigated were under no obligation to furnish returns under section 305 disclosing the source of the funds. The practices suggested that there might be scope for tightening the operation of the funding and disclosure provisions to prevent potential circumvention of the aims of the Electoral Act.

8.71 The AEC[20] proposed four alternatives for tightening the provisions for the Committee's consideration:

(i) removing time limitations so that section 305 would operate from election to election. The $1,000 threshold for furnishing a return and the $1,000 threshold for disclosure of donors of gifts would remain. The disclosure period would be the same as that applying to parties' returns, that is, from the day after polling day in one election to polling day in the next election. (Note, however, that the Committee has recommended that the disclosure period for parties' returns should begin 30 days after polling day in an election and end 30 days after polling day in the next election.);

(ii) requiring any person 'incurring expenditure for a political purpose' of $1 000 or more to disclose how that expenditure was sourced;

(iii) extending option (ii) to require not just the source of the funds but a full financial statement from the person 'incurring expenditure for a political purpose', and

(iv) raising the threshold above which a return is required to be furnished under section 305 from $1,000 to $5,000 or $10,000.

A further option not discussed in the AEC submission is that of removing the exemption that applies to gifts to political parties for their continuing maintenance (gifts made on condition that the money be used for a purpose other than a purpose related to a Commonwealth election). To remove this exemption would be to impose on a donor to a party an obligation more onerous than that imposed by other provisions of Part XX and would be contrary to the principle underlying the legislation that gifts related to electoral expenditure only are disclosable, and those for continuing party maintenance are not.

8.72 Option (i) would not help in at least two situations -

- where a person makes a gift to a political party out of his own funds in one disclosure period with the intention of reimbursing himself by seeking gifts in the next disclosure period, and

- where a person makes a gift to a political party in one disclosure period from gifts received in a previous disclosure period.

8.73 The second option is to require disclosure of all the sources of the funds used to 'incur expenditure for a political purpose in relation to an election'. A return would be required from any person who, in the disclosure period applying to political parties, 'incurred expenditure for a political purpose' of $1,000 or more. The return would have to disclose donors of gifts of $1,000 or more received and used to incur the expenditure and also any other source of the expenditure.

8.74 If, for example, a person were to borrow money to make a gift with the intention of seeking donations to meet the repayments at a later date, under this option the details of the overdraft or loan would need to be disclosed, for example, borrower, lender and guarantor. Special provisions would need to be inserted regarding a gift sourced in the first instance through overdrafts or loans to require disclosure of the final source of repayments. This might mean supplementary returns (at say 6 monthly intervals) until the disclosure requirements were met. Where the source of the gift was fundraising or a business undertaking, the general details of that fundraising or business undertaking would need to be shown. If a person donated from cash at hand then that information would have to be disclosed.

8.75 Had this option applied at the 1 December 1984 elections, some 400 additional individuals and organisations would have been required to furnish returns under section 305 by virtue of having given $1,000 or more to a political party, candidate or Senate group; and 34 additional 'third parties' would have been required to furnish section 305 returns by virtue of having spent $1,000 or more campaigning during the election period. (After the 1984 elections, 6 'third parties' furnishing returns of electoral expenditure under sub-section 309(4) also furnished returns under the existing section 305 provisions.) Adoption of this option might be considered an unwarranted burden to place on the public generally and an interference with the freedom of 'third parties' to participate in the electoral process. A consequence of this option might be a reluctance on the part of the public to make political donations at or above the threshold.

8.76 In addition, the disclosure obligations of 'third parties' would exceed those of political parties since the latter are required to disclose only gifts they receive and not all sources of their funds.[21]

8.77 The third option is to require a full financial statement from a person 'incurring expenditure for a political purpose in relation to an election'. A return would be required from any person who, in the disclosure period applying to political parties, 'incurred expenditure for a political purpose' of $1,000 or more. The return would have to disclose not only the source of the funds used to incur the expenditure but also include a statement of the person's financial affairs (during the disclosure period and each subsequent disclosure period until the sources were finally disclosed). This might be considered an unwarranted invasion of privacy and similar objections raised earlier are relevant.

8.78 The fourth option is to raise the threshold above which a return is required to be furnished under section 305 (for example, to $5,000 or $10,000 from the present $1,000). A return would be required from any person who, in the disclosure period applying to political parties, 'incurred expenditure for a political purpose' of $5,000/$10,000 or more. A return would have to disclose:

- donors of gifts of $1,000 or more (see option (i)), or
- the source of the funds expended (see option ii), or
- a full financial statement (see option (iii)).

8.79 In so far as 'incurring expenditure for a political purpose' consists of making gifts to political parties, this option would restrict the reporting burden to those giving more substantial gifts but, in the form stated so far, might simply

encourage a proliferation of gifts below the section 305 threshold by various members of an organisation or company to disguise the fact that that organisation or company is in reality making one large gift, or a proliferation of companies and unincorporated associations like Political Action Committees (PACs) in the USA making gifts below the new threshold. In anticipation of the former, a requirement to disclose in party returns (furnished under sub-section 304(1) further 'relevant details' of a donor (see sub-section 304(4), such as occupation and name of employer might be considered. In anticipation of a proliferation of companies, a requirement to disclose in party returns the names and addresses of the directors of corporations which give $1,000 or more might be considered. The Committee has recommended that the members of the managing body of an unincorporated association be required to be disclosed in party returns as the 'person' making a gift in relation to a gift by an unincorporated association. These proposals to require further details to be disclosed in returns furnished under sub-section 304(1), however, would not be effective if there was a proliferation of gifts below $1,000.

8.80 Adoption of any of the options discussed above might well encourage those whose 'expenditure for a political purpose' was in the form of a gift to a political party to designate that the gift be used for a purpose other than a purpose related to a Commonwealth election.

8.81 Adoption of any of the options discussed above or any combination that might be devised, would not ensure that the object of the exercise was achieved. It would not guarantee disclosure of the original source of a gift made by a 'third party' to a political party. A 'third party' could avoid the requirement to furnish a return under section 305, and thus avoid disclosure of the source of a gift to a party, simply by designating that the gift be used for a purpose not related to a Commonwealth election (under sub-paragraph 304(5)(a)(i)).

8.82 The AEC noted that whilever the financial disclosure scheme is designed to effect disclosure of only those gifts to political parties that are able to be used for federal election campaigns, and exempts from disclosure those gifts designated for other purposes, expenditure of effort in an attempt to devise a 'watertight' section 305 (even if it were possible) would appear to be futile. Although the concept of funding and disclosure was opposed by some of the parties represented on the first Committee, there was general support for the concept of the actual scheme which emerged from the Committee's deliberations. In particular there was general support for the exemption of on-going party maintenance and administration from the disclosure requirements of the scheme.

8.83 The scheme as originally proposed relies for its viability on the integrity of the participants. It is largely in the hands of the political parties themselve to determine whether or not the scheme will succeed. Should it be evident that the

dichotomy between gifts for election purposes and gifts for general maintenance is being exploited then the whole foundation of the scheme will be undermined. The scheme would need to be radically recast, possibly to require disclosure of all gifts to political parties for whatever purpose. This could lead to a decline in voluntary financial support for political parties with resultant demands for further funding to cover the shortfall. This could not only cast an additional burden on the public purse, it would have the unfortunate consequence of reducing public involvement resulting in the political process in Australia becoming sterile and non-participatory.

8.84 It would be premature to recommend measures to prevent abuses in the absence of evidence that such abuses are widespread and likely to increase. The Committee agrees with the AEC that adoption of measures such as those proposed in its submission to the Committee would not solve the potential problem. The over-all scheme originally proposed by the first Committee and supported by the Government in the 1983 legislation still provides a workable and equitable basis for disclosure of donations. It should not be revised until it becomes quite clear that the spirit and intendment of the legislation is not being observed.

8.85 The Committee is of the view that legislative measures are not necessary at this stage to prevent abuses of the scheme. It considers the intention of the scheme is quite clear and that attempts to subvert it will be apparent. The AEC has power under the Electoral Act to investigate suspected breaches. In Recommendation 1 we recommend that the Committee be re-appointed as a Standing Committee with a general function of reviewing the Electoral Act and the work of the AEC. Such a committee would be well positioned to investigate suspected abuses and would have undoubted powers to do so. These powers derive from the powers of investigation that both Houses of the Parliament have under section 49 of the Constitution and would operate as both complementary and supplementary to those specifically conferred on the AEC by the Electoral Act. It can be anticipated that such a committee would not hesitate to exercise these powers where it suspects the aims of the legislation are being subverted. In the meantime this Committee considers that the first of the options proposed above should be exercised and the legislation amended accordingly. This would have the effect of bringing provisions of section 305 into line with those of section 304. The Committee recommends -

Recommendation 121

8.86 **That time limitations be removed so that section 305 would operate from election to election. The $1,000 threshold for furnishing a return and the $1,000 threshold for disclosure of donors of gifts would remain. The disclosure period would be the same as that applying to parties' returns, that is, from 30 days after polling day in one election to 30 days after polling day in the next election.**

Recommendation 122

8.87 That sub-section 306(2) relating to anonymous gifts received by a candidate or Senate group be amended so that the period covered by the prohibition in that section would clearly be the same as the period covered by a return (disclosing details of gifts received) under section 304.

Recommendation 123

8.88 That, if the requirement for returns from Senate groups endorsed by registered political parties is deleted as earlier recommended, a consequential amendment be made to require registered political parties to furnish 'nil' returns.

Disclosure of Electoral Expenditure

8.89 Division 5 of Part XX casts an obligation on candidates, groups, political parties, 'third parties' involved in the election process, broadcasters, publishers and printers to furnish returns of electoral expenditure incurred in relation to elections. Section 308 defines electoral expenditure for the purposes of Division 5 as -

(a) the broadcasting, during the election period, of an advertisemnt relating to the election;

(b) the publishing in a journal, during the election period, of an advertisement relating to the election;

(c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election;

(d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c);

(e) the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 328 or 332 to include the name and address of the author of the material or of the person authorizing the material and that is used during the election period;

(f) consultant's or advertising agent's fees in respect of -

(i) services provided during the election period, being services relating to the election; or

(ii) material relating to the election that is used during the election period, or

(g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election.

8.90 The AEC advised the Committee[22] that the only use it derived from returns by broadcasters, printers and publishers was for the purpose of cross-checking with party and candidate returns. Requirements for other data lay in the province of the Australian Broadcasting Tribunal under the Broadcasting and Television Act 1942. It therefore questioned the requirement for the amount of detail in the returns. The AEC also raised the question of the need for returns from the public broadcasters.The Committee agrees and recommends -

Recommendation 124

8.91 **That broadcasters', publishers' and printers' returns be required for the sole purpose of cross-checking against returns by participants (political parties, candidates, Senate groups and 'third parties') and not for providing statistical information for other purposes. As less detail will be required from these returns, they should be furnished sooner. Public broadcasters should continue to make returns.**

Recommendation 125

8.92 **That the deadline for furnishing broadcasters', publishers' and printers' returns be reduced from 15 weeks after polling day to 8 weeks after polling day.**

8.93 The AEC noted in its Interim Report that returns furnished by printers and publishers were often confusing in that they identified an advertising agency rather than the participant in the election in the return.[23]

Recommendation 126

8.94 **That in a return furnished under section 310 or 311, a broadcaster or publisher be required to set out particulars identifying the person lodging an advertisement in addition to particulars of the participant with whose authority the advertisement was broadcast or published.**

8.95 The AEC in its Interim Report[24] observed:

> The legislative requirement to show in relation to a broadcast advertisement 'the times between which, that advertisement or each of those advertisements was broadcast', created a difficulty of interpretation. It was not clear whether the requirement refers to the actual time of day an advertisement went to air (for example,

11.06 a.m.) or the time band during which the advertisement was broadcast (for example, 9 a.m. - 12 midday). The legislation does not require a broadcaster to specify the length of a particular advertisement, that is, whether a 30-second or 60-second advertisement etc.

The majority of the Committee consider that the requirement should be retained.

8.96 *The Committee did not, however, agree to the removal of* the $1,000 value threshold requirement for disclosure by printers and publishers. It considered that this threshold should continue to be required.

8.97 As printers' returns related to elections and referendums are of limited use for the purpose of cross-checks the Committee agrees with the AEC that the requirement for making a return should be removed.

Recommendation 127

8.98 **That the obligation on printers to furnish returns in *respect of elections (and referendums) be discontinued.***

Offences

8.99 Division 6 contains provisions creating offences under the funding and disclosure provisions. Section 315 makes it an offence for a person to fail to furnish a return that s/he is required to furnish under the Act within the time required by Part XX. Sub-section 315(2) creates the offence of furnishing an incomplete return or failing to retain records required to be retained. Sub-section 315(3) makes it an offence for an agent to furnish a return that contains material that is false or misleading (in a material particular). Sub-section 315(4) creates *a similar offence for persons other than agents required to* furnish returns under the Electoral Act. The court is empowered under sub-section 315(5) to order a person guilty of an offence under sub-section 315(3) and (4) to refund to the Commonwealth the amount of any payment wrongfully obtained.

8.100 Under sub-section 315(7) the offence is created of a person furnishing misleading information to a person required to furnish a return. In its Interim Report the AEC notes[25] that the provision now only covers the offence of knowingly furnishing false information to a person required to furnish a return - it should be extended to knowingly furnishing false information to a person lodging a claim.

Recommendation 128

8.101 **That sub-section 315(7) be amended so that it extends to knowingly furnishing false information to a person lodging a claim for public funds.**

8.102 Under sub-section 315(8) failure to furnish returns as required is made a continuing and cumulative offence.

Investigations

8.103 Section 316 confers on the AEC, through authorised officers the power to conduct investigations in aid of its administration of Part XX. 'Authorised officer' is defined as a person authorised by the AEC by instrument in writing authorising a person or persons to perform duties under the section. The power includes the power by notice in writing to require a person with obligations under the Part to produce documents and appear in person before the authorised officer to give evidence, and creates an offence (sub-section 316(5)) of failing to comply with the notice and of giving knowingly false or misleading evidence (sub-section 316(6)). Under sub-section 316 (7) the authorised officer may apply to a magistrate for a warrant to enter premises and sieze documents.

8.104 On the assumption that section 316 provided the necessary legislative authority, the AEC intended to undertake compliance audits of political parties. The purpose of the audits was to ensure that all information which should have been included in party returns had in fact been included. As the AEC's resources are limited, the scope of the proposed audits was to be confined to gifts received. The AEC was concerned to establish that political parties understood and were complying with the provisions of sub-paragraph 304(5)(a)(i) which sets out 2 conditions which must be met before a gift is exempt from disclosure in a party's return of details of gifts received. The AEC had reason to believe there is considerable misunderstanding of these 2 conditions.

8.105 The AEC stressed, in its negotiations with the parties that the purpose of this exercise was simply to ensure that it adequately discharged its responsibilities in a manner that could enable it to assist the parties in discharging theirs. It was proposed to conduct the audits by lot and a draw was held for the purpose.

8.106 Subsequently, two of the parties advised that they considered the proposed audits exceeded the scope of the Act and the intention of the Federal Parliament. The AEC, therefore, sought advice from the Attorney-General's Department as to whether section 316 of the Act provided the legislative power to conduct such audits. The advice was to the effect that section 316 could not be 'read as enabling an authorised officer to require the production of party records relating to gifts that are not required to be set out in a Part XX return'.

8.107 The AEC submitted that it was always intended that the investigatory powers conferred on it by section 316 should enable such audits to be undertaken. The original drafting instructions

to give effect to the Government's decision that provision be made for the auditing of the accounts of political parties stated under the heading 'Commission's power to call for records' -

> The Australian Electoral Commission, where it wishes to verify a return shall be empowered to call for records to be provided by a person who has made a return or a person it has reasonable grounds for believing should have made a return.

8.108 The AEC considers that this inability to conduct audits except in cases where a breach of the Electoral Act is suspected severely limits its ability to administer and enforce the disclosure provisions of the Act.

8.109 The Committee does not accept this argument. It will be noted that section 316, cited above, provides the AEC with extensive powers of investigation where it suspects a breach of the disclosure provisions. As the Committee has noted in the discussion on proposals for tightening the disclosure provisions the scheme depends for its integrity on mutual trust and co-operation. In evidence to the Committee the AEC acknowledged that it had no reason to suspect the major political parties or the other major participants of deliberately falsifying returns. The compliance audit was proposed as a means of 'assisting the parties' and to ensure that they did not breach the Act by 'inadvertance' and 'misunderstanding'. The AEC also felt that it could not discharge its duty under the Electoral Act to be in a position to state that the funding and disclosure provisions are being complied with unless it had the ability to assure itself that exempt donations were being dealt with correctly by the parties. The AEC denied that the spot audit procedure was to be a 'fishing expedition' and stressed that the role it perceived for itself was educational only. The Deputy Electoral Commissioner stated:

> If it is envisaged that the Commission be in a position to say at any time that the funding and disclosure provisions of the Act are being complied with, then unless we have a power along those lines we will not be in a position to affirmatively answer that question. On the other hand, if nobody expects us to say that the provisions are being complied with or that it is not our role, or any part of our function, then we can do that without the additional power.[26]

8.110 The Committee concluded that to the extent that the AEC believed that the parties were misinterpreting the legislation or misunderstanding its tenor the problem was amenable to correction by an educative process. To the extent that the AEC suspected deliberate evasion or falsification then it possessed the necessary powers to investigate and should use them. There is no need for spot audits.

Records

8.111 Section 317 imposes a requirement that persons responsible for furnishing returns under the legislation should retain the record of particulars upon which the return was based for a period of at least one year commencing on polling day in the election.

8.112 The AEC noted a difficulty that arose where complaints were received concerning an advertisement broadcast during the election. Section 117A of the Broadcasting and Television Act 1942 requires broadcasters to keep sound or video tapes of broadcasts of political matter for a period of 6 weeks after the broadcast. This provision was no help in determining whether a particular advertisement was covered by the reporting provisions of sub-section 309(4) of the Electoral Act, as 'the 6 weeks' from the date of the broadcast had always expired long before the broadcaster's return identifying the possible 'third party' was received by the AEC.

8.113 Section 117A also provides that the Minister for Communications may direct that these records be kept for a longer period. For future elections, it may be of value to seek the Minister for Communications' assistance to have records of political broadcasts kept for a longer period following polling day to enable a copy of a particular advertisement to be obtained to determine whether it ought to be the subject of a return under sub-section 309(4).

8.114 The AEC proposed that the problem could be overcome by including in the legislation a requirement that tapes of the broadcast be retained for a period extending beyond the lodgement of the broadcaster's return. The Committee agrees and recommends -

Recommendation 129

8.115 **That broadcasters be required to retain tapes of an electoral advertisement for a longer period than the 6 weeks already required for the retention of political broadcasts by the Broadcasting and Television Act 1942, so as to permit assessment of whether the advertisement was subject to the reporting requirements of Part XX. A period of one month after a broadcaster has furnished its return should be sufficient for this purpose.**

8.116 The Committee also agreed to the following proposal of the AEC -

Recommendation 130

8.117 **That in the case where a person has been named as having particulars necessary for the completion of a return, the requirement to set out those particulars in a return in an approved form be replaced by the simple requirement to supply the particulars to the AEC.**

8.118 Section 319 provides that a failure to comply with any provision of Part XX shall not be taken to effect the result of an election.

8.119 The Committee also agreed to a proposal of the AEC to streamline its administration and recommends -

Recommendation 131

8.120 **That the requirement for the AEC to keep a copy of every claim and return in 8 different offices be replaced by a requirement that the AEC keep a copy of every claim and return at its Central Office in Canberra only, and upon request make available for inspection a copy of a claim or return at a State Head Office or the Darwin Office.**

Indexation of Funding Unit

8.121 Section 321 provides for indexation of the basic funding units. The Committee noted that the basic funding unit for House of Representatives election was, as indexed at 1 July 1986, 69.733708543296 cents. The Committee recommends -

Recommendation 132

8.122 **That section 321 should be amended to allow the basic funding units as indexed from time to time to be rounded off after the third decimal place.**

8.123 The AEC proposed that the institution of proceedings for offences under section 315 be facilitated by making provision for appropriate certificates to be issued under section 385 and for averments that returns had not been duly furnished to be deemed proven in the absence of evidence to the contrary under section 388. The AEC stated that the averment provision was required because of the difficulty of proving a negative. It involves, however, a reversal of the onus of proof. The Committee considers that on balance the convenience to the prosecution does not justify the reversal of the onus of proof.

8.124 The Committee also agreed and recommends[27] -

Recommendation 133

8.125 **That sub-section 114(3) of the Referendum (Machinery Provisions) Act 1984 be repealed and replaced by a provision that where a referendum is held in conjunction with an election there be no obligation on broadcasters, publishers and printers to furnish returns under Part IX of the Referendum (Machinery Provisions) Act 1984.**

8.126 Following receipt of returns relating to the 1 December 1984 elections, the first at which the funding and disclosure provisions applied, AEC officers permitted those furnishing returns to remove formal defects, correct formal errors and amend

other details. Also, electoral officers removed formal defects and corrected formal erors when requested to do so by those furnishing returns. The Electoral Act, however, contains no clear legislative authority to permit such alterations. It is recommended -

Recommendation 134

8.127 **That the Electoral Act be amended to provide**

(a) that where he is satisfied that a claim or return has a formal defect or contains a formal error, the officer of the AEC dealing with the claim or return may amend the claim or return to the extent necessary;

(b) that a claim or return may be amended with the consent of an officer of the AEC authorised by the AEC, upon request by the person who has lodged the claim or furnished the return, provided the officer, or on internal review the AEC, is satisfied that proper reasons exist justifying the request;

(c) that where there is an omission or error in a claim or return and it is not so amended a supplementary claim or return be permitted or required, and

(d) that such an amendment would be a bar to proceedings in relation to the falsity of the original claim or return in respect of the matter amended - supplementary claim or return would not be such a bar.

8.128 The Committee noted that following the 1984 elections, the AEC referred incomplete returns (or those which showed a misunderstanding of the requirements of the legislation) back to the relevant agent to be amended before making them available for public inspection. One result was that those returns which were furnished both early and correctly were highlighted in the press by being available for public inspection before many other returns. A common release date would remove this disadvantage. In addition, it would enable the AEC to liaise with agents to correct formal errors in returns without such efforts having an effect on the timing of the release of returns for public inspection. A common release date was supported by all parties. The Committee recommends -

Recommendation 135

8.129 **The Electoral Act be amended to provide that copies of all claims and all returns in all categories not be available for public inspection until 4 weeks beyond the deadline for party returns.**

Endnotes

1. Joint Select Committee on Electoral Reform, First Report, September 1983 - op. cit. - appendices 6 and 7 at pp. 299 and 302.

2. Australian Electoral Commission, Elections 1984: Election Funding and Financial Disclosure - Interim Report - September 1985.

3. Australian Electoral Commission, Elections 1984: Election Funding and Financial Disclosure - Final Report, August 1986.

4. Australian Electoral Commission - Election Funding and Financial Disclosure - Interim Report - op. cit. at paras 4.124 to 4.131 and 4.154 to 4.156 and Schedule I at p. 66.

5. Ibid. at p. 80.

6. Ibid. at p. 80.

7. *Ibid. at paras 4.29 to 4.37, pp. 25 to 26 and Schedule I at* p. 66.

8. Ibid. at p. 81.

9. Ibid. at p. 17.

10. Australian Electoral Commission - Electoral Funding and Financial Disclosure: Final Report - op. cit. at p. 22.

11. AEC - Electoral Funding etc., Interim Report - op. cit. - paras. 3.34 to 3.41 at p. 18.

12. *Ibid. paras 3.34 to 3.38 at pp. 17-18.*

13. AEC - Electoral Funding etc., Final Report, op. cit. - at p. 5.

14. Ibid. at p. 6.

15. AEC - Electoral Funding etc., Interim Report - op. cit. at paras 4.58 to 4.63 (pp. 31-32).

16. Ibid. at paras 4.51 to 4.57 at pp. 29 to 31.

17. Ibid. at paras 4.45 to 4.49 at pp. 28-29.

18. AEC - Electoral Funding etc., Final Report - op. cit. at p. 9.

19. AEC - Electoral Funding etc., Interim Report - op. cit. at p. 34.

20. Funding and Disclosure - options for extending or tightening the Disclosure Provisions of Section 305 of the Commonwealth Electoral Act - submission prepared by the AEC for the Committee - transcript of evidence - pp. 1422 to 1430.

21. Joint Select Committee on Electoral Reform, First Report, September 1983 at paras 10-14, p. 166.

22. AEC Electoral Funding etc. - Interim Report - op. cit. - at paras. 4.171 to 4.181 at pp. 48-50.

23. Ibid. at paras 4.157 to 4.161 at pp. 46-47.

24. Ibid. at paras 4.168 to 4.181.

25. Ibid. at Schedule 3 at p. 82.

26. Transcript of evidence at p. 1490.

27. AEC - Electoral Funding etc. - Interim Report - op. cit. at paras 4.182 and 4.183, p. 50.

CHAPTER 9

ENFORCEMENT

9.1 PART XXI of the Electoral Act deals with electoral offences. In respect of offences committed within the election or 'relevant' period, section 322 of the Act defines that period as commencing with the issue of the writ for the election and expiring at the latest time on polling day at which an elector in Australia could enter a polling booth to cast a vote.

Liability of the Crown in Right of the Commonwealth and the States under the Electoral Act

9.2 The AEC brought to the Committee's attention two incidents at the 1984 Election which it submitted were indicative of a need to make the Electoral Act binding on the Crown in the right of the Commonwealth and the several States and the Northern Territory.

9.3 The first concerns an election advertisement by the Queensland Government. It was authorised by the Premier and to that extent it complied with section 328 of the Electoral Act. However, no return of election expenditure under section 309 was provided. The Director of Public Prosecutions advised against a prosecution being of the opinion that the section probably did not bind the Crown in the right of Queensland. He raised the question of whether the legislation should be made binding on the Crown.

9.4 The second concerns the Commonwealth Department of Education and the distribution by it of a pamphlet entitled 'Improving Government Schools - 1985 and Beyond'. Whilst the Department's advice was that this had not been intended, the pamphlet in question was being distributed during the 1984 election period. The pamphlet was not authorised in accordance with sub-section 328(1) and no return under sub-section 309(4) was furnished.

9.5 The Director of Public Prosecutions advised that the pamphlet was an electoral pamplet within the meaning of section 328 and that had it been published by an ordinary citizen, it would have been caught by the authorisation requirements of section 328 and there would have been an obligation to furnish a return. However, it was a Commonwealth Government advertisement and as the Electoral Act did not bind the Crown in right of the Commonwealth, there was no breach of either section by its publication.

9.6 Adoption of the recommendation that the Electoral Act be amended to bind the Commonwealth and States Crowns would not prevent Governments from advertising their opinions during elections. It will mean, however, if they do participate they

will have to comply with the Electoral Act in the same way as any other participant. Some years ago there were complaints about Commonwealth Government advertising in the election period which did not comply with the Act - and while, by and large, administrative steps have been taken to put an end to such advertising, the Department of Education example indicates a problem remains.

9.7 The area in which the Commonwealth and the States would be caught up - if they participated in the electoral process would be the provisions of Part XX, Divisions 5 and 6. Division 5 provides for returns of electoral expenditure to be filed. Division 6 imposes criminal sanctions for breaches of the reporting provisions and imposes duties to maintain records as well as conferring investigative powers on officers.

9.8 Part XXI creates electoral offences and those impacting particularly on the Commonwealth and the States would be sections 328, 329, 331, 332, 333, 334, 350 and 351 dealing with election advertising. If Part XXI was to bind the Commonwealth and the States, they as employers would be placed in the same position as employers with respect to the grant of leave to employees to vote.

9.9 The Committee referred various aspects of this proposal for advice of the Attorney-General's Department. The Secretary of the Department advised:

> That the question of whether the Electoral Act should be made binding on the Crown is a question of policy. It is not possible to infer general principles as to when the Crown should be bound 'the primary consideration would be the effectuation of the purpose of the particular Act concerned'.

9.10 The Committee has concluded that as a matter of policy the Electoral Act should be made binding on the Crown in right of both the Commonwealth, the States and the self-governing Territories. The legislation should be made binding in general terms and not be limited to Parts XX and XXI.

9.11 Agents of the Crown, whether Ministers or their officials, are deeply involved in the electoral process. They should be subject to the provisions of the Act. The Attorney-General's Department advice indicated that it would be clearly within the legislative power of the Commonwealth to make Parts XX and XXI or the whole Act binding in the crown in right of the Commonwealth or the States and the Northern Territory. Contrary to the opinion of the Director of Public Prosecutions the Secretary of the Attorney-General's Department was of the opinion that the Act, and particularly Parts XX and XXI, did bind the Crown. He conceded that the matter was not free from doubt and pointed out that legally there was a clear case for clarifying the position by an express provision on the topic.

9.12 The advice also considers the question of whether the Crown, if bound, would be liable to criminal prosecution. Government policy is that legislation binding on the Crown should not expose the Crown itself to criminal prosecution. Consistently with this policy, in every case where criminal provisions of legislation are intended to bind the Crown, the legislation should provide that this should not render the Crown (whether in right of the Commonwealth or of the States) liable to be prosecuted for an offence. An example of such a provision is sub-section 5(1) of the Liquid Fuel Emergency Act 1984 which provides:

> 5.(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

Enforcement against the Crown of the prohibitions contained in the provisions in question would be limited to enforcement proceedings by way of declaration or injunction or similar proceedings, and it may well be desirable that specific provisions for that purpose be included in the legislation.

9.13 On the question of enforcement of the Act, including the criminal provisions, against servants of the Crown (Ministers, public servants, etc.) the advice stated:

> If the Act were amended to bind the Crown in right of the Commonwealth and of the States, Crown officers and agents of the Commonwealth and States would be obliged to comply with the prohibitions in Parts XX and XXI of the Act. These obligations could be enforced, for example, by injunction (as to which, see s.383 of the Act) or by criminal prosecutions. The question whether Crown officers (including Ministers and officials) and agents should be liable to criminal prosecution is more appropriately resolved by seeking an answer to the question whether they should be specifically excluded from the criminal penalty. Generally, it would be contrary to criminal law policy to exclude specific classes of persons from criminal liability provisions of a general character. Considering the subject matter of the Act, this policy would seem to be fully relevant in relation to Ministers.

The advice noted that where if the Act were expressed to bind the Crown, the reference to 'the Crown' extends to government Ministers, government departments and their public servants when acting as the Crown, and all bodies and persons acting as servants or agents of the Crown. If directive provisions in a statute are binding on the Crown, then it is the duty of the

Ministers and other officers of the Crown to carry them out. As far as penal provisions are concerned then (unless criminal liability is specifically excluded contrary to Government policy), persons responsible for breach of these prohibitions, whether Ministers, public servants or other persons, would be subject to criminal proceedings and to the criminal penalties laid down (including imprisonment if custodial punishment were included as a penalty). The Committee agrees with these propositions and recommends -

Recommendation 136

9.14 That the Electoral Act, in its entirety, be made binding on the Crown in right of the Commonwealth, the several States and the self-governing Territories, and that the several Crowns should not be liable to prosecutions and enforcement action should be limited in injunctive relief under the Act, and by way of prohibition and declaration; and that the servants or agents of the several Crowns (including Ministers) should be subject to the penal provisions of the Act and the penalties prescribed in the Act for breaches of those provisions.

Penal Provisions of the Electoral Act

9.15 Section 323 makes it an offence for a polling official or a scrutineer to 'divulge' information regarding how a person voted which s/he may have acquired in the performance of official duty. Section 324 creates a general offence making an officer liable for any contravention of the Act. Section 325 makes it an offence for an officer to influence the vote of an elector.

9.16 Section 326 creates an offence of asking for, or receiving a bribe.

9.17 A similar offence is created by sub-section 326(2) of offering a bribe. It is made an offence by section 327 for a person to hinder or interfere with the free exercise or performance by any other person of any political right or duty relevant to an election under the Electoral Act.

9.18 Section 328 creates an offence of printing, publishing or distributing an electoral advertisement that does not have on it the name of the person authorising the advertisement and the name and address of the printer.

Misleading or Deceptive Publications

9.19 Sub-section 329(1) makes it an offence for a person to print, publish or distribute or cause or authorise the same any matter or thing that is likely to mislead or deceive an elector in relation to the casting of his vote. Sub-section 329(2) which made it an offence to publish a statement that is untrue or misleading in an advertisement, has been repealed by Act No. 45 of 1984. Sub-section 329(3) makes it an offence to publish material that is likely to induce an elector to mark his vote

otherwise than in accordance with the directions on the ballot paper. Sub-section 329(5) provides a defence for anyone charged with an offence who can prove that s/he did not know that material printed was likely to mislead or deceive under sub-section 329(1).

9.20 The AEC reported that an ungrouped Queensland Senate candidate who was opposed to preferential voting, advocated in his advertising the use of a single 'X' to mark the ballot paper. The matter was referred to the Director of Public Prosecutions for advice whether such advertising came within the ambit of sub-section 329(1) which proscribes advertising which is likely to mislead or deceive an elector in relation to the casting of his vote (see Evans v. Crichton-Browne)[1] - the point being that if an elector marked the preferential part of the Senate ballot paper with a single 'X' the ballot paper would be informal. The matter did not come within sub-section 329(3) as no representation of a ballot paper was involved. The Director of Public Prosecutions advised that an offence has been committed but that proofs of evidence would need to be obtained before the matter could proceed.

9.21 The first Committee in its second Report[2] had recommended the repeal of sub-section 329(2) basically because it was felt that it would give rise to the unscrupulous use of interim injunctions to block advertisements by the political opponents of the applicant.

9.22 Notwithstanding the publicity attached to the repeal of sub-section 329(2) which proscribed misleading and deceptive electoral advertising, the AEC received quite a few complaints from representatives of some of the State branches of the major parties that opposition advertisements were misleading and/or deceptive in the broad sense. These were easily disposed of.

9.23 One such case, however, went straight to the Supreme Court of the Australian Capital Territory. The plaintiff, a Senate candidate for the Territory, instituted proceedings for injunctive relief under the new locus standi provisions of section 383. Section 383 declares that a court may grant an injunction to restrain a breach of a provision of the Electoral Act on the application of a candidate in an election or of the AEC.

9.24 The plaintiff sought the continuation and extension of an interlocutory injunction which she had obtained ex parte to restrain the circulation and distribution of a pamphlet prepared on behalf of the ACT Referendum First Group for the December 1984 election. The principal ground of complaint was that the pamphlet offended section 329 in that it was likely to mislead or deceive an elector. The application was refused by the Acting Chief Justice. The Court, unaware of the repeal of sub-section 329(2) had granted an interim injunction. On being acquainted of the situation it discharged the injunction and found, on the basis of

the decision of the High Court of Australia in Evans v. Crichton-Browne,[3] that it could not be said that the pamphlet in question was directed to the casting of an elector's vote within the meaning of sub-section 329(1). In a vain attempt to sustain and continue the interlocutory injunction, the plaintiff attacked the pamphlet in question as offending against section 328 of the Act which requires all election pamphlets to have the name and address (not being a post-office box) of the person authorising the pamphlet at the end thereof - the case for the plaintiff being that the address shown on the pamphlet was not a sufficient address to comply with requirements of the section. In dismissing this argument the Acting Chief Justice stated, in relation to the requirement of section 328:

> I think the section is designed to ensure that there is a physical place identified at which the person authorising the advertisement in question may be found and that is sufficient. In any event, as I have said, even if it were not sufficient in this particular case I do not think it is desirable to grant an injunction on that head.

9.25 Complaints received by the AEC concerning campaign advertising fell into the following categories -

(a) paragraph 328(1)(a) - no name and/or address of the person authorising the advertisement

(b) paragraph 328(1)(b) - no name and/or place of business of the printer, and

(c) section 331 - the word 'advertisement' did not appear at the top of the advertisements.

9.26 The AEC reported that in most of these cases the breaches appear to have been a consequence of simple inadvertence or error or in the case of section 328, a simple lack of appreciation that the material complained of came within the ambit of the section. The authorship of the material was also clear. Accordingly, since the purpose of section 328 is to guard against irresponsibility through anonymity, the AEC, in some cases on the basis of advice from the Director of Public Prosecutions, has not pursued the matters beyond drawing the breaches to the attention of the people concerned.

9.27 In New South Wales there were two cases of offensive but anonymous election pamphlets - one defamatory of a candidate, the other racist. In neither case was the author or the printer of the pamphlets identified. In the case of the former, the printer came forward following an article in the press but was unable to identify the author. In the particular circumstances of that case it was decided that no proceedings should be instituted against the printer. The identity of the author still remains unknown. In the second matter, the offending pamphlet was distributed inside a newspaper. Prosecutions in respect of the offending material were subsequently dismissed in the Local Court, Wellington.

9.28 Another matter referred by the AEC to the Federal Police involved an electoral advertisement in support of a candidate for election to the Senate in Queensland. The advertisement named a prominent citizen as the person authorising it who transpired to have no knowledge of the advertisement.

Visiting Electors for the Purpose of Witnessing Postal Votes

9.29 On the recommendation of the original Committee in its first Report the Electoral Act was amended to make it an offence to visit an elector for the purpose of witnessing a postal vote application - section 187 of the Electoral Act. The provision was modelled on sub-section 225(2) of the Victorian Constitution Act Amendment 1958.

9.30 Sub-section 187(3) provides that a person shall not visit an elector for the purpose of witnessing the signature of the elector to an application for a postal vote. Sub-section 187(4)provides an exception in the case of an applicant who is incapacitated, seriously ill or approaching maternity in which case the authorised witness may attend the sick person on being requested by the person to do so.

9.31 The AEC pointed out the narrow ambit of sub-section 187(3) - if the purpose of the visit was to witness a postal vote application, then witnessing would be illegal; on the other hand, if the purpose of the visit was otherwise, then there would be no illegality arising from the fact a party worker was asked to and did witness a postal vote application in the course of that visit. Further, on one view of sub-sections 187(3) and (4) it would be legitimate for a party worker visiting an elector for the purpose of distributing postal vote application forms, after explaining to the elector that s/he could not legally witness the application, to insinuate the information that if requested by the elector, another party worker, outside, would be available to perform the function.

9.32 The AEC reported varying reactions to the new provisions ranging from reactions that the provision was an unreasonable restraint on those wishing to assist people to vote at an election to claims that the provision failed to address the real problem of postal vote manipulation. The latter argument was that there should be an offence of undue influence. The Committee is of the view that the requirement of section 187 that a person shall not visit an elector for the purpose of witnessing a postal vote does not serve a useful purpose. Accordingly it recommends -

Recommendation 137

9.33 That sub-sections 187(3) and (4) should be repealed.

Provisions Relating to Political Advertising

9.34 Sections 331 to 334 create a range of other offences relating to advertising in 'the election period'. Section 331 requires every newspaper to cause the word 'advertisement' to be printed as a headline to each article or paragraph in the newspaper comprising a paid advertisement relating to an election. Section 332 requires printed election material to identify the author or authors and their addresses.

9.35 Section 333 deals with broadcast or televised material. Complementary provisions are contained in the Broadcasting and Television Act 1942. (See the second report of the Joint Select Committee of Electoral Reform for a full discussion of these provisions.)

9.36 Section 334 prohibits graffiti related to elections and the prohibition is not limited to 'the election period'.

Polling Day Offences

9.37 Section 335 makes it an offence to leave or display how to vote material in or about any polling booth or place except for the purposes of section 234 viz. Group Voting.

9.38 Section 336 deals with the signing of electoral papers and the witnessing of them. It is an offence to forge a signature or mark on such a paper. Section 337 dealing with the witnessing of electoral papers creates a series of offences, such as signing a blank electoral paper as a witness, signing any paper as a witness without seeing the person sign it, or writing any name other than his own on an electoral paper. It is an offence under section 338 for any person to mark a ballot paper issued to another person.

9.39 Section 339 creates a range of offences relating to ballot-papers such as personation to obtain ballot papers or to vote, fraudulently destroying or defacing nomination and ballot papers, fraudulently putting a ballot paper or other paper in a ballot-box, taking papers out of the polling booth or counting centre, forging electoral papers, opening or interfering with ballot-boxes, voting more than once at the same election, making false and misleading statements in any claim, application or return or response required under the Electoral Act.

9.40 Section 340 prohibits canvassing near polling booths (see Chapter 5, para 5.70) where the Committee rejected a proposal by the AEC that the prohibition be extended to places where pre-poll voting is occurring).

Badges or Emblems

9.41 Section 341 creates an offence committed by any officer or scrutineer who wears or displays on polling day the insignia of a candidate or a political party. The Committee has recommended that scrutineers should wear some form of identification other than a badge. The section may need to be amended unless a form of identification can be designed that avoids infringing the provision.

Persons Present at the Polling

9.42 The AEC brought to the Committee's attention two incidents that occurred in Queensland during the 1984 election. In the first, a husband accompanied his wife in to the voting compartment and refused the presiding officer's direction to vacate the compartment. Apparently the husband who was not an elector insisted that he had a right to tell his wife how to vote. The matter was referred to the Director of Public Prosecutions for advice whether the conduct complained of contravened section 348 of the Electoral Act or sub-section 135(1) of the Referendum (Machinery Provisions) Act 1984. The Director of Public Prosecutions advised a prosecution under paragraph 135(1)(c) of the Referendum (Machinery Provisions) Act. The same misconduct is proscribed by section 219 of the Electoral Act but no penalty is provided for breach hence no criminal offence. The AEC explained that the omission of a penalty would appear to be an oversight, following the repeal of that part of former section 170 which prescribed a penalty for any contravention of the Act for which no other penalty was provided. Sections 348 and 349 of the Electoral Act create related offences. Section 348 provides that any person who misconducts himself in a polling booth on polling day is guilty of an offence and may be removed. Section 349 creates a further offence for an offender under section 348 who returns to the polling booth after being removed.

9.43 The AEC submitted that sections 219, 348 and 349 of the Electoral Act be recast to reflect the position as set out in section 135 of the Referendum (Machinery Provisions) Act. The Committee agrees and recommends -

Recommendation 138

9.44 That sections 219, 348 and 349 of the Electoral Act be recast to reflect the approach taken in section 135 of the Referendum (Machinery Provisions) Act.

9.45 In the second case, a scrutineer for a Senate candidate was removed from a counting centre during the scrutiny by the police at the Divisional Returning Officer's direction. The scrutineer had failed to obey directions given by the Assistant Returning Officer. It appears to have been assumed that the removal was authorised under section 348. However, as this section refers to the removal of persons who misconduct

themselves or fail to obey lawful directions 'in polling booth on polling day' it would appear that those concerned may not have been acting within the section. The Committee agrees to the proposal to extend the ambit of the provisions but the legislation should make it quite clear that it only applies when the polling official is acting within his lawful authority.

Recommendation 139

9.46 That the provisions of sections 348 and 349 whether they be recast as recommended above or not, be extended to deal with misconduct within counting centres (as defined in section 246) on any day when the scrutiny is in progress. The provision should also be extended to premises used for the issue of pre-poll votes.

9.47 Sections 350 and 351 deal with defamation of candidates and the publications of matter regarding candidates. These matters will be taken up by the Committee under Item 1A (iii) of its terms of reference and made the subject of a separate report.

Dual Voting/Personation

9.48 The AEC reported to the Committee that cases of possible dual voting/personation are usually detected at the mark back of the booths certified lists to the master list. It will transpire that most of the cases identified thus are cases of errors in marking-off electors rather than genuine cases of dual voting. The AEC admitted that cases selected for further investigation were picked reactively on the 'gut feeling' of the AEC official regarding possible transcription errors. The practice was to send a form letter to the elector which invited him to admit to having voted twice. Unless the elector responded positively to this invitation it was unlikely that the matter would be pursued further. The AEC being dissatisfied with these procedures now proposes that action will be taken to ensure that-

(a) all duplicates are listed for follow up-action;

(b) all whose names are not marked off as having voted (other than those covered by sub-sections 245(4) and (14) of the Electoral Act) receive non-voter notices;

(c) all non-voter replies which claim that the elector voted be followed up with a view to determining that fact and for the purpose of matching with replies to dual voter follow-up letters in which the elector asserts he voted only once, to identify marking errors, and

(d) that outstanding non-voter replies that might provide a match for a name on the list of duplicates be followed up and not be left to procecution simply for the offence of failing to reply to a non-voter's notice.

9.49 The following table indicates on a State by State basis the position - as far as it can be ascertained - with respect to duplicate markings at the 1984 elections and the results of follow-up action as at 30 June 1985.

TABLE 20

1984 ELECTION: DUPLICATE MARKINGS AND FOLLOW-UP ACTION AS AT 30.6.85

STATE	TOTAL NO OF CASES	DUAL VOTER NON VOTER MATCHED	EVIDENCE INCONCLUSIVE	ELECTOR ADMITTED VOTING TWICE	INVESTIGATIONS PROSECUTIONS BEING PURSUED
NSW	1721	585	1114	16	11
VIC	2227	1456	753	13	15
QLD	1435	802	612	21	2
WA	1289	995	290	3	1
SA	343	105	234	4	-
TAS	298	282	15	1	-
ACT	22	13	9	-	-
NT	64	45	19	-	-
TOTAL	7399	4283	3046	58	29

Note: Those electors who admitted voting twice were not all referred to the Australian Federal Police for prosecution because of mitigating circumstances considered acceptable to the State Australian Electoral Officers. Similarly, those figures listed under the 'prosecutions pending' column do not consist solely of cases where the elector admitted voting twice. Several cases were referred for prosecution for other reasons including failure to respond to notices and where strong evidence is available.

Although the number of dual voters is higher in 1984 than in 1983, the change in procedures has required a greater degree of investigation to be undertaken before assumptions of clerical error are made.

Court of Disputed Returns

9.50 Part XXII of the Electoral Act provides for Courts of Disputed Returns. Division 1 covers disputed elections and returns. Sub-section 353(1) provides that the validity of any election or return may be disputed by petitions addressed to the Court of Disputed Returns and not otherwise. The provision gives the Court jurisdiction on disputes concerning the filling of casual vacancies under section 15 of the Constitution, and the choice of a person to fill a casual vacancy in the Australian Capital Territory or Northern Territory, by deeming the choice to be an election. Section 354 provides that the High Court shall be

the Court of Disputed Returns with jusisdiction to try the petition or refer it for trial to the Supreme Court of a State or Territory in which the election was held. Jurisdiction may be exercised by a single judge.

9.51 Considerable interest focussed on the question of Courts of Disputed Returns as a result of the disputed election for the province of Nunawading in the Victorian State Election of 1985. The AEC monitored the proceedings and supplied at the Committee's request a series of papers on the issues raised before the Court and the implications of its decision for federal electoral law and practice.

Nunawading Court of Disputed Returns (Varty v. Ives)

9.52 The Court was constituted by His Honour Mr Justice Stark, a Justice of the Supreme Court of Victoria. The result of his decision was to invalidate the election. The decision dealt with a number of provisions of the Victorian Constitution Amendment Act 1958 which are identical or very similar to provisions of the Electoral Act.

9.53 The circumstances giving rise to the petition were outlined by His Honour:

> On 2 March 1985 simultaneous elections were held in Victoria for the Legislative Assembly and the Legislative Council. For the seat of Nunawading there were three candidates: the petitioner Varty, the respondent Ives and the respondent Nardella. The respondent Nardella was first eliminated and his second preferences were distributed. In the result there was a majority for the respondent Ives of 38. On 13 March 1985 there was a recount. The result was a tie, the petitioner Varty and the respondent Ives each polling 54,821 votes. The Returning Officer then caused the names of Ives and Varty to be written on two pieces of paper folded over and had them placed in an empty ballot box. She then drew out one of the pieces of paper. On it was Ives' name. She later recorded her casting vote for Ives. At the declaration of the poll which took place five days later the respondent Ives was declared elected by one vote.

9.54 The parties identified 12 issues upon which, it was agreed, the validity of the election depended. In ten of these it was alleged that for one reason or another a qualified elector was prevented from voting. On one it was alleged that there were instances of dual voting and one concerned the validity of the method used by the returning officer to cast the casting vote.

9.55 The court also considered two matters of law:

(1) Where the court found that polling officer error had prevented certain voters from voting so that the onus of proof shifted to the respondent, whether the respondent could discharge that onus of proof by proving that the error had not affected the result, or whether he had to prove that there was no reasonable ground for presuming that the result had been so affected.

(2) Whether the court could resolve the factual issue in (1) above by scrutinising the declaration votes held to have been wrongly rejected.

9.56 A further matter, the subject of a separate submission from the AEC, was whether the petitions should instance particulars of the irregularities alleged, or whether, it was sufficient merely, to specify the nature of these objections. In the latter case there was a danger that future petitioners could embark on a 'fishing expedition' by merely alleging a standard set of irregularities in petitions and relying on the process set in train to produce the evidence to support them.

9.57 The following matters were identified as having federal implications and requiring Committee decision.

Electors Prevented from Voting

9.58 In 16 cases the polling officer gave to electors seeking absent votes for Nunawading, papers showing the wrong candidates names. The Court found that the voter in all but one of these cases was prevented from voting by polling officer error. The AEC states that the polling officer error in issue here could also be a problem at Commonwealth Elections. The AEC considers that the problem could be overcome in the design of the official list of candidates and the use of pre-printed ballot papers with the employment, in appropriate cases, of additional staff to issue them. The Committee noted with concern the extent to which irregularities arose due to officer error. It was of the view that, administratively, it should be possible to identify the offending officers and take appropriate action against them.

9.59 The Committee noted the observation of the AEC that the problem of the issue of wrong ballot papers could be overcome administratively. The Committee recommends -

Recommendation 140

9.60 That the AEC introduce administrative procedures designed to minimise the possibility of declaration voters being issued with wrong ballot papers. As well as better designed lists of candidates and pre-printed ballot papers, the procedures should act as a check on the issuing officers so that those offending can be identified.

Absent Votes (Declarations not Bearing the Returning Officer's Signature)

9.61 Twenty-two absent votes were disallowed on this ground. The elector's declarations had neither been attested by the District Returning Officer or validated by the returning officer's certificate that the elector had been recorded as having voted absent. The Court found that they had been properly disallowed because the law required the missing signatures but their lack of legality was due to polling officer error i.e. the failure to attest the declarations and subsequent failure to obtain a certificate to rectify the error. The Electoral Act contains identical provisions. However, it is standard procedure for a certificate to be obtained from the Divisional Returning Officer for the issuing Division in all cases in which an absent vote declaration has not been attested by the presiding officer. The Committee has already recommended that, in cases where an absent vote is neither attested nor validated by certificate, the officer conducting the scrutiny should admit the vote to further scrutiny where it can be established that the vote was properly issued.

Absent Votes Rejected as Received Too Late

9.62 The third issue concerned 5 absent votes excluded from the scrutiny on the instructions of the Chief Electoral Officer. Four of these arrived on the day on which the recount for the Province was being conducted, and a fifth arrived after the recount but before the declaration of the poll. His Honour found no statutory basis for the exclusion of these votes. The problem of 'late' arrival stemmed from the Victorian practice of on-forwarding absent votes through the post. His Honour noted the cut-off date for receipt of postal votes and commented -

> Before passing from this issue I should like to add there appears to be no logical reason why there should be a limitation of time for the reception of postal votes and not for absent votes. It may be proper for the Parliament to consider this matter.

9.63 The position is different at Commonwealth elections. Absent votes are not now consigned to the post, but are instead transmitted through a central exchange system wherein they are never outside the AEC's control.

9.64 Accordingly, it would only be in the most extraordinary circumstances that a deadline for the receipt of absent votes would ever have to come into play at a Commonwealth election. The Committee has already recommended that here be a fixed 14 day deadline for the receipt of all pre-poll and postal votes. It considers that absent votes should be brought within the same time constraints.

Recommendation 141

9.65 **That the Electoral Act be amended to require the return of absent votes by a 14 day deadline as recommended for postal and pre-poll votes in Recommendation 59.**

Absent Vote Rejected Because of Unsatisfactory Declaration

9.66 The fourth issue related to an absent vote cast by an elector enrolled as Keralyn Granland. Although the elector signed the declaration 'K. Granland', the vote was rejected on the basis that the elector's given name, as written on the declaration by the poll clerk, was apparently 'Carolyn'. His Honour held that the vote should have been allowed.

9.67 At the Commonwealth level, it is a standard procedure, in cases where an absent voter appears not to be on the roll, to check the voter's signature on the declaration in case his or her name was wrongly recorded by the issuing officer. In addition, the elector's date of birth as indicated on the declaration envelope would be used in such cases to verify the voter's enrolment. Nevertheless, the AEC is examining its procedures to see whether even clearer guidelines should be provided.

Absent Votes Excluded Because Wrong District Shown On Declaration Due to Poll Clerk Error

9.68 The fifth issue concerned 12 absent votes excluded because of mistakes concerning the Assembly District for which the elector was enrolled. In the case of 10, the polling official entered on the declaration envelope the wrong Assembly District within Nunawading. When it was discovered that the electors involved were not on the Roll for the District in question their votes for both the Assembly and the Council were disallowed. An eleventh vote was disallowed because an elector voting outside the District for which he was enrolled was given a provisional vote for the District in which was located the polling booth at which he voted, rather than the absent vote to which he was entitled. A twelfth vote was disallowed because the address declared did not correspond to the elector's enrolled address, even though the address declared was within the same Assembly district. His Honour held all of these votes to have been disallowed because of polling clerk error.

9.69 All of these votes would clearly have been admitted at a Commonwealth election. In the case of the 10, the situation would have been covered by sub-section 266(5) of the Electoral Act, which allows an absent vote for the Senate to be admitted where the elector is not enrolled for the Division for which s/he has declared, but is enrolled for another Division within the State. The eleventh vote would have been admitted under sub-section 235(8) of the Electoral Act, which makes similar provision in respect of provisional votes. The twelfth vote would appear to have been excluded purely because of a misconstruction in the first instance of the relevant State law.

Postal Votes Rejected on the Basis that Signature on Application and Declaration did not Match.

9.70 The sixth issue concerned two pairs of postal votes (each pair having apparently been recorded by a married couple) rejected because the signatures on the application form and declaration envelope did not match. In respect of each pair His Honour was of the view that 'all that has happened is that each voter has signed the appropriate form but in the wrong space'. This he regarded as a mere technicality, and accordingly it was held that the votes had been wrongly disallowed.

9.71 The AEC reported that it was examining its procedures to avoid such an occurrence. The Committee agrees with the view of His Honour that votes ought not be excluded because of a mere technicality of this kind and recommends in relation to the Electoral Act -

Recommendation 142

9.72 **That the AEC continue to review its procedures so as to ensure, that postal votes (and other declaration votes) are not excluded from the scrutiny as a consequence of the sort of technicalities rejected by His Honour in the Nunawading Court of Disputed Returns. The Committee draws the AEC's attention to the remarks by His Honour during the hearing of the Petition that on such matters as comparisons of signatures - for example, on postal vote applications and certificates, electoral staff are not handwriting experts and should be slow to reject postal votes on the grounds of apparent differences in signatures.**

9.73 In summary, there were 59 instances identified by the Court in which polling official error had prevented an elector from voting. Forty-four of the declaration envelopes in question were exhibited in the Court unopened.

Onus of Proof

9.74 His Honour, having made the findings described in the preceding paragraphs, had to decide whether as a matter of law they constituted sufficient grounds for voiding the election. On the authority of Fell v. Vale (No. 2)[4] he applied the following test:

> An election is to be declared void on that account if, but only if, the Court is satisfied that, by reason thereof, a majority of electors have in fact been prevented from electing the candidate they preferred or there is reasonable ground to believe that they may have been so prevented. The onus is on the respondent, at least where there is evidence of substantial contravention capable in the same circumstances of affecting the result of an election, to show that, in the circumstances of the particular case, there is no reasonable ground

> to believe that the majority may have been prevented from electing the candidate they preferred.

His Honour rejected a contention from the respondent's counsel that the respondent in such cases should bear the burden of proving not that there is 'no reasonable ground to believe' that the majority may have been prevented from electing the candidate they preferred, but that the errors and omissions in question did not in fact affect the result.

Opening of Envelopes

9.75 The question then arose as to whether the Court could, in order to resolve the factual question of whether the result had been affected, scrutinise the ballot papers contained in the 44 declaration envelopes in its custody. This depended on the construction of section 290(1) of the Victoria Constitution Act Amendment Act 1958, the relevant parts of which provide that:

> No election shall be voided ... on account of the absence or error of or omission by any officer which did not affect the result of the election.
>
> Provided that where any elector was, on account of the absence or error of, or omission by, any officer, prevented from voting in any election, the Court shall not, for the purpose of determining whether the absence or error of, or omission by, the officer did or did not affect the result of the election, admit any evidence of the way in which the elector intended to vote in the election.

9.76 The respondent sought to have the envelopes opened and the votes scrutinized, in the knowledge that if 30 of the 44 votes turned out to be in his favour, it would thereby be known that the polling official errors found to have denied electors their votes had not affected the result of the election.

9.77 His Honour found as a matter of statutory interpretation that the proviso to sub-section 290(1) prevented him scrutinizing the 44 votes.

9.78 The proviso to sub-section 290(1) is repeated word for word in the proviso to section 365 of the Electoral Act, and while the judgement in the Nunawading petition would not in strict terms bind a Court of Disputed Returns hearing a petition disputing a Commonwealth election, the views expressed would have persuasive authority.

9.79 It would appear that the original purpose of the proviso in section 365 was to prevent the admission after the event of untestable evidence as to purported voting intentions. This would not be the case where the vote in issue was, for

example, a declaration vote because the voter could be identified from his signature on the declaration envelope. The AEC advised the Committee that by providing in sub-section 200(7) that a postal vote post-marked with a date after polling day shall, except for the purposes of a Court of Disputed Returns, be taken as recorded after the close of the poll, it was clearly intended that such votes should be admitted to the scrutiny by the Court where evidence had established that they had been recorded before the close of the poll. The Committee's proposal for a full markback of certified lists before the preliminary scrutiny of any declaration votes, with the fate of any possible 'dual' declaration votes being left to the Court of Disputed Returns, is also clearly predicated on the possibility of the Court counting such votes as it was satisfied were valid.

9.80 The Committee considers that if it was lawful for envelopes to be opened upon it being found that the vote was wrongly excluded from the scrutiny there would be a possibility of the Court determining whether the excluded votes would have had an effect on the election, thereby, avoiding the requirement for a by-election, with all the entailed expenses.

Recommendation 143

9.81 That where a Court of Disputed Returns has found that postal, absent or other declaration votes were wrongly excluded from or not admitted to the scrutiny as well as the postal and declaration votes referred to in para 9.72 and the votes are in the possession of the Court, that the Court may, for the purposes of determining whether the election result would have been affected, direct that the envelopes be opened and the votes distributed.

Casting Vote

9.82 The validity of the Returning Officer's action in determining her casting vote by lot was challenged on three grounds -

> that the casting vote was required to be a deliberate act of choice; that the Returning Officer could only cast a casting vote if enrolled for Nunawading (which she was not); and that a Returning Officer could not vote twice at the same election (which, by virtue of being enrolled in another province, she apparently did).

9.83 The Court rejected all these contentions. His Honour held first that the duty of the Returning Officer was simply to choose between the two candidates, and how she arrived at that choice was, as in the case of every elector, purely a matter for her own discretion. In respect of the second contention, he held that her entitlement to vote was conferred by her appointment as Returning Officer, and that enrolment was therefore unnecessary.

Finally, His Honour held that the general prohibition on dual voting had to be read as qualified by the provision imposing a duty on the Returning Officer to record a casting vote.

9.84 The AEC asked the Committee to consider two possible changes to the procedures currently laid down for resolving ties at Commonwealth elections. The first would be to take the approach recently adopted in South Australian State legislation, where, in the event of a tie, a casting vote is only required if the tie persists after an examination by the Court of Disputed Returns of any disputed ballot papers. The second would be to stipulate that in the event of a tie, the Divisional Returning Officer shall determine by a procedure specified in the legislation which candidate is to be elected - an approach to the problem of tie-breaking specifically commended by Mr Justice Starke in his judgment.

9.85 The Committee also considered the following means of breaking a deadlock in the event of a tied election -

- to declare elected the candidate who received the most primary votes in the election;
- for the legislation to require that an immediate by-election be held in the event of a tied election;
- for the legislation to require an immediate recount in the event of a tie, and
- that the AEC be required immediately to file a petition disputing the election, the Crown bearing the costs of the Court of Disputed Returns.

9.86 It seems to the Committee that in any election resulting in either a deadlock or a very narrow winning margin of say 40 votes or less, that a party interested in overturning the election will be able to find sufficient grounds to mount a case for a Court of Disputed Returns. It is highly probable that the petition, in such a case, will be successful. The outcome will usually be that a new election is ordered. This process entails very considerable expense for the candidates, their political parties and the relevant electoral authority, both in regard to the Court proceedings themselves and the ensuing by-election. In these days of public funding the process is also costly for the taxpayer. For these reasons all the political parties and all citizens have an interest in avoiding disputed elections. Every effort should be made, and we believe is being made, to ensure that mistakes by polling officials do not contribute unduly to the voiding of elections. It is unlikely that any system, however good, can exclude human error entirely. Given the pressures placed upon people involved in the election process and the complexity of that process the probability is that there will be enough mistakes made to establish a case whenever the winning margin is a narrow one.

9.87 Apart from the cost of the process there are other unfortunate consequences that should be noted. There are delays. In the case of a general election where the overall margin is very close it is conceivable that Government can be thrown into confusion until the overall result of the election is clear. The very worst scenario would be where the issue of who should form a government turned on the result in one seat where the outcome was taken to a Court of Disputed Returns. It follows that where there are likely to be disputes the procedure for determining them should be clear cut and speedy.

9.88 To deal, first, with the case of a deadlocked result. The Committee is not satisfied that the best way of breaking the deadlock is on the basis of the presiding officer's casting vote. This imposes an unduly heavy and public burden on an official as the Nunawading case illustrates. The Committee thinks that the Commonwealth should dispense with that method of determining the outcome in federal elections.

9.89 The Committee considers that the second item listed in para 9.85, an immediate recount and a fresh preliminary scrutiny and, as appropriate, the further scrutiny of all rejected declaration votes should be a statutory requirement. Should the compulsory recount confirm the deadlocked result then a number of alternatives for resolving the deadlock could be considered. One means would be to declare elected the candidate receiving the largest number of first preference votes cast. Another approach would be to require an immediate by-election to be called where the recount confirms the deadlock. A third approach is for the Electoral Act to require, in such a case, that the AEC immediately lodge a petition for a Court of Disputed Returns. Declaring elected the candidate with the highest number of first preferences would, in the Committee's view, be a more equitable and less arbitrary means of resolving the deadlock than a casting vote. But the probability of a disputed election and ensuing by-election would still remain.

9.90 To minimise delay and cost in the process the Committee considers that either the Electoral Act should require that the AEC immediately lodge a petition for a Court of Disputed Returns with the cost of the proceedings to be borne by the Commonwealth or that the Act should make an immediate by-election mandatory. Either of these alternatives would reduce the delays. An attraction of the latter is that a by-election would be held closer to the time of the original election so as to more nearly reflect the electoral climate and sentiments of the original election. The cost of the Court of Disputed Returns would be saved. However, on balance, the Committee concludes that the former is preferable. There may be circumstances that would amount to injustice where there was evidence of malpractice in the election and the opportunity was not available for the allegations to be tested in court. The Committee concludes, however, that the Electoral Act should specify a time limit for the return of the petition to avoid undue delays. The Committee therefore recommends -

Recommendation 144

9.91 That sub-section 274(9) of the Electoral Act be amended to remove the provision that the Divisional Returning Officer decide the result of a deadlocked election by his casting vote and that the Electoral Act be amended to provide that in the circumstances of a deadlocked result -

(a) there be an immediate recount of votes and a fresh preliminary scrutiny, and as appropriate, the further scrutiny of all rejected declaration votes;

(b) where, on the recount, one of the candidates emerges as the winner, that the Divisional Returning Officer declare the result accordingly;

(c) where the recount confirms the deadlock that the Divisional Returning Officer declare the election to be deadlocked and advise the AEC accordingly;

(d) that, on receipt of advice under (3), the AEC immediately file a petition disputing the election, and

(e) that Part XXII be amended to provide that in the circumstance of a petition being filed by the AEC disputing the result in a deadlocked election that the Court of Disputed Returns determine the case within 3 months and return a verdict of a declared winnner or order the election to be held again.

9.92 For the purposes of the petition, the Committee is of the view that the AEC should undertake a complete review of the issue and receipt of all votes (including all official delays in despatch and receipt of absent and postal and pre-poll votes - after the cut-off date), the admission and rejection of all declaration votes, all cases of apparent dual or multiple voting, all cases of alleged non-voters asserting that they had voted, and all cases of alleged wrongful rejection of votes in polling booths.

Fishing Expeditions

9.93 The AEC briefed Mr M E J Black QC to advise on the present state of the law regarding the degree of particularity required in an election petition. This action was taken because the AEC was concerned about the possibility of petitions alleging a range of standard irregularities in general terms and relying on the court procedures to provide the evidence necessary to substantiate them i.e. fishing expeditions.

9.94 In his advice Mr Black sets out the present state of the law regarding the degree of particularity required in an election petition. Mr Black concluded that general allegations in an election petition are permissible and that a Court can properly order particulars in circumstances which fall short of a 'fishing expedition'. Further, in the event that as a matter of policy it is desired to ensure that petitions set out with greater particularity the ground relied upon, he suggests a series of amendments to the relevant provisions of the Electoral Act. Mr Black's conclusions were

> First, the need to retain some flexibility. If, for example, particulars in a petition are erroneous in matters of fine detail, but identify the substance with the matter relied upon, it is hard to see why a petitioner should be shut out from relying upon the substance of the allegation, even though the particulars might be incorrect in some respects and might need amendment. Particularly would this be so if no-one was taken by surprise or otherwise prejudiced. Another aspect of flexibility related to some possible future case in which there was a legitimate suspicion of some serious irregularity but the only information that might prove the irregularity was to be found in the electoral documents to which the petitioner could not gain access except by an order of the court. Would it be desired to exclude inspection in such a case?
>
> Secondly, a Respondent can resist a petition by showing that, by reason of what are sometimes termed 'compensating errors' the result was not in fact affected by the irregularities proved by the petitioner. See, for example, Dunbier v Mallum (1971) 2 N.S.W.L.R. 169. It may not be desired to narrow inspection to the extent that a Respondent could not make out a proper case for compensating error. The argument would be that if in truth there was a compensating error and the result could, thereby be shown not to have been affected by the errors in their entirety, then the result of the election should not be disturbed.

These considerations led Mr Black to suggest that any amendments should provide that a judge could 'otherwise order'. The difficulty lies in allowing for flexibility whilst at the same time providing for the basic concept with precision.

Recommendation 145

9.95 That in order to ensure greater particularity in the statement of grounds supporting a petition for a Court of Disputed Returns, without precluding the petitioner from alleging general grounds entirely, that the Electoral Act be amended in the following respects -

(a) to require particularity, amend section 355 and insert a new sub-section 355(aa) as follows:

'355. Subject to section 357 and to sub-section 358(b), every petition disputing an election or return in this Part called the petition shall -

(a) ...
(aa) set out particulars of the facts relied on to invalidate the election or return sufficient to identify the specific matter or matters upon which the petitioner relies,
(b) ...'

(b) to provide for flexibility amend section 358 to read:

'358 (a) Subject to sub-section (b), no proceedings shall be had on the petition unless the requirements of sections 355, 356 and 357 are complied with.

(b) The Court may at any time after the filing of the petition and on such terms (if any) and to such extent as it thinks fit, relieve the petitioner from compliance with the requirements of sub-section 355(aa).

(c) To restrict fishing insert a new sub-section in section 360 as follows:

(2A) The Court shall not make any order in the exercise of its powers under sub-paragraph 360(1)(iii) granting leave to any party to inspect any document or classes of document which do not relate to a matter of which particulars are given in the petition, unless the Court considers it desirable to do so in the public interest.

A consequential amendment to the existing sub-section 360(2) would be desirable.

Freedom of Information

9.96 After 1 December 1984 and within and without the period for challenge to the several elections the AEC received a number of requests under the FOI Act for access to the election materials - ranging from formal and informal ballot papers, the documents relating to declaration voting to the booth rolls. The ballot paper requests were capable of refusal under section 24 of the FOI Act on the ground that the work associated with meeting the requests would have unreasonably diverted the AEC's resources from its other operations.

9.97 The other requests had to be met. However, insofar as the material to which access was sought all related to the several elections which were subject to challenge in the Court of Disputed Returns, access had to be provided under strict supervision. This meant the redeployment of staff at times when the AEC was ill equipped for such deployment, particularly in the period prior to the declaration of the polls.

9.98 The AEC also noted that FOI access was available to ballot papers, whereas the Court of Disputed Returns itself had no power to direct the inspection of ballot papers.

9.99 The AEC also noted that FOI access to the election material was available after the period for challenge to the Court of Disputed Returns or for that matter after an elector had been challenged. The AEC pointed to another consequence of such access - the information could be simply used to attack the political legitimacy of an election (or the proceedings before the Court of Disputed Returns) in the public arena, without ever having the need to test the soundness of any criticisms before the Court of Disputed Returns.

9.100 The AEC recognised the legitimate interests of those involved in the election process (and others) to have access to the election material but was of the view that a balance had to be maintained. The Committee agrees and recommends -

Recommendation 146

9.101 That the Electoral Act be amended so as to ensure that access to election material under the Freedom of Information Act is limited as follows - there should only be access between the declaration of the relevant poll and the last date for the challenge of the relevant election in the Court of Disputed Returns. After that date the Court of Disputed Returns should have the power to grant access to all documents (including ballot papers) to those affected by any petition that had been filed.[5]

9.102 The AEC also raised with the Committee advice it had received from the Attorney-General's Department that once a petition had been filed on the Court of Disputed Returns the AEC was precluded access to relevant material for the purposes of statistical/information, inquiries or surveys. The Committee

noted that the petition challenging the result of the 1984 election in the Division of Forde still remained unresolved, and recommends -

Recommendation 147

9.103 **That the legislation be amended to permit the AEC access to documents and material relating to a disputed election (subject to any order of the Court) so that it may proceed with its enquiries for the purpose of collecting statistical information, as soon as it is expedient for the AEC to do so.**

9.104 The AEC also drew the Committee's attention to section 390 of the Electoral Act which provides that except for the purposes of the Act itself, officers of the AEC are excused from being required to give evidence in any 'court' regarding claims for enrolment or transfer of enrolment or from being required to produce to a 'court' the claims themselves. The reasons for inserting the provision in 1960 were clearly stated in the second reading speech:

> This Bill is also intended to remove the need for officers to attend the courts to put in evidence claims for enrolment or transfer of enrolment in connection with such matters as tenancy cases, divorce proceedings and small debts cases. The practice of serving subpoenas on electoral officers to produce claim cards in courts has developed over recent years and is increasing as it becomes more widely known that evidence of this nature can be obtained. The law requires the completion and submission of claim cards for the purpose of securing enrolment, and the fact that such claim cards are being produced as evidence in the courts may result in persons evading their responsibilities to enrol or to notify changes of address. Details appearing on the claim cards relating to the date and place of birth are not published. These particulars are used for official purposes only.

9.105 The AEC drew the Committee's attention to two instances - one involving the Family Court, the other the Administrative Appeal Tribunal.

9.106 On 11 October 1984 the Registrar of the Family Court of Australia at Hobart issued an order, directing the AEC to furnish any information contained in the records of the AEC which might tend to establish the address or present whereabouts of a named (with aliases) person. The order was issued pursuant to section 64(11B) of the Family Law Act 1975. The Attorney-General's Department advised that the section requires persons to whom an order under the provision is directed to 'comply with that order notwithstanding anything contained in any other Act' and that the order must be complied with notwithstanding the provisions of s.390 of the Electoral Act.

9.107 On 9 January 1985 the Deputy Registrar of the Administrative Appeals Tribunal at Sydney issued a summons requiring production of the 'original electoral enrolment card and all documents pertaining thereto' of a named person and attendance to give evidence. The AEC decided to submit that section 390 constituted a valid basis for refusing to produce documents or give evidence to the Tribunal, and should the submission not be accepted to seek to have the summons set aside. However in the event the proceedings were terminated without the point being pursued.

9.108 The AEC observed that the intention of section 390 has been overturned by the wording of the Family Law Act, and may (though the point is not certain) have been overturned by the creation of a body with power to compel evidence which is not 'a court' within the meaning of section 390. The AEC expressed the view there should be consistency among all courts and similar bodies - either evidence from AEC officers as to persons' whereabouts as shown in their electoral records should be compellable or it should not be. If the preference is to have it compellable, then the real possibility of a significant commitment of AEC resources to attendance at courts to give such evidence should be recognised.

9.109 The Committee is aware that section 64(11B) of the Family Law Act 1976 was inserted for the specific purpose of enabling the Registrar of the Family Court to have access to records that might assist the Court in tracing the whereabouts of an abducted child. The Family Law Council in its Annual Report for 1984-85 commented:

> Section 64(11A) of the Family Law Act authorises the Court to order a person to provide to an officer of the Court such information as the person 'has in relation to the address at which the child ... may be found'.
>
> Section 64(11B) empowers the Court to make an order directed to a Commonwealth Department or instrumentality to furnish such information as is contained in its records in relation to the address at which a child or a person whom the Court reasonably has cause to believe has possession of the child may be found.
>
> These provisions are part of the general scheme in s.64, as amended in 1983, to provide wider powers for the tracing of children who have been taken out of the custody of their lawful custodian.
>
> The Full Court of the Family Court in the case Sealey held that s.64(11B) did not enable the Court to make an ongoing order, that is, it only required the Department to search its records once upon the receipt of the order and further that

such infomation was limited to the address at which the child may be found rather than more general information concerning the child's whereabouts.

The Council considers that this interpretatin is most unsatisfactory and that where there exist Commonwealth Department records which may not at any particular or specified time hold the key to the whereabouts of a missing child but which by their nature are likely at some stage to provide that information it is proper that the Court be empowered to require the Department to carry out periodic searches. It was also of the opinion that the limitation of information strictly to the address at which the child may be found at a particular time was too retrictive, and information as the the general whereabouts of the child would be likely to be more useful.

Consequently the Council recommended to the Attorney-General that two steps should be taken to amend this provision. the first was to substitute in s.64(11A) and s.64(11B) the words 'whereablouts of the child' for the present words 'address at which the child may be found', and secondly that those provisions be amended by inserting words making it clear that the Department should be required to carry out periodic searches in appropriate cases.[6]

9.110 The Attorney-General's Department has informed the Committee that it has written to all Commonwealth Departments asking for their comments on the Family Law Council Recommendations and has established a committee to review the operation of sub-section 64(11A) and 64(11B). The AEC, presumably, can make its observations within that forum. The Committee believes that this matter is best dealt with by the Government on the basis of the results of the departmental review referred to above. Regard should also be had to Recommendation 18 of the report which if implemented would mean that access would be available to Electoral Roll data without the necessity of recourse to the officers of the AEC, particularly in view of the fact that the Committee has recommended that more pertinent information should be available on the Rolls.

Impact of Industrial Action on the Electoral Process

9.111 The AEC's concern derives from two incidents during the last election - a threatened stoppage by Divisional Returning Officers and a strike of mail sorters at a mail exchange in Sydney.

9.112 In the case of industrial action by its own staff the effect would have been to cause delays in:

- the processing of claims for enrolment lodged before the closing of the Rolls so that it would have been necessary to advertise that those claimants had the right to lodge a provisional vote; and

- processing nomination papers and deposits within the required time.

9.113 The latter consequence could theoretically have resulted in a postponement of the election in NSW because of the absence of any provision to extend the nomination period.

9.114 More generally, there are a number of critical stages in the electoral process at which only the Divisional Returning Officer for the Division can discharge a statutory duty required by the Electoral Act:

- Section 102: processing of claims for enrolment or transfer of enrolment;

- Section 176: declaration of nominations;

- Section 179: declaration of election of an unopposed candidate;

- Sections 212, 213: determination of order of names on the ballot-papers;

- Sub-sections 225(8), 227(10), 228(1): designation of Assistant Returning Officers for mobile booths (hospitals), mobile booths (remote) and absent voters respectively;

- Sub-section 226(7): causing to be posted notice of arrangements for mobile booths (hospitals);

- Section 208: certification of certified lists, and

- Section 284: declaration of result and making out statement.

They vary in their importance in the effect that failure to discharge the duty might have on the conduct of the election, and in the likelihood that such failure could constitute grounds for overturning the election.

9.115 The Electoral Act contains provisions that could have been invoked against the officers involved in the action including a mandatory injunction directing an officer to perform the duties required of him under the Act.

9.116 Section 103 creates a specific offence of failure to discharge a duty prescribed by section 102:

> Any officer who receives a claim for enrolment or transfer of enrolment and who without just excuse fails to do everything necessary on his part to be done to secure the enrolment of the claimant in pursuance of the claim shall be guilty of an offence.
>
> Penalty: $1,000.

9.117 Section 324 provides a general penal sanction:

> A person who, being an officer, contravenes -
>
> (a) a provision of this Act for which no other penalty is provided; or
>
> (b) a direction given to him under this Act,
>
> is guilty of an offence punishable on conviction by a fine not exceeding $1,000.

Otherwise a remedy by way of injunction is provided for in sub-section 383(2):

> Where -
>
> (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing, and
>
> (b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to elections,
>
> a prescribed court may, on the application of -
>
> (c) in a case where the refusal or failure relates to an election - a candidate in the election, or
>
> (d) in any case - the Electoral Commission,
>
> grant an injunction requiring the first-mentioned person to do that act or thing.

9.118 The AEC reported that these remedies were not adequate to meet the problem presented. The AEC had been prepared to seek injunctive relief on this occasion, but it is far from a satisfactory solution to the difficulties. Adequate warning of the possibility of industrial action is needed to prepare for

litigation and to serve process on officers whose services are being withdrawn or curtailed. Grant of the injunction is at the discretion of the court, and in the last resort the injunction may be disobeyed. Nor is it considered that the 'normal' public service and conciliation and arbitration remedies are adequate - see, for example, the bans on revenue collection in 1985, as generally speaking they are not geared to operate in situations where time is critical.

9.119 It then examines a range of possible amendments to the Electoral Act. These were:

(1) An increase in existing penalties making them more specific. It does not recommend this course.

(2) Provide for the immediate replacement of an officer refusing to perform duties as directed by one who would be prepared to perform those duties. The AEC points out that this would be hard to achieve within the constraints imposed by the Public Service Act.

On the other hand, if it were possible for the AEC or the Electoral Commissioner to appoint another person (not necessarily restricted to officers of the AEC or Public Service) to discharge the statutory and other duties of the Divisional Returning Officer in default, the administrative problems referred to above would not arise.

(3) Provide for an extension of time in which acts must be completed in the event of unforeseen failure of a person to discharge an associated statutory duty. The difficulty could arise from other than industrial problems, including act of God. An extension of 24 or up to 48 hours should be sufficient.

It is envisaged that such an extension would be ordered by the AEC or the Electoral Commissioner on very specific grounds which, however, could not be subject to judicial review because of the timing. A modest acceptance of the principle of extending time already exists in sub-section 156(2) when if a candidate dies after nominating but before the close of nominations, a further day is permitted for nominations. The Committee believes that proposal (3) above should be implemented and recommends -

Recommendation 148

9.120 That the Electoral Act be amended to enable the AEC to extend by 48 hours the time in which acts must be completed in the event of a failure to perform a statutory duty.

9.121 The AEC also suggests that the Committee should examine the provision contained in section 286 relating, generally, to extending time for the elections.

9.122 Section 286 provides that within 20 days before or after the date appointed for the polling the person issuing the writ can extend the time for holding the election or the return of the writ, or to meet any difficulty which might interfere with the course of the election, but the date of the poll cannot be postponed in the last 7 days.

9.123 The present 20 day limitation does not cover the close of the rolls or nominations and as far as the Senate writ is concerned it is unlikely that any problems that might delay its return are likely to have emerged at that stage. The prohibition against moving polling day within the last 7 days appears to serve no purpose today. A Divisional ambit of operation for the section will enable localised issues to be resolved without necessarily affecting the rest of the State. The Committee recommends -

Recommendation 149

9.124 **That section 286 be amended to do away with the present 20 and 7 day limitations and to also enable adjustments to be made on a Divisional basis.**

Postal Stoppages

9.125 The AEC also referred to the stoppage by postal clerks at the St Leonards' mail exchange in Sydney which delayed movement of a number of claim cards - roughly estimated at 2,000. It put forward possible amendments to remedy this situation including

> Where it is possible to identify any electoral claim card/envelope posted before the closing of the Rolls, which, but for an industrial stoppage affecting the postal system would have been received in time for the claimant to be enrolled for the election, then the claim should be deemed received before the close of the rolls and enrolment action implemented in regard to the claim. This would enable the claimants to be 'enrolled' for the election; and if in sufficient time their names to be added to the certified lists so that they could vote in the same manner as any other elector, or if insufficient time for this to occur, secure an admissible provisional vote (with a possible need to amend section 235).

9.126 The Committee agrees. Action to enrol electors in these circumstances should be subject to the 14 day cut-off date for the receipt of postal votes referred to by the Committee in Recommendation 59. The Committee recommends -

Recommendation 150

9.127 That where an electoral claim card is delayed in the post because an industrial dispute affecting the postal system, that the claim should be admitted and the elector enrolled if the AEC is satisfied that, but for the industrial dispute delaying the mails, the claim would have been received before the close of the Rolls. This should only apply to claims received within the 14 day cut-off recommended for postal and pre poll votes i.e. within 14 days of polling day.

Incorporation of the Regulations in the Act

9.128 In 1984 many changes to the Electoral and Referendum Regulations were made as a consequence of the amendments to electoral legislation which had taken place in 1983 and 1984. However, as a result of the piecemeal nature of those amendments, there is now no sensible division of provisions between the Electoral Act and the Regulations. The AEC submitted that further amendments be made in an effort to incorporate as many of the provisions of the Electoral and Referendum Regulations as possible into the Electoral Act. The provisions referred to in Recommendation 151 are described in Appendix D. The Committee recommends -

Recommendation 151

9.129 That the provisions of the Electoral and Referendum Regulations other than Regulation 6 (consequences of the repeal of Joint Roll Regulations and the form of Joint Rolls) be incorporated in the Electoral Act (and where appropriate in the Referendum (Machinery Provisions) Act and that 'prescribed' forms should become 'approved' forms - that is, forms approved by the AEC by notice in Gazette.

9.130 The Committee also proposed the following further machinery amendments.

Recommendation 152

9.131 That paragraph 6(5)(a) be amended to reflect the 1984 changes to the Public Service Act, that is for the purposes of appointment of members of the AEC the qualification should be by reference to the 'office of Secretary' and not 'office of Permanent Head'.

Recommendation 153

9.132 That the Act be amended to provide that the remuneration of acting members of the AEC shall be as determined by the Remuneration Tribunal.

Recommendation 154

9.133 That section 20 be amended to put the Australian Electoral Officers for the States under the direct control of the Electoral Commissioner (rather than the AEC, as at the moment).

9.134 The Attorney-General's Department has raised questions regarding the extent to which section 392 which enables Forms in the Schedule to the Act to be amended, enables Forms to be repealed and substituted. At the time it prepared Regulations to bring into force the present Senate ballot paper; rather than substituting a new Form the Department undertook extensive 'amendments' to different parts of the old Form.

Recommendation 155

9.135 That section 392 be amended to ensure that the Regulations may repeal and substitute Forms in the Schedule to the Electoral Act.

Recommendation 156

9.136 That in respect of amendments recommended for the Electoral Act, there should where necessary be corresponding amendments to the Referendum (Machinery Provisions) Act.

ROBERT RAY
(Chairman)

8 December 1986

Endnotes

1. Evans v. Crichton-Browne (1981) 147 CLR 196.

2. Joint Select Committee on Electoral Reform - Second Report - Parliamentary Paper no. 198 of 1984.

3. Evans v. Crichton-Browne - op. cit.

4. (1974) V.R. 134 at page 153.

5. See Recommendation 18 where the Committee recommended access to information relating to electors.

6. Family Law Council - Annual Report 1984-1985 at page 35.

DISSENTING REPORTS

SUBMITTED BY

SENATOR THE HON. SIR JOHN CARRICK

THE HON. M.J.R. MACKELLAR, MP

MR C W BLUNT, MP

TO THE

JOINT SELECT COMMITTEE

ON ELECTORAL REFORM

8 December 1986

Recommendation 23

Abolition of Voting Restrictions on Prisoners

Currently prisoners convicted and under sentence for an offence punishable by imprisonment for 5 years or longer are denied a vote.

The majority recommendation is that all voting restrictions on prisoners (except for the crime of treason) be abolished.

This section of the Act was amended in 1983 to increase the period from 1 to 5 years. The Committee then argued that anyone convicted and sentenced to 5 years had obviously committed a serious offence. In practice most would not be first offenders.

It is now argued by the majority that the incarceration itself is sufficient restriction and that the denial of voting should not be attached.

The concept of imprisonment, apart from any rehabilitation aspects, is one of deterrent, seeking by the denial of a wide range of freedoms to provide a disincentive to crime. The person having committed an offence against society, is denied the privileges and freedoms of society of which one important one is the right to vote. In that philosophy, in the past some electoral laws provided that habitual criminals (recidivists) should be permanently denied the franchise.

The essential question is whether, in certain proven offences, voting rights should be included amongst the many other restrictions of freedoms for those in gaol.

On balance the 1983 amendment appears a sensible compromise. It does not seek to penalise the minor offenders. It retains the deterrent for the more serious and recidivist offences.

The AEC has pointed to difficulties in the present wording of the Act. This can be very largely overcome by the disqualification operating not by reference to the maximum sentence but to the actual sentence or to the period that the prisoner is actually in custody.

The argument that there is a serious lack of consistency in attaching a penal sanction to an offence is not a ground for removing voting restrictions on prisoners but rather a plea to re-establish consistency. The fact that some people who commit serious offences are fined and not gaoled cannot be taken to support the freeing from gaol of all prisoners of a similar magnitude of crime.

It is a current fact of life that the conduct of penal systems is not founded totally on deterrence and rehabilitation but rather on the political economics of maintaining gaols - a low priority.

There is a need for an objective study of crime, punishment and rehabilitation to derive optimum decisions free of the grave distortions of priorities in government financing. A similar objective approach should be made to the question of whether one of the many losses of freedom impacting on certain prisoners should be the freedom to vote for a certain period.

In the interim, the 1983 amendment seems appropriate.

8 December 1986

Senator the Hon. Sir J. Carrick, KCMG

Hon. M.J.R. MacKellar, MP

Mr C.W. Blunt, MP

Recommendation 59

Fourteen Days Limitation on Admission of Pre-poll Votes

The majority recommendation is that there should be a fixed cut-off period of 14 days for the return of postal and pre-poll votes.

There is some merit in a cut-off period for postal votes since although the number of ballot papers issued is known, there can be no way of knowing the number completed and committed to the post.

Pre-poll votes, however, are quite different. All such votes are in the hands of electoral oficials prior to polling day. There is no reason, by any action of the voter, why they should not be admitted to the ballot.

There should be no limit on pre-poll votes. Similar procedures to absentee votes (see dissenting report on recommendation 141) should be followed.

8 December 1986

Senator the Hon. Sir J. Carrick, KCMG

Hon. M.J.R. MacKellar, MP

Mr C.W. Blunt, MP

Recommendation 81

Increased Penalty for Non-Voting

Australia is one of the very few democratic countries in the world which attempts to enforce a system of compulsory voting.

Most countries entrench the right of every citizen to be enrolled and to have the privilege (but not the compulsion) to cast a vote.

The Australian electoral system may prescribe compulsory voting but it cannot enforce it. Persons are compelled to enrol and, under penalty, to attend a polling place, have their names marked off and receive a ballot paper.

No amount of surveillance can ensure that the person actually votes. An elector, with impunity, can place a blank or deliberately informal ballot paper in the ballot box.

It is the very contradiction of a free society to attempt to compel the casting of a vote.

If a person can discharge his duty by casting a deliberately informal vote (or even pocketing the paper if undetected), what sense is there in forcing such a person to attend a polling place?

Inevitably such compulsion must cause a significant number of electors, who are apathetic, unwilling, and resistant to compulsion, to cast reckless, thoughtless and even punitive votes.

Traditionally, many electorates and, indeed, overall elections are decided very narrowly - possibly by margins no greater than the percentage of unwilling voters. This can mean that the results are determined by the accidental and reckless behaviour of the apathetic and coerced.

The increase in penalties simply aggravates this bad trend.

There is a major inconsistency in the attempts to enforce compulsion. Recommendation 72, for example, proposes that an honest belief on the part of an elector that abstention from voting is part of his religious duty should be accepted as a 'valid and sufficient reason' for not voting. This is clearly a commendable principle. But why should conscientious objection be based solely on religion? There can be other valid grounds of conscience.

8 December 1986 Senator the Hon. Sir J. Carrick, KCMG

Hon. M.J.R. MacKellar, MP

Mr C.W. Blunt, MP

Recommendation 141

Fourteen Day Limit on Receipt of Absentee Votes

This majority recommendation should be rejected. At the close of polling, all absentee votes are in the hands of Divisional Returning Officers. Their total numbers by Electoral Divisions are determined and the information conveyed to the respective Divisions.

It is the duty of electoral officials to ensure that all absentee votes reach their appropriate Divisions. There should be no reason why such parcels of votes could not be conveyed to their destinations by safe-hand. Failure to do so within a reasonable time must arise from action or inactions of officials. Electors should not be denied their validly cast vote due to the actions of others.

If the absentee votes are not received in their electoral destinations within a reasonable time, say one week, it should be the duty of the appropriate official to seek an explanation of non-receipt. If the non-receipt is due to a delay, whatever its duration, which can be overcome and the votes ultimately delivered, those votes should be admitted to the count. If votes are irretrievably lost, an official statement should be made and the statement made public. The information should be admissible in an appeal to the Court of Disputed Returns.

In other sections of the Electoral Act the principle is enshrined that an elector should not be denied an otherwise valid vote if the defect is not due to his or her fault. This principle should apply to absentee voting where the total responsibility for safe transmission lies with the officials.

8 December 1986

Senator the Hon. Sir J. Carrick, KCMG

Hon. M.J.R. MacKellar, MP

Mr C.W. Blunt, MP

DISSENTING REPORT

SUBMITTED BY

SENATOR MICHAEL MACKLIN

TO THE

JOINT SELECT COMMITTEE

ON ELECTORAL REFORM

8 December 1986

Recommendation 18 (e)

Additional Personal Information on the Commonwealth Electoral Roll

I continue my support for suggested amendments in this area contained in the First Report of the Joint Committee on Electoral Reform tabled in the Parliament on 12 October 1983. I believe that these were sensible recommendations in keeping with the principle of eliminating all unnecessary data collection on citizens. Sex and occupation have no relevance to a citizen's right to vote.

The Committee is also recommending wider access to the Electoral Rolls and, as such, it seems to me that only necessary information for the purposes of voting should be included and available.

The suggestions that the listing of sex on the printed Electoral Rolls seems to me to be completely beside the point unless one is going to require that the electoral officers ask each citizen not only their name and address but also their sex. This, for obvious reasons has never been the case.

In addition, clarification of given names which are shared by both sexes is simply a non-issue. If the person presenting for a vote has such a given name, what possible confusion can be occasioned? Such confusion as one may like to imagine cannot be any different from the confusion resulting from the large number of extremely popular male and female given names.

Unless two people living in the same house have the same first names, the same second names and the same surnames, then no confusion can arise. No evidence has been given that even one such situation exists or that it has caused any problem if it does. The liklihood of such an event must be even less than two males or two females sharing the same first and surnames given the often used custom of naming the eldest son or daughter after the father or mother.

I cannot understand why the Committee is recommending collecting and providing this information if no problem has been acknowledged or shown to exist.

The listing of occupation is even more questionable. What one does for a living has no relevance whatsoever to one's eligibility to vote. Occupation cannot be used as an identifier at the polling booth. I accept this information may be useful for political parties but the Electoral Rolls are not maintained for the benefit of gaining useful information but to provide as accurate an account as is possible of those citizens entitled to vote. Electors rarely update their occupations with the Electoral Commission basically because they have no legal obligation to do so. Where occupations are currently required for state rolls, they are notoriously out of date.

As there seems to be no good reason mentioned in this Report for 18(e), and several good reasons as to why it should not be accepted, I dissent from this recommendation.

Paragraphs 7.63 and 7.64

I belive the comments made concerning Mr Haber, a witness who came before the Committee to assist us with our deliberations, are inappropriate in the context of this Report. Essentially, the disagreement between members of the Australian Electoral Commission and Mr Haber should not be rehearsed - particularly in this manner.

I, therefore, register my dissent from the comments in this paragraph which tend to reflect on the integrity of Mr Haber.

8 December 1986 Senator Michael Macklin

DISSENTING REPORT

SUBMITTED BY

SENATOR BRIAN HARRADINE

TO THE

JOINT SELECT COMMITTEE

ON ELECTORAL REFORM

8 December 1986

Qualifying Comments by Senator Harradine on Recommendations Relating to Senate Voting Systems and Funding

> 'The new alternative method of Senate voting gives tremendous power to the political parties to whom the voters surrender their rights to allocate and bargain over their preferences. It is a further step in the adaptation of the Single Transferable Vote (STV) system of PR away from its initial aim of breaking parties to serving their purposes. (Earlier steps have been in the grouping of candidates, allowing the parties to decide on the order in which their candidates' names appear and in the method of filling casual vacancies.)'
>
> - Paper by Professor Joan Rydon, Professor of Politics at La Trobe University, Published in the Australian Quarterly (V. 57 (4), Summer 1985: 319-332.)

The view expressed by Professor Rydon frequently appears in the academic literature from the pens of other noted political scientists. It is not for me here to review the results of their studies.

Suffice to say that, in general, their conclusion appears to be that the combined effect of the enlarged Senate* and the alternate method of Senate voting will be to advantage the major parties and to subordinate the Senate making it more amenable to the wishes of the Government of the day.

The implications of these radical changes on the role of the Senate as a House of Review are of such significance that the reader will find it curious that these implications are not addressed in the otherwise detailed report of the Joint Select Committee on Electoral Reform. The Committee simply recommends that the AEC conduct an intensive media campaign on the system in the run-up to the next election.

This recommendation does not provide me with the scope to address the potentially damaging outcomes of the system for our bicameral partliamentary democracy or for fairness to individual candidates and voters.

However, may I be permitted one comment on the question of fairness to voters.

* At each half-Senate election there are now six vacacies in each State to be filled. This means that both major parties need only 42.9% of the vote to get 50% (3) of the seats.

The first test of any fair system of voting must be that it truly reflects the intention of the voter. In the 1984 Senate election most voters (from a high of 92.6% in South Australia to a low of 66.3% in Tasmania) used the easy group ticket vote by placing the figure '1' in the Party Box at the head of the Senate ballot paper rather than filling in preferences on the lower part - a task made tedious by the formality requirements which the Joint Select Committee has refused to change.

It is common ground that large numbers of voters were unaware that their group ticket vote would produce an outcome unforeseen and unwanted by them. An example of this was in the 1984 Senate elections in Tasmania. No amount of advertising will redress the inbuilt bias of the group ticket system of voting which now favours the major parties.

The intolerance of the major parties to any Independent or minor group attempting to surmount the inbuilt bias of the system towards major parties is manifested to the absurd degree in Recommendation 67 which requires upper case to be used despite the fact that the name might normally be otherise printed for ethnic or other reasons.

It should also be noted that the funding provisions advantage the major parties to the extent that it enables them to attack individual candidates or small groups. To use the 1984 Senate elections in Tasmania again as an instance, a major party spent on a media campaign attacking another group twice the amount which that group received in election funding for the whole of its campaign.

8 December 1986

Senator Brian Harradine

Electoral Roll

The Committee proposes that certain of the information given confidentially to the Australian Electoral Commission so as to ensure the integrity of the Rolls by preventing false enrolments, should now appear on publicly-available printed Electoral Rolls and microfiche.

The additional information is threefold: occupation, sex, and date of birth. The first two items used to appear in the past and people did not object. The third item - date of birth - has never appeared on the publicly-available electoral rolls in Australia and I believe that most Australians would object to a change in that policy.

The publication of information about date of birth would be regarded as a severe and unnecessary invasion of privacy by many thousands of Australians.

The Rolls exist principally for electoral purposes and I do not see why Australian citizens should be obliged to convey private information to a Government agency which will be used piublicly so as to make them (the voters) the victims of more precisely-aimed direct-mailing campaigns.

'I'm as old as my tongue and a little older than my teeth.'

- Jonathan Swift

Recommendation 81

Administrative Charge

I dissent from the majority recommendation in regard to the proposed increase from $4 to $20 in the administrative penalty to be levied on electors who fail to vote.

8 December 1986 Senator Brian Harradine

APPENDIX A

JOINT SELECT COMMITTEE ON ELECTORAL REFORM

RESOLUTION OF APPOINTMENT

THIRTY-FOURTH PARLIAMENT

(1) That a joint select committee be appointed to inquire into and report upon-

(A) all aspects of the conduct of elections for the Parliament of the Commonwealth and matters related thereto, including:

(i) legislation governing, and the operation of, the Australian Electoral Commission,

(ii) the provision of 'free' radio time for political messages during election periods,

(iii) the provision of the Commonwealth Electoral Act 1918 concerning the defamation of candidate for election,

(iv) tax deductibility of political donations, and

(v) the establishment of fixed formulae for determining the number of Senators and Members of the House of Representatives to which the Australian Capital Territory, the Northern Territory and other territories are entitled; and

(B) such other matters relating to Australian electoral laws and practices as may be referred to it by either House of the Parliament.

(2) That the committee consist of 11 members, 4 Members of the House of Representatives to be nominated by either the Prime Minister, the Leader of the House or the Government Whip, 1 Member of the House of Representatives to be nominated by either the Leader of the Opposition, the Deputy Leader of the Opposition or the Opposition Whip, 1 Member of the House of Representatives to be nominated by either the Leader of the National Party, the Deputy Leader of the National Party or the National Party Whip, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate, and 2 Senators to be nominated by any minority groups or any Independent Senator or Independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chairman.

(6) That the committee elect a deputy chairman who shall perform the duties of the chairman of the committee at any time when the chairman is not present at a meeting of the committee, and at any time when the chairman and the deputy chairman are not present at a meeting of the committee, the members present shall elect another member to perform the duties of the chairman at that meeting.

(7) That 4 members of the committee constitute a quorum of the committee.

(8) That the committee have power to appoint sub-committees consisting of 3 or more of its members, and to refer to such a sub-committee any matter which the committee is empowered to examine.

(9) That the committee appoint the chairman of each sub-committee who shall have a casting vote only, and at any time when the chairman of a sub-committee is not present at a meeting of the sub-committee, the members of the sub-committee present shall elect another member of that sub-committee to perform the duties of the chairman at that meeting.

(10) That the quorum of a sub-committee be a majority of the members of that sub-committee.

(11) That members of the committee, not being members of a sub-committee, may participate in the proceedings of that sub-committee, but shall not vote, move any motion or be counted for the purpose of a quorum.

(12) That the committee or any sub-committee have power to send for persons, papers and records.

(13) That the committee or any sub-committee have power to consider and make use of -

(a) submissions lodged with the Clerk of the Senate in response to public advertisements placed in accordance with the resolution of the Senate of 26 November 1981 relating to a proposed Joint Select Committee on the Electoral System, and

(b) the evidence and records of the Joint Select Committee on Electoral Reform appointed during the 33rd Parliament.

(14) That the committee or any sub-committee have power to move from place to place.

(15) That a sub-committee have power to adjourn from time to time.

(16) That any sub-committee have power to authorise publication of any evidence given before it and any document presented to it.

(17) That the committee have leave to report from time to time.

(18) That the committee report as soon as possible.

(19) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

SUBMISSIONS RECEIVED IN THE INQUIRY

PART I

Australian Electoral Commission

£1 The Commission made the following submissions to the Inquiry which are incorporated in the transcript of evidence where indicated -

Subject	Date	Evidence
Redistribution 1984	June 1985	334 - 375
Should the Commonwealth Electoral Act Bind the Crown?	June 1985	467 - 481
Freedom of Information and Access to Electoral Documents	June 1985	491 - 525
Enrolment and Roll Maintenance	July 1985	541 - 589
Impact of Industrial Action on the Electoral Process	June 1985	645 - 653
Registration of Political Parties and Registration of Candidates	June 1985	660 - 683
Group Voting Tickets	July 1985	700 - 710
Draw for Ballot Paper Positions	July 1985	733 - 735
Forfeiture of Deposits	June 1985	739 - 744
Voting in Antarctica	July 1985	747 - 750
The Election Process	July 1985	754 - 797
The Penal Provisions of the Commonwealth Electoral Act	July 1985	895 - 933
Referendums	June 1985	937 - 949
Postal Voting	July 1985	953 - 970
Minor Amendments of, and Incorporation of the Electoral and Referendum Regulations, in the Commonwealth Electoral Act	July 1985	986 - 1006
Senate Scrutiny Procedures	July 1985	1010 - 1034

Subject	Date	Evidence
Nunawading Court of Disputed Returns	August 1985	1100 - 1109
Response from the AEC to Committee's request for information - Top position on ballot paper (effect on the informal vote) - Table showing the ALP share for the 2 party preferred vote adjusted after the inclusion of informal preferences - Data on the effect on the informal vote of Redistributions - Proportion of blank ballot papers of total votes cast in 1977 election - Breakdown of informal ballots in the electorate of Moore in 1984 election - Number of votes taken by mobile polling teams in each Division	August 1985	1110 - 1142
Compulsory voting countries (Bicameral legislatures and voting systems)	August 1985	1143 - 1156
Summary of proposed amendments submitted to the Committee	September 1985	1261 - 1281
AEC comments on Australian Democrats proposals for amendment to Senate Scrutiny procedures	October 1985	1319 - 1325
Additional submission on Freedom of Information/Electoral Act conflict	November 1985	1326 - 1392 1351 - 1364
Nunawading Court of Disputed Returns - 'Fishing Expeditions' (opinion of Mr M E J Black, QC)	November 1985	1330 - 1346
Compulsory Voting Countries Bicameral legislatures and voting systems (Belgium and Greece)	November 1985	1347 - 1350
Funding and Disclosure - Options for extending or tightening the Disclosure Provisions of section 305 of the Commonwealth Electoral Act 1918	January 1986	1422 - 1430

Subject	Date	Evidence
Financial Disclosure - Pop Star Candidacy Phenomenon	January 1986	1431 - 1437
Funding and Disclosure - Miscellaneous Matters - Developments Since Interim Report (30 September 1985)	January 1986	1438 - 1471
Compulsory Voting Countries: Bicameral Legislatures and Voting Systems. Supplementary Paper on Informal Votes Recorded in Compulsory Voting Countries and Others 1945-81	January 1986	1531 - 1536
Response from AEC to requests of the Committee for information	February 1986	1616 - 1711
- Implications of the ticket voting system		1621
- 1984 Redistribution - Newspaper Advertisements for Suggestions and Comments		1626
- Habitation Reviews: Percentage of Habitations visited each year		1629
- Habitation Reviews 1975-87 (Costs)		1634
- Habitation review officers and electoral agents, 1985		1635
- Enrolment and voting in gaols		1640
- Itinerant electors registered as at 31.12.85		1644
- Breakdown of use of ticket and non-ticket votes by party		1647
- Cost of postal votes c.f. mobile votes		1664
- Enrolment sample survey		1667
- AEC research		1668
- Comparison of voting systems - Commonwealth and State		1670
- Attorney-General's Department (Cwth) - Advice concerning requirements for a Commonwealth Redistribution		1682
- Mobile Polling in psychiatric institutions		1685

Subject	Evidence
- Promotion of enrolment by physically-handicapped persons	1687
- Cost of electoral education centre	1689
- Occupancy threshold for appointment of special hospitals	1690
- Survey of linguistic abilities of polling officials	1691
- Number of electors who appear to have voted more than twice	1696
- Absent votes rejected	1697
- Provisional votes rejected	1701
- Non-counting Centres with Fewest Votes	1702
- Government departments etc. supplied with copies of microfiche	1703

Other papers authorised for publication but not yet published in Hansard format:

	Date of Submission
Funding and Disclosure - Limit of ban on use of non-disclosable gifts for a Commonwealth Election purpose	13 May 1986
Enrolment trends to March 1986	28 April 1986
Data relating to Grayndler enrolments	2 May 1986
AEC to Committee re public opinion survey	22 May 1986
Postal votes received on or after 10 December 1984	8 May 1986
Unauthenticated ballot papers (1984 House of Representatives Informal Ballot Paper Survey)	18 February 1986
1984 Redistribution: Enrolment/Population Ratios (Research Report No. 9)	18 February 1986
Scullin By-election 1986 - Informal Vote	10 March 1986

Subject	Date of Submission
Information paper on ballot papers admitted to the Senate scrutiny where the elector was not enrolled for the Division for which he claimed to vote	5 & 13 March 1986
Statistics on the possible advantage to Party securing far left position on the Senate ballot paper (Donkey vote)	4 July 1986
Submission on enrolment trends and deviation from quota/average	13 August 1986
Postal Voting - 1 December 1984 Election	18 February 1986
Funding and Disclosure - Consolidated Table of Proposed Changes put forward by the Commission in Schedules 1, 2 and 3 of its Interim Report (30 September 1985) and in its Submision to the Committee on Miscellaneous Matters (January 1986)	14 March 1986
Quality of Enrolment Data	23 May 1986
FOI - Submission re access to habitation walk lists	30 May 1986
Submission re s. 20 of Commonwealth Electoral Act	10 July 1986
Additional submission re Voting in Antarctica	15 July 1986
Submission re ss. 126 and 137 of Commonwealth Electoral Act	26 August 1986
Funding and Disclosure - Submission re definition of 'an advertisement relating to an election'	2 September 1986 & 26 September 1986
Submission re use of letters O.A.M. for party registration purposes	15 September 1986
Submission re 'mini-redistributions'	1 October 1986

PART II

Submission	Date
Ms D White, Australian National Council of and for the Blind, Kew, VIC.	15 April 1985
Mr F E Peters, Mt Darrek, NSW.	16 April 1985
Mr J W Geale, Howrah, TAS.	17 April 1985
Mr N Robson, Member for Bass, Launceston, TAS.	17 April 1985
Ms H Berrill, South Yarra, VIC	22 April 1985
Mr A Freeman, Belconnen, ACT	22 April 1985
Mr L B McLeay, MP, Chairman of Committees and Member for Grayndler, Campsie, NSW.	22 April 1985
Ms H Higgins, Padstow, NSW.	22 April 1985
Mr R Brown, MHA, Ind. Member for Denison, Hobart, TAS.	16 May 1985
Mr C J Heald, Richmond, TAS.	20 May 1985
Mr I Bacon, Trigg, WA.	20 May 1985
Mr Ian Hinckfuss, University of Queensland, St Lucia, QLD.	20 May 1985
Mr D M Cameron, MP, Member for Moreton, Brisbane, QLD.	20 May 1985
Proportional Representation Society of Australia	29 May 1985 and 30 September 1985
Mr A J Fischer, University of Adelaide.	31 May 1985
Senator S C Knowles, Senator for WA.	31 May 1985
Mr L Madden, Beecroft, NSW.	31 May 1985
Mr B Musidlak, Wingfield, SA.	4 June 1985
Antarctic Division, Department of Science, Kingston, TAS	11June 1985

Submission	Date
The Hon. R J L Hawke, AC, Prime Minister of Australia.	11 June 1985
Senator C J G Puplick, Senator for NSW.	11 June 1985
The Hon. E Kirkby, MLC, Legislative Council, NSW.	14 June 1985
Australian Labor Party National Executive	8 July 1985 and 18 November 1985
The Hon. Sir Johannes Bejelke-Petersen MLA Premier of Queensland	11 July 1985
The HOn. B Burke, MLA Premier of Western Australia	11 July 1985
Department of Aboriginal Affairs (Cwth)	11 July 1985
The Specific Learning Difficulties Association of New South Wales	14 August 1985
Professor J Rydon, La Trobe University	22 August 1985
Mr A Tonkin, MLA, WA.	23 August 1985
Mr R A Wegener, Canterbury, VIC	30 September 1985
Dr K Richmond, Liberal Party	8 October 1985
Mr J H Taplin, Nedlands WA	15 October 1985
Mr S H Smart, Wahroonga, NSW	16 December 1985
Mr R L Coombe, the Seventh-Day Adventist Church.	28 January 1986
Mr S Parkin, Woodbridge, TAS.	1 April 1986

APPENDIX C

WITNESSES

GENERAL ELECTION INQUIRY

Ms Christine Lesley Briton, Clerical Administrative Officer, Electoral, Grants and Authorities Branch, Department of Special Minister of State, Canberra, Australian Capital Territory.

Mr Andrejs Cirulis, Deputy Electoral Commissioner, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mr David Arthur Fraser, Research Manager, Queensland Division, Liberal Party of Australia, Canberra, Australian Capital Territory.

Mr Phillip Green, Clerical Administrative Class 8, Research, Legislative Projects and Freedom of Information Section, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mr Edwin William Haber, Electoral Adviser, Australian Democrats, Crows Nest, New South Wales.

Mr Graham Chester Hudson, National Organiser, Australian Labor Party, Barton, Australian Capital Territory.

Dr Colin Anfield Hughes, Electoral Commissioner, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mr Martin Phillip Johnson, Divisional Returning Officer of Eden-Monaro, Australian Electoral Commission, Canberra, Australian Capital Territory.

The Hon. Elisabeth Wilma Kirkby MLC, State Parliamentary Leader, New South Wales, Australian Democrats, Parliament House, Sydney.

Dr Peter Loveday, Field Director, North Australia Research Unit, Australian National University, Casuarina, Northern Territory.

Mr Malcolm Mackerras, Campbell, Australian Capital Territory.

Mr Robert Francis McMullan, National Secretary, Australian Labor Party, Barton, Australian Capital Territory.

Mr Michael Charles Maley, Director, Research, Legislative Projects and Freedom of Information Section, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mrs Heather Marjorie Meers, Convenor, Electorates and Candidates Selection Committee, Australian Democrats, Crows Nest, New South Wales.

Mr Shawn Barry Raymond O'Brien, Assistant Director, Funding and Disclosure Section, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mr Raymond Francis Toohey, Assistant Secretary, Community Development and Support, Department of Aboriginal Affairs, Woden, Australian Capital Territory.

Mrs Janette Woodward, Director, Funding and Disclosure Section, Australian Electoral Commission, Canberra, Australian Capital Territory.

Mr John Francis Hugh Wright, National President, Proportional Representation Society of Australia, West Pymble, New South Wales.

APPENDIX D

In recommendation 151 the Committee recommends the incorporation within the Electoral Act and where appropriate in the Referendums (Machinery Provisions) Act of certain regulations. The regulations to be covered are -

Regulation 5	Definitions
Regulation 26	Forms of Objection Notice
Regulation 29	Methods of answering objections (to be extended to answer by telepohne in addition to personally or in writing)
Regulation 30	Inquiries into objections
Regulation 34	Undertaking by officers and scrutineers (to be extended to all AEC Divisional staff)
Regulation 36	Use of same ballot boxex for House of Representatives, Senate elections and referendums
Regulation 37	Construction of ballot boxes
Regulation 38	Official marks
Regulation 40	Cancellation of registration as a general postal voter
Regulation 40A	Internal review of decisions under section 40
Regulation 40B	AAT review of decisions under regulation 40A
Regulation 40C	Regulations 40A and 40B to apply to Territories
Regulation 41	Form of Postal Vote certificate
Regulation 42	Use of 'open' postal ballot-papers
Regulation 44	Marking of Postal ballot-papers
Regulations 45 to 48	Handling of postal ballot papers by Presiding Officers, Assistant Returning Officers and Divisional Returning Officers
Regulations 49, 50 & 71	Scrutiny of postal, provisional and section votes to be the same as for absent votes

Regulation 67	Declaration voting Forms
Regulation 68	Declaration voting ballot papers
Regulation 69	Recording details of declaration voters
Regulation 70	Handling of declaration votes
Regulation 72	Assistance to declaration voters
Regulation 72A	Spoilt ballot papers
Regulation 73	Scrutiny of ballot papers by AROs
Regulation 74	Recounts
Regulations 75-83	Enforcement of compulsory voting
Regulation 84	Preservation and destruction of ballot material
Regulation 85	Official enquiries into regulation 84 materials
Regulation 86	Use of regulation 84 materials for collection of statistical information
Regulation 93	Penalties for breaches of the regulations
Regulation 96	Strict compliance with forms not required
Regulation 98	Official marks for referendums ballot papers
Regulation 99	Referendum forms
Regulation 100	Destruction of referendum ballot papers

APPENDIX E

I

Form C

(To be initialled on back by Presiding Officer before issue)

Commonwealth of Australia

BALLOT-PAPERS

AUSTRALIAN CAPITAL TERRITORY

Referendums on Proposed Constitution Alterations

DIRECTIONS TO VOTER

Write "YES" or "NO" in the space provided opposite each of the questions set out below.

1. *An Act to change the terms of senators so that they are no* longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on the same day.

DO YOU APPROVE this proposed alteration? ✓

2. An Act to enable the Commonwealth and the States voluntarily to refer powers to each other.

DO YOU APPROVE this proposed alteration? X

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II

Form C

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Commonwealth of Australia

BALLOT-PAPERS

AUSTRALIAN CAPITAL TERRITORY

Referendums on Proposed Constitution Alterations

DIRECTIONS TO VOTER

Write "YES" or "NO" in the space provided opposite each of the questions set out below.

THE CAT VICTORIA

1. An Act to change the terms of senators so that they are no longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on the same day.

DO YOU APPROVE this proposed alteration? NEVER

WHAT ABOUT LOVERS OF

2. An Act to enable the Commonwealth and the States voluntarily to refer powers to each other.

DO YOU APPROVE this proposed alteration? YES

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Form C

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AUSTRALIAN CAPITAL TERRITORY

Referendums on Proposed Constitution Alterations

DIRECTIONS TO VOTER

Write "YES" or "NO" in the space provided opposite each of the questions set out below.

1. An Act to change the terms of senators so that they are no longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on *the same day*.

DO YOU APPROVE this proposed alteration? 1 ✓

2. An Act to enable the Commonwealth and the States voluntarily to refer powers to each other.

DO YOU APPROVE this proposed alteration? NO DAMS

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IV

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Write "YES" or "NO" in the space provided opposite each of the questions set out below.

1. An Act to change the terms of senators so that they are no longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on the same day.

DO YOU APPROVE this proposed alteration? NO DAMS

2. An Act to enable the Commonwealth and the States voluntarily to refer powers to each other.

DO YOU APPROVE this proposed alteration? I GUESS SO

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AUSTRALIAN CAPITAL TERRITORY

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1. An Act to change the terms of senators so that they are no longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on the same day.

DO YOU APPROVE this proposed alteration? YES

2. An Act to enable the Commonwealth and the States voluntarily to refer powers to each other.

DO YOU APPROVE this proposed alteration? DITTO

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VI

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AUSTRALIAN CAPITAL TERRITORY

Referendums on Proposed Constitution Alterations

DIRECTIONS TO VOTER

Write "YES" or "NO" in the space provided opposite each of the questions set out below.

1. An Act to change the terms of senators so that they are no longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on the same day.

DO YOU APPROVE this proposed alteration? NOT SURE

2. An Act to enable the Commonwealth and the States voluntarily to refer powers to each other.

DO YOU APPROVE this proposed alteration? OH NO

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