Parliament of the Commonwealth of Australia

THE OPERATION DURING THE 1984 GENERAL ELECTION OF THE 1983/84 AMENDMENTS TO COMMONWEALTH ELECTORAL LEGISLATION

A Report from the Joint Select Committee on Electoral Reform

Report No. 2

December 1986

Australian Government Publishing Service
Canberra 1986

ISBN 0 644 05602 9

Printed in Australia by C. J. THOMPSON, Commonwealth Government Printer, Canberra

CORRIGENDA

Page xxii - In Recommendation 31 delete '18(c)' in line 5 and insert '22(c)'.

Page xxiv - In Recommendation 48 delete '40' in line 6 and insert '42'.

Page xxx - In Recommendation 80 delete the word 'formal'.

Page xxxii - In Recommendation 94 add the words 'determines otherwise'.

Page xxxiii - In Recommendation 100 delete the word 'Electoral Act' and insert the words 'Referendum (Machinery) Provisions Act'.

Page 221 - On line 27 delete '72' and insert '82'.

MEMBERS OF THE COMMITTEE

Chairman	:	Senator R F Ray
Deputy Chairman	:	The Hon M J R MacKellar MP
Members	:	Senator The Hon Sir John Carrick KCMG
	:	Senator B Harradine
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	:	Mrs C A Jakobsen MP
	:	Mr A H Lamb MP
	:	Mr M J Lee MP
	:	Mr J L Scott MP
Secretary	:	Mr D W Nairn

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RECOMMENDATIONS

The Committee made the following recommendations in their report.

Recommendation 1

That the next and succeeding Parliaments appoint a Joint Standing Committee to inquire into and report on all aspects of the conduct of elections for the Parliament of the Commonwealth and matters related thereto.

(para. 1.9 at page 2)

Recommendation 2

That, to avoid locking the redistribution commissioners into the timetable for the previous redistribution in which NSW, the largest and most complex State, was distributed last, paragraph 59(2)(c) of the Electoral Act be amended to replace the words 'forewith after' with the words 'within 30 days'. The amendment would give the AEC more flexibility in determining an appropriate order in which to conduct the distributions.

(para. 2.10 at page 7)

Recommendation 3

That it wishes to emphasise the recommendation of the original Committee in its 1st report that the 4th member of the Redistribution Committee for a State be the Auditor-General or the deputy for the State. It recommends that the Government make representations to State Governments requesting in the strongest terms that State Auditors-General, or their deputies, in future be made available to serve on Redistribution Committees. In the absences of the Auditor-General or his deputy (or should the Surveyor General or his deputy be unavailable) then his replacement should be a senior officer of the Australian Public Service in the State concerned (cf. paragraph 61(3)(d) which provides for the composition of the ACT Redistribution Committee), such as the Regional Directors of the Public Service Board.

(para. 2.13 at page 8)

Recommendation 4

That the degree of permitted variation under paragraph 66(3)(a) should be 2 per cent variation above or below the future average and that the Electoral Act paragraph 66(3)(a) and sub-section 75(4) should be amended accordingly.

(para. 2.22 at page 10)

Recommendation 5

The majority of the Committee also recommends that the criterion 'trend of population changes' be deleted from sub-section 66(3) as it has been rendered unnecessary by the introduction of the future equality requirement.

(para. 2.24 at age 10)

Recommendation 6

That sub-section 68(1) of the Electoral Act be amended to require boundary proposals to be publicised by advertisement in two newspapers circulating throughout the State and in regional newspapers in the areas affected by the redistribution, rather than by display of maps in post offices. The Redistribution Committees should be authorised to make their broad proposal publicly known by some immediate means such as a press release as soon as they have determined the general thrust of the redistribution (i.e. prior to the placement of newspaper advertisements).

(para. 2.27 at page 11)

Recommendation 7

That section 69 be amended to extend the period in which objections may be lodged from 14 days to 28 days.

(para. 2.30 at page 11)

Recommendation 8

That the period for consideration of objections under sub-section 72(2) be extended from 6 weeks to 60 days.

(para. 2.35 at page 12)

Recommendation 9

That the Electoral Act be amended to provide -

(i) that as soon as practicable after the augmented Electoral Commission has held its inquiry and considered the objections it shall make a public announcement (by means of media release or otherwise) of the general or particular thrust of its findings or conclusions in respect of the objections and the redistribution proposed by the Redistribution Committee;

(ii) that following this public announcement any person originally appearing or entitled to appear before the augmented Electoral Commission may forthwith lodge a further objection to the redistribution as announced by the augmented Electoral Commission;

(iii) that the augmented Electoral Commission shall hold an inquiry into any such further objections, unless it is of the opinion that the redistribution proposed by it is not significantly different from that proposed by the Redistribution Committee;

(iv) that anyone entitled to appear at the initial inquiry should be entitled to appear before the augmented Electoral Commission at the subsequent inquiry;

(v) that the second round of objections or inquiry should be completed within the 60 days recommended in Recommendation 7 above, and

(vi) that the augmented Electoral Commission be authorised to announce publicly the general or particular thrust of its findings and conclusions concerning the objections and redistribution to be finally proposed.

(para. 2.37 at page 13)

Recommendation 10

That paragraph 68 (1)(b) be amended to enable the AEC to make suggestions as well as comments available to the public. Rather than providing detailed descriptions of proposed boundaries as required by sub-paragraph 68(1)(b)(ii), a more readily comprehensible format such as descriptions of the boundaries of each proposed Electoral Division made by reference to a map or plan or otherwise should be substituted.

(para. 2.44 at age 15)

Recommendation 11

That sub-section 72(6) be amended to include persons and organisations who have made comments in relation to suggestions, among those entitled to appear before the augmented Electoral Commission.

(para. 2.47 at page 15)

Recommendation 12

That sub-section 75(1) be amended to require the AEC to forward the specified documents to the Minister 'as soon as practicable' rather than 'forthwith'.

(para. 2.51 at page 16)

Recommendation 13

That the transcript of any public inquiry be included among the specified documents to be forwarded to the Minister subject to the qualification 'if available' to guard against any unanticipated failure of the transcription service.

(para. 2.53 at page 16)

Recommendation 14

In the naming of Electoral Divisions the following guidelines should be observed.

Naming after persons

(a) That, in the main, Divisions be named after former citizens who have rendered outstanding service to their country and that every effort be made to retain the names of original Federation Divisions.

(b) That, when new Divisions are created, the names of former Prime Ministers be considered. It is noted in particular that the former Australian Prime Minister, John Christian Watson, has not continued to be honoured by having an electoral Division named after him. The Committee did not accept the Fox Committee's requirement that the Division not be named after a person until that person had been 10 years dead.

Geographical names

(c) That locality or place names should generally be avoided but the Committee is aware that in certain areas the use of geographical features may be appropriate (eg, Eden Monaro, Riverina).

Aboriginal names

(d) That Aboriginal names should be used where appropriate, and, as far as possible, the names of those existing Divisions with Aboriginal names should be retained.

Other criteria

(e) That the names of Commonwealth Divisions should not duplicate existing State Divisions and discussions between the Commonwealth and State Electoral Officers should take place on this question.

(f) That qualifying names (eg, North Sydney, Melbourne Ports, Port Adelaide) should be used where appropriate. The Fox Committee was opposed to the use of qualified naming.

(g) That names of Divisions should not be changed or transferred to new areas without very strong reasons.

(h) That 2 Fox Committee guidelines be deleted i.e. avoiding similarily in pronuniciation (Lawson and Dawson) and that the names of Divisions abolished at a redistribution should not be reallocated.

(i) That, when two or more Divisions are partially combined at a redistribution, as far as possible the name of the new Division should be that of the old Division which has the greatest number of electors within the new boundaries.

(para. 2.57 at page 17)

Recommendation 15

That the Act be amended to provide that Australian Bureau of Statistics Population Census Collection Districts be the building blocks for mini-redistributions.
(para. 2.63 at page 19)

Recommendation 16

That the present entitlement of Senators and Members of the House of Representatives to a free issue of the Electoral Roll should be increased to five copies, together with copies of the electoral maps for the Divisions represented by the Member and of all Divisions in the State represented by the Senator.
(para. 3.7 at page 22)

Recommendation 17

That printed rolls and habitation indexes should be brought into existence no later than the end of the second year of a Parliament and that section 89 and 91 of the Electoral Act be amended to reflect this requirement. Funds to cover the cost of roll printing should be guaranteed in the legislation and the Consolidated Revenue Fund should be appropriated accordingly. On the other hand, if the Government proceeds with the legislation foreshadowed in 1985 for the removal of standing or special appropriation, the Committee is of the view that the legislation that gives effect to the recommendation should be drafted in such a way as to ensure as far as possible the necessary funds through the annual budgetary process.
(para. 3.12 at page 23)

Recommendation 18

The Electoral Act be amended to provide that -

(a) political parties should continue to have access to habitation indexes as per the arrangements now in force, but only on magnetic tape. Like Senators/Members they should also have the option of receiving the Rolls on magnetic tape.

(b) the AEC should be able to sell the magnetic tapes of habitation indexes and Electoral Rolls and microfiche of Electoral Rolls at a commercial price;

(c) the AEC should be protected from having to comply with requests for 'hard copy' of the magnetic tape information.

(d) that the AEC be permitted to make the elector information referred to in (e) below available on microfiche to Government Departments and Authorities.

(e) the surnames, given names address, occupation, sex and date of birth of each elector should be provided on the Electoral Roll and publicly available microfiche

(f) microfiche of the Electoral Rolls for the States and Territories containing electoral information (but limited to that available on the official and printed Rolls) should be made available at the office of the Australian Electoral Officer for the State or that of the Director, AEC in the Northern Territory and the office of the Electoral Commissioner in Canberra, where interested persons should be able to conduct their own searches;

(g) the AEC should be protected from having to respond to individual requests for information that could be obtained by searches of the printed or official Rolls, the publicly available microfiche and the magnetic tapes of the habitation indexes and electoral Rolls. The AEC's position with respect to refusal to provide elector information otherwise than through the printed or official Rolls, the publicly available microfiche and magnetic tapes of habitation indexes and electoral Rolls, should also be preserved.

The Committee also recommends -

(h) that the AEC make available a complete set of Commonwealth Electoral Rolls for the States and Territories (as in (f) above) on micro fiche through the Legislative Research Service of the Parliamentary Library and that the AEC be adequately funded to provide all the services recommended above.

(para. 3.19 at page 26)

Recommendation 19

The Committee reaffirms the recommendation of the original Joint Select Committee on Electoral Reform that the Electoral Act should provide for annual cleansing of the Rolls to be conducted in conjunction with annual habitation reviews and the Act should be amended accordingly including the appropriation of the Consolidated Revenue Fund. On the other hand, if the Government proceeds with the legislation foreshadowed in 1985 for the removal of standing or special appropriation, the Committee is of the view that the legislation that gives effect to the recommendation should be drafted in such a way as to ensure as far as possible the necessary funds throught the annual budgetary process.

(para. 3.22 at page 27)

Recommendation 20

That sub-section 93(6) of the Electoral Act, containing the requirement of three months real place of living within the electorate for which an elector is enrolled be repealed.
(para. 3.33 at page 29)

Recommendation 21

That, in the event of the introduction of a form of national identification like the Australia Card, there should be an immediate reference to the Joint Select Committee on Electoral Reform or its successor to determine if, and to what extent, the identification system should be given an Electoral Act function.
(para. 3.35 at page 30)

Recommendation 22

That, for the purposes of paragraph 93(8)(a) of the Electoral Act which provides for removal of a person from the Electoral Roll on the ground that the elector is by reason of unsoundness of mind incapable of understanding the nature and significance of enrolment and voting, the Electoral Act be amended by -

(a) inserting in Part IX ('Objections') a provision to the effect that an elector should not be removed from the Roll on the grounds set out in paragraph 93(8)(a) unless a registered medical practitioner certifies the existence of the ground,

(b) providing that notwithstanding the duty that might otherwise exist under section 115 the Divisional Returning Officer shall not lodge or make an objection to enrolment on the grounds of unsoundness of mind - without the proposed amendment section 115 would require a Divisional Returning Officer to lodge an objection 'in respect of any name which he has reason to believe ought not to be retained on the Roll'. In respect of the unsoundness of mind disqualification, the Divisonal Returning Officer could ever only act on the advice of others, and be in no position to form an independent judgement of his own;

(c) that the notice of objection required under section 116 to be forwarded to the elector objected to shall clearly state the grounds on which the objection is made, the person who has lodged the objection, and the procedure to be adopted by the elector should that person wish to contest the matter.

The Committee also recommends that -

(d) The AEC undertake a review of the procedures that should apply in the removal of an elector from the Rolls on the grounds set out in paragraph 93(8)(a).
(para. 3.47 at pages 32 and 33)

Recommendation 23

That paragraph 93(8)(b)of the Electoral Act, relating to the disqualification from enrolment and voting of a person who has been convicted and is under sentence for an offence punishable under the laws of the Commonwealth or a State or Territory by imprisonment for 5 years or longer should be repealed.
(para. 3.58 at page 36)

Recommendation 24

That the Electoral Act be amended to permit mobile polling in gaols declared for that purpose and that the AEC take up with the relevant State prison authorities the question of introducing mobile polling in gaols - with a view to the introduction of mobile polling in all gaols at the earliest opportunity, and that the Electoral Act be amended to provide that a prisoner may enrol or retain his enrolment in -

(a) the subdivision in which he was enrolled prior to sentence; failing this

(b) the subdivision for which he was entitled to enrol prior to sentence; failing this

(c) the subdivision of the prisoner's next of kin; failing this

(d) the subdivision of birth and, failing this

(e) the subdivision with which the prisoner has the closest connection.

Recommendation 25

That sub-section 96(1) of the Electoral Act, relating to the registration of itinerant electors be amended to make it clear that the registration of an elector in respect of an Electoral Division should be in the following sequential order, namely -

(a) the subdivision in which he last had an entitlement to be enrolled; failing this

(b) the subdivision of the elector's next of kin, and failing this

(c) the subdivision of birth, and failing this

(d) the subdivision with which the elector has the closest connection.

and that the elector does not have a choice as to the criteria which should govern the electoral Division in which he is to be enrolled as an itinerant elector.

Recommendation 26

That subsection 96(10)(a) be amended to provide that the itinerant status annotation, as distinct from the enrolment, is cancelled only in cases where the Australian Electoral Officer is aware that the elector resides in the Division.
(para. 3.72 at page 40)

Recommendation 27

(a) That section 100 of the Electoral Act be amended to enable an Australian Electoral Officer to receive a claim for age 17 enrolment in the same way as ordinary claims and to substitute the heading 'Claims for age 17 enrolment' for the present heading to section 100.

(b) That the Commonwealth request State Governments to co-operate by providing for age 17 enrolment in relevant State legislation to reduce inconsistencies in Commonwealth and State enrolment procedures.
(para. 3.96 at page 46)

Recommendation 28

That in order to ensure that claimants for enrolment as electors under section 101 of the Electoral Act are entitled to be so enrolled by virtue of being Australian citizens that -

(a) Officers of the AEC attend naturalisation ceremonies to facilitate the electoral enrolment of new Australian citizens. Funds should be provided to the AEC to cover overtime, where necessary, and other essential costs incurred in implementing this recommendation.

(b) That the Electoral Claim Card continue to contain a question to claimants as to whether they are Australian citizens; that the AEC conduct spot checks to ensure the accuracy of responses made to this question by claimants; and that Departments of State possessing the information needed by the AEC in conducting such checks should make that information available to the AEC;
(para. 3.101 at page 47)

Recommendation 29

That sub-sections 101(2) and (3) be amended to ensure that, where Rolls are maintained pursuant to section 111, a Divisional Returning Officer and Australian Electoral Officer may process claims received for enrolment irrespective of where received, during the period between the announcement of an election or the issue of the writ and the close of the Rolls.

(para. 3.104 at page 48)

Recommendation 30

That silent voters should be able to register as postal voters but should still have the right to cast a declaration vote.

(para. 3.114 at page 50)

Recommendation 31

That section 116 should be amended by insertion of the words 'shall forthwith give notice to the elector concerned of his intention to remove his name from the Roll and set out the grounds in the objection'. This recommendation is in addition to Recommendation 18(c).

(para. 3.125 at page 52)

Recommendation 32

That the word 'member' in the context of a political party seeking registration on the basis of 500 members should be defined for the purposes of Part XI as an elector or a person entitled to be enrolled as an elector which would include electors resident abroad but would exclude foreign citizens not entitled to enrolment in Australia.

(para. 4.20 at page 57)

Recommendation 33

That the Electoral Act be amended to require a party seeking registration to have a constitution which includes a statement of aims and to supply the constitution as evidence of eligibility with its application for registration.

(para. 4.23 at page 57)

Recommendation 34

Paragraph 137(1)(b) be amended to include the provision that where a party ceases to be an 'eligible political party', as defined in sub-section 123(1), then the de-registration provisions should apply, that is, if a party that was registered as a Parliamentary party ceases to be a Parliamentary party then it would be de-registered unless it has 500 members.

(para. 4.25 at page 58)

Recommendation 35

That the party secretary should be one of the 10 applicants for registration by a political party other than a Parliamentary party.

(para. 4.27 at page 58)

Recommendation 36

That section 132 of the Electoral Act be amended to provide that applicants for registration be notified of objections to their applications and to permit the applicant to respond to the objection and that objections lodged against registration and responses to them should be open for inspection at the AEC central office.

(para. 4.31 at page 58)

Recommendation 37

That the format of the name and abbreviation entered in the Register of Political Parties should be standardised to require all lettering to be lower case with capitals only at the beginning of each word and for initials.

(para. 4.38 at page 59)

Recommendation 38

That where a party has already had its eligibility for registration established and applies to make some formal variation to the details of its registration its eligibility ought not be subject to further objection.

(para. 4.40 at page 60)

Recommendation 39

That any application under paragraph 134(1)(h) of the electoral Act to change the address of the registered officer shall be made by the registered officer.

(para. 4.42 at page 60)

Recommendation 40

That Part XII relating to registration of candidates should be repealed. Upon deletion of Part XII the provision of that Part relating to verification of endorsement will need to be transferred to Part XIV - *The Nominations; and the Nomination* form will need to cover claims to use political party affiliations and their verification.

(para. 4.48 at page 61)

Recommendation 41

That sub-section 136 (1) be amended to make it clear *that a registered political party without parliamentary* representation failing to endorse a candidate in any period of 4 years afters its registration should be subject of automatic de-registration.

(para. 4.50 at page 61)

Recommendation 42

That the signature of the person who is to be the registered officer shall be required on the party's application for registration and that sub-section 126(2) should be amended by including a provision (such as sub-section 332(3)) to prohibit the use of post-office box addresses for the purposes of the section.

(para. 4.53 at page 62)

Recommendation 43

That section 128 and sub-paragraph 132(2)(b)(iii) be repealed

(para. 4.55 at page 62)

Recommendation 44

That objection to party registration should be open to public inspection.

(para. 4.57 at page 63)

Recommendation 45

That the time for lodgement of the Group Voting Ticket after the close of nominations should be reduced from 48 to 24 hours.

(para. 5.7 at page 65)

Recommendation 46

That the statutory period between the issue and return of the writs should be extended from 90 to 100 days.

(para. 5.10 at page 66)

Recommendation 47

That section 166 of the Electoral Act be amended to provide that, where a candidate for election is endorsed by a political party registered under Part XI of the Electoral Act, and the nomination form is signed by the Party's electoral agent, that the requirement in sub-section 166(1)(b), that the form of nomination be signed by not less than 6 persons entitled to vote at the election for which the candidate is nominated, not apply to the candidature.

(para. 5.14 at page 66)

Recommendation 48

That a single form of nomination for the Senate on which candidates who wish to be grouped may so indicate and may notify the order in which their names are to appear on the ballot paper be introduced; the form should also indicate the name of the candidate or person responsible for signing and lodging the group's group voting ticket. See also Recommendation 40.

(para. 5.17 at page 67)

Recommendation 49

That the requirement that the nomination form should state 'the number on the roll' of nominators be deleted.
(para. 5.19 at page 67)

Recommendation 50

That sub-section 184(1) of the Electoral Act be amended to give a right to a postal vote to an elector who will be engaged on polling day in his employment or occupation and whose absence to vote may cause danger or substantial loss in respect of that employment or occupation.
(para. 5.28 at page 70)

Recommendation 51

(a) That mobile polling facilities be made comprehensive and be provided at all hospitals and nursing homes.

(b) That the right of an elector fulfilling the qualifications for a postal vote under paragraph 184(1)(d) of the Electoral Act be confirmed.

(c) That it be an offence under the Electoral Act for any person being a person who is the proprietor, a member of the staff, and/or involved in the administration of a hospital or nursing home, to influence a person who is a patient or inmate in the hosital or nursing home as to the candidate or candidates for whom that person should vote.
(para. 5.39 at page 72)

Recommendation 52

That all electors residing further than 20 kilometres from a polling place should be eligible to register as general postal voters and sub-paragraph 185(1)(a)(i) be deleted, removing the remote Subdivision requirement.
(para. 5.44 at page 74)

Recommendation 53

That section 185 be amended to provide that an elector whose religious beliefs prevent him/her from voting on the day appointed for polling be entitled to register as a general postal voter.
(para. 5.46 at page 75)

Recommendation 54

That the postal voting provisions be amended so as to draw a clear distinction between postal and pre-poll votes so that votes sent through the post or otherwise delivered continue to be referred to as postal votes while votes applied for in person be referred to as pre-poll votes.
(para. 5.51 at page 76)

Recommendation 55

That paragraph 184(2)(c) be amended so that the earliest possible date for a written postal vote application will be after the public announcement of the date of an election.
(para. 5.54 at page 76)

Recommendation 56

That sub-section 186(1) be amended so that application forms for postal votes can be sent to registered general postal voters as soon as practicable after public announcement of the date of an election. This would extend the period available for the postal voting process, and bring this provision into line with the previous recommendation.
(para. 5.56 at page 76)

Recommendation 57

(a) That in the case of a half Senate election held on its own, or a joint Senate/House of Representatives election, pre-poll voting should not be possible until the day after the expiration of the 24 hour period allocated for the lodging of group voting tickets. (b) That in respect of an election for the House of Representatives only pre-poll voting commence the day after nominations close.
(para. 5.58 at page 77)

Recommendation 58

That section 192 be amended to cover electors who claim not to have received postal ballot material and electors who have received such material but are unable to surrender it for cancellation.
(para. 5.62 at page 78)

Recommendation 59

That in future there should be a fixed cut off date for return of postal and pre-poll votes of 14 days and extra-territorial extension of the Act to bring Assistant Returning Officers stationed overseas within the purview of penalties for neglect of duty under the Electoral Act.
(para. 5.67 at page 79)

Recommendation 60

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.
(para. 6.7 at page 82)

Recommendation 61

That a column of grouped candidates not be split. It should be authorised to split ungrouped candidates into more than one column only when the size of the column exceeds that of the largest column of grouped candidates, creating further columns no longer than the size of the largest column of grouped candidates.
(para. 6.11 at page 83)

Recommendation 62

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.
(para. 6.23 at page 85)

Recommendation 63

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
(para. 6.27 at page 86)

Recommendation 64

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.
(para. 6.29 at page 86)

Recommendation 65

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.
(para. 6.35 at page 87)

Recommendation 66

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.
(para. 6.54 at page 91)

Recommendation 67

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 case should be used.
(para. 6.59 at page 92)

Recommendation 68

That there should be a form of identification to be worn by scrutineers at the polling place.
(para. 6.61 at page 93)

Recommendation 69

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.
(para. 6.72 at page 96)

Recommendation 70

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).
(para. 6.78 at page 97)

Recommendation 71

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.
(para. 6.80 at page 98)

Recommendation 72

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.

(*para. 6.84 at page 99*)

Recommendation 73

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

(*para. 6.97 at page 102*)

Recommendation 74

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

(para. 6.104 at page 103)

Recommendation 75

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'.

(para. 6.106 at page 104)

Recommendation 76

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

(para. 6.108 at page 104)

Recommendation 77

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.

(para. 6.112 at page 105)

Recommendation 78

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.

(para. 6.115 at page 106)

Recommendation 79

That sub-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.

(para. 6.118 at page 107)

Recommendation 80

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

(para. 6.125 at page 109)

Recommendation 81

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

(para. 6.142 at page 113)

Recommendation 82

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.

(para. 6.145 at page 113)

Recommendation 83

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).

(para. 6.157 at page 116)

Recommendation 84

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

(para. 6.160 at page 117)

Recommendation 85

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.

(para. 6.163 at page 117)

Recommendation 86

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.

(para. 7.4 at page 118)

Recommendation 87

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, 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.

(para. 7.39 at page 128)

Recommendation 88

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.

(para. 7.41 at page 128)

Recommendation 89

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.
(para. 7.60 at page 133)

Recommendation 90

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.
(para. 7.67 at page 136)

Recommendation 91

That the Senate scrutiny should cease upon the election of the last Senator to be chosen for the State or Territory.
(para. 7.69 at page 137)

Recommendation 92

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.
(para. 7.75 at page 139)

Recommendation 93

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.
(para. 7.77 at page 139)

Recommendation 94

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.
(para. 7.81 at page 140)

Recommendation 95

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.
(para. 7.88 at page 141)

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.

(para. 7.90 at page 141)

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.

(para. 7.92 at page 142)

Recommendation 98

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

(para. 7.93 at page 142)

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.

(para. 7.96 at page 143)

Recommendation 100

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

(para. 7.102 at page 145)

Recommendation 101

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.

(para. 7.108 at page 147)

Recommendation 102

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.
(para. 8.7 at page 153)

Recommendation 103

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.
(para. 8.9 at page 154)

Recommendation 104

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

(para. 8.10 at page 154)

Recommendation 105

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.

(para. 8.13 at page 154)

Recommendation 106

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.

(para. 8.15 at page 155)

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.
(para. 8.18 at page 156)

Recommendation 108

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.
(para. 8.20 at page 157)

Recommendation 109

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.
(para. 8.25 at page 158)

Recommendation 110

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.

(para. 8.30 at page 159)

Recommendation 111

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.

(para. 8.35 at page 160)

Recommendation 112

That 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.

(para. 8.40 at page 161)

Recommendation 113

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.

(para. 8.43 at page 161)

Recommendation 114

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.

(para. 8.46 at page 162)

Recommendation 115

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.)

(para. 8.48 at page 163)

Recommendation 116

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.

(para. 8.50 at page 163)

Recommendation 117

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.

(para. 8.55 at page 164)

Recommendation 118

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.

(para 8.58 at page 165)

Recommendation 119

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.

(para. 8.65 at page 167)

Recommendation 120

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.

(para. 8.66 at page 167)

Recommendation 121

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.

(para. 8.86 at page 172)

Recommendation 122

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.

(para. 8.87 at page 173)

Recommendation 123

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.

(para. 8.88 at page 173)

Recommendation 124

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.

(para 8.91 at page 174)

Recommendation 125

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

(para 8.92 at page 174)

Recommendation 126

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.

(para 8.84 at page 174)

Recommendation 127

That the obligation on printers to furnish returns in respect of elections (and referendums) be discontinued.
(para. 8.98 at page 175)

Recommendation 128

That section 315(7) be amended so that it extends to knowingly furnishing false information to a person lodging a claim for public funds.
(para. 8.101 at page 175)

Recommendation 129

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.
(para. 8.115 at page 178)

Recommendation 130

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.
(para. 8.117 at page 178)

Recommendation 131

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.
(para. 8.120 at page 179)

Recommendation 132

The 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.
(para 8.122 at page 179)

Recommendation 133

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.

(para. 8.125 at page 179)

Recommendation 134

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 - a supplementary claim or return would not be such a bar.

(para. 8.127 at page 180)

Recommendation 135

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.

(para. 8.129 at page 180)

Recommendation 136

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.
(para. 9.14 at page 186)

Recommendation 137

That sub-sections 187(3) and (4) should be repealed.
(para. 9.33 at page 189)

Recommendation 138

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.
(para. 9.44 at page 191)

Recommendation 139

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.
(para. 9.46 at page 192)

Recommendation 140

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.
(para. 9.60 at page 195)

Recommendation 141

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.
(para. 9.65 at page 197)

Recommendation 142

1& 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.
(para. 9.72 at page 198)

Recommendation 143

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.

(para. 9.81 at page 200)

Recommendation 144

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.

(para. 9.91 at page 203)

Recommendation 145

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.
(para. 9.95 at page 205)

Recommendation 146

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 ate 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.
(para. 9.101 at page 206)

Recommendation 147

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.

(para. 9.103 at page 207)

Recommendation 148

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.

(para. 9.120 at page 212)

Recommendation 149

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.

(para. 9.124 at page 213)

Recommendation 150

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.

(para. 9.127 at page 214)

Recommendation 151

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.

(para. 9.128 at page 214)

Recommendation 152

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'.

(para. 9.131 at page 214)

Recommendation 153

That the Act be amended to provide that the remuneration of acting members of the AEC shall be as determined by the Remuneration Tribunal.
(para. 9.132 at page 214)

Recommendation 154

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).
(para. 9.133 at page 215)

Recommendation 155

That section 392 be amended to ensure that the Regulations may repeal and substitute Forms in the Schedule to the Electoral Act.
(para. 9.135 at page 215)

Recommendation 156

That in respect of amendments recommended for the Electoral Act, there should where necessary be corresponding amendments to the Referendum (Machinery Provisions) Act.
(para. 9.136 at page 215)

CHAPTER 1

BACKGROUND TO THE INQUIRY

1.1 This second report of the Joint Select Committee on Electoral Reform in the 34th Parliament reviews the operation of the Commonwealth Electoral Act 1918 (hereafter the Electoral Act) during the 1984 General Election. The Committee was appointed in March 1985 to continue the work of the original committee which, in the 33rd Parliament, in its first report, had reviewed Commonwealth electoral legislation and made recommendations for substantial reform.[1] The first committee's recommendations were largely implemented by the Commonwealth Electoral Legislation Act 1983. These amendments brought about changes to the redistribution procedures, the introduction of public funding of election campaigns, established the Australian Electoral Commission and made other significant changes to aspects of Commonwealth electoral law and practice.

1.2 The present Committee determined early in its life that it should inquire into, and report on, the operation during the 1984 General Election of the 1983/84 amendments to Commonwealth electoral legislation. It undertook this Inquiry pursuant to part 'A' of paragraph (1) of its resolution of appointment, reproduced at Appendix "'A', which enjoins the Committee to inquire into and report upon all aspects of elections for the Parliament of the Commonwealth and matters related thereto, including, inter alia (1) legislation governing, and the operation of, the Australian Electoral Commission.

1.3 The Committee advertised the Inquiry in the national press on the weekend of 13 and 14 April 1985. It sought submissions directly from State Governments, State Opposition Leaders and registered political parties. The Committee received submissions from the persons and organisations listed in Appendix 'B'. It held public hearings on the Inquiry in Canberra and Sydney and took evidence from the witnesses listed in Appendix 'C'.

1.4 The Australian Electoral Commission (the AEC) prepared a series of detailed submissions for the Committee as well as a number of supplementary papers. These are listed in Appendix 'B', Part I. The submission of the AEC as well as reporting on the operation of different aspects of the Electoral Act during the 1984 election identified difficulties that had arisen and, where appropriate, suggested amendments which the AEC considers should be made to the Electoral Act. These submissions were authorised for publication by the Committee at public hearings in Sydney on 6, 7 and 8 August 1985 and are reproduced in the transcript of evidence for those days.[2] The AEC submissions to the Inquiry were sent to the National Secretariats of the Australian Labor Party, the Liberal Party of Australia, the National Party of Australia and the Australian Democrats. The parties were invited to comment on the AEC's proposals. At subsequent public hearings evidence was taken from the political parties that had responded to the Committee's invitation to comment.

1.5 As well as the submissions referred to in the previous paragraph the Committee took evidence from the AEC on the following of its reports to Parliament -

- Research Report 1/85 - Informal Voting 1984 House of Representatives: Report
- Research Report 1/86 - Informal Voting 1984 Senate: Report
- Elections 1984 - Election Funding and Financial Disclosure: Interim Report
- Elections 1984 - Election Funding and Financial Disclosure: Final Report

1.6 The Committee's report is based on the submissions received from the AEC and other witnesses and the published reports referred to above.

1.7 The report reviews the provisions of the Electoral Act as amended in 1983/84. The format of the report follows that of the Electoral Act itself, incorporating the information provided by the AEC and identifying recommendations for further change proposed either by the AEC or by other witnesses to the Inquiry. The Committee makes 156 recommendations in the report.

1.8 It is our view that a parliamentary committee provides a useful forum for the AEC to raise matters concerning the legislation and put forward proposals for amendment. These proposals are thus exposed for public comment from the political parties, interested observers of the system and the community at large. The AEC is in a much better position at the end of such a process to put forward, confidently, to the Government proposals for amendment. The Government is also better informed as to the likely reaction to the changes when making the decision whether to support them or not. The existence of a parliamentary committee also provides a forum in which key aspects of the legislation can be monitored and the Parliament alerted concerning areas where legislative action is required. The operation of the financial disclosure provisions of the Act are a case in point which we discuss in Chapter 8 at paras and suggest that the Committee could well exercise its investigative functions in the aid of provisions of the Act requiring disclosure. To date the Joint Select Committee has been appointed with specific terms of reference as a select committee. Future Parliaments in our view should appoint it as a Joint Standing Committee with a broad function related to the overview of the electoral laws and their administration. The Committee recommends

Recommendation 1

1.9 **That the next and succeeding Parliaments appoint a Joint Standing Committee to inquire into and report on all aspects of the conduct of elections for the Parliament of the Commonwealth and matters related thereto.**

1.10 In its Report No. 1 for the 34th Parliament the Committee reported on the Representation of Federal Territories and New States in the Parliament,[3] thus discharging item 1(A)(v) of its order of reference. The present report discharges item 1(A)(i) concerning the legislation governing, and the operation of, the Australian Electoral Commission. It has recently advertised the remaining items

(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 candidates for election,

(iv) tax deductibility of political donations

and will be commencing public hearings on these matters shortly with a view to reporting on them during 1987. In addition, under paragraph (1)(B) of the resolution of appointment, the Senate has referred to the Committee for inquiry and report the Constitution Alteration (Democratic Elections) Bill 1985.[4] That matter is currently under examination and will be the subject of a report later in the present Parliament.

1.11 The Committee wishes to acknowledge the assistance provided by all those who have made submissions to the Inquiry. It particularly wishes to thank Dr Colin Hughes, the Australian Electoral Commissioner, Mr Andrejs Cirulis, the Deputy Electoral Commissioner, and the staff of the AEC. As well as providing, very promptly, submissions on all aspects of the operations of the Electoral Act, the Commissioner and his staff have made themselves available at short notice to give evidence or consult with the Committee or to provide additional written responses to requests by Committee members for supporting information and analysis. The Committee also wishes to praise the AEC for the high quality of its research and analysis which is a contribution that greatly assists all those in Australia concerned to ensure a continuance of the tradition of equitable electoral practices for Commonwealth elections.

Endnotes

1. Joint Select Committee on Electoral Reform - First Report September 1983 - Parliamentary Paper no. 227 of 1983

2. See Appendix B, Part I

3. Joint Select Committee on Electoral Reform - Determining the entitlement of federal Territories and new States to representation in the Commonwealth Parliament - November 1985 - in Parliamentary Paper no. 1 of 1986

4. See Journals of the Senate no. 74 for 6 December 1985.

CHAPTER 2

REDISTRIBUTION PROCESS

2.1 The 1983 amendments to electoral legislation made significant changes to the procedure for determining the boundaries of the Electoral Divisions of the House of Representatives. The Commonwealth Electoral Legislation Amendment Act 1983 consolidated all legislation relating to representation in the Parliament and enacted new provisions for the determination of boundaries of Electoral Divisions for the House of Representatives.

2.2 The entitlement of the States of the Commonwealth to representation in the House of Representatives is determined by a formula contained in section 24 of the Constitution. The number of seats to which each State is entitled is found by dividing a quota (obtained by dividing the population of the Commonwealth by twice the number of sentators) into the population of each State. This ensures that the overall size of the House of Representatives is as near as practicable to twice the size of the Senate and that the number of members chosen in the several States is in proportion to the respective numbers of their people as required by the Constitution. Representation of Federal Territories is provided for by section 122 of the Constitution and is such representation as the Parliament shall determine. Representation of the Australian Capital Territory and the Northern Territory in the Parliament was governed by separate enactments which have now been consolidated and re-enacted in the Electoral Act. On the question of Territory representation, see Report No. 1, November 1985, Joint Select Committee on Electoral Reform - 'Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament'.[1]

2.3 Under Division 3 of Part III of the Electoral Act the Australian Electoral Commissioner is charged with the duty of making the determination provided for in section 24 of the Constitution.

2.4 Section 56 requires that each State and the Australian Capital Territory be distributed into Electoral Divisions. Section 58 sets up a mechanism for measuring each month the extent of enrolment inequality within each State and the Australian Capital Territory. The Electoral Commissioner is required at the end of each month to ascertain the enrolment in each Division in the States and the Australian Capital Territory; to calculate the average Divisional enrolment for each State and the Australian Capital Territory and the extent to which each Division's enrolment deviates from the appropriate average; and to publish the figures in the Gazette.

2.5 Section 59 provides for the timing of electoral redistributions. The AEC shall commence a redistribution by notice in the Gazette:

- immediately upon the making of a determination under sub-section 48(1) which changes the representation entitlement of a State of the Commonwealth;

- whenever it appears to the AEC, from figures published under section 58 that more than one-third of the divisions within a State deviated from the average divisional enrolment by more than 10% in the most recent month for which such figures have been published and in the previous two months;

- if seven years have expired since the State was last redistributed;

but not otherwise.

2.6 Sub-section 59(7), (8) and (9) make provision in respect of the Australian Capital Territory

Redistribution timetable

2.7 The AEC brought to the Committee's attention a problem that had arisen with regard to the timetable for the redistribution.

2.8 Because a State election in NSW coincided with the work of the Redistribution Committees, it was feared that insufficient attention could be given to redistribution questions in the midst of a State election campaign. New South Wales, the largest State in respect of the number of its Divisions and therefore potentially the most difficult and time-consuming for redistribution, was moved down the planning queue.

2.9 Paragraph 59(2)(c) provides that the next regular, septennial redistribution should commence on the day after that on which the determination was made in 1984. This will have the effect of locking New South Wales, into last place in the queue of States and the Australian Capital Territory. Its place there was accidental, contrary to the AEC's original intention, and would be undesirable for the future. The AEC recommended that paragraph 59(2)(c) be amended to replace 'forwith after' by 'within 30 days of', thereby allowing such rearrangement of the queue as may seem advisable when the time arrives and certainly so as to allow New South Wales to be an early starter. The Committee agreed with this argument and accordingly recommends -

Recommendation 2

2.10 That, to avoid locking the redistribution commissioners into the timetable for the previous redistribution in which NSW, the largest and most complex State, was distributed last, paragraph 59(2)(c) of the Electoral Act be amended to replace the words 'forewith after' with the words 'within 30 days'. The amendment would give the AEC more flexibility in determining an appropriate order in which to conduct the distributions.

Redistribution Committees (Composition)

2.11 Section 60 establishes for the purposes of a redistribution in a State a Redistribution Committee for the State, to be appointed, by instrument in writing, by the AEC. Sub-section 60(2) provides that the Redistribution Committee shall consist of the Electoral Commissioner, the Australian Electoral Officer for the State, the Surveyor-General for the State and the Auditor-General for the State. Sub-sections 60(3) and (4) qualify sub-section 60(2) by providing that should either the Surveyor-General or Auditor-General (or both) be unavailable, one of his deputies (or failing that, a senior officer of the Australian Public Service of similar status nominated by the Governor-General) may be appointed instead of him. Sub-section 60(5) provides that the Redistribution Committee may perform its functions and exercise its powers notwithstanding there being a vacancy, or change or changes, in its membership. Sub-section 60(6) and (7) qualify sub-section 60(5) by providing that should two or more members of a Redistribution Committee die or become unable to serve by reason of physical or mental incapacity, the AEC shall revoke the appointment of the Redistribution Committee, and appoint a new one, when the redistribution shall proceed as if the first Redistribution Committee had never been appointed. Section 61 makes provision for the appointment of a Redistribution Committee for the Australian Capital Territory similar to that made in respect of a State Redistribution Committee by section 60.

2.12 The AEC brought to the Committee's attention a problem that arose in regard to the composition of Redistribution Committees. Only two out of the six State Auditors-General or their deputies proved to be available to participate in the 1984 Redistribution. The Special Minister of State and the AEC also drew attention to problems in finding suitable Commonwealth officers as substitutes for the unavailable State officials. The problems flowed from the requirement that the Commonwealth Officers have 'a status similar to' that of the unavailable State officials. Following advice from the Commonwealth Attorney-General's Department the redistribution committees were constituted by the appointment by Regional Directors of the Commonwealth Public Service Board for the State concerned. In the case of Tasmania, however, the Regional Director for South Australia was appointed.

2.13 The Committee gave consideration to possible office holders who might be substituted for the State Auditor-General as a statutory member of the panel. Members of the Committee who had been members of the original Committee on Electoral Reform recalled that in making the recommendation that the State Auditor-General be included on the panel the Committee had reached that conclusion unanimously after considering various alternatives. The office of Auditor-General was common to all State administrations, was a senior position of considerable prestige and was associated with the notion of independence from direction by the Government of the day. The Committee recommends -

Recommendation 3

2.14 **That it wishes to emphasise the recommendation of the original Committee in its 1st report that the 4th member of the Redistribution Committee for a State be the Auditor-General or the deputy for the State. It recommends that the Government make representations to State Governments requesting in the strongest terms that State Auditors-General, or their deputies, in future be made available to serve on Redistribution Committees. In the absences of the Auditor-General or his deputy (or should the Surveyor General or his deputy be unavailable) then his replacement should be a senior officer of the Australian Public Service in the State concerned (cf. paragraph 61(3)(d) which provides for the composition of the ACT Redistribution Committee), such as the Regional Directors of the Public Service Board.**

2.15 This will provide greater flexibility than for the present 'similar status' requirements and avoid the situation that arose in Tasmania where a person with no local knowledge had to be appointed to the redistribution for the State.

Meetings of Redistribution Committees

2.16 Section 62 makes provision for the procedures to be adopted at meetings of a Redistribution Committee. Section 63 provides that a Redistribution Committee may appoint sub-committees of three members to assist it. Section 64 provides for suggestions and comments. Sub-section 64(1) provides that as soon as practicable after its appointment a Redistribution Committee shall by notice published in the Gazette and in two newspapers circulating throughout the State or territory invite suggestions, to be lodged within 30 days of the Gazette notice, and comments on the suggestions, to be lodged within 14 days of the end of the suggestion period. Sub-section 64(2) provides for copies of the suggestions to be made available at the office of the Australian Electoral Officer in the case of a State redistribution, and of the senior Divisional Returning Officer in the case of an Australian Capital Territory redistribution.

Determination of the Quota

2.17 Section 65 provides for the calculation of a quota, for the purposes of a redistribution in a State or Territory by dividing the number of persons enrolled in the State or Territory (as at the close of the period for the making of comments) by the number of members to be chosen in the State or Territory at a general election, and rounding to the nearest whole number. Section 66 sets out the criteria to be adopted by a Redistribution Committee for a State or Territory. Sub-section 66(2) provides that the number of proposed Divisions must equal the number of members to be chosen in the State or Territory at a general election.

Principles to be Applied in Making the Redistribution

2.18 Sub-section 66(3) provides that the Redistribtuion Committee:

(a) *shall, as far as practicable, endeavour to* ensure that, 3 years and 6 months after the State or Territory has been redistributed, the number of electors enrolled in each proposed Division in the State or Territory will be equal; and

(b) subject to (a), shall give due consideration, in relation to each proposed Division, to -

(i) community of interests within the proposed electoral Division, including economic, social and regional interests;

(ii) means of communication and travel within the proposed electoral Division;

(iii) the trend of population changes within the State or Territory;

(iv) the physical features and area of the proposed electoral Division; and

(v) the boundaries of existing Divisions in the State or Territory;

and that subject to (a) and (b) the quota of electors for the State or Territory shall be the *basis for the proposed redistribution, and the* Redistribution Committee may adopt a margin of allowance of ten per cent to be used whenever necessary, but in no case shall the quota be departed from to a greater extent than one-tenth more or one-tenth less.

Future Equality Requirement (permissable degree of variation)

2.19 The AEC raised the following issues in regard to paragraph 66(3)(a) and sub-section 73(4) which impose a duty on the committees and augmented Electoral Commissions to (as far as is practicable) ensure that after 3 years and 6 months the number of electors enrolled in each proposed Division in the State will be equal. The AEC drew attention to the difficulty of achieving the task without reliable figures and stressed the necessity of annual habitation reviews. The matter that it reserved for the Committee was the question of permissible degree of variation from perfect equality.

2.20 Advice available to the Redistribution Committees was that the formula 'as far as practicable' was better read as relating to the method(s) by which figures were calculated, and represented a recognition that any such figures could not be assured of future accuracy. Therefore, once a Redistribution Committee had arrived at what it believed to be the best possible figures it could produce, there remained no scope for setting acceptable margins around the average future enrolment. Equality should then be construed narrowly.

2.21 Some members of Redistribution Committees believed that it would be preferable for the Parliament to decide the degree of variation from perfect future equality that should be permissible rather than leaving the question open. Whilst it was acknowledged that what would be involved would be setting seemingly firm limits around a figure, which because of future developments would be potentially unreliable, the attempt seemed desirable. Various figures were discussed without any firm agreement being reached, though 2% or 2.5% variation above or below future average were often instanced as acceptable. The AEC proposed that the Committee consider whether some numerical limits for variation around future equality should be set, and if so what would be the appropriate range. It also suggested that the criterion 'trend of population changes' be deleted from paragraph 66(3)(b) as it has been rendered unnecessary by the introduction of the future equality requirement. Moreover, by introducing the concept of population numbers when all other quantitative requirements relate to enrolment numbers it has some potential for confusing the issue. The Committee recommends -

Recommendation 4

2.22 **That the degree of permitted variation under paragraph 66(3)(a) should be 2 per cent variation above or below the future average and that the Electoral Act paragraph 66(3)(a) and sub-section 75(4) should be amended accordingly.**

2.23 **The majority of the Committee also recommends -**

Recommendation 5

2.24 **That the criterion 'trend of population changes' be deleted from sub-section 66(3) as it has been rendered unnecessary by the introduction of the future equality requirement.**

Publicising Proposals

2.25 Section 67 provides that a Redistribution Committee shall give reasons in writing for the redistribution it proposes. It provides that a member who disagrees with the proposed redistribution may give reasons for his disagreement. Section 68 provides for a proposed redistribution to be publicized. Sub-section 68(1) requires each Redistribution Committee to arrange for the public display of maps showing the names and boundaries of each proposed Electoral Division in post offices and AEC offices, and to arrange for comments lodged on the suggestions, detailed descriptions of the electoral boundaries, the Committee's reasons, and any dissents, to be available for perusal in AEC offices. The fact that the proposals are available for public perusal is to be advertised in the Gazette and newspapers with information as to where they can be perused.

2.26 The AEC proposes that section 68(1) of the Electoral Act be amended to require boundary proposals to be publicised by newspaper advertisement rather than by display of maps in post offices which is the present requirement. The Committee agrees with the suggestion and recommends -

Recommendation 6

2.27 **That sub-section 68(1) of the Electoral Act be amended to require boundary proposals to be publicised by advertisement in two newspapers circulating throughout the State and in regional newspapers in the areas affected by the redistribution, rather than by display of maps in post offices. The Redistribution Committees are to be authorised to make their broad proposal publicly known by some immediate means such as a press release as soon as they have determined the general thrust of the redistribution (i.e. prior to the placement of newspaper advertisements).**

The Objection Process

2.28 Sub-section 68(2) provides for the advertisement published under sub-section 68(1) to include a reference to the right of persons and organisations to lodge objections to the proposed redistribution. Section 69 provides that a person or organisation may lodge a written objection against a proposed redistribution within 14 days of the publication of the Gazette notice under section 68.

2.29 There were widespread complaints about the brief period that organisations, especially local government authorities, had in which to become aware of the proposals. The problem would be overcome by extending the period in which objections may be lodged and the Committee recommends -

Recommendation 7

2.30 **That section 69 be amended to extend the period in which objections may be lodged from 14 days to 28 days.**

Augmented Electoral Commission

2.31 Section 70 establishes in respect of each State and the Australian Capital Territory a body to be called the augmented Electoral Commission, to consider objections to a proposed redistribution lodged under section 69 in respect of that State or Territory. Sub-section 70(2) provides that each augmented Electoral Commission consist of the members of the Redistribution Committee for the particular State or Territory, plus the two members of the Electoral Commission who were not on the Redistribution Committee. Sub-section 70(3) provides that an augmented Electoral Commission may perform its functions, and exercise its powers notwithstanding there being a vacancy or vacancies, or change or changes, in its membership.

2.32 Section 71 makes provision for the procedures to be adopted at meetings of an augmented Electoral Commission. In particular sub-section 71(6) provides that an augmented Electoral Commission shall not make a determination of Divisions and their names unless it is supported by not less than 4 of its members, including not less than 2 members of the Electoral Commission.

2.33 Section 72 makes special provision for the way in which objections shall be considered by an augmented Electoral Commission. Sub-section 72(2) imposes a time limit of 6 weeks on an augmented Electoral Commission's consideration of objections. Sub-section 72(3) requires an augmented Electoral Commission to hold an inquiry into an objection unless it is of the opinion that the objection deals with matters which were covered in an earlier submission or comment, and/or is vexatious or frivolous. Sub-section 72(4) allows a single inquiry to be held into a number of objections. Sub-section 72(5) provides that inquiries shall be held in public. Sub-section 72(6) gives the right to the objector and any person who, or organization that, lodged a suggestion to the Redistribution Committee to make submissions to an inquiry. Sub-sections 72(8) and (9) give the augmented Electoral Commission power to control the format of submissions and the conduct of inquiries.

2.34 Sub-section 72(2) requires the augmented Electoral Commission to complete its consideration of objections 'as soon as is practicable and, in any event, before the expiration of the period of 6 weeks after' the period in which objections may be lodged. Additional time is desirable within which the planning and publicising of the public inquiries can take place and would allow for more local hearings outside State capitals. It would also permit adjournments. People and organisations appearing could properly consider 'new' proposals which had emerged at the public hearings themselves and would also facilitate the second round of objections referred to in Recommendation 8 below. Accordingly the Committee recommends.

Recommendation 8

2.35 That the period for consideration of objections under sub-section 72(2) be extended from 6 weeks to 60 days.

2.36 There had been a number of submissions to the Committee's Inquiry observing that where, as a result of the consideration of objections the augmented Electoral Commission recommends boundaries radically different from its initial proposal there should be the opportunity for a second round of objections. Where the proposals of an augmented Electoral Commission are radically different to the original proposals of the Redistribution Committee it is desirable that an opportunity be given to interest groups to lodge further objections. However, this process needs to be finite rather than endless and should not delay the completion of the redistribution process. Further objections should be possible but not so as to delay the process beyond the extended period recommended above. the Committee recommends -

Recommendation 9

2.37 That the Electoral Act be amended to provide -

(i) that as soon as practicable after the augmented Electoral Commission has held its inquiry and considered the objections it shall make a public announcement (by means of media release or otherwise) of the general or particular thrust of its findings or conclusions in respect of the objections and the redistribution proposed by the Redistribution Committee;

(ii) that following this public announcement any person originally appearing or entitled to appear before the augmented Electoral Commission may forthwith lodge a further objection to the redistribution as announced by the augmented Electoral Commission;

(iii) that the augmented Electoral Commission shall hold an inquiry into any such further objections, unless it is of the opinion that the redistribution proposed by it is not significantly different from that proposed by the Redistribution Committee;

(iv) that anyone entitled to appear at the initial inquiry should be entitled to appear before the augmented Electoral Commission at the subsequent inquiry;

(v) that the second round of objections or inquiry should be completed within the 60 days recommended in Recommendation 7 above, and

(vi) **that the augmented Electoral Commission be authorised to announce publicly the general or particular thrust of its findings and conclusions concerning the objections and redistribution to be finally proposed.**

Abandoning the Suggestions and Comment Stage

2.38 The possibility was raised by the AEC that redistribution would proceed as satisfactorily and more expeditiously if the early stage of public involvement, the lodging of suggestions and comments, were abandoned. Each Redistribution Committee would, instead, proceed to formulate its proposals on the basis of its own ideas and its knowledge of community opinions on electoral boundaries. Public involvement would consequently occur only at the objections and public inquiry stages, by way of response to the Redistribution Committee's proposals.

2.39 Alternatively, it would be open to have officers of the AEC prepare a limited number of options (which might be specified in advance or might not) to place before each Redistribution Committee at its commencement. Subsequently these would be made available to the public for preparing objections.

2.40 **The Committee did not accept this proposal. The suggestion and comment stage should be retained.**

2.41 The Committee is of the firm view that the AEC should maintain or have available to it better data and data bases with a view to providing to political parties and others who wish to participate in the redistribution process, more detailed information on which to make their suggestions, comments or objections.

2.42 Paragraph 68(1)(b) requires copies of comments, detailed descriptions and reasons (including dissents) of Redistribution Committees to be made available at AEC offices. Practice has been to prepare a single document containing descriptions and reasons, together with the comments. This leads to different treatment of suggestions and comments. It would be preferable to have suggestions and comments available to the public on the same basis. Both should be available for perusal -

(i) at all AEC offices in the State or ACT, that is, at Divisional Offices as well as Head Office, and

(ii) for the period from the day after the last day for their lodging until the end of the period in which any public inquiries are being conducted.

2.43 Sub-paragraph 68(i)(b)(ii) requires 'detailed descriptions' of the boundaries of each proposed Division to be provided by the Redistribution Committees. The present product is expensive to prepare and incomprehensible to almost all electors.

A less demanding formula, such as 'descriptions of the boundaries of each proposed Electoral Division made by reference to a map or plan' should be substituted. The Committee recommends -

Recommendation 10

2.44 **That paragraph 68 (1)(b) be amended to enable the AEC to make suggestions as well as comments available to the public. Rather than providing detailed descriptions of proposed boundaries as required by sub-paragraph 68(1)(b)(ii), a more readily comprehensible format such as descriptions of the boundaries of each proposed Electoral Division made by reference to a map or plan or otherwise should be substituted.**

2.45 Sub-sections 72(1) and (2) provide that as soon as practicable after it has considered the objections lodged, an augmented Electoral Commission shall make a determination, and the Divisions so determined shall remain in force until altered or quashed.

2.46 Sub-section 72(6) provides that at an inquiry by an augmented Electoral Commission submissions in relation to objections may be made by persons or organisations lodging the objections and by those who lodged suggestions at the earlier stages of the redistribution. There appears to be no good reason for not including those who lodged comments on the suggestions. While it would be open to an augmented Electoral Commission to hear anyone it wished, someone who had only lodged a comment might be inhibited from coming forward. The Committee recommends

Recommendation 11

2.47 **That sub-section 72(6) be amended to include persons and organisations who have made comments in relation to suggestions, among those entitled to appear before the augmented Electoral Commission.**

The Australian Capital Territory

2.48 Sub-section 73(5) provides that in the case of the Australian Capital Territory, the whole of the Jervis Bay Territory shall be included in one Division.

Transmission to Minister

2.49 Section 75 provides for copies of the suggestions and comments lodged with the Redistribution Committee, its proposed redistribution and reasons, any reasons for disagreement with the proposed redistribution, objections lodged against the proposed redistribution, the augmented Electoral Commission's determination and reasons, and any reasons for disagreement with the determination, to be forwarded to the Minister and subsequently tabled in both Houses of Parliament.

2.50 Sub-section 75(1) requires the AEC to forward the specified documents to the Minister 'forthwith' after an augmented Electoral Commission has made its determination of boundaries and names. The Minister is then required to table them within 5 sitting days. The Committee agrees with the AEC that the requirement to provide the data 'forthwith' is too inflexible. The intention of the provision would be effectively realised if the phrase 'as soon as practicable' were to be substituted. It may be that 'forthwith' in this context would be held to mean 'as soon as practicable', but it is recommended that the amendment be made to put the point beyond question. The Committee recommends -

Recommendation 12

2.51 **That sub-section 75(1) be amended to require the AEC to forward the specified documents to the Minister 'as soon as practicable' rather than 'forthwith'.**

2.52 Sub-section 75(1) when listing the documents to be forwarded to the Minister and then tabled does not include the transcript of any public inquiry. It is recommended -

Recommendation 13

2.53 **That the transcript of any public inquiry be included among the specified documents to be forwarded to the Minister subject to the qualification 'if available' to guard against any unanticipated failure of the transcription service.**

Naming of Electoral Divisions

2.54 Section 73 provides for an augmented Electoral Commission to make a final determination of the boundaries and names of the Divisions in a State or Territory, by notice published in the Gazette.

2.55 The AEC reported to the Committee that the uncertain status of the Report from the House of Representatives Select Committee on the Naming of Electoral Divisions (the Fox Report)[2] of 1969 caused concern. Whilst it was apparent that certain of the criteria endorsed in the Report had not been followed in subsequent redistributions, for example criterion (d) that a name should not be used until 10 years after a person's death and criterion (e) that locality or place names should generally be avoided, it remained the only source of guidance that the Redistribution Committees, and subsequently the augmented Electoral Commissions, had available to them.

2.56 The Committee has considered the guidelines proposed by the House of Representatives Select Committee on the Naming of Electoral Divisions. It has endorsed some of these and proposed the deletion or alteration of others. These changes are set out in the Recommendation. The Committee recommends that -

Recommendation 14

2.57 **In the naming of Electoral Divisions the following *guidelines should be observed.***

Naming after persons

(a) That, in the main, Divisions be named after former citizens who have rendered outstanding service to their country and that every effort be made to retain the names of original Federation Divisions.

(b) That, when new Divisions are created, the names of former Prime Ministers be considered. It is noted in particular that the former Australian Prime Minister, John Christian Watson, has not continued to be honoured by having an electoral Division named after him. The Committee did not accept the Fox Committee's requirement that the Division not be named after a person until that person had been 10 years dead.

Geographical names

(c) That locality or place names should generally be avoided but the Committee is aware that in certain areas the use of geographical features may be appropriate (eg, Eden-Monaro, Riverina).

Aboriginal names

(d) That Aboriginal names should be used where appropriate, and, as far as possible, the names of those existing Divisions with Aboriginal names should be retained.

Other criteria

(e) That the names of Commonwealth Divisions should not duplicate existing State Divisions and discussions between the Commonwealth and State Electoral Officers should take place on this question.

(f) That qualifying names (eg, North Sydney, Melbourne Ports, Port Adelaide) should be used where appropriate. The Fox Committee was opposed to the use of qualified naming.

(g) That names of Divisions should not be changed or transferred to new areas without very strong reasons.

(h) That 2 Fox Committee guidelines, i.e. avoiding similarily in pronunciation (Lawson and Dawson) and that the names of Divisions abolished at a redistribution should not be reallocated, be deleted.

(i) That, when two or more Divisions are partially combined at a redistribution, as far as possible the name of the new Division should be that of the old Division which has the greatest number of electors within the new boundaries.

Mini-Redistributions

2.58 Section 76 provides for a 'mini-redistribution' to be held whenever an election is called and the number of Divisions into which a State is distributed differs from the number of members to which it is entitled. It is provided, for example, that where a State is entitled to one more member than the number of Divisions in existence, a pair of contiguous Divisions with the greatest enrolment will be redistributed so as to create three Divisions where there had been two; on the other hand, where a State is entitled to fewer members than it has Divisions, a pair of contiguous Divisions with the lowest enrolment will be joined so as to create one Division where there had been two.

2.59 Sub-section 76(2) provides for a 'mini-redistribution' to be conducted by Redistribution Commissioners consisting of the Australian Electoral Commissioner and the Australian Electoral Officer for the State. Sub-section 76(3) sets out the formulae according to which the pairs of contiguous Divisions involved in the 'mini-redistribution' are identified. Sub-sections 76(4) and (5) qualify the formulae set out in sub-section 76(3) in the case where two pairs of contiguous Divisions have the same enrolment.

2.60 Sub-sections 76(6) and (7) provide for the names and boundaries of Divisions in the State to be determined by instrument in writing as soon as practicable and at most within seven days after the issue of the writ, and for the names and boundaries so determined to have effect until altered by a subsequent redistribution. Sub-section 76(8) provides that Divisions not in any of the pairs identified in accordance with sub-section 76(3) shall not have their names or boundaries changed. Sub-section 76(9) provides that where the number of Divisions is to be increased, the new Divisions shall be created from existing subdivisions, shall as far as practicable have equal enrolments, and shall have unbroken boundaries except where a Division includes an island. Sub-section 76(10) provides for the creation of names for the new Divisions from the names of the Divisions from which they were formed. Sub-section 76(11) and (12) provide that where the number of Divisions is to be decreased each pair of contiguous divisions involved in the mini-redistribution shall be made into a single Division, with a composite name based on the names of the former Divisions.

Sub-sections 76(13) and (14) provide for the Redistribution Commissioner's determination to be gazetted, sent to the Minister and tabled in both Houses of the Parliament. Sub-section 76(15) provides that the formulae set out in sub-section 76(3) shall be applied using the most recent enrolment statistics.

2.61 The AEC has proposed that there should be new 'building blocks' for mini redistributions, rather than retaining subdivisions which are quite artificial and are basically retained only for joint roll purposes in New South Wales, Victoria and South Australia. The new 'building blocks' it has proposed are the Australian Bureau of Statistics Population Census Collection Districts which are much smaller than subdivisions and thus their use would facilitate the achievement of equality of enrolment between the new divisions as specified in paragraph 76(9)(b).

2.62 Census Collection Districts have boundaries which are relatively stable over time and they are mapped in a consistent manner. The Committee agrees with this proposal and recommends -

Recommendation 15

2.63 **That the Act be amended to provide that Australian Bureau of Statistics Population Census Collection Districts be the building blocks for mini-redistributions.**

2.64 Section 77 provides that subject to the Constitution and to the original jurisdiction of the High Court (and the concurrent original jurisdiction of the Federal Court) in respect of matters in which writs of mandamus or prohibition or an injunction are sought against an officer of the Commonwealth, decisions are not to be subject to legal challenge.

2.65 Section 78 creates an offence of improperly seeking to influence, in the performance of his duties, a member of a Redistribution Committee, augmented Electoral Commission or Redistribution Commissioners. In this regard the Committee notes that it would be unfortunate if the provision were to prevent Redistribution Committees and augmented Electoral Commissions consulting those in a position to provide useful information.

Endnotes

1. op.cit.
2. Parliamentary Paper no. 35 of 1969.

CHAPTER 3

ENROLMENT AND ROLL MAINTENANCES

3.1 Part VI of the Electoral Act is entitled 'Electoral Rolls'. Section 81 of the Act provides that there shall be a Roll of the electors for each State and for each Territory. Section 82 provides that there shall be a Roll for each Division and a separate Roll for each subdivision, the subdivisional Rolls together forming a Divisional Roll. All the Divisional Rolls for a State or Territory together form the State or Territory Roll. Section 83 declares that the Rolls shall be in a prescribed form and shall set out the surname, christian and given names and place of living of each elector other than eligible overseas electors and such further particulars as are prescribed. The Committee recommends, later in the report, that the sex and occupation and date of birth of each elector also be printed on the Roll.

Joint Commonwealth and State Rolls

3.2 Section 84 of the Electoral Act enables the Government of the Commonwealth to arrange with State Governments for the carrying out of a procedure relating to the preparation, alteration or revision of the Rolls jointly, so that the Rolls can be used as Electoral Rolls for State elections as well as Commonwealth Elections. The provision then goes on to declare that where an elector is eligible to vote in an election for the Commonwealth but not for the State, or vice versa, that the qualification shall appear on the Roll by a distinguishing mark against the name of the elector in question.

3.3 Under this provision the Commonwealth has entered into joint roll arrangements with New South Wales, Victoria, South Australia and Tasmania under which the enrolment and Roll maintenance functions are performed by the AEC. In Western Australia there is in force an arrangement for joint Commonwealth/State enrolment and State Roll maintenance by the AEC - there are however separate Commonwealth and State Rolls. In the case of the Northern Territory there is a defacto joint Roll and in the ACT there is only the Commonwealth Roll. In Queensland since 1 April 1986 there has been in force an arrangement for joint enrolment - with both the Commonwealth and State responsible for separate processing of claims cards for the separate Commonwealth and State Rolls.

3.4 The Electoral Act, sections 85 and 86, declares the circumstances in which, and the occasions on which, new Rolls are to be prepared. Section 87 provides that where new Rolls are required as the result of the creation of new Divisions or Subdivisions or a change in boundaries, the new Rolls are to be prepared by transferring names from existing Rolls to the new Rolls. The section also provides for notice of these transfers to be given to the electors concerned - the notice may be by means of a general advertisement addressed to all electors or by

individual notices. Section 90 provides that copies of the latest print of the Rolls, and the Divisional Returning Officers official Rolls, be available for public inspection without fee. Copies of the latest print of the Rolls are also available for purchase at AEC offices.

Provision of Rolls and Habitation Indexes to Political Parties

3.5 Among the 1983 amendments was a requirement that the AEC provide a free copy of the printed Electoral Roll to registered political parties, Senators and Members of the House of Representatives and to such other persons or organisations as the AEC determines.

3.6 Sub-section 91(1) of the Act requires the AEC to provide the above persons or organisations with a copy of 'the latest print' of the Rolls 'at a time during each House of Representatives'. The Committee has received representations from a number of Members of Parliament complaining that the present provision of printed copies of the Electoral Rolls was insufficient to meet their needs. Electoral Rolls are an important part of a member's equipment being in constant use in the Electoral Office and in Canberra. The Committee recommends that-

Recommendation 16

3.7 **The present entitlement of Senators and Members of the House of Representatives to a free issue of the Electoral Roll should be increased to five copies, together with copies of the electoral maps for the Division represented by the Member, and of all divisions in the State represented by the Senator.**

3.8 Previously, the then Australian Electoral Office printed Electoral Rolls and supplementary Electoral Rolls on the occasion of each Federal election (for use as certified lists at the polling), printed such Rolls on the occasion of State elections in the 4 Joint Roll States, and sought to have, as a minimum, an annual Roll printing program. A main Roll print would have been undertaken 'in anticipation' of an election and supplementary Rolls would have been printed as at the close of the Rolls. Those Rolls would have been used to meet that statutory obligation. There was no problem, under these arrangements, meeting the requirements of parties and candidates for up-to-date Rolls at election time.

3.9 However, with Division-wide ordinary voting and advances in technology, the AEC now has no need for printed main and supplementary Rolls - made up as they would be by Subdivision. It prints Division-wide A-Z certified lists as at the close of the Rolls. While every effort was made to get copies of the certified lists to the parties and candidates contesting the 1984 elections at the first opportunity, it is doubtful whether this was sufficient to meet their needs at election time.

3.10 The political parties have requested the AEC to make these certified lists available more expeditiously. The AEC drew attention to the cost of providing up-to-date certified lists at short notice. In the 1984 General Election the cost of providing one copy for the parties and candidates was approximately $39,000.00. The Committee noted that some parties and candidates needs might be met with certified lists on magnetic tape.

3.11 The AEC asked the Committee to indicate when, in a parliamentry 3 year term, printed Rolls and, habitation indexes should be provided for the purposes of this free distribution. It noted that a time early in the third year of a parliamentary term would be appropriate and suggested the 2/3 month mark. If a Parliament did not run to the 2 year 3 months mark no printed Rolls would be provided. The parties (and candidates) contesting an election at that time would just have to wait for the Division-wide certified lists to be made available. The Committee considers that printed Rolls should be made available earlier than the AEC suggests. The Committee is of the view that adequate funding should be guaranteed for Roll printing. These should be set aside together with funds for the annual habitation reviews recommended later.

Recommendation 17

3.12 That printed rolls and habitation indexes should be brought into existence no later than the end of the second year of a Parliament and that section 89 and 91 of the Electoral Act be amended to reflect this requirement. Funds to cover the cost of roll printing should be guaranteed in the legislation and the Consolidated Revenue Fund should be appropriated accordingly. On the other hand, if the Government proceeds with the legislation foreshadowed in 1985 for the removal of standing or special appropriation, the Committee is of the view that the legislation that gives effect to the recommendation should be drafted in such a way as to ensure as far as possible the necessary funds through the annual budgetary process.

Freedom of Information (Access to Electoral Roll Data)

3.13 The AEC raised with the Committee a number of cases where there is a clash between the provisions of the Electoral Act and the Freedom of Information Act. One of the cases relates to the provision of roll information.

3.14 The Electoral Act requires electors to provide (a) details of surname, (b) given names, (c) place of living, (d) occupation, (e) sex, (f) date of birth, (g) place of birth, (h) former surname, (i) former place of living. Only the first three details appear on the printed Rolls. Rolls are required to be open for inspection without fee (s.90) and copies are to be supplied free of charge to Federal Members of Parliament and registered political parties. In addition the AEC supplies a habitation index to the major political parties in the form of magnetic tape. The Committee considers that the public

information on the Roll should include the occupation, sex, and date of birth of the elector as well as the information currently provided.

3.15 Relying on s.41(1) of the Freedom of Information Act (hereafter FOI Act) which provides that a document is exempt from the provisions of the Act if disclosure would involve the unreasonable disclosure of the personal affairs of any person, the AEC refused to provide a Queensland Alderman with access to habitation indexes for the Ipswich Division. Later advice from the Attorney-General's Department however indicated that the requirement that these documents be provided to political parties would mean that there supply to the Alderman was not 'unreasonable'. The Alderman was supplied with the information.

3.16 The AEC interprets this decision to mean that it would be required to supply commercial interests with the same information if they requested it. The AEC has reported to the Committee that it has since received a number of further requests for copies of 'Habitation Walk' indexes both hard copy and on magnetic tape. These included requests from members of Parliament for the 'Habitation Walk' indexes for their own electorates, one from a computer company designing a package of computer software to appeal to politicians, and a number of requests from solicitors representing companies competing for liquor/hotel licenses. The AEC, reluctantly, complied with the requests for hard copy considering itself compelled to do so by the tenor of the legal advice it had received. On the other hand it has refused requests for magnetic tapes on the ground that such tapes are not documents within the meaning of the FOI Act. The AEC recommended that supply of material should be restricted to those currently entitled to receive it under the Act and that the FOI Act should be specifically excluded from application. Alternatively, it suggests that the Electoral Act should provide for the AEC to sell this information to commercial interests.

3.17 The AEC also expresses the fear that under the present provisions of the FOI Act it could be required to provide habitation indexes in some form other than magnetic tapes. This would be extremely costly. It recommends amendment of the Act to specify magnetic tapes as the form in which the material should be provided.

3.18 The sudden interest in Electoral Roll data is due to its availability in a computer compatible format which enables it to be processed to provide information in a number of different formats. The existence of the data on computer in conjunction with regular habitation reviews makes the Rolls more accurate and the data itself more readily accessible. The Committee considers that microfiche of the Rolls as updated from time to time should be available for public search at AEC offices and at central libraries. This will take pressure off the AEC staff who currently have to respond to requests from various agencies to confirm or correct the Roll entries. It should be available to the public in a form as accurate or near so as is available to

the AEC itself. The Committee is not in favour of precluding access to elector information under the FOI legislation. However, it does not consider that commercial and other interests should be able to obtain such valuable information at the taxpayer's expense. The AEC should be authorised to sell the magnetic tapes of the Electoral Roll at a commercial price.

Recommendation 18

3.19 The Electoral Act be amended to provide that -

(a) political parties should continue to have access to habitation indexes as per the arrangements now in force, but only on magnetic tape. Like Senators and Members they should also have the option of receiving the Rolls on magnetic tape;

(b) the AEC should be able to sell the magnetic tapes of habitation indexes and Electoral Rolls and microfiche of Electoral Rolls at a commercial price;

(c) the AEC should be protected from having to comply with requests for 'hard copy' of the magnetic tape information.

(d) that the AEC be permitted to made the elector information referred to in (e) below available on microfiche to Government Departments and Authorities;

(e) the surname, given names, address, occupation, sex and date of birth of each elector should be available on the Electoral Roll and on the publicly available microfiche of the Electoral Roll;

(f) micro fiche of the Commonwealth Electoral Rolls for the States and Territories containing electoral information (but limited to that available on the official and printed Rolls) should be made available at the office of the Australian Electoral Officer for the State or that of the Director, AEC in the Northern Territory and the office of the Electoral Commissioner in Canberra, where interested persons should be able to conduct their own searches;

(g) the AEC should be protected from having to respond to individual requests for information that could be obtained by searches of the publicly available printed or microfiche official Rolls, or of the magnetic tapes of the habitation indexes and Electoral Rolls. The AEC's position with respect

to refusal to provide elector information otherwise than through the printed or official Rolls, the publicly available microfiche and magnetic tapes of habitation indexes and Electoral Rolls, should also be preserved.

The Committee also recommends -

(h) that the AEC make available a complete set of Commonwealth Electoral Rolls for the States and Territories (as in (e) above) on micro fiche through the Legislative Research Service of the Parliamentary Library and that the AEC be adequately funded to provide all the services recommended above.

Habitation Reviews

3.20 The Joint Select Committee on Electoral Reform in its first Report recommended that there should be annual habitation reviews. The 1983 amendments gave legislative effect to this indirectly: sub-sections (2), (3), (4) and (5) of section 92 provide for a standing appropriation of the Consolidated Revenue Fund for the purposes of a minimum number of habitation reviews. However, the Department of Finance, and others, have not been slow to argue that the minimum number may also be regarded as the maximum. The lack of provision of habitation review funds for 1985/86 is evidence of the acceptance of this view.

3.21 The AEC brought certain consequences of this development to the attention of the Committee:

- the lack of funds for habitation reviews in the second half of 1984/85 and for 1985/86 will have an impact on the quality of Electoral Rolls that will prevent measurement of the 1984 redistribution forecasts;

- the lack of a habitation review funds in 1985-86 would have left the Commonwealth in breach, at least of the spirit, of the 1983 Joint Enrolment Arrangement with Western Australia which provides - 'The Australian Electoral Officer (for Western Australia) will - (a) so far as possible conduct in the State annual habitation reviews'. The Committee was informed that, following representations from the Western Australian Government, funds were made available for a review in that State, and

- the lack of habitation reviews in 1985/86 could have had an impact on the quality of the Rolls in Western Australia, and in South Australia and Tasmania both of which are Joint Roll States, in the lead up to the State elections earlier

this year. In a Joint Roll State there is an inherent responsibility upon the AEC to ensure that the Roll is as accurate as possible for State events as well as Federal events. Up-to-date and accurate Electoral Rolls are an indispensable element in a democratic electoral system. They provide evidence of each elector's eligibility to vote and are the means of preventing many potential electoral malpractices and frauds. The only way to ensure the quality of the Rolls is for regular habitation reviews to purge and up-date them.

3.22 The Committee regards it as essential that funds be available to ensure that the quality of the Electoral Rolls is maintained through regular habitation reviews. The AEC, at the request of the Committee provided estimates as to the cost of habitation reviews.

TABLE 1

COST OF HABITATION REVIEWS 1975-1987

FINANCIAL YEARS	$	
1975/76	261,615	
1976/77	401,276	
1977/78	130,544	
1978/79	1,524,373	
1979/80	1,795,480	
1980/81	1,547,897	
1981/82	1,116,691	
1982/83	1,961,744	
1983/84	2,461,009	
1984/85	826,404	
Estimated Cost		
1985/86	170,000	(being $75,000 for A.C.T. and $95,000 for W.A.)
1986/87	4,070,000	

Recommendation 19

3.23 The Committee reaffirms the recommendation of the original Joint Select Committee on Electoral Reform that the Electoral Act should provide for annual cleansing of the Rolls to be conducted in conjunction with annual habitation reviews and the Act should be amended accordingly including the appropriation of the Consolidated Revenue Fund. On the other hand, if the Government proceeds with the legislation foreshadowed in 1985 for

the removal of standing or special appropriation, the Committee is of the view that the legislation that gives effect to the recommendation should be drafted in such a way as to ensure as far as possible the necessary funds through the annual budgetary process.

Qualifications and Disqualifications for Enrolment and for Voting

3.23 Section 93 of the Electoral Act provides that persons are entitled to enrolment and to vote:

(a) who have attained 18 years of age;

(b) who are Australian citizens (or British subjects already enrolled in 1984 when the new citizenship legislation came into effect).

3.24 Sub-section 93(5) provides that an elector is not entitled to vote more than once at any Senate election or any House of Representatives election, or at more than one election for the Senate or for the House of Representatives held on the same day.

Real Place of Living

3.25 Sub-section 93(6) provides that except in the case of an eligible overseas elector, an itinerant elector or an Antarctic elector, enrolment is not of itself sufficient to confer a right to vote: the elector must in addition have had his 'real place of living' within the Division for which he is enrolled at some time during the 3 months immediately preceding polling day.

3.26 Ordinary voters are obliged to establish that they are not disqualified from voting by the 3 months rule by satisfactorily answering questions prescribed by the Act to be put by the polling official issuing votes. Each voter is asked the question 'Where do you live?', and if the address given in response is not that shown on the certified list, the further question 'At what other place or places have you lived during the last 3 months?' is asked. If the address, or one of the addresses, given in answer to the latter question is within the Division, the elector is given an ordinary vote - otherwise, his claim to vote is rejected.

3.27 Absent voters, provisional voters, or electors voting pursuant to sections 192, 236 and 237 are obliged to make a declaration to the effect that they lived within the Division at some time during the 3 months immediately preceding polling day, the relevant declarations being forms approved by the AEC.

3.28 In the case of a postal voter, however, the declaration made - that the voter is entitled to a postal vote in accordance with the provisions of the Electoral Act - is not nearly so

explicit, and could be interpreted simply as a declaration that one or more of the qualifications for a postal vote spelt out in sub-section 184(1) of the Act have been fulfilled. The relevant declaration is a form prescribed by sub-regulation 41(1) of the Electoral and Referendum Regulations: see sub-section 188(3).

3.29 It can be seen that the 3 month rule is therefore in practical terms incapable of across the board enforcement. More seriously, however, its operation is anomalous in that it only works to disenfranchise those electors who have not correctly maintained their enrolments, but are honest enough to admit it. This clearly raises the general question of whether the rule continues to serve any useful purpose.

3.30 The Committee believes that the regular maintenance of the Rolls by annual habitation reviews should ensure improved accuracy and reliability. The 3 months real place of living requirement has been needed because the accuracy of the Rolls at any given election could not be guaranteed. It might be reasonable to suppose that if the Rolls could approximate better to the ideal, the significance of the 3 months rule would be diminished.

3.31 It is also notable that the Court of Disputed Returns is specifically denied by sub-section 361(1) the power to 'inquire into the correctness of any Roll', the reason for this being that it is recognized by the legislature that Rolls of their very nature will contain defects. The 3 months rule as it stands, however, could give rise to challenges in the Court to the correctness of the admission of individual votes which, depending as they would on the question of where a person had resided, would be of very similar nature to a challenge to the Roll itself - since in each case the assertion would be that the voter really should not still have been on the Roll. On this basis also, it could be argued, the 3 months rule should be abandoned.

3.32 The rule, it should be emphasised, is not an obstacle to fraud or impersonation. Very few electors were ever asked the complex pre 1983 prescribed questions (one of the reasons for their repeal) and there is nothing to suggest that any more were asked the sub-section 229(3) question regarding places of living during the previous 3 months. Any person contemplating fraudulent voting can, without difficulty state addresses or make declarations which will not of themselves prevent the admission of the vote. It must be emphasised that the ordinary voter's answer to the question, whether true or false, is for all practical purposes - as far as the vote being recorded and placed in the ballot box (and hence 'irretrievable') - conclusive.

Recommendation 20

3.33 That sub-section 93(6) of the Electoral Act, containing the requirement of three months real place of living within the electorate for which an elector is enrolled be repealed.

3.34 The Australia Card Bill 1986, currently before the Parliament, provides for a national form of identification to be called the Australia Card. There is a diversity of views within the Committee as to the merits of the principle behind the proposed Bill. However, the Committee does agree that, should the Australia Card Bill 1986 be enacted, then the question of a possible Electoral Act function for the Card should at least be explored. It would be appropriate, in the Committee's view, for the question of a possible Electoral Act function for the Card to be referred to the Committee or the Committee proposed in our Recommendation 1 for inquiry and report should the Australia Card Bill 1986 be enacted. The Committee recommends -

Recommendation 21

3.35 **'That, in the event of the introduction of a form of national identification like the Australia Card, there should be an immediate reference to the Joint Select Committee on Electoral Reform or its successor to determine if, and to what extent, the identification system should be given an Electoral Act function.'**

Unsoundness of Mind

3.36 Sub-section 93(8) provides that a person who, by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting is not entitled to have his name placed on or retained on any Roll or to vote at any Senate or House of Representatives election. Persons of unsound mind have always been denied the Commonwealth franchise. In 1983 a 'definition' of more precise content was inserted into the relevant disqualification by sub-paragraph 93(8)(a) so that only those people who by reason of unsoundness of mind were incapable of understanding the nature and significance of enrolment and voting were disqualified.

3.37 Electors who are subject to the disqualification, can only be removed by objection action. The relevant notice to the elector must state the grounds of the objection. The AEC reported the existence of a view that the present legislative provisions require too harsh an approach by involving the use of the words 'unsound mind' when setting out the grounds of the objection. It is said to lack sensitivity and to cause unnecessary distress to the families of the electors concerned. The suggestion is that the offending words could be replaced by others - for example 'medical condition'.

3.38 The AEC recommends that there be inserted in Part IX ('Objections') a provision to the effect that an elector should not be removed from the Roll on the ground set out in paragraph 93(8)(a) unless a registered medical practitioner certifies the existence of the grounds; and that the relevant notice setting out the grounds of the objection be expressed in the formula:-

> **'that a registered medical practitioner has certified that your medical condition precludes you from involvement in the electoral process.'**

3.39 It is clearly desirable that the notice of objection state clearly both elements of the ground of disqualification. The ground for disqualification contained in sub-section 93(8) requires that the elector be of unsound mind and, as a consequence incapable of understanding the nature and significance of voting. A person of unsound mind, yet capable, despite his mental condition of understanding the nature and significance of enrolment and voting is still entitled to the franchise as is, a person who is incapable of understanding the nature and significance of enrolment and voting for some reason other than unsoundness of mind.

3.40 The expression 'unsoundness of mind', as long as it remains an element of the ground, should therefore be used. Otherwise the elector and his relatives could be misled as to the reason for the removal action, particularly if the phrase 'medical condition' is used as it is neither an accurate nor adequate substitute for the expression 'unsoundness of mind' raising as it does a range of possibilities beside unsoundness of mind as the reason for the elector's removal from the Roll.

3.41 The Committee considers that action to disenfranchise an elector perhaps permanantly is of such significance that it is necessary and desirable that the action be taken pursuant to Part IX of the Act (Objections) which contains provision for review of decisions by the Administrative Appeals Tribunal and subsequent appeal. It is concerned that removal action should be based on clear evidence and open to appeal.

3.42 Certification by a medical practitioner that the elector is of unsound mind and by reason thereby incapable of the understandings required by sub-section 93(8) is necessary. However, the decision should not be made on the basis of that certification alone. The person making the certification should be required to lodge a report and full assessment.

3.43 It is noted that the ground for disqualification contained in paragraph 93(8)(a) differs in kind from other grounds for disqualification under the Electoral Act. Other grounds for disqualification like not having attained voting age, not being an Australian Citizen, being convicted of an offence are capable of simple objective proof. Action based on real place of living within the Division for which the elector is enrolled only relates to a technicality of enrolment. The elector will be re-enrolled for his correct address or given enrolment as an itinerant. It does not challenge the fundamental right to the franchise. Paragraph 93(8)(a) of the various grounds for disqualifications is the only one that requires the Commission, through its officers to make a value judgment. The questions raised which require answers are -

- how and by what process is the issue of the unsoundness of mind of an elector raised initially? i.e. who lodges the objection?

- what entitlement is given to an elector subjected to such a challenge to answer the objection and confront the objector?

- what consequences does such a finding have for other rights of the elector? i.e. could a finding under the Electoral Act in some way be used by relatives to obtain certificates for other purposes?
- what provision is made for rectification of the Roll if at some later stage the ground on which the disqualification is based ceases to exist?

3.44 The Committee is aware of a continuing debate on mental health legislation which has given rise to concern as to the rights of the mentally ill. Much of this debate is about the circumstances in which a person should be deprived of his or her liberty in the interest of that person himself and in the interest of the community generally. It would not necessarily follow that a person certified under such legislation should be disqualified under the Electoral Act as in many cases the mental condition resulting in confinement may not affect the capacity of that person to understand the significance of voting and enrolment.

3.45 The provision may be considered applicable to many elderly people. This raises the question of how the objection is raised. It may be raised by a person with responsibilities in an institution such as the Matron of a C class hospital. It may be raised by the relatives of a person. In the cited cases there would seem to be lacking a person or authority who would act objectively in the interest of the person whose continued entitlement to the franchise has been called in question.

3.46 The Committee is of the view that the matter should be thoroughly reviewed in the light of the various issues we have cited. The Committee recommends -

Recommendation 22

3.47 That, for the purposes of paragraph 93(8)(a) of the Electoral Act which provides for removal of a person from the Electoral Roll on the ground that the elector is by reason of unsoundness of mind incapable of understanding the nature and significance of enrolment and voting, the Electoral Act be amended by -

(a) inserting in Part IX ('Objections') a provision to the effect that an elector should not be removed from the Roll on the grounds set out in paragraph 93(8)(a) unless a registered medical practitioner certifies the existence of the ground.

(b) providing that notwithstanding the duty that might otherwise exist under section 115 the Divisional Returning Officer shall not lodge or make an objection to enrolment on the grounds of unsoundness of mind, and

the Committee notes that without the proposed amendment section 115 would require a Divisional Returning Officer to lodge an objection 'in respect of any name which he has reason to believe ought not to be retained on the Roll'. In respect of the unsoundness of mind disqualification, the Divisonal Returning Officer could ever only act on the advice of others, and be in no position to form an independent judgement of his own.

(c) that the notice of objection required under section 116 to be forwarded to the elector objected to shall clearly state the grounds on which the objection is made, the person who has lodged the objection, and the procedure to be adopted by the elector should that person wish to contest the applications.

The Committee also recommends that -

(d) the AEC undertake a review of the procedures that should apply in the removal of an elector from the Rolls on the grounds set out in paragraph 93(8)(a).

Persons Under Sentence for an Offence

3.48 In its 1983 report, the original Joint Select Committee on Electoral Reform recommended amendments to the Electoral Act to amend the disqualifications of persons convicted and under sentence for offences punishable by imprisonment for one year or longer to those undergoing sentence for offences punishable by imprisonment for five years or longer.

3.49 The AEC has reported a number of problems that arose in the administration of the new provision at the 1984 General Election. These difficulties involved, first, the identification of prisoners retaining the franchise from those who are disqualified and, second, identifying the electoral Division for which a prisoner with the entitlement to vote should be enrolled.

3.50 Consideration of the first of these issues has allowed the Committee to reconsider the recommendation of the First Committee that the disqualification should continue to apply where a person is under sentence for an offence, punishable by imprisonment for five years or more.

3.51 Section 109 of the Electoral Act requires a Controller-General of Prisons (defined as the principal officer of a State or Territory having control of the prisons and gaols of the State) to forward to the Australian Electoral Officer or the Electoral Commissioner, as the case requires, a list of all persons convicted and under sentence for any offence punishable by imprisonment for 5 years or longer.

3.52 In practice the prison authorities are generally not able to comply with this requirement. They are only aware of actual sentences imposed on prisoners, not of the maximum sentences for their offences. Maximum sentences are set by statute, and prison authorities are often unaware of the statutes under which prisoners are sentenced. That situation is unlikely to improve in the near future. Therefore the most that the AEC can expect is to be supplied with a list of prisoners with actual sentences. In this respect the present legislation is unworkable.

3.53 This problem did not emerge with the previous disqualification as only prisoners under sentence for summary offences were qualified to enrol and to vote. Short-term prisoners (that is, subject to less than 12 months imprisonment) under sentence for offences punishable by imprisonment for 12 months or more were not picked up by the system. Reconstructing what happened with the benefit of hindsight, they appear, generally speaking, to have been treated as summary offence prisoners. This, coupled with the problems confronting prisoners getting a postal vote in the absence of a specific statutory right such as was conferred by the 1983 amendments, meant that while some eligible prisoners may have failed to secure their votes, there was little danger of ineligible prisoners getting votes. However, when in the light of the 1983 amendments the AEC sought to encourage eligible prisoners to enrol it was confronted by the problem of identification discussed above.

3.54 The AEC has submitted that this problem could be overcome if the Committee were to adopt one or other of the following recommendations -

(i) the disqualification operate not by reference to the maximum sentence but by reference to the actual sentence.

(ii) further limit the disqualification to the period that the prisoner actually is in lawful custody pursuant to the sentence. This would not deny the franchise to prisoners technically under sentence who are released on bonds without ever going to gaol, or who are on licence or parole. It has never been possible to police the franchise disqualification of prisoners once they have been released from gaol, and

(iii) a complete removal of the disqualification (cases of treason excepted) as submitted to the 1983 Committee.

3.55 The majority of the Committee has concluded that the Commission's recommendation (iii) should be supported. In reaching this conclusion it noted dissenting reports to the previous Committees original recommendation. Senator Macklin, in his dissent argued that it was inconsistent with the values of a free society to deny the franchise to a person under sentence for an offence. He also drew attention to the inconsistency inherent in having on the one hand a law making voting compulsory and subject to penalty and at the same time relieving persons convicted of other offences from the obligation to comply with this law. Senator Sir John Carrick, in his dissent, drew attention to the vagaries of the sentencing system and argued that actual imprisonment for one year should be the determinant because under modern sentencing policy it indicated the commission of a serious offence. Mr Hall argued that the Electoral Act should continue to reflect section 44(ii) of the Constitution under which a person is disqualified from sitting or being chosen as a Member of the House of Representatives or a Senator if he has been convicted of an offence punishable by imprisonment for one year. He regarded it as absurd that a member could be disqualified from sitting in Parliament but still able to vote on the choice of his successor.

3.56 Being under sentence of imprisonment quite clearly precludes a Member from the exercise of his parliamentary duties and has the added effect of depriving his constituents of representation in the Parliament. These practicalities suggest that very different considerations should apply when the qualifications of a person to sit are under consideration to those that apply in considering the right to exercise the franchise. As Sir John Carrick pointed out, there are a number of incongruities associated with the application of the disqualification. The Senate Standing Committee on Constitutional and Legal Affairs in its report on the Qualifications of Members of Parliament[1] also identified these incongruities. They included -

- the lack of consistency in attaching penal sanctions to an offence. The Senate Committee referred to the Australian Law Reform Commission's Interim Report on Sentencing which identified 'a lamentably confused morass of sanctions which lack any apparent consistency, or planning' under Commonwealth legislation alone;

- the fact that certain serious offences were punishable on conviction by a fine only. For example, section 231 of the Income Tax Assessment Act 1936 which then imposed a penalty of a $1000.00 fine without the option of imprisonment for fraudulent attempts to avoid assessment on tax;

- different penalties for similar offences as between different jurisdictions and, within the same jurisdiction, inconsistencies attaching to the same offence under different Acts, and

- the inconsistencies and incongruity which could arise because of the sentencing policy adopted within a jurisdiction, which may differ very substantially from the policy operating in another jurisdiction. Thus prisoners in some cases may have their sentences suspended and remain at liberty unless and until they breach the terms of a bond whereupon the suspended sentence comes automatically into operation. The person is at large but under sentence and therefore, subject to the disqualification. In other cases, the offender is discharged conditionally, the conditions being expressed in a bond to which he must adhere for a specified time. In this case the offender is not under sentence and therefore not subject to the application of the provision.

3.57 It is the view of the majority of the Committee that the disqualification can apply in an inconsistent and inequitable way and serves no useful purpose. It considers that an offender once punished under the law should not incur the additional penalty of loss of the franchise. We also note that a principle aim of the modern criminal law is to rehabilitate offenders and orient them positively toward the society they will re-enter on their release. We consider that this process is assisted by a policy of encouraging offenders to observe their civil and political obligations.

Recommendation 23

3.58 **That paragraph 93(8)(b)of the Electoral Act, relating to the disqualification from enrolment and voting of a person who has been convicted and is under sentence for an offence punishable under the laws of the Commonwealth or a State or Territory by imprisonment for 5 years or longer should be repealed.**

3.59 The AEC also raised with the Committee, the question of the enrolment of prisoners. The AEC received advice from the Attorney-General's Department regarding the definition of 'real place of living' for the purposes of prisoners enrolling. Prisoners who are currently enrolled for other than a gaol address, and intend to return to that address after their release from prison, can remain enrolled for that address. Prisoners who have no fixed intention of returning to the address for which they are enrolled, or are unenrolled, can enrol in respect of the gaol address. However a prisoner who has a fixed intention of returning to his former address ('real place of living') is not entitled to enrol for the gaol address unless the gaol is within the same subdivision as his 'real place of living'.

3.60 One problem in this regard is that prisoners in some States tend to be moved from gaol to gaol at frequent intervals. Thus their enrolments quickly become out-of-date. Alternatively they may never satisfy the one month residential qualification (in much the same way as itinerants).

3.61 Joint roll arrangements do not cause any problems with regard to the enrolment of prisoners. In those States that have different franchise entitlements for prisoners, affected prisoners are shown on the Roll with either a 'Commonwealth only' or 'State only' indicator.

3.62 The AEC has concluded that the problem could be overcome by providing specifically in the Act, a hierarchy in which a prisoner may enrol or retain his enrolment. The AEC stress that the prisoner should not have a choice within the categories specified but they should operate hierarchically. The AEC also raised the question of the method of voting which should be applied. The choice was between postal voting and voting at a mobile polling booth. The Committee favours mobile polling and is re-enforced in this conclusion by the consideration that if Recommendation 23 is accepted then prison populations will be largely entitled to the franchise. The Committee recommends -

Recommendation 24

3.63 That the Electoral Act be amended to permit mobile polling in gaols declared for that purpose and that the AEC take up with the relevant State prison authorities the question of introducing mobile polling in gaols - with a view to the introduction of mobile polling in all gaols at the earliest opportunity, and that the Electoral Act be amended to provide that a prisoner may enrol or retain his enrolment in -

(a) the Subdivision in which he was enrolled prior to sentence; failing this

(b) the Subdivision for which he was entitled to enrol prior to sentence; failing this

(c) the Subdivision of the prisoner's next of kin; failing this

(d) the Subdivision of birth, and failing this

(e) the Subdivision with which the prisoner has the closest connection.

Enrolled Voters Leaving Australia

3.64 Sections 94 and 95 were inserted in the Electoral Act replacing provisions in the previous legislation protecting the voting rights of unenrolled members of the Defence Force serving outside of Australia. Electors who are temporarily leaving for overseas but who intend to return to live in Australia within 3 years of their departure have their voting rights protected. Previously the elector would lose voting rights unless s/he had a fixed intention of returning to live at the address for which s/he was enrolled immediately prior to departure. Such an elector may now apply to the Divisional Returning Officer for the Division in which s/he is enrolled to be treated as an eligible overseas elector. The Roll is then amended accordingly. While the elector is entitled to this status s/he remains enrolled for the Division in which s/he was enrolled before departing. The elector must leave Australia within one month of making the application and the entitlement lasts only for one month after return. Provision is made for an extension of the period of eligibility. The spouse or child of an overseas elector may apply for enrolment from outside Australia upon turning 18 years of age.

Itinerant Electors

3.65 Section 96 deals with itinerant electors defined as a person who is in Australia but does not reside in any subdivision and is by reason of that fact alone not entitled to have his name on the Roll for any subdivision. Such a person can apply to have his name enrolled for the subdivision in that State where (a) the person's next of kin is enrolled; (b) where the person last had an entitlement to be enrolled; (c) the subdivision in which the person was born; or (d) the subdivision with which s/he has the closest connection.

3.66 The following tables indicate that the new provision has served a useful purpose to date.

TABLE 2

State	Claims to May 85	Enrolments to May 85	Enrolments to close of Roll	No. voted
NSW	114	96	67	54
VIC	195	162	115	82
QLD	108	108	69	63
WA	110	107	74	66
SA	61	59	44	44
TAS	22	21	17	14
ACT	9	9	9	8
NT	10	10	10	7
AUST	629	572	405	338

TABLE 3

State	s.96(1)(c): Subdivision of next of kin	s.96(1)(d): Subdivision of last enrolment	s.96(1)(e): Subdivision of birth	s.96(1)(f) Subdivision of closest connection
NSW	48	33	1	14
VIC	88	54	3	17
QLD	48	31	2	27
WA	39	33	4	31
SA	19	25	1	14
TAS	9	10	-	2
ACT	5	3	-	1
NT	1	5	-	4
AUST	257	194	11	110

3.67 The AEC provided the Committee with information regarding the occupations in respect of which electors have sought enrolment as itinerant voters.[2]

3.68 There are two amendments which the Committee has been asked to consider. Both relate to the Subdivision in which an itinerant may be enrolled. As the options (c) to (f) in sub-section 96(1) stand at the moment the choice of subdivision is a matter for the elector. This was never the intention. There was to be no room for choice or discretion as between the grounds which were intended to have a hierarchical application. In fact the section has been administered hierarchically. The AEC also suggested a change in the hierarchical order to bring it into line with that recommended for prisoners. The Committee recommends -

Recommendation 25

3.69 That sub-section 96(1) of the Electoral Act, relating to the registration of itinerant electors be amended to make it clear that the registration of an elector in respect of an electoral division should be in the following sequential order, namely -

(a) the Subdivision in which the elector last had an entitlement to be enrolled; failing this

(b) the Subdivision of the elector's next of kin, and failing this

(c) the Subdivision of birth, and failing this

(d) the Subdivision with which the elector has the closest connection.

and that the elector does not have a choice as to the criteria which should govern the electoral Division in which he is to be enrolled as an itinerant elector.

3.70 The effect of paragraph 96(10)(a) is that an itinerant elector who fails to vote can convert to an ordinary elector provided he lived in the Division for which he was enrolled as an itinerant at the time he lost his entitlement as an itinerant. This conversion results from the Australian Electoral Officer cancelling his itinerant annotation. By implication a duty is imposed on the Australian Electoral Officer by the Act to pursue all avenues to determine whether the elector resides in the Division before taking action. No matter how energetically these avenues are pursued the Australian Electoral Officer is rarely in a position to say definitely that the person does or does not live in the Division. As a result he has open to him two courses of action: (1) to cancel the enrolment while he still has doubts about the person's place of living, or (2) cancel the annotation and, in doing so, run the risk of retaining on the Roll for a subdivision as an ordinary elector a person who has no right to be on that Roll.

3.71 The AEC suggested that this problem might be overcome by an amendment to paragraph 96(10)(a) to provide that the itinerant elector status annotation be cancelled and the elector retained on the Roll, only if the Australian Electoral Officer is aware of the elector's residence within the Division at the relevant time. In any case in which the Australian Electoral Officer has no knowledge of the elector's residence he would cancel the enrolment of the itinerant under paragraph 96(10)(b). The Committee supports this suggestion and recommends -

Recommendation 26

3.72 **That paragraph 96(10)(a) of the Electoral Act be amended to provide that the itinerant status annotation, as distinct from the enrolment, is cancelled only in cases where the Australian Electoral Officer is aware that the elector resides in the Division.**

Physically Handicapped Electors

3.73 Another of the 1983 amendments, sub-section 98(3), was designed to extend the franchise so that physically handicapped electors not able to sign a claim card could still secure enrolment. Provision was also made for them to obtain registration as General Postal Voters.

3.74 The following tables indicate the extent to which the physically handicapped have availed themselves of the provision.

TABLE 4

State	Enrolments to May 85	Registration as GPV to May 85	Enrolments to close Roll	Registration as GPV to close of Roll	No. voted
NSW	80	80	35	32	31
VIC	75	157	42	42	34
QLD	235	235	25	25	5
WA	15	15	12	11	12
SA	9	7	3	3	2
TAS	5	5	5	5	4
ACT	2	2	1	1	1
NT	3	3	3	3	3
AUST	424	504	126	122	92

Aboriginal Electoral Education Program (AEEP)

3.75 The Joint Select Committee on Electoral Reform in its *first report, September 1983, recommended that the provisions of* the Electoral Act exempting Aboriginal people from the compulsory enrolment provisions of the legislation, be repealed. Accordingly, the 1983 amendments repealed sub-section 42(5) of the old Act. This had the effect of making all Aboriginal people subject to the compulsory enrolment provision.

3.76 The amendments were made against a background in which the Australian Electoral Office had for some years been conducting a program of information/education among Aboriginal people in Western Australia, South Australia and the Northern Territory - particularly in the more remote areas. The need for such a program arose initially from a recommendation of the 1961 **House of Representatives Select Committee on Voting Rights for Aboriginals** which found that 'every help must be given in their enrolment and political education'.

3.77 The first program of electoral education for Aboriginal people commenced in Western Australia on 3 September 1963. The program explained the enrolment and voting process with the use of visual aid material. Mock elections were conducted to demonstrate the polling process and those who wanted to enrol were given the opportunity to do so. Some 4,000 Aboriginal people were contacted at 90 centres throughout the State and approximately 1,000 electors were enrolled on the spot during a 3 month period. During the 1960s and early 70s staff from the Kalgoorlie Divisional Office conducted a refresher course before each election.

3.78 Following a disputed by-election for the W.A. State District of Kimberley in 1977, the W.A. Department of Education began an education program funded by the Department of Aboriginal Affairs. This lead the Australian Electoral Office to review its own activities and the Aboriginal Electoral Education Program was the result. It progressively introduced into South Australia and Western Australia in 1979, the Northern Territory in 1981 and Tasmania in 1985. A consultative committee, comprising representatives of the Department of Aboriginal Affairs and the National Aboriginal Education Committee, meets regularly to review the operation of the program and provide advice where appropriate. The program's primary aim is to develop an understanding of Australia's parliamentary and electoral systems amongst Aboriginal people. The program also undertakes enrolment and Roll cleansing activities.

3.79 At present there are 10 Aboriginal and non-Aboriginal field staff and 3 Central Office staff working full-time on the program. The field staff are engaged on a 2-year temporary basis. The field staff also employ local Aboriginal people on a part-time basis. The program uses audio-visuals as the primary education medium. A new range of curriculum materials has been developed by the Institute of Applied Aboriginal Studies (W.A. C.A.E.) with a complementary series of video programs. The field staff also produce local materials in their areas of operation.

3.80 In rural and remote areas, the field staff visit a community or town for up to 2 weeks to conduct electoral education and enrolment/roll cleansing. They also operate in settled urban areas.

3.81 The costs of AEEP in the financial year 1983/84 was $723,542 plus $199,305 in salaries for the field staff and Central Office staff solely engaged on the implementation of the program. In 1984/85 the figure was $745,796 plus $403,871 in salaries.

3.82 Prior to the 1983 amendments it was an offence to solicit Aboriginal enrolment. Accordingly, the field staff would only assist Aboriginals to enrol on request. They did, however, engage in such matters as Roll cleansing, removal of duplicate enrolments, and correction of spelling of names.

3.83 Field staff now actively encourage enrolment and have 'enrolled' about 2900 Aboriginal people as well as making some 850 Roll cleansing notations for action by the Divisional Returning Officers during the period March - November 1984. Figures for January - May 1985 are 868 and 630 respectively. They have also widely distributed electoral claim cards and indications are that some of these are completed and returned in due course. The number is unknown however.

3.84 While the program has been found to be effective in terms of enrolment, voter turn out and formal voting by a number of independent studies, some contrary views have been expressed.

3.85 The Department of Aboriginal Affairs submitted that the Aboriginal Electoral Education Program (AEEP):

- had little if any Aboriginal input into the development of proposals;
- contained material which was inappropriate for many Aboriginals;
- did not provide the type of information needed by Aboriginals;
- that a mechanism of ongoing consultative meetings between DAA, NAEC and the AEC should be established in an attempt to overcome the problems;
- the Electoral Education Program should be ongoing and intensified to include the employment of additional officers who are familiar with particular districts and can visit all the communities involved on a regular basis; and
- formal training of Aboriginal polling staff should be carried out in communities as part of the Program, thereby providing the AEC with a pool of potential polling staff. Resource material should be flexible enough for both urban and traditional communities and be prepared in conjunction with appropriate resource organisations such as the NAEC.[3]

3.86 The AEC noted in its submission that the recommendation of the first Electoral Reform Committee that the enrolment system needs to be able to accommodate Aboriginal clan or tribal names and/or their European names - also Aboriginal concepts of real place of living still remain to be addressed.

3.87 The Committee took evidence from Dr Peter Loveday of the Australian National University North Australia Research Unit. Dr Loveday was asked to comment on the points of criticism by D.A.A. On many of the matters Dr Loveday did not feel qualified to express an opinion. He agreed with the proposal that Aboriginal polling staff should be recruited and trained within communities. On the DAA suggestion that the resource material used by the team should be flexible enough for use by both urban and rural communities he commented that the material, to be useful, had to build on people's existing knowledge. It was his experience that Aboriginal people were more knowledgeable about electoral matters than was often assumed. He pointed out that as well as experience of voting in federal and Northern Territory elections they were also involved in local elections within their own communities.

3.88 On the question of accommodating Aboriginal clan/tribal names within the enrolment system he commented -

> ...that anybody who has been out in the field knows that the Electoral Rolls in the Northern Territory, which is the area I know best, already do accommodate both Aboriginal and European names. The suggestion may be that the AEC could insist on one or other or both kinds of names being recorded on the Rolls. My comment on that is that if that is what is meant, this could add to everyone's difficulties. I think the present arrangement whereby people are put on the Rolls, both in the Northern Territory and throughout the Commonwealth, according to the names they are currently using, is the appropriate one and people should not be compelled to produce certain kinds of names at the whim of the Electoral Commission.[4]

3.89 He also dealt with the matter of the Aboriginal concept of real place of living. In its 1983 report the Committee recommended that account should be taken of the Aboriginal concept of real place of living. Dr Loveday told the Committee -

> First, I think that a lot more is being made of this than is necessary for the purposes of enrolment and voting entitlement. Secondly, there are some difficulties, but they are certainly not conceptual difficulties and I think that is a somewhat fanciful word in this context. Certainly Aborigines have more than one place of residence for long periods, depending on the season. That is a reference to people who are living in the bush, but this is not by any means the largest group of Aborigines.[5]

3.90 Study undertaken by Dr Loveday and his teams on population movement within the Northern Territory tended to show that the pattern of movement of Aboriginal people was not greatly different to that of people of European descent living in the Territory. He had not found, in conversation with Aboriginal people, a problem of identifying 'place'. The concept of place was no different to that understood by Europeans.

3.91 Dr Loveday's overall conclusion was that the AEC had produced material that was accurate from the point of view of the electoral law and was culturally appropriate. He did not agree with DAA that greater imput from Aboriginal organizations was necessary. 'It is not quite clear what DAA thinks are the special resources that Aboriginal organisations can bring to electoral education. As far as I understand the matter, the AEC and AEEP are both well aware of the need for very close co-operation. I think DAA is making a fuss there about something that is really quite well in hand'.[6]

Provisional Enrolment

3.92 To encourage and facilitate participation by young, people in the electoral process, the 1983 amendments introduced provisional or 17 year old enrolment. This did not mean that 17 year olds could vote as such but ensured that by securing enrolment before the close of the Rolls they would be able to vote if they attained age 18 between the close of the Rolls and polling day.

3.93 The relevant provision of the Electoral Act is section 100. The following table is an indication of the extent to which 17 year olds have availed themselves of the new facility.

TABLE 5

State	Estimates of 17 year olds at May 85 (a)	Enrolment at May 85	Estimates of 17 year olds at Close of Roll (a)	Enrolment at Close of Roll	No. turned 18 to Polling Day	No. Voted
NSW	84,680	174	85,010	1625	1423	1351
VIC	69,563	323	69,159	2194	1450	1307
QLD	42,727	23	42,060	417	413	386
WA	23,745	351	23,448	651	396	390
SA	22,379	89	21,998	426	293	284
TAS	7,356	27	7,301	224	215	213
ACT	4,305	85	4,151	153	46	43
NT	2,388	23	2,382	81	27	23
AUST	257,143	1095	255,509	5771	4263	3997

(a) These estimates will include some who will not have citizenship qualifications for enrolment.

3.94 The AEC raised two matters requiring attention:

- an amendment to section 100 to allow an Australian Electoral Officer to receive a claim in the same way as ordinary claims, and
- to amend the Act to substitute the heading "Claims for Age 17 Enrolment" as the present heading causes confusion.

3.95 The Committee has noted that the States have yet to follow the initiative of the Commonwealth in providing for provisional enrolment for 17 year olds. The Committee considers that provision for 17 year olds to enrol provisionally was a

valuable innovation which should be adopted for State elections. The Committee noted some confusion at the 1984 Federal Election when provisional electors who had not turned 18 years of age attended to cast section 235 'provisional votes' - obviously the terminology 'provisional vote' suggested to them a right to vote, contrary to the fact.

Recommendation 27

3.96 (a) That section 100 of the Electoral Act be amended to enable an Australian Electoral Officer to receive a claim for age 17 enrolment in the same way as ordinary claims and to substitute the heading 'Claims for Age 17 Enrolment' for the present heading to section 100.

(b) That the Commonwealth request State Governments to co-operate by providing for age 17 enrolment in relevant State legislation to reduce inconsistencies in Commonwealth and State enrolment procedures.

Wrongful Enrolment

3.97 Section 101 of the Electoral Act lays down a procedure where an elector entitled to enrolment for a Subdivision may have his name placed on the Roll for the Subdivision or an enrolment transferred to a new place of living. In relation to the provision made by section 101 the AEC stated -

> It may well be that the Commission, and before it the Australian Electoral Office, have relied excessively on the honesty and integrity of claimants for enrolment and witnesses to their claims. Continued acceptance of the assumption in Commonwealth and State electoral administration that the penalties for false statements would keep people honest may no longer be warranted. Non-voter action in respect of the 1984 elections is bringing to light too many cases of 'wrongful' enrolment - for example, as at 21 June in New South Wales and Victoria 292 and 324 'electors' respectively replied to non-voter notices stating that they had not voted because they were not Australian citizens. Having regard to the nationalities involved some of these will probably be British subjects who were on the Rolls on 26 January 1984 and thus will have retained their franchise notwithstanding that they had not taken out Australian citizenship. However, most of them will be people who had not become naturalised.

3.98 The AEC observed that to check the validity of every claim for enrolment would require massive deployment of resources. If resources were so deployed the result would be delays in processing and finalising claims. The AEC proposed that it conduct spot checks on a percentage of claims and sought the Committee's support for this proposal.

3.99 The Committee has given consideration to this proposal and also to other means whereby this problem may be overcome. An occasion on which newly naturalised Australian citizens can be enrolled as electors is the citizenship ceremony itself. The AEC has staff in the States and Territories and could arrange for Divisional Returning Officers or other AEC staff to attend citizenship ceremonies in their Divisions with the object of enrolling as many newly created Australian citizens as possible. For this to be practicable it would be necessary to ensure that the AEC was adequately funded to perform this additional function and that funds were available to cover overtime and other costs that would be incurred.

3.100 The Committee also notes that, since its submission on this matter was made, the AEC has redesigned the Electoral Claim Card which now includes a question asking the claimant to indicate whether or not s/he is an Australian citizen. This enables the AEC, in checking the claim, to identify those who indicate no. The Committee endorses this development. It is also considered that Commonwealth Departments possessing information that would assist the AEC in cross checking citizenship qualifications of applicants for enrolment should make that information available to the AEC where an applicant's entitlement to be enrolled is in question. The Committee recommends -

Recommendation 28

3.101 That in order to ensure that claimants for enrolment as electors under section 101 of the Electoral Act are entitled to be so enrolled by virtue of being Australian citizens that -

(a) officers of the AEC attend citizenship ceremonies to facilitate the electoral enrolment of new Australian citizens, and funds should be provided to the AEC to cover overtime, where necessary, and other essential costs incurred in implementing this recommendation, and

(b) that the electoral claim card continue to contain a question to claimants as to whether they are Australian citizens; that the AEC conduct spot checks to ensure the accuracy of responses made to this question by claimants, and that Departments of State possessing the information needed by the AEC in conducting such checks should make that information available to the AEC.

Processing of Claims for Enrolment

3.102 The 1983 amendments made provision for an elector to lodge a claim for enrolment at any Divisional Returning Office in Australia. This creates a problem at the time of closure of the

Roll because of the need for speed in processing claims to produce the final Roll. This position would be improved if:

- any Divisional Returning Officer in a State could process all claims for that State received by him or any other Divisional Returning Officer in his State (in practice - and time permitting - this would be done in consultation with the appropriate Division), and

- the Australian Electoral Officer could process all claims for his State received by him or any other Divisional Returning Officer in his State or by Australian Electoral Officers and Divisional Returning Officers in other States.

3.103 However, an amendment of the Act would appear to be required before this can be done. It is recommended that the necessary provisions be included in sub-sections 101(2) and 101(3) along the lines that, where Rolls are maintained pursuant to section 111, then in the period between the public announcement of the election or the issue of the writs - whichever is the earlier, and the close of the Rolls, Divisional Returning Officers and Australian Electoral Officers may process claims in the manner indicated. The Committee recommends -

Recommendation 29

3.104 **That sub-sections 101(2) and 101(3) of the Electoral Act be amended to ensure that, where Rolls are maintained pursuant to section 111, a Divisional Returning Officer and Australian Electoral Officer may process claims received for enrolment irrespective of where received, during the period between the announcement of an election or the issue of the writ and the close of the Rolls.**

Silent Enrolment

3.105 Section 104 of the Act provides that persons, the publication of whose addresses on the Roll would endanger the personal safety of themselves or their families, may request the Divisional Returning Officer that their addresses not appear on, or be deleted from, the Roll. However, in the absence of complementary State and Northern Territory legislation there were problems which made this provision unworkable.

3.106 In the 4 Joint Roll States (NSW, Vic, SA and Tas) only 1 Roll and 1 enrolment are maintained for Commonwealth and State purposes. This effectively meant that, for an elector to become a silent enrollee for Commonwealth electoral purposes, he would be in breach of the State law which would still require his name to be on the State Electoral Roll.The AEC instructed its staff handling requests from electors for silent enrolments to inform such electors that, because of the differences in Commonwealth and State legislation, their names and addresses would remain on

the Roll until the State legislated to provide also for silent enrolment. The present position is that, with the exception of New South Wales, all States now have a provision for silent enrolment.

3.107 In the Northern Territory the Commonwealth Roll is the de facto roll for the Territory so that the present absence of a Territory provision for silent enrolments does not give rise to too many problems of elector identification. In the Australian Capital Territory there is only the Commonwealth Roll and consequently silent enrolments have not been a problem.

3.108 The following table indicates the use that has been made of the facility.

TABLE 6

State	No. Applications Refused to May 85	No. Silents May 85	No. Silents at close of Roll	No. Voted
NSW	2	95	77	77
VIC	2	21	10	10
QLD	NIL	28	23	22
WA	NIL	44	35	32
SA	3	20	14	14
TAS	NIL	15	15	15
ACT	NIL	8	9	9
NT	NIL	3	3	3
AUST	7	234	186	182

3.109 The Commission has sought advice from the Attorney-General's Department on available grounds for exempting access to documents under the FOI Act relating to any silent enrolled electors. The Department's preliminary view was that the AEC could claim exemption for the documents under paragraph 37(2)(c), and sections 41 and 45. However, it considered that paragraph 37(2)(c) which provides:

> A document is an exempt document if its disclosure under this act would or could be reasonably expected to - ...
>
> (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety

clearly exempts the provision of silent enrolment details covering those persons in certain occupational groups who consider themselves to be in danger of violence.

3.110 The AEC raised the question of the extent to which this enrolment facility should be advertised. Would, for example, extensive advertising lead to the facility being abused. The AEC sought the Committee's views on this question.

3.111 There appears to be a particular problem regarding voting by silent enrollees. It arises from the fact that, in view of the small numbers involved, the vote of a silent elector is capable of being identified so long as he or she is a declaration voter and the ballot papers continue to be labelled 'section 237 ballot paper'.

3.112 To overcome any possible breach of secrecy of their vote, the AEC suggested that the Act should be amended to provide that silent electors should only vote by post and they be automatically entered on the Register of General Postal Voters. This it is said is likely to be as much in the interest of the silent electors as of Divisional and Polling staff - in some States all polling booths were unnecessarily 'prepared' to handle silent elector declarations.

3.113 Adoption of this suggestion would, of course, mean that silent electors would be the only category of electors in Australia, capable of attending at a polling booth, who were required to vote by post. The Committee concluded that advertisement of the availability of the right to register as a silent voter should not be confused with determining the merits of the claim when made. Responsible authorities should be told of the facility (ie police, courts etc).The Committee recommends -

Recommendation 30

3.114 **That silent voters should be able to register as postal voters but should still have the right to cast a declaration vote.**

Correction of the Roll

3.115 Section 105 makes provision for alteration of the Roll and authorises the Divisional Returning Officer to alter the Roll for which he is responsible in order to correct any mistake or omission in the particulars of the enrolment of an elector, on the written application of an elector, altering the name or address of the elector, removing the name of a deceased elector, removing a superfluous entry, re-instating the name of an elector removed by mistake, to correct entries where a street name or other part of an address is changed and, to correct errors where the elector has been enrolled wrongly pursuant to a claim.

3.116 Section 106 provides that where an elector is incorrectly enrolled on the basis of a false statement in his claim the Divisional Returning Officer, on receipt of a certificate from the Australian Electoral Officer setting out the true facts, may correct the Roll accordingly.

3.117 The legislation then makes provision for the Divisional Returning Officers to be furnished with information regarding deaths and lists of convictions (sections 108 and 109) and requiring that officer to take action to correct the Roll.

Objections

3.118 The Electoral Act deals with objections in Part IX. Objection action relating to an elector's name being on the Roll for the most part originates from two main sources: habitation review activity and non voter action. Objections may, however, be initiated by members of the public.

3.119 The protection of an elector's franchise is important and the law prescribes detailed procedures (see sections 116-118) which the AEC is required to follow before it can delete from the Electoral Roll the name of any person who appears to have lost entitlement for enrolment.

3.120 *Where a Divisional Returning Officer becomes aware that* a person appears to have lost his qualifications for his current enrolment the law requires the Divisional Returning Officer to issue a formal notice of objection. That notice advises the elector of the receipt of information suggesting his loss of eligibility and asks the elector to show cause why his name should not be removed from the Electoral Roll for the address specified. The law further provides that an objection shall not be good unless it claims that the elector has been absent from the subdivision (in which that address is located) for at least one month.

3.121 In most cases the Notice of Objection procedure follows advice from the review officer or electoral agent that an elector has permanently left the address for which s/he is enrolled. Where Divisional Returning Officers receive non-attendance cards on which householders have crossed out the names of electors who have left the address they institute objection action.

3.122 Following each Federal election or by-election, the Divisional Returning Officer sends out non-voter notices to electors who are not marked-off as having voted. In cases where replies have not been forthcoming the Divisional Returning Officer forwards at least two reminders. If these electors still fail to respond the Divisional Returning Officer arranges, if practicable, for visits to check if the elector is still at the address. Where it appears that the electors have moved, notices of objection are forwarded.

3.123 *Where a Divisional Returning Officer removes an* elector's name from the Electoral Roll in error the law protects the right of the elector to exercise his franchise in the event of an election. An elector whose name is not on the Roll when s/he attempts to cast his vote may apply for a provisional vote under section 235 of the Electoral Act. Provision is of course made for reinstatement of an elector's name on the Roll should s/he have been inadvertently removed by objection.

3.124 Section 116 provides that where an objection is lodged against an enrolment the Divisional Returning Officer shall give notice of the objection to the elector concerned. The AEC legal advice is that the words 'Notice of Objection' should legally appear on the notice forwarded to the elector. The AEC considers that these words are too stark and not particularly meaningful to the elector and proposes an amendment to sub-section 116 which is designed to overcome this problem while retaining the substance of the present provision. The AEC proposed that section 116(1) be amended by insetting the words 'shall forthwith give notice to the elector concerned of his intention to remove his name from the Roll and set out the grounds in the objection'. The Committee accordingly recommends -

Recommendation 31

3.125 **That section 116 should be amended by insertion of the words 'shall forthwith give notice to the elector concerned of his intention to remove his name from the Roll and set out the grounds in the objection'. This recommendation is in addition to the Recommendation 18(c).**

Endnotes

1. Parliamentary Paper No. 131 of 1981.
2. Transcript of Evidence at pages 562 to 566.
3. Transcript of Evidence at page 1074
4. Transcript of Evidence at page 1576
5. Ibid.
6. Transcript of Evidence at page 1586

CHAPTER 4

REGISTRATION OF POLITICAL PARTIES AND CANDIDATES

4.1 The amendments to the Electoral Act made in 1983 established 2 schemes of registration, one for political parties and one for candidates and Senate groups. The party and candidate registration schemes are provided for in Parts XI and XII of the Electoral Act. The legislative schemes are based on the recommendations made by the Joint Select Committee on Electoral Reform in its First Report. The first election at which the schemes applied was the 1984 General Election.

4.2 The AEC has established a unit in its central office in Canberra to administer Part XX, Funding and Disclosure, which also administers Parts XI and XIII, the Registration of Parties and Candidates.

Party Registration Scheme

4.3 A Register of Political Parties has been established under Part XI of the Act.

4.4 A party which registers under Part XI of the Act gains the following benefits:

- an entitlement to claim public funding in respect of the votes cast for its endorsed candidates and Senate group if they receive the qualifying threshold of support;
- an entitlement to have the party's name (or abbreviation) printed on ballot papers adjacent to the names of its candidates/group, and
- an entitlement to receive, without charge, copies of the electoral roll and habitation index for each State or Territory in which a branch or division of the party is organised.

4.5 Only eligible political parties may apply for registration. Under section 4 of the Electoral Act, a political party is defined as 'an organisation the object or activity, or one of the objects or activities, of which is the promotion of the election to the Senate or to the House of Representatives of a candidate or candidates endorsed by it'. To be eligible to apply a political party must either:

- be a parliamentary party defined as a party, at least one member of which is a member of the Commonwealth Parliament or of a State or Territory legislature or assembly; or
- have at least 500 members.

4.6 Applications for party registration must be made to the AEC and lodged at its principal office in Canberra, any State capital or Darwin.

4.7 Applications for registration are publicly notified in the Gazette and press. A one month period is allowed for objections to the registration of the party to be lodged. A determination is then made by the AEC or its delegate and, if the application is successful, the party is registered. Registration is publicly notified by advertisement in the Gazette. No action may be taken on any application for party registration from the issue of a writ for a House of Representatives or Senate election until the date fixed for the return of the writ.

4.8 Provision is made for changes to the Register and for de-registration of political parties either (a) voluntarily, (b) where a party fails to endorse a candidate in the first 4 years of its registration or (c) where the AEC is satisfied that the party has ceased to exist, ceased to have 500 members (if not a parliamentary party) or the party's registration was fraudulently obtained.

4.9 Provision is made for review of a decision to grant or refuse registration, to make or not to make a change to the Register, or to de-register a party on grounds other than (a) or (b) in the previous paragraph. Where the decision is made by a delegate, an application for review may be made to the AEC; where the decision is made (either originally or on review) by the AEC, an application for review may be made to the Administrative Appeals Tribunal.

4.10 The Register is available for public inspection at the AEC's principal office in Canberra and, by arrangement, in the State capitals and Darwin.

Registration of Candidates and Senate Groups

4.11 Part XII of the Act establishes a Register of Candidates for each Senate election and general election or by-election for the House of Representatives. To qualify to have party affiliation printed beside their names on the ballot paper each candidate must be registered under Part XII and the party must be registered under Part XI. Candidates not endorsed by registered political parties must be registered in order to receive public funds or to have the word 'Independent' printed next to their names on the ballot papers.

4.12 Senate groups endorsed by registered political parties must be registered to have the registered name or abbreviation of the party printed on the ballot papers adjacent to their names and to have the name or abbreviation (or a combination of names if the group is jointly endorsed) adjacent to any group voting ticket square. Senate groups not endorsed by a registered political party must be registered in order to receive public funds.

4.13 Candidates who are members of a Senate group may register that group, but are not entered individually in the Register. Candidates or groups are eligible to apply for registeration if they have announced their intention to be candidates or propose to stand as a group at the election. Applicants notify the AEC of their candidacy and are then entered in the Register. Provision is made for alteration to the Register and for de-registration voluntarily or on the request of a party's registered officer in the case of a candidate endorsed by a registered party. The Register is available for public inspection at the AEC's principal office in Canberra and, by arrangement, in the State capitals and Darwin.

Gazettal and Press Advertising

4.14 Section 132 of the Commonwealth Electoral Act requires the AEC to publish an application for party registration in the Gazette and in each State and Territory in a newspaper circulating generally in that State or Territory. When a party's application was received it was published in the Gazette - usually on the second Thursday following receipt of the application. When the issue of writs became imminent, Special Gazettes were arranged. Applications were advertised in 10 newspapers chosen with the advice of the then Australian Government Advertising Service to ensure coverage throughout each State and Territory.

4.15 From the date of gazettal of an application a one month period is set aside for objections to the party's registration to be lodged.

Objections

4.16 In the period 21 February to 1 December 1984, 31 applications attracted no objections. Sixteen objections to 10 applications for registration were received but of those only 3 relied on grounds specified in the Act. As at 1 December 1984, objections to 6 applications had been considered. In 1 case the objection was upheld and the party's registration refused.

4.17 Initially the practice adopted in relation to objections was to advise applicants of the substance of objections only where the AEC felt that some investigation would assist it in making a determination. As further cases were dealt with, questions relating to access under the Freedom of Information Act and the rights of applicants to know the case put against their registration arose. The AEC revised its procedures and now advises applicants of any objections lodged, indicating those which are made on grounds set out in the Act and which therefore need to be given due consideration when their application is being determined. An opportunity is given for applicants to comment on objections.

4.18 In its submission to the Committee, the AEC identified a number of matters requiring attention.

Eligible Political Parties - 500 Members

4.19 The Act at present does not define a 'member' of a political party for the purposes of section 126. Under paragraph 126(1)(c) an application from a political party other than a parliamentary political party is required to be made by 10 members. An eligible political party is defined in sub-section 123(1) as, inter alia, a political party other than a parliamentary party, that has at least 500 members. As there are no criteria in the Act to determine the capacity of member the AEC must accept the individuals assertion of membership. The AEC suggested that the Committee devise a definition of 'member'. It also notes that some applications have been received including 'members' resident overseas which raises the question of whether members should be Australian residents. The Committee recommends that -

Recommendation 32

4.20 **That the word 'member' in the context of a political party seeking registration on the basis of 500 members should be defined for the purposes of Part XI as an elector or a person entitled to be enrolled as an elector which would include electors resident abroad but would exclude foreign citizens not entitled to enrolment in Australia.**

Eligible Political Party - Aims and Principles

4.21 Paragraph 126(2)(f) requires the application to state 'whether or not the party has or operates under a constitution' and to accompany the application with a copy paragraph 126(2)(g). There is, however, no legislative requirement that the applicant have a constitution.

4.22 Assessment of whether the applicants were a political party (as defined in subsection 4(1), namely, an organisation the objects of which is the election of candidates to the Parliament) would be simpler if the Act required a political party to have a constitution which includes a statement of the aims of the party and to supply that constitution as evidence of the party's eligibility. It is recommended that -

Recommendation 33

4.23 **That the Electoral Act be amended to require a political party seeking registration to have a constitution which includes a statement of aims and to supply the constitution as evidence of eligibility with its application for registration.**

Parliamentary Party

4.24 Sub-section 137(1) sets out the reasons, other than not endorsing candidates, for which a political party may be de-registered. Through an oversight there is no provision for de-registering a party which qualified for registration on the

basis that it was a parliamentary party and then lost its parliamentary party status. Examples are the ACT Referendum First Group and the Australian Family Movement; both parties which achieved eligibility by having a member who was a member of the ACT House of Assembly prior to that body's expiration. Other examples of parliamentary parties losing their entitlement may occur in the future. The Committee recommends that -

Recommendation 34

4.25 Paragraph 137(1)(b) be amended to include the provision that where a party ceases to be an 'eligible political party', as defined in sub-section 123(1), then the de-registration provisions should apply, that is, if a party that was registered as a parliamentary party ceases to be a parliamentary party then it would be de-registered unless it has 500 members.

Qualifications of Applicants

4.26 An application for registration by a non-parliamentary party must be made by 10 members of the party. To ensure that any such application is made with the support of the elected office-bearers of the party it is appropriate to require that the party secretary be one of those 10 members and the Committee recommends -

Recommendation 35

4.27 That the party secretary should be one of the 10 applicants for registration by a political party other than a parliamentary party.

Objections to Registration

4.28 Under section 132 the AEC is required to publish notice of application for registration, in the Gazette and in certain newspapers. Objections can be made under paragraph 132(2)(b).

4.29 The AEC has adopted a practice of notifying the applicants for registration of any objections lodged and giving the applicants an opportunity to comment on the objections. The AEC suggested that the Committee might consider it appropriate to make this practice a legislative requirement.

4.30 The AEC proposed a further amendment to facilitate public scrutiny whereby objections to registration would be made available for public inspection at the AEC's Canberra Office, as they are lodged. The Committee agrees and recommends -

Recommendation 36

4.31 That section 132 of the Electoral Act be amended to provide that applicants for registration be notified of objections to their applications and to permit the applicant to respond to the objection and that objections lodged against registration and responses to them should be open for inspection at the AEC central office.

Protection for Names of Well-known Organisations

4.32 Section 129 does not preclude the AEC from registering parties in the name of other well-known organisations.

4.33 Any new eligible political party is entitled to apply for registration and the restrictions on the name which may be registered are few. The limitation does not extend to initials. A new party might choose the initials R.S.L., R.S.P.C.A., etc. or the name of a well-known company or organisation as the party name in the hope of gaining extra votes on the strength of the association.

4.34 Some restriction on the use of names, or alternatively, an extension of the grounds for objection to allow other organisations to apply to prevent adoption of misleading names was suggested. The Committee also received representations expressing concern regarding the proposed registration of the One Australian Movement and its proposed abbreviation 'O.A.M.' which is the same as the post-nominal initials used by Australians who have been awarded the Medal of the Order of Australia. The Committee was of the view that any attempt to control the name which a political party might adopt other than through the present provision contained in section 129, would require a reconsideration of a proposal rejected in 1983. The proposal rejected was that a party could not be registered if its name or abbreviation was of a kind declared to be objectionable. Nothing has been placed before the Committee to warrant such a reconsideration. **As far as the Order of Australia is concerned the Committee is of the view that legislative action through the Electoral Act is not appropriate and if legislative protection of the Order or its designations is required then specific legislation relating to the Order is the appropriate vehicle.**

Upper/Lower Case

4.35 The AEC's practice in relation to the typestyle of entries in the Register came under criticism at the 1984 elections. The Tasmanian Branch of the Australian Labor Party lodged a complaint that the Senator Brian HARRADINE Group was highlighted on the ballot papers. It was of the view that all political affiliations ought to be shown in the same style to ensure that all candidates were treated equally.

4.36 The Tasmanian Senate ballot paper had been printed in accordance with the Act. The legislation prescribes that the names or abbreviations entered in the Register are those to be used on the ballot papers and does not require any standardised format.

4.37 The AEC suggested that the legislation prescribe the style of printing for entry in the register and on ballot papers. The Committee agrees and recommends -

Recommendation 37

4.38 **That the format of the name and abbreviation entered in the Register of Political Parties should be standardised to require all lettering to be lower case with capitals only at the beginning of each word and for initials.**

Changes to Register

4.39 Section 134 provides that registered parties may apply to effect changes to the Register. Sub-section (4) provides that where changes sought relate to change of name, changing the abbreviated name or entering an abbreviated name for the first time, the whole of the public notification and objection provisions prescribed by section 132 apply. Accordingly it is possible to re-open the question of the entitlement to registration of a party already registered. As the party's eligibility is determined at the time of original application there appears to be no reason for requiring it to undergo further challenge to its eligibility for registration where the application in question is merely a formal one. The Committee recommends -

Recommendation 38

4.40 **That where a party has already had its eligibility for registration established and applies to make some formal variation to the details of its registration its eligibility ought not be subject to further objection.**

Registered Officer's Address

4.41 Sub-section 134(1) requires application for variations to the registration to be made by, in the case of a parliamentary party, the persons identified in section 126, and in any other case three members of the party. This includes change of the registered officer's address. Where the registered officer is changing address there seems no need for an application to be signed by any one other than the registered officer. It is therefore recommended -

Recommendation 39

4.42 **That any application under paragraph 134(1)(h) of the Electoral Act to change the address of the registered officer shall be made by the registered officer.**

Register of Candidates (Part XII)

4.43 The Register of Candidates for the 1984 elections seemed to be of no practical value and yet it was established at a considerable cost in resources to parties, candidates and the AEC.

4.44 Party officials spent considerable time organising forms from their endorsed candidates in order to apply for registration. Candidates were confused by the requirement to lodge these forms in addition to those already lodged in relation to the nomination process.

4.45 Further evidence of candidates' confusion and anxiety over the registration process was obvious in the number of duplicate notifications received in different offices of the AEC and in the variety of political affiliations sought which were not identical with the registered name or abbreviation of the relevant party.The prescription of a Register of Candidates creates a complex system and a heavy workload for political parties, candidates, and the AEC for no perceived benefit. The AEC proposed the deletion of Part XII of the Act. It was clear from submissions by the major political parties that the repeal would have their support.

4.46 The requirement that a candidate go through procedures in addition to nomination to have a political affiliation or the word 'Independent' printed on the ballot papers also seems superfluous. A candidate notifies his or her candidacy in a nomination. The form could provide for the candidate to request that a political affiliation or 'Independent' be shown. Verification by the party of an endorsement so claimed could be provided for on the nomination form or by written statement by each party's registered officer to each Australian Electoral Office by the close of nominations.

4.47 In Canada, it has not been felt necessary to introduce a register of candidates for administrative or any other reasons despite the existence of public funding, political affiliations on ballot papers and a scheme whereby donors to candidates may claim tax credits. Necessary information and safeguards are provided in the nomination process. The Committee accordingly recommends -

Recommendation 40

4.48 **That Part XII of the Electoral Act relating to registration of candidates should be repealed. Upon deletion of Part XII the provision of that Part relating to verification of endorsement will need to be transferred to Part XIV - The Nominations - and the Nomination form will need to cover claims to use political party affiliations and their verification.**

Deregistration of a Party not Endorsing Candidates

4.49 Under section 136 a registered party not endorsing a candidate within the period of 4 years of registration is automatically deregistered by the AEC. It was probably not intended that liability to deregistration should only apply for the 4 years following registration but was intended that a party failing to endorse a candidate during any 4 year period after its registration should be deregistered. Section 136 should be amended to make this clear. The Committee recommends -

Recommendation 41

4.50 **That sub-section 136 (1) be amended to make it clear that a registered political party without parliamentary representation failing to endorse a candidate in any period of 4 years after its registration should be subject to automatic de-registration.**

Section 126

4.51 Sub-section 126 (2) sets out the information which must be contained in an application for the registration of an eligible political party. One of the requirements is for the application to 'set out the name and address' of the proposed registered officer and of each of the applicants. The AEC has suggested that the signature of the person who is to be the registered officer should be required on the application. The signature on the application of the person who is to be the registered officer would -

(a) be a form of consent to appointment as registered officer;

(b) provide a check for the signature required by current sub-section 146(4) as verification of endorsement of a candidate by the party, and

(c) provide a check for the signature required by current sub-section 146(6) on a letter of appointment of a deputy registered officer of the party.

4.52 The intention of the 1983 amendments was that the registered officer and the applicant or applicants ought to give an address where thay could be located by an enquirer with reasonable effort and it is not appropriate that a post-office box address be used. The Committee recommends -

Recommendation 42

4.53 **That the signature of the person who is to be the registered officer shall be required on the political party's application for registration, and that sub-section 126(2) should be amended by including a provision (such as section 332(3)) to prohibit the use of post-office box addresses for the purposes of the section.**

Section 128

4.54 Section 128 is a transitional provision, providing that for the first 3 months from the commencement of Part XI only parliamentary political parties were to be registered. Its effect is now exhausted. Sub-paragraph 132(2)(b)(iii) provided that one ground of objection to registration was that the application should not be considered by reason of section 128. That provision can have no further application.

Recommendation 43

4.55 **That section 128 and sub-paragraph 132(2)(b)(iii) of the Electoral Act be repealed.**

Section 132

4.56 Insofar as the registration process might generally speaking be said to be open to public scrutiny, section 132 should be amended so that objections to registration could be made available for public inspection at the Commission's Canberra Office, as they are lodged.

Recommendation 44

4.57 **That objections to party registration should be open to public inspection.**

CHAPTER 5

THE ELECTORAL PROCESS

The Election Timetable

5.1 Sections 151 to 154 deal with the issue of writs for elections. The amending legislation in 1983 repealed the existing provisions of the Electoral Act and substituted new procedures. These are now contained in Part XIII of the Act. Section 152 relates to the form of the writ and requires the date of the close of the rolls to be fixed by the writ in the same way as the dates for nominations, polling, and return of the writ.

5.2 Section 153 provides that a writ for the election of Senators shall be addressed to the Australian Electoral Officer for the State or Territory who shall advertise its particulars in at least 2 newspapers circulating in the State or Territory, advise each Divisional Returning Officer of the dates fixed by the writ and give such directions as appropriate to each Divisional Returning Officer in relation to the conduct of the election.

5.3 Section 154 relates to the issue of writs for election to the House of Representatives and requires that writs for a general election of the House of Representatives shall be addressed to the Electoral Commissioner. Only eight writs are issued for each general election for the House of Representatives - a writ for each of the 6 States and the 2 Territories in respect of the members to be elected from those States and Territories. All eight writs are issued on the same day. Previously for a general election, a writ was issued in respect of the election in each House of Representatives Division. The Commissioner is required to advertise the particulars of a writ in at least 2 newspapers circulating in the State or Territory, advise each Divisional Returning Officer of the dates fixed by the writ and give such directions as he considers appropriate to each Divisional Returning Officer in relation to the conduct of the election.

5.4 Sections 155 to 159 make provision for the election timetable. The date fixed for the close of the Rolls shall be 7 days after the date of the writ. The date fixed for the nomination of the candidates shall be no more than 11 days nor more than 28 days after the date of the writ and date fixed for polling shall be not less than 22 nor more than 30 days after the nomination date. The date fixed for the return of the writ shall be not more than 90 days after the issue of the writ.

5.5 The statutory period for the close of the Rolls of 7 days after the issue of the writ allowed approximately 200,000 electors to enrol or correct their enrolment in time to vote at the 1984 election.

Lodgement of Group Voting Tickets

5.6 The Act now provides that, following the draw for order on the Senate ballot paper, candidates who are grouped may within 48 hours lodge with the Australian Electoral Officer a written statement of their preference order. Under the Act as it now stands a voter is 'entitled' to apply orally for a postal vote immediately nominations close. However, at that point there will be no indication whether all or any groups intend to lodge group voting tickets or what their preference distribution will be. On the basis of the 33 days minimum election timetable from writ to polling day, nominations will always close at 12 noon on a Friday; in turn the 48 hour period will expire at 12 noon on Sunday. It is impossible for the AEC to have in divisional offices by Monday morning pre-printed Senate ballot papers and information regarding group preference allocations. To overcome this problem it is proposed that the day of nominations should be a Wednesday so that the closing time for the lodgement of group voting tickets would be 12 noon on Friday. The Committee considers that the problem will be overcome by reducing the time within which group voting tickets must be lodged and recommends -

Recommendation 45

5.7 **That the time for lodgement of the Group Voting Ticket after the close of nominations should be reduced from 48 to 24 hours.**

Statutory Period for the Return of the Writ

5.8 The statutory period for the return of the writ is currently fixed as not more than 90 days after issue.

5.9 In a letter to the Committee the Prime Minister, the Hon. R.J.L. Hawke, A.C., M.P., said:

> The 1983 amendments increased the minimum period between the issue of writs and polling day from about 26 days (for instance 1975 election) to 33 days. As the new Parliament must meet 120 days after the issue of the writs, this increase has reduced the maximum time between the polling day and the first meeting of the new Parliament. Would it be possible for the Committee to consider amendments which would add some flexibility to the date for the first meeting, for instance by increasing the period between the issue of writs and return of the writs from 90 to 100 days? Such an amendment would avoid the need for the Parliament to meet in early February if an election were held in mid to late November.

Further, the manner in which the Senate scrutiny is now conducted can mean, where there is a large number of candidates, a long delay before all Senate vacancies are filled. The Committee therefore recommends -

Recommendation 46

5.10 **That the statutory period between the issue and return of the writs should be extended from 90 to 100 days.**

Nominations

5.11 Part XIV of the Electoral Act concerns nominations of candidates. Section 163 prescribes the qualifications of a member of the House of Representatives. To be nominated a candidate must be (a) of the full age of 18 years and (b) an Australian citizen and an elector entitled to vote at the election of a member of the House of Representatives or a person qualified to become such an elector. The provision was amended in 1983 to delete the requirement that the person must have resided within the Commonwealth for at least 3 years.

5.12 Section 164 provides that a member of Parliament for a State or a Territorial Assembly shall not be capable of being nominated if, at the hour of nomination, that person was a member of such Parliament or Assembly. Before the act was amended in 1983 a State or Territory parliamentarian wishing to nominate was required to resign from the State or Territory Parliament 14 days before nominations closed. Section 165 prohibits a candidate nominating for two or more elections on the one day. Section 166 provides for nomination forms.

5.13 The Committee notes that it is still a requirement of paragraph 166(1)(b) of the Electoral Act that a candidate's nomination is to be supported by the signatures of six electors. This requirement now appears to be superfluous where a candidate is an endorsed candidate of a political party registered under Part XI. For the party to obtain registration it must either be a parliamentary party, that is a party that has returned a Member to a State or Commonwealth Parliament, or the application must be supported by the the signatures of at least 10 members of the party with evidence that the party has at least 500 members. If the Committee's Recommendation 32 is adopted, and a definition of member is inserted, then it will be a requirement that all the nominating members, as well as the 500, be electors. In these circumstances, the requirement of section 166(1) should no longer apply to registered political parties. It should continue to apply to candidates not endorsed by a registered party. The Committee recommends -

Recommendation 47

5.14 **That section 166 of the Electoral Act be amended to provide that, where a candidate for election is endorsed by a political party registered under Part XI of the Electoral Act,**

and the nomination form is signed by the Party's electoral agent, that will be regarded as sufficient compliance with the requirement of paragraph 166 (1)(b) that the form of nomination be signed by not less that 6 persons entitled to vote at the election for which the candidate is nominated.

Nomination Forms (Senate)

5.15 The AEC suggests the introduction of one form for the nomination of Senate candidates on which those who wish to be grouped may so indicate and may notify the order in which their names are to appear on the ballot paper.

5.16 Such a form could usefully serve other purposes. It is proposed that one person be responsible for signing and lodging the group voting ticket. The new nomination form could indicate the name of that person. The Committee has recommended that the political affiliation to be printed on the ballot paper be notified on the nomination form. Adoption of a single form for all these purposes would greatly streamline the obligations on grouped Senate candidates.

Recommendation 48

5.17 **That a single form of nomination for the Senate on which candidates who wish to be grouped may so indicate and may notify the order in which their names are to appear on the ballot paper be introduced; the form should also indicate the name of the candidate or person responsible for signing and lodging the group's group voting ticket.** *(See also Recommendation 40.)*

5.18 The AEC also pointed out that the present requirement that the nomination form should state the 'number on the roll' of nominators serves no useful purpose and suggested its deletion.

Recommendation 49

5.19 **That the requirement that the nomination form should state 'the number on the roll' of nominators be deleted.**

Deposits

5.20 Sub-section 170(c) deals with deposits and section 173 with their forfeiture. The Electoral Act was amended in 1983 to increase the amount of deposit to be lodged by candidates to $500 for the Senate and $250 for the House of Representatives. The deposit is refundable in the case of the Senate to a candidate who either -

(i) polled at least 4% of first preference votes cast in the election; or

(ii) was a member of a group whose candidates received in total at least 4% of first preference votes cast in the election,

and in the case of the House of Representatives, to a candidate who received at least 4% of the first preferences cast in the Division.

5.21 At the 1 December 1984 General Election 87 Senate candidates and 162 House of Representatives candidates forfeited their deposits. In respect of the Senate, 35 candidates forfeited their deposits who would have recovered them under the previous formula.[1] In respect of the House of Representatives, no candidates forfeited their deposits who would have recovered them under the previous formula. There is no reason to suppose that the groups of Senate candidates who forfeited would be inhibited from standing at subsequent elections by losing their deposits at the 1984 election.

5.22 The Committee was satisfied that the provision operated equitably at the 1984 General Election and that no change should be made either to the amount of deposit required to be paid or to the conditions governing forfeiture.

5.23 Section 174 provides that the Office of the Australian Electoral Officer for the State should be the place of nomination for Senate candidates and the Office of the Divisional Returning Officer for each Division should be the place for nominations of candidates for the House of Representatives. Twelve noon on the day for nominations is declared to be the hour of nomination and the Australian Electoral Officer and the Divisional Returning Officer for each Division are required to declare the nomination received for the Senate and the House of Representatives, respectively. Under section 177 a candidate may withdraw his consent for nomination at any time before the close of nominations and recover his deposit. Where a candidate dies before the date of election the deposit is returned to his personal representatives. Section 179 provides that where the nominated candidates do not exceed the number of vacancies to be filled the Australian Electoral Officer shall declare the candidates duly elected. The Divisional Returning Officer does the same where no more than one candidate nominates for a Division. Where the number of nominees exceeds the place or places to be filled the poll is to proceed.

5.24 Section 180 deals with the case of the death of candidates between the declaration of nomination and the polling. In the unlikely event of the death of a candidate for election to the Senate leaving no greater number of candidates than is required to be elected they are declared elected. In the event of the death of a candidate for the House of Representatives between declaration of nomination and polling the election is deemed to have failed and under section 181 a new writ for a supplementary election is issued.

Postal Voting (Grounds for Applications for a Postal Vote)

5.25 Part XV of the Act makes provision for postal voting. Section 184(1) declares an elector entitled to a postal vote to be an elector who -

(a) will not throughout the hours of polling on polling day be within the State or Territory for which he is enrolled;

(b) will not throughout the hours of polling on polling day be within 8 kilometres by the nearest practicable route of any polling booth open in the State or Territory for which he is enrolled for the purposes of an election;

(c) will throughout the hours of polling on polling day be travelling under conditions which will preclude him from voting at any polling booth in the State or Territory for which he is enrolled;

(d) is seriously ill or infirm, and by reason of such illness or infirmity will be precluded from attending at any polling booth to vote, or, in the case of a woman, will by reason of approaching maternity be precluded from attending at any polling booth to vote;

(e) is, at a place other than a hospital, caring for a person who is seriously ill or infirm or approaching maternity and by reason of caring for the person will be precluded from attending at any polling booth to vote;

(f) will throughout the hours of polling on polling day be a patient in a hospital (other than a special hospital) unable to vote at that hospital;

(g) will -

(i) throughout the hours of polling on polling day be a patient in a special hospital; and

(ii) be unable to have his vote taken at that hospital in accordance with section 225;

(h) is, by reason of his membership of a religious order or his religious beliefs -

(i) precluded from attending at a polling booth; or

(ii) precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours;

(j) is, by reason of -

(i) serving a sentence of imprisonment; or

(ii) being otherwise in lawful custody or detention,

precluded from attending at any polling booth to vote.

5.26 The 1983 amending legislation added (e), (f), (g) and (j). The legislation was amended to allow for postal vote applications to be made either orally or in writing.

5.27 Despite the extension of the grounds for application for a postal vote provided for in the 1983 amendments to the Electoral Act, the Committee's attention has been drawn to yet another category of electors who arguably should be eligible for a postal vote. Sub-section 345 of the Act requires employers, subject to certain qualifications, to grant leave of absence to employees to enable them to vote; however section 345(3) exempts from this requirement 'any elector whose absence may cause danger or substantital loss in respect of the employment in which he is engaged'. At present, these people are not entitled to a postal vote, and may thereby be effectively disenfranchised. People in this category include, for example, air traffic controllers. Self-employed people who would face a loss of business if they took time off to vote are in an analogous position. The Committee recommends -

Recommendation 50

5.28 **That sub-section 184(1) of the Electoral Act be amended to give a right to a postal vote to an elector who will be engaged on polling day in his employment or occupation and whose absence to vote may cause danger or substantial loss in respect of that employment or occupation.**

5.29 A written application must be in the approved form and contain a declaration by the applicant that s/he is an elector who is entitled to apply for a postal vote, be signed by the applicant and witnessed by an elector, and be made after the issue of the writ for the election.

5.30 An elector making an oral application shall state the grounds on which s/he applies.

5.31 A written application is required to reach the officer to whom it is made before 6 pm of the day immediately preceding polling in the election. An oral application must be made before the close of polling for the election. The Electoral Act imposes a penalty of $1000 fine or imprisonment for 6 months for a person convicted of inducing an elector to make a false declaration in an application for a postal vote.

Postal Voting by Hospital Patients

5.32 A person hospitalised and not otherwise able to vote may apply for a postal vote. An entitlement pre-existed the introduction of mobile polling. The right was qualified by the 1983 amendments so that the postal vote is not available if access to mobile polling is.

5.33 The AEC informed the Committee that there was difficulty in implementing the intentions of the 1983 amendments that mobile polling should replace postal voting because arrangements for mobile polling could not be finalised with the hospitals until the very last minute.

5.34 There are also two possible legislative impediments to the adoption of a strict line on postal voting in hospitals. The Act currently gives an officer issuing postal votes no specific authority to deny a postal vote to an applicant who has fulfilled the formal requirements of an application - the applicant's statement or declaration is taken to be conclusive of the facts stated therein. In this sense the provision is analogous to that applying to nomination as a candidate, where by virtue of section 172 the Divisional Returning Officer or Australian Electoral Officer cannot refuse to accept a nomination if the formal requirements imposed by the Electoral Act are satisfied.

5.35 It is also not clear from the legislation that a hospital patient who can vote at a static or mobile booth is not still entitled to obtain a postal vote on the old ground of 'serious illness or infirmity'.

5.36 The AEC submitted that if hospital patients who are capable of voting at a static or mobile booth are not to vote by post, two amendments should be made. The first would specifically exclude such hospital patients from the general operation of the 'serious illness or infirmity' ground. The second would insert a provision prohibiting the official despatch to hospital addresses of postal ballot papers for patients if the hospital was to be serviced by mobile and/or static polling, unless the issuing officer was satisfied, by the production of an appropriate medical certificate, that the patient in question would not be able to vote at the static or mobile booth for that hospital.

5.37 The Committee believes that some sick, infirm and elderly electors in nursing homes and hospitals are vulnerable to be influenced by the staff in certain of those institutions as to how they should direct their postal votes. The Committee considers that the opportunity for undue influence of this kind should be prohibited and the Electoral Act should be clarified to prevent such abuses. It is strongly of the view that the provision of mobile polling facilities should be extended to all hospitals. It is aware that time constraints prevailing during the run up to the 1984 General Election prevented the AEC from extending the facility as widely as was considered desirable. Amendments to the Electoral Act should be made to make it quite clear that the provision of mobile polling booths to hospitals and nursing homes is intended to be comprehensive.

5.38 The Committee believes that a sick, infirm or elderly elector should continue to have the right to apply for a postal vote and be able to exercise the right despite the provision of mobile polling facilities at the hospital or nursing home in which the person is resident. However, to ensure that undue influence is not brought to bear on an elector by the proprietor or any member of the staff of a hospital or nursing home there should be inserted in the Electoral Act a provision making it a specific offence for the proprietor or any person on the staff of a nursing home or hospital to influence an elector to cast a postal vote in favour of a particular candidate or candidates in the election.

Recommendation 51

5.39 **The Committee recommends -**

(a) **That mobile polling facilities be made comprehensive and be provided at all hospitals and nursing homes.**

(b) **That the right of an elector fulfilling the qualifications for a postal vote under paragraph 184 (1)(d) of the Electoral Act be confirmed.**

(c) **That it be an offence under the Electoral Act for any person being a person who is the proprietor, a member of the staff, and/or involved in the administration of a hospital or nursing home, to influence a person who is a patient or inmate in the hospital or nursing home as to the candidate or candidates for whom that person should vote.**

Eligible Overseas Electors

5.40 The 1983 amendments introduced provisions for people travelling or intending to live overseas to be registered as eligible overseas electors, thereby maintaining their enrolment for the Subdivision for which they were enrolled before leaving Australia. There were 1572 people registered as eligible overseas electors prior to the December 1984 election, of whom 1064 are recorded as having voted.

TABLE 7

STATE	REGISTERED	VOTED
NSW	425	267
VIC	346	175
QLD	202	143
WA	70	58
SA	40	26
TAS	23	17
ACT	435	360
NT	31	18
AUST	1572	1064

Registration of General Postal Voters

5.41 The 1983 amendments also introduced provisions for people who regularly vote by post to be registered and automatically sent postal vote applications (or postal ballot papers in the case of incapacitated electors who had registered). The provisions were publicised to a minor extent only, by a leaflet made available in AEC offices. The following tables set out statistics on the extent to which the opportunity to register and vote as a general postal voter was taken up by electors.

TABLE 8

GENERAL POSTAL VOTERS REGISTERED AS AT 1.12.84

STATE	REMOTE	ILL/HOSP	ILL/HOME	PRISON	DISABLED	TOTAL
NSW	96	23	429	2	46	596
VIC	0	24	561	7	70	662
QLD	104	0	101	0	10	215
WA	2	36	271	0	16	325
SA	2	4	38	0	4	48
TAS	82	0	20	0	5	107
ACT	0	0	10	0	1	11
NT	1411	0	0	17	2	1430
AUST	1697	87	1430	26	154	3394

TABLE 9

GENERAL POSTAL VOTERS WHO VOTED

STATE	REMOTE	ILL/HOSP	ILL/HOME	PRISON	DISABLED	TOTAL
NSW	86	22	421	1	39	569
VIC	0	19	507	4	60	590
QLD	95	0	78	0	7	180
WA	2	36	260	0	15	313
SA	2	2	37	0	3	44
TAS	80	0	19	0	4	103
ACT	0	0	10	0	1	11
NT	624	0	0	17	2	643
AUST	889	79	1332	22	131	2453

5.42 In many cases electors only got on the register after the election having heard of the availability of the facility from divisional staff at the time postal vote applications were being sent to them. There are some minor procedural defects in section 185 of the Act which should be corrected.

Remote Subdivisions

5.43 The prescription that a person whose real place of living is further than 20 kilometres from a polling place can only be registered if the Subdivision where he lives has been designated as 'remote' (paragraph 185(1)(a)) is unnecessarily severe and led, for example, to the otherwise pointless gazettal of remote Subdivisions in Tasmania. The Electoral Act should permit the abolition of Subdivisions for Commonwealth purposes in Tasmania. The State authorities have indicated their agreement to the abolition of Subdivisions for House of Assembly purposes and did not include the repeal of Subdivisions in their recent Bill to amend the State Electoral Act only because of continued requirement for Commonwealth purposes. The Committee recommends -

Recommendation 52

5.44 **That all electors residing further than 20 kilometres from a polling place should be eligible to register as general postal voters and sub-paragraph 185(1)(a)(i) be deleted, thus removing the remote Subdivision requirement.**

Registration on Religious Grounds

5.45 Section 185 as it stands makes no provision for those who would be entitled to a postal vote on religious grounds to register as general postal voters. Submissions were received from the 7th Day Adventist Church seeking the extension of the provision to them. The facility should be available to all

electors whose religious beliefs preclude them from voting on a Saturday. The omission from the legislation in 1983 appears to have been an oversight. The Committee recommends -

Recommendation 53

5.46 **That section 185 be amended to provide that an elector whose religious beliefs prevent him/her from voting on the day appointed for polling be entitled to register as a general postal voter.**

Postal Votes by Prisoners

5.47 As far as can be ascertained, the number of prisoners who were enrolled, who were registered as general postal voters, or who actually voted is not great. The AEC advised that statistics in this area are not particularly useful or reliable. At a rough guess there are probably less than a thousand prisoners enrolled in all of Australia.

5.48 Part of the problem behind the poor turnout of prisoners, is the confusion surrounding their enrolment entitlement and their maximum length of sentence, as well as their mobility in some States from gaol to gaol, as discussed in Chapter 3.

Oral and Written Applications for Postal Votes

5.49 Some confusion arose at the 1984 election over the use of the expression 'oral application for a postal vote', insofar as such votes are not in fact sent by post. There are also significant procedural differences in the processing of written and oral applications for 'postal votes' and in the subsequent preliminary scrutinies. The following table compares the number of electors who made oral and written applications for postal votes at the 1984 election.

TABLE 10

STATE	ORAL APPLICATIONS	WRITTEN APPLICATIONS	TOTAL
NSW	42221	77498	119719
VIC	39872	71502	111374
QLD	29797	50846	80643
WA	11192	17168	28360
SA	10346	20270	30616
TAS	2313	7749	10062
ACT	6886	3744	10630
NT	1508	1667	3175
AUST	144135	250444	394579

5.50 It is considered that the provisions should be clarified by making a distinction between postal and pre-poll votes. This could be achieved by placing all provisions relating to pre-poll voting in a separate part of the Electoral Act. The Committee accordingly recommends -

Recommendation 54

5.51 **That the postal voting provisions be amended so as to draw a clear distinction between postal and pre-poll votes so that votes sent through the post or otherwise delivered continue to be referred to as postal votes, while votes applied for in person be referred to as pre-poll votes.**

Timing of Written Applications for Postal Votes

5.52 Prior to the 1983 amendments, an application for a postal vote could be made 'after the tenth day prior to the issue of the writ for the election'. On the basis that this was nonsensical in cases where the election was announced only a few days before the issue of the writ, the provision was amended to make the date of issue of the writ the point from which written applications could be made. This, however, caused problems at the 1984 election, since written applications made before that date as a result of the early announcement of the election could not be accepted.

5.53 If the earliest possible date for a written postal vote application is 'after the public announcement of the date of the election', the timetable relating to postal voting could be extended. this would cater especially for those who are going overseas before the issue of the writ and are aware of the date of an election following its announcement. The Committee recommends -

Recommendation 55

5.54 **That paragraph 184(2)(c) be amended so that the earliest possible date for a written postal vote application will be after the public announcement of the date of an election.**

5.55 At present sub-section 186(1) provides that application forms for postal votes are to be sent to registered general postal voters (other than those registered on the ground of physical incapacity, who are sent postal ballot material) as soon as practicable after the issue of the writ. The Committee recommends -

Recommendation 56

5.56 **That sub-section 186(1) be amended so that application forms for postal votes can be sent to registered general postal voters as soon as practicable after public announcement of the date of an election. This would extend the period available for the postal voting process, and bring this provision into line with the previous recommendation.**

Timing of Oral Applications;Pre-Poll Votes

5.57 The present provision that oral applications for postal votes may be made immediately after nominations close caused considerable difficulties at the 1984 election. It does not make allowance for the time lag after close of nominations for the lodgement of group voting tickets for Senate elections. This problem would be overcome by prohibiting oral applications until the day after the closure of group voting tickets notification. The Committee recommends -

Recommendation 57

5.58 **(a) That in the case of a half Senate election held on its own, or a joint Senate/House of Representatives election, pre-poll voting should not be possible until the day after the expiration of the 24 hour period allocated for the lodging of group voting tickets.**

(b) That, in respect of an election for the House of Representatives only, that pre-poll voting commence the day after nominations close.

5.59 The reason for 'the day after' formulation is to enable the AEC to disseminate the nomination/group voting details to as many of its offices as possible.

Lost Postal Ballot Papers

5.60 Sub-section 191(3) of the Electoral Act provides that an elector to whom postal ballot material has been issued, who claims to vote at a polling booth, must deliver his postal ballot material to the presiding officer for cancellation. Notwithstanding this provision, sub-section 192(1) provides that an elector who claims to vote at a polling booth, who is marked on the certified list as having been issued a postal vote but who maintains that he has not received it, may be permitted to vote if he makes the appropriate declaration.

5.61 These provisions do not accommodate people who may have received postal ballot-papers but for some reason have not taken them to the polling booth either because they have either lost them, inadvertently destroyed them, or simply left them behind. As the provisions stand a person in this category is not entitled to a declaration vote, however should such a person declare (falsely) that he or she had not received postal ballot material, he or she would be issued a declaration vote. The Committee's view is that the Electoral Act should not penalise honesty in this case. Section 192(3) already provides that where a person casts a section 192 vote, no postal vote in his name shall be admitted to the scrutiny. There should therefore be no possibility of a person having more than one vote admitted to the scrutiny. The Committee therefore recommends -

Recommendation 58

5.62 That section 192 be amended to cover electors who claim not to have received postal ballot material and electors who have received such material but are unable to surrender it for cancellation.

Receipt of Postal and Pre-Poll Ballot Papers After Polling Day

5.63 A major problem encountered was the operation of overseas postal voting. There was a reluctance of Assistant Returning Officers at Australia's overseas posts to heed instructions for the speedy despatch of votes to Australia after polling day.

5.64 When it became apparent that many votes delivered to Assistant Returning Officers at overseas posts were delayed in reaching Australia, the AEC sought advice from the Attorney-General's Department as to whether the past approach should still be followed. The Attorney-General's Department advised that sub-section 200(1) of the Act required that postal ballot papers sent through the post should only be admitted to the scrutiny if received within the 10 day period after the close of the poll, but that votes delivered to any Divisional Returning Officer, Assistant Returning Officer or Presiding Officer, pursuant to sub-section 194(3), and votes cast in pursuance of an oral application, pursuant to sub-section 194(4), were to be admitted to the scrutiny regardless of what time they were received by the relevant Divisional Returning Officer. This interpretation enabled the delayed overseas votes to be admitted to the scrutiny.

5.65 The AEC submitted that there should be a fixed cut-off date for all postal and pre-poll votes issued in Australia and overseas of 14 days. The 4 day increase over the present 10 day cut-off which is only limited in operation to certain votes, makes allowance for logistical problems which could, possibly, again affect the returning of material to Australia. The amendment would need to be supported by instructions from the highest level of the Department of Foreign Affairs to ensure that Assistant Returning Officers overseas follow to the letter the instructions given to them by the AEC. The AEC would also support the amendment with appropriate instructions to its staff and postal voting officers. In so far as the inter-divisional transfer of postal votes is concerned the AEC experienced no difficulty at the last election or at previous elections in having the votes in the hands of the appropriate Divisional Returning Officers inside the old 10 day rule.

5.66 The Committee was also asked to consider whether the Commonwealth Electoral Act should be given an extra-territorial operation so as to make the overseas Assistant Returning Officers liable to the same penalties for neglect of duty as Divisional and polling staff in Australia. The Committee recommends -

Recommendation 59

5.67 That in future there should be a fixed cut off date for return of postal and pre-poll votes of 14 days and extra-territorial extension of the Electoral Act to bring Assistant Returning Officers stationed overseas within the purview of penalties for neglect of duty under the Act.

Canvassing Near Pre-Poll Voting Centres

5.68 At present canvassing is prohibited by section 340 of the Electoral Act within 6 metres of the entrance of a polling booth on polling day, and on all days to which polling is adjourned. There is no provision prohibiting canvassing outside places at which postal votes (pre-poll votes) are taken. The AEC received numerous complaints from Divisional Office staff regarding canvassing outside their Offices while votes were being taken. The AEC submitted that canvassing be prohibited within 6 metres of the entrance of a building or office at which pre-polling occurs like the prohibition on canvassing outside polling booths. The amendment would need to provide for a Divisional Returning Officer to be able to waive strict compliance, if there was no place outside the 6 metres from which party workers could operate.

5.69 The Committee is extremely unsympathetic to this proposal from the AEC. It is an essential but difficult task for party workers to staff Divisional Returning Offices at the times that pre-poll votes can be cast. No evidence of inconvenience either to the office staff or the general public was produced to support the proposal or on the assumption that some inconvenience could be shown how the placing of a chalk mark 6 metres from the office door would relieve it.

5.70 The Committee does not agree to the proposal that the rule prohibiting canvassing within 6 metres of a polling place should also apply to pre-poll voting centres.

Endnotes

1. In New South Wales the Call to Australia, in Victoria the Call to Australia and the Democratic Labor Party, in South Australia the National Party and the Call to Australia, in Western Australia the National Party and the Australian Family Movement, and in Tasmania the Nuclear Disarmament Party.