
The Parliament of the Commonwealth of Australia

The 2004 Federal Election

**Report of the Inquiry into the Conduct of the 2004 Federal
Election and Matters Related Thereto**

Joint Standing Committee on Electoral Matters

September 2005
Canberra

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Foreword

The publication of this report into the conduct of the 2004 Federal Election comes one year and one day after the election.

Over the course of the year since polling day, the Committee has held public hearings in rural and regional areas of both Queensland and New South Wales and in major metropolitan areas across Australia.

This report confirms that Australia has a very good electoral system – but it is one which can, and should, be further improved. The 56 recommendations in this report outline issues that the Committee believes should be dealt with immediately, as well as longer term reform issues for consideration into the future.

There are a number of issues that require immediate attention.

The Committee examined the problems with postal voting at the election. These problems should not have occurred. All stakeholders in the electoral process have the right to expect better service than was provided in respect of postal voting. The Committee makes a series of recommendations designed to ensure those problems are not repeated.

Present requirements for electoral enrolment result in an unacceptable level of inaccuracy in the electoral roll. The Committee recommends the adoption of two significant enrolment reforms designed to improve integrity and to prevent electoral fraud occurring.

The first is the requirement for proof of identification and address to be provided at the time of enrolment. This move is consistent with existing contemporary identification practices, already widely accepted and adopted by the community for everyday activities such as joining a video library, or obtaining a prepaid mobile telephone.

The second is closing the roll at 8.00 pm on the day that the writs are issued for an election. The Committee received compelling evidence indicating that the current

seven day close of rolls period actually encourages electors not to enrol at the time when their enrolment entitlements change.

On one hand we have laws which compel electors to enrol at the time that they gain or change their enrolment entitlement. On the other hand, the law allows for a seven day period that provides an escape for those who do not do so.

This is clearly contradictory. It promotes the view that enrolment is neither necessary nor important.

This ongoing situation creates an unrealistic volume of enrolment in the close of roll period and makes the roll more vulnerable to electoral fraud and manipulation.

The Committee recommends that the Government make these changes as soon as possible. This will allow time for the Government and the AEC to communicate the changes and give them wide publicity, thus ensuring that electors are aware and able to update their enrolment well in advance of the next election.

The Committee is also most concerned about the current processes regarding provisional voting.

Under existing arrangements, electors may apply for and cast provisional votes on election day without any identification or proof of address. The Committee, therefore, recommends that all electors who cast provisional votes must provide proof of identification and address before those votes are accepted for counting.

The Committee is not recommending that all electors provide proof of identity at polling places at the time of voting, although it believes that those electors who wish to, should be able to do so. This may assist in the finding of names on the electoral roll and thus speed up the voting process.

The Committee also received convincing evidence that necessitated recommendations to overhaul party registration. These are aimed at preventing political parties from deliberately and deceptively misleading voters into unintentionally voting for them on the basis of a similar or like name to an existing party.

In this regard, the actions of the Liberals for Forests during the election campaign and, in particular, their actions on election day have galvanised the Committee to urge Parliament to act decisively. The Committee is most concerned to ensure that voters are not misled in the same way in the future.

The community has a right to expect a reasonable degree of transparency and accountability in the way that political parties are structured and managed, both administratively and financially. The Committee has made a number of recommendations aimed at ensuring this transparency.

Australia's public funding and disclosure laws are found to work well. However, the thresholds over which donations must be disclosed and tax deductibility ceases are considered far too low. Both have not altered in more than a decade. Both require an overhaul to reflect contemporary standards and community expectations. Increases would see the donation threshold move in line with that existing in New Zealand and the United Kingdom.

Over 88% of the total value of donations received by the major parties in the last financial year were amounts in excess of \$10,000. Lifting the threshold over which donations must be disclosed to \$10,000 would still see those donations disclosed.

Accordingly, the Committee recommends lifting the amount over which donations must be disclosed to \$10,000 and the amount at which tax deductibility ceases to \$2,000.

The Committee also canvasses a number of longer term reform issues which have been the subject of longstanding public debate.

The issue of four year terms for the House of Representatives has received a great deal of attention by the Committee. Previous reports of the Committee in 1996, 1998 and 2001 have advocated four year terms for the House of Representatives. This report deals with the history, issues and options for reform in a comprehensive way, and recommends that a referendum be held at the next election to alter the Constitution to extend the Parliamentary term for the House of Representatives to four years. In the context of this debate, the Committee also highlights the need for consideration to be given to the application of consequential changes to the length of the Senate term.

The Committee believes that for any change to Federal parliamentary terms to be implemented, there must be cooperation and a broad willingness to change from the major political parties. The Committee considers it is unreasonable for the Government to proceed with reforming parliamentary terms without clear support from the Opposition.

If multi-party support is obtained for potential models for both the House of Representatives and the Senate, the Government could hold a referendum at the next Federal Election, with a view to implementing new parliamentary terms following the Federal Election due in 2010. The Parliament elected at the 2007 election, therefore, would continue under the current system.

The Committee also revisits the longstanding debate about voluntary and compulsory voting covering arguments both for and against a possible change. The Committee has recommended that compulsory voting be retained for the next

election. However, it believes it worthwhile to encourage and foster further public debate and for this issue to be examined through a JSCEM inquiry in the future.

The Committee also examined voting systems (particularly for the Senate), the use of technology in the electoral process, and the need for education to be recognised as a key to a healthier democracy.

The Committee believes that technological advances should now enable the vision impaired and blind to cast a secret and independently verifiable vote through electronic voting.

The Committee recommends that the AEC undertake a trial of electronic voting at one location in each electorate at the next Federal Election.

This should ideally be a central and accessible location and not necessarily an AEC office or a pre-poll centre. This measure would, for the first time, allow those voters who currently require assistance when casting their vote to exercise the franchise independently, whilst ensuring that their vote remains secret.

The Committee does not view this measure as the precursor to a general move to electronic voting.

It will, however, provide the opportunity to gradually integrate suitable technologies into an already stable electoral system, whilst making it responsive to the needs of the blind and visually impaired.

The work of the Committee on this report would not have been possible without the dedication, effort and professional conduct of the Committee Secretariat staff. I thank Dr Stephen Dyer, Mr Andrew McGowan and Mr Terry Rushton who travelled to the public hearings, and all of the other staff who worked on the report over the course of the last 12 months.

I express my thanks also to the Electoral Commissioner Mr Ian Campbell and the staff of the Australian Electoral Commission who met the Committee's requests for information in a professional and timely manner.

Finally, I would like to thank the Members and Senators of the Committee for their work and contribution to the report, in particular, the Deputy Chair Mr Michael Danby MP and Senator Andrew Murray, both of whom attended hearings and actively shared their experience and wisdom through all aspects of the Committee's activities, examinations and considerations.

The Committee received 221 submissions from members of the public and organisations, and heard from 84 witnesses at 11 public hearings, gathering 798 pages of evidence.

The evidence and submissions have provided valuable contributions to the Committee's consideration of the last election, and Australia's electoral system now and for the future.

The Committee and Secretariat staff have worked to a very tight timeframe to produce this report. The Committee was determined to complete its investigations and consideration of matters so that the Government has sufficient time to make the necessary changes to electoral legislation, and to communicate those changes to the community in a timely manner prior to the next Federal Election.

Tony Smith, MP
Chair



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Membership of the Committee

Chair Mr Tony Smith MP

Deputy Chair Mr Michael Danby MP

Members Mr Steven Ciobo MP

Mr Alan Griffin MP *(from 6/9/05)*

Mr Daryl Melham MP *(to 6/9/05)*

Ms Sophie Panopoulos MP

Senator George Brandis

Senator Kim Carr

Senator Michael Forshaw

Senator Brett Mason

Senator Andrew Murray

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	Mr Robert Nicol (to June 2005)



Terms of reference

In December 2004, the Special Minister of State, Senator the Hon Eric Abetz, referred to the Committee an inquiry with the following terms of reference:

That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of 2004 Federal Election and Matters Related thereto.



List of abbreviations

AEC	Australian Electoral Commission
ABC	Australian Broadcasting Corporation
ACT	Australian Capital Territory
ADF	Australian Defence Force
AEO	Australian Electoral Officer
AFP	Australian Federal Police
ALP	Australian Labor Party
ANAO	Australian National Audit Office
APVIS	Automated Postal Vote Issuing System
ARO	Assistant Returning Officer
ATL	Above the Line
BCRA	Bipartisan Campaign Reform Act
CEA	Commonwealth Electoral Act 1918
CEO	Chief Executive Officer
CRU	Continuous Roll Update
CSSS	Computerised Senate Scrutiny System
CVP	Citizenship Visits Program
DAC	Direct Address Change

DPP	Director of Public Prosecutions
DRE	Direct Recording Electronic Voting Machine
DRO	Divisional Returning Officer
EAV	Electronically Assisted Voting
ECQ	Electoral Commission Queensland
EVACS	Electronic Voting and Counting System
FACS	Federation of Australian Commercial Stations
FEC	Federal Electoral Commission
GPV	General Postal Voter
HTV	How to Vote
IDEA	Institute for Democracy and Electoral Assistance
IDTV	Interactive Digital Television
IVR	Interactive Voice Recognition
JCPAA	Joint Committee of Public Accounts and Audits
JSCEM	Joint Standing Committee on Electoral Matters
NESB	Non English Speaking Backgrounds
NSW	New South Wales
NT	Northern Territory
PEO	Parliamentary Education Office
PIAC	Public Interest Advocacy Centre
PILCH	Public Interest Law Clearing House
PPERA	Political Parties Elections and Referendums Act
PVA	Postal Vote Application
QLD	Queensland

RTA	Road Transport Authority
RMANS	Roll Management System
SA	South Australia
SMS	Short Message System
STV	Single Transferable Vote
TAS	Tasmania
TCP	Two-Candidate Preferred (Count)
VEC	Victorian Electoral Commission
VIC	Victoria
WA	Western Australia



List of recommendations

2 Enrolment

Recommendation 1

The Committee recommends that the Commonwealth Electoral Act be amended to require that electoral enrolment forms, AEC reply paid envelopes and enrolment promotional material be prominently displayed at all times in every Australia Post, Medicare, Centrelink and Rural Transaction Centre outlet, including any agency or sub-agency, to encourage electors and potential electors to meet enrolment obligations. Further, all such material should be displayed without fee to the Commonwealth.

Recommendation 2

The Committee recommends that:

- the AEC formulate, implement and report against a detailed, ongoing, action plan to promote and encourage enrolment and voting among persons and groups experiencing difficulty because of social circumstance; and
- that such persons and groups should include, but not be limited, to homeless and itinerant persons, illiterate persons, persons with disabilities and residents of isolated and remote areas;
- the AEC consult with and consider the views of organisations and groups representing homeless and itinerant persons, illiterate persons, persons with disabilities, residents of remote localities, and other appropriate bodies, to formulate appropriate strategies, programs and materials for use when the action plan is implemented;
- the AEC report back to the Committee prior to the next Federal Election with details of its action plan and implementation strategies;

- where appropriate, adequate funding be provided to enable the AEC to develop, implement and report against the action plan; and
- that following the next Federal Election, the AEC seek feedback from representative groups and community members regarding the effectiveness of the strategies implemented, and further develops its action plan to incorporate constructive suggestions where appropriate.

Recommendation 3

The Committee recommends that the Commonwealth Electoral Act be amended to require all applicants for enrolment, re-enrolment or change of enrolment details be required to verify their identity and address.

Regulations should be enacted as soon as possible to require persons applying to enrol or change their enrolment details, to verify their identity and address to the AEC by:

- showing or producing an acceptable identification document and a proof of address document to the AEC or a person who can attest a claim for enrolment; or
- where such proof of identity documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the enrolee's identity and by supplying a proof of address document:
 - ⇒ persons supplying references must have known the enrolee for at least one month and must show their own acceptable identification document or supply their drivers licence numbers to the AEC); and
- enrolees should have the choice of providing the required documents in person to the AEC, or a person who can attest a claim for enrolment, or by posting or faxing the required documents or certified copies to the AEC with the enrolment form to which they relate; and
- where certified copies of acceptable documents are posted or faxed to the AEC, they must be certified by the enrolee to be true copies and witnessed by an elector enrolled on the electoral roll.

Where the AEC or a person who can attest a claim for enrolment receives original documents from an enrolee, the AEC must return the documents to the enrolee by hand, registered mail or other means agreed to by the enrolee.

Recommendation 4

The Committee recommends that Section 155 of the Commonwealth Electoral Act be amended to provide that the date and time fixed for the close of the rolls be 8.00pm on the day of the writs.

Recommendation 5

The Committee recommends:

- Section 155 of the Commonwealth Electoral Act should be amended to provide for the date and time of the closing of the rolls as soon as possible within the life of the 41st Parliament;
- that the amendment to section 155 be given wide publicity by the Government and the AEC;
- that the AEC be required to undertake a comprehensive public information and education campaign to make electors aware of the changed close of rolls arrangements in the lead up to the next Federal Election;
- that the AEC review, and where appropriate amend, the wording of all enrolment related forms, letters, promotional material and advertising used for enrolment related activities to include a notification to electors that the rolls will close on the day of the issue of the writs for Federal Elections and referenda; and
- that appropriate funding be made available to the AEC so it may comply with these and other recommendations agreed to by the Government.

Recommendation 6

The Committee recommends that:

- the Commonwealth Electoral Act be amended to expand the demand power to allow the AEC direct access to State and Territory government agency data;
- the AEC continue with its Continuous Roll Update (CRU) processes as the principal method for reviewing the electoral roll;
- the AEC remain focussed and innovative in relation to CRU, in order to continue to develop and refine those processes to maintain and enhance the integrity of the electoral roll; and
- the AEC consider and report on the implications of the Direct Address Change proposal (contained in Submission No. 136) and

provide a detailed report to the Committee on its findings by the end of 2005.

3 Voting in the pre-election period

Recommendation 7

The Committee recommends:

- that the AEC continue to develop and utilise the Automated Postal Vote Issuing System (APVIS) to support the distribution of postal voting material for future elections;
- that AEC computer and data recording and retrieval systems be upgraded to allow real-time information to be extracted by DROs, AEC staff handling enquiries and call centre staff, on the progress of the production of postal voting material for individual postal voters;
- that the AEC consult with Australia Post and, if Australia Post holds and is able to supply the necessary data to the AEC, the AEC modify the Roll Management System (RMANS) so that that matters relevant to the postal delivery schedules applicable to the delivery points at the postal address, or in the postcode area, of the applicant are available to the DRO at the time the decision is made whether an application should go to Central or Local print;
- that Australia Post provide the data required for upgrading the AEC's systems at no cost to the Commonwealth;
- that the flexibility to determine whether postal voting material should be produced centrally or through a local computer-based system in the office of DROs be retained; and
- that if the AEC modifies RMANS so that that matters relevant to the postal delivery schedules are available to DROs, the DRO must use such information when making the decision about whether an application should go to Central or Local print.

Recommendation 8

The Committee recommends:

- that the AEC ensure that sufficient and continuing resources are available to the Election Systems and Policy Section in non-election periods and that these levels be supplemented as appropriate in the lead up to and during election periods;

-
- that the AEC apply appropriately rigorous and correct procurement practices in order to identify and enter into a contractual agreement with suitable provider/providers for the provision of APVIS services; and
 - that the AEC apply contemporary best practice to the project management and contract management of APVIS, including undertaking the activities outlined in Recommendation 16 of the Minter Ellison report into postal voting.

Recommendation 9

The Committee recommends:

- that the *Electronic Transaction Regulations 2000* be amended to permit electors to submit an application for a postal vote or an application to become a general postal voter, by scanning and e-mailing the appropriate form to the AEC;
- that the Commonwealth Electoral Act be amended to specifically permit eligible overseas electors and Australian Defence Force and Australian Federal Police personnel serving overseas to become general postal voters;
- that the Commonwealth Electoral Act be amended to provide that:
 - ⇒ for postal vote applications received up to and including the last mail on the Friday eight days before polling day, the AEC be required to deliver the postal voting material to the applicant by post unless otherwise specified by the applicant;
 - ⇒ for postal vote applications received after the last mail on the Friday eight days before polling day and up to and including the last mail on the Wednesday before polling day, the AEC be required to post or otherwise deliver the postal voting material by the most practical means possible; and
 - ⇒ for postal vote applications received after the last mail on the Wednesday before polling day, the applications be rejected on the grounds that delivery of postal voting material cannot be guaranteed. Reasonable efforts should be made to contact the applicants to advise them of the need to vote by other means.
- that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to allow electors to return their postal votes to any employee of the AEC by any convenient means, and to require the AEC to then deliver the postal vote to the

appropriate Divisional Returning Officer within 13 days after polling day.

Recommendation 10

The Committee recommends:

- that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended so that postal voters are required to confirm by signing on the postal vote certificate envelope a statement such as “I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled”;
- that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to allow the date of the witness’s signature, not the postmark, to be used to determine whether a postal vote was cast prior to close of polling.

Recommendation 11

The Committee recommends that the AEC:

- amend the General Postal Voter application form to indicate that the completed form can be returned to the AEC by fax;
- amend the Postal Vote Application form to allow an applicant, if they choose to do so, to nominate a date by which they require the postal voting material to be delivered to the postal address nominated;
- highlight the difficulties associated with electors leaving it to the last week in the election period to lodge postal vote applications in the public education campaign associated with the next election;
- take steps through its public education activities to ensure that the public is informed of the importance of having a witness date on postal vote certificate envelopes; and
- devise appropriate penalties for voters who provide false witness or who are otherwise in default of the requirements.

Recommendation 12

The Committee recommends that prior to the next election:

The AEC discusses with the Minister’s office options for establishing a process for the provision of information about emerging issues during the election period; including:

- how and to whom requests for urgent briefing are to be handled;

-
- identifying which staff are to be involved; and
 - how issues are to be followed up and reported on, by the AEC;

And, that following those discussions:

- the AEC formulate guidelines reflecting the outcome of those discussions and make them available to all relevant parties prior to the commencement of the election period.

Recommendation 13

The Committee recommends that the AEC:

- consult widely with stakeholders, including political parties, Commonwealth State and Territory Privacy Commissioners, privacy advocates and others, in order to canvass possible solutions to the privacy issue, that will not require a return to double enveloping; and
- report back to the Committee before the end of June 2006, with details of its consultations, and provide the Committee with recommendations about how the AEC should address the privacy concerns of electors, whilst minimising the number of ballot papers excluded from the count.

Recommendation 14

The Committee recommends that political parties and candidates should ensure that any material they provide to electors in advance of the writ issue or public announcement of the election date, advises electors of the relevant provisions relating to the lodgement of postal vote applications.

Recommendation 15

The Committee recommends that the AEC should review its pre-polling arrangements with a view to ensuring that, wherever practical, pre-poll centres are located at appropriate Commonwealth, State or Territory government, or local government, agencies in regional areas.

Recommendation 16

The Committee recommends that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to provide that:

- the AEC may set up and operate pre-poll voting centres in circumstances and locations where the AEC is required to quickly ensure that electors are able to cast votes; and
- in such circumstances, to require the AEC to do everything it practically can to advise relevant candidates, political parties and other stakeholders of:

- ⇒ the circumstances which prevail and require the AEC to take such action;
- ⇒ the location, dates and times on which the AEC proposes to operate the pre-poll centre; and
- to require the AEC to Gazette the pre-poll centre or centres as soon as practicable after it becomes aware of the circumstances that require it to set up and operate the centre or centres.

Recommendation 17

The Committee recommends:

- that the AEC comprehensively publicise the location of all pre-poll voting centres; and
- that the AEC ensure that standardised, prominent signage is used to identify pre-polling centres, so that electors and other stakeholders can immediately recognise and locate them from the day of opening and throughout election day.

4 Registration of political parties

Recommendation 18

The Committee recommends that the Commonwealth Electoral Act be amended to expand the definition of an eligible political party so that:

Eligible political party means a political party that is either:

- a parliamentary party; or
- a political party that has at least 500 financial members who are currently enrolled on the electoral roll; and
- is established on the basis of a written constitution that incorporates the minimum requirements for the constitution of a registered political party contained in the Commonwealth Electoral Act and complies with the State or Territory legislation to the extent that it applies.

Recommendation 19

The Committee recommends that the Commonwealth Electoral Act be amended to provide minimum requirements for the constitution of a registered political party.

Potential minimum requirements would include:

-
- a clear indication that it is a political party;
 - a statement that it intends to participate in the Federal Election process;
 - certain minimum requirements in relation to its operations, specifically that it:
 - ⇒ be written;
 - ⇒ include the aims of the party, one of which must be the endorsement of candidates to contest Federal Elections;
 - ⇒ include the process by which the party is managed in respect of its administration, management and financial management;
 - ⇒ set out requirements for becoming a member, maintaining membership and ceasing to be a member;
 - ⇒ outline the process for the election of office holders (including, but not limited to, the registered officer, the Executive and any committees);
 - ⇒ detail the party structure;
 - ⇒ detail the procedure for amending the constitution; and
 - ⇒ detail the procedures for winding up the party.

Recommendation 20

The Committee recommends that the Commonwealth Electoral Act be amended to provide for the:

- Deregistration of all political parties that are not parliamentary parties (as defined in section 123 of the Commonwealth Electoral Act) or are parties that have had past representation in the Federal Parliament; and that:
- all existing parliamentary parties and those with past representation remain registered, but be required (where appropriate) to prove that they meet the requirements for a parliamentary party:
 - ⇒ where a parliamentary party has proven that it meets the relevant requirements during the life of the 41st Parliament, it will not be required to provide further proof;
 - ⇒ where a parliamentary party has not proven its status as a parliamentary party during the 41st Parliament, it will be required to

prove this by indicating which sitting member it relies on for its status;

⇒ where a party claims that it has past representation in the federal Parliament, it will be required to prove this by indicating which past member it relies on for its status.

- all other parties would have to apply for re-registration, at which point they must comply with the amended registration requirements in the CEA, including the existing naming provisions contained in section 129;
- where a political party applies for registration using a name which does not conform with the requirements of section 129 of the CEA, the Electoral Commission shall refuse such registration;
- where the AEC refuses such application for registration, it must notify the applicant party that it is bound to refuse the registration and give the applicant party an opportunity to vary the original application;
- if the applicant party fails to vary the application the AEC shall refuse the registration; and
- all amended registration requirements must also be met in any case where a registered political party applies to change its registered name; or its registration is reviewed by the AEC in accordance with section 138A of the CEA.

Recommendation 21

The Committee recommends that the AEC be given appropriate funding to meet the additional obligations associated with de-registration and re-registration.

5 Election day

Recommendation 22

The Committee recommends that the AEC review the proportion of its election budget allocated to training polling booth staff.

Recommendation 23

The Committee recommends that the AEC ensure that it has sufficient staff to meet peak demands at known busy polling places, if need be through the use of casual staffing at peak times.

Recommendation 24

The Committee recommends that the AEC increase the thresholds for joint polling booths to a level to be determined through consultation with the JSCEM.

Recommendation 25

The Committee recommends that, at the next Federal Election, those wishing to cast a provisional vote should produce photographic identification.

Voters unable to do so at the polling booth on election day would be permitted to vote, but their ballots would not be included in the count unless they provide the necessary documentation to the DRO by close of business on the Friday following election day. Where it was impracticable for an elector to attend a DRO's office, a photocopy of the identification, either faxed or mailed to the DRO, would be acceptable.

Those who do not possess photographic identification should present one of the other forms of identification acceptable to the AEC for enrolment.

Recommendation 26

The Committee recommends that the AEC continue its consultations with relevant parties and prior to the next Federal Election, as part of improving access to the franchise by those experiencing homelessness, as a minimum:

- target homeless persons in its public awareness campaigns, informing them about itinerant elector and other voting enrolment and options; and
- ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.

Recommendation 27

The Committee recommends that the AEC consult with appropriate organisations to establish appropriate experimental arrangements to assist the blind and visually impaired to cast a secret ballot at the next Federal Election.

Recommendation 28

The Committee recommends that, as a future direction, the AEC consult with relevant organisations representing people with disabilities to develop a disability action plan covering the full spectrum of access issues faced.

Recommendation 29

The Committee does not support the introduction of proof of identity requirements for general voters on polling day at the next election.

Instead, the Committee recommends that the AEC report to the JSCEM on the operation of proof of identity arrangements internationally, and on how such systems might operate on polling day in Australia.

Recommendation 30

The Committee recommends that, at the next Federal Election, the AEC encourage voters to voluntarily present photographic identification in the form of a driver's licence to assist in marking off the electoral roll.

6 Counting the votes

Recommendation 31

The Committee recommends that the AEC increase its efforts to improve understanding of the voting system and reduce the informal vote in electorates with a high percentage of constituents from non-English speaking backgrounds, including by development of new and innovative strategies.

7 Parliamentary terms

Recommendation 32

The Committee recommends that there be four-year terms for the House of Representatives.

Recommendation 33

The Committee recommends that the Government promote public discussion and advocacy for the introduction of four-year terms during the remainder of the current Federal Parliament.

Recommendation 34

The Committee recommends that, in the course of such public discussion, consideration be given to the application of consequential changes to the length of the Senate term, and in particular, Senate Options 1 and 2, as set out in this chapter.

Recommendation 35

The Committee recommends that proposals be put to the Australian public via a referendum at the time of the next Federal Election. If these

proposals are successful, it is intended that they come into effect at the commencement of the parliamentary term following the subsequent Federal Election.

8 Voluntary and compulsory voting

Recommendation 36

The Committee recommends that voluntary and compulsory voting be the subject of a future inquiry by the JSCEM.

9 Voting systems

Recommendation 37

The Committee recommends that compulsory preferential voting above the line be introduced for Senate elections, while retaining the option of compulsory preferential voting below the line. Consequently, the practice of allowing for the lodgement of Group Voting Tickets be abolished. This would involve amendments to the Commonwealth Electoral Act, in particular the repeal of ss.211, 211A, 216, 239(2) and 239(3).

Recommendation 38

The Committee recommends that the system of compulsory preferential voting for the House of Representatives be retained.

Recommendation 39

The Committee recommends that the AEC be resourced to conduct a public education campaign, in advance of the next Federal Election, to explain the changes to the above-the-line Senate voting system.

In those States where the Commonwealth and State voting systems are different (i.e. New South Wales and Queensland), the AEC's education campaign should emphasise the necessity, in Federal Elections, of voting by the compulsory preferential, as opposed to the optional preferential, method.

11 Technology and the electoral system

Recommendation 40

The Committee recommends that the AEC investigate technology that could facilitate electronic checking of the electoral roll through networked polling places. In doing so, it will be beneficial to monitor any

international developments in which such technology is utilised. The AEC should report back to the Committee about any major developments in this area.

Recommendation 41

The Committee recommends that a trial of an electronic voting system be implemented at an appropriate location in each electorate to assist blind and visually impaired people, who currently cannot cast a secret and independently verifiable vote.

- In terms of the type of electronic voting system, and the most appropriate locations, the AEC should liaise with relevant groups, and then report back to the Committee with its proposal.
- Following the election, the AEC should report back to the Committee on all aspects of the trial.

Recommendation 42

The Committee recommends that the AEC identify, at an early stage, any legislative changes required to allow the paper ballot output of the system (whether electronic counting or a printed ballot paper) to be counted as a valid vote.

Recommendation 43

The Committee recommends that the AEC trial remote electronic voting for overseas Australian Defence Force and Australian Federal Police personnel, and for Australians living in the Antarctic. The AEC should develop a proposal that considers matters such as security and verification of identity, and report back to the Committee.

12 Campaigning in the new millennium

Recommendation 44

The Committee recommends that the AEC review section 328 of the Commonwealth Electoral Act to devise authorisation requirements for electoral advertisements, as distinct from general commentary, on the internet.

Recommendation 45

The Committee recommends that the AEC review section 328 of the Commonwealth Electoral Act to enhance the accountability and transparency of the electoral process.

Recommendation 46

The Committee recommends that the Government give consideration to amendment of the Commonwealth Electoral Act to remove section 350, which carries criminal actions and penalties for defamation against electoral candidates.

Recommendation 47

The Committee recommends that the AEC assess local and state legislation governing electoral signage and determine whether the Commonwealth Electoral Act should be amended to preserve candidates' equivalent rights to display electoral advertising during an election period.

Recommendation 48

The Committee recommends that the AEC review Sections 340 and 348 of the Commonwealth Electoral Act with a view to addressing issues of "misleading conduct" on polling day.

13 Funding and disclosure**Recommendation 49**

The Committee recommends that the disclosure threshold for political donations to candidates, political parties and associated entities be raised to amounts over \$10 000 for donors, candidates, political parties, and associated entities.

Recommendation 50

The Committee recommends that the threshold at which donors, candidates, Senate groups, political parties, and associated entities must disclose political donations should be indexed to the Consumer Price Index.

Recommendation 51

The Committee recommends that the *Income Tax Assessment Act 1997* be amended to increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed \$2,000 per year.

Recommendation 52

That the *Income Tax Assessment Act 1997* be amended to provide that donations to an independent candidate, whether from an individual or a

corporation, are tax deductible in the same manner and to the same level as donations to registered political parties.

Recommendation 53

The Committee recommends that third parties be required to meet the same financial reporting requirements as political parties, associated entities, and donors.

14 Looking to the future— education as the key to a healthy democracy

Recommendation 54

The Committee recommends that State, Territory and Federal education authorities coordinate their contributions to students' understanding and appreciation of Australia's system of government.

Recommendation 55

The Committee recommends that State, Territory and Federal education authorities increase their financial contribution to enable students in grades five and six to visit the National Capital to further their understanding of democracy.

Recommendation 56

The Committee recommends that the Parliament refer electoral education to the JSCEM for further examination and report.

Introduction

- 1.1 Predecessors of this Committee have examined every Federal Election since 1983, encouraging public discussion on the conduct of elections and formulating recommendations for legislative and practical change. This chapter sets the scene for subsequent discussion of the 2004 Federal Election by outlining the key events and outcomes.

The 2004 Federal Election

- 1.2 The 2004 Federal Election was announced on Sunday 29 August 2004. The writs were issued on the following Tuesday for the House of Representatives election and a half-Senate election.
- 1.3 The electoral rolls closed seven days later on 7 September 2004, with 423,993 enrolment transactions processed by the Australian Electoral Commission (AEC) during this period. Of these, 18.6 per cent (78,816) were new enrolments, bringing the total number of electors on the roll to 13,098,461.¹
- 1.4 Nominations closed on 16 September 2004, with 1,091 candidates listed for the 150 House of Representatives seats. Candidates for the 40 vacant seats in the half-Senate election numbered 330.

1 Submission No 165, (AEC), p. 11.

Table 1.1 The 2004 Federal Election timetable

Event	Date
Election announcement by Prime Minister and dissolution of House of Representatives	29 August 2004
Issue of writs	31 August 2004
Close of rolls	7 September 2004
Close of nominations	16 September 2004
Pre-polling commences	20 September 2004
Polling day	9 October 2004
Return of writs	
House of Representatives	11 November 2004
Senate	1-11 November 2004
First meeting of the 41 st Parliament	16 November 2004

Source AEC, *Behind the scenes*, 2005, p. 6.

- 1.5 Polling day was Saturday 9 October 2004. The time between the issue of the writs and polling day was 40 days, which is slightly longer than previous periods (which tend to be around 34 days long).

Table 1.2 Time between issue of writs and polling day: 1993-2004

	1993	1996	1998	2001	2004
Issue of writs	8 Feb 93	29 Jan 96	31 Aug 98	8 Oct 01	31 Aug 04
Polling day	13 Mar 93	2 Mar 96	3 Oct 98	10 Nov 01	9 Oct 04
Total days	34 days	34 days	34 days	33 days	40 days

Source Submission No 205, (AEC), Attachment A

- 1.6 The significant feature of this date is that it fell within the school holiday period for Western Australia, South Australia, New South Wales and the Australian Capital Territory.

Voter turnout and the count

- 1.7 A total of 12,420,019 votes were counted in the 2004 election. The large majority of voters cast ordinary votes at the 7,729 polling booth locations around the country (see Table 1.3 below for further details). Nearly 18% of voters, however, cast a declaration vote, 298,687 more than in the 2001 Federal Election (see Chapter 3 *Voting in the pre-election period*, below for further discussion about declaration voting).

Table 1.3 Votes admitted to the count, numbers and % of total: 1998 - 2004

	Ordinary	Pre-poll	Postal	Absent	Provisional	Declaration votes	Total votes
2004	10,195,459	726,797	613,871	771,332	112,560	2,224,560	12,420,019
<i>%total</i>	82.09	5.85	4.94	6.21	0.91	17.91	100.00
2001	10,172,617	585,616	451,900	780,961	107,396	1,925,873	12,098,490
<i>%total</i>	84.08	4.84	3.74	6.46	0.89	15.92	100.00
1998	9,513,300	692,377	488,671	776,859	116,158	2,074,065	11,587,365
<i>%total</i>	82.10	5.98	4.22	6.70	1.00	17.90	100.00

Source AEC, *Behind the scenes, 2005*, p.123; JSCEM, *The 2001 Federal Election, June 2003*, p.8. Note that the figures in this table refer to the number of Senate votes counted. The number of House of Representatives votes will be less than these figures.

1.8 The number of votes cast reflects a slight drop in voter turnout when compared with the 2001 Federal Election. Votes for both the House of Representatives and the Senate dropped by approximately 0.4-0.5 per cent.

Table 1.4 Voter turnout at Federal Elections 1993-2004

Voter turnout at the election	1993	1996	1998	2001	2004
House of Representatives	95.75%	95.77%	94.99%	94.85%	94.32%
Senate	96.22%	96.20%	95.34%	95.20%	94.82%

Source AEC, *Behind the scenes, 2005*, pp.110, 120; JSCEM, *The 2001 Federal Election, June 2003*, p. 6.

1.9 The informal vote for the 2004 Federal Election increased in the House of Representatives to 5.2 per cent, but dropped slightly in the Senate to 3.8 per cent. Table 1.5 illustrates the trend in informal voting over the past five Federal Elections.

Table 1.5 Informal voting at Federal Elections: 1993-2004

Voter turnout	1993	1996	1998	2001	2004
% of informal voting in House of Representatives	3.0	3.2	3.8	4.8	5.2
% of informal voting in Senate	2.6	3.5	3.2	3.9	3.8

Source AEC, *Behind the scenes, 2005*, pp.114, 120; JSCEM, *The 2001 Federal Election, June 2003*, p. 6.

Composition of the 41st Parliament

1.10 The 2004 Federal Election resulted in the Coalition of the Liberal Party and The Nationals being returned to Government for a fourth term, with an increased majority in the House of Representatives. The Coalition won a total of 87 seats, with the Australian Labor Party winning 60 seats. Three independent candidates won the remaining seats. Tables 1.6 and 1.7 outline the changes in the party make-up of the House of Representatives from 2001 to 2004.

Table 1.6 House of Representatives results, 2001 and 2004

Party	2001			2004		
	Seats Won	First Preference Vote	Swing	Seats Won	First Preference Vote	Swing
	%			%		
Liberal Party	68	37.1	+3.19	74	40.5	+3.39
National Party	13	5.6	+0.32	12	5.9	+0.28
Country Liberal Party	1	0.3	0.00	1	0.3	+0.02
Australian Labor Party	65	37.8	-2.26	60	37.6	-0.20
Australian Democrats	-	5.4	+0.27	-	1.2	-4.17
Greens	-	5.0	+2.34	-	7.2	+2.23
Pauline Hanson's One Nation	-	4.3	-4.09	-	1.2	-3.15
Other	3	9.5	+0.24	3	6.0	-3.5

Source AEC, *Behind the scenes*, 2005, p. 89; JSCEM, *The 2001 Federal Election*, June 2003, p. 9.

Table 1.7 House of Representatives results, two-party preferred vote 2001 and 2004

State/Territory	2001			2004		
	Per cent		Swing	Per cent		Swing
	ALP	LP/NP	%	ALP	LP/NP	%
New South Wales	48.3	51.7	2.9 (LP/NP)	48.1	51.9	0.2 (LP/NP)
Victoria	52.1	47.9	1.4 (LP/NP)	49.0	51.0	3.1 (LP/NP)
Queensland	45.1	54.9	1.8 (LP/NP)	42.9	57.1	2.2 (LP/NP)
South Australia	45.9	54.1	1.0 (LP/NP)	45.6	54.4	0.3 (LP/NP)
Western Australia	48.4	51.6	1.1 (LP/NP)	44.6	55.4	3.8 (LP/NP)
Tasmania	57.7	42.3	0.4 (ALP)	54.2	45.8	3.5 (LP/NP)
Northern Territory	52.5	47.5	1.9 (ALP)	52.2	47.8	0.3 (LP/NP)
Australian Capital Territory	61.1	38.9	1.4 (LP/NP)	61.5	38.5	0.4 (ALP)
Total	49.0	51.0	1.8 (LP/NP)	47.3	52.7	1.7 (LP/NP)

Source AEC, *Behind the scenes*, 2005, p. 99; JSCEM, *The 2001 Federal Election*, June 2003, p. 9.

1.11 The Coalition also obtained, for the first time since 1981, a majority in the Senate. The Coalition now holds 39 of the 76 Senate seats, the ALP holds 27 seats, with the remaining nine seats divided between the Australian Greens (four seats), the Australian Democrats (four seats) and the Family First Party (one seat).

Table 1.8 2004 Senate results and composition, seats by State

Party	State/Territory								Total	Change from 2001 result	Total rep in full Senate	Change from 2001 composition
	NSW	VIC	QLD	WA	SA	TAS	ACT	NT				
Liberal Party	2	2	3	3	3	3	1	-	17	0	33	+2
National Party	1	1	1	-	-	-	-	-	3	+1	5	+2
Country Liberal Party	-	-	-	-	-	-	-	1	1	0	1	0
Australian Labor Party	3	2	2	2	3	2	1	1	16	+3	27	0
Country Labor Party	-	-	-	-	-	-	-	-	-	-1	1	0
Australian Democrats	-	-	-	-	-	-	-	-	-	-4	4	-3*
Greens	-	-	-	1	-	1	-	-	2	0	4	+2
Family First	-	1	-	-	-	-	-	-	1	+1	1	+1
Other	-	-	-	-	-	-	-	-	-	-	0	-4**
Total	6	6	6	6	6	6	2	2	40		76	

Source AEC, *Behind the Scenes*, 2005, pp.124-130; AEC, *Electoral Pocketbook*, 2005, p.108. See also www.aec.gov.au/_content/When/elections/2001/representation.htm; www.aec.gov.au/_content/When/elections/2004/representation.htm

* Senator Meg Lees left the democrats during 2002, and is included in other rather than Democrats.

** This figure includes two independent Senators, a Senator representing Pauline Hanson's One Nation and Tasmanian Independent Senator Brian Harradine.

Table 1.9 2004 Senate results, 2001 and 2004

Party	2001		2004	
	Per cent votes	Swing	Per cent votes	Swing
Liberal/National Party	23.88	+2.00	25.72	+1.84
Liberal Party	15.69	+2.05	17.65	+1.96
National Party	1.92	+0.06	1.37	-0.55
Country Liberal Party	0.35	+0.03	0.35	+0.00
<i>Coalition Sub-total</i>	<i>41.83</i>	<i>+4.13</i>	<i>45.09</i>	<i>+3.26</i>
Australian Labor Party	34.32	-2.98	35.02	+0.70
Australian Democrats	7.25	-1.21	2.09	-5.16
Greens	4.94	+2.22	7.67	+3.29

Source AEC, *Behind the scenes, 2005*, p. 120; JSCEM, *The 2001 Federal Election, June 2003*, p 10.

1.12 The 41st Parliament first met on 16 November 2004. If the Parliament runs for its maximum term it will expire on 15 November 2007, with the new House of Representatives election to be held, at the latest, by 19 January 2008. The next half-Senate election must be held between 1 July 2007 and 30 June 2008, with the earliest possible date for such an election being 4 August 2007. The latest possible date is 24 May 2008, to allow sufficient time for the Senate writs to be returned by 30 June 2008.²

Election expenditure

1.13 Expenditure on the 2004 Federal Election, as at 30 April 2005, was \$75,338,711.89 plus \$41,926,158.91 for public funding of political parties and candidates.³ The average cost per elector was \$5.79, excluding public funding. This figure continues a trend of increasing costs for Federal Elections (see Table 1.10 below).

2 Lundie, R., "Timetable for the Next Australian Elections", *DPL Research Note 4, 2005-2006*; parlinfoweb.parl.net/parlinfo/Repository1/Library/PrsPub/AA7H60.pdf.

3 AEC, *Behind the Scenes: 2005*, p. 55.

Table 1.10 Comparative costs of expenditure on elections: 1993-2004

	1993	1996	1998	2001	2004
	\$	\$	\$	\$	\$
Average cost per elector (excl. public funding)					
Actual cost	4.11	5.08	5.21	5.09	5.79
Constant prices (Dec 2004 base)	5.49	6.21	6.24	5.49	5.79
Actual cost (incl. public funding payments)	64,049,500	91,407,000	95,657,857	105,830,037	117,264,870

Source AEC, *Behind the scenes*, 2005, p. 55; AEC, *Behind the scenes*, 2002, p. 60.

Scope and conduct of the inquiry

- 1.14 On 2 December 2004 the Special Minister of State, Senator the Hon Eric Abetz, wrote to the Joint Standing Committee on Electoral Matters asking it to inquire into and report on all aspects of the conduct of the 2004 Federal Election and matters related thereto. The inquiry was advertised in all major newspapers and members of the public were invited to make submissions.
- 1.15 The Committee also wrote to all Members and Senators and Senators-elect; State Premiers, Territory Chief Ministers, and the Administrators of External Territories; the Australian Electoral Commissioner, State and Territory Electoral Commissioners; registered political parties⁴; and heads of university government and politics departments.
- 1.16 The Committee received 221 submissions to this inquiry from a variety of individuals and organisations. The submissions are listed at Appendix A. The Committee held eleven public hearings in Dalby, Longreach, Ingham, Brisbane, Tweed Heads, Melbourne, Adelaide, Perth, Canberra and Sydney, from April through to August 2005. A list of the hearings and witnesses is at Appendix C.

4 The Secretariat wrote to the National Secretariats/Divisions, and each of the State Head Offices, of the Australian Labor Party, the Liberal Party of Australia, the Nationals, the Australian Democrats, the Australian Greens, the Family First Party and Pauline Hanson's One Nation. These parties fielded 911 of the total 1,421 candidates (or 64%) contesting seats in both the House of Representatives and the Senate (AEC, *Behind the Scenes*, 2005, pp. 77-8).

- 1.17 The submissions and transcripts of evidence from the public hearings are available on the internet from:

www.aph.gov.au/house/committee/em/elect04/index.htm

Structure of the report

- 1.18 The report's structure is primarily chronological in relation to the significant elements involved in the conduct of the 2004 Federal Election. Chapter two discusses issues associated with pre-election preparation, including enrolment and the electoral roll; chapter three outlines voting issues in the pre-election period; chapter four is concerned with the issues surrounding party registration; chapter five investigates processes on election day; and chapter six considers the counting of the votes (the 'scrutiny').
- 1.19 Chapters seven through thirteen cover various other matters relevant to the Australia's electoral system. These are:
- Parliamentary terms;
 - Voluntary and compulsory voting;
 - Voting systems;
 - Geographical challenges in the modern age;
 - Technology and the electoral system;
 - Campaigning in the new millennium; and
 - Public funding and disclosure.
- 1.20 The final chapter looks to the future and the role of education in maintaining a healthy democracy.

Enrolment

- 2.1 The Australian democratic process requires that all qualified electors enrol and cast a ballot at each Federal Election.¹ In order to give effect to this requirement, the Australian Electoral Commission (AEC) maintains the Commonwealth's electoral roll which contains information regarding all electors who have enrolled for Federal Elections.²
- 2.2 By its very nature, the electoral roll is a dynamic document requiring constant alteration and adjustment to reflect additions, deletions, transfers and corrections to the roll as they occur, or are notified to the AEC.
- 2.3 The Committee examined enrolment matters in some detail during this inquiry.
- 2.4 This chapter deals with those issues and makes recommendations accordingly.

Qualifications and disqualifications for enrolment

- 2.5 Australian citizens over the age of 18 and British subjects who were enrolled as at 25 January 1984 are entitled and required to be enrolled

1 CEA sections 101, 245.

2 The AEC also maintains electoral rolls for States and Territories in accordance with Joint Rolls Agreements.

for an address at which they have lived for one month or longer that is their real place of living.

- 2.6 Persons who are of unsound mind, are serving a prison sentence of three years or longer, or have been convicted of treason or treachery and have not been pardoned, are not entitled to enrol, or to remain enrolled.
- 2.7 Enrolment is compulsory for all eligible persons³ other than Australians residing overseas, Norfolk Islanders, itinerant electors and people aged between 17 and 18. These persons may enrol in accordance with other relevant sections of the Act.⁴

The enrolment process

- 2.8 Electors claim enrolment or make changes to their enrolment by completing an Application for Electoral Enrolment (*enrolment form*).
- 2.9 Enrolment forms must be signed by the claimant; and be attested by an elector or a person entitled to enrolment, who is required to sign the enrolment form as witness in his or her own handwriting.⁵
- 2.10 Electors may notify changes to their electoral enrolment details using the enrolment form, or, where the change is within the division for which the elector is already enrolled, by giving written notice to the Divisional Returning Officer (DRO).⁶
- 2.11 Enrolment forms are available for download from the AEC Website. They cannot be lodged electronically, as the AEC requires manuscript signatures.
- 2.12 Printed versions of the enrolment form are displayed and available at AEC Offices, State and Territory Electoral Offices and most Post Offices.⁷

3 CEA section 93.

4 CEA sections 94, 94A, 95, 95AA, 96, 99A and 100.

5 CEA section 98. The proof of identity provisions contained in the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* have not yet taken effect.

6 CEA section 105 (1) (b) and (ba).

7 AEC, *General Enrolment - Frequently Asked Questions*, www.aec.gov.au/_content/What/enrolment/faq_general.htm#4

- 2.13 The Nationals express their concern that the act of enrolling to vote is too simple:

currently all that is required to change your voting enrolment is to sign a card with a willing witness. There is no requirement to produce any information to attest to your enrolling address or to your identification. This arrangement is unreasonably easy and leaves the electoral roll open for potential abuse and should be addressed.⁸

- 2.14 DROs who receive and action claims for enrolment are required to ensure the enrollee has supplied all necessary information; that the application is completed and signed by both the applicant and a witness; and to undertake a series of eligibility checks prior to adding new enrollees to the roll or making alterations to existing enrolment details.⁹

- 2.15 The AEC's ability to carry out thorough checks during the surge in enrolments in the seven days between the announcement of the election and the closing of roll (the *close of roll period*) has been raised as a concern in this and all recent election related inquiries. It was also examined by the Committee in its 2001 inquiry into the Integrity of the Electoral Roll¹⁰ and the October 2002 Review of ANAO Report No. 42 2001-02, *The Integrity of the Electoral Roll*.¹¹

- 2.16 In response to a request for information regarding its ability to carry out thorough checks on enrolment during the close of roll period, the AEC has advised the Committee:

when the AEC processes an application for enrolment, every component of the enrolment form is checked for any anomalies and to ensure that it complies with the provisions of the Electoral Act, prior to the form being processed and the elector's name being entered on the roll. This occurs during close of rolls and in non-election periods.

An elector's name is not added to, nor amended on, the roll during close of rolls, or at any other time, if the DRO has reason to believe that the enrolment form is not in order or if there is any doubt as to the elector's entitlement to electoral enrolment. During the roll close period, the AEC applies its

8 Submission No. 92, (The Nationals).

9 CEA section 93A and 102 (1A). These checks are outlined below.

10 JSCEM, *User Friendly, Not Abuser Friendly*: May 2001.

11 JSCEM, *The Integrity of the Electoral Roll*, October 2002.

established procedures with the same degree of rigour as it does in a non-election period.

Applicants are not added to the roll, at any time, until verification of eligibility is completed. Where such verification is completed after the roll close, the elector is advised to complete a declaration vote at a polling place as their name will not appear on the Certified List of Voters.

Contact would be made before the application is processed in all cases, including during a close of rolls, where information contained on the form cast doubt on the eligibility of the person to be enrolled.

The AEC considers criteria such as name, address, date of birth, citizenship, prior enrolment history and signatures prior to processing an enrolment application. The verification of eligibility checking may include any of the following checks:

- address does not exist or does not match an enrollable address on our records;
- the enrolment would result in the enrolment limit for the address being exceeded;
- the name and date of birth do not match an existing enrolment in the same name;
- no previous enrolment exists and the elector is well over the age of 18;
- no signature of applicant and/or witness;
- the witness's signature appears to be in the same writing style as the signature of the applicant;
- a number of enrolment forms received at the same time that appear to have the same handwriting/style of signature or the same witness details; and
- citizenship (e.g. claims British citizenship but was not on the roll as at 25/01/84).¹²

2.17 The CEA provides for other actions that may occur to ensure the DRO is satisfied that the enrolment claim is in order before adding or changing the enrolment. These actions may include:

- contacting the applicant to confirm, clarify or complete information required to determine eligibility;¹³

12 Submission No. 205, (AEC), p. 6.

13 CEA section 102 (1A).

- checking that the name is not fictitious, frivolous, offensive or obscene;¹⁴
- checking to confirm the applicant is an Australian citizen by naturalization and confirming citizenship details;¹⁵
- checking address or property details with the applicant and/or other authorities to determine the exact location and address details of the residence where it does not appear on AEC records;¹⁶ and
- any other enquiries that the DRO thinks necessary to ensure roll integrity.¹⁷

The Committee's view

- 2.18 The Committee considers that the qualifications for electoral enrolment are appropriate, well accepted by the population, and generally well enforced.
- 2.19 The Committee considers that the process by which electors' effect enrolment is appropriately accessible by those who are, in the normal course of life, able to access appropriate services, especially in urban areas.
- 2.20 The Committee notes, however, that in some rural and remote areas, access to enrolment-related material and forms may be more problematic.
- 2.21 The Committee continues to be concerned about the lack of identity verification required when electors enrol and change enrolment detail. These concerns will be addressed more fully later in this report.
- 2.22 The Committee notes the AEC's response regarding the checking processes for enrolment forms, but continues to be concerned about the AEC's ability to carry out the thorough checks required to ensure enrolment integrity during the close of rolls period. These concerns will also be more fully addressed later in this report.
- 2.23 In addressing its concerns about the availability of enrolment related forms and information, and to ensure that all electors and potential

14 CEA section 98A.

15 CEA section 93(1) (b) (i).

16 CEA section 102 (1) (b).

17 CEA section 102 (1A).

electors are able to avail themselves of such information, whilst being prompted to update electoral roll details in a timely manner, the Committee makes the following recommendations:

Recommendation 1

- 2.24 **The Committee recommends that the Commonwealth Electoral Act be amended to require that electoral enrolment forms, AEC reply paid envelopes and enrolment promotional material be prominently displayed at all times in every Australia Post, Medicare, Centrelink and Rural Transaction Centre outlet, including any agency or sub-agency, to encourage electors and potential electors to meet enrolment obligations. Further, all such material should be displayed without fee to the Commonwealth.**

Enrolment of itinerant and homeless persons

- 2.25 The CEA provides for enrolment by persons who have living arrangements or special enrolment requirements that are outside the scope of “ordinary” enrolment criteria.
- 2.26 These persons include Australians residing overseas, Norfolk Islanders, itinerant electors, prisoners, Silent Electors and persons aged between 17 and 18 years.¹⁸
- 2.27 The inquiry received submissions and heard evidence which commented on and made recommendations regarding the itinerant elector provisions of the CEA, particularly in relation to homeless persons.
- 2.28 The ALP noted in its submission that:
- ABS estimates that on any given night in Australia there are 105,000 homeless people. Very few of them are enrolled to vote.
- Under section 96 of the Electoral Act, people can enrol as “itinerant electors”, yet in March 2005 only 5,860 people were enrolled that way.¹⁹

18 CEA sections 94, 94A, 95, 96, 96A and 104.

19 Submission No. 136, (ALP), p. 8.

- 2.29 The ALP requested the Committee to consider the following recommendation:

Rec. 18. That the AEC be requested to report to JSCEM on the effectiveness of Commonwealth and State programs currently devoted to improving and sustaining the enrolment levels of young and homeless Australians. That the AEC also be requested to provide recommendations on how to improve the levels of enrolment of those groups and other groups it identifies.²⁰

- 2.30 Professor Brian Costar and Mr David McKenzie made a detailed submission which canvassed some of the reasons that homeless people may be reticent to engage in electoral enrolment:

In 2004 the AEC joined Swinburne University to conduct a research project *Bringing Democracy Home - Enfranchising Australia's Homeless...*. The project aimed to develop a better understanding of the homeless population and its voting needs as a group. The study found that approximately one half of participants experiencing homelessness had never voted or stated they did not ever intend to vote again. The barriers to their participation in the electoral process could be described as more social than mechanical in nature, and it is unlikely that changes in current electoral law or civic education campaigns will engage them.

Nevertheless, the Swinburne [and a similar Queensland] study has indicated that there are mechanical, social and ideological hurdles the Australian Government *can* address to enfranchise a significant portion of the homeless population who have either voted in the past and/or have expressed a desire to vote in the future. Some impediments that prevent them from engaging include: a too narrow understanding of what constitutes a 'current address' under the Act, a lack of understanding of itinerant voting and silent enrolment provisions, lack of transportation to or location of polling stations, a lack of awareness that it is permissible, in certain circumstances, for third parties to assist in the process of enrolment and voting, fear of becoming visible to government agencies, other than the AEC, on publicised lists, complexity of enrolment process and forms, overall lack of faith in the political system, fear

20 Submission No. 136, (ALP), p. 10.

of [especially retrospective] fines for failing to enrol or vote when eligible, etc.²¹

- 2.31 Many other submissions contained supporting information and recommendations in respect to the homeless, including that:

Section 96(2A) of the Commonwealth Electoral Act 1918 (Cth) should be amended so that Itinerant Electors are registered to vote in the Subdivision with which they have the 'closest connection'.

Section 96(8) of the Commonwealth Electoral Act 1918 (Cth) should be amended to increase the period of time that an Itinerant Elector may have a 'real place of living' from one month to six months.²²

The Committee's view

- 2.32 The Committee agrees with the comments made in relation to voting by Mrs Lindsay MacDonald and considers that they apply equally to enrolment:

While voting is compulsory, the Commonwealth should take responsibility for ensuring that every person entitled to vote is actually able to exercise this most basic of rights.²³

- 2.33 The Committee believes that the AEC must use its resources to ensure that appropriate forms of enrolment are available to and accessible by those who have an entitlement, but who may suffer disadvantage because of social circumstances.
- 2.34 Such groups may include the homeless, itinerant persons, illiterate persons, persons with a disability and persons who reside in remote and isolated areas.
- 2.35 The Committee understands that the AEC has made some progress in identifying issues associated with homelessness in partnership with Swinburne University and notes the contents of the *AEC's Research Report Number 6 – Electorally Engaging the Homeless*.
- 2.36 The Committee also notes that the AEC may be limited in its ability to be more proactive in its research and outreach activities due to funding constraints, however, the Committee is strongly of the view

21 Submission No. 105, (Prof. B Costar & Mr D MacKenzie), p. 5.

22 Submission No. 131, (PILCH), p. 8.

23 Submission No. 47, (Mrs L MacDonald).

that these issues deserve greater, more focussed attention and accordingly, makes the following recommendations:

Recommendation 2

2.37 The Committee recommends that:

- the AEC formulate, implement and report against a detailed, ongoing, action plan to promote and encourage enrolment and voting among persons and groups experiencing difficulty because of social circumstance; and
- that such persons and groups should include, but not be limited, to homeless and itinerant persons, illiterate persons, persons with disabilities and residents of isolated and remote areas;
- the AEC consult with and consider the views of organisations and groups representing homeless and itinerant persons, illiterate persons, persons with disabilities, residents of remote localities, and other appropriate bodies, to formulate appropriate strategies, programs and materials for use when the action plan is implemented;
- the AEC report back to the Committee prior to the next Federal Election with details of its action plan and implementation strategies;
- where appropriate, adequate funding be provided to enable the AEC to develop, implement and report against the action plan; and
- that following the next Federal Election, the AEC seek feedback from representative groups and community members regarding the effectiveness of the strategies implemented, and further develops its action plan to incorporate constructive suggestions where appropriate.

Silent enrolment

2.38 Silent enrolment means that the address of the elector will not be shown on the publicly available electoral roll. Electors can apply for a

silent enrolment if they believe that having their address printed on the publicly available electoral roll could put their personal safety or their family's personal safety at risk.²⁴

- 2.39 The Liberal Party of Australia detailed its concerns with the AEC's application of the provisions of the CEA in regards to Silent Electors. The Party's Federal Director, Mr Brian Loughnane, stated in evidence:

we have had reports of differences of interpretation and of very stringent interpretation in the discretion by DROs in considering applications for silent enrolment. In this day and age, when there are legitimate security issues facing public officials and people in the public eye, we believe that a reasonably flexible interpretation of the discretion that DROs have for applying silent enrolment is necessary, and a further consideration of this by the commission, I believe, is warranted.²⁵

The Committee's view

- 2.40 The Committee considers that there is a need to carefully balance the requirement for address details of electors to be available on the electoral roll, against the need to minimise or eliminate any risk to the personal safety of any elector.
- 2.41 Whilst considering that the current legislative provisions are appropriate, the Committee is firmly of the view that the AEC must apply those provisions fairly and consistently, always ensuring that the safety of electors and their families remains the highest priority.

Proof of identity

- 2.42 Despite the recent tightening of witnessing provisions for enrolment, the most significant roll integrity issue remains ensuring that the identity of the person claiming electoral enrolment is verified.
- 2.43 There has been much debate and Committee consideration in recent years regarding proof of identity for applicants for enrolment and changes of enrolment details.

24 AEC, "Silent Electors" in Research Report 3 - *Analysis of Declaration Voting* www.aec.gov.au/_content/How/research/papers/paper3/page3.htm

25 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, p. 22.

2.44 Submissions to this and previous inquiries have canvassed this issue, and there have been recent attempts by the Government to introduce Proof of Identity measures in order to prevent fraudulent enrolment activity and to ensure roll integrity.

2.45 The Chair of this Committee is on the record as supporting proof of identity for enrolment:

While there are some members that would oppose regulations for proof of identity for the electoral roll, I think the Australian public would do well to question why someone would oppose such a provision.

It is not foreign to require proof of identity. It is something that Australians are familiar with, are used to, and, in this day and age, support.

... having to go through more checks to be able to hire a video than are required to get on the electoral roll is something that needs to be fixed up, and quickly.

We know from previous debates that there are some members opposite who have opposed this legislation for various reasons... But there is no doubt that the Australian public, upon seeing these provisions when they come into effect, should they pass this parliament, will have no problem with them – no problem whatsoever.²⁶

2.46 There is a deal of history to proof of identity arguments. In its report on the 1996 Federal Election, the Committee recommended that proof of identity measures be adopted whereby electors would be required to produce at least one original item of documentary proof of identity.

2.47 At that time the Committee asserted that acceptable documents might include photographic drivers licences, Birth Certificates or extracts, Social Security papers, Veterans Cards, Citizenship Certificates, passports, Medicare cards, or in some limited cases, written references.²⁷

2.48 After considering proof of identity issues in some detail, the Committee recommended in its May 2001 report: *User Friendly, Not Abuser Friendly*:

26 Mr Tony Smith MP, Second Reading Speech, *Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Bill 2004 Cognate Bill: Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004*, House of Representatives, *Hansard*, 26 May 2004, p. 29217.

27 JSCEM, *The 1996 Federal Election*, June 1997, p. 9, Recommendation 3.

that the States and Territories support the *Electoral and Referendum Regulations 2000* and the Commonwealth proceed to implement the amended regulations in time for the next federal election.²⁸

2.49 Those regulations would have implemented a system whereby documentary evidence of identity was required at time of enrolment.

2.50 Further, in its report into the conduct of the 2001 Federal Election, the Committee recommended:

that all applicants for enrolment, re-enrolment or change of enrolment details be required to verify their name and address. Regulations should be made under the Commonwealth Electoral Act 1918 to require people applying to enrol to provide documentary evidence of their name and address:

- by showing or providing a photocopy of their driver's licence or other document or documents accepted by the AEC in a particular case (or, in the event that all States and Territories make driver's licence records available to the AEC for data-matching purposes, by providing their driver's licence number); or
- where such documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the person's identity and current residential address. These persons must have known the enrollee for at least one month.²⁹

2.51 The issue has, once again, been canvassed in many submissions to this inquiry.

2.52 Mrs Alison Cousland, an elector recently returned from overseas, notes that:

after living overseas for 19 years, I returned to Australia and added my name to the electoral roll. I was most surprised when voting in the Federal election not to have to provide identification.

Opening bank accounts, registering at Medicare, and signing up for a mobile telephone all required different combinations of identification to satisfy each organizations identification

28 JSCEM, *User Friendly, Not Abuser Friendly*, May 2001, Recommendation 4.

29 JSCEM, *The 2001 Federal Election*, June 2003, p. 48, Recommendation 1.

point system. And yet to vote, one of the privileges we have in a democracy, no identification is required.³⁰

2.53 Mrs Cousland's view receives support from The Nationals who submit:

currently all that is required to change your voting enrolment is to sign a card with a willing witness. There is no requirement to produce any information to attest to your enrolling address or to your identification. This arrangement is unreasonably easy and leaves the electoral roll open for potential abuse and should be addressed.³¹

2.54 The Nationals recommend:

that the requirements for changing address be altered to include the production of some form of significant identification, such as a driver's license, 18+ card, passport or birth certificate, along with documentation that shows a current residential address, such as a utilities bill or bank statement.

The process for changing ones enrolment details should be either undertaken by presenting oneself to an AEC office or to a JP to witness the production of these materials and then generate a change of enrolment form.³²

2.55 In a similar vein the Festival of Light claimed:

there is the question of false enrolment. We believe there should be identity checks which are as rigorous as those used to open a bank account. People are very familiar with opening a bank account and there should be no lesser scrutiny of people going on the electoral roll. Likewise, there should be adequate checks on the capacity to fraudulently alter another person's details, to make sure that it is a true correction to the roll.

2.56 The ALP, despite opposing any further strengthening of the verification of identity for enrolment, goes part of the way and submits:

30 Submission No. 30, (Ms A Cousland).

31 Submission No. 92, (The Nationals).

32 Submission No. 92, (The Nationals).

Those applying for enrolment or transfer of enrolment to provide their driver's licence number on the enrolment form, without further witnessing; and

If an applicant for enrolment did not have a driver's licence, the enrolment form to be witnessed by an elector who did have a licence and who would include their licence number on the enrolment form.³³

2.57 Similarly, the Premier of Western Australia, Dr Geoff Gallop MLA, argues:

firstly, on the matter of the integrity of our electoral and enrolment systems, it is important that any new measures adopted are appropriate to improving the electoral roll and thereby our electoral system.³⁴

2.58 On the other hand, Dr Gallop also notes:

as to electoral integrity, there is no persuasive evidence of electoral roll manipulation such as to affect the election result...

More rigorous identity tests may also considerably increase the time taken for electors to submit or update enrolment details and in the process discourage their involvement.³⁵

The Committee's view

2.59 The Committee, while noting that there are differences of opinion on the level of identity verification required for enrolment, is committed to ensuring that the process of enrolment is not conducive to electoral fraud or electoral roll manipulation.

2.60 The Committee notes that there have been past instances of electoral roll fraud. Whilst it is not proven that electoral roll fraud has changed or significantly affected election results, the Committee believes that the real issue to be addressed is the prevention of the possibility that electoral roll fraud may occur.

2.61 The Committee agrees with Mrs Alison Cousland and asserts that is not too onerous to require proof of identity for those seeking to enrol or change enrolment details.

33 Submission No. 136, (ALP), p. 9.

34 Submission No. 60, (Dr Geoff Gallop, Premier of Western Australia).

35 Submission No. 60, (Dr Geoff Gallop, Premier of Western Australia).

- 2.62 The Committee argues that providing identification at the time of enrolling will not cause delays or inconvenience to electors attempting to enrol. In fact, Australians are becoming more and more used to providing proof of identity for such mundane tasks as joining a video library.
- 2.63 Australians are already required to provide proof of identity for many everyday undertakings such as opening a bank account, applying for a drivers licence, signing up for a mobile telephone, seeking rental accommodation, enrolling in educational programs, applying for a Medicare card, applying for welfare benefits, applying for a passport, applying for a credit card, seeking credit approvals and accessing licensed premises, along with a myriad of other situations encountered daily which require proof of identity, age or address.
- 2.64 The Committee notes that applicants for pre-paid mobile telephone services are currently required to provide the service provider with one of more of the following, in order to prove their identity:
- an identification card issued to the purchaser or end-user by a tertiary education institution;
 - a licence or permit issued in the name of the purchaser or end-user under a Commonwealth, State or Territory law;
 - a passport issued in the name of the purchaser or end-user;
 - a statement issued under a Commonwealth, State or Territory law to the effect that the purchaser or end-user is entitled to receive a financial benefit;
 - a birth certificate in the name of the purchaser or end-user, or in a former name of the purchaser or end-user; and
 - a document that is recognised as a proof of identity under a Commonwealth, State or Territory law.³⁶
- 2.65 Why should the act of enrolling to vote and choosing who should govern Australia, arguably one of the most important steps in our democratic society, be subject to any less scrutiny and verification than purchasing and enabling a pre-paid mobile telephone, or, as previous inquiries have stated, joining a video library?
- 2.66 In the Committee's view, enrolling or changing enrolment details on the electoral roll must be supported by documentary evidence
-

36 *Telecommunications (Service Provider – Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000.*

sufficient to identify the enrollee and the address for which they claim enrolment.

- 2.67 The Committee's view is that acceptable identification³⁷ and proof of address³⁸ must be shown or provided to the AEC, or a person who can attest a claim for enrolment,³⁹ before an enrollee is added to, or their details changed, on the electoral roll.
- 2.68 Acceptable identification should include, but not be limited to:
- an Australian birth certificate, or an extract of an Australian birth certificate, that is at least 5 years old;
 - an Australian Defence Force discharge document;
 - a Australian marriage certificate;
 - a certificate of Australian citizenship;
 - a current Australian driver's licence or learner driver's licence;
 - a current Australian passport;
 - a current Australian photographic student identification card;
 - a current concession card issued by the Department of Veterans' Affairs;
 - a current identity card showing the signature and photograph of the card holder, issued by his or her employer;
 - a current pension concession card issued by the Department of Family and Community Services;
 - a current proof of age card issued by a State or Territory authority;
 - a decree nisi or a certificate of a decree absolute made or granted by the Family Court of Australia; or
 - a document of appointment as an Australian Justice of the Peace.

37 *Acceptable identification* should be defined as consisting of at least one document from a list of acceptable documents, which the AEC accepts as evidence of proof of identity. A number of suitable documents were listed in Schedule 5 of the *Electoral and Referendum Amendment Regulations 2001*.

38 Acceptable documentary evidence of an enrollee's address should be defined as a document from a list of acceptable documents, which the AEC accepts as evidence of proof of address

39 A previous list of persons who can attest claims for enrolment was in Schedule 4 of the *Electoral and Referendum Amendment Regulations 2000*. This list will require some amendment to remove references to ATSIC, and is reproduced at Appendix F.

- 2.69 Persons who can attest a claim for enrolment should include, but not be limited to:
- staff of the AEC or other Electoral authorities;
 - Commonwealth and State or Territory public servants,
 - bank or credit union officers;
 - finance company officers;
 - members of the defence forces;
 - Australia Post employees; and
 - other persons accepted by the AEC as persons who can attest a claim for enrolment.
- 2.70 Those enrolling, re-enrolling, or changing enrolment details should have the choice of providing the required documents either in person at an AEC office, or to a person who can attest a claim for enrolment, or by posting or faxing those documents (or certified copies of those documents) and the enrolment form to which they relate to the AEC.
- 2.71 Where certified copies of documents are posted or faxed to the AEC, they must be certified to be true copies by the enrolee and witnessed by a person who is currently an enrolled elector.
- 2.72 Where the AEC receives an original document by post, the AEC must return the document to the enrolee by registered post unless the enrolee agrees to its return by other means.
- 2.73 Where the AEC, or a person who can attest a claim for enrolment, is handed an original document, the AEC or that person must hand the document back to the enrolee, unless the enrolee agrees to its return by other means.
- 2.74 These requirements would greatly increase the integrity and accuracy of the electoral roll by proving the identity of the enrolee.
- 2.75 Once proof of identity and address is provided, the electoral roll should be annotated to record that acceptable proof of identity documentation has been sighted for that elector.
- 2.76 The Committee notes that there will be some cases where an enrolee does not hold an acceptable identification document.
- 2.77 Should the enrolee be unable to provide an acceptable identification document, they would be required to supply written references given

by any two persons on the electoral roll who can confirm the enrollee's identity, and one proof of address document to the AEC.

- 2.78 The persons supplying the references must have known the enrollee for at least one month and must show their own acceptable identification document, or alternatively, supply their driver's licence number to the AEC.
- 2.79 In such situations, the AEC should check and confirm the identity details of the referees and not the enrollee. This could be achieved by the AEC conducting one or more of the following checks:
- sighting the acceptable identification document of the referees; or
 - checking the electoral roll to confirm that acceptable proof of identity had already been provided by the referees when they last enrolled; or
 - by confirming the authenticity of the drivers licence numbers supplied by the referees with the relevant motor licensing authority.
- 2.80 In cases where the checks proved the identity of the referees, the AEC should enrol or change the enrolled details of the enrollee on the electoral roll.
- 2.81 In relation to driver's license material, the Committee supports the AEC's comments about the desirability of expanding its *demand power*⁴⁰ to allow the AEC to access driver's licence details held by some State and Territory authorities. In the Committee's view this access would enable the AEC to give effect to the Committee's recommendations.
- 2.82 Specific recommendations in respect of the demand powers are included below in the electoral roll review section of this chapter.
- 2.83 The Committee notes that in certain circumstances, the electoral roll itself is used to verify the identity of certain persons. For over 30 years the financial sector has relied on electoral enrolment as one of the checks required before approving and issuing credit to applicants.⁴¹
- 2.84 The Committee is also aware that numerous other agencies and organisations rely on the veracity of the information contained on the

40 Submission No. 216, (AEC), p. 25.

41 Submission No. 70, (Institute of Mercantile Agents).

electoral roll for verification of identity, in order that they are able to issue other identification documentation.

- 2.85 For instance; verification of electoral enrolment details may form 25 of the 100 points required towards:
- the eligibility for obtaining an Identification Record for a Signatory to an Account under the *Financial Transaction Reports Act 1988* (FTR Act);⁴²
 - verification of identity for the Ministry of Transport in NSW;⁴³ and
 - a photographic student Identification card for the University of Newcastle.⁴⁴
- 2.86 The Committee believes that, in addition to the substantial need for roll integrity, organisations and agencies who issue identification documentation based on the accuracy of the electoral roll ought to be satisfied that the details contained on the electoral roll have been verified.
- 2.87 The electoral roll is a list of those Australians who share a common democratic right/privilege: Those who appear on it choose those who govern us.
- 2.88 Those who are not Australian Citizens, or who are by virtue of other circumstances, not entitled to join this roll, should not be permitted to do so.
- 2.89 Finally, the Committee believes that the integrity of the electoral roll will be enhanced and any risk of systemic electoral fraud mitigated to a high degree by requiring verification of identification and address for enrolment, and, as detailed later in this report, provisional voting.

42 www.austrac.gov.au/guidelines/forms/201.pdf.

43 www.transport.nsw.gov.au/licensing/100-point-check.html.

44 www.newcastle.edu.au/study/forms/idrequest.pdf.

Recommendation 3

2.90 The Committee recommends that the Commonwealth Electoral Act be amended to require all applicants for enrolment, re-enrolment or change of enrolment details be required to verify their identity and address.

Regulations should be enacted as soon as possible to require persons applying to enrol or change their enrolment details, to verify their identity and address to the AEC by:

- showing or producing an acceptable identification document and a proof of address document to the AEC or a person who can attest a claim for enrolment; or
- where such proof of identity documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the enrolee's identity and by supplying a proof of address document:
 - ⇒ persons supplying references must have known the enrolee for at least one month and must show their own acceptable identification document or supply their drivers licence numbers to the AEC); and
- enrolees should have the choice of providing the required documents in person to the AEC, or a person who can attest a claim for enrolment, or by posting or faxing the required documents or certified copies to the AEC with the enrolment form to which they relate; and
- where certified copies of acceptable documents are posted or faxed to the AEC, they must be certified by the enrolee to be true copies and witnessed by an elector enrolled on the electoral roll.

Where the AEC or a person who can attest a claim for enrolment receives original documents from an enrolee, the AEC must return the documents to the enrolee by hand, registered mail or other means agreed to by the enrolee.

The electoral roll used at the 2004 Election

- 2.91 In accordance with the CEA, the rolls closed for the 2004 election at 8.00pm on Tuesday 7 September 2004, seven days after the issue of the writs for the election.
- 2.92 As demonstrated by the following table, the electoral roll continues to grow at a significant rate from election to election.

Table 2.1 Electors enrolled at close of rolls 1996 - 2004

Election	1996	1998	2001	2004
Electors at close of roll	11,655,190	12,056,625	12,636,631	13,021,230
Increase since previous election	2.7%	3.44%	4.81%	3.04%

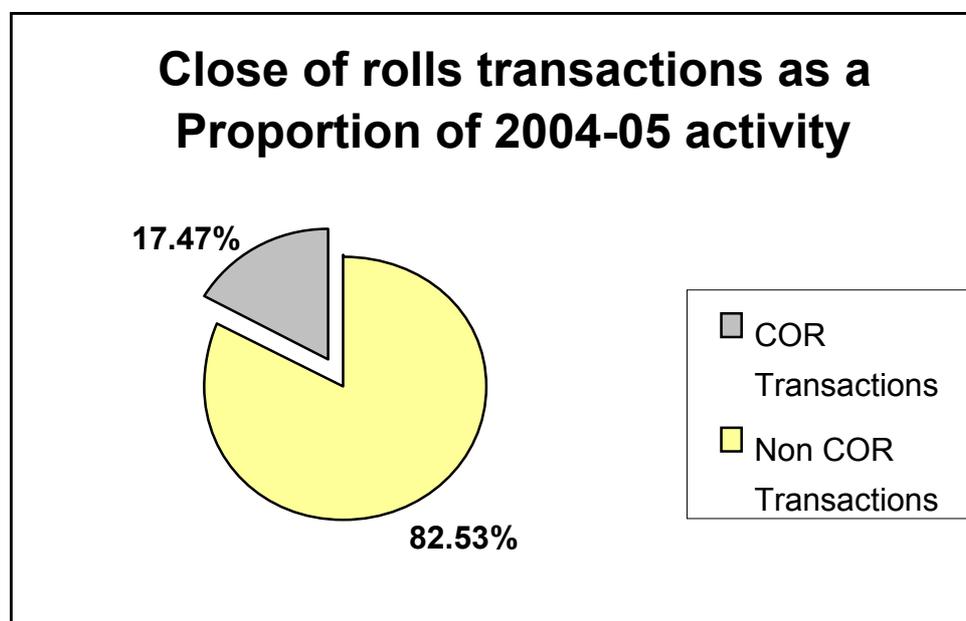
Source AEC, *Electoral Pocketbook*, 2005, p. 62.

- 2.93 Between the 2001 and 2004 Federal Elections, the electoral roll grew by some 384,599 electors. Of this growth, some 62,583 or 16.27% occurred during the seven day close of rolls period for the 2004 election.
- 2.94 In those seven days the AEC actioned some 520,086 transactions against the electoral roll.⁴⁵
- 2.95 In order to put that number into perspective, the Committee compared the total number of transactions during the seven-day close of roll period for the 2004 election (520,086), to the total number of transactions made to the electoral roll during the 2004-05 financial year (2,976,181).⁴⁶
- 2.96 These statistics indicate that close of rolls transactions represent nearly 17.5% of the total enrolment activity (transactions) for the 2004-05 financial year as shown in figure 2.2.
- 2.97 Put another way, the AEC was required to action nearly 17.5% of its total yearly transactions in the first seven days of the 2004 election period.

45 This figure is comprised of the 423,993 total enrolment transactions (column g of Appendix E) plus the 89, 529 objections, 6, 256 death deletions and the 308 duplicate deletions (columns i, j and k) removed from the roll during this period.

46 Submission No. 205, (AEC), Table 2, p. 13.

Figure 2.1 Close of rolls transactions as a proportion of 2004-05 enrolment activity



Source AEC Submission Nos 165, p. 11; 205, p. 13, Table 2.

- 2.98 Further analysis of the 520,086 close of rolls transactions indicates that in those seven days:
- 256,513 enrolment cards were received from electors at addresses that the AEC had contacted in the 12 months prior to the election, and who subsequently enrolled, re-enrolled or changed their enrolment details during the close of rolls.
 - In many of those cases, the AEC contacted those same addresses or electors on more than one occasion during that same 12 months.⁴⁷
- 2.99 The high volume of transactions made to the roll in the close of roll period has been noted in submissions to the Committee during each inquiry since the 1996 Federal election.
- 2.100 The majority of submissions to this inquiry repeat arguments and points of view that have been consistently put either for or against retaining the seven day close of rolls period.
- 2.101 The Festival of Light notes that the close of rolls period is the most vulnerable period for electoral fraud, due to the inability of the AEC to carry out thorough checks of enrolment claims:

47 Submission No. 221, (AEC), pp. 4-5.

a problem with this practice is that it allows a person a chance to identify a marginal electorate and attempt to enrol in that electorate under a false name, or to change his enrolment in order to vote in a marginal electorate. The large number of people who alter their enrolment details in the lead up to the election limits the scrutiny that the Australian Electoral Commission (AEC) can apply to each enrolment.

Coupled with the pressure of preparing for Election Day, this period is the most vulnerable time in the election cycle.

The possibility of dishonesty could be greatly reduced by closing the electoral roll on the day that an election is called.⁴⁸

- 2.102 This view is supported in the Liberal Party of Australia submission which states:

the integrity of the electoral roll remains a central concern for us, and in that regard we express our support for the attempts made by the Government to legislate for closing the roll to new enrolments on the day of issue of the writs for an election... We continue to be of the view that a flood of new enrolments in the days after writs are issued, at a time when they cannot be properly checked, are to the detriment of the integrity of the roll. Our view therefore remains that Parliament should pass legislation to close the roll to new enrolments on the day of the issue of writs.⁴⁹

- 2.103 The Nationals submission indicates a concern with the current close of roll arrangements:

Currently the roll closes somewhere between 7 to 10 days after the issue of the writs. This has allowed a large number of people change their address and update their details of enrolment with the AEC... While a large proportion of these are genuine cases, we are concerned that the long period before close of rolls could enable deceitful people or parties to shift voters from safer electorates to more marginal ones....

There has been evidence of false voter enrolments occurring in past elections, specifically in Queensland, and we are concerned that the Federal system has not been sufficiently changed to prevent this problem from occurring. While we

48 Submission No. 125, (Festival of Light), p. 1.

49 Submission No. 95, (Liberal Party of Australia).

have no evidence that we can submit to this inquiry from the 2004 election, our concerns are that the integrity of the rolls are in question while they remain open for such a long period during the campaign.

The point is not if false voter enrolment occurs, but whether the present system provides an opportunity for it to occur, and the limited opportunity available for checking if it has taken place. We believe that the current arrangements are unnecessarily generous. We note that other State jurisdictions have a system where their roll closes at the issue of the writs and it would appear to be working effectively.⁵⁰

2.104 Other submissions assert that a close of rolls period should remain.

2.105 The Premier of Western Australia, Dr Geoff Gallop notes:

As a related matter, moves to close the federal electoral roll on the day a poll is called will present particular difficulties for a large number of electors geographically dispersed throughout Western Australia and without immediate access to appropriate communication facilities.⁵¹

2.106 The PILCH Homeless Persons Legal Clinic submission makes comments supporting the retention of the close of roll period, noting:

Section 155 of the Act requires that the Electoral Roll remain open for 7 days after the election writ is issued. This is a limited timeframe within which an elector may lodge a claim updating his or her information. In the week following the announcement of the 1998 election, the AEC received a total of 351,913 enrolment forms which included new enrolments, re-enrolments and transfers of enrolments. While the Act requires that electors update their information on the roll within 21 days of a change of address, it is recognised that many people (homeless or not) do not discharge this requirement. It is only when a federal election is announced that most individuals notify the AEC of their changed circumstances.⁵²

50 Submission No. 92, (The Nationals).

51 Submission No. 60, (Dr Geoff Gallop, Premier of Western Australia).

52 Submission No. 131, (PILCH).

2.107 The submission from the Public Interest Advocacy Centre notes:

The last instance in which the electoral rolls were closed on the day the Electoral Writs were issued was under the Fraser Government in 1983. This effectively disenfranchised 90,000 voters.⁵³

2.108 The close of rolls argument and associated issues were examined at length during hearings. The Committee was presented with many arguments, both for and against closing the roll on the day of issue of the writ.

2.109 Mr Brian Loughnane presented the Liberal Party of Australia's view:

the Liberal Party support the government's efforts to legislate for the closing of the electoral roll for new enrolments on the day that writs are issued for an election.

We are of the view that a flood of new enrolments in the days following the issue of writs, when they cannot be properly checked, calls into question the integrity of the electoral roll.⁵⁴

2.110 The ALP's position on the matter was expressed by Mr Tim Gartrell in his opening statement:

I would now like to turn to the proposal for early closure of the roll. The Liberal Party, in their submission to this inquiry, claimed the roll needs to be closed early because:

... a flood of new enrolments in the days after writs are issued, at a time when they cannot be properly checked, are to the detriment of the integrity of the roll.

We agree that a flood of enrolments does occur after an election is announced. That is because many normal Australians, as opposed to political junkies like us, hear about the election and decide to sort out their enrolment. The Liberals claim that this phenomenon is to the detriment of the roll. That is not only a weird twist of logic; it is also not backed up by our history. No election has ever been found to be affected by inaccuracies or fraud relating to enrolments occurring at this time.⁵⁵

53 Submission No. 144, (Public Interest Advocacy Centre).

54 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday 8 August 2005. p. 22.

55 Mr T Gartrell, National Secretary ALP, *Evidence*, Monday 8 August 2005, pp. 36-37.

- 2.111 The AEC's position on closing the roll was expressed by the Electoral Commissioner, Mr Ian Campbell, who gave the following evidence in response to a question from the Deputy Chair:

Perhaps I will tackle that question from a slightly different angle. Even with the seven-day close of rolls, I have no doubt that we now have people who try to enrol on days 8, 9 and 10. In that sense, wherever you draw a cut-off point, you will have people who, for whatever reason, did not get to enrol before the rolls closed – there is under current arrangements and there would be in any changed arrangements...

My point is that I could not draw any conclusion that a change in the closure date of the rolls would automatically lead to a particular number of electors who want to vote not being able to vote.⁵⁶

The Committee's view

- 2.112 When expressed in terms of enrolment workload (transactions only) it could be said that the AEC processed approximately 17.5% of the 2004--05 years enrolment transaction workload during the close of rolls for the 2004 Federal Election in only 3% of the available working time for the year.⁵⁷
- 2.113 Whilst acknowledging the efforts made by the AEC in attempting to ensure that the electoral roll is updated with integrity during the close of rolls period, the Committee considers that the volume of transactions which takes place during that period limits the AEC's ability to conduct the thorough and appropriate checks required to ensure that integrity.
- 2.114 The Committee notes that 60.5% of the enrolment transactions that occurred during the close of rolls period would not have been required, if electors had enrolled or changed their enrolment details at the time that their entitlement changed.⁵⁸
- 2.115 In the case of those turning 18, the Committee considers that the act of enrolling should be considered as much a symbol of transition to adulthood as applying for a proof of age card for entry to licensed premises or for a driver's licence.

56 Mr I Campbell, *Evidence*, Friday 5 August 2005, p. 55.

57 Assumes 227 working days and 7 days for close of roll.

58 Submission No. 221, (AEC), Attachment A.

- 2.116 The Committee believes that the seven day close of roll period for Federal elections actually encourages electors and potential electors to neglect their obligations in respect of enrolment, believing that they can play “catch up” during the close of rolls period.
- 2.117 This “period of grace” has served to decrease the accuracy of the roll during non-election periods as a result of electors neglecting their lawful enrolment obligations. Those that argue otherwise acknowledge that electors act in this way, but still seek to allow the situation to continue unabated.
- 2.118 The Committee notes, with a high degree of concern, that a significant number of electors failed to update their enrolment details in the 12 months before the 2004 election writs were issued, despite having been contacted and prompted to do so by the AEC up to 12 months before the election was announced. Those same electors were later responsible for a large proportion of the enrolment transactions that the AEC was required to process during close of roll.
- 2.119 Statistics provided by the AEC indicate, that despite AEC efforts and the significant amount of taxpayer funds expended by them in contacting electors prior to elections being announced, that same pattern is repeated election after election.⁵⁹
- 2.120 Not only do electors act unlawfully in not enrolling when entitled, they cause the wastage of a significant amount of taxpayer funds that the AEC is obliged to expend on postage and other measures, making repeated attempts to persuade those same electors to update their details on the electoral roll.
- 2.121 The Committee also agrees that the current close of roll arrangements present an opportunity for those who seek to manipulate the roll to do so at a time where little opportunity exists for the AEC to undertake the thorough checking required ensuring roll integrity.
- 2.122 The Committee believes that those who argue for the retention of the seven day close of rolls and who promote the argument that there is no proof that enrolment fraud is sufficiently widespread to warrant any action, have missed the point.
- 2.123 The fundamental issue facing this Committee is to prevent any such fraud before it is able to occur. Failure to do so would amount to neglect.

59 34.43% in 1999, 46.18% in 2001, and 60.5% in 2004. Submission No. 221, (AEC), Attachment A.

- 2.124 While the risk exists that fraud sufficient to change the result of an election might occur, we are failing in our duty to protect and preserve the integrity of our electoral system and our democratic processes and principles.
- 2.125 Accordingly, the Committee recommends that the roll should be closed at 8.00pm on the day that the writ is issued.
- 2.126 This change, along with the introduction of proof of identify and address measures for enrolment and provisional voting, will ensure the electoral roll retains a high degree of accuracy and integrity, while reminding electors that the responsibility for ensuring that the electoral roll is updated in a timely manner rests with them.

Recommendation 4

- 2.127 **The Committee recommends that Section 155 of the Commonwealth Electoral Act be amended to provide that the date and time fixed for the close of the rolls be 8.00pm on the day of the writs.**

Recommendation 5

- 2.128 **The Committee recommends:**
- **Section 155 of the Commonwealth Electoral Act should be amended to provide for the date and time of the closing of the rolls as soon as possible within the life of the 41st Parliament;**
 - **that the amendment to section 155 be given wide publicity by the Government and the AEC;**
 - **that the AEC be required to undertake a comprehensive public information and education campaign to make electors aware of the changed close of rolls arrangements in the lead up to the next Federal Election;**
 - **that the AEC review, and where appropriate amend, the wording of all enrolment related forms, letters, promotional**

material and advertising used for enrolment related activities to include a notification to electors that the rolls will close on the day of the issue of the writs for Federal Elections and referenda; and

- **that appropriate funding be made available to the AEC so it may comply with these and other recommendations agreed to by the Government.**

Electoral Roll review

2.129 The CEA requires the AEC to undertake reviews of electoral rolls with a view to ascertaining such information as is required for the preparation, maintenance and revision of the rolls.⁶⁰

2.130 The AEC conducts a number of activities aimed at reviewing the rolls.⁶¹ These processes are ongoing and include:⁶²

- Continuous Roll Updating (CRU), which incorporates:
 - ⇒ Data-mining of the AEC's electronic Roll Management System, or RMANS (on which the publicly available name and address detail of electors is stored);
 - ⇒ data-matching with other Commonwealth and State -Territory agencies;
 - ⇒ mailouts; and
 - ⇒ targeted fieldwork involving doorknocks.
- Direct enrolment;
- Marketing enrolment;
- Geographic Information System (GIS) Technology;
- Monitoring of death notices and information from State Registrars of Deaths;
- Address Register Maintenance;

60 CEA section 92.

61 This aspect of roll management was discussed in detail in JSCEM, *User Friendly, Not Abuser Friendly*, May 2001.

62 JSCEM, *User Friendly, Not Abuser Friendly*. May 2001, p. 23.

- Return to Sender mail, and
 - Information from members of the public and other organisations.
- 2.131 In examining the issues surrounding the updating of the roll, the Committee sought to gain an in-depth understanding of the amount of effort required of the AEC to update the electoral roll over a 3 year period, equivalent to a full three-year election cycle, which included a Federal Election.
- 2.132 The Committee sought statistics from the AEC in order to undertake such an analysis. In response to the Committee's request, the AEC provided statistics for the 2002-03, 2003-04 and 2004-05 financial years.⁶³ The 2004-05 financial year (Table 2.2) incorporated the 2004 Federal Election.
- 2.133 The statistics show that the AEC made 2,836,267 changes to the electoral roll in the 2002-03 financial year, 2,792,172 in 2003-04, and 2,976,181 in 2004-05.⁶⁴ Collectively, these years saw the AEC make some 8,604,620 enrolment changes, at an average of 2,868,206 transactions per year.
- 2.134 In the same three year period the electoral roll grew from 12,741,980 electors to 13,114,475 electors, indicating a net growth of 372,495 or 2.92%, at an average of 124,165 electors per year.⁶⁵

Table 2.2 Total Electors on the Electoral Roll at 30 June: 2002 - 2005

	30 June 2002	30 June 2003	30 June 2004	30 June 2005	Totals
Total Electors	12,741,980	12,818,739	12,961,467	13,114,475	
Transactions in preceding 12 months	N/A	2,836,267	2,792,172	2,976,181	8,604,620
Actual Growth	N/A	76,759	142,728	153,008	372,495
Growth %	N/A	0.6%	1.11%	1.26%	2.92%

Source AEC's Annual Reports 2002-03; Submission No 205, (AEC), pp. 12-13.

63 Previously published in the AEC's annual reports for the respective years.

64 AEC Annual Report 2002-03, Table 5; Submission No. 205, (AEC), Tables 1 and 2.

65 AEC, *Enrolment Statistics as at 30 June 2005*
www.aec.gov.au/_content/What/enrolment/stats/2005/06.htm

- 2.135 The statistics indicate that for every 10 electors by which the roll grew during the three year period, the AEC was required to make an average of 231 changes to the electoral roll.
- 2.136 Further analysis indicates that for the individual years the number of changes made to the roll for each 10 electors added to the roll was 370 in 2002--03; 196 in 2003-04; and 195 in 2004--05.
- 2.137 Therefore, as can be clearly seen in the statistics, there is considerable variation in the number of changes made over a three year period, with a significant variation in the effect that those changes have on the size of the roll.
- 2.138 There may be any number of reasons for those differences. Federal, State, and local government elections and by-elections occur with varying frequency during any three-year period. Each of those events has a potential to impact on the enrolment rate and the number of electors on the roll.
- 2.139 In some cases these elections provide for a close of rolls period during which enrolment activity may peak. There are other cases where there is no close of rolls period.
- 2.140 Actions taken to remove electors from the roll because of death, a loss of entitlement to enrolment at a particular address or even duplicate entries on the roll may also occur at any time during any three year period.
- 2.141 These also have the potential to affect the enrolment rate and the number of electors on the roll.
- 2.142 There are however, three inescapable conclusions that can be drawn from any analysis of the above statistics:
- the electoral roll continues to grow;
 - the growth rate of the roll is not indicative of the number of changes required to keep the roll up to date; and
 - the roll requires constant update in order to ensure its accuracy for all elections for which it is used, not just for Federal Elections.
- 2.143 Submissions to this inquiry which canvassed electoral roll review issues generally focussed on the issue of whether or not CRU was the most effective way of updating the roll.
- 2.144 Mr Bruce Kirkpatrick and Mr Peter Brun argued in a jointly signed submission that :

the lack of a properly and efficiently maintained Habitation Review underlines the fact that that the AEC's CRU is a poor substitute for serving the Australian Democracy.⁶⁶

2.145 Mr Michael Danby MP, Deputy Chair of the Committee, disagreed:

in your submissions... you are critical of the continuous roll update that the Electoral Commission undertake. If you compare it to electoral systems across the world, isn't this the most advanced, integrated attempt to quickly update people's correct addresses using the databases of other agencies where people voluntarily give their names, like transport accident commissions and organisations like that?

My view is that you come to this committee with the same view that all of us hold: we want the electoral roll to have integrity. I cannot think of a system outside of doorknocking every home – which in some cases is appropriate – that is not like the CRU which could possibly be better.⁶⁷

2.146 However, Mr Peter Brun who, with Mr Kirkpatrick, presented evidence to the Committee about door knocks undertaken by them to test the accuracy of the roll, also notes in his submission:

whatever methods used by the AEC, it is impossible for the Electoral Roll to be completely up to date. Whenever the roll is examined, it will always be a snapshot of an earlier date.⁶⁸

2.147 The Festival of Light appears to support the AEC's use of CRU, noting in their submission:

the AEC operates a Continuous Roll Update (CRU) system that continuously applies a variety of checking procedures to the electoral roll in an attempt to find irregularities such as non-existent people.

These include comparisons of data with Australia Post, electricity suppliers, water suppliers and the Department of Motor Vehicles, and Sample Audit Fieldwork that involves visiting households of registered voters. In South Australia this process involved door knocking 7,206 households, however the results of this process have not yet been released.

66 Submission No. 35, (Mr B Kirkpatrick & Mr P Brun), p. 4.

67 Mr M Danby MP, *Transcript of evidence*, 12 August 2005, p. 14.

68 Submission No. 52, (Mr P. Brun).

If the AEC process is being applied properly, it is virtually impossible to create a fake address. Furthermore, only a limited number of people can be registered to vote in each house without prompting the AEC to investigate thoroughly. Investigations can even include an AEC representative knocking on the door of the house in question to identify each voter personally.⁶⁹

- 2.148 The AEC's operation of CRU was supported by the Committee in its October 2002 report *The Integrity of the Electoral Roll* which found that:

in conducting CRU "...the AEC, using data sourced from within the AEC and [data] obtained from external sources, undertakes data-matching and data-mining activities to identify addresses on the roll where residents have moved...new electors... electors to be removed from the roll... Using the results...the AEC sends letters and enrolment forms to individuals inviting them to enrol or update their details. As individuals respond... the roll is updated."

Since the inception of CRU, the AEC has improved its ability to periodically review the Electoral Roll. For example, it has increased the frequency of its reviews.

The Committee notes the Audit Report finding that... "the CRU methodology is an effective means of managing the Electoral Roll and is capable of providing a roll that is highly accurate, complete and valid."

It also notes the Audit Report's conclusion that CRU had developed in an 'ad hoc' manner, without strategic planning for a consistent national approach.⁷⁰

- 2.149 The ALP suggests that CRU might be improved by the introduction of Direct Address Change (DAC). The ALP submission notes:

DAC would allow the AEC to use the data it already receives from other agencies to update the elector records of Australians. This information would be received from suitable government agencies without seeking a specially signed elector enrolment or transfer of enrolment form.

Suitable agencies for DAC roll update would be the Australian Tax Office, Medicare, Centrelink and State and

69 Submission No. 125, (Festival of Light), p. 2.

70 JSCEM, *The Integrity of the Electoral Roll*, October 2002, pp. 18-20.

Territory Motor Registries. The data required from these agencies is name, address, gender and data of birth. DAC roll updating would therefore take advantage of the proof of identity already supplied to these agencies by their clients for identification requirements for electoral roll updating.

DAC may provide advantages for the elector and enrolment processes because:

(a) The elector would not have to separately obtain an enrolment card, complete it and forward it to the AEC as their enrolment details would be entered automatically from their advice to the particular DAC agency.

(b) Proof of identity would already be provided as the change of address data has originated from an agency which has already confirmed the identity of the client through drivers' licences, citizenship documents, birth certificates, etc.

(c) It would probably make the enrolment process simpler for electors in remote or regional areas who have limited access to government agencies. For example, it could extend enrolment services to electors who may be handicapped, from a non-English speaking background or reliant on governmental support.

(d) DAC provides greater accuracy and integrity to the electoral roll as change of address data is provided from suitable government agencies from an identified source and contains elector specific details.

Importantly, DAC could allow for the provision of enrolment transactions via "*all of government*" change of address forms and/or also accommodate the promotion of government services through electronic transactions.⁷¹

2.150 The AEC notes the obvious value of using data from agencies such as Centrelink and the RTA in New South Wales. for CRU activities, especially in relation to youth enrolment:

In relation to youth and CRU, the AEC uses data supplied by Centrelink containing details of persons aged 17 and 18 to mail to newly eligible electors encouraging them to enrol. Data from motor transport authorities is also used to

71 Submission No. 136, (ALP), p. 10.

encourage youth enrolment through the AEC's Continuous Roll Update program.

The value of using motor transport data as a major data source to increase youth enrolment was demonstrated when the AEC first used the New South Wales Road Transport Authority data. The enrolment of 18 year olds in NSW increased from 41% to 79% within 2 months of the first mail out using this data.

Both Centrelink data and transport data, for those states where it has been obtained, are now included in every monthly mailout.⁷²

2.151 The AEC advises that it is continuing to refine CRU processes:

The AEC is continuing to refine CRU processes to improve the efficiency and effectiveness of activities, and gain consistency across states and territories.

2.152 The AEC has indicated to the Committee that there are data sources, which are currently unavailable to the AEC due to State and Territory privacy legislation, that would be of significant benefit to its CRU processes if an amendment was made to section 92 of the CEA:

the AEC has identified a number of state/territory government data sources, such as Road Transport Authority (RTA) driver's licence data, as valuable in identifying potential new electors and those electors that might need to update their current details. This data can also be used in 'background review' to confirm that electors' current roll details are correct. However, to date, the AEC has encountered problems accessing these data sources in a number of jurisdictions that have their own privacy legislation, preventing national access to a number of data sources, such as RTA data in the Northern Territory, Victoria and Queensland...

However, the issue of inconsistent access to state/territory government data sources could be alleviated if the demand power contained in section 92 of the Electoral Act covered all state/territory government agencies/officers rather than just state/territory electoral, police and statistical officers as is currently the case. Such an extension of the demand power

72 Submission No. 216, (AEC), p. 17.

would mean that if the AEC determines a particular type of data source is valuable for roll update purposes (eg. RTA licence data) we can obtain data from each state/territory without having to negotiate on a state by state basis. Further, as the disclosure of the data by the state/territory would then be “required or authorised by law” privacy requirements would be satisfied. While an amendment to section 92 was recently passed widening the demand power to include “other prescribed officers” of state/territory governments, the policy authority for this amendment was in relation to the introduction of a proof of identity requirement for electoral enrolment. This amendment is awaiting proclamation while negotiations with state/territory governments are carried out. In any case, once proclaimed, this provision could not properly be used for purposes other than for the verification of the identity of electors at the point of enrolment.⁷³

The Committees view

- 2.153 The Committee is of the view that the AEC should continue with CRU as its primary roll update and review activity.
- 2.154 The Committee notes that CRU already incorporates targeted Habitation Reviews in circumstances where the AEC considers it to be appropriate, and supports this approach.
- 2.155 The Committee agrees with Mr Peter Brun that “whenever the roll is examined, it will always be a snapshot of an earlier date”, however, the Committee is not convinced that that there is sufficient argument nor evidence for returning to full Habitation Reviews.
- 2.156 The Committee endorses the view expressed by its Deputy Chair, Mr Michael Danby MP about CRU:

if you compare it to electoral systems across the world, isn't this the most advanced, integrated attempt to quickly update people's correct addresses using the databases of other agencies where people voluntarily give their names, like transport accident commissions and organisations like that?⁷⁴

73 Submission No. 216, (AEC), pp. 25-26.

74 Mr M Danby MP, *Transcript of evidence*, 12 August 2005, p. 14.

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- 2.157 The Committee recommends that the AEC remain focussed and innovative in relation to CRU, in order to continue to develop and refine those processes to maintain and enhance the integrity of the electoral roll.
- 2.158 The Committee notes, and is impressed by the claimed marked improvement in 18 year old enrolment resulting from the AEC's initial use of data provided by Centrelink and the New South Wales Roads and Traffic Authority.⁷⁵
- 2.159 Similarly, the Committee acknowledges the AEC's concerns regarding the unavailability of certain State and Territory data due to privacy constraints.⁷⁶
- 2.160 The Committee supports the AEC's recommendation for a further strengthening of the demand power contained in section 92 of the CEA and recommends accordingly.
- 2.161 The Committee notes the ALP's assertion that CRU might be improved by the incorporation of Direct Address Change and notes that this matter has been brought before previous Committee Inquiries.
- 2.162 The Committee considers that the AEC is best placed to undertake a detailed consideration of this matter and report its findings to the Committee for further, more detailed investigation.

75 Submission No. 216, (AEC), p. 17.

76 Submission No. 216, (AEC), p. 17.

Recommendation 6

2.163 The Committee recommends that:

- the Commonwealth Electoral Act be amended to expand the demand power to allow the AEC direct access to State and Territory government agency data;
- the AEC continue with its Continuous Roll Update (CRU) processes as the principal method for reviewing the electoral roll;
- the AEC remain focussed and innovative in relation to CRU, in order to continue to develop and refine those processes to maintain and enhance the integrity of the electoral roll; and
- the AEC consider and report on the implications of the Direct Address Change proposal (contained in Submission No. 136) and provide a detailed report to the Committee on its findings by the end of 2005.

Voting in the pre-election period

- 3.1 The primary method of voting in an election is “ordinary” voting, where electors attend at a polling booth in the division for which they are enrolled, have their name marked off the certified list of eligible voters, and cast their vote.¹
- 3.2 The CEA provides alternative methods by which those electors, who may, for reasons such as being more than eight kilometres from the nearest polling place on polling day, undertaking domestic or overseas travel that would prevent attending a polling place in the elector’s enrolled division, or serious illness or carer responsibilities, be unable to cast an “ordinary vote”.²
- 3.3 The alternative methods of voting are collectively called “declaration” voting, because, when using one of these alternatives, the elector must complete a declaration that they are entitled to vote, in place of having their name marked off a certified list.
- 3.4 The declaration is later compared against the elector’s enrolment record to determine the admissibility of the vote by checking the information contained in the declaration.³
- 3.5 The two methods of declaration voting that electors may utilise in the pre-election period are *postal voting* and *pre-poll voting*.

1 Submission No. 165, (AEC), p. 16.

2 Application for postal and pre-poll voting is provided for in sections 183 and 200A of the CEA and the grounds of application are specified in Schedule 2 of the CEA.

3 Submission No. 165, (AEC), p. 16.

- 3.6 The 2004 election was conducted during school holidays in Western Australia, South Australia, New South Wales and the Australian Capital Territory. School holidays inevitably have an impact on the number of declaration votes cast, as many electors are absent from their real place of living.
- 3.7 The 2004 election timetable allowed for an election period of over five weeks, providing electors with an extra week in which to lodge postal vote applications, however, there was no such increase in the time available for those who wished to cast pre-poll votes.
- 3.8 This chapter details the Committee's examination of the conduct of postal and pre-poll voting in the lead up to and during the 2004 election period.

Postal voting

- 3.9 The postal voting provisions in the CEA date back to Federation. The provisions have been significantly amended over time, but the principles involved remain the same. Postal voting is one of two mechanisms to enable electors who cannot attend a polling place on polling day to fulfil their voting obligations under the CEA.
- 3.10 There are two mechanisms for obtaining a postal vote. The first is to complete a postal vote application (PVA) after an election has been announced or the writs have been issued, whichever is first. The second is to apply to become a general postal voter (GPV). An application to become a GPV can be made at any time. GPVs are automatically sent postal votes at each election.
- 3.11 In each case, the elector must have grounds for making the application. Generally, the grounds are that the elector is unable to attend a polling place on polling day.
- 3.12 During an election, postal voting packages are sent to GPVs and electors who submit PVAs. The packages generally contain the ballot papers, a postal voting certificate envelope, and some information on how to complete and return the postal vote.
- 3.13 Postal voters must fill in the ballot papers, seal the ballot papers in the postal vote certificate envelope, and complete the declaration on the postal vote certificate envelope on or before polling day. The elector must then return the completed package to the AEC, where the

appropriate Divisional Returning Officer must receive it within 13 days after polling day.⁴

- 3.14 The AEC received 793,904 valid PVAs from electors at the 2004 federal election. This compares to 562,733 in 2001 and 606,991 in 1998.⁵
- 3.15 The number of GPVs has increased from 62,677 to 132,929 in the same period, accounting somewhat for the growth in applications processed at each election.
- 3.16 Postal voting was by far the largest single issue identified as causing concern to those who made submissions, and to a large degree, by those who gave evidence during the inquiry.
- 3.17 Those concerns can generally be categorised into 2 groups:
- issues caused by or related to the use of the Automated Postal Vote Issuing System (APVIS), and
 - other postal voting issues.
- 3.18 The major issues caused by, or related to, the use of APVIS were:
- non-receipt or the delayed receipt of postal votes by those who had lodged postal vote applications or were registered as GPVs;
 - receipt of postal votes by one member of a family but not another, when those PVAs had been submitted together at the same time;
 - inadequate and inconsistent responses by the AEC to electors, Members of Parliament and their staff, who were enquiring about the whereabouts of postal votes;
 - lack of timely and accurate advice to stakeholders about postal voting problems;
 - incorrect ballot papers sent to some postal voters;
 - incorrect postal voting material sent to some postal voters;
 - inadequate awareness of geography and distance issues by AEC call centre staff when dealing with electors' enquiries relating to postal voting;
 - lack of postal services and alternative voting arrangements in regional areas;

4 Submission No. 74, (AEC), p. 2.

5 Submission No. 168 (AEC), p. 14, Table 2, (includes GPVs).

- inadequate contractual arrangements for the provision of postal voting services;
- inadequate planning and project management of the postal voting process by the AEC, in the lead up to and during the election period;
- inadequate quality assurance procedures for the production and regeneration of postal voting material;
- inadequate tracking and reporting mechanisms for postal vote production; and
- the election period encompassed school holiday periods for some States and Territories in Australia, with the result that many electors were engaged in travel, and because of the non receipt of postal vote material they were left unable to access interstate voting facilities as an alternative.

3.19 Other postal voting issues of a more general nature were:

- PVAs rejected by the AEC because they were signed before the issue of the writ;
- lack of privacy of postal vote certificates; and
- the inability of electors lodge PVAs by email or on-line.

The problems experienced in regional Queensland

3.20 In order to gain an insight into the effect on electors and to hear from those possessing first hand knowledge of the difficulties caused by the 2004 Federal Election postal voting experience, the Committee held its first round of hearings in Dalby, Longreach and Ingham, as many of the submissions and complaints about postal voting had originated in regional Queensland.

3.21 As it turned out, electors in this region had experienced the full range of issues that the Committee sought to understand and were the most affected by the postal voting failures.

3.22 Those electors and their representatives provided the Committee with a great deal of insight into the distress and confusion caused to electors by the postal voting failings.

3.23 The Hon. Bruce Scott MP, the Member for Maranoa, summed up many of the concerns in his evidence to the Committee at Dalby:

tyranny of distance is a huge factor in a seat like Maranoa, which covers almost 50 per cent of the landmass of Queensland...

The centralisation of the distribution of ballot papers has caused huge confusion and disenfranchised many voters in Maranoa and, I would suspect, other parts of Australia. I assume that the Electoral Commission in Canberra took that decision, but it failed to recognise that, once you centralise the process, you lose contact with the divisional returning officers. The office of the division of Maranoa is here in Dalby. In centralising the distribution of postal ballot papers, given the obvious magnitude of the electorate, local contact and local understanding of the geography were lost.

I will outline how people in Maranoa who apply for a postal vote get their ballot papers. Those papers come by mail services that emanate nearly always in Queensland but often outside of the electorate. Distribution of some of the ballot papers is done by remote air service, which sets out from Port Augusta, South Australia. I am sure that those contracted to distribute postal ballot papers would not have been aware of that. It may be a minor factor, but it makes the point that, when you centralise distribution, you lose local understanding of a task that must be conducted for the successful running of an election.

Many of our constituents who were obviously very keen to exercise their democratic right of voting and making their views known through the ballot box alerted us to the fact that they had not received their postal ballot papers. We advised the local divisional returning officer and were then advised to record that concern with the Brisbane office. It was by following this trail that we found the process was being controlled out of Sydney. But, in the early phase of the election, no-one seemed to be listening to us when we put before them the problem that constituents had identified. Putting aside the political interests of any political party, people were disenfranchised of their democratic right; they had applied for a ballot paper and it had not arrived. That was a major concern of mine and obviously I wanted it rectified. I was the sitting member and my office was getting complaints. No-one seemed to be listening. Everyone said, 'It's in hand; the ballot papers are being processed and will be

in the mail.’ As events unfolded, many of the ballot papers from the central agency in Sydney were never distributed in time. On some occasions we would get calls from people saying that the postal ballot had arrived for their wife or for their husband, but not for their son or daughter.⁶

- 3.24 The Committee was made aware that the postal voting problems were not just confined to the late or non-issue of ballot papers through APVIS.
- 3.25 The AEC only became aware on the Thursday night prior to the election (7 October 2004) that 1,832 postal voting packages that it believed had been previously sent to electors, had in fact not been sent.⁷
- 3.26 On Friday 8 October 2004 (the day before the election) the Governor General issued a proclamation under section 285 of the CEA, which extended the time during which certain affected postal voters could vote and return their ballot papers to the AEC.
- 3.27 The AEC instituted action to despatch postal voting packages to those affected. Postal voting packages were hand packed by AEC staff and despatched from the AEC divisional office for Maranoa.
- 3.28 Shortly after polling day it became apparent that some of those postal voters, for whom special arrangements had been made and whose postal voting packages had been re-issued directly from the Maranoa Divisional office in accordance with the special proclamation, had been incorrectly issued with New South Wales Senate ballot papers, instead of Queensland Senate ballot papers. The Hon Bruce Scott stated:

when the Electoral Commission finally decided there were some ‘spoilt’ – as they call them – ballot papers that had not been distributed and that the time had run out for these postal votes to be received by the voters prior to polling day, special provisions were made by order of the Governor-General to allow people to receive them after polling day and to allow them as valid votes on their return. This was at the end of a long campaign...

6 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, Dalby, p. 4.

7 Mr D Orr, Assistant Commissioner Elections, AEC, *Evidence*, 28 April 2005, Ingham, p. 17.

We received the news that some had received them perhaps in Friday's or Saturday's mail and that, certainly on the Monday and Tuesday after polling day, they had received the House of Representatives ballot paper, but some had received a New South Wales Senate ballot paper and not a Queensland ballot paper.⁸

3.29 The AEC then took action in respect of the 577 electors who might have received the wrong ballot papers.

3.30 Mr William Woolcock of the AEC told the Committee:

on 13 October last year, I was asked by my head office to come out to Dalby. They told me that they wanted me to assist in the proclamation of ballot papers recovery process. We were aware that a number of New South Wales Senate ballot papers had been despatched. I was asked to come here and I came straight away. I worked here for seven days. I started on 13 October and finished on 20 October...

My job was to oversee the process. We were aware that 577 electors had received the repackaged proclamation votes. In those ballot papers that had been dispatched there were 100 New South Wales Senate ballot papers. We contacted the electors on the list. We were able to use the phones that had been set up for the election night results. We engaged up to 11 casual staff – not all at the one time – on this process. Some staff were making phone calls while others were accessing telephone numbers. The staff on the telephones worked to a script. Basically, they were asked to contact the elector concerned who was on the list, ask them whether they had already voted in the election – in other words, because their ballot papers had not turned up, they may have made other arrangements...

And had an ordinary vote, and that was the case with most electors. If they had not voted and the repackaged proclamation ballot papers had turned up and they had not already filled them out, we asked them to see which Senate ballot paper was there, to see whether the correct ballot paper had been included. Where an incorrect Senate ballot paper had been received and these people had not already voted, we made arrangements for a replacement Senate ballot paper

8 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, p. 4.

to be sent to those electors. As I said, we needed to contact 577 electors. From the figures I have, 563 could be contacted. Of those 563, 528 had voted, most of those by an ordinary vote. In other words, they had hopped in the car. They had realised that their ballot papers were not going to turn up, so they had gone and voted. Ten electors needed replacement ballot papers. We then used an AEC courier in about seven of those cases and went out and gave them the replacement ballot paper. The person voted and our officer brought those papers back. I think in three cases, because of the distance involved, we faxed a replacement ballot paper direct to the elector.⁹

3.31 In later evidence to the Committee the AEC indicated that, of the 563 electors reissued with postal voting packages in accordance with the proclamation, only 12 electors had actually voted on and returned the NSW Senate Ballot paper to the AEC.¹⁰

3.32 The Committee was told that complaints about non-delivery of postal voting material were raised with the AEC early in the pre-election period, but that it appeared to those raising concerns, that the AEC wasn't listening, or didn't understand the nature of the problems. Mrs Sonja Doyle commented:

we live on a property 85 kilometers south of Blackall and our access to Blackall is mostly via a black soil road which becomes impassable when it is wet. Our mail service comes twice a week. When it rains we may not get a mail delivery for some time. My husband and I do not normally have a postal vote, so we are not normally on the permanent postal voting register, mainly because we have often worked on the polling booths in Blackall. This year we hoped it would rain and it looked like it might rain, so we applied for a postal vote. The two applications for the postal votes were sent off in the one envelope. My husband received his postal ballot but I did not receive mine. I waited for the next mails to come and then I rang the AEC. They told me that the postal ballot could be posted right up until the Friday before the election. That was not good enough for me because it would have meant that I would not get it, I would not get it back and I would be effectively disenfranchised. I contacted Bruce Scott's office in

9 Mr W Woolcock, (DRO, Groom), *Evidence*, Wednesday, 27 April 2005, pp. 16-17.

10 Mr I Campbell, (Electoral Commissioner, AEC), *Evidence*, Friday 5 August 2005, p. 8.

Dalby and asked the Dalby AEC to issue me with ballot papers as there was a very limited number of mails before the election. I reapplied by fax to Dalby AEC and subsequently the ballot papers from the Dalby AEC arrived in the next mail on Monday. So I was one of the lucky ones; I got my postal ballot.¹¹

- 3.33 In response to a question from Senator Mason about whether she was happy with the service she received from the AEC, Mrs Doyle said:

with the Dalby office, most definitely. I did not feel that the people at the call centre knew what the urgency was or how remote I was, but I do not know where they were actually situated – I did not ask; it is my fault for not asking. In my first contact with the AEC, I really did feel that they did not realise that my mail services were limited and I was in danger of not receiving my ballot until after the very last mail when I would not have been able to vote.¹²

- 3.34 The Nationals claimed:

we understand that the AEC's call centre misinformed people who could get through to them to ask where their ballot paper was, telling them that their ballot papers had been sent when in fact the only confirmation they could reliably provide was that the AEC had lodged their requests for ballot papers to the contracted distributor.¹³

- 3.35 The Committee became aware that the AEC's communication failures were not limited to external stakeholders. Communications between the AEC, its systems and its staff were also found wanting.

- 3.36 This exchange during the Dalby public hearing outlines some of the problems:¹⁴

Senator MASON – Senator Brandis has put his finger on the nub of the problem. While you are quite right in saying that a lot of things happened at election time, Mr Woolcock, what worries us is that there were complaints made – and we have evidence taken in Longreach from constituents that they had rung the AEC, the call centre and Mr Scott – but that these

11 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, p. 2.

12 Mrs S Doyle, *Evidence* Wednesday, 27 April 2005, p. 4.

13 Submission No. 92, (The Nationals).

14 See *Transcript of evidence*, Wednesday, 27 April 2005, p. 28.

complaints were not picked up as part of a systemic problem with the Maranoa postal votes. That really is the issue for us. We just do not know why it took so long. You gave the evidence that it was the Thursday before the election – 7 October – before there was a realisation that there was a systemic problem. That is weeks after Mrs Doyle and Mrs MacDonald both complained about how, in their case, they had only received ballot papers for their husbands and not for themselves. That is the problem. We want to know why, with all these complaints, there was not a realisation that there were systemic problems with the postal votes in Maranoa. What is wrong with the process?

Mr Woolcock – Once again I can only say to you that, as I understand the process, if the contractor had told the AEC about the damaged postal votes on 20 or 21 September this would not have been an issue. I think there was a stage about 10 days before the election, if my memory serves me correctly, that the AEC became aware of problems with the delay in the production of postal votes. Our advice at our level, if I am correct, was: ‘These issues are being addressed. Yes, there have been delays. It has been caused by the volume of postal vote applications received this time.’ I think the AEC may have even published advertisements to say that postal votes were on the way.

3.37 The Committee further explored the communication issue:¹⁵

Mr CIOBO – I take up Senator Mason’s point – although it may not be possible to ask about Maranoa specifically. You say that if someone calls and says, ‘I haven’t received my ballot papers,’ or ‘My husband and I have applied for our ballot papers but only my husband has received his,’ or something like that, that is tagged in APVIS. Is that correct?

Mr Boyd – If somebody rings with that particular complaint, we can interrogate the APVIS system, which will tell us: ‘Yes, that person’s postal vote has been issued,’ and when it was issued. If they are a registered general postal voter, as these particular 577 people are, the expectation is that they would be the first cab off the rank. That is the idea of it. Generally they are registered for distance reasons, and the system will place them first for the issuing of their ballot papers. If that

15 See *Transcript of evidence*, Wednesday, 27 April 2005, pp. 28–29.

were the case, we would say to them, 'The application has been processed and, if your partner has received them, we expect that you will receive them shortly.' At that time we did not know any differently.

- 3.38 The Committee was thus informed that the APVIS was unable to track the issue of postal vote packages at all. It was, in fact, only able to provide an indication that the postal voting had been extracted from the system on a particular day, not that the postal voting packages had in fact been posted.
- 3.39 The Committee sought information and recommendations from affected postal voters about alternative strategies that might be adopted for future elections.
- 3.40 The Hon. Bruce Scott MP recommended a return to the issuing of postal vote material from State or Divisional Offices, and claimed such a return would see an improvement in the delivery of that material because local AEC officers would have a better local geographic knowledge of the area and the its postal services.¹⁶
- 3.41 The Hon Mr Scott also claimed that on line checking of postal vote application status by applicants could be considered. This would allow applicants to satisfy themselves that their applications had been received and processed, or alternatively allow them to lodge another application if necessary.¹⁷
- 3.42 Ms Shandra Baker suggested that call centres should be state based:
- I believe the call centres need to be state based. They would understand each state and each state's problems. I do not know where the call centre was based but, as I said, the standard response was 'It's in the mail'. That went on until two days before the elections. Obviously, as these people were not going to receive their ballot papers – I am talking about the GPVs – they drove to polling booths. I heard that in some cases they drove for three hours because they did not trust the AEC to get their ballot papers to them.¹⁸
- 3.43 Mrs Doyle indicated that pre-poll voting and electronic voting should be considered as alternatives:

16 Submission No. 1, (The Hon. B Scott MP).

17 Submission No. 1, (The Hon. B Scott MP).

18 Ms S Baker, *Evidence*, Wednesday, 27 April 2005, p. 35.

I would have to say that first and foremost is voting in person... –I would rank pre-poll next, then electronic and I would rank postal voting last.¹⁹

3.44 Mr Bob Hoogland, Chief Executive Officer, Winton Shire Council favours pre-poll voting as used for state elections:

the idea of pre-poll voting is very important to us. We confirm what Mrs Doyle said: the staff at the government agents or courthouses are very experienced. They are people who have a significant responsibility in a number of areas, including but not limited to state elections. Very often in Winton one of these staff could actually form a Magistrates Court. They are very experienced people and quite capable of conducting pre-poll and absentee voting.

Absentee voting is an issue for us. A lot of tourists visit here during the tourist season. If the election were held in, say, the middle of July, literally hundreds of tourists would be in Winton, let alone throughout western Queensland. They do not know that they should have voted before they came. They wander into a polling booth expecting that they will be able to cast a vote. There would have been more than a dozen in Winton alone who were disenfranchised because they had an expectation they would be able cast an absentee vote.²⁰

3.45 Mrs Lindsay MacDonald notes the lack of pre-polling facilities and suggests that technology may assist those wanting to vote:

at federal elections, pre-poll voting is not available to us, as the only centres where this was permitted in the seat of Maranoa were Dalby (10 hours away) or Emerald (5 hours away). Neither of these towns is in any way a 'centre of interest' for us, giving us no reason to travel to either of these places...

- There are now many people in remote areas of Australia with good access to high speed Internet services through satellite, which makes them independent of the often problematic telephone system, which can cause problems when faxing.
- Email is therefore a more reliable way to return written material, which is feasible when people are able to scan the document and attach it to an email.

19 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, p. 7.

20 Mr B Hoogland, *Evidence*, Wednesday, 27 April 2005, p. 12.

- It is possible to set up an email requiring an immediate acknowledgement of receipt of an email, something not easily done with a fax.
- All forms should be available for download from the Internet. It remains a mystery to me why the form I needed was not available except by mail.
- Greater thought should be given to use of technology in facilitating voting, particularly for those most remote. While voting is compulsory, the Commonwealth should take responsibility for ensuring that every person entitled to vote is actually able to exercise this most basic of rights. In view of vastly improved telecommunications services, inclement weather and poor mail services should no longer be the reasons why people are not able to vote.
- I submit my quarterly Business Activity Statement online. In order do to this, I downloaded the appropriate software from the ATO, and received a digital certificate in order to communicate with them. If I can conduct my confidential business with the ATO in this manner, I believe it must be possible to develop a system for registered postal voters to access the AEC in the same way.²¹

3.46 Ms Shelley Colvin provided an overview of the concerns of electors and others in the region when she stated during evidence:

from my perspective, I cannot stress highly enough that isolation must be recognised as the biggest factor contributing to the failure of our voting procedures in Australia. There are very few mobile polling booths that travel around aged care facilities. The only ones in Maranoa were in Chinchilla, Dalby, Roma and Warwick, yet we have aged care facilities in Longreach, Emerald, Charleville and Blackall. People who were travelling thought it was possible to do interstate polling anywhere but it was only available in some towns—I think they were Longreach and Dalby but I am not certain which ones.

When postal votes did arrive, the individual's details were on the back of the envelope and there was only one envelope. The full name, address and date of birth were typed on the back of these envelopes. Usually there are two envelopes to preserve anonymity but, when posted, that information was readily available to be seen through the post office. That means there was a security risk for bankcards and so forth, let

21 Submission No. 47, (Mrs L MacDonald).

alone a chance that someone could tamper with or destroy the vote. Some of the postal votes that eventually did arrive had the wrong Senate papers enclosed – for example, those in Charleville.²²

3.47 In hearing evidence from witnesses in regional Queensland, the Committee gained a deeper understanding of the issues faced by such electors when delays to postal voting materials were occasioned.

3.48 Electors in other areas also faced the problems experienced by postal voters in regional Queensland. The Member for Brisbane, the Hon. Arch Bevis MP made a submission to the inquiry where he stated:

I received many complaints from constituents about

- extreme delays between dispatch of their application and receipt of their ballot papers, and
- lack of privacy with constituents' full private details required to be shown on the external face of the return envelopes.

An inordinate number of complaints came from people who had lodged postal vote applications and rang to complain they had not received their ballot papers in most cases ten or more days had elapsed.²³

3.49 The Hon. Mr Bevis' concerns were supported by the ALP which was:

very concerned about the relatively higher number of administrative errors in the issuing of postal ballot papers and difficulties encountered by postal voters during the 2004 election. These issues must be addressed through a thorough revision of the postal vote process.

The ALP endorses the concerns about the administration of postal voting in the 2004 election raised by the Hon Arch Bevis MP in his submission to this inquiry...

The ALP fully supports recommendations 24 through 27 of the AEC commissioned report into postal voting at the 2004 election and requests that an open and public discussion take place as part of a comprehensive review of pre-polling and its

22 Ms S Colvin, *Evidence*, Wednesday, 27 April 2005, p. 24.

23 Submission No. 94, (The Hon. A Bevis MP).

advantages as an alternative to address the increasing demand for postal votes.²⁴

3.50 The Nationals stated that:

the problems with the management of postal votes at this election were not just limited to large rural electorates. Another example occurred in the electorate of Richmond. Here the margin was very close in respect to the final outcome and again, as with Maranoa, many campaign staff hours were spent making representations to the AEC and assisting postal voters as a result of ballots, which had either not turned up, or were turning up very very late compared with when the voter had requested the ballot paper. It is possible this single area of incompetence by the AEC could have altered the result in this seat.²⁵

3.51 Senator Ruth Webber later told the Committee that postal voting problems had occurred in Western Australia:

as the committee would be aware, the AEC decided to centralise the processing of postal vote applications; ending the long standing practise of processing them at AEC divisional offices.

This led to backlogs and delays that threatened to disenfranchise many postal voters. I know of many cases where elderly people applied for postal votes in the first week of the campaign but did not receive their ballot papers until the day before polling day. Considering that this was quite a large problem in metropolitan areas, there is little doubt that it had quite a substantial impact in our remotest country areas.²⁶

3.52 The Hon. Dick Adams MP, Member for Lyons, noted that electors in Tasmania also experienced delays:

As I believe you are aware, there were a number of difficulties with postal votes. The office received requests for over 500 postal votes and found there were delays in the

24 Submission No. 136, (ALP), p. 8.

25 Submission No. 92, (The Nationals).

26 Submission No. 49, (Senator R Webber).

returns so that many people did not get to vote until the Friday before the election.²⁷

3.53 Mr Brian Loughnane, the Federal Director of the Liberal Party told the Committee:

quite obviously the issue of the administration of the postal votes at this election was a matter of very great concern to the Liberal Party. It was very well known to, I think, everyone in this room and everyone in Australia that the government was getting toward the end of its three-year term so the likelihood of an election being sometime in an approaching time frame was known to everyone, including the Electoral Commission. The fact that the election was ultimately held during school holidays and that was one of the contributing factors that led to a fairly significant increase in the number of postal votes could on any reasonable scenario planning have been expected, and I do believe that it is a matter of concern that there were these issues with the administration of postal voting.²⁸

3.54 The Department of Defence indicated that it had concerns with postal voting arrangement and had raised them:

with the AEC throughout the consultation process about the ability of ADF personnel, particularly those on war-like deployments (ie Operation Catalyst), to meet the stringent timings that electoral legislation requires for casting postal votes. The major risk in the process was assessed to be the time required for mail to reach the Middle East Area of Operations (MEAO) and return to Australia (up to two weeks each way). Even with a six-week election campaign, from issue of writ to the day of the election itself, there was little room for delays.²⁹

3.55 The Committee was left in no doubt that the postal voting problems were widespread; however, it noted that it appeared the worst effects had been felt by electors in regional Queensland.

27 Submission No. 10, (The Hon. D Adams MP).

28 Mr Brian Loughnane, Federal Director of the Liberal Party, *Evidence*, Monday 8 August 2005, pp. 23-24.

29 Submission No. 132, (Department of Defence).p. 1.

How does APVIS Work?

3.56 The AEC describes APVIS thus:

the Automated Postal Vote Issuing System (APVIS) provides automated support to divisional offices for the printing, production and distribution of postal votes. It comprises both a subsystem of the Roll Management System (RMANS) and services provided by a contractor.

It was first used to support the issue of postal votes at the 1999 referendum and subsequently at the 2001 and 2004 federal elections... There were no production failures arising from automated support for postal voting services in 1999 and 2001.

Under APVIS, postal votes are issued both by AEC divisional offices and a contractor. When an AEC officer enters a postal vote application into RMANS, the default outcome is for that data to be sent to the contractor for printing of a postal vote certificate, and lodgement with Australia Post. This is called "central print".

The AEC officer can also choose to flag the data for "local print". This means that the postal vote certificate is printed on the divisional office printer, and lodged by the DRO at their local post office.

Local print is used to produce postal votes for electors who require the material immediately. Examples include an elector who is about to go overseas and does not have an overseas forwarding address, or an elector who lives in an area with a limited postal delivery service and the next service is leaving the following day.

Local print is also used to produce postal votes for electors whose applications are received in the week immediately preceding polling day, when central mail lodgement is unlikely to result in the elector receiving their postal vote on time.³⁰

3.57 After reviewing all material provided to it, the Committee understands the major operations involved in treating a PVA for Central Printing to be:

30 Submission No. 192, (AEC), p. 18.

- The PVA is received, checked for completion and the details data entered into the APVIS by Divisional staff. The data is stored in the APVIS subsystem of RMANS in preparation for download and transmission to the Contractor.
- The AEC centrally extracts the batched data for all current PVAs from the APVIS and electronically transmits it to the Contractor.
- The Contractor receives, verifies and sorts the data, and then laser prints flat sheets on which the postal vote certificate, the elector's details from the PVA, and the correct House of Representatives ballot paper appear.
- The flat sheets are transported to an envelope making plant, where the sheets are folded and formed into postal voting certificate envelopes.
- The postal voting certificate envelopes are returned to the mail house where they and the remainder of the postal voting material are inserted into outer envelopes.
- The postal voting packages are then lodged with Australia Post.

Working out what went wrong

3.58 A number of submissions indicated that the problems in postal voting were associated with the AEC's decision to outsource its postal voting operations. Senator Ruth Webber commented:

as the committee would be aware, the AEC decided to centralise the processing of postal vote applications; ending the long standing practise of processing them at AEC divisional offices.

This led to backlogs and delays that threatened to disenfranchise many postal voters.³¹

3.59 Other submissions and evidence suggested that the trend to an increase in the number of postal votes might have been responsible. The Nationals stated that the Party understood that:

AEC divisional staff, when giving estimates on the numbers of postal votes expected, did these figures on the basis of the growth in the number of electors in their division proportioned to the previous election's number of postal

31 Submission No. 49, (Senator R Webber).

votes. This in itself failed to take account of the fact that this election was being held during a holiday period, which results in more people being away from their normal voting area than usual.³²

3.60 Dr Kathryn Gunn stated:

I am aware that there were some problems caused by an unusually large number of applications for postal votes at this election.³³

3.61 In its first submission to the inquiry the AEC identified the problem as a contract management issue:

The most significant issue arising during the election related to contract management and the delay in the processing of some postal votes and related problems.³⁴

3.62 The AEC commissioned an independent inquiry into postal voting at the 2004 Federal Election:

On 29 October 2004, the AEC contracted Minter Ellison to conduct an inquiry into postal voting at the 2004 federal election. The terms of reference for the inquiry were as follows:

To investigate the problems encountered in certain aspects of postal voting at the 2004 federal elections and to provide a report on the following key matters:

- What went wrong with postal voting processing;
- How the AEC dealt with issues as they arose;
- An examination of the context and process failures and successes;
- Recommendations for any changes that should be made for the future.

Specifically, the inquiry is asked to address the following non-inclusive list of issues:

- the initial deluge of postal vote applications;
- delays in delivery;
- the 568 postal vote certificates sent to incorrect addresses;
- the delayed regeneration of 68 ACT and 2,043 Queensland spoil postal vote certificate envelopes;

32 Submission No. 92, (The Nationals).

33 Submission No. 28, (Communication Project Group – Dr K Gunn).

34 Submission No. 74, (AEC) p. 3.

- the 1,832 spoilt postal vote certificate envelopes from a central print batch lodged on 20 September 2004 that were not regenerated;
- the inclusion of New South Wales Senate ballot papers in some mailouts of postal voting material for Queensland.

The inquiry is also asked to consider:

- whether APVIS is the optimum method of preparing and distributing postal voting materials; and
- whether risks to servicing voters in country and remote parts of Australia might be reduced by alternative methods.³⁵

3.63 The AEC provided a copy of the Minter Ellison report, *inquiry into Postal Voting Administration in the 2004 Federal Election*, and recommendations to the Committee as part of the AEC's first submission to the current inquiry.³⁶

3.64 The Committee accepted the submission into public evidence while authorising the submission's Attachment A (the Minter Ellison report) and Attachment B (the AEC contract for the production of postal voting material) as confidential evidence to the Committee.

3.65 The Committee, therefore, has access to information that was not made public because of the nature of some of the content, which contain commercial-in-confidence material.

3.66 The Committee has relied on the evidence contained in submission and that presented orally at public hearings as well as the matters contained in the Minter Ellison report in reaching its conclusions.

The Committees view

APVIS

3.67 In reviewing all of the material placed before it, the Committee is of the opinion that the problems experienced by electors who applied for postal votes during the 2004 election period were not directly related to an increase in the volume of postal vote applications received by the AEC. In this respect, the Committee disagrees with those who submit otherwise.

3.68 The Committee believes that the AEC was well aware of the trend for postal voting to increase. The AEC has made submissions to the Committee about this trend in a number of inquiries.

35 Submission No. 74, (AEC) p. 3.

36 Submission No. 74, (AEC).

- 3.69 Similarly, there have been elections conducted during school holidays in the past, for which the AEC holds relevant data.
- 3.70 Therefore, the Committee is of the opinion that the AEC should have anticipated the growth in PVAs and ensured that it was geared to handle any increase in postal voting resulting from that trend and the school holidays.
- 3.71 The Committee notes that the AEC successfully implemented and utilised APVIS for the 1999 Referendum and 2001 Federal Election. This experience, coupled with the AEC's anticipation that postal votes would increase, should have resulted in the AEC being better prepared.
- 3.72 The Committee is, therefore, not convinced that the problems experienced during the 2004 Federal Election were caused by the AEC's decision to outsource some of its postal voting operations. Accordingly, the Committee does not accept the argument presented in some submissions and evidence.
- 3.73 The Committee notes that the APVIS used for the 2004 election was fundamentally the same as that used in 1999 and 2001, notwithstanding the increased number of small files transmitted to the Contractor, and the other changes to processing.
- 3.74 The Committee agrees, therefore, with those that submit that the AEC may have been lulled into a false sense of security by the success of APVIS at previous electoral events.
- 3.75 The Committee considers that there were failings on the part of the AEC to implement and effectively carry out its contract management and project management obligations in respect of APVIS:
- 3.76 These failings are evident to the Committee in:
- the lack of continuity of project management staff responsible for oversight of the APVIS project,
 - the lack of effective quality assurance processes and procedures which led to the AEC not being aware that 1,832 spoilt postal voting packages had not been regenerated until 36 hours before the election,
 - the other quality assurance failings that allowed for 568 misaddressed postal voting packages, the 68 ACT and 2,043 Queensland spoils not regenerated in a timely manner and the

duplication of a significant number of postal voting packages as a result of operator error;

- the lack of any satisfactory documentary evidence of agreement between the AEC and its contractor on the processes that the contractor was to follow at both the Sydney and Melbourne sites in respect of:
 - ⇒ “diverted” postal voting packages; and
 - ⇒ “spoilt” postal voting packages; and
- the lack of adequate systems and procedures for the reconciliation of postal voting package data records received by the contractor to those postal voting packages lodged for postage by the contractor.

- 3.77 The Committee recognises that the contractor failed to meet some of its contractual obligations, and that circumstances, such as the closure of the Sydney envelope making plant in the months before the election, will have impacted on the effective operations of APVIS.
- 3.78 The Committee does not accept, however, that the closure of the plant should have had such a significant impact on the success of the operation. Indeed, the AEC should have immediately implemented a mitigation strategy, which it should have previously developed from a comprehensive risk analysis process. This thorough risk analysis appears never to have been done.
- 3.79 Despite this, the recovery strategy adopted by the AEC in consultation with the contractor after the closure of the envelope making plant would probably have been successful, if the AEC had ensured that adequate quality assurance processes and procedures were in place, and had been tested, prior to the election being announced.
- 3.80 Whilst throughput at the mail house would have remained an issue, and postal voting material would still have been delayed, issues such as the failure to regenerate spoilt material, the incorrect addressing of postal voting packages, and the duplication of some postal voting material would have been detected and corrected much earlier, with much less consequence for affected electors.
- 3.81 The Committee considers that AEC may have been too optimistic in its expectations that the mail house would cope with the initial deluge of PVAs and GPVs, and that the AEC should have examined the output from the insertion machines, by thoroughly testing the processes at each site before the election.

- 3.82 It appears to the Committee, however, that little if any testing was carried out, following changes to processes in APVIS in the period leading up to the election. This is despite the fact the AEC knew an election was imminent and that APVIS was an election critical system.
- 3.83 When it became apparent to the AEC, in the early stages of the mail house processing, that delays were inevitable because of the slow output from the insertion machines, immediate steps should have been taken to elevate the matter to more senior AEC management attention.
- 3.84 This would have enabled the AEC to be more proactive in its advice to external stakeholders and might have resulted in the AEC discovering that there were problems other than slow production, as alluded to by the Electoral Commissioner in evidence to the Committee:

There is another issue that might help to explain why it unfolded in such a tortuous way. There is no doubt – as you heard at a number of the Queensland hearings in particular – that we were getting phone calls from a lot of people about non-receipt of general postal vote forms. It turns out that, in addition to the spoil problem that you and Mr Pickering have just discussed, the production and dispatch of general post voting forms was slower than anticipated. So, in those several weeks, there were a large number of phone calls – I do not have the numbers but my colleagues might be able to quantify – from people in two categories. Both of them were making the general comment that they had not received their general postal voting application form. Most of those were affected by the slowness of production but, unfortunately, 1,800 were affected by the spoils issue that you are talking about...

In a sense we probably fell into a trap of knowing that we had a major issue, which was the slowness and therefore assuming that everything that came in related to that.³⁷

- 3.85 Earlier, more focussed attention to the problems may have greatly assisted the AEC to understand them and thus have been better able to respond to the many electors who contacted them about missing postal voting material.

37 Mr I Campbell, (Electoral Commissioner, AEC), *Evidence*, Friday, 5 August 2005, pp. 6, 9.

- 3.86 The Committee believes that the Sydney operation (despite its problems) should have been geared to provide services 24 hours a day and for a greater number of days in the initial stages of production.
- 3.87 This should have been identified as a potential issue by the AEC during its initial contract negotiations by testing the Contractor's claimed throughput. The AEC even had a second chance to identify throughput as a problem when it was made aware of the closure of the envelope plant.
- 3.88 As mentioned earlier, if the AEC had followed proper risk management methodology this throughput problem would have been detected at that point.
- 3.89 However, the Committee accepts that AEC may have been misguided in accepting the optimistic projected insertion machine throughput advised by the contractor at face value.
- 3.90 The Committee asserts that the contractor was unable to sustain that throughput even with full capacity being maintained in two sites for 24 hours a day, given that the contractor was required to make changes to the insertion machines every time a different run was to be processed.
- 3.91 The AEC had clearly not anticipated that this was the case. This is demonstrated by the AEC's expectation that only two quality assurance officers would need to be provided at each site. This effectively indicates that the AEC expected that only two shifts would be required to process the volume of postal voting packages through the mail house.

Committee conclusions regarding APVIS

- 3.92 The Committee has formed the opinion that there were major failings in the AEC's project management of the APVIS, and that these failures lead to a compounding of the problems faced by both the AEC and the contractor when production delays were initially experienced.
- 3.93 The AEC was (and is) under an obligation to monitor postal voting trends and to ensure the APVIS, and its internal and external support systems, were fully tested and ready to respond to evolving demands.
- 3.94 If the handling of spoilt and diverted postal vote material had been clearly resolved before the commencement of production, those

packages would have been treated effectively and delivered expeditiously.

- 3.95 Similarly, if the volume had been correctly anticipated, the backlogs would not have occurred, and postal voting packages would not have been delayed nor misdirected.
- 3.96 Proper and timely communication between the AEC and the contractor would have been more effective in uncovering the cause of the delays, and as a consequence, the despatch of postal voting packages would have been dealt with expeditiously. This would have avoided the subsequent voter confusion, and the potential (and in some cases actual) disenfranchisement of electors.
- 3.97 The Committee, therefore, has concluded that the majority of the postal voting problems encountered at the 2004 Federal Elections were directly caused by, or related to, failings on the part of the AEC to carry out effective project management and contract management of the APVIS processes.
- 3.98 Responsibility for these failures must ultimately rest with the AEC.
- 3.99 Whilst the Committee is justly critical of the AEC in its contract and project management of postal voting for the 2004 election, the Committee notes with a degree of appreciation, the frankness with which the Electoral Commissioner addressed the AEC's performance to the Committee during evidence.
- 3.100 The Committee recognises that, for an organisation of such high repute as the AEC to so frankly admit its failings and take responsibility for them, it first requires the organisation to accept that it has not performed to a standard that it would expect of itself.
- 3.101 The Committee considers that the AEC has done this in respect of postal voting, which, as the Committee acknowledges, was only one aspect of an election at which in excess of 13,000,000 electors were able to cast effective votes, most of whom encountered no problems at all.
- 3.102 The Committee notes the recommendations made in the Minter Ellison report *inquiry into Postal Voting Administration in the 2004 Federal Election*, the AEC's response to those recommendations, the material contained in submissions to the Committee and the evidence taken on this matter, and recommends that the AEC should continue to develop and utilise the APVIS for future elections.

Recommendation 7**3.103 The Committee recommends:**

- that the AEC continue to develop and utilise the Automated Postal Vote Issuing System (APVIS) to support the distribution of postal voting material for future elections;
- that AEC computer and data recording and retrieval systems be upgraded to allow real-time information to be extracted by DROs, AEC staff handling enquiries and call centre staff, on the progress of the production of postal voting material for individual postal voters;
- that the AEC consult with Australia Post and, if Australia Post holds and is able to supply the necessary data to the AEC, the AEC modify the Roll Management System (RMANS) so that that matters relevant to the postal delivery schedules applicable to the delivery points at the postal address, or in the postcode area, of the applicant are available to the DRO at the time the decision is made whether an application should go to Central or Local print;
- that Australia Post provide the data required for upgrading the AEC's systems at no cost to the Commonwealth;
- that the flexibility to determine whether postal voting material should be produced centrally or through a local computer-based system in the office of DROs be retained; and
- that if the AEC modifies RMANS so that that matters relevant to the postal delivery schedules are available to DROs, the DRO must use such information when making the decision about whether an application should go to Central or Local print.

Recommendation 8

3.104 The Committee recommends:

- that the AEC ensure that sufficient and continuing resources are available to the Election Systems and Policy Section in non-election periods and that these levels be supplemented as appropriate in the lead up to and during election periods;
- that the AEC apply appropriately rigorous and correct procurement practices in order to identify and enter into a contractual agreement with suitable provider/providers for the provision of APVIS services; and
- that the AEC apply contemporary best practice to the project management and contract management of APVIS, including undertaking the activities outlined in Recommendation 16 of the Minter Ellison report into postal voting.

Recommendation 9

3.105 The Committee recommends:

- that the *Electronic Transaction Regulations 2000* be amended to permit electors to submit an application for a postal vote or an application to become a general postal voter, by scanning and e-mailing the appropriate form to the AEC;
- that the Commonwealth Electoral Act be amended to specifically permit eligible overseas electors and Australian Defence Force and Australian Federal Police personnel serving overseas to become general postal voters;
- that the Commonwealth Electoral Act be amended to provide that:
 - ⇒ for postal vote applications received up to and including the last mail on the Friday eight days before polling day, the AEC be required to deliver the postal voting material to the applicant by post unless otherwise specified by the applicant;
 - ⇒ for postal vote applications received after the last mail on the Friday eight days before polling day and up to and including the last mail on the Wednesday before polling day, the AEC

- be required to post or otherwise deliver the postal voting material by the most practical means possible; and
- ⇒ for postal vote applications received after the last mail on the Wednesday before polling day, the applications be rejected on the grounds that delivery of postal voting material cannot be guaranteed. Reasonable efforts should be made to contact the applicants to advise them of the need to vote by other means.
- that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to allow electors to return their postal votes to any employee of the AEC by any convenient means, and to require the AEC to then deliver the postal vote to the appropriate Divisional Returning Officer within 13 days after polling day.

Postmarking of postal votes returned to the AEC

- 3.106 The Committee notes the AEC's response to the Minter Ellison recommendation number 12 and accepts that there are technical difficulties associated with the postmarking of mail in some locations, which leads to postal votes not being accepted into the count, despite being lodged with Australia Post after last mail clearances on the Friday prior to election day and on election day but prior to the close of polling.
- 3.107 There is evidence to suggest that when those postal votes are collected by mail contractors, or processed by Australia Post, they are postmarked as having been lodged on the Sunday which is the day after election day.
- 3.108 Under the current rules for preliminary scrutiny, those postal votes are excluded from the count, because the date of the postmark is taken to be the date on which the vote was completed.
- 3.109 The Committee is of the view that this situation leads to the votes of electors in some regional, rural and remote areas being unnecessarily rejected, as the votes have in fact been cast, and posted prior to the close of the poll.
- 3.110 The Committee therefore makes the following recommendations:

Recommendation 10

3.111 **The Committee recommends:**

- **that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended so that postal voters are required to confirm by signing on the postal vote certificate envelope a statement such as “I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled”;**
- **that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to allow the date of the witness’s signature, not the postmark, to be used to determine whether a postal vote was cast prior to close of polling.**

Facilitating Postal Voting

3.112 The Committee notes that there were submissions and evidence which indicated that other actions on the part of the AEC may facilitate the postal voting process, including allowing forms to be faxed to the AEC and encouraging electors to vote earlier in the election period.

3.113 In response to these issues the Committee makes the following recommendations:

Recommendation 11

3.114 **The Committee recommends that the AEC:**

- **amend the General Postal Voter application form to indicate that the completed form can be returned to the AEC by fax;**
- **amend the Postal Vote Application form to allow an applicant, if they choose to do so, to nominate a date by which they require the postal voting material to be delivered to the postal address nominated;**

- **highlight the difficulties associated with electors leaving it to the last week in the election period to lodge postal vote applications in the public education campaign associated with the next election;**
- **take steps through its public education activities to ensure that the public is informed of the importance of having a witness date on postal vote certificate envelopes; and**
- **devise appropriate penalties for voters who provide false witness or who are otherwise in default of the requirements.**

Guidelines for the management of problems

- 3.115 In its response to Minter Ellison recommendation no. 26, the AEC makes a commitment to develop guidelines for the timely management of problems emerging during an election period.
- 3.116 The Committee, while noting that the AEC's relationship and interactions with the Minister is a matter for the Minister and the AEC to resolve, nevertheless recognises that other stakeholders also have valid expectations that they should be kept informed of significant issues that emerge.
- 3.117 The Committee endorses the AEC's commitment to developing such guidelines, and recommends that the AEC progress this commitment as soon as practicable.

Recommendation 12

- 3.118 **The Committee recommends that prior to the next election:**

The AEC discusses with the Minister's office options for establishing a process for the provision of information about emerging issues during the election period; including:

- **how and to whom requests for urgent briefing are to be handled;**
- **identifying which staff are to be involved; and**
- **how issues are to be followed up and reported on, by the AEC;**

And, that following those discussions:

- **the AEC formulate guidelines reflecting the outcome of those discussions and make them available to all relevant parties prior to the commencement of the election period.**

Privacy concerns

- 3.119 The Committee has also considered the issue of the privacy of the postal vote certificate envelopes used at the 2004 Federal Election.
- 3.120 The Committee notes the representations made by concerned electors and others in submissions to this inquiry and during evidence.
- 3.121 The Committee is, however, persuaded that there has been a demonstrable reduction in the number of ballot papers excluded from the count as a result of the envelopes used during this election.
- 3.122 The Committee is concerned to ensure a suitable balance between the privacy of electors and protecting the franchise. This balance is not achieved when postal ballot papers are excluded from the count because they are not contained within the postal vote certificate envelope.
- 3.123 The Committee has not drawn any conclusions about this matter at this stage. However, it intends to seek further information by recommending that the AEC consult widely with stakeholders – including, political parties, Commonwealth, State and Territory Privacy Commissioners, privacy advocates and others – to canvass possible solutions to the postal vote privacy issue that will not require a return to double enveloping.
- 3.124 The Committee is concerned to ensure, however, that electors who wish to use a second envelope to satisfy their own privacy concerns are not precluded from doing so.
- 3.125 The Committee will recommend that the AEC report back to the Committee before the end of June 2006, with details of its consultations and provide the Committee with recommendations about how the AEC should address the privacy concerns of electors, whilst minimising the number of ballot papers excluded from the count.

Recommendation 13

3.126 The Committee recommends that the AEC:

- **consult widely with stakeholders, including political parties, Commonwealth State and Territory Privacy Commissioners, privacy advocates and others, in order to canvass possible solutions to the privacy issue, that will not require a return to double enveloping; and**
- **report back to the Committee before the end of June 2006, with details of its consultations, and provide the Committee with recommendations about how the AEC should address the privacy concerns of electors, whilst minimising the number of ballot papers excluded from the count.**

PVAs lodged prior to the election announcement

3.127 The Committee also examined the issue of postal vote applications that were signed by electors and forwarded to the AEC prior to the announcement of the 2004 election.

3.128 The Committee notes that; as a result of parties and candidates distributing postal vote applications to electors prior to the issue of the writ, the AEC was required to contact a number of postal vote applicants to advise them it was unable to accept the applications lodged by them, because they were lodged too early.

3.129 The CEA provides that an application for a postal vote may not be made until after the issue of the writ for an election or the public announcement of the proposed date for the election.

3.130 The Committee is not persuaded that this provision requires any amendment, but does recommend that political parties and candidates take some action to advise electors about the relevant provisions for lodgement.

Recommendation 14

- 3.131 **The Committee recommends that political parties and candidates should ensure that any material they provide to electors in advance of the writ issue or public announcement of the election date, advises electors of the relevant provisions relating to the lodgement of postal vote applications.**

Pre-poll voting

- 3.132 Pre-poll voting is a form of declaration voting for electors who will not be in their home state or territory or who are unable to attend a polling place on election day.
- 3.133 An elector may attend an AEC Divisional office or one of the pre-poll voting centres set up before polling day to cast their vote.
- 3.134 In order to assist Australian electors overseas to vote, the AEC, with the cooperation and assistance of the Department of Foreign Affairs and Trade, opens a number of pre-poll voting centres in overseas missions. These missions also offer postal voting services to electors overseas who are not able to vote in person
- 3.135 An elector must have grounds for making a pre-poll vote. Generally, the grounds are that the applicant is unable to attend a polling place on polling day.³⁸
- 3.136 An elector seeking to make a pre-poll vote is required to personally attend a pre-poll voting centre, complete the declaration on the pre-poll certificate envelope, and sign the declaration.
- 3.137 The elector then receives ballot papers which they fill out, fold and return to the officer who issued them. The ballot papers are placed into the pre-poll certificate envelope which is sealed before being placed in a ballot box.
- 3.138 All pre-poll certificate envelopes are ultimately sent to the DRO for the Division for which the elector claims to be enrolled, whereupon they are checked to determine the eligibility of the elector before being included or excluded from the count.

38 The Grounds for application for a pre-poll vote are contained in Schedule 2 of the CEA.

- 3.139 The AEC is required to gazette the location and opening times of pre-poll centres.³⁹
- 3.140 In some instances this requirement may prevent the AEC responding quickly to changing circumstances where pre-poll voting might be required, such as was caused by delays in postal vote materials for the 2004 election. Ms Jennie Gzik from the AEC stated:

I would also like stronger contingency plans in place. For example, because there was some delay we opened up the airport earlier, as a pre-poll. Next time I would like to do that even earlier. We were delayed by a day because we have to gazette it as a pre-poll first, so we could not open until the Sunday before the election instead of the Saturday.⁴⁰

- 3.141 The AEC submitted that it believed that:

the CEA should be amended to remove the requirement to gazette dates and times of operation for pre-poll voting centres, provided that appropriate steps are taken to ensure they are advertised. This would place the gazettal and advertising of pre-poll voting centres on the same basis as that applying to remote mobile stations (s227 (4)).⁴¹

The Gazette is not widely read, and the AEC believes it is possible to allow greater flexibility in the establishment of pre-poll voting centres by replacing the requirement to gazette with a requirement to publicise the locations and times of operation of pre-poll voting offices. Such a change will mean that advertising the locations and times of operation of pre-poll voting will be on a similar footing to advertising the locations and times of operation of remote mobile polling, with similar flexibilities.⁴²

- 3.142 Conversely, the Liberal Party expressed some concerns with the way the AEC advises the opening of pre-poll voting centres:

reports from some electorates indicated that there was a degree of confusion about the opening of pre-poll centres. Our local campaigns in these instances reported that pre-poll centres opened and began operations without notification in

39 CEA, section 200D.

40 Ms J Gzik, (Australian Electoral Officer for Western Australia), *Evidence*, Wednesday, 3 August 2005, p. 59.

41 Submission No. 74, (AEC), Attachment C.

42 Submission No. 74, (AEC), p. 11.

advance. It is important for the AEC to ensure that candidates or their campaigns are advised in advance of the opening of these centres.⁴³

3.143 In addition to being open prior to election day, the AEC's Divisional Offices and some pre-poll centres are open on election day to take the votes of those electors who are not in their home state or territory.

3.144 These pre-poll centres and Divisional Offices are often not located in the most appropriate locations for travellers. The Nationals Hinkler Divisional Council stated that:

members received a number of complaints from interstate voters that they could not get to a DRO to vote on election day. DRO offices are not 'close' (sometimes there is 400km between them) and an examination of the Queensland coastline demonstrates how difficult it can be for people visiting centres between the major provincial cities. For example, there are DROs at Brisbane, Nambour, Maryborough, Bundaberg, Rockhampton, Mackay, Townsville and Cairns. It is not reasonable to expect voters between these centres to travel hundreds of kilometres to vote if business, holiday, family commitment or emergency situations place them in a locality at a distance from those offices.⁴⁴

3.145 The AEC recognises that electors who are interstate on polling day may only vote at pre-poll centres and notes that:

the current distribution of pre-poll voting centres also affects electors interstate on polling day, many of whom attend a polling place in the mistaken belief that they can have an absent vote. There is no provision in the CEA for electors to vote at a polling place outside of the State or Territory in which they are enrolled. They are only able to vote at an interstate voting centre (a Divisional Office or a pre-poll voting centre open on polling day). The AEC has recognised this as an issue at previous elections and so advertises interstate voting arrangements, including information in the householder leaflet distributed by the AEC to every household once the election is announced.⁴⁵

43 Submission No. 95, (Liberal Party of Australia).

44 Submission No. 53, (The Nationals Hinkler Divisional Council).

45 Submission No. 74, (AEC), Attachment C.

- 3.146 Many submissions to this inquiry expressed concern that pre-poll centres were not located in locations where they were deemed to be required.
- 3.147 In the case of electors in regional areas of Queensland who were unable to cast postal votes because of delays in receiving them, there were no alternatives such as pre-poll located within hundreds of kilometres of where they were required. Mrs Lindsay MacDonald wrote:
- at federal elections, pre-poll voting is not available to us, as the only centres where this was permitted in the seat of Maranoa were Dalby (10 hours away) or Emerald (5 hours away). Neither of these towns is in any way a 'centre of interest' for us, giving us no reason to travel to either of these places.⁴⁶
- 3.148 The Nationals, in their submission from the Hinkler Division, advised that:
- members received a number of complaints from interstate voters that they could not get to a DRO to vote on election day. DRO offices are not 'close' (sometimes there is 400km between them) and an examination of the Queensland coastline demonstrates how difficult it can be for people visiting centres between the major provincial cities. For example, there are DROs at Brisbane, Nambour, Maryborough, Bundaberg, Rockhampton, Mackay, Townsville and Cairns. It is not reasonable to expect voters between these centres to travel hundreds of kilometres to vote if business, holiday, family commitment or emergency situations place them in a locality at a distance from those offices.⁴⁷
- 3.149 Mr Michael Parker, Chief Executive Officer, Warroo Shire Council considered that while there were practical obstacles to installing a sufficient number of pre-polling locations, there would be advantages in taking the pressure off the postal voting system:
- Senator MASON** – So you are saying that, if there were adequate pre-polling, that could take pressure off postal voting.

46 Submission No. 47, (Mrs L MacDonald).

47 Submission No. 53, (The Nationals Hinkler Division).

Mr Parker — Yes. The facilities are there. That is what the council has looked at. The community points are there. There are skilled people who work at those places who probably have been involved and may be involved with electoral systems. Generally a lot of teachers work in the state election systems. Even the local government officers in the area have generally got experience in the electoral system. So the expertise is in the area, were pre-polling to be the preferred option.⁴⁸

- 3.150 The ALP submits that there is a need for additional pre-poll centres and that they should be more accessible:

That the AEC establish additional pre-poll voting centres in every Division in locations deemed to be accessible to the public, such as in major shopping centres, sporting venues and education institutions. Further, that the times when pre-poll voting centres are open be reviewed.⁴⁹

- 3.151 The ALP also believes that the electoral system must be responsive to family needs:

Labor believes that electoral arrangements need to accommodate the ever increasing demands on family time. This factor may be able to lend an explanation to the increase in postal voting during the 2004 federal election.

Labor believes that there is sufficient demand for an increase in pre-polling voting centres.⁵⁰

- 3.152 The Minter Ellison inquiry into postal voting at the 2004 election made recommendations in relation to pre-poll voting. These included that the AEC undertake a thorough review of current pre-poll voting arrangements.

- 3.153 The AEC's response to that recommendation indicates that the review will be:

completed by November 2005. The review will determine the most appropriate locations and days and times of operation for pre-poll voting centres for the next election, and the most appropriate content and media for advertising.

48 Mr M Parker, CEO, Warroo Shire Council, *Evidence*, Wednesday, 27 April 2005, p. 13.

49 Submission No. 136, (ALP), p. 7.

50 Submission No. 136, (ALP), p. 7.

It should be noted that any increase in the numbers of pre-poll voting centres, and their days and times of operation, will have cost implications.

The AEC proposes amending the provisions of the CEA relating to pre-poll voting so that only the places where pre-poll voting will take place will be gazetted, and to provide for the Electoral Commission to take such steps as it sees fit to give public notice of the places where pre-poll voting will take place and the days and times of operation.⁵¹

- 3.154 The AEC also notes the criticisms levelled at it during and since the 2004 election by:

electors in rural and regional Australia for not providing a wider network of pre-poll voting centres. When issues arose with the timely delivery of postal votes in rural Queensland, the AEC advised electors to lodge a pre-poll vote as an alternative. As the Mayor of Winton Shire Council pointed out to the AEC (correspondence of 11 October 2004), given that the closest pre-poll voting centre to his community was at Mount Isa, “the distances involved would preclude many, if not most, of the affected people from making the trip”. A round trip from Winton to Mt Isa would be 950 kilometres...

The AEC could also discuss with a range of Commonwealth, State and Territory and local government agencies the possibility of the AEC appointing pre-poll voting centres at some of their premises during the election period. If implemented, the pre-poll voting centres would ideally be located in a shopfront in a town where the AEC did not have an office, operate during the same hours as the agency and be staffed by staff of the agency.⁵²

The Committee's view

- 3.155 The Committee recognises that concerns about the location of pre-poll facilities have become more prominent in the light of the postal voting delays during the 2004 election, especially in regional Queensland.

51 Submission No. 74, (AEC), Attachment C.

52 Submission No. 74, (AEC), Attachment C.

- 3.156 There is also a need to find a balance between the expectations of a society that demands electoral convenience, with the desire of that same society to retain the ability to participate by voting in person.
- 3.157 This is the fundamental problem that presents itself when polling places are closed down for economic reasons and are replaced by postal voting.
- 3.158 Postal voting suits many people, but as pointed out by those electors in regional Queensland, the desire to vote in person is still important to many.
- 3.159 Pre-poll voting on the other hand, satisfies the desire to vote in person, and provides a measure of electoral convenience to all involved in the electoral process, be they electors, electoral authorities, political parties or candidates.
- 3.160 The Committee believes, therefore, that the AEC should review its pre-polling arrangements with a view to ensuring that, wherever practical, pre-poll voting centres are located at appropriate Commonwealth, State or Territory government or local government agencies in regional areas, as suggested by the AEC in its response to the Minter Ellison recommendations.
- 3.161 The Committee notes that there will be costs associated with this proposal, however, it believes that there should be no electoral disadvantage suffered by electors in regional areas, wherever a reasonable case for providing pre-poll voting facilities exists.
- 3.162 Where the same case exists in respect of interstate travellers, and the AEC has an expectation that a reasonable number of electors would utilise those facilities on election day, the pre-poll facilities should remain open on election day to allow interstate travellers to vote.
- 3.163 The AEC should comprehensively publicise and advertise the location of all pre-poll voting centres.
- 3.164 Similarly, the AEC must also ensure that standardised, prominent signage is used to identify pre-polling centres, so that electors and other stakeholders can immediately recognise and locate them.
- 3.165 The Committee notes the AEC's concerns about the requirement to gazette pre-poll voting locations and times, however, it is not convinced that removing the requirement for gazettal of the times would provide significant benefits to electors, candidates or other stakeholders.

- 3.166 However, the Committee believes that an amendment to the CEA is required to allow the AEC to set up and operate pre-poll voting centres in circumstances where the AEC is required to quickly ensure that electors are able to cast votes.
- 3.167 In such circumstances, the AEC must do everything it practically can to advise relevant candidates and political parties of:
- the circumstances which prevail and require the AEC to take such action; and
 - and the times and days on which it is proposed to operate the pre-poll centre.
- 3.168 The AEC must gazette the pre-poll centre or centres as soon as practicable after it becomes aware of any circumstances that require it to set up and operate a centre or centres.

Recommendation 15

- 3.169 **The Committee recommends that the AEC should review its pre-polling arrangements with a view to ensuring that, wherever practical, pre-poll centres are located at appropriate Commonwealth, State or Territory government, or local government, agencies in regional areas.**

Recommendation 16

- 3.170 **The Committee recommends that the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to provide that:**
- **the AEC may set up and operate pre-poll voting centres in circumstances and locations where the AEC is required to quickly ensure that electors are able to cast votes; and**
 - **in such circumstances, to require the AEC to do everything it practically can to advise relevant candidates, political parties and other stakeholders of:**
 - ⇒ **the circumstances which prevail and require the AEC to take such action;**
 - ⇒ **the location, dates and times on which the AEC proposes to operate the pre-poll centre; and**

- to require the AEC to Gazette the pre-poll centre or centres as soon as practicable after it becomes aware of the circumstances that require it to set up and operate the centre or centres.

Recommendation 17

The Committee recommends:

- that the AEC comprehensively publicise the location of all pre-poll voting centres; and
- that the AEC ensure that standardised, prominent signage is used to identify pre-polling centres, so that electors and other stakeholders can immediately recognise and locate them from the day of opening and throughout election day.

Registration of political parties

- 4.1 This chapter examines the current arrangements for the registration of political parties, problems evident in the current system, and makes a series of recommendations for reform.

Current political party registration arrangements

- 4.2 Part XI of the CEA contains the provisions that permit eligible political parties to be registered. Section 123, provides that an eligible political party is a political party that is either a parliamentary party or has at least 500 members, and is established on the basis of a written constitution (however described) that sets out the aims of the party.
- 4.3 A parliamentary party is defined as a political party, which has at least one member who is a member of the Parliament of the Commonwealth.¹
- 4.4 Applications for registration are made to the AEC and must, amongst other information, set out the proposed name of the party and any proposed abbreviation. An application will be refused where the party name:
- is more than six words;

¹ CEA, section 123.

- is obscene;
- is the name, abbreviation or acronym of another unrelated party or so nearly resembles the name, abbreviation or acronym of an unrelated party that it is likely to be confused with or mistaken for that party; and
- suggests a connection or relationship exists with a registered party when it does not; and
- comprises words:
 - ⇒ 'independent party';
 - ⇒ 'independent' plus the name, abbreviation or acronym of a recognised political party; or
 - ⇒ 'independent' plus a name that so nearly resembles the name, abbreviation or acronym of a recognised political party that it is likely to be confused with or mistaken for it.²

4.5 The intention behind these legislative amendments, which were introduced in 2004,³ is to address public concerns that the political party registration provisions in the CEA may be open to exploitation by parties seeking to confuse voters by registering a name that is similar to another well-known political party. The tests currently included in section 129 are to ensure that a party cannot be registered if its name suggests to a reasonable person that a relationship or connection with a registered political party that does not exist.⁴ This test is administered by the AEC.

4.6 The AEC will cancel a party's registration where a parent party has successfully objected to the continued use of a similar party name by a second party and the second party is not related to the parent party and has not satisfactorily changed its name within one month.⁵

4.7 The effect of the 2004 amendments is that parties can no longer register names that are too similar to that of a recognised or registered party.

2 CEA, section 129.

3 *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*

4 Explanatory Memorandum, *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004*. scaleplus.law.gov.au/html/ems/0/2004/0/2004040208.htm

5 Submission No 216, (AEC), Attachment C, p. 1.

Problems with current registration processes

Minimum number of members and application fees

4.8 The CEA requires a political party to have at least 500 members before it can be registered under the Act. There is a view that this should be retained, if not extended to 1,000 to better reflect the size of the Australian voting public.⁶ Incidentally, the Nationals believe that the number of Members of Parliament required for registering a party should be increased from one to two.⁷

It is the case now that it is easier to register a political party for a federal election than it is to register a political party for certain state elections. We believe that the Electoral Act must ensure that political parties are properly constituted organisations and do not act in a manner which is deceptive to voters.⁸

4.9 There are those, however, that feel that no minimum is required: the Democratic Labor Party, for example, feels that the recognition of a party is a matter for the members of the party.⁹ They submit that there should instead be a minimum number of electors, rather than members.

4.10 Mr Antony Green is of the view that the CEA requires amendment to include a definition of “membership” of political parties, and to provide the AEC with an oversight power to decide disputes about internal party ballots (in light of previous JSCEM consideration of whether false enrolment by political parties has been used to manipulate internal party ballots) of disputes instead of resorting to the courts. This is an important issue as there have been disputes over whether a party has the 500 members required under the Act, so a widening of the powers of the AEC could result in the swifter resolution of any such disputes.¹⁰

6 See, for example, Submission No 125, (Festival of Light), p. 3; Submission No 92, (The Nationals).

7 Submission No. 92, (The Nationals); Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, p. 58.

8 Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, p. 57.

9 Mr John Mulholland, Democratic Labor Party, *Evidence*, Monday, 25 July 2005, p. 93.

10 Submission No. 73, (Mr A Green), pp. 1-2.

- 4.11 As noted above, non-parliamentary parties must provide a list of 500 members with their application for registration. One of the most obvious ways for the AEC to check the bona fides of the names provided on such lists is to check them against the electoral roll.
- 4.12 Given that section 123(3) of the CEA requires only that members of parties be entitled to enrolment, not actually enrolled, the AEC is unable to reject an application for registration if this check of the membership list against the electoral roll shows a large number of discrepancies (that is, members not enrolled or not correctly enrolled).

The Committee's view

- 4.13 The Committee is of the opinion that the minimum number of members required for registration should remain at 500 and the fee for registration remain at the present level.
- 4.14 However, given that enrolment is compulsory for eligible persons, it is not unreasonable to expect that the 500 members on which a political party relies in order to seek or retain registration, actually be enrolled, instead of being entitled to enrol.
- 4.15 This should not be taken to suggest that persons who are not Australian citizens should be precluded from being members of political parties. It merely makes the point that the 500 members that the party relies on for registration and continued registration are to be enrolled.
- 4.16 There must also be a degree of rigour applied to the requirement that a party is established on the basis of a written constitution.
- 4.17 It is only proper to expect that an organisation that has the election of one of its members to the Commonwealth Parliament as one of its aims, to exhibit a good degree of organisational ability and responsible management, such as is already required of other types of organisations that represent or provide advocacy on behalf of members.
- 4.18 A party should be able to demonstrate, to the satisfaction of its members and relevant authorities, the process by which it is managed in respect of its administration, management and financial management. It is essential that these elements be included in the written constitution.
- 4.19 Moreover, to ensure an appropriate level of transparency, the constitution should be publicly available on the AEC website from the

time a party makes application for registration, and following this, whilst ever the party remains registered.

- 4.20 Registered clubs, for example, are required to have a constitution that among other things sets out the requirements for gaining, maintaining and ceasing membership. Clubs must also maintain membership registers. These registers are required to be up to date and be available for inspection by the relevant authority.
- 4.21 Members of clubs are required to demonstrate a commitment to the club. This commitment is usually demonstrated by remaining a financial member of the club and by adopting and maintaining the standards of dress and behaviour set down in the club constitution or rules.
- 4.22 It is not unreasonable, therefore, to expect that political parties would, or should, be organised along similar lines. Parliamentary parties are already organised in this manner, as are trade unions and clubs.
- 4.23 A political party should have a reasonable constitution in place. It should, at the very least:
- clearly indicate that it is a political party;
 - indicate that it intends to participate in the federal election process;
 - contain certain minimum requirements in relation to its operations, specifically that it:
 - ⇒ be written;
 - ⇒ include the aims of the party, one of which must be the endorsement of candidates to contest Federal Elections;
 - ⇒ set out requirements for becoming a member, maintaining membership and ceasing to be a member;
 - ⇒ outline the process for the election of office holders (including, but not limited to, the registered officer, the Executive and any committees);
 - ⇒ detail the party structure;
 - ⇒ detail the procedure for amending the constitution; and
 - ⇒ detail the procedures for winding up the party.
- 4.24 The central element of the party constitutional requirements is the definition of a 'party member' as this can have far reaching implications on the registration of parties.

- 4.25 Political parties should be able to show that the memberships on which they rely for registration or for the maintenance of registration are demonstrable. They should be able to demonstrate that their members are committed to the aims of the party by maintaining financial membership.
- 4.26 The CEA should, therefore, be amended to expand the definition of an eligible political party.

Recommendation 18

- 4.27 **The Committee recommends that the Commonwealth Electoral Act be amended to expand the definition of an eligible political party so that:**

Eligible political party means a political party that is either:

- a parliamentary party; or
- a political party that has at least 500 financial members who are currently enrolled on the electoral roll; and
- is established on the basis of a written constitution that incorporates the minimum requirements for the constitution of a registered political party contained in the Commonwealth Electoral Act and complies with the State or Territory legislation to the extent that it applies.

Recommendation 19

- 4.28 **The Committee recommends that the Commonwealth Electoral Act be amended to provide minimum requirements for the constitution of a registered political party.**

Potential minimum requirements would include:

- a clear indication that it is a political party;
- a statement that it intends to participate in the Federal Election process;
- certain minimum requirements in relation to its operations, specifically that it:

- ⇒ **be written;**
 - ⇒ **include the aims of the party, one of which must be the endorsement of candidates to contest Federal Elections;**
 - ⇒ **include the process by which the party is managed in respect of its administration, management and financial management;**
 - ⇒ **set out requirements for becoming a member, maintaining membership and ceasing to be a member;**
 - ⇒ **outline the process for the election of office holders (including, but not limited to, the registered officer, the Executive and any committees);**
 - ⇒ **detail the party structure;**
 - ⇒ **detail the procedure for amending the constitution; and**
 - ⇒ **detail the procedures for winding up the party.**
- **the constitution of all parties registered with the AEC be made publicly available on the AEC's website.**

Confusion over party names

4.29 The amendments to section 129 of the CEA in 2004 had the effect of preventing applicant parties from registering names that are too similar to that of a recognised or registered party. Since that time, any parties attempting to register a name have been prevented from doing so if the name:

is one that a reasonable person would think suggests that a connection or relationship exists between the party and a registered party if that connection or relationship does not in fact exist'.¹¹

4.30 Confusion still arises, however, because parties that registered names prior to the 2004 amendments are still permitted to use those names. This has created the situation where the previous system directly contradicts the current party registration system.

While the Electoral Act now prevents the registration of unaffiliated parties using names of other parties in their

11 CEA, subsection 129(da).

names, it still does nothing to address those that were registered before that time. ... [a]llowing parties that are not affiliated to use parts of another party's name is distorting, inappropriately affects voters when they vote ... or at the very least makes it unnecessarily confusing for any voter.¹²

the name of [liberals for forests] is potentially confusing and can mislead voters into believing that liberals for forests has some connection to the Liberal Party or gives its preferences to the Liberal Party. While we welcome the improvement to the Commonwealth Electoral Act passed by Parliament last year to clarify the provisions governing registration of party names for new parties applying for registration, there remains an issue about confusion caused by the name of liberals for forests which is already registered.¹³

- 4.31 This was raised as a particular issue in the 2004 Federal Election in the case of Liberals for Forests (see detailed discussion about the problems surrounding Liberals for Forests in Chapter 5, *Election day*).¹⁴ The Nationals have also previously complained about the New Country Party, which it felt had a historical association with the National Party. The complaint about the New Country Party was rejected by the AEC, so the potential for confusion between these two parties, and for The Nationals to be deprived of votes that rightfully belong to them, remains.¹⁵
- 4.32 Liberals for Forests was registered as a political party in 2001 after a decision by the Administrative Appeals Tribunal, which overturned an AEC decision to refuse registration.¹⁶ Even though the CEA now contains requirements preventing the registration of similar names, this provision does not apply retrospectively to parties already registered prior to the amendments coming into force. So, as Liberals for Forests is a registered political party, it was entitled to use its party name in political advertising.
- 4.33 The Committee heard strong evidence that the design of the Liberals for Forests how-to-vote cards led to voters being confused as to where

12 Mr A Sochacki, Chairman, Richmond Electorate, The Nationals, *Evidence*, Thursday, 7 July 2005, p. 3.

13 Submission No. 95, (Liberal Party of Australia)

14 Under *Richmond Electorate: Liberals for Forests HTVs*.

15 Submission No. 92, (The Nationals).

16 *Woollard and Australian Electoral Commission and Liberal Party of Australia (WA Division) Inc* [2001] AATA 166, cited in Submission No. 166, (Liberals for Forests), p. 1.

their vote would flow.¹⁷ The layout and colour of the Liberals for Forests How-to-Vote card were felt to be very similar to that used by the Liberal Party,¹⁸ even though the AEC determined the card conformed to the relevant provisions of the CEA:¹⁹

Following the election, a reasonable number of people called either our campaign office or the then sitting member's office to say that they were confused when they voted: they thought they were voting for the Liberals when, if you follow the preference ticket, their vote ended up with Labor.²⁰

- 4.34 This point was emphasised by evidence from Mrs Bronwyn Smith, who responded to a question about whether she had been misled by the Liberals for Forest actions by saying

I thought that they were an environmentally based Liberal group that were going to suddenly start protecting the environment. I thought, 'That's good', and that naturally it would go to Larry.²¹

- 4.35 These issues are canvassed in greater detail in Chapter 5, *Election Day*.

The Committee's view

- 4.36 Although the CEA now contains provisions that were designed to avoid confusion, the Committee has heard and received clear evidence that these mechanisms have not reduced confusion for electors. This is particularly the case regarding political parties that have similar names. It is essential, in the Committee's opinion, that this confusion be removed.

Privacy of political party members

- 4.37 The Democratic Labor Party also raised concerns about the privacy of the names of members of political parties because there is no

17 Submission No. 92, (The Nationals); Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, pp. 28-29.

18 Submission No. 92, (The Nationals).

19 See Submission No. 172, (AEC), pp. 8-9 and Attachment B.

20 Mr A Sochacki, Chairman, Richmond Electorate, The Nationals, *Evidence*, Thursday, 7 July 2005, p. 3; Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, pp. 58-59.

21 Ie The Hon Larry Anthony MP, the Nationals' sitting member. Ms B Smith, *Evidence*, Thursday, 7 July 2005, p. 27.

guarantee that the lists of party members will not be made public.²² The converse of this view, however, is that parties should be required to provide proof that they actually do have members (who are not relied on by any other party for the purposes of registration), and the only way of doing so is by identifying them by name and address.²³

The Committee's view

- 4.38 The Committee acknowledges that some parties have concerns that membership lists may be made public; however, the Committee notes the AEC's advice that membership lists are used only for the purposes of establishing a party's eligibility for registration or continuing registration and are not made public by the AEC.
- 4.39 The Committee believes that the public benefit is best served by requiring political parties to provide the names of such members to the AEC as proof for party registration purposes as required under the CEA.

An option for reform

De-registration and re-registration of political parties

- 4.40 As outlined above, the CEA was amended in 2004 to impose stricter requirements on the naming of political parties. For these amendments to have their desired impact, and reduce voter confusion in this area, these requirements must apply to all political parties operating in the Australian federal political system.
- 4.41 The amended section 129 cannot apply retrospectively, so a means of making all existing political parties subject to these requirements must be found.
- 4.42 A solution would be to amend the CEA to deregister all registered parties, with the exception of parliamentary parties (as defined in section 123 of the CEA) and those parties currently registered in accordance with part XI of the CEA that have, in the past, been represented in the Federal Parliament.

22 Mr J Mulholland, Democratic Labor Party, *Evidence*, Monday, 25 July 2005, pp. 93-97; see also Submission No. 121, (Democratic Labor Party).

23 Senator Michael Forshaw, *Transcript of Evidence*, Monday, 25 July 2005, p. 95.

- 4.43 Whilst parliamentary parties and those with past representation would retain their registration, they would be under an obligation to prove to the AEC that they meet the requirements for being a parliamentary party contained in the CEA, unless they had already provided such proof in the life of the 41st Parliament.
- 4.44 All other parties would be de-registered and be removed from the Register of Political Parties. They would be required to re-apply for registration, and be required to comply with the amended registration requirements contained in the CEA, including the naming provisions in section 129.
- 4.45 This, in effect, means that where a political party applies for registration, the application will be tested against the provisions of the CEA, as they currently apply to new registrations, as well as any amended registration provisions arising from recommendations made by this Committee.
- 4.46 Where an application for registration does not meet the requirements of the CEA, the AEC will be required to write to the Registered Officer of the applicant party in accordance with section 131 of the CEA and give the applicant party an opportunity to vary the application. If the applicant party fails to do so, the applicant party will not be registered.
- 4.47 Further, the more stringent registration requirements in the CEA must also apply to parties that register, or are currently registered under an acceptable name, and which then seeks to change its name after registration.
- 4.48 Any change of name proposed by a registered party must also conform to the naming requirements in the CEA.
- 4.49 This option would remove the opportunity for non-related political parties to use elements of the name of registered or recognised parties for deceptive and misleading political ends, thus reducing voter confusion. It would also ensure consistency in the registration and naming requirements for all parliamentary and non-parliamentary parties.
- 4.50 There should be no exceptions (other than parliamentary parties and those parties who have had past representation in the Federal Parliament) to the requirement to face the re-registration requirements of the CEA, even if that party is registered for State or

Territory elections under relevant State or Territory electoral legislation,²⁴ or has a member in any State or Territory Parliament.

- 4.51 In any case, that party or those parties would still be required to register or re-register under the CEA in order to stand candidates in a federal election.

Recommendation 20

- 4.52 **The Committee recommends that the Commonwealth Electoral Act be amended to provide for the:**

- **Deregistration of all political parties that are not parliamentary parties (as defined in section 123 of the Commonwealth Electoral Act) or are parties that have had past representation in the Federal Parliament; and that:**
- **all existing parliamentary parties and those with past representation remain registered, but be required (where appropriate) to prove that they meet the requirements for a parliamentary party:**
 - ⇒ **where a parliamentary party has proven that it meets the relevant requirements during the life of the 41st Parliament, it will not be required to provide further proof;**
 - ⇒ **where a parliamentary party has not proven its status as a parliamentary party during the 41st Parliament, it will be required to prove this by indicating which sitting member it relies on for its status;**
 - ⇒ **where a party claims that it has past representation in the federal Parliament, it will be required to prove this by indicating which past member it relies on for its status.**
- **all other parties would have to apply for re-registration, at which point they must comply with the amended registration requirements in the CEA, including the existing naming provisions contained in section 129;**
- **where a political party applies for registration using a name which does not conform with the requirements of section 129 of**

24 See *Parliamentary Electorates and Elections Act 1912 (NSW)*, *Electoral Act 2002 (VIC)*, *Electoral Act 1992 (Qld)*, *Electoral Act 1907 (WA)*, *Electoral Act 1985 (SA)*, *Electoral Act 2004 (Tas)*, *Electoral Act 1992 (ACT)* and *Electoral Act 2004 (NT)*.

the CEA, the Electoral Commission shall refuse such registration;

- **where the AEC refuses such application for registration, it must notify the applicant party that it is bound to refuse the registration and give the applicant party an opportunity to vary the original application;**
- **if the applicant party fails to vary the application the AEC shall refuse the registration; and**
- **all amended registration requirements must also be met in any case where a registered political party applies to change its registered name; or its registration is reviewed by the AEC in accordance with section 138A of the CEA.**

Registration of individual candidates

4.53 As outlined in Chapter 6, *Counting the votes*, below, one of the causes of a rise in informal voting is the increasing number of candidates contesting elections. This is an issue on both House of Representatives and Senate ballot papers.

4.54 Mr Antony Green believes that changes should be made to the registration process to limit the burgeoning number of candidates. He suggests:

- applying a fee to the registration and supervision of political parties;
- requiring local endorsement for parties nominating candidates using the central list nomination procedure; and
- reviewing deposit fees, and perhaps introducing a special deposit fee for Senate Group Ticket Votes.²⁵

4.55 Further, there is the view that the deposits for individual candidates should be increased to better discourage candidates who are not seriously running in the election.²⁶ The Festival of Light claims that:

25 Submission No. 73, (Mr A Green), pp. 4-5.

26 Submission No. 125, (Festival of Light), p. 4.

the deposit for an individual candidate should be increased to \$500 and the deposit for a Senate candidate should be increased to \$1,000. Particularly, we believe that an individual who wishes to stand should be endorsed by 200 signatures of electors. We do not think that taxpayer funding of elections is appropriate and we would like to see an end to that practice.²⁷

Extended powers for the AEC

- 4.56 The Nationals are of the view that the CEA requires amendment to extend the current laws on misleading or deceptive publications, to also include misleading conduct. The Nationals lodged official complaints with the AEC on polling day about the behaviour of the Liberals for Forests campaign workers, and whilst these complaints were investigated, they were dismissed because the CEA covers only written material.²⁸
- 4.57 There may, therefore, be a need for stricter controls on the conduct of campaign workers (including casual booth workers), where this conduct can confuse or mislead voters.²⁹
- 4.58 Further, even where damaging or misleading materials are produced and distributed on polling day, the AEC can do very little about the circulation of these materials at that time. This is because the process for removing such materials is a legal process which can take some time to reach a conclusion.³⁰ The Nationals, therefore, believe the AEC should be given power to remove materials on polling day that are determined as being misleading or confusing for voters.³¹

The Committee's view

- 4.59 Whilst the Committee recognises that there are problems associated with misleading conduct on polling day, changes to the CEA to allow the AEC to act on such conduct raise further, more significant problems. Such a change would require the AEC to exercise subjective judgements, which may ultimately be subsequently challenged through the legal system, thus potentially calling the result of an election into doubt.

27 Dr D Phillips, Festival of Light, *Evidence*, Tuesday, 26 July 2005, p. 13.

28 Submission No. 92, (The Nationals)

29 Submission No. 92, (The Nationals)

30 Submission No. 92, (The Nationals).

31 Submission No. 92, (The Nationals).

Other issues

List of designated words for use in party names

- 4.60 Effective enforcement of the naming provisions contained in section 129 of the CEA will require the creation of two lists of words: one to specify which words are words forming parts of names of registered parties. Words appearing on this list or their plural forms may not be contained in the names of applicant parties seeking registration.
- 4.61 The other list should contain words that must not be included on the first list, for example, the words Australia, Australian and Australians must be available for use by all, as must the words party, alliance and group.

Increased workload for the AEC

- 4.62 The introduction of the deregistration and re-registration regime outlined above would involve a significant increase in the workload of the AEC, during the deregistration and re-registration processes and a moderate increase in workload in the ongoing checking of existing registrations and re-registrations. As such, additional funding would be required to ensure the efficient processing of applications for re-registration.

Recommendation 21

- 4.63 **The Committee recommends that the AEC be given appropriate funding to meet the additional obligations associated with de-registration and re-registration.**

Nominations

- 4.64 People wishing to be nominated as candidates in Federal Elections must be Australian citizens who are over the age of 18. They must be either enrolled, or entitled to be enrolled, to vote. People wishing to

nominate cannot make multiple nominations, and persons are disqualified if they fail to meet certain criteria.³²

- 4.65 A candidate may be nominated by 50 persons entitled to vote in the election or by the registered officer of a registered political party that has endorsed the candidate. A person who is a sitting member may be nominated by a single signature from a person entitled to vote in the election.³³
- 4.66 The Committee received little evidence regarding the nomination of candidates for the Federal Election, and only the following issues were raised:
- A suggestion that all candidates be required to have local nominators (rather than a central nominations process) to limit the number of candidates and political parties in each electorate to only those genuinely interested in running;³⁴
 - A suggestion that all candidates be required to submit a nomination form to the AEC with 200 signatures of registered electors from the electorate for which the candidate is nominating. An elector may nominate only one candidate in their electorate;³⁵
 - A proposed amendment to the qualification for nomination provisions of the CEA to require, amongst other new requirements, that a candidate must have been on the electoral roll of the electorate they wish to stand in for a minimum of twelve calendar months prior to an election being called;³⁶ and
 - An error on the version of House of Representatives Single Nomination – “Independent” Candidate form posted on the Internet was identified. Line 21 was missing, so if a nominator completed the available lines on the form, they would have provided only 49 signatures.³⁷ This problem was rectified by the AEC as soon as possible after it was discovered.

32 Submission No. 165, (AEC), p.13.

33 See sections 163, 166, CEA.

34 Submission No. 73, (Mr Green), Part 2, p. 10; Mr A Green, *Evidence*, Friday, 12 August 2005, p. 65.

35 Submission No. 125, (Festival of Light), pp. 4–5.

36 Submission No. 34, (Mr John Clarkson).

37 Submission No. 134, (Mr Ivan Freys).

The Committee's view

As very few problems were raised about the nominations process, the current arrangements appear to be working in a satisfactory manner. The Committee, therefore, does not make any recommendations regarding nominations.

Election day

5.1 In this chapter, the Committee examines issues which can be conveniently grouped as relating mainly to the conduct of the election on polling day itself. The topics considered are:

- **Administration issues**
 - ⇒ training of polling officials
 - ⇒ compensation of polling officials
 - ⇒ staffing of polling booths
- **Polling booths**
 - ⇒ location of booths
 - ⇒ joint polling booths
 - ⇒ size and position of signs/advertisements around polling booths
- **How-to-vote cards**
 - ⇒ the need for HTV
 - ⇒ alternatives to HTV cards
 - ⇒ misleading HTV
- **Voting**
 - ⇒ absent voting
 - ⇒ provisional voting
 - ⇒ prisoner voting
 - ⇒ homeless voting
 - ⇒ mobile polling
 - ⇒ assisted voting

- fraudulent voting
 - ⇒ precinct/sub-divisional/local voting
 - ⇒ proof-of-identity requirements
 - ⇒ barcoding
 - ⇒ networked checking of the Electoral Roll
- **Senate**
 - ⇒ Group Voting Tickets

Administration issues

Training of polling officials

- 5.2 The AEC reported that it spent nearly \$80,000 on the training of polling staff, and that approximately 67,000 temporary staff assisted in the conduct of the election.¹ Officers in charge of polling places received payment for three hours of home study and three hours to attend a training session. Polling officials issuing declaration votes receive payment for one hour of home study and one hour to attend a training session. Polling officials issuing ordinary votes would also be expected to spend an hour reading the manual and completing homework exercises.² The AEC noted that many election staff have worked at a number of elections, building up extensive experience.³
- 5.3 A number of submissions considered that the training provided was inadequate,⁴ citing examples of:
- errors in the training material;⁵
 - training being curtailed because of the wrong starting time being advised;⁶

1 Submission No. 182 (AEC), Table 2 identifies \$79,474.86. Training for call centre operators was additional to this sum. AEC, *Behind the Scenes 2004 Election Report*, 2005, p. 16.

2 AEC, quoted in Submission No. 8, (Mr P. Hickey), Attachment B.

3 AEC, *Behind the Scenes 2004 Election Report*, 2005, p. 16.

4 Submission Nos 8, 9, 49, 50, 68, 100, 134 & 176.

5 Submission No. 134 (Mr I Freys).

6 Submission No. 176, (Mr S Luntz).

- the estimate of time required to study the manual and undertake the homework exercises was "totally unrealistic";⁷
 - some staff not understanding the role of scrutineers.⁸
 - inconsistent interpretations of the Act from booth to booth;⁹
 - a polling official apparently unfamiliar with the arrangements permitting a provisional vote;¹⁰ and
 - unfamiliarity with the Group Voting Ticket booklet required to be available at each polling place.¹¹
- 5.4 The Committee was particularly concerned by reports that polling place staff were unfamiliar with the legislated requirements in relation to provisional voting and Group Voting Tickets. The Committee noted that the AEC had undertaken to include in polling official training sessions a segment on the reasons behind providing Group Voting Ticket booklets to voters.

The Committee's view

- 5.5 The Committee concluded that the variety of issues raised did not indicate a systemic problem with the AEC training for polling place personnel.
- 5.6 The Committee did, however, note, and share, concerns that the ageing of the population will bring the retirement of polling officials with long experience, with the consequent need for the AEC to ensure that training programs are designed to replace this expertise.¹²
- 5.7 In this regard, the Committee was concerned at the apparently low expenditure of 0.06% of the election budget on the specific training of polling staff.¹³

7 Submission No. 8, (Mr P Hickey).

8 Submission No. 49, (Senator R. Webber).

9 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, p. 22.

10 Submission No. 176, (Mr S Luntz).

11 Submission No. 100, (Electoral Reform Society of South Australia), Attachment 5.

12 Submission No. 176, (Mr S Luntz).

13 Submission No. 182, (AEC), Table 2. \$79,474.86 of a total expenditure of \$117,914,086.92. Training for call centre operators was additional to this sum.

Recommendation 22

- 5.8 **The Committee recommends that the AEC review the proportion of its election budget allocated to training polling booth staff.**

Compensation of polling officials

- 5.9 Polling officials issuing ordinary votes or working as ballot box guards or queue controllers were paid \$279, a 5% increase on the rate for similar polling officials at the 2001 Federal Election. The rate was based on 14 hours and included a component for home study.¹⁴
- 5.10 One submission claimed that the amount of home study required to understand the responsibilities of polling officials was inadequate.¹⁵

The Committee's view

- 5.11 The question of the adequacy of payment in relation to the amount of home study was an issue which the AEC should consider in its examination of training.

Staffing of polling booths

- 5.12 Evidence to the Committee drew attention to the queues at polling booths and queried whether the AEC was allocating sufficient staff to polling places.¹⁶ One solution proposed was that additional staff be allocated for the expected busy periods.¹⁷
- 5.13 Another related issue was the hours staff were required to work. The AEC indicated that the remuneration paid to polling officials was based on 14 hours (including a component for home study), and that, in most booths staff would complete their work by 10.00pm.¹⁸ However, one submission noted the physical demands on polling officers during the long hours involved at some polling places.¹⁹

14 AEC quoted in Submission No. 8, (Mr P Hickey), Attachment B.

15 Submission No. 8, (Mr P Hickey).

16 Submission Nos 9, 42, 94, 176 and see Mr T Mathers, *Evidence*, Wednesday, 6 July 2005, p. 18.

17 Submission No. 92, (The Hon. Arch Bevis MP), p. 2.

18 AEC, quoted in Submission No. 8, (Mr P. Hickey), Attachment B.

19 Submission No. 176, (Mr S Luntz).

The Committee's view

- 5.14 The Committee noted that the effectiveness of officials would be affected by demanding days of such duration and considered that additional staff should be allocated to booths which have experienced problems before, or have predictably high voter turn out, and during busy periods.

Recommendation 23

- 5.15 **The Committee recommends that the AEC ensure that it has sufficient staff to meet peak demands at known busy polling places, if need be through the use of casual staffing at peak times.**

Polling booths

- 5.16 The operation of polling booths attracted comments during the Committee's review of the 2004 election. In addition to comments on the operation of polling booths, the Committee was advised to consider a few specific issues.

Dual (joint) polling booths

- 5.17 The AEC established dual polling places in most divisions for the 2004 election. The AEC stated:

dual polling places are established when a polling place in one division is regularly used by a large number of voters from another division, who are only able to complete a more inconvenient absent vote.²⁰

This assessment is made for each division by the Divisional Returning Officer.²¹

- 5.18 According to the AEC, if the polling place is issuing sufficient absent votes for a second division to require three declaration vote issuing officers for voters for that division, then there is sufficient justification for establishing a dual polling place.²²

20 Submission No. 165, (AEC), p. 29.

21 Submission No. 182, (AEC), p. 13.

22 Submission No. 165, (AEC), p. 29.

5.19 Mr Mark Powell, citing the experience in the Queensland electorates of McPherson and Moncrieff, urged the curtailment of the use of dual booths because voters:

would have been barraged by 2 sets of campaign material from each candidate in the electorates, then confronted with the two booths when they actually made it inside... this process must leave many voters confused.²³

5.20 The submission also claimed that joint booths are wasteful of AEC resources and they disadvantage minor party and independent candidates.²⁴

The Committee's view

5.21 The Committee noted that the two electorates concerned had hosted the largest number of dual booths of all divisions – 17 between them.²⁵

5.22 The Committee notes there are some benefits that flow from dual polling booths, namely:

- it takes less time to cast an ordinary vote than it takes to cast an absent one, potentially resulting in shorter queues; and
- it speeds up the process of counting the votes because ordinary votes are counted in the polling places at the end of polling, whilst declaration votes need to go through the preliminary scrutiny process.²⁶

5.23 Notwithstanding these benefits, there are obvious difficulties which also arise at dual polling booths. The practice of political candidates having volunteers man booths, often leads to dual polling booths having large numbers of volunteers from adjoining seats touting electors and potentially giving rise to confusion as to the candidates and the seat.

5.24 The Committee is of the view that widespread use of dual polling booths between adjoining seats is likely to give rise to the view that electors are able to vote in any booth, regardless of the seat in which they are enrolled.

23 Submission No. 2, (Mr M. Powell).

24 Submission No. 2, (Mr M. Powell).

25 Submission No. 165, (AEC), p. 30.

26 Submission No. 182, (AEC), p. 13.

- 5.25 In order to minimise elector confusion and to maximise the advantages of dual polling booths, the Committee found a higher threshold than the current ought to apply to establish a dual polling place.

Recommendation 24

- 5.26 **The Committee recommends that the AEC increase the thresholds for joint polling booths to a level to be determined through consultation with the JSCEM.**

Size and position of signs/advertisements around polling booths

- 5.27 Section 340 of the CEA prohibits exhibiting any notice or sign (other than an official notice relating to an election) within six metres of the entrance to a polling booth, but does not give the AEC power to regulate activities outside of these limits.²⁷
- 5.28 Most of the issues brought to the Committee's attention in relation to signs at polling booths were summarised in the submission from the Australian Greens:

election placards being attached to booth fences...is useful and helpful. The large size of some... and the undesirably early placement of such advertising is causing problems.²⁸

As there is no size limit on banners or placards, some parties or candidates... cover the whole of the fencing... so that no other candidate can display a placard. It is inherently unfair that one candidate should be able to monopolise all of the [location].

...we had a ridiculous situation of one candidate attaching their placards to polling booth perimeters the evening before the election and hiring security guards to see that they are left intact overnight.²⁹

27 Submission No. 182, (AEC), p. 9.

28 On size, location and timing of advertising see also, Submission No. 10, (The Hon. Dick Adams MP).

29 Submission No. 107, (Australian Greens), pp. 2-3.

- 5.29 Submissions suggested that there should be a size limit on advertising that can be displayed at polling booths, a limitation on the number of such signs one party may display, and a prohibition on advertising material being displayed on a polling booth fence or perimeter prior to 6 am on election day.³⁰

The Committee's view

- 5.30 In the Committee's view, the practices complained of affected smaller parties more than the larger ones, which had the resources for more and larger signs, and often more personnel to deploy to reserve desirable locations outside booths.
- 5.31 The Committee noted that in New South Wales there is a limit to the size of advertising posters which can be displayed.³¹ There is, however, apparently no limit to the number, so the monopolisation of space near polling booths complained of in submissions would still be possible.
- 5.32 The Committee does not, however, believe that there should be any change to the existing arrangements.

How-to-vote cards

- 5.33 Section 340 of the CEA prohibits the handing out of how-to-vote cards (HTVs) and other canvassing within six metres of the entrance to a polling booth on polling day. The CEA does not give the AEC power to regulate activities outside of these limits.³² HTVs are a common, but not universal, element of polling days in Australia.
- 5.34 The Committee received submissions about HTVs complaining that some were misleading, proposing alternatives to their use, and questioning the need for them.
- 5.35 A number of instances where it was alleged that HTVs had misled voters were drawn to the Committees attention.³³

30 Submission Nos 42, (Mr B McRae), Attachment A, 107, (Australian Greens), p. 3.

31 The prescribed size is an area which is not more than 8,000 square centimetres. See NSW *Parliamentary Electorates and Elections Act 1912 No 41*, section 151B(6).
www.seo.nsw.gov.au/publications__resources/electoral_legislation/index.html

32 Submission No. 182, (AEC), p. 9.

33 Submission Nos 92, (The Nationals) & 155, (Ms A Hicks).

Richmond Electorate: *Liberals for Forests HTV*

- 5.36 At the 2004 Federal Election the Liberals for Forests Party fielded candidates in seven House of Representatives seats in New South Wales and, across Australia, ten Senate candidates.³⁴
- 5.37 On election day, the AEC received complaints about the Liberals for Forests HTVs in the electorates of Greenway, Page, Parramatta, and Richmond.³⁵ The substance of the complaints was that the card breached section 329 of the CEA which provides that:
- a person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.³⁶
- 5.38 The AEC response on election day was that the HTVs were not in breach of section 329 of the CEA. In reaching this conclusion, the AEC later advised the Committee that although the section covers “misleading or deceiving electors”, in the wake of court decisions:
- section 329 only applies to a publication that is likely to mislead or deceive a voter *in relation to the recording of a vote as distinct from forming a judgment* as to the person for whom to vote.³⁷
- 5.39 The Liberal Party argued that, notwithstanding the interpretation of the CEA, the Liberals for Forests HTV was misleading and confusing to voters because:
- in the Richmond electorate there was no Liberal candidate;
 - the HTV typographic emphasis on the word “Liberals” in capitals overshadowed “for forests”;
 - its layout replicated the HTVs used by Liberal candidates previously; and
 - the colours were those normally associates with Liberal HTVs.³⁸

34 Electorates of Cunningham, Dobell, Greenway, Lowe, Page, Parramatta, Richmond, and two Senate candidates in each of NSW, Qld, SA, Vic, WA.

35 Submission No. 172, (AEC), pp. 7-8.

36 CEA, section 329(1).

37 Submission No. 182, (AEC), p. 8 [Committee’s italics].

38 “There is a resemblance between the how-to-vote card...and the Liberal Party how-to-vote card. There is a similarity between colours used...It is the whole layout of the

- 5.40 The significance of these potentially misleading HTVs was that the narrow margin deciding the seat of Richmond – just 301 votes on a two party preferred basis.
- 5.41 The Nationals claimed that it was:
- entirely possible that the historical association of the party name, coupled with the fact that it was a Nationals candidate representing the Coalition in Richmond, and not a Liberal was the deciding factor in the loss of this seat for the Coalition...A number of voters in NSW have either written or phoned in following the Richmond campaign to say they had been misled...
- on polling day there is no recourse of action by the offended party. If these materials are authorised in the correct manner, there is nothing the AEC is able to do about the circulation of these materials. The process for their removal becomes a legal process and one which can take some time to address. Thus meaning that in marginal seats, the intended damage is already done.³⁹
- 5.42 Seeking to pursue this issue further, the Committee held one of its public hearings in the Richmond electorate at Tweed Heads. It invited the Liberals for Forests candidate, Ms Fiona Tyler, to appear at the hearing, but she did not respond. There was also no response to the Committee's later invitation to attend a public hearing in Sydney, which was where she lived at the time of the election.
- 5.43 The Committee asked the Federal Labor Member for Richmond, Ms Justine Elliot MP, to appear before the hearing in Tweed Heads (within her electorate), given that she was a candidate and benefited from Liberals for Forests preferences.
- 5.44 Ms Elliot declined to appear and was invited to send a representative in her absence, but also declined this offer.
- 5.45 The Greens candidate, Mrs Susanna Flower and representatives of The Nationals both appeared and gave evidence.
- 5.46 Following the hearing the Chair wrote to Ms Elliot and asked her to appear at a hearing of the Committee in Canberra during

how-to-vote card"; Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005 p. 29.

39 Submission No. 92, (The Nationals).

parliamentary sittings at a time of her convenience. Ms Elliot did not reply to the correspondence.

- 5.47 The Committee did, however, hear from Dr Keith Woollard, President and Secretary of Liberals for Forests, when it held public hearings in the party's home State of Western Australia. Dr Woollard indicated that the HTV was designed in New South Wales and that he had not seen it, although he was aware of the content.⁴⁰ The Committee noted that, nevertheless, his name was on the HTV as having authorised it. Dr Woollard later confirmed in writing that he had in fact authorised the HTV without sighting it.⁴¹

The Committee's view

- 5.48 The result in the Richmond Electorate was one of the closest of the 2004 Federal Election. One indicator of this was the fact that the first seats of the 2004 Federal Election were declared on 20 October,⁴² but Richmond was not declared until 28 October 2004. The winning margin was only 301 votes after the distribution of preferences.⁴³
- 5.49 Therefore only 151 people needed to be misled to affect the result and, as the Committee heard from witnesses, this had happened. Ms B Smith stated:
- I feel very strongly that I was deceived, misled and let down by the process... On polling day, liberals for forests clearly looked like a group affiliated with the standing member.⁴⁴
- 5.50 Similarly, Mrs S Flower commented:
- I do believe that liberals for forests misled voters.⁴⁵
- 5.51 The Liberals for Forests candidate received 1,417 primary votes. Their HTVs directed preferences to the Greens, then the Australian Democrats, then to the Labor candidate ahead of The Nationals, as was their right.⁴⁶

40 Dr K Woollard, *Evidence*, Wednesday, 3 August 2005, pp. 19, 33; Submission No. 206 (Dr K Woollard).

41 Submission No. 206, (Dr K Woollard).

42 AEC, *Behind the Scenes*, p. 34.

43 AEC, *Electoral Pocketbook*, 2005, p. 150.

44 Ms B Smith, *Evidence*, Thursday, 7 July 2005, p. 24.

45 Mrs S Flower, *Evidence*, Thursday, 7 July 2005, p. 31.

46 Order of Liberals for Forests HTV preferences: Green, Democrat, Labor, Nationals, Family First, Nuclear Disarmament, Veterans. Actual preference distribution from Liberals for Forests: Greens = 589; Nationals = 514; FFP = 326; ALP = 144. Final two-party

5.52 The Committee heard evidence from four persons directly involved in the campaign in Richmond: Mr Andrew Sochacki, the local Chairman of the National Party; Mrs Susanna Flower, the Australian Greens candidate; Mr Thomas Tabart, Mrs Flower's campaign manager; and Ms Bronwyn Smith, who was not a member of a political party. All witnesses expressed concern at the behaviour and strategies of the Liberals for Forests candidate, in particular the how-to-vote card. The view of those witnesses was captured by Mrs Flower's characterisation of the party's candidacy:

Mrs Flower – It was a bogus party, set up to steer votes away from the National Party.

CHAIR – To deceive people.

Mrs Flower – To deceive them.⁴⁷

5.53 Those witnesses agreed that the number of people whom it would be necessary to deceive, by deceptively drawing and ultimate preference away from Mr Anthony so as to alter the result, was 151. On the basis of direct and anecdotal evidence, Mrs Flower, with whom Mr Tabart agreed, was of the view that a substantial number of people would have been so misled (or "tricked"), possibly more than 151.⁴⁸

5.54 Mr Sochacki reported "confusion" which was "reasonably widespread"⁴⁹, and was of the view, on the basis of direct evidence of complaints and anecdotal evidence received from National Party booth workers, that the number of people intending ultimately to vote for Mr Anthony who were misled by the how-vote-card was "in excess of one in 10 people who followed it"⁵⁰, i.e. in excess of 151.

5.55 Mrs Smith, not a member of a political party, took the trouble to write to the AEC to complain, in a letter of 21 February 2005, in which she asserted that:

there were thousands of people deliberately and fraudulently misled by this party and voted for them understanding that they were casting a Liberal vote.⁵¹

preferred vote: Labor =39,560; Nationals= 39,259. Full Distribution of Preferences shown at Appendix H. Submission No. 172, (AEC), Attachment A.

47 Mrs S Flower & Mr A. Smith MP, *Evidence*, Thursday, 7 July 2005, p. 38.

48 Mrs S Flower, *Evidence*, Thursday, 7 July 2005, p. 38.

49 Mr A Sochacki, *Evidence*, Thursday, 7 July 2005, p. 14.

50 Mr A Sochacki, *Evidence*, Thursday, 7 July 2005, p. 15-16.

51 Letter from Ms B. Smith to the AEC re Liberals for Forests, quoted by Senator George Brandis, *Transcript of evidence*, Thursday, 7 July 2005, p. 28.

- 5.56 However, their HTV clearly caused confusion in the eyes of many voters – who thought they were voting Liberal:
- a number of voters in NSW have either written or phoned in following the Richmond campaign to say they had been misled.⁵²
- 5.57 She agreed with the following proposition:⁵³
- you are aware, are you, from your own knowledge and from your conversations you have had with local people that there are a substantial number of people who followed the Liberal for Forests how-to-vote card thinking that ultimately they were going to be voting for Larry Anthony?⁵⁴
- 5.58 Like the other witnesses, Ms Smith characterised the number of people who were misled as “substantial”.⁵⁵
- 5.59 In view of the above uncontradicted evidence the Committee believes that, on the balance of probabilities, the misleading of voters by the Liberals for Forests how-to-vote card caused the defeat of Mr Anthony.
- 5.60 Therefore, the Committee believes that, given the closeness of the election, it was the decisive factor which resulted in Ms Elliot and the ALP winning the seat. That is: had the Liberals for Forests not engaged in misleading and deceptive conduct to present themselves as the Liberal Party of Australia and direct more than enough of those votes via preferences to the Australian Labor Party, the National’s Mr Anthony would have retained the seat.
- 5.61 As a consequence, the Committee holds that Ms Elliot was elected as a result of preferences on the basis of deceptions by Liberals for Forests.
- 5.62 The Committee would have liked to have reached a definitive conclusion as to whether Ms Elliot and the local Australian Labor Party officials were aware of or involved in any way with the planned deception by Liberals for Forests.
- 5.63 Ms Elliot’s refusal to appear or answer correspondence requesting her to appear means that no involvement can either be proved or disproved.

52 Submission No. 92, (The Nationals).

53 Ms B Smith, *Evidence*, Thursday 7 July 2005, p. 29.

54 Senator G Brandis, *Transcript of evidence*, Thursday, 7 July 2005, p. 28.

55 Ms B Smith, *Evidence*, Thursday, 7 July 2005, p. 29.

Other complaints about HTVs

5.64 The AEC received complaints that HTVs for one candidate in Melbourne Ports resembled those of the Australian Greens candidate in that they were in the same vertical format and the same colour as the Australian Greens' HTV.⁵⁶ Some submissions claimed that this confused voters.⁵⁷

5.65 The AEC dismissed the complaint, reiterating the position that:

section 329 of the act and previous judicial consideration of section 329 and what 'misleading' means... that that particular how-to-vote card... was not in fact misleading.⁵⁸

5.66 The Liberal Party pointed out to the Committee that the relevant HTV:

included the word "Liberal" 5 times, including in the authorisation line, which clearly stated that the Card was authorised by "Julian Sheeziel (Liberal Party of Australia)". The Card also recommended voters place a number 1 in the "Liberal/The Nationals" box for the Senate.⁵⁹

5.67 During the Committee's hearings in Canberra, the Deputy Chair of the Committee Mr Michael Danby MP raised this issue with the AEC.

5.68 The Deputy Electoral Commissioner, Mr Paul Dacey, who had attended to the original complaint advised that he:

could form no other view, on the basis of the particular evidence in front of me, that it was not in fact misleading. It is quite clear that it is a Liberal Party how-to-vote card...

which says, 'Mark "1" for the Liberal candidate, David Southwick.' It mentions 'Liberal Party' in several places. It talks about Liberals-Nationals for the Senate, it talks about some of the environmental achievements of the Liberals. So, in applying section 329 of the act, I had no choice but to determine that, in the AEC's view, and in my view... it was not misleading.⁶⁰

56 Submission No. 201, (ALP).

57 Submission No. 155, (Ms A Hicks).

58 Mr P Dacey, Deputy Electoral Commissioner, AEC, *Evidence*, 5 August 2005, p. 79.

59 Submission No. 197, (Liberal Party).

60 Mr P Dacey, Deputy Electoral Commissioner, AEC, *Evidence*, 5 August 2005, p. 79.

5.69 The AEC also received complaints that a further source of potential confusion was that the HTVs were:

distributed by teams of young people wearing green tee-shirts and green baseball caps... saying to voters as they approached... "the Green alternative".⁶¹

5.70 That this occurred was disputed.⁶²

The Committee's view

5.71 The Committee finds that the Liberal party HTV distributed in the electorate of Melbourne Ports was not a misleading HTV. Concerns about misleading conduct in the circulation of HTV cards are considered in Chapter 12, *Campaigning in the new millennium*.

5.72 More generally, the Committee considered that the issue of misleading HTVs is one which might be collectively examined by the relevant ministers at the Council of Australian Governments (COAG).

Alternatives to HTVs

5.73 The main origins of proposals made to the Committee for alternative means of notifying voters of party preferences were concerns that electors were being harassed on their way into the polling booths,⁶³ and that the production of HTVs was environmentally unsound.⁶⁴

5.74 Solutions proposed to address these objections were:

- to ban the handing out of election material to voters within a broad radius from the entrances to a polling place;⁶⁵
- to display HTVs for all candidates in each booth;⁶⁶ or
- if HTVs were retained, recycling bins be provided at the polling booths⁶⁷

61 Submission No. 201, (ALP).

62 Submission No. 197, (Liberal Party).

63 Submission Nos 11, (Mr G. Ryall), p. 14; 166, (Liberals for Forests), p. 2.

64 Submission No. 42, (Mr B McRae).

65 Submission No. 11, (Mr G. Ryall), p. 14, proposed 100 metres; Submission No. 166, (Liberals for Forests), p. 2, proposed 200-300 metres.

66 Submission No. 66, (Mr L Wilson).

67 Submission No. 42, (Mr B McRae).

The Committee's view

- 5.75 The Committee noted that a 100 metre exclusion zone⁶⁸ had substantially reduced the use of HTVs at polling booths in the Australian Capital Territory Legislative Assembly elections, and that in South Australia HTVs are fixed to the wall of each polling booth.⁶⁹ The Committee understands that the AEC already provides re-cycling bins for HTVs at the polling places.

The need for HTVs

- 5.76 The most radical submissions questioned the need for HTVs. Mr G Ryall argued that HTVs encourage:

voters to give away their freedom of choice of the candidates on offer⁷⁰

- 5.77 Mr E Laurila commented:

we, the voters, are not always thinking [the] same way as the Party leaders, whom we give the second, third etc. preferences but like [to] do it with our own choosing.⁷¹

The Committee's view

- 5.78 The Committee agreed that HTVs serve a variety of functions. At the broadest level they are a way to influence voters who are undecided on how they will vote even as they arrive at the polling location.
- 5.79 Among those who have decided for whom they wish to vote, the HTVs provide guidance on how their preferred candidate or party recommends they distribute their preferences.
- 5.80 In addition to their use in influencing electors' voting decisions, HTVs serve another political function. They offer partisan supporters the opportunity to do something practical and public to assist their chosen party in a way which has the potential to decide an election.
- 5.81 At another level, the often day-long activity associated with handing out HTVs can be a catalyst for other community activities in the vicinity of the polling places.

68 ACT *Electoral Act 1992*, section 303.

69 JSCEM, *The 2001 Federal Election*, June 2003, p. 134.

70 Submission No. 127, (Mr G Ryall, p. 14).

71 Submission No. 11, (Mr E Laurila).

- 5.82 As it concluded in its report on the 2001 Federal Election, the Committee thinks that the distribution of HTVs on election day mobilises democratic participation and keeps political parties in touch with their membership base.⁷²

Voting

- 5.83 A total of 13,098,461 voters were enrolled to vote on the polling day and 12,644,207 cast their votes.⁷³ Four in every five of these were “ordinary” votes, i.e. those cast by voters in the division in which they were enrolled. This proportion (80.6%) was lower than in 2001 (82.2%).
- 5.84 The proportion casting “declaration” votes increased, particularly the pre-poll and postal votes which have been reviewed in Chapter 3, *Voting in the pre-election period*, which deals with voting prior to the polling day. This section addresses the balance of the 2,448,748 “declaration” votes – the absent and provisional votes.

Table 4.1 Votes, numbers and % of total: 2001 and 2004

	Ordinary	Absent	Pre-poll	Postal	Provisional	Total votes cast
2001	9,910,877	852,054	610,122	516,434	165,177	12,054,664
<i>%total</i>	82.2	7.1	5.1	4.3	1.4	100
2004	10,195,459	853,505	754,054	660,324	180,865	12,644,207
<i>%total</i>	80.6	6.8	6.0	5.2	1.4	100

Source AEC Submission Nos 165, p. 32; 205, pp.14, 20; AEC Electoral Pocketbook, 2005, p.117

Absent voting

- 5.85 Absent voting takes place when an elector casts a vote for the division in which they are enrolled but at a polling place in another division in the State or Territory in which they are enrolled.⁷⁴ At the 2004 Federal Election the proportion of absent votes cast was lower than in 2001 (6.8% vs 7.1%).

72 JSCEM, *The 2001 Federal Election*, June 2003, p. 134.

73 AEC Submission Nos 165, p. 8 & 205, p. 14.

74 Submission No. 165, (AEC), p. 16.

Provisional voting

- 5.86 The proportion of provisional votes cast in the 2004 Federal Election was the same as in 2001. Provisional voting occurs when:
- an elector has already been marked off as having voted; or
 - an elector's name or address cannot be found on the certified list of voters on polling day; or
 - the elector cannot satisfy the presiding officer that they are the elector named on the certified list, but they claim they are eligible to vote.⁷⁵

Marked off as having voted

- 5.87 Electors might be marked off on the roll at the polling station because of:
- a clerical error; or
 - they had in fact voted; or
 - they have been impersonated.

- 5.88 Provisional votes are checked during the AEC preliminary scrutiny. If the elector is eligible, their vote is admitted to the count.

The Committee's view

- 5.89 In the Committee's view this situation could be avoided by requiring those wishing to cast provisional votes to provide identification and proof of address at the polling booth.

Not able to be found on the roll

- 5.90 A person's name may not be found on the roll because:
- they have not enrolled; or
 - they have provided a fictitious name; or

75 Submission No. 165, (AEC), p. 16. If a person does not answer the questions correctly, refuses to answer the questions or answers the questions successfully but the issuing officer is still unsure about their identity, the issuing officer can refuse to issue an ordinary vote. In these cases the person would be offered a provisional vote. See AEC *Election Bulletin*, 6 October 2004, in Submission No. 168, Attachment A.

- their name is there but cannot be located at that moment (for example through confusion over spelling or the correct order of their names); or
 - they were enrolled but have been removed from the roll as a result of not responding to AEC inquiries.
- 5.91 At the AEC preliminary scrutiny of provisional votes, those whose names had not been able to be found at the time of the vote, but, were subsequently found to be on the roll would be admitted to the count. The provisional votes of those who were not enrolled (and who were not entitled to be enrolled at the time of the poll) and those who provided a fictitious name would be eliminated from the count.
- 5.92 Those whose names were absent because they had been removed from the roll through lack of response to AEC inquiries would also be admitted to the count if the AEC records established that they had been enrolled and were not enrolled elsewhere on polling day.
- 5.93 The Committee was alerted to the possibility that this fact could be exploited to influence the result of the poll in marginal electorates. A number of people could enrol in the electorate without living there by getting compliant witnesses to sign their enrolment form. If they had subsequently been removed from the roll through failing to respond to AEC correspondence they could still claim a right to vote (unless they subsequently enrolled in another division).
- 5.94 The Nationals claimed in evidence to the Committee that, in marginal electorates, it could be possible to influence the result of the poll by deceptively enrolling sufficient voters to do so.⁷⁶
- 5.95 As a remedy, it was recommended to the Committee that provisional voting should no longer be permitted and, instead, voters be required to keep their details up to date.⁷⁷

The Committee's view

- 5.96 The Committee's view was that the recommendation to remove the opportunity for provisional voting altogether did not take account of the number of situations outlined above where an elector's right to

76 Submission No. 92, (The Nationals); Mr A Sochacki, Chairman, Richmond Electorate, The Nationals, *Evidence*, Thursday, 7 July 2005, p. 4.

77 Submission No. 92, (The Nationals), Recommendation 3.

vote was being questioned because of circumstances outside their control – such as inadvertent removal or marking off.

5.97 The Committee considered that requiring provisional voters to identify themselves would remove the possibility of provisional votes being cast by persons with assumed identities.

5.98 In examining this, the Committee referred to the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* which provides that, to enrol, a person must provide a drivers licence number or have two electors vouch for their identity.⁷⁸ As it argued in Chapter 2, *Enrolment*, the Committee considered that these provisions were insufficiently comprehensive, and preferred the identification requirement set out in the proposed Regulations of 2001:

- Australian birth certificate, or an extract of an Australian birth certificate, that is at least 5 years old
- Australian Defence Force discharge document
- Australian marriage certificate
- Certificate of Australian citizenship
- Current Australian driver's licence or learner driver's licence
- Current Australian passport
- Current Australian photographic student identification card
- Current concession card issued by the Department of Veterans' Affairs
- Current identity card showing the signature and photograph of the card holder, issued by his or her employer
- Current pension concession card issued by the Department of Family and Community Services
- Current proof of age card issued by a State or Territory authority

78 Where the applicant does not possess a driver's licence, the application must be countersigned by two persons on the electoral roll who can confirm the applicant's identity and current residential address. The counter-signatories must have known the applicant for at least one month or have sighted identification showing the applicant's name and address. *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*, section 98AA Regulations. *FCS Online* noted that there were difficulties with ensuring that driver's licences were authentic, Submission No. 191, (*FCS Online*).

- Decree nisi or a certificate of a decree absolute made or granted by the Family Court of Australia
 - Document of appointment as an Australian Justice of the Peace.⁷⁹
- 5.99 However, the need to enable electors to cast their ballots as quickly as possible meant that a more readily checked form of identification was required for polling day.
- 5.100 The Committee believed that a driver's licence would provide a means of speedy identification to AEC officials for those wanting to cast a provisional vote. As a significant majority of voters hold a driver's licence, and are likely to have it with them on polling day, this would be first form of identification sought by the AEC from those wanting to cast a provisional vote.

Recommendation 25

- 5.101 **The Committee recommends that, at the next Federal Election, those wishing to cast a provisional vote should produce photographic identification.**

Voters unable to do so at the polling booth on election day would be permitted to vote, but their ballots would not be included in the count unless they provide the necessary documentation to the DRO by close of business on the Friday following election day. Where it was impracticable for an elector to attend a DRO's office, a photocopy of the identification, either faxed or mailed to the DRO, would be acceptable.

Those who do not possess photographic identification should present one of the other forms of identification acceptable to the AEC for enrolment.

- 5.102 The Committee recognised that this measure alone would not solve the potential problem of deceptively enrolling people in the electorate. However, in combination with the recommendations in Chapter 2 *Enrolment* about proof of identification and address for enrolment, the measures should not only improve the integrity of the

⁷⁹ *Electoral and Referendum Amendment Regulations 2001 (No 1)*, Schedule 5, <http://scaleplus.law.gov.au/html/numrul/18/9184/pdf/2001No248.pdf>

roll and the count, but also provide barriers to the fraudulent enrolment complained of in submissions.

Prisoner voting

- 5.103 Since 2004 persons who are otherwise entitled to vote but are serving a prison sentence of three years or more have been precluded from voting. Other prisoners entitled to vote may enrol as a GPV or apply for a Postal Vote, or vote a prison mobile poll.⁸⁰ The AEC provided 17 prison mobile polls for the 2004 Federal Election.⁸¹
- 5.104 The submission from the Liberal Party welcomed:
- the government's legislation in 2004 that sought to deny the vote to prisoners. While the Senate approved some tightening of these provisions, it did not fully agree to the government's objective. We believe the matter should again be brought before the parliament.⁸²
- 5.105 The Public Interest Advocacy Centre argued against prisoner disenfranchisement because Australia, as a party to the International Covenant on Civil and Political Rights, is required to legislate to ensure equal and universal suffrage.⁸³
- 5.106 Further, the PIAC submitted that section 41 of the Constitution prevents the Commonwealth from excluding a person from voting in a Federal Election if that person has a right to vote in state elections. The end result is inconsistency across the national electorate in that prisoners in:
- South Australia and Tasmania are entitled to vote in Federal Elections no matter how long their sentence;
 - Victoria are entitled to vote in Federal Elections if their sentence is for less than five years;
 - Queensland, the Northern Territory, the ACT and NSW are entitled to vote in Federal Elections if their sentence is for less than three years;

80 AEC, *Information on Enrolling as a Prisoner*, www.aec.gov.au/_content/what/enrolment/forms/ER016Pw_0804.pdf

81 Submission No. 165, (AEC), pp. 24-28.

82 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, p. 21.

83 Submission No. 144, (Public Interest Advocacy Group), p. 10. Submission No. 106, (Prof. B Costar) claimed that denial of the vote to prisoners was highly discriminatory because the prison population was not a mirror of society: most prisoners are male (94%) and aged between 25 and 35 (56%). The imprisonment rate of Indigenous Australians is 15 times that of the non-Indigenous.

- Western Australia are entitled to vote in Federal Elections so long as the provisions of section 18 of the *Electoral Act 1907* (WA) do not apply to them.⁸⁴

5.107 Professor Brian Costar argued that:

in liberal societies such as Australia, offenders are incarcerated as punishment, not for punishment. Since almost all those currently imprisoned will be released, it is poor rehabilitative policy to further alienate them from society by stripping them of the franchise.⁸⁵

5.108 However, the Hon. Senator Eric Abetz, Special Minister of State responsible for the AEC, has a different view:

to ensure that people realise the importance of the democratic system and the role it plays within our societal structures...it is appropriate, because of criminal conviction, that you be disqualified from holding office within this parliament, it is equally appropriate that you be unable to vote until such time as you have served your sentence or your penalty.⁸⁶

The Committee's view

5.109 The Committee believes that persons sentenced to a period of full-time imprisonment should not be allowed to a vote during that time and urge the Government to pursue this through legislative change as soon as possible.⁸⁷

Homeless voting

5.110 In its review of the 2001 Federal Election, the Committee recommended that:

in relation to homeless electors:

- that the itinerant elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* be amended so as to make clear their applicability to homeless persons;

84 Submission No. 144, (Public Interest Advocacy Group), pp. 9-10; Submission No. 119, (ACT Government), p. 2 endorsed this, commenting that the ACT's Human Rights Act 2004 enshrined... the right to enjoy human rights without any discrimination of any kind (section 8), and the right to vote at periodic elections (section 17).

85 Submission No. 106, (Professor B Costar).

86 Senator Abetz, Senate Hansard, 20 September 95, p. 1073.

87 Special Minister of State, Senator the Hon. Eric Abetz, quoted in "Coalition Set to Change the Way We Vote", *The Age*, 11 June 2005; ABC News online, 23 January 2005, www.abc.net.au/news/newsitems/200501/s1287044.htm

- that the AEC continue its efforts to simplify the itinerant elector application form and ensure that its applicability to homeless persons is made more apparent; and
 - that the AEC target homeless persons in its next public awareness campaign, informing them about itinerant elector enrolment.⁸⁸
- 5.111 According to the joint submission by the Public Interest Law Clearing House (PILCH), Homeless Persons' Legal Clinic and the Council to Homeless Persons many of the AEC strategies being considered and developed to improve homeless voter education, enrolment and participation, including simplification of the Itinerant Elector Application Form, were not implemented in time for the 2004 Federal Election.⁸⁹
- 5.112 The Committee was told that, at the time of the 2004 Federal Election, between 54% and 76% of the 64,000 homeless people who were eligible to vote did not do so.⁹⁰ One in five voted as ordinary electors, and one in 25 as itinerant electors.⁹¹
- 5.113 The Committee was advised that, although their political orientation had not been specifically investigated the homeless population was very diverse, as were its political preferences.⁹²
- 5.114 The AEC, in conjunction with the Swinburne Institute for Social Research, conducted research on the homeless in Melbourne in 2004. One of its findings was that 64% of the participants expressed a desire to vote, indicating that they did not do so because they did not know how to engage with the system and therefore found it easier to stay off the electoral roll.⁹³
- 5.115 The report published by Swinburne concluded, as did another study by the University of Queensland in Brisbane, that the main factors which discouraged homeless people from voting were:
- exclusion from social life;
 - disillusionment with the Government; and
-

88 JSCEM, June 2003, *The 2001 Federal Election*, p. 92.

89 Nor had the Commonwealth Government amended, nor announced an intention to amend, section 96 of the CEA to ensure that it effectively applied to and enfranchised homeless people. Submission No. 131, (PILCH), pp. 17-18.

90 Submission No. 105, (Professor B Costar & Mr D Mackenzie), p. 6; and Submission No. 131, (PILCH), pp. 7, 38 respectively.

91 Submission No. 131, (PILCH), p. 7.

92 Professor B Costar, *Evidence*, Monday, 25 July 2005, p. 3.

93 *Electurally Engaging the Homeless*, AEC Research Report Number 6, February 2005, p. 9, www.aec.gov.au/_content/How/research/papers/paper6/research_paper6.pdf

- a lack of resources for anything but basic needs.⁹⁴
- 5.116 The detailed PILCH submission reported that the reasons advanced by the three in four of the homeless interviewed in Melbourne who did not vote were that they were:
- uninterested in participating (37%);
 - concerned that voting is futile and will not make any difference (35%);⁹⁵
 - apprehensive that, at the voting station, they would be fined for failing to enrol and vote at previous elections (27%);⁹⁶
 - thought that a person required a fixed residential address in order to vote (24%);
 - finding difficulty with the process (18%);
 - unaware or did not understand how to vote (16%);
 - unaware of where to cast their vote (14%);⁹⁷ and
 - finding that voting stations were either inaccessible or were not conveniently located (13%).⁹⁸
- 5.117 In addition, the Swinburne report also identified that other impediments to homeless people voting were that they lacked and understanding of itinerant voting provisions, they did not have transport to polling stations, and they were unaware of the possibility that third parties could assist in the process of voting.⁹⁹

The Committee's view

- 5.118 The Committee noted the extensive collaboration in research between the AEC and Swinburne which had already taken place and the AEC's engagement with stakeholder representatives including the Victorian Electoral Commission in 2004 and 2005. This, the Committee believed, should be pursued with the aim of making necessary changes prior to the next Federal Election

94 Submission No. 105, (Professor B Costar & Mr D Mackenzie), p. 10.

95 Also reported in Submission No. 105, (Professor B Costar & Mr D Mackenzie), p. 6.

96 Also reported in Submission No. 105, (Professor B Costar & Mr D Mackenzie), p. 6.

97 Also reported in Submission No. 105, (Professor B Costar & Mr D Mackenzie), p. 6.

98 Submission No. 131, (PILCH), pp. 8, 39-40.

99 Submission No. 105, (Professor B Costar & Mr D Mackenzie), p. 6.

Recommendation 26

- 5.119 **The Committee recommends that the AEC continue its consultations with relevant parties and prior to the next Federal Election, as part of improving access to the franchise by those experiencing homelessness, as a minimum:**
- **target homeless persons in its public awareness campaigns, informing them about itinerant elector and other voting enrolment and options; and**
 - **ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.**

Mobile polling

- 5.120 In particular circumstances the CEA permits the AEC to establish mobile polling booths that visit electors to collect votes. The Committee was advised that mobile polling arrangements were not intended as a personal service to electors in their homes.¹⁰⁰
- 5.121 In addition to prison mobile polling mentioned above, for the 2004 Federal Election the AEC established 445 special hospital mobile polling places and 48 remote mobile polling teams.¹⁰¹ The latter are considered in Chapter 10, *Geographical challenges in the modern age*.
- 5.122 At some hospitals the AEC sets up ordinary, or 'static', polling places on polling day. Section 224 of the CEA provides that polling officials may visit patients in those hospitals who are unable to get to the static polling booth, in order to allow them to cast their votes.
- 5.123 However, there are a number of hospitals that do not have an ordinary polling place on polling day. In general these are smaller or specialist hospitals and nursing homes. For these hospitals, the AEC undertakes special hospital mobile polling. At the 445 special hospital mobile polling places, voting in Federal Elections may take place up to five days before polling day as well as on polling day itself.¹⁰²

100 Submission No. 74, (AEC), Attachment C.

101 Submission No. 165, (AEC), pp. 24-28.

102 Submission No. 165, (AEC), pp. 24-28.

- 5.124 A number of submissions urged that the AEC provide universal mobile polling for all aged care facilities.¹⁰³
- 5.125 In a similar vein, the submission from PILCH on homeless voters recommended that the CEA:
- should be amended to provide for the deployment of mobile polling booths on-site at homelessness assistance services.¹⁰⁴

The Committee's view

- 5.126 The Committee considered that the resource demands on the AEC in the week prior to polling day precluded more widespread use of mobile polling. It also acknowledged that there may be an increasing need for such arrangements to maintain the franchise for growing numbers of the elderly. However, it considered that this requirement was not yet of such a scale as to demand the automatic provision of mobile polling.

Assisted voting

- 5.127 The Committee received considerable evidence about the blind, one specific group of voters with a special need for assistance with voting from many sources, including:
- Guide Dogs Victoria
 - Mr Noel Abrahams
 - RPH Adelaide Inc
 - Professor G Williams & Mr B Mercurio
 - People with Disability Australia Incorporated
 - Vision Australia (previously RBS.RVIV.VAF)
 - NSW Disability Discrimination Legal Centre
 - The Royal Society for the Blind
 - Blind Citizens Australia
 - Canberra Blind Society
 - The Royal Society for the Blind of SA Inc.¹⁰⁵
- 5.128 The Committee was told that when blind electors relied on another person to cast their vote, the blind elector lost rights which others automatically held, such as the right to:
- cast their vote secretly in privacy; and
 - independently verify their vote.¹⁰⁶

103 Submission Nos 1; 62, & 74.

104 Submission No. 131, (PILCH), p. 11.

105 Submission Nos 16, 31, 45, 48, 50, 54, 68, 101, 135, 138 and 101 respectively.

106 Submission Nos 16, 50 & 54, p. 1.

- 5.129 A number of submissions focussed on the potential for such voters' intentions to be thwarted or their votes influenced by those assisting them to cast their ballot.¹⁰⁷
- 5.130 One proposed solution was that these voters use only an AEC official to mark their ballot.¹⁰⁸ Another was for the AEC to ensure that its staff received disability awareness and flexible service delivery training.¹⁰⁹
- 5.131 Another proposed remedy to allow special needs voters to cast their vote privately, and independently verify it, was a system described in numerous submissions as *electronically assisted voting (EAV)*.¹¹⁰ This system is described in detail in Chapter 11, *Technology and the electoral system*.

The Committee's view

- 5.132 The Committee agreed that the current provision whereby assistance is provided to electors in casting their votes also provided an opportunity for the vote of the elector requiring the assistance, to be misused by the person providing the assistance.
- 5.133 Under section 234 of the CEA, it is open to individuals to seek the assistance of the presiding officer at the polling place.
- 5.134 The Committee was aware that, in addition to the blind, there were others who would also need assistance to cast their vote. Professor G Williams and Mr B Mercurio stated:
- a substantial, yet indeterminate number of all voters... with impaired vision or limited arm movements as well as illiterate voters and those voters from non-English speaking backgrounds who may not feel comfortable reading or writing in English.¹¹¹
- 5.135 This was, the Committee judged, an incomplete roll call, but indicative of a need which the AEC should address.
- 5.136 In view of the extensive evidence presented to it, and the very specific difficulties faced by the blind in voting, the Committee considered that, at the next Federal Election, the AEC should be able to provide facilities for them to cast a secret, verifiable ballot.

107 Submission Nos 28, 48 & 141.

108 Submission No. 28, (Communication Project Group).

109 Submission No. 50, (People with Disability Australia Inc).

110 Submission Nos 16, 20, 45, 54 & 135, pp. 6-7.

111 Submission No. 48, (Professor G Williams & Mr B Mercurio).

- 5.137 These facilities would be of an experimental nature, so would be available only at one appropriate location in each electorate.
- 5.138 In the Committee's view such an experiment would allow electronic voting technology to assist those currently unable to cast a secret ballot. This should be part of a broader initiative addressing the special needs of people with disabilities at polling stations.
- 5.139 Aspects of electronic assistance to voting are considered again in Chapter 11, *Technology and the electoral system*, which makes recommendations in relation to arrangements for the blind in the section covering electronic voting.
- 5.140 However, the Committee did not see this experiment as a precursor to widespread electronic voting. The Committee does not favour a wider move towards home-based electronic voting because it believes that the Saturday ritual of visiting a polling place to vote is an important component of maintaining Australians' engagement with the democratic process.

Recommendation 27

- 5.141 **The Committee recommends that the AEC consult with appropriate organisations to establish appropriate experimental arrangements to assist the blind and visually impaired to cast a secret ballot at the next Federal Election.**

Recommendation 28

- 5.142 **The Committee recommends that, as a future direction, the AEC consult with relevant organisations representing people with disabilities to develop a disability action plan covering the full spectrum of access issues faced.**

Fraudulent voting

- 5.143 Under the current electoral arrangements it is possible for people to vote more than once, to vote under assumed names, or to impersonate another voter. This potential for voter fraud was raised in submissions and evidence. The Committee was provided with a scenario combining two elements of fraud, in which multiple votes

were made while impersonating another elector. The Festival of Light stated:

John can go to the same polling place as Bill to cast his own vote, and then go to the other 61 polling booths and vote as Bill, thus voting 62 times in the election, in a marginal electorate. If several people did this, the extra votes could have a significant effect on the outcome of the election... Although the number of extra votes could be identified, they could not be removed from the count because there is no way of knowing which candidate gained the invalid votes.¹¹²

5.144 The Committee has examined allegations of electoral fraud in its reports on each of the last six Federal Elections. Whilst to date the Committee has had no evidence to indicate there has been widespread electoral fraud,¹¹³ the Committee believes that rectifying electoral fraud after it has occurred and has compromised the democratic process is not a responsible or sensible proposition. While to date the Committee has not received any evidence of widespread or large-scale electoral fraud, it is considered preferable to take steps to prevent fraud occurring in the first place. The Chair of the Committee, Mr Tony Smith MP, commented that otherwise, it would be:

a bit like the major banks in Australia saying, 'We will leave the safe and the front door open every night, and only when the money is stolen will we begin to lock them'.¹¹⁴

5.145 Currently, should someone or some group seek to engineer fraudulent voting, it would be possible for that to occur and to affect the electoral outcome. The AEC advised that instances of apparent multiple voting can be detected when, after the election, the lists of those who voted are scanned.¹¹⁵

112 Submission No. 125, (Festival of Light Australia), p. 8.

113 Submission Nos 35, 52, 89, p. 6, 185, 125, p. 8 & 186, Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Tuesday, 26 July 2005, p. 17 indicated that there were opportunities for fraudulent voting in the 2004 Federal Election. In 2001 the AEC said that: "It has been concluded by every parliamentary and judicial inquiry into the conduct of Federal Elections, since...1984...there is no evidence to suggest that the overall outcomes of the 1984, 1987, 1990, 1993, 1996 and 1998 Federal Elections were affected by fraudulent enrolment and voting". AEC, *Electoral Backgrounder 14: "Electoral Fraud and Multiple Voting"*, www.aec.gov.au/_content/How/backgrounders/14/index.htm

114 Mr T Smith MP, *Transcript of evidence*, Monday, 25 July 2005, p. 90.

115 Submission No. 165, (AEC), p. 32.

5.146 The Committee examined three proposals which could assist in the prevention of fraud at the polling place. The first was establishing specific voting places for specific electors (“subdivision” or “precinct” voting). Secondly, at polling place level, the Committee considered voter identification requirements and thirdly, bar-coding.

“Subdivision” voting

5.147 In 1983 the Committee's predecessor, the Joint Select Committee on Electoral Reform, recommended that voters be allowed to cast ordinary votes at any polling place within their House of Representatives electorate (division), rather than being confined to a smaller subdivision. Under the then system, electors who arrived at a polling place outside of their enrolled subdivision – even if the subdivision was within their "home" division – had to either make their way to the appropriate subdivision or cast an absent vote.¹¹⁶

5.148 Since this arrangement was abandoned for the 1984 election, it is now possible for unscrupulous persons to travel to every polling place within an electorate, recording votes against the same name.

5.149 In his submission, the Attorney-General, the Hon. Philip Ruddock, MP, said that:

there is strong support for subdivisional voting to minimise any electoral fraud.¹¹⁷

5.150 The advantage of the subdivision voting arrangement is that an elector's name appears on only one roll at one polling place. Any person wishing to use an elector's name to vote many times would only be able to do so by casting an absent vote at booths outside the subdivision.

5.151 In the past the AEC has drawn attention to possible consequences of the reintroduction of subdivision voting, confusion and delay at polling booths, increased queuing, increased declaration voting and probable delays in the provision of election results.¹¹⁸

116 JSCem, *Report of the Inquiry into all Aspects of the Conduct of the 1996 Federal Election and Matters Related Thereto*, June 1997, para 2.45.

www.aph.gov.au/house/committee/em/elec/elec.pdf

117 Submission No. 128, (The Hon. Philip Ruddock, MP).

118 AEC, *Submission to Inquiry into the Integrity of the Electoral Roll*, 27 March 2001, www.aec.gov.au/_content/Why/committee/jscem/electoral_roll/sub81.htm

The Committee's view

- 5.152 At one level, the subdivision vote arrangement would, in the Committee's view, be a useful move to minimise the potential for fraud at the polling place.
- 5.153 The Committee's most recent recommendation concerning subdivisional voting was made in its report on the 1996 Federal Election, urging that the:
- AEC prepare a detailed proposal for the reintroduction of subdivisional voting for future Federal Elections.¹¹⁹
- 5.154 In the Government Response was a counter-recommendation, that:
- the JSCEM should conduct a more detailed investigation into the positive and negative aspects of the reintroduction of subdivisional voting.¹²⁰
- 5.155 The Committee notes that most voters continue to vote close to where they live, as was required under the subdivision arrangements.¹²¹ It therefore still considers that the subdivision voting system has been a useful one, and that it should not have been abolished.
- 5.156 However, on balance, the Committee believes that Australian society has changed in the two decades since subdivision voting was abolished, and in the decade since the Committee urged its reintroduction. The population is more mobile and more of the workforce is now employed all day on Saturday when polling is held. To reintroduce subdivision voting would be disruptive and confusing.
- 5.157 However, the Committee notes that, with the introduction of its recommended changes to enrolment and voting identification, subdivision voting would, in any event, play a lesser role in preventing voting fraud.

Proof of identity

- 5.158 The Committee has already addressed voter identification above, in relation to provisional voting. That recommendation highlighted the
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119 Government Response: *JSCEM The 1996 Federal Election*, www.aph.gov.au/house/committee/em/elec/govtresp.htm

120 Government Response: *JSCEM Report The 1996 Federal Election*, www.aph.gov.au/house/committee/em/elec/govtresp.htm

121 For example, 61.2% of the ordinary voters in Moncrieff voted at the most convenient polling place to where they were enrolled. Submission No. 182, (AEC), p. 14.

broader issues, raised in submissions to the Committee. Ms A Cousland stated:

opening bank accounts, registering at Medicare, and signing up for a mobile telephone all required different combinations of identification to satisfy each organizations identification point system. And yet to vote, one of the privileges we have in a democracy, no identification is required.¹²²

5.159 In this context it was suggested to the Committee that another barrier to potential fraud at the polling booth was to require voters to provide identification prior to being given their ballot paper. The Council for the National Interest Western Australian Commission stated:¹²³

for example a Driver's Licence with photo and address or a combination of documents for example a Medicare Card and a Rates Notice.¹²⁴

The Committee's view

5.160 Presentation of identification would ensure that the person voting was the person named on the electoral roll. Against the concern that such a procedure would slow down the voting process and potentially generate queues, the Committee believed that it could, in fact, expedite the checking process by clarifying to the polling officials the precise spelling of the voter's name. This was an issue which the AEC could address.

Recommendation 29

5.161 The Committee does not support the introduction of proof of identity requirements for general voters on polling day at the next election. Instead, the Committee recommends that the AEC report to the JSCEM on the operation of proof of identity arrangements internationally, and on how such systems might operate on polling day in Australia.

122 Submission No. 30, (Ms A Cousland).

123 Submission Nos 6, 41, 52, 66, 120 & 185 and see Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Tuesday, 26 July 2005, p. 17.

124 Submission No. 185, (Council for the National Interest Western Australian Committee).

- 5.162 At the next Federal Election, the Committee considers that the AEC might seek, but not compel, voters to provide identification to gauge any effect on the speed with which the rolls could be marked off.

Recommendation 30

- 5.163 **The Committee recommends that, at the next Federal Election, the AEC encourage voters to voluntarily present photographic identification in the form of a driver's licence to assist in marking off the electoral roll.**

Barcoding

- 5.164 The H S Chapman Society proposed using bar-coding as a means of addressing the potential for fraudulent voting.¹²⁵ All electors would be sent an alpha-numeric bar-coded voting card by the AEC after the close of the rolls. At the polling booth the voter would hand in the card, it would be read and its surrender recorded centrally through mobile telephone technology. The voter would then receive a ballot paper.¹²⁶

The Committee's view

- 5.165 The Committee is aware that postal delivery of unique identifiers to voters could be intercepted and the cards used for electoral identity theft. Having to produce another form of identification to demonstrate that the barcode is legitimately held would negate one of the suggested advantages, that of quick checking off.
- 5.166 Barcoding is again considered in Chapter 11, *Technology and the electoral system*.

Networked checking of the Electoral Roll

- 5.167 Under this arrangement, as each person had their name marked off on the electoral roll at a polling place, that fact was recorded on a master elector list at the AEC's central server. Any attempt to vote again, or for another person to use that name at any polling booth would be identified by real-time matching with the master roll and potential duplicate voting prevented.

125 Submission No. 41, (H S Chapman Society)

126 Submission No. 187, (H S Chapman Society)

- 5.168 This is considered in more detail in Chapter 11, *Technology and the electoral system*.

Senate

Group Voting Tickets

- 5.169 Group Voting Tickets are lodged by parties to indicate how they wish their preferences to flow when a voter elects to vote above the line, endorsing only one party. Copies of these are required to be prominently displayed at each polling booth so voters can clearly see where their preferences will go when they vote above the line.
- 5.170 The Committee was advised of a number of problems with this system, in addition to the apparent lack of familiarity with it among polling booth staff (mentioned under *Training of polling officials* above).
- 5.171 The majority of voters appeared to be unaware of Group Voting Tickets and so did not access them, or request access to them, before they voted.¹²⁷ The Festival of Light stated:
- the knowledge of the tickets is not readily available. Certainly in the last Federal Election the tickets were not displayed publicly on the walls, as they had been in the previous election, so the voters were kept in the dark as to how the flow of preferences would work in the tickets.¹²⁸
- 5.172 There is also anecdotal evidence of some voters being unable to access Group Voting Tickets at the 2004 election, with some others being misdirected by party staff at polling booths about where their preferences might flow. This resulted in some people wishing to retract their votes once they realised that their preferences would flow in a direction contrary to their wishes.¹²⁹

127 Submission Nos 100, (Electoral Reform Society) & 144, (PIAC), p. 11.

128 Dr David Phillips, National President, Festival of Light Australia, *Evidence*, Tuesday, 26 July 2005, p. 14.

129 Submission No. 90, (Mr D. Risstrom), p. 2.

The Committee's view

- 5.173 In Chapter 9, *Voting systems*, the Committee assesses criticisms about the operation of the compulsory preferential voting system. On evaluation of the evidence, the Committee arrived at the view that above-the-line compulsory preferential voting should be introduced for Senate elections, but with the option of below-the-line voting retained. A consequence of this would be the abolition of the option for lodgement of Group Voting Tickets.
- 5.174 In the event that the recommendation of Chapter 9, *Voting systems*, is not adopted, the Committee considers that any proposed amendment of the Senate voting ballot paper should contain measures to include ungrouped candidates in the preferences above the line.¹³⁰

130 Submission No. 182, (Australian Electoral Commission), p. 26.

Counting the votes

- 6.1 This chapter first outlines the vote counting process, and then examines some of the concerns and issues arising from it.

Scrutiny

- 6.2 The scrutiny process outlined below is set out in Part XVIII of the CEA, which deals with the provisions for the counting of the vote.¹

Election night

- 6.3 When House of Representatives and Senate elections are held concurrently, the House of Representatives ballot papers are counted first. The sequence of events is:
- Polling officials empty the House of Representatives ballot boxes and unfold the papers.
 - The ballots are sorted into first preference votes for each candidate.
 - Informal ballots are set aside.
 - First preference votes are counted and results rung through to the DRO, along with the number of informal ballot papers. The DRO enters the results onto the AEC's computerised tally system, and

¹ Description of the scrutiny process adapted from: JSCEM, *The 2001 Federal Election*, June 2003, pp. 198–200.

they are transmitted to the National Tally Room and the Virtual Tally Room.

- Polling officials then conduct a two-candidate preferred (TCP) count. This is an indicative distribution of preferences to the two candidates identified by the AEC as being most likely to win each Division (based on historical voting patterns for each seat). The TCP count gives an early indication of who is most likely to win each seat, which is not always clear from first preferences. The TCP candidates are most often – but not always – from the three major parties (the Australian Labor Party, the Liberal Party of Australia or The Nationals).
- The results of the TCP are tabulated and rung through to the DRO, for input to the AEC computer network.²

6.4 Once the counting of House of Representatives votes on election night is completed, polling officials open the Senate ballot boxes.

- All the ‘above the line’ group ticket votes, and the first preference of ‘below the line’ voters, are counted and rung through to the DRO. This is the only Senate counting that takes place on election night because Senate results cannot be calculated until the quota for election is known.
- Declaration vote envelopes containing ballot papers are sorted and counted, but are not opened.

6.5 Once this preliminary counting for the House of Representatives and the Senate is complete, all the ballot papers and declaration vote envelopes are placed into sealed parcels and delivered to the DRO for further scrutiny.³

Further scrutiny

6.6 The initial counting of votes on election night is followed by a *fresh scrutiny*, conducted by DROs at Divisional Offices, beginning on the Monday following the election. The *fresh scrutiny* involves:

2 Section 284 of the Electoral Act provides, in effect, that election results may be declared on the basis of the TCP where the two candidates with the highest number of first preference votes could not be displaced from those positions after a full distribution of preferences.

3 AEC, *Behind the Scenes: the 2001 Federal Election Report: Election Night, 2001.*: www.aec.gov.au/_content/when/past/2001/bts/08night.pdf

- *Fresh scrutiny* of ordinary House of Representatives votes – the DRO examines all ordinary votes, including those deemed to be informal (which may be admitted to the count on the decision of the DRO), and counts the votes.
 - *Preliminary scrutiny* of declaration votes⁴ – the DRO conducts a preliminary scrutiny of all declaration vote envelopes to determine whether each vote should be admitted for further scrutiny.
 - ⇒ A postal vote will be accepted for further scrutiny if the DRO is satisfied that:
 - the elector is enrolled (or entitled to be enrolled) for the Division;
 - the signature on the postal vote envelope is genuine and properly witnessed; and
 - the vote was recorded prior to the close of polls.
 - ⇒ Postal votes received up to 13 days after the close of polls will be accepted.
 - ⇒ A pre-poll, absent or provisional vote will be accepted for further scrutiny if the DRO is satisfied that the elector is enrolled (or entitled to be enrolled) for the Division, and that the envelope has been properly signed and witnessed.
 - Declaration vote envelopes admitted to the further scrutiny are opened as part of that scrutiny, the ballot papers are taken out, unfolded, and the House of Representatives ballot papers are counted in the same way as ordinary ballot papers.
- 6.7 Senate ballot papers marked ‘above the line’ are manually counted in the Divisional Office.⁵
- 6.8 The first preference votes of Senate ballot papers marked ‘below the line’ are counted. Those ballot papers are then sent to the head office for each State and Territory, where they are entered into the Computerised Senate Scrutiny System (CSSS). This process usually begins late in the week after the poll, and continues until every Senate ballot paper has been entered.⁶

4 The preliminary scrutiny of postal and pre-poll votes begins on the Monday before polling day. The preliminary scrutiny of absent and provisional votes begins on the Monday after polling day.

5 AEC, *Behind the Scenes: the 2001 Federal Election Report: Scrutiny after Election Night*, 2001; www.aec.gov.au/_content/when/past/2001/bts/09scrut.pdf

6 Submission No 182, (AEC), p. 28.

Concerns about the scrutiny

Calwell

- 6.9 A significant problem occurred with the counting of absent votes in the Calwell electorate. There were 5,426 absent envelopes in the count concerned. At the initial preliminary scrutiny, 4,273 envelopes were determined to be admissible and 1,153 were classed as inadmissible at that point.⁷
- 6.10 The AEC described the issue, saying that:
- at the counting centre, all 5,426 declaration envelopes were inadvertently opened and processed as if they had been determined to be admissible. Consequently, all the absent ballot papers for the House of Representatives and the Senate were placed in ballot boxes, with the result that the Divisional Returning Officer (DRO) was unable to determine which ballot papers relate to the admissible envelopes, and which relate to the inadmissible envelopes.⁸
- 6.11 On further inspection, the DRO determined a maximum of 893 House of Representatives ballot papers and a maximum of 681 Senate ballot papers should not have been included in the count.⁹
- 6.12 In the end, it was apparent that the number of votes admitted in error in the counts was not large enough to affect the outcome of the elections.¹⁰

The Committee's view

- 6.13 While the result was evidently unaffected, the Committee remains extremely concerned about the events that took place in Calwell.
- 6.14 Clearly, if this had occurred in a more marginal electorate, the result could have been altered.

7 Submission No 221, (AEC), p. 6.

8 Submission No 221, (AEC), p. 6.

9 Submission No 221, (AEC), p. 6. The term "maximum" is used here to account for the fact that in some cases the envelope may have contained either no ballot paper or only one ballot paper.

10 Submission No 221, (AEC), p. 7.

- 6.15 The Committee regards such a mistake as unacceptable, and urges the AEC to put appropriate safeguards in place to ensure it does not occur again.

Other concerns

- 6.16 Several submissions raised other concerns about the scrutiny process. Senator Ruth Webber, who was a scrutineer in the electorate of Swan, was concerned that some staff did not understand the role of scrutineers, and were also overwhelmed by the pressure of the tight count.¹¹
- 6.17 Her submission therefore recommends that:
- the committee should look at the level of funding provided to the AEC for staffing and the AEC's current ability to train and retain experienced staff.¹²
- 6.18 Mr Peter Brun, who attended the further scrutiny for the Division of Banks, was concerned that many ballot papers had been incorrectly sorted at the polling booths on election night, including obviously informal votes being included in the polling booth counts.
- 6.19 Mr Brun asserts and questions:
- the job was clearly not done properly in the polling booths. Was this because political and media pressure to get results out quickly caused counting to be done too quickly or sloppily?
- 6.20 The Committee also received advice of two separate incidents in which declaration votes were not counted. In the first instance, 93 absent votes were allegedly lost, an event attributed to short staffing in the division.¹³ In the second, a submission asserts that 30 unchecked postal votes were discovered after a seat had been declared, and were therefore unable to be included in the count.¹⁴
- 6.21 In regard to the Senate scrutiny, one submission contends that the way in which the AEC conducted and reported the Senate count in

11 Submission No 49, (Senator R. Webber), p. 2.

12 Submission No 49, (Senator R. Webber), p. 2.

13 Submission No 134, (Mr I. Freys).

14 Submission No 176, (Mr S Luntz).

the 2 – 3 week period following Election Day was puzzling, because ungrouped candidates seemed not to exist.¹⁵

- 6.22 The AEC notes that for the 2004 election, the Senate count was updated on its website on a daily basis for the first time, whereas in previous elections almost no information had been available until the scrutiny was completed.¹⁶

The Committee's view

- 6.23 In regard to comments about lack of staff training, the Committee notes that, in Chapter 5, *Election Day*, it recommends that the AEC conduct a review of the proportion of its budget allocated to staff training.
- 6.24 While recognising the concerns of several submissions, the Committee noted that no candidates requested a recount of the ballots in their Division or State,¹⁷ as they are entitled to do under Sections 278 (Senate) and 279 (House of Representatives) of the CEA.¹⁸
- 6.25 This was despite the fact that six House of Representatives seats were won by 1,000 votes or less.¹⁹
- 6.26 The Committee is therefore of the view that the scrutiny process for the 2004 election was generally efficient and accurate, although the errors show there is still room for improvement.

Issues arising from the scrutiny

- 6.27 The key issue the Committee considered was the prevalence of informal voting.

Informal voting

- 6.28 Informal ballot papers are ballot papers that cannot be included in the count because they have not been completed in accordance with the
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15 Submission No 115, (Mr J Pyke).

16 Submission No 182, (AEC), p. 27.

17 Submission No 205, (AEC), p. 15.

18 CEA, sections 278 & 279. Candidates must also supply satisfactory reasons when requesting a recount, which can be rejected by the Electoral Commissioner or an Australian Electoral Officer.

19 AEC, 2005, *Electoral Pocketbook*, pp. 129-206. The seats were Swan (104), Hindmarsh (108), Kingston (119), Richmond (301), Bonner (795), and Greenway (883).

requirements of the Electoral Act for a valid vote. Generally, a ballot paper will be informal if:

- it is not completed correctly (for example, if an elector simply ticks one of the boxes on a House of Representatives ballot paper rather than numbering all of the boxes); or
- it has not been completed at all (that is, the ballot paper is blank); or
- it does not have an official mark or an initial from the issuing presiding officer, and the Divisional Returning Officer responsible for considering the formality of the ballot paper is not satisfied that it is an authentic ballot paper; or
- it contains some mark that may identify the voter who marked it.²⁰

6.29 The most common type of informality is where ballot papers do not have all preferences marked or are incorrectly numbered.²¹

Table 6.1 Informal voting at House of Representatives Elections since 1993

	1993	1996	1998	2001	2004
	%	%	%	%	%
NSW	3.1	3.6	4.0	5.4	6.1
VIC	2.8	2.9	3.5	4.0	4.1
QLD	2.6	2.6	3.3	4.8	5.2
WA	2.5	3.2	4.2	4.9	5.3
SA	4.1	4.1	4.5	5.5	5.6
TAS	2.7	2.4	3.1	3.4	3.6
ACT	3.4	2.8	2.9	3.5	3.4
NT	3.1	3.4	4.2	4.6	4.5
AUS	3.0	3.2	3.8	4.8	5.2

Source AEC, *Electoral Pocketbook*, p. 71

6.30 At the 2004 election, 639,851 ballot papers were identified as informal, representing 5.2% of the vote and an increase of 0.4 percentage points from the 2001 election.²² The above table shows the concerning trend of informal voting increasing at every Federal Election since 1993.

20 Submission No 165, (AEC), p. 33.

21 Submission No 165, (AEC), p. 33.

22 Submission No 165, (AEC), p. 33.

Causes of Informal Voting

- 6.31 Numerous submissions addressed the causes of informal voting,²³ and the Committee has identified several significant potential causes of informal voting namely:
- number of candidates on the ballot paper;
 - differences in voting systems between the Commonwealth, the States and the Territories;
 - visual impairment;
 - proficiency in English;
 - age and education; and
 - political disengagement.
- 6.32 The Committee noted that the relative importance of specific causes of informal voting will vary between electorates and over time.

NUMBER OF CANDIDATES ON THE BALLOT PAPER

- 6.33 The AEC asserts that informality increases when there is an increase in the number of candidates on the ballot, and that this explains approximately 46% of the overall increase in formality.²⁴
- 6.34 Furthering this point, Professor Colin Hughes highlights the number of candidates on the ballot paper as a potential cause of informal voting. He explains that:
- filling in a ballot for two candidates is very easy indeed, but it never happens anymore. Filling in a ballot paper for 10 or 15 candidates, which is an increasingly common phenomenon, is a much more taxing experience for people who are not accustomed to filling in forms and numbering things.²⁵
- 6.35 Other submissions also emphasise that the number of candidates has a definite influence on the level of informal voting.²⁶

23 See Submission Nos 9, 18, 22, 40, 42, 52, 54, 66, 68, 69, 73, 80, 84, 86, 89, 90, 97, 100, 103, 107, 115, 118, 127, 136, 144, 145, 159, 181, 184, 194.

24 Submission No 165, (AEC), pp. 33-34.

25 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, pp. 1-2.

26 Submission No 97, (Democratic Audit of Australia), p. 10; and Submission No. 145, (Dr S. Young), p. 9.

6.36 Despite these concerns, Professor Hughes acknowledges that:

controlling the number of candidates is a very tricky business and, by and large, nothing works.²⁷

The Committee's view

6.37 While acknowledging that the number of candidates on ballot papers may be increasing, and may also play some role in levels of informal voting, the Committee does not view an attempt to reduce the number of candidates as a viable or democratic means to reducing the informal vote.

DIFFERENCES IN VOTING SYSTEMS BETWEEN THE COMMONWEALTH, THE STATES AND THE TERRITORIES

6.38 The difference in voting systems and how informal votes are determined across the States and Territories continues to have an impact on informality as electors apply ballot marking practices acceptable in State and Territory elections to Federal elections where they are invalid.²⁸

6.39 Moreover, ballots informal due to the practice of using “number ‘1’ only” continue to represent the highest percent of informality across all States and Territories, even though the national percentage dropped slightly in 2004.²⁹

The Committee's view

6.40 This issue will be discussed in detail in Chapter 9, *Voting Systems*.

VISUAL IMPAIRMENT

6.41 Vision Australia reports anecdotal evidence of people who are blind or visually impaired intentionally voting informally through a frustration of being unable to cast a secret ballot.³⁰

The Committee's view

6.42 As the Committee commented in Chapter 5, *Election Day*, the specific difficulties facing the blind should be addressed for the next Federal

27 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 3.

28 Submission No 165, (AEC), pp. 33-34.

29 Submission No 165, (AEC), pp. 33-34.

30 Submission No 54, (Vision Australia), p. 2.

Election. The outcome, the Committee believes is that this type of informal vote would be greatly reduced.

- 6.43 In Chapter 11, *Technology and the Electoral System*, the Committee recommends the implementation of a trial of electronic voting, which would allow some blind and visually impaired voters to vote independently.

PROFICIENCY IN ENGLISH

- 6.44 Several submissions highlight a lack of proficiency in English as a potential cause of informal voting.³¹
- 6.45 The Democratic Audit of Australia asserts there is a definite correlation between high numbers of informal voting and electorates with high numbers of people from non-English speaking backgrounds (NESB).³²
- 6.46 In his submission, Professor Colin Hughes, using State and Federal Elections in NSW as his base, provides empirical evidence to highlight that electorates with higher percentages of constituents “not fluent in English”, consistently have higher percentages of informal votes.³³
- 6.47 Similarly, Mr Laurie Ferguson MP stated:
- if you look at the five seats with the highest number of informal votes in Sydney, with one exception they have the five highest proportions of non-English-speaking background populations.³⁴

31 See Submissions 52, 73, 89, 97, 144, 145.

32 Submission No. 97, (Democratic Audit of Australia), p. 11.

33 Submission No. 69, (Professor C Hughes), pp 6-8.

34 Mr L Ferguson MP, Evidence, Monday, 8 August 2005, p. 97.

Table 6.2 Informal voting in Sydney electorates with the highest non-English speaking background (NESB) population

Electorate	NESB Population	Informal 2001 Election	Informal 2004 Election
	%	%	%
Fowler	65.0	12.8	9.1
Watson	60.7	7.5	9.1
Blaxland	58.0	9.8	10.7
Reid	57.0	11.1	11.7
Prospect	47.7	9.0	9.2

Source NESB data from 2001 census. Informality data: AEC, *Electoral pocketbook*, 2005.

6.48 Mr Ferguson also noted that:

in the electorate of Fowler there was a decline in the informal vote there of some significance in this election. I think that might be related to a campaign by the AEC in the Vietnamese community. I would like to see a broadening of that kind of activity through a number of these seats.³⁵

6.49 The improvement in Fowler may be explained by the specific campaign run by the AEC, as asserted by Mr Ferguson. However, the AEC also notes that it ran similar campaigns in Reid and Blaxland, where informal votes increased.³⁶

6.50 In regard to its strategy for informing electors from non-English speaking backgrounds about the election, the AEC said that:

in addition to the placement of election advertising in ethnic media, the AEC provided a national telephone interpreting service in 15 languages and key election information was sent to ethnic media and community organisations throughout the election period. Election and voting information was translated into 18 community languages and available from the AEC website or by calling the AEC's national enquiry service. Selected polling places located in divisions with large numbers of electors from non-English speaking backgrounds and past high informal voting rates also displayed translated how to vote messages in key community languages and in English, and translated how to vote posters were available for issuing to electors on Election Day. In the lead up to the federal election, the AEC in conjunction with Migrant

35 Mr L Ferguson MP, *Evidence*, Monday, 8 August 2005, p. 97.

36 Submission No 205, (AEC), p. 11.

Resource Centres conducted election information sessions in NSW electorates which had a high level of informal voting at the previous election. The sessions were designed to provide enrolment and 'how to vote' information and educate key ethnic community leaders who could assist their communities to fully participate in the election process in a meaningful and correct way.³⁷

- 6.51 Offering a different perspective, Sir David Smith, when speaking about voters of non-english speaking backgrounds, said:

how on earth, in an ordinary election, do [people from NESB] understand the mass of material that comes in through their letter boxes, newspapers and television sets? Our whole democracy is based on having an informed electorate, and the Australian Electoral Commission does us no credit when it makes it possible for votes to be given to people who simply do not know what they are doing.³⁸

The Committee's view

- 6.52 The Committee acknowledges that the evidence points to a lack of proficiency in English as a definite cause of informal voting. Self evidently, this is a cause for concern.
- 6.53 The Committee is keen to see the level of informal vote reduce significantly, particularly in electorates currently experiencing the highest levels.
- 6.54 The Committee recognises the efforts of the AEC to target electorates with high percentages of constituents from non-English speaking backgrounds. However, it is evident that, by and large, the programs such as those in the ethnic media and the election information sessions did not have a significant effect on informal voting figures.
- 6.55 The Committee also believes that confusion caused by the difference between State and Federal electoral systems (particularly in Queensland and NSW), is amplified in electorates with large NESB populations. This is discussed in detail in Chapter 9, *Voting systems*.

37 Submission No 165, (AEC), p. 38.

38 Sir D Smith, *Evidence*, 8 August 2005, p. 16.

Recommendation 31

- 6.56 **The Committee recommends that the AEC increase its efforts to improve understanding of the voting system and reduce the informal vote in electorates with a high percentage of constituents from non-English speaking backgrounds, including by development of new and innovative strategies.**

AGE AND EDUCATIONAL ATTAINMENT

- 6.57 In its 2001 survey of informal voting, the AEC highlights the age and educational attainment of a voter as important predictors of informal voting.³⁹
- 6.58 Naturally, those people who are illiterate have extreme trouble casting a formal vote. Educational attainment is also an important factor in determining whether a person will in fact vote, as well as deciding whether they will involve themselves in the political process.⁴⁰
- 6.59 It also appears that older people are more likely to have knowledge of parties and candidates, as well as hold opinions on political issues. Furthermore, they are likely to be patient and spend more time checking their ballot paper for mistakes.⁴¹
- 6.60 In summary, it appears that in terms of age and education, younger people with lower levels of education are at the most risk of casting an informal vote.

The Committee's view

- 6.61 The Committee believes that the key to reducing this type of informal vote is education about the Parliament and the system of government from a young age. These issues will be discussed more fully in Chapter 14, *Looking to the future – education as the key to a healthy democracy*.

39 Submission No 165, (AEC), Attachment A, pp. 15-16.

40 Elkins in Submission No 165, (AEC), Attachment A, p. 16.

41 Submission No 165, (AEC), Attachment A, p. 16.

POLITICAL DISENGAGEMENT

- 6.62 The AEC contends the increase in the percentage of informal ballots with marks and slogans may represent an increased level of political abstention, apathy or protest among Australian electors.⁴²

The Committee's view

- 6.63 The Committee acknowledges evidence of this concerning trend towards increased informal voting. Once again, the Committee believes that one of the keys to reducing this type of informal vote is education about the Parliament and the system of government from a young age. As mentioned, this will be more fully discussed in Chapter 14: *Looking to the future – education as the key to a healthy democracy*.

42 Submission No 165, (AEC), pp. 33-34.

Parliamentary terms

- 7.1 This chapter examines the history, arguments in favour of, and options for, a shift to four-year terms for the Federal House of Representatives. There have been a number of detailed publications on the history of the issue of four year terms. *Four-Year Terms for the House of Representatives?* (September 2003) by Scott Bennett of the Parliamentary Library provides a comprehensive overview, and is regularly referred to throughout this chapter.

Introduction

- 7.2 The Constitution provides that terms for the House of Representatives continue for a maximum of three years from the first meeting of the House subsequent to an election. The House may also be dissolved sooner than the three-year term by the Governor General.¹ This means that a Federal Election for the House of Representatives may be called at any time in the three-year period following the first sitting of the House.
- 7.3 There have been almost continuous calls over recent years for reconsideration of the appropriateness of this three-year maximum term for the efficient governance of the country. Specifically, the question has been often asked whether the term of the House of Representatives could be extended to four years.

¹ *Commonwealth of Australia Constitution Act 1900* (The Constitution), section 28.

- 7.4 Recent calls for this extension of the parliamentary term have attracted widespread and cross-party support.²
- 7.5 Any change to the term of the House will, most likely, necessitate amendment to the existing terms for the Senate. This raises a number of complex issues, which are outlined later in this chapter.
- 7.6 Finally, this issue is further complicated by the need to amend the Constitution in order to change the duration of the House of Representatives. There are also other electoral issues that would be affected by the introduction of a longer term. These matters are also discussed throughout the chapter.

History

- 7.7 The issue of parliamentary terms has been on the national agenda since the first Constitutional Convention in 1891. Since that time, the question of the appropriateness of the three-year House of Representatives term has been asked in various public forums no less than 12 times.³

The Constitutional conventions

- 7.8 The colonies initially had five-year parliamentary terms, which they inherited from the British parliamentary system. By the 1890s, however, the colonies had moved to three-year terms, with only Western Australia having a four-year term.
- 7.9 Not surprisingly, therefore, the various draft constitution bills throughout the 1890s showed a clear preference for three-year terms.
- 7.10 The four-year term option was, however, canvassed in at least one draft constitution, upon the recommendation of a Constitutional subcommittee in 1897. This subcommittee included two future prime ministers, Edmund Barton and Alfred Deakin, who were clearly

2 See Smith T, "It's Time We Moved To Four-Year Parliamentary Terms", *The Age*, 1 May 2005; Bennett E, and J Breusch, "Howard Backs 'Four-Year Term' Call", *Australian Financial Review*, 27 June 2005, p. 5; Hudson P, "Beazley Opens Door to Four-Year Terms", *The Age*, 17 April 2005; Hudson P, "Costello Backs Four-Year Term Push", *Sun Herald*, 3 April 2005; Danby M, "Four Better Or Worse? Let's Vote", *Herald Sun*, 28 July 2004, p. 18.

3 Bennett S, "Four-Year Terms for the House of Representatives?", *Research Paper No. 2 2003-04*, Department of the Parliamentary Library, September 2003, p. 7.

looking beyond the changing parliamentary landscape of the time to a point in the future where parliaments would have more stability and would benefit from longer terms.

- 7.11 The Western Australia Premier and Legislative Assembly also argued strongly in favour of the four-year term throughout the Federation Conference, citing a belief that the three-year system was too short.⁴
- 7.12 The four-year term proposal, however, was defeated during debate in the Australasian Federal Convention in April 1897, and the three-year House of Representatives term became enshrined in the Constitution in 1900.⁵ This decision was arguably influenced by a desire to harmonise the House terms with the already settled six-year term of the Senate, rather than by any serious objection to four-year terms in principle.
- 7.13 This decision ensured consistency with the three-year terms of the states at the time.
- 7.14 The original aim of consistency has now been lost. All of the States and Territories (with the exception of Queensland which has a unicameral Parliament) have now moved to four-year terms.
- 7.15 The original consistency argument therefore now demands a shift to four-year federal terms to align with the states.⁶

Further reviews of parliamentary terms

- 7.16 There have been numerous calls to increase the House of Representatives term since 1900 in a wide range of forums.
- 7.17 The Royal Commission into the Constitution (1927–1929) was the first major opportunity to revisit the operation of the Commonwealth Constitution. The Commission strongly recommended that the life of the Parliament be increased to at least four years.⁷ No action was

4 Business Council of Australia, *Towards a Longer Term for Federal Parliament*, 1987, pp. 4-5; Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005; Bennett S, "Four-Year Terms...?" p. 7; Reith P, "Let's Give Democracy a Chance: Some Suggestions", Proceedings of the Fifteenth Conference of The Samuel Griffith Society, 23-25 May 2003, www.samuelgriffith.org.au/papers/html/volume15/v15chap4.html

5 The Constitution, section 28, Australasian Federal Convention, March 22nd to May 5th, 1897, *Debates*, p. 1031; Smith T, "It's Time We Moved To Four-Year Parliamentary Terms", *The Age*, 1 May 2005; see also Bennett S, "Four-Year Terms...?", p. 7; Business Council of Australia, *Towards a Longer Term for Federal Parliament*, 1987, pp. 4-5.

6 Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005.

7 Report of the Royal Commission on the Constitution, *Parliamentary Papers*, 1929, 30–31, Vol. II, Part 1, p. 41; p. 268.

taken on this recommendation at this time, so the parliamentary term continued to run for three years.⁸

- 7.18 In more recent times, Parliament's Joint Standing Committee on Electoral Matters has given its unanimous support to the idea of four-year terms in the House of Representatives via its investigations into the 1996, 1998 and 2001 Federal Elections.⁹
- 7.19 Further, both the Prime Minister and the Leader of the Opposition have been open to review of the length of parliamentary terms. Prime Minister Howard stated that he thought it "a good idea to have a longer period of time to deal with medium and long term issues".¹⁰

Past attempts to change parliamentary terms

- 7.20 In 1983, the four-year term option was again recommended at an Adelaide session of the Australian Constitutional Convention.¹¹ The Commonwealth Parliament passed the necessary legislation (*Constitution Alteration [Simultaneous Elections] Act 1983*) to bring this change to a referendum in February 1984.¹²
- 7.21 While there was widespread community support for this change, a difference of opinion between the Hawke Government and the Senate of the day led to the referendum being delayed indefinitely.¹³
- 7.22 The proposal to increase the House of Representatives term from three years to four years has, therefore, only been presented to the electorate on one occasion in 1988, where it was defeated with the lowest 'YES' vote in any referenda since 1900.¹⁴

8 Business Council of Australia, *Towards a Longer Term for Federal Parliament*, 1987, p. 5.

9 JSCEM, *The 1996 Federal Election*, July 1998, p. 114; *1998 Federal Election*, June 2000, p. 152; *2001 Federal Election*, June 2003, p. xlviii.

10 *Sydney Morning Herald*, 1 October 1998 and *The Age*, 4 September 1999; "Beasley Opens Door to Four-Year Term", *Sunday Age*, 17 April 2005.

11 *Minutes of Proceedings, Official Record of Debates and Biographical Notes on Delegates and Representatives attending the Australian Constitutional Convention held in the House of Assembly Chamber Parliament House, Adelaide, 26-29 April 1983*, Adelaide, 1983.

12 For details of the debate on the introduction of four-year terms at this time, see House of Representatives *Hansard*, 20 October 1983, pp. 2031-36 and 17 November 1983, pp. 2581-63

13 Bennett S, "Four-Year Terms...?", p. 8; Business Council of Australia, *Towards a Longer Term for Federal Parliament*, 1987, p. 6.

14 See www.aph.gov.au/library/elect/referend/results.htm and www.aec.gov.au/_content/when/referendums/dates.htm

- 7.23 While there appeared to be significant and widespread community support for an increased House term, the 1988 proposal was combined with other more contentious proposals (including the reduction of Senate terms to four years) without the option for voters to choose 'YES' for only one element of the package.¹⁵
- 7.24 It is therefore arguable that the "NO" vote in this referendum did not reflect the true feelings of the electorate, and so does not preclude future support for the extension of the House of Representatives term.

Length of parliaments since Federation

- 7.25 The primary factor which determines the length of the House of Representatives term is the Governor General's discretion to call elections any time in that three-year period, arguably when it is politically judicious to do so.
- 7.26 The study "Four-Year Terms for the House of Representatives?" contains a comprehensive analysis of the length of House of Representatives terms of 38 completed parliaments between 1901 and 2003. It shows that, as a result of the operation of the Prime Minister's discretion, parliaments have ranged from under one year to over three years, with an average length of 30.7 months, or 2.5 years per parliament.¹⁶
- 7.27 Whilst that research may indicate that parliamentary terms have been shortening over the long term, the experience of elections in the 1990s reveals an average parliament length of 34.5 months,¹⁷ so there is no discernible trend in the time between elections.

Comparison with other systems

- 7.28 A comparison between Federal parliamentary terms reveals some disparity with jurisdictions throughout Australia and other bicameral systems throughout the world. Generally speaking, three-year terms are not the norm, with some jurisdictions adopting either four-year or five-year terms.

15 Bennett S, "Four-Year Terms...?", p. 8.

16 This figure includes the six double dissolution elections; if these elections are removed, the average figure becomes 32.5 months, which is still less than the 3 year maximum. See Bennett S, "Four-Year Terms...?", pp. 9-10.

17 Bennett S, "Four-Year Terms...?", p. 10.

- 7.29 There is also some difference arising from whether the term is a “maximum term” (where an election must be called before the expiration of this term) or a “fixed term” (where the election is fixed on a certain date for the future).
- 7.30 The following sections outline current practice in both Australian States and Territories and overseas.

Australian States and Territories

- 7.31 There has been a recent trend towards four-year terms in State lower houses, with only Queensland and the Commonwealth House of Representatives retaining three-year terms. Responding to recent calls to extend the Queensland parliamentary term to four years, the Queensland Premier, the Hon. Mr Peter Beattie MP, stated that he would prefer that any change to the state's system occur in conjunction with amendments at the Federal level.¹⁸
- 7.32 As illustrated in Table 7.1, below, not all Australian jurisdictions employ fixed parliamentary terms.

Table 7.1 Parliamentary terms: Australian lower house terms

Parliament	Term	Fixed term?	Date of change to 4 years	Mechanism for change
Commonwealth	3 years	Nil	-	(Referendum)
NSW	4 years	4 years	1981; fixed 1995	Referendum
Victoria	4 years	4 years	1984; fixed 2003 ¹⁹	Legislation
Queensland	3 years	Nil	-	(Referendum)
Western Australia	4 years	Nil	1987	Legislation
South Australia	4 years	4 years	1985	Legislation
Tasmania	4 years	Nil	1972	Legislation
ACT	4 years	4 years	2003	Legislation
Northern Territory	4 years	Nil	Always 4 years	(Legislation)

Source: Adapted from Bennett S., “Four-Year Terms for the House of Representatives?”, September 2003, and Sawyer M and Kelly N, ‘Parliamentary Terms’, *Democratic Audit of Australia*, February 2005,²⁰

18 See for example, Odgers R, “Commission in Call for Fixed Terms”, *Courier Mail*, 3 November 2004, p. 9; Ludlow M, “Qld Push for Longer Terms”, *Australian Financial Review*, 22 October 2004, p. 15; Parnell S, “Beattie Urges PM To Back Four-Year Terms”, *Courier Mail*, 22 June 2004, p. 13; Parnell S, “Four-Year Terms Get Backing”, *Courier Mail*, 9 September 2004; “Longer Terms, Better Government”, *Sydney Morning Herald*, 26 August 2004, p. 16.

19 See Skulley M, “Victoria Adopts Four-Year Terms”, *Australian Financial Review*, 19 February 2003, p. 8.

Overseas jurisdictions

- 7.33 A significant majority of democratic jurisdictions throughout the world employ either four-year or five-year terms for the lower houses of their parliaments, with just over half having a parliamentary term of five years.
- 7.34 Table 7.2 summarises term durations for countries which, like Australia, employ a bicameral system for their national government. The United Kingdom's parliamentary system, the model for the Australian Federal electoral system, employs a maximum term of five years.

Table 7.2 Parliamentary terms: International lower house terms (bicameral systems only)

Length of parliamentary term	Number of countries	% of total	Comments
2 years	1	1.4%	USA
3 years	3	4.2%	Australia, Philippines, Mexico
4 years	26	36.6%	
5 years	40	56.4%	a) In India the <i>Lok Sabha</i> can be extended in 1 year increments upon the expiry of the original 5-year term, b) Burundi is currently in a period of transition c) Italy had 52 elections in between 1945 to 1993 (a period of 48 years)
6 years	1	1.4%	Yemen
TOTAL	71	100%	

Source *Inter-Parliamentary Union*²¹

Constitutional requirements for parliamentary terms

- 7.35 As outlined above, the Constitution sets out the requirements for the length of the parliamentary term. The wording of these requirements is very specific: the House of Representatives can continue for no longer than three years from the first meeting of the House. This

20 Bennett S., "Four-Year Terms ...?", p. 5; and Sawyer M, and N Kelly, "Parliamentary Terms", Democratic Audit of Australia, February 2005, <http://democratic.audit.anu.edu.au/SawerKellyParlterms.pdf>

21 IPU, www.ipu.org

means that any reform to existing parliamentary terms will require the words of section 28 of the Constitution to be amended to allow for a four-year term.

- 7.36 Senator Andrew Murray pointed out that the introduction of a fixed three-year term for the House of Representatives may be possible via legislative change, rather than requiring a referendum.²²
- 7.37 Section 7 of the Constitution provides that Senators will be chosen for a term of six years, with the places of senators becoming vacant at the expiration of six years from the beginning of the term of service. The terms of half of the senators expire every three years, so an election for the vacancies must occur within a year prior to the places becoming vacant.²³

Table 7.3 Parliamentary terms: Australian upper house terms

Legislature	Date
Commonwealth Senate	The Senate has fixed six-year terms, and half the Senate is elected every three years (generally simultaneously with the House, but constitutionally there could be two separate elections). The exception is three years for Territory Senators. If there is a double dissolution all the Senate is elected at the same time as the House members.
New South Wales Legislative Council	The NSW Legislative Council has a fixed eight-year term, with half the members being elected at every general election. Elections are held on the fourth Saturday in March every four years.
Queensland	Unicameral
Victoria Legislative Council	The Legislative Assembly and Council now both have fixed four-year terms. Elections are to be held on the last Saturday in November every four years, commencing in 2006.
South Australia Legislative Council	The Legislative Council has a fixed eight-year term, with half of its members being elected at each general election. Elections are to be held on the third Saturday in March every four years, commencing in 2006.
Western Australia Legislative Council	The Legislative Council has a fixed term of four years from the time members take their seats on the 22 May following the date of their election. The election date is not fixed.
Tasmania Legislative Council	Legislative Council members have fixed six-year terms with an election for two or three of the 15 being held on the first Saturday every May, on a six-year periodic cycle.
Australian Capital Territory	Unicameral
Northern Territory	Unicameral

22 Senator A Murray, *Transcript of Evidence*, Friday, 12 August 2005, p. 90.

23 The Constitution, section 13.

- 7.38 Note that sections 43 and 54 of the *Commonwealth Electoral Act 1918* (CEA) require that an election of Senators and members of the House of Representatives for each Territory must be held at the same time as each general election. Senators from the Territories, therefore, serve only a three-year term.
- 7.39 Any attempt to change the Senate term, therefore, would also require constitutional amendment via a referendum.
- 7.40 Finally, the Constitution also provides mechanisms where the Senate twice rejects or fails to pass a bill passed by the House of Representatives within a three-month period. If this occurs, the Governor General may dissolve the Senate and the House of Representatives simultaneously, but not within six months before the next general election is due.²⁴
- 7.41 If a bill is rejected or remains unpassed after such a dissolution, the Governor General may convene a joint sitting of the members of the Senate and the House of Representatives. If an absolute majority of members of both Houses affirm the bill, it is then taken to be duly passed by both Houses of Parliament.²⁵
- 7.42 As discussed below, a number of commentators have suggested amendment to the double dissolution provisions in the Constitution. Such a change would also require a referendum to become effective.

Arguments in favour of a four-year parliamentary term

- 7.43 In the earliest discussions about the length of the term of the House of Representatives, the three-year term was felt to be inadequate considering the large area of the country and some electorates and the large number of important issues confronting the young Parliament.
- 7.44 These concerns have largely evaporated with the passage of time, but one significant argument against the three-year term remains: the three-year period is seen as providing insufficient time between electoral contests.²⁶

24 The Constitution, section 57.

25 The Constitution, section 57.

26 Sawyer M, and N Kelly, *Parliamentary Terms*, p. 2, <http://democratic.audit.anu.edu.au/>

Advantages of longer terms

- 7.45 The Committee reviewed a range of opinions supporting a move to a longer term for the House of Representatives:
- improved policy-making;
 - increased business confidence;
 - reduced cost of elections;
 - improved debate; and
 - voter dislike of frequent elections.

Improved policy-making

- 7.46 Mr Tony Smith MP expressed a common argument throughout the debate in favour of longer parliamentary terms:

Government would gain a greater capacity to implement policies with a focus on the longer-term issues facing the nation over the shorter-term electoral considerations.²⁷

- 7.47 It is thought that a government spends the first twelve months of their term settling in and only starts taking significant policy steps in the second year, before attention focuses on the election campaign in the third year.²⁸
- 7.48 It is for this reason that governments in short-term systems are accused of focusing on making politically expedient decisions during their term, rather than pursuing policy that is in the national interest. A four-year term would potentially allow governments the extra time required to make the difficult policy decisions, without politics being the primary driver.
- 7.49 In the United States, the term of the government (namely the President), accords with international norms. The President is elected for a four-year fixed term with a pre-set election date.
- 7.50 Nevertheless, the re-election of the United States Congress every two years provides a good example of what can happen when a

27 Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005; Harvey M, "Next Election All Too Soon", *Herald Sun*, 16 October 2004, p. 28; Submission No. 66, (Mr M Wilson), p. 1.

28 Business Council of Australia, *Towards a Longer Term for Federal Parliament*, Melbourne, 1987, p. 10; See also Dodson L, "Backbenchers Complicate a Tricky Stretch", *Sydney Morning Herald*, 21 June 2005, p. 6.

parliamentary term is short and fixed. In that system, congressional elections are held in November every two years, so while voters know when an election is pending, the election campaign tends to start early in the second year of the term. Incumbent representatives thus are almost constantly running for re-election, creating the perception that they will consider only what is best for their electoral fortunes, rather than the good of the nation.²⁹ This can create a form of "policy gridlock", where there is little willingness to take policy action that may be in the best interest of the country.

- 7.51 There is, however, a contrary view that the shorter the parliamentary term, the greater the motivation for prompt legislative change. Further, there is nothing to say that the extension of the term by one year will ensure the same government is in power when one of their reforms is implemented. The shift to a longer term, according to this view, should not demonstrably improve the policy making activities of any given government.³⁰
- 7.52 On a related point, Jim Snow (former Member of the House of Representatives) believes that the brevity of the three-year period means that members cannot effectively represent their electorate.³¹ The majority of this time may be taken up with local campaigning, rather than agitating for solutions to long term problems in their local electorate.

Increased business confidence

- 7.53 The private sector has long complained that the short Federal election cycle has a negative impact on long term business planning, and therefore the national economy.³² The evidence commonly used to support this claim is that retail sales tend to drop in the period leading up to an election as people become more cautious about their spending.
- 7.54 A longer period between Federal Elections would provide greater certainty for the business community when making investment

29 See Aldrich J A, "Congressional Elections", US Department of State's Bureau of International Information Programs, <http://usinfo.state.gov/products/pubs/election04/congress.htm>

30 Bennett S, "Four-Year Terms...?", p. 16.

31 Snow J, House of Representatives, *Debates*, 17 November 1983, p. 2851.

32 Bennett S, "Four-Year Terms...?", p. 12; Hudson, P, "Beazley Opens Door to Four-Year Terms", *The Age*, 17 April 2005.

decisions.³³ Further, Gary Banks, the Productivity Commissioner, supports the extension of the Federal parliamentary term to four years, as he feels that the current three-year electoral cycle is the “major obstacle to reform with long-term pay-offs”.³⁴

- 7.55 Some claim, however, that this criticism from industry may be motivated by a disinclination to lobby the political party in power.³⁵

Reduced cost of elections

- 7.56 Perhaps the most tangible benefit identified about the introduction of a longer parliamentary term is the reduction of costs associated with holding less frequent elections. Mr Michael Wilson stated:³⁶

The longer the period between elections, the greater the saving for the taxpayers forced to foot the election bill.³⁷

- 7.57 The cost of the 2004 Federal Election was approximately \$117 million (Table 1.10). Averaged over the current expected three-year term this equates to \$39 million. Were the term of the House of Representatives to be extended to four years, the per annum cost would drop to approximately \$29 million, effectively drop by up to 25 per cent.
- 7.58 Note, however, that for this benefit to be realised, the election cycle for the Senate must also fit into an expanded cycle (for example, by having four-or eight-year terms). This issue is discussed in further detail below.

Improved debate

- 7.59 The Australian Constitutional Convention in 1982 raised one, perhaps more tenuous, benefit of a longer period between elections:³⁸ greater time between elections could allow a greater chance for a genuinely cross-party discussion of policy issues without the spectre of the election hanging over discussions. This, arguably, would raise the standard of political debate in this country.

33 Smith T, “It’s Time We Moved to Four-Year Parliamentary Terms”, *The Age*, 1 May 2005.

34 Hudson P, “Liberal Plan for Four-Year Terms”, *Sunday Age*, 27 March 2005, p. 7; Murphy K, “Three-Year Terms An ‘Obstacle to Reform’”, *Australian*, 8 September 2004, p. 8.

35 Brunton R, “Longer Terms Denigrates Voters”, *Courier-Mail*, 26 February 2000.

36 Submission No. 66, (Mr M Wilson), p. 1.

37 Bennett S, “Four-Year Terms...?”, p. 12.

38 Australian Constitutional Convention 1982, Standing Committee D, *Fourth Report to Executive Committee*, Vol. 1, 27 August 1982, p. 60.

Voter dislike of frequent elections

- 7.60 A small number of commentators believe that Australians show a marked dislike for frequent elections, perhaps linked to distaste for the highly adversarial nature of Australian party politics.³⁹
- 7.61 There is a view in the general community that once a government has been elected, it should focus on the business of governing the country, rather than being concerned by an impending election. This might be alleviated by fewer elections under four-year terms, where the government could focus on making mid and long-term policy decisions rather than simply focusing on what may be politically expedient.
- 7.62 Nevertheless, a number of arguments against changing the existing three-year term were put to the Committee.⁴⁰ The most commonly cited reason was that any attempt to extend the life of a Parliament offends the principles of democracy.
- 7.63 The historian Geoffrey Blainey argued that lengthening the parliamentary term would reduce the right of the Australian electorate to dismiss an incompetent or underperforming government at the earliest possible opportunity.⁴¹

The Committee's view

- 7.64 As Table 7.2 showed, more countries with bicameral systems have five-year parliamentary terms than any other length of term. As a result, some have suggested that the Commonwealth consider extending the federal parliamentary term to five years. The introduction of a five-year term could have significant ramifications for the operation of the Senate, which is discussed in further detail below.
- 7.65 Independent of the implications for the Senate, there were, however, pragmatic reasons for pursuing a four-year term.

Advantages of a four-year term

- 7.66 When examining the option of a four year period two factors assume importance:

39 Bennett S, "Four-Year Terms...?", pp. 12-13.

40 Bennett S, "Four-Year Terms...?", pp. 15-16.

41 Blainey G, *Australian*, 28 May 1988, cited in Bennett S, "Four-Year Terms...?", pp. 15-16.

- electoral consistency across jurisdiction; and
- voter acceptance.

Electoral consistency across jurisdictions

7.67 As shown in Table 7.1 above, all Australian lower houses, apart from the Commonwealth House of Representatives and the Queensland Legislative Assembly, have a term of four years. Were the term of the House of Representatives to change to four years, it would be consistent with other election cycles throughout the country.

Voter acceptance

7.68 It has been argued that the shift from three-year to five-year terms may be too great for the electorate to accept, even if they would potentially provide greater stability and efficiency for government.⁴² This view is also supported on the grounds that a five-year term could lead to a ten-year Senate term (on the presumption that the Senate term would be twice the length of the House term), which could be unpalatable to the electorate.⁴³

The Committee's view

7.69 The Committee concluded that a four-year term was appropriate as a compromise between the overly short three-year term and the dramatic change associated with a five-year term. This is particularly important in light of the fact that voters are comfortable with four-year terms in the States, so a change to four-year terms in the Federal sphere would not represent a significant change for voters.

A fixed term

7.70 Some of the identified benefits of a fixed term Parliament include: the protection of the Government through guaranteed tenure; assuring the requisite amount of time for effective governance and in-depth analysis of complex policy issues; more systematic servicing of the electorate by local members; a reduction in the number of elections

42 Thompson E, "Tenure of Parliament", in *Fixed-Term Parliaments*, Australasian Study of Parliament Group, Third Annual Workshop, 29-30 August 1981, Canberra, p. 104.

43 Ms J Stratton, Policy Officer, PIAC, *Evidence*, Friday, 12 August 2005, p. 90.

and ancillary costs (both monetary and administrative); and more effective planning of the parliamentary timetable.⁴⁴

- 7.71 Further, members of the business community are in favour of fixed term elections as they provide a more certain environment within which to make long term business decisions.⁴⁵ The introduction of fixed terms would mean that business were not in 'an electoral cycle of uncertainty every two or so years'.⁴⁶
- 7.72 There are, however, a number of issues associated with fixed terms that arguably preclude its successful operation in the Australian Federal system.
- 7.73 Most importantly, fixed terms are often supported because it is argued that they minimise the opportunity for political manoeuvring.
- 7.74 A shift to a fully fixed term Federal Parliament in Australia would change the character of the Parliament.
- 7.75 It is also argued that fixed term elections could help reduce the cost of campaigning, because there would be a clearly defined period for campaigning.⁴⁷ here are suggestions, however, that flexible election dates result in shorter and cheaper election campaigns.⁴⁸ For example, the final year of the fixed Presidential term in the United States system appears to be characterised by significant formal campaigning for a long period of time. This is in contrast to the Australian experience, where formal election campaigning does not commence until the election is called, allowing only six weeks of intensive campaigning.

The Committee's view

- 7.76 Consideration of the foregoing led the Committee to conclude that there are a large number of possible parliamentary term models that

44 Adapted from Chris Sumner quoted in Parliament of New South Wales, The Joint Select Committee on Fixed Term Parliaments, *Report on the Constitution (Fixed Term Parliaments) Special Provisions Bill 1991*, December 1991, pp. 8–9 and Lindell G, "Fixed Term Parliaments: the Proposed Demise of the Early Federal Election", *Australian Quarterly*, Vol. 53, No. 1, Autumn 1981, pp. 16–17; Sawyer M and N Kelly, *Parliamentary Terms*, Democratic Audit of Australia, <http://democratic.audit.anu.edu.au/>, p. 2; Submission No. 144, (PIAC), p. 11.

45 Business Council of Australia, *Towards a Longer Term for Federal Parliament*, 1987.

46 Hudson P, "Beazley Opens Door to Four-Year Terms", *The Age*, 17 April 2005.

47 Whitlam G, *Sydney Morning Herald*, 24 January 2000.

48 Butler D, "Elections", *Blackwell Encyclopaedia of Political Science*, 1991, p. 190.

may potentially work within the Australian system. Yet, whilst there is some support for fixed-term parliaments, it is not bi-partisan.

- 7.77 The Committee therefore decided to consider in detail only those options that it sees as feasible in the current climate and capable of achieving broad community support.⁴⁹ In doing this, the Committee sought options which were simple to understand and would not require a major change to implement.

Potential House terms

- 7.78 The options the Committee believes likely to achieve widespread support are:

- **House Option 1:** increase the maximum term for the House of Representatives to four years, retaining the existing power for the Prime Minister to call an election at any point before the expiration of that period; and
- **House Option 2:** increase the maximum term for the House to four years, but introduce a fixed three-year period where an election could not be called until the third anniversary of the first sitting date of the House of Representatives had passed, except where there is a constitutional crisis.⁵⁰ This hybrid option would retain flexibility for the Prime Minister to call an election at any time in the fourth year, consistent with Westminster conventions, while also introducing three years of certainty to the parliamentary term.⁵¹

49 Others options include: **Three or four-year fixed term:** an election takes place on or about the same date every three years. An election could only be held earlier than this date under very specific circumstances, such as a successful motion of no confidence or a double dissolution. **Three, four or five-year maximum term:** an election can be called at any time prior to the expiration of the maximum term. **Four-year maximum term, with a fixed three-year component:** this option need not be limited to the “3 plus 1” configuration outlined above; any combination of fixed and maximum terms may be appropriate.

50 That is, an early dissolution due to a House of Representatives withdrawing its confidence from a government and failing, within a specified period, to express its confidence in an alternative government.

51 This model is supported by the Federal Treasurer, Peter Costello. See Hudson P, “Costello Backs Four-Year Term Push”, *Sun Herald*, 3 April 2005; see also Senator A Murray, *Transcript of Evidence*, Friday, 12 August 2005, p. 90; Professor C Hughes, private capacity, *Evidence*, Wednesday, 6 July 2005, pp. 14–15; Submission No. 89, (Mr E Jones), p. 12.

House Option 1

7.79 The advantage of an extension of the current three-year maximum term to four years is that the election process would be largely similar to existing processes. The public would know that discussions about the Federal Election would generally start at some point in the fourth year of the term, so even though more time would pass between elections, the lead up to the calling of an election would remain the same. The Prime Minister would be able to call on the electorate at any time within this four-year period, retaining a key element of the current system.

House Option 2

- 7.80 This model has the same benefits as outlined for House Option 1, but would, in fact, provide a higher level of certainty around when an election could take place. Again, the Prime Minister would retain the power to call an election before the expiration of the four-year period, but there would also be increased stability of government as an election would not be possible in the first three years of the term. This limits the uncertainties attached to an indefinite campaigning period to only the final of the four years.⁵²
- 7.81 This option would provide more certainty than the current maximum term without the restrictiveness of the fixed term option.

Constitutional ramifications

- 7.82 The two options outlined above would require a referendum to amend section 28 of the Constitution to extend the maximum term of the House of Representatives to four years. It is worth noting that the complexity and history of the referendum process could prevent this reform coming to fruition. In addition to the Government securing the support of the opposition,⁵³ a majority of states must vote 'YES' to any proposal to change the parliamentary term.
- 7.83 Confusion about the introduction of such options can be overcome if the proposal is simple and clearly drafted. Further, concerns that

52 Bennett S, "Four-Year Terms...?", p. 21.

53 Dodson L, "Backbenchers Complicate a Tricky Stretch", *Sydney Morning Herald*, 21 June 2005, p. 6; Koutsoukis J, "Coalition Poised to Change the Way Australians Vote - For Its Own Good", *The Age*, 11 June 2005, p. 5.

these options may be self-serving for an incumbent government will be avoided if the implementation of the proposal were delayed.⁵⁴

- 7.84 One option in the current political climate, therefore, would be to undertake any change in two distinct stages:
- hold the referendum to give effect to the constitutional change at the next Federal Election for the 42nd Parliament (which is due by January 2008); but
 - delay the introduction of the longer parliamentary term until the commencement of the 43rd Parliament in 2010.⁵⁵

Impact on the operation of Senate terms

- 7.85 The term for Senators is a fixed term of six years, and runs from 1 July to 30 June six years later. The Governor General, however, may dissolve the Senate in the circumstances outlined in section 57 of the Constitution.
- 7.86 Working on the presumption that either of the options for the House of Representatives term above is implemented, and that change to the Senate is necessary as a result to keep election timetables in step and to avoid unnecessary confusion amongst the electorate, there are a number of options for the length of the term of the Senate.⁵⁶
- 7.87 Note that the term of Senators from the Territories is only three years long, as mentioned above.⁵⁷ This means that any proposal to change the length of the Senate term should take into account the length of this distinct Senate term and whether any amendment to the CEA is required.

54 Bennett S, "Four-Year Terms...?", p. 14; Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005.

55 See Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005.

56 Bennett S, "Four-Year Terms...?", p. 22. As an aside, it is notable that the reasons provided for the early dissolution of the House in 1917, 1955, 1977 and 1984 were to meet a perceived need to synchronise the election of the House of Representatives with the half Senate election due at that time. See Harris I C, *House of Representatives Practice 5th Edition*, 2005, p. 10.

57 CEA, section 43.

Potential Senate terms

- 7.88 As with the length and character of the term for the House of Representatives, a number of possible models have been suggested for application to the Senate. These range in length from four to eight years and can be either fixed or maximum terms. Some of these models are discussed below.
- 7.89 Some have argued that a six-year maximum term, regardless of the length of the House of Representatives term, would allow the Senate to stand alone and have a higher public profile:⁵⁸ Madden stated:
- [r]emoving the Senate electoral race from the partisan prime ministerial election process would help to focus more attention on individual Senate candidates rather than political parties. This would in turn help to increase the independence and prestige of the Senate and ultimately, its effectiveness.⁵⁹
- 7.90 Others suggest a maximum four-year term, where the Senate and the House of Representatives would have identical terms, and all seats in the Senate would be vacated at the same time as the House. This model would have the advantage of allowing the composition of the Senate to more accurately reflect the views of the electorate.⁶⁰
- 7.91 The six-year model would result in a higher number of elections, as simultaneity would be rare if the House had four-year terms. Further, the existing difficulty associated with a delay between an election and the commencement of the Senate term would be exacerbated – where the House of Representatives would be placed in the unenviable position of having to wait until an election subsequent to the first sitting of a new Parliament to start enacting their mandate.⁶¹
- 7.92 The four-year model is criticised because it would result in the demise of half-Senate elections, which have always been a feature of the Australian parliamentary system. The benefit of the current arrangement, where only half of the Senate seats are vacated at each

58 Reith P, *Proposal for Four-Year Terms for the House of Representatives*, [1989?], pp. 3-4.

59 Madden D, "Fixed Four-Year Electoral Terms Will Improve Our System of Government", *Online Opinion*, 20 August 2004, www.onlineopinion.com.au

60 Cole K, "Senate Terms", Law and Government Group, Parliamentary Research Service, 8 November 1990; Fraser M, "Four-Year Terms Would Demand Change to the Senate", *The Age*, 17 April 2002; Submission No. 66, (Mr M Wilson), p. 1; Submission No 136, (Australian Labor Party, Mr T Gartrell), p. 12.

61 Cole K, "Senate Terms", Law and Government Group, Parliamentary Research Service, 8 November 1990, p. 2.

election for the House of Representatives, is that the composition of the Senate does not necessarily reflect that of the House, arguably allowing more robust review of the actions of the government.

- 7.93 Under a four-year model, if the current half-Senate election system were retained, the Australian public would be required to vote at a Federal Election every two years.⁶² This would cause a dramatic increase in the number of elections held, when one of the benefits, however, of shifting to a four-year term for the House of Representatives is that there would be fewer elections, not more. In order to realise this benefit it is likely, therefore, that simultaneous elections would be held, meaning the end of the half-Senate election and its associated benefits.
- 7.94 If the House term is extended to a four-year maximum term via either option outlined above, there are, therefore, only two plausible options for amending the Senate term, regardless of whether there is a fixed component. Both of these options would require a referendum to amend the Constitution to take effect. These are:
- **Senate Option 1:** increase the fixed term of the Senate to eight years, being from 1 July to 30 June eight years later;
 - **Senate Option 2:** increase the term for the Senate so it is the length of two House terms, with half-Senate elections simultaneous with House of Representatives elections. This option would remove the fixed-term component, so the precise length of this term would not be known until an election was called.

Senate Option 1

- 7.95 This option would increase the existing six-year maximum term to an eight-year fixed term.⁶³ The benefit of this system is that it essentially maintains the existing arrangements with simply an extension of time, as the Senate has traditionally been a fixed-term body. This may make this option more palatable to commentators concerned about the powers of the Senate.⁶⁴

62 Reith P, *Proposal for Four-Year Terms for the House of Representatives*, [1989?], p. 3.

63 This option was successfully introduced in New South Wales following a referendum in 1995, and the South Australian Legislative Council also operate on eight-year terms.

64 Bennett S, "Four-Year Terms...?", pp. 22-23; Grattan, M, "Eight-Year Terms? The Senate is Already Full of Unrepresentative Time Servers, Scoffs Keating", *Sydney Morning Herald*, 11 April 2002.

- 7.96 Voter opposition may act as an obstacle to the introduction of eight-year terms for Senators.⁶⁵ a move to extend the Senate term could be seen as self-serving by the general public.⁶⁶ Further, an eight-year term can raise issues of the currency of the mandate issued by the electorate to the Senate.⁶⁷ However, even greater criticism is likely to be raised at what would effectively be a double dissolution every four years.
- 7.97 Any discussion of the longer House of Representatives terms raises the important question of how such terms would be coordinated with Senate elections. Simultaneous elections are not a Constitutional requirement, but they are cost effective and administratively more efficient. Only six of the 40 House of Representatives elections have been held alone, and the last was over 30 years ago in 1972. The Australian experience has therefore been that the three-year House of Representatives/six-year Senate model makes it relatively easy to hold elections for both houses on the same day.
- 7.98 If the House of Representatives terms became four years with no alteration to the Senate terms it would be necessary, as a matter of practicality, to extend the duration of Senate terms to maintain the synchronicity of half-Senate and House of Representative elections.
- 7.99 In addition, Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre stated:
- to the extent that people are aware that government is created in the lower house – the House of Representatives – and that the Senate’s role is, while important, limited, what is more important is to create an effective mechanism to enable governments to govern for longer and keep us out of the electoral cycle for longer. It will not necessarily be seen as such a disastrous outcome to have people for eight years in the Senate. While...eight years will ring alarm bells for some people, a significant percentage of the population, through awareness that in effect government is the lower house, will

65 Senator A Murray, *Transcript of Evidence*, Friday, 12 August 2005, pp. 90, 92.

66 Cole K, "Senate Terms", Law and Government Group, Parliamentary Research Service, Parliamentary Library, Parliament of Australia, 8 November 1990, p. 2.

67 *The Age*, 8 March 1983 and Crawford, J, "Comment on Professor Cooray's Paper", in Crawford J and S Odgers (ed.), *Change the Constitution?*, University of Sydney, Committee for Post-Graduate Studies in the Department of Law, 1988, p. 99.

be more concerned to give that stability to government than be concerned about the way the Senate operates.⁶⁸

- 7.100 It is also questionable whether the major parties would support a situation where a Senator from a minor party would be able to hold a seat in the Senate for such a long time, even though they had only received a very small share of the vote: this situation arose after the 1999 New South Wales election.⁶⁹ The electorate, too, might have similar qualms.
- 7.101 A further disadvantage of this option is that the current difficulties associated with a delay between the election and the commencement of the Senate term would continue. In the 2004 Federal Election, for example, new Senators were elected on 9 October 2004, but had to wait until 1 July 2005 to take their seats to give the Government a majority in the Senate. This meant that the Government could not act to implement its legislative program for eight months after they received the electoral mandate to do so.

Senate Option 2

- 7.102 This option would extend the term of the Senate to equal the length of two terms of the House of Representatives. In practice, this would result in the Senate term being somewhere between six and eight years long. Elections would be simultaneous, meaning that a half-Senate election would be held at the same time as every House of Representatives election. The Senate would, therefore, retain its current continuity through the life of two Parliaments.
- 7.103 If the first three-years of the House term were fixed, neither the Prime Minister nor the Senate could force an election in this period, unless the Parliament became completely unworkable. This option would also effectively retain the status quo for the Senate, as senators would serve at least a six-year term, and perhaps more. It would also reduce the number of elections held.⁷⁰
- 7.104 The option would have the benefit of allowing senators to take their seats in the Senate at the same time as the first sitting of the House of Representatives. This would mean that there would be no delay that

68 Ms R Banks, CEO, PIAC, *Evidence*, Friday, 12 August 2005, p. 92.

69 Bennett S, "Four-Year Terms...?", pp. 22–23; see also Hull C, "Few Flaws in Calls for Election Reform", *Canberra Times*, 2 April 2005, p. 9.

70 Bennett S, "Four-Year Terms...?", p. 24; Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005.

could impede the Government's ability to implement its legislative mandate. This model, therefore, arguably has a better capacity to reflect the will of the electorate.

- 7.105 One problem with this option is the uncertainty about the constitutional position of the Senate which would result. At present, with the exception of double dissolution elections, the Senate is a "continuous chamber"; that is, unlike the House of Representatives, it never dissolves. Under the current system there is no prorogation before a half-Senate election. Senators who retire or who are defeated at the half-Senate election continue to serve until the following 30 June, and the functions of the Senate (including its committee functions)⁷¹ continue unaffected.
- 7.106 Arguably, the expiry of the retiring Senators' terms at the same time as the expiry of the terms of the members of the House of Representatives would alter its constitutional character so that it would cease to be a continuous chamber. The counter-argument is that, by reason of the continuity of the non-expiring Senators, its character as a continuous chamber is unaffected.
- 7.107 The Committee does not have a clear view of the legal position, but is concerned about the potential problem which arises. One possible solution would be to deem the term of retiring Senators to continue until the swearing-in of the new members of the House of Representatives. If that course were adopted, the "old" Senate would have a continuous existence beyond the Election, but only for a brief period.

The Committee's views

- 7.108 The Committee welcomed the existing cross-party contemplation of proposed alterations to the parliamentary term and considered that this was a sound basis for further public debate about the introduction of a four-year maximum term for the House of Representatives and extended term for the Senate.
- 7.109 The House and Senate Options outlined earlier in this chapter are those that appear to have widespread support in both the general community and in political circles. These options would result in the minimal amount of systemic change that could potentially confuse the

71 Although by convention the Senate Committees are inactive during the weeks of the election campaign.

electorate, but still give effect to important reforms to the parliamentary term system.

- 7.110 Recent public debate highlights the initial cross-party nature of support for these proposals. The Prime Minister, the Hon. John Howard MP, has supported calls for a referendum to extend the House of Representatives term to four years.⁷² The Leader of the Opposition, the Hon. Kim Beazley MP, stated that while he is still of the view that a fixed term would be better, he was prepared to consider supporting an extension of the House term to four years. The Leader of the Opposition stated:

I'm not going to stand up a sensible reform because it's not perfect...if they are putting [flexible four year terms] forward between now and the next election, I wouldn't rule out supporting it.⁷³

- 7.111 Others in Federal Parliament have, however, expressed support for fixed term elections.⁷⁴
- 7.112 The Committee is of the view that this is an opportune time to raise the issue of Federal parliamentary terms to allow sufficient time over the next two years for broad discussion to inform government consideration of this issue before the next scheduled election. This would also allow for sufficient time for the necessary referenda legislation to pass through Parliament before the next election.
- 7.113 The Committee believes that for any change to federal parliamentary terms to be implemented, there must be cooperation and a broad willingness to change from the major political parties. The Committee considers it is unreasonable for the Government to proceed with reforming parliamentary terms without clear support from the Opposition.
- 7.114 If multi-party support is obtained for potential models for both the House and the Senate, the Government could hold a referendum at the next Federal Election, with a view to implementing the new parliamentary terms following the Federal Election due in 2010. The

72 Bennett E, and J Breusch, "Howard Backs 'Four-Year Term' Call", *Australian Financial Review*, 27 June 2005, p. 5.

73 Hudson P, "Beazley Opens Door to Four-Year Term", *The Age*, 17 April 2005.

74 Refer Brown B, "Fixed Three-Year Terms Get Thumbs Down", *Media Release*, 10 August 2004; Senator Andrew Murray is of the view that the public will be more willing to accept a three-year fixed term than a longer term. See Senator A Murray, *Transcript of Evidence*, Friday, 12 August 2005, p. 92.

Parliament elected at the 2007 election, therefore, would continue under the current system.⁷⁵

Recommendation 32

- 7.115 **The Committee recommends that there be four-year terms for the House of Representatives.**

Recommendation 33

- 7.116 **The Committee recommends that the Government promote public discussion and advocacy for the introduction of four-year terms during the remainder of the current Federal Parliament.**

Recommendation 34

- 7.117 **The Committee recommends that, in the course of such public discussion, consideration be given to the application of consequential changes to the length of the Senate term, and in particular, Senate Options 1 and 2, as set out in this chapter.**

Recommendation 35

- 7.118 **The Committee recommends that proposals be put to the Australian public via a referendum at the time of the next Federal Election. If these proposals are successful, it is intended that they come into effect at the commencement of the parliamentary term following the subsequent Federal Election.**

75 Smith T, "It's Time We Moved to Four-Year Parliamentary Terms", *The Age*, 1 May 2005.

Voluntary and compulsory voting

- 8.1 In earlier chapters the Committee has drawn out the obligations imposed on voters prior to and at election day. In this chapter the Committee examines the arguments advanced for and against both compulsory and non-compulsory voting.
- 8.2 The CEA states, under section 245 (1), that:
- it shall be the duty of every elector to vote at each election.
- 8.3 Because of the secrecy of the ballot, it is not possible to determine whether a person has filled out their ballot paper prior to placing it in the ballot box. It is therefore not possible to determine whether all electors have met their legislated duty to vote. It is, however, possible to determine that a voter has attended a polling booth (or applied for a declaration vote), and been issued with a ballot paper.
- 8.4 These arrangements are commonly described as being a compulsory vote. The Committee, like most voters, uses the term “compulsory voting” in that sense.¹

¹ Submission Nos 33 & 66. See also AEC Fact Sheet *Compulsory Voting*, www.aec.gov.au/_content/what/publications/factsheets.htm

Compulsory voting in Australia

- 8.5 Compulsory voting was advocated by Alfred Deakin at the time of Federation although voting was voluntary until after the First World War. Enrolment was compulsory from 1911.²
- 8.6 In 1915 consideration of compulsory voting arose in the Senate in connection with a referendum intended for later that year but never held.³ That year, too, compulsory voting for state elections was introduced in Queensland.⁴
- 8.7 The significant impetus for compulsory voting came from a sharp decline in voluntary voter turnout from more than 71% at the previous 1919 election to less than 60% at the 1922 elections.⁵ As Table 8.1 shows, this fall-off in turnout was an abrupt reversal of the steady trend to increasing voter participation which began with the election of 1903.
- 8.8 On 17 July 1924 a Private Member's Bill, based on the 1915 Senate proposals, was debated in the Senate. Five Senators spoke on the Bill and it was passed that day. In the House of Representatives only three members spoke. Significantly, for such a piece of far-reaching legislation, Mr Tony Smith MP, noted that:
- there were only a few speakers on each side and it went through on the voices.⁶
- 8.9 Thus did Australia acquire a compulsory vote for Federal Elections.
- 8.10 Subsequently Victoria established compulsory voting (in 1926), followed by NSW and Tasmania (1928); WA (1936); and SA (1942).⁷
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2 AEC Fact Sheet: *Compulsory Voting*, www.aec.gov.au/_content/what/publications/factsheets.htm

3 Uhr J, "Making Sense of the Referendum", *Papers on Parliament No. 35*, June 2000, www.aph.gov.au/senate/pubs/pops/pop35/c06.htm

4 AEC Fact Sheet, *Compulsory Voting*, www.aec.gov.au/_content/what/publications/factsheets.htm

5 Submission No. 58, (Ms L Hill & Mr J Louth), p. 1. Overall figures hide wide differences—in the 1903 election, for example, the lowest House of Representatives turnout was 28% in WA and 30% in the Senate in the same state. *The Age*, 1 March 2004, quoted in www.echoed.com.au/chronicle/1904/mar-apr/national.htm

6 *Hansard*, Senate 17 July 1924, pp. 2179-2188; *Hansard*, House of Representatives, 24 July 1924, pp. 2446-2452; Mr T Smith MP, *Hansard*, House of Representatives, 10 February 2005, p. 125.

7 Elections ACT Factsheet, *Compulsory Voting*, www.elections.act.gov.au/adobe/FactSheets/FactSheetCompulsoryVoting.pdf

Table 8.1 Voter turnout (%) Federal Elections 1901–1934

Election	Senate	House of Representatives
1901	54.34	56.71
1903	46.86	50.27
1906	50.21	51.48
1910	62.16	62.80
1913	73.66	73.49
1914	72.64	73.53
1917	77.69	78.30
1919	71.33	71.59
1922	57.95	59.38
1925	91.31	91.38
1928	93.61	93.62
1929	-	94.85
1931	95.02	95.02
1934	95.03	95.16

Source AEC, *Electoral Pocketbook*, 2005, p. 66.

- 8.11 As Table 8.1 indicates, following the introduction of compulsory voting, voter turnout increased well beyond the previous maximum of 78.30%. The Senate voter turnout of 91.31% in 1925 proved to be the minimum in the history of compulsory voting. Since then, the median turnout has been 95.1%, with a maximum of 96.31% (in the 1943 Senate election). The turnout for the 2004 Federal Election was 94.82% for the Senate and 94.32% for the House of Representatives.⁸
- 8.12 However, it is also noteworthy that, prior to the introduction of compulsory voting, the voter turnout rose in every election following that of 1903 (50.27%) to 78.30% in 1917.
- 8.13 One of the reasons would undeniably have been the introduction of compulsory enrolment in 1911. Between 1911 and 1924 Australia had a combination of compulsory enrolment and voluntary voting, as occurs currently in New Zealand. Another factor affecting turnout in the elections after 1913 was the controversial nature of the events of the day, such as the conscription referenda.

8 AEC, *Electoral Pocketbook*, 2005, p. 66.

Considering compulsory voting

- 8.14 The Committee's post-election reviews of the preceding elections are generally considered to be focussed on examining and responding to problems. They therefore attract few arguments for accepted aspects of the status quo. Consequently, in those reviews, the Committee heard from comparatively few proponents of the compulsory voting regime.
- 8.15 Conversely, those wishing to challenge the status quo take the latter part of the Committee's term of reference (matters relating thereto) as an opportunity to place voluntary voting on the Committee's agenda. The Committee therefore heard arguments against compulsory voting in its review of the 2004 Federal Election, as it had in its previous reviews of the Federal Elections of 1993, 1996, 1998 and 2001.⁹
- 8.16 The Committee notes that the Prime Minister has said that the abolition of compulsory voting will not occur before the next election.¹⁰
- 8.17 A number of submissions commented on compulsory voting. Mr Don Willis stated:
- Australians are used to, and have widely accepted, compulsory voting and they would rightly be apprehensive of the motives of any government that sought to abolish it without first seeking their endorsement for any such proposal....any move to abolish compulsory voting...would need to be underpinned by a high degree of popular acceptance and support. Consequently, if the Government intended to move in these respects it would be essential for it to obtain the explicit approval of the Australian electorate.¹¹
- 8.18 The Public Interest Advocacy Centre stated:
- for any Government to move to alter this fundamental character of elections in Australia without lengthy discussions and consultation with the Australian people would be to risk acting in a way that could be seen as being
-

9 See the Committee's reports on those elections.

10 "Coalition Set to Change the Way We Vote" *Age*, 11 June 2005; also *Sunday Sunrise* interview with Prime Minister John Howard, 21 November 2004: "I want to make it clear there will be No. attempt made by this Government in this term to change that system...But I speak from term to term".
http://seven.com.au/sundaysunrise/politics_041121_howard

11 Submission No. 157, (Mr D Willis), p. 2.

essentially undemocratic. It is not enough even for a party to seek control of the Parliament on the basis of a platform that includes the introduction of 'voluntary voting'. Public support for a general raft of policies proposed by a political party ought not to be seen as a clear endorsement of a specific intent to undertake radical electoral reform... such changes must be preceded by widespread community debate on the single issue of electoral reform. This would be akin to a proposal being submitted to referendum.¹²

The Committee's view

- 8.19 With compulsory voting on the political agenda, the Committee decided to take the opportunity in this report to stimulate deeper consideration and debate on issues associated with voluntary and compulsory voting.
- 8.20 In doing this, the Committee believes that the focus of the debate should be on:
- which arrangement delivers the best reflection of the electorate's wishes; and
 - the implications of each arrangement for the legitimacy of the resulting government's mandate.

Reflecting the will of the electorate

- 8.21 The supporters of the current arrangements and proponents of voluntary voting all agree that the outcome of the poll should be a genuine reflection of the views of the electorate.¹³
- 8.22 But they differ significantly in identifying how that view should be collected: compulsorily or voluntarily.

A voluntary or compulsory mirror?

- 8.23 Proponents of the current arrangements argue that all qualified electors must participate in the poll. The Festival of Light stated:

12 Submission No. 144, (Public Interest Advocacy Centre), p. 6.

13 Submission No. 119, (ACT Government).

the practical reality is that compulsory voting produces a better indication of the opinion of the people than voluntary voting.¹⁴

8.24 Proponents of voluntary voting argue that compulsory voting fails to achieve this. Mr Michael Doyle stated:

with compulsory voting, we do not know how many people give consideration to their votes.¹⁵

8.25 Senator the Hon. Nicholas Minchin, Minister for Finance and Administration, with overall responsibility for electoral matters, is of the view that "voluntary voting is an important barometer of the health of a political system". He would like to see the Government seek a mandate to change the compulsory voting laws at the next election.¹⁶

8.26 There is a variety of evidence which the respective proponents adduce in support of their interpretation. The main arguments centre on:

- engaging the electorate; and
- considering the full electorate.

Engaging the electorate

8.27 The compulsory voting system *per se* is said to encourage voters to engage in the political process. Mr John Kilcullen stated:

this obligation makes more people listen seriously to the election campaign and follow politics between elections, since they recognize that they have a civic duty to try to decide. The existence of the obligation seems to move many people to seek information. It helps toward a better informed electorate.¹⁷

8.28 Even if the obligation did more than "seem" to move people to seek information there would, according to Mr Doyle, be a component of the electorate which decides by:

14 Submission No. 125 (Festival of Light Australia), p. 5.

15 Mr M Doyle, *Evidence*, Monday, 25 July 2005, p. 72.

16 "Minchin Seeks End of Compulsory Voting", *ABC News Online*, 19 September 2005, www.abc.net.au/news/newsitems/200509/s1463769.htm

17 Submission No. 56, (Mr J Kilcullen), p. 7.

making a toss-of-the-coin decision...or one based on a how-to-vote card pushed into their hand.¹⁸

The Committee's view

- 8.29 The cross-party membership of the Committee acknowledges that “donkey voting”, which is particularly apparent under compulsory voting, reveals that the alleged intrinsic engagement of electors by compulsory voting is incomplete.
- 8.30 However, the Committee also noted that in the 2005 New Zealand election eight out of ten voters exercised their democratic right to vote, one of the highest rates of voluntary voting in the world. This, the Committee remarked, was under a voluntary voting/compulsory enrolment electoral regime.

Considering the full electorate

- 8.31 Supporters of voluntary voting and those urging compulsory voting both accuse their opponents of not taking into account the needs of the whole electorate when campaigning for their votes.
- 8.32 Compulsory voting is claimed to encourage policies which collectively address the full spectrum of elector values, because all voters have to be wooed . Mr Martin Mulvihill, in support of compulsory voting, stated that it:
- makes sure minority migrant groups are enrolled and participate in the political process.¹⁹
- 8.33 This is contrasted with what could happen under voluntary voting when it might only be necessary to target those most likely to vote or, alternatively, according to Ms Beverley Stubbs:
- [to] use covert practices to discourage certain people from voting whilst facilitate voting by electors who favour their policies.²⁰

The Committee's view

- 8.34 Under both voluntary and compulsory systems of voting the imperative is for parties to maximise their votes. It is not in their

18 *Perspective*, ABC, 13 June 2003, Guest: Michael Doyle, member of the Liberal Party, www.abc.net.au/rn/talks/perspective/stories/s879162.htm

19 Submission No. 167, (Mr M Mulvihill).

20 Submission No. 33, (Ms B Stubbs).

interest to neglect groups so it could be argued that the voluntary system would lead to more intensive campaigning.

8.35 Overall, the Committee considered that the two sides of the debate were succinctly put in two quotations. One, an article in the *Sydney Morning Herald* commented:

Compulsory voting...the bigger the vote, the more representative the government, the healthier the democracy.²¹

8.36 A second quotation was from Mr Doyle who stated that, under a:

voluntary system... all of those who voted, did so because they wanted to vote and had given consideration to their choices. 'Quality is always better than quantity'.²²

8.37 The Committee considered that the question about which form of voting produced a more reliable indication of the electorate's will should be subject to a wider debate.

8.38 It also noted that an important consideration in that debate was the question of the legitimacy of the government which emerges from the compulsory or the voluntary ballot.

Legitimacy

8.39 The AEC advises that the current electoral regime aims to ensure that:

there are as nearly as practicable the same number of electors in each electoral division for a given State or Territory.²³

8.40 Compulsory voting attempts to ensure that all qualified citizens do in fact have a say in the creation of their government. Mr Willis noted that consequently, the legitimacy of the outcome of the election benefits from the fact that:

- a government is elected on the basis of the support of the majority of the population;²⁴ and

21 "An Obligation to Democracy", *Sydney Morning Herald*, 7 March 2005.

22 Submission No. 175, (Mr M Doyle).

23 AEC, *Redistributions - Frequently Asked Questions*, www.aec.gov.au/_content/why/redistributions/faq.htm#6

24 Submission No. 157, (Mr D Willis), p. 2.

- each Member of Parliament is elected as the result of the collective decision of (“as nearly as practicable”) the same numbers of electors as any other MP.

8.41 In contrast to the previous points Mr Willis noted that, under:

voluntary voting systems...low voter turnout can affect the confidence of a government to proceed with implementing its election platform.²⁵

8.42 Ms Ilona Renwick summarised the implications of low voter turnout, saying that :

with voluntary voting it is possible that a government may be elected with less than 50% of Australian adults voting. There is no way that such a government can claim a mandate for its programs if it has maybe only 25% or less support from the Australian people.²⁶

Further components of the debate

8.43 In addition to these central issues, evidence to the Committee raised a number of points pertinent to voluntary and compulsory voting:

- Australia's adherence to compulsory voting is unusual;
- voting as a civic duty;
- popular support for compulsory voting;
- resource implications;
- partisan advantage;
- quality of the vote; and
- unintended consequences.

Australia is unusual

8.44 Australia has a democratic tradition that is largely based on the Westminster system, with the inclusion of some elements of the United States system. Given this heritage from two regimes that employ voluntary voting, it is unusual for Australia to have compulsory voting, particularly considering that voting at the first nine Federal elections was voluntary.

25 Submission No. 157, (Mr D Willis), p. 2.

26 Submission No. 22, (Ms I Renwick).

- 8.45 Further, Australia is also unusual when compared with other democratic governments. At present, Australia is one of some 32 democracies worldwide to have compulsory voting. Only 19 actually pursue it through support and enforcement.²⁷ Australia, it is argued, is therefore out of step with the world.
- 8.46 In a counter argument, Mr Mulvihill noted that:
- the notion... that Australia is 'out of step'... is a nonsense: each of these countries has its own individual take on democracy.²⁸
- 8.47 Furthermore, some 6,314 million people, or 9.6% of the world population, use compulsory voting in determining their government.²⁹

The Committee's view

- 8.48 The value of this exchange of opinion, in the Committee's eyes, was that it highlighted the fact that each nation adapts its democratic arrangements to suit its own particular requirements. Therefore the practices of other countries are neither directly comparable nor necessary precedents for Australia. Indeed, as the Committee Chairman, Mr Tony Smith MP, has noted:
- we did not just follow the world in electoral reforms; we led it. We led the world in universal and free voting, we led the world in the right to vote for women and we led the world with the introduction of the secret ballot.³⁰

Voting as a civic duty

- 8.49 Debate on this point centred on whether, in a democracy, it is acceptable to compel citizens to vote. A *Sydney Morning Herald* article noted that:

27 Those that pursue it through support and enforcement comprise Argentina, Australia, Austria (two Länder only), Belgium, Brazil, Chile, Cyprus, Ecuador, Fiji, Greece, Lichtenstein, Luxembourg, Mexico, Nauru, Peru, Singapore, Switzerland (one canton only), Turkey and Uruguay. Others in which non-enforcement or enforcement actions are unknown, include: Bolivia, Cost Rica, Dominican Republic, Egypt, France (Senate only), Gabon, Guatemala, Honduras, Italy, Netherlands, Paraguay, Philippines and Thailand. See IDEA, *Compulsory Voting*, www.idea.int/vt/compulsory_voting.cfm

28 Submission No. 167, (Mr M Mulvihill).

29 See Appendix G: *Countries with Compulsory Voting*.

30 Mr T Smith MP, *Hansard*, House of Representatives, 10 February 2005, p. 125.

the argument is, essentially, between rights and obligations. Opponents argue that in a free society, citizens should be free not to vote.³¹

- 8.50 Much of the evidence to the Committee focussed on this point, bringing forth a variety of arguments for and against compulsory and voluntary voting, such as the burdensome nature of voting and international and domestic obligations.³²

Burdensome

- 8.51 One argument against compulsion is that it can be an onerous imposition on some citizens.³³
- 8.52 This claim, however, is countered by observations such as expressed by Mr Christopher Bayliss:

all our voting system requires is for a voter to attend a polling booth and mark some papers as they wish, approximately every three years. This does not seem to be an insurmountable burden to be part of a democracy.³⁴

The Committee's view

- 8.53 As already discussed in other chapters, special arrangements such as postal and mobile polling exist to minimise the burden for specific groups. The Committee Chairman has determined therefore that the focus should be on:

the privilege of the right to vote and the importance that people exercised their right rather than on the burden of voting for some.³⁵

International obligations

- 8.54 One argument against compulsion to the polls looks beyond Australia to its obligations under international agreements. Both the United Nations Universal Declaration of Human Rights and the United Nations International Covenant on Civil and Political Rights refer to

31 "An Obligation to Democracy", *Sydney Morning Herald*, 7 March 2005.

32 Submission Nos 13, 33, 40, 125, 144, 157 & 167.

33 Submission No. 66, (Mr M Wilson).

34 Submission No. 40, (Mr C Bayliss).

35 Smith T, "Your Vote, Your Voice, Your Choice", *Herald Sun*, 24 February 2005.

people's right to "freely chosen representatives".³⁶ On this basis, Mr Doyle argues that:

to state the obvious, there is no way that a voting system based upon compelling people to vote or attend polling booths can be considered in terms of free expression.... Indeed, far from the United Nations agreements mentioning the 'duty' of people, the act of selecting a political representative is regarded as a 'right' something which a person possesses and uses (or does not use) according to choice. It is not something to be produced on demand.³⁷

8.55 Against this could be set Article 29 of the Universal Declaration of Human Rights which states that rights and freedoms are, however subject to:

Everyone has duties to the community...In the exercise of...rights and freedoms...limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society..³⁸

8.56 In short, obligations may be imposed on an individual for the benefit of the society generally, Mr Tony Smith MP stated:

It is contrary to the underlying democratic spirit and the foundation of voting itself to force someone to exercise the vote against their will.³⁹

The Committee's view

8.57 The Committee noted that the tension between perceived freedoms and obligations was paralleled in consideration of domestic obligations.

36 Submission No. 13 (Mr M Doyle), quoting UN Universal Declaration of Human Rights: Article 21 (1): "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives"; and UN International Covenant on Civil and Political Rights: Article 25 "Every citizen shall have the right and the opportunity...To take part in the conduct of public affairs, directly or through freely chosen representatives".

37 Submission No. 13, (Mr M Doyle).

38 *Universal Declaration of Human Rights*, www.un.org/Overview/rights.html

39 Smith T, "Your Vote, Your Voice, Your Choice", *Herald Sun*, 24 February 2005.

Domestic obligations

8.58 Arguments about freedoms and obligations within Australia were presented as contrasts between compulsory voting and other government-imposed obligations. Mr Willis contended that:

the primary argument... against compulsory voting appears to be that people should not be compelled to vote and that they should be able to choose not to vote. However, this is not a strong argument given that citizens are compelled to perform many other duties, such as to pay taxes.⁴⁰

8.59 Such analogies were rebuffed by a contrary interpretation from Mr Doyle who stated that:

being available for Jury Service or paying taxes... have no relevance or parallel to the electoral process and yet they are often raised as justifying compulsory voting. It seems that the 'logic' is that paying taxes and Jury Service, and (apparently) voting are essential duties – and if people were allowed to opt out of these functions, society would collapse.⁴¹

8.60 The Public Interest Advocacy Centre summarised these contested issues in its submission, stating:

the principle of individual freedom, which is sometimes said to be the underpinning principle, clearly has to be subject to restrictions appropriate to a democratic society. There are many things that people do not wish to do and which they would not do if they were able to exercise 'individual freedom', but which parliament has legislated to require. The role of parliament in a parliamentary democracy includes passing laws to ensure the effectiveness of that democratic system.⁴²

The Committee's view

8.61 The points made about the domestic obligations of citizens do not refute, in the Committee's view, the right of the Parliament to impose requirements on citizens. The question, instead, is about the nature and extent of the obligations that it is acceptable for the Parliament to impose.

40 Submission No. 157, (Mr D Willis), p. 2.

41 Submission No. 13, (Mr M Doyle).

42 Submission No. 144, (Public Interest Advocacy Centre), p. 5.

8.62 The Committee notes that the primary electoral obligation placed on Australian voters at Federal elections is that of enrolling to vote. The Committee Chairman has noted that this duty is generally accepted, and:

those who campaigned for free and fair elections and the right to vote were making sure everyone had the chance to have an equal say on election day, not about compulsorily forcing people to have their say.⁴³

8.63 The Committee also notes that there is extant research which examines the question of how acceptable the existing compulsory arrangements are.

Popular support

8.64 According to the three recent opinion polls summarised in Table 8.2, compulsory voting enjoys popular support.⁴⁴ The polls concluded that three in every four Australians support compulsory voting ahead of voluntary voting. There was also evidence that this support crosses party lines.

43 Smith T, "Your Vote, Your Voice, Your Choice", *Herald Sun*, 24 February 2005.

44 See also commentary in Submission Nos 60, 119 & 157.

Table 8.2 Popular opinion of compulsory and voluntary voting

	Australian Election Study 2004	Morgan poll 2005			Ipsos-Mackay Study 2005 ⁴⁵		
		Liberal National voters	Labor voters	Total	Liberal voters	Labor voters	Total
Support Compulsory voting							
Strongly	46.9%				-	-	-
Total	74.1%	73%	74%	71%	79%	75%	74%
Prefer voluntary voting	10.9%				-	-	-
Strongly	10.9%				-	-	-
Total	25.8%	27%	25%	28%			24%
Can't say No view		-	1%	1%	-	-	2%
Would vote if not compulsory	85.8	91%	89%	87%	-	-	-

Source Roy Morgan Research and polls reported in Sydney Morning Herald, March 2005⁴⁶.

The Committee's view

8.65 The Committee noted the current wide disparity in electorate support for the compulsory or voluntary voting systems.

Resource implications

8.66 Evidence to the Committee sought to associate savings in resources with either of the voting options by examining:

- government costs; and
- party costs.

Government costs

8.67 Compulsory voting comes as a cost to the government. Non-voters can only be discovered if the electoral roll is kept up-to-date so that

45 2% did not know which they favoured. "Poll Shows Majority Favours Compulsory Voting", *Sydney Morning Herald*, 27 March 2005.

46 "Poll Shows Majority Favours Compulsory Voting", *Sydney Morning Herald*, 27 March 2005, "Voluntary Voting May Not Favour the Liberals", *Sydney Morning Herald*, 9 March 2005; "Majority of Australians Think Voting Should Remain Compulsory", Roy Morgan Research, 27 September 2005, www.roymorgan.com/news/polls/2005/3901/

the subsequent process of identification of non-voters can take place. Both components of this process have costs.

The Committee's view

- 8.68 A move to voluntary voting would remove the cost to the tax payers of pursuing non-voters. However other costs could potentially arise if it was decided that the Government had increased responsibility for educating voters of the importance of their non-compulsory vote.

Party costs

- 8.69 Compulsory voting enables parties to use previous voting data to identify marginal seats on which to focus their efforts. With a potentially more volatile vote under voluntary voting, they may no longer be able to rely on past election results as indicators of expected voting patterns. Resources currently focussed on seats perceived as winnable would have to be more widely and thinly spread, or more resources would be required.⁴⁷

- 8.70 Also, on the basis of experiences in non-compulsory voting regimes, supporters of the status quo drew the attention of the Committee to a new cost for the political parties which would arise from a change to voluntary voting. Mr Kilcullen stated:

the political parties would organize to “get out the vote”... door-knocking... not to persuade electors to change their minds, but to find out how they intend to vote, so that canvassers can visit supporters on election day to remind them to vote (perhaps offering help with transport.⁴⁸

- 8.71 Under voluntary voting, political parties' resources would be diverted from efforts to promote their leader and their policies, whereas under compulsory voting, as a *Sydney Morning Herald* article suggested:

at a practical level, compulsory voting means the energy otherwise spent just getting voters to the polling booths can be devoted to campaigning on the issues.⁴⁹

47 See AEC Fact Sheet *Compulsory Voting*, www.aec.gov.au/_content/what/publications/factsheets.htm

48 Submission No. 56, (Mr J Kilcullen), pp. 7-8.

49 “An Obligation to Democracy”, *Sydney Morning Herald*, 7 March 2005.

The Committee's view

- 8.72 The Committee notes that these arguments assume that parties' self-interest would lead them to attempt to maximise turnout, a responsibility currently assumed by the Government.
- 8.73 The Committee considers this view is based too narrowly on British and United States practices where "getting out the vote" has a twofold function: ensuring voters are registered to vote; and urging them to exercise that right.
- 8.74 The low turnout of the eligible population in those countries despite the parties' efforts is a reflection of systemic factors in the electoral process which do not apply in Australia. First and foremost, elections in those countries are held on a weekday, whereas elections in Australia are held on a Saturday. Unlike in Australia, the United States ballot covers elections for everything from dog catcher to police chief to Congressman. Further, registration to vote is more complex, which is a disincentive to many of the voting-age population.
- 8.75 However, the Committee notes that, across the Tasman there is a different regime that is more relevant to Australia. Commenting on the New Zealand system, Mr Tony Smith MP stated:
- they have for many years had compulsory enrolment and voluntary voting...their voter turnout... has remained high all the way through.⁵⁰
- 8.76 This turnout, the Committee observed, had been achieved despite strict limits on election expenses.⁵¹ Mr Smith MP therefore considered:
- in a move to voluntary voting [Australia] could maintain a compulsory enrolment regime.⁵²
- 8.77 Under the compulsory enrolment and voluntary voting regime prior to compulsory voting, Australia achieved high Federal Election turnouts. To assume that, without compulsion, Australian voters would not vote is to do them a disservice.

50 Mr A Smith MP, House of Representatives *Hansard*, 10 February 2005, p. 125. NZ Turnout (contested seats only): 1990 = 85.2%; 1993 = 85.2%; 1996 = 88.3%; 1999 = 84.9%; 2002 = 77.0%. Elections New Zealand, www.elections.org.nz/elections/elections_dates_turnout.html

51 Party election expenditure is limited to NZ\$1 million plus NZ\$20,000 for each electorate candidate nominated by the party. In addition each candidate may expend up to NZ\$20,000. "Election Expenses and Returns", Elections New Zealand, www.elections.org.nz/elections/e5_party_return_expenses.html

52 Smith T, "Your Vote, Your Voice, Your Choice", *Herald Sun*, 24 February 2005.

Partisan advantage

8.78 The effect on politics of the new role for political parties of mobilising voters was raised in a number of submissions. Mr Mulvihill noted that under a voluntary system, voter turnout would be:

subject to the power of organised lobby groups whose primary concern is power not democracy.⁵³

8.79 A central concern was whether this process would advantage one party over another and how representative the outcome might be

8.80 There was no consensus on whether voluntary voting would intrinsically favour one party ahead of another because supporters of one party might be more or less likely to participate in such a poll than supporters of other parties.

8.81 On the basis of overseas experience Mr Doyle asserted:

voluntary voting in the UK and New Zealand does not seem to swing the balance much to the Tories.⁵⁴

and that:

relatively low turnouts (as will sometimes occur under a voluntary system, but never under a compulsory one) seem to favour Left-wing political Parties.⁵⁵

8.82 On the other hand, research in Australia on the predicted effect of voluntary voting:

found that the Liberal Party would increase its share of the two-party preferred vote by about five percent if compulsory voting was abolished, an outcome that would give it a permanent electoral advantage over other political contenders.⁵⁶

The Committee's view

8.83 There is no empirical evidence that a move to voluntary voting would favour one major party over another.

53 Submission No. 167, (Mr M Mulvihill).

54 Mr M Doyle, *Evidence*, Monday, 25 July 2005, p. 68.

55 Submission No. 175, (Mr M Doyle).

56 Submission No. 157, (Mr D Willis), pp. 1, 4; *Courier Mail*, "Every Vote Counts, Except...", 21 February 2005, *Queensland Newspapers*, p. 9; "Libs Unlock the Gates of Power", *Courier Mail*, 30 October 2004; *Queensland Newspapers*, p. 1.

Quality of the vote

- 8.84 At issue here was the perceived opportunity offered by voluntary voting to reduce the informal vote present under compulsory voting, as outlined in Table 8.3.
- 8.85 Informal voting was discussed in Chapter 5, *Counting the votes*. In this section the Committee examines the evidence concerning the significance of the informal vote as a measure of protest against being compelled to vote.

Table 8.3 Informal voting at Federal Elections: 1993–2004

Voter turnout	1993	1996	1998	2001	2004
% of informal voting in House of Representatives	3.0	3.2	3.8	4.8	5.2
% of informal voting in Senate	2.6	3.5	3.2	3.9	3.8

- 8.86 A *Sydney Morning Herald* article argued that:
- the 5.2 per cent informal vote in the last federal election means a lot of people don't want to vote.⁵⁷
- 8.87 The Public Interest Advocacy Centre advanced a counter argument:
- rather than a protest against the requirement to attend a polling place, informal voting can be attributed to a combination of any number of factors.⁵⁸
- 8.88 The AEC, having analysed the reasons ballot papers were considered informal, concluded that:
- the link between compulsory voting and informal voting is difficult to prove.⁵⁹

57 "An Obligation to Democracy", *Sydney Morning Herald*, 7 March 2003.

58 These include: **limits on voters exercising their own electoral preferences** (embodied in the rules about voting "below the line"); **confusion about voting** because of the different systems in the three different tiers of government and between different states and territories; **dissatisfaction** with the political parties rather than the electoral process; **shortcomings in "voter education"**; **English as a second language**; **migrants** from countries where voting is not compulsory (or indeed, in some countries, a real option). See Submission No. 144, (Public Interest Advocacy Centre), p. 5.

59 Submission No. 165, (AEC), p. 7.

- 8.89 The types of markings (or their absence) which causes ballots to be discarded as informal are set out in Table 8.4, together with the proportion of the informal votes to which they applied.

Table 8.4 Categories of House of Representatives informal ballot papers: 2001 Federal Election⁶⁰

Marking	Proportion of papers (%)
Number 1	33.58
Blank	21.43
Non sequential	17.18
Ticks & Crosses	12.42
Marks	6.31
Larger Style	2.68
Slogans making numbers illegible	0.31
Voter identified	0.04
Other	6.00
Total % votes	4.82

Source AEC Research Report No 1 *Informal Vote Survey, House of Representatives, 2001 Election*, 2003, p. 8.

- 8.90 According to the AEC only two categories of informal ballot papers might indicate a protest against voting: **blanks** and **“marks”**.

it is impossible to say with assurance whether other types of informal voting are a deliberate act of electoral disobedience or a misunderstanding of the electoral laws.⁶¹

- 8.91 Because “marks” include slogans and protests against the political and electoral system they can be considered to be indicators of protest voting, although not all ballots so marked will be protests against compulsion. Blanks may merely be mistakes.⁶²

60 The analysis of the 2004 informal vote was not available prior to the Committee concluding its report.

61 AEC Research Report No. 1: *Informal Vote Survey*, House of Representatives, 2001 Election, 2003, pp. 8–9

62 AEC Research Report No. 1: *Informal Vote Survey*, House of Representatives, 2001 Election, 2003, pp. 8–9.

8.92 According to analyst Mr Antony Green:

deliberately spoiled ballot papers make up only a minority of the informal vote. The majority of informal votes are caused by incorrect or incomplete marking, a consequence of the third compulsion faced by Australian voters, compulsory preferential voting.⁶³

The Committee's view

8.93 A component of the informal vote may be attributed as a protest against compulsion, but it is not the only factor which may compromise the quality of the final vote count. Mr Tony Smith MP stated:

as the voting statistics show, our compulsory system still can't force people to have their say if they are determined not to... Donkey voting, a home-grown feature of the compulsory system can potentially skew results.⁶⁴

Unintended consequences

8.94 When examining questions of legitimacy (above), the Committee noted that voluntary voting in Federal Elections would contrast with the compulsory nature of State and Territory elections. Another facet was highlighted in a submission from the ACT Government which claimed that:

it is unlikely that electoral authorities would be successful in persuading all eligible citizens to enrol if voting is voluntary, even if compulsory enrolment was maintained.⁶⁵

The Committee's view

8.95 While voters may continue to make objection to compulsory enrolment under a voluntary election system, the Committee notes that New Zealand's electoral system combines these features and has done so very successfully for a long period of time.

63 Submission No. 73, (Mr A Green), p. 7.

64 Smith T, "Your Vote, Your Voice, Your Choice", *Herald Sun*, 24 February 2005.

65 Submission No. 119, (ACT Government).

Conclusion

8.96 As this chapter has demonstrated, there are strong views about the relative merits of voluntary and compulsory voting. This is true even within political parties as the Minister for Finance and Administration, Senator the Hon. N Minchin indicated:

I won't retreat from my strong support for voluntary voting...I will continue to advocate a policy of voluntary voting...but I wouldn't continue to push the proposition if it resulted in internal divisions.⁶⁶

8.97 The Committee is aware that the nature of the submissions to this inquiry, which focused on the 2004 Federal Election, would not represent the full breadth of opinion that could be revealed if compulsory voting was the subject of inquiry.

8.98 The Committee therefore does not recommend that the Government should initiate any change to compulsory voting prior to the next election. Rather, the Committee will continue to encourage wider debate on this matter and seek to investigate the matter in more depth.

Recommendation 36

8.99 **The Committee recommends that voluntary and compulsory voting be the subject of a future inquiry by the JSCEM.**

66 Senator the Hon. N Minchin, quoted in *Australian Financial Review*, 4 November 2004.

Voting systems

- 9.1 This chapter considers the nature of the voting systems used for Federal House of Representatives and Senate elections. Specifically, it discusses the arguments surrounding the complexity of preferential voting systems and the impact of such systems on voting behaviour and electoral outcomes.

Introduction

- 9.2 The *Commonwealth Electoral Act 1918* (CEA) governs the requirements for voting in Federal Elections.

House of Representatives voting

- 9.3 In accordance with subsection 240(1) of the CEA, a valid vote for the House of Representatives is cast by:
- (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
 - (b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.

- 9.4 The numbers placed in the boxes on the ballot form must be consecutive, and must not repeat any number.¹ Further, no more than one square may be left blank, and only where this reflects the voter's last preference.²
- 9.5 If a voter does not follow the requirements in section 240, the ballot paper will be informal, and the vote will not count, except in very specific circumstances.³

Senate voting

- 9.6 The processes used for voting for the Senate are different because of the different electorate structure. Rather than a number of candidates vying for one House of Representatives seat, a number of candidates compete for a number of vacancies (currently six for each State at a half-Senate election, or twelve in the case of a double dissolution election, and two for each Territory). Parties or groups of candidates can request to be grouped on the Senate ballot paper⁴, where preferences automatically flow to the candidates in a group, in the order in which they are printed on the ballot paper.
- 9.7 Subsection 239(1) of the CEA states that a person may vote in a Senate election by:
- (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
 - (b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.
- 9.8 Other provisions of the CEA, however, allow a valid vote to be cast above the line on the Senate ballot paper:

1 *Commonwealth Electoral Act 1918* (CEA), subsection 240(2).

2 Submission No. 165, (AEC), Attachment A, AEC, *Informal Vote Survey, House of Representatives, 2001 Election: Research Report Number 1, 2003*, AEC, 2003, p. 24.

3 For example, section 268, CEA provides that where there are only two candidates, and the voter has placed "1" in one box and left the other blank, the vote will still count as the blank box is deemed to reflect the voter's last preference, so the voter has indicated their preference for all candidates on the ballot paper.

4 See CEA, section 168.

A vote may be marked on a ballot paper by writing the number 1 in a square (if any) printed on the ballot paper under subsection 211(5) or 211A(6).⁵

Where a voter has marked a tick or cross in a square printed on a ballot paper under subsection 211(5) or 211A (6), the voter shall be regarded as having written the number 1 in the square.⁶

- 9.9 Voters may vote for a political party or group by putting the number “1” in one box only above the line on the Senate ballot paper. Each box above the line represents a group of candidates. By casting a vote this way, voters indicate that they adopt the Group Voting Ticket that the party or group has lodged with the AEC, so all the preferences will be distributed according to the Group Voting Ticket.
- 9.10 The registration of groups for above-the-line voting requires each party to lodge with the AEC at least one Group Voting Ticket, which outlines the flow of preferences upon their party receiving a single vote above the line. Parties and groups may lodge more than one Group Voting Ticket, indicating different preference allocations.
- 9.11 Where an individual, in error, votes accurately both above and below the line on the Senate ballot paper, the below the line vote takes precedence and will be counted. If the below-the-line vote is informal, then the vote will be counted as formal above the line.

The preferential voting system

- 9.12 As outlined above, elections for both the Federal House of Representatives and the Senate are held under compulsory preferential voting systems. Compulsory preferential voting is sometimes referred to as “full preferential voting”.
- 9.13 Under this system, voters are required to express preferences for each individual candidate on the ballot paper for their vote to be counted as formal. If a voter chooses to vote below the line in the Senate, they must provide preferences for every candidate on the ballot paper if their vote is to be formal. Note, however, that voting above the line in the Senate

5 CEA, subsection 239(2); Subsections 211(5) and 211A (6), govern the use of Group Voting Tickets in the Senate, where voters are allowed to vote above the line.

6 CEA, subsection 239(3).

requires the voter to provide only one preference (otherwise known as a Single Transferable Vote [STV]).

- 9.14 Preferences on the House of Representatives ballot paper and in below-the-line voting for the Senate operate to ensure that the candidate who is successfully elected is the one who received the highest combined number of votes, both primary votes and those flowing from preferences. The difference between a preferential voting system and “first past the post” voting is that the flow of preferences ensures that a candidate cannot be elected without securing at least 50% of the total formal votes for an electorate. It is for this reason that it is argued the preferential voting system most accurately represents the will of the electorate.⁷
- 9.15 In the Senate, the flow of preferences for above-the-line voting works differently. Under the STV approach, parties are required to lodge at least one (but up to three) Group Voting Tickets with the AEC before an election. These Group Tickets state how preferences will flow for each party in the event that a voter votes “1” only above the line. Votes cast for a single party above the line flow to the candidates as they appear below the line on the ballot paper.
- 9.16 The Liberal Party and the Nationals are of the view that the current Group Voting Ticket arrangements in the Senate work well, and that voters can be adequately informed about the lodgement of preference flows, or they can choose to vote below the line to redirect their preferences elsewhere.⁸ The Liberal Party of Australia commented that its position was that:
- lodged tickets for Senate elections work well. We seek no change to that... simplicity with regard to the Senate ticket is important. The current system has been in place for a number of elections, and we believe it has worked well. We see insufficient evidence at the moment to give us concern to argue for a change.⁹

Concerns about the preferential voting system

- 9.17 Over recent times, a number of concerns have been expressed about the operation of compulsory preferential voting systems. Key issues raised with the Committee in this context were:
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7 Submission No 125, (Festival of Light Australia), p. 5.

8 Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, p. 64.

9 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, p. 30.

- informal voting;
- false preferencing;
- dictated Senate preferencing;
- preference harvesting; and
- disadvantaged independents.

Informal voting

- 9.18 Some witnesses suggested that the current compulsory preferential voting system in both the House of Representatives and below the line in the Senate is related to a high incidence of informal votes.¹⁰
- 9.19 There has been a trend to increased informal voting in the House of Representatives over the past 20 years (see Table 1.5 in Chapter 1).¹¹ The level of informal voting in the Senate appears to have declined because of the increased prevalence of the above-the-line vote, which does not require the direction of preferences.
- 9.20 This section largely discusses House of Representatives voting, but these issues also have currency for below-the-line votes in the Senate.
- 9.21 The compulsory preferential voting system is considered a factor in informal voting because its application is inconsistent between the House of Representatives and the Senate, and also with some voting arrangements at State, Territory and local government levels.¹² The different arrangements are outlined in Table 9.1 below. The outcome is that not all voters know how to record their vote when they come to a Federal Election.
- 9.22 The differences in the systems employed by the House and the Senate are considered to be a cause of informal voting.¹³ Requiring voters to use two different voting systems on the same day will almost inevitably lead to mistakes in votes and, therefore, a higher informal vote. It is possible, for example, that some voters vote only “1” on their House of Representatives ballot paper because they complete the Senate ballot first and then mistakenly complete the House ballot in the same way.¹⁴ According to Mr

10 See Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 2; Submission Nos 69, 170, & 145.

11 See also Submission No. 69, (Prof. C Hughes), pp. 2-3; and Submission No 73, (Mr A Green), pp. 21-34 for details of voting formality by State at the 2004 Federal Election.

12 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 40; Submission No. 73, (Mr A Green), p. 10.

13 Submission No. 118, (Mrs D Vale).

14 Mr T Smith, *Transcript of evidence*, Friday, 12 August 2005, p. 42.

Antony Green, the ABC's expert election analyst (who submitted and appeared in a private capacity):

the ticket voting system applying in the Senate is what is causing people to vote just No. 1 in the lower house, because they are using the same voting system.¹⁵

Table 9.1 Voting systems for Australian parliaments

Jurisdiction	Legislature	Method of voting
Commonwealth	House of Representatives	Compulsory preferential
	Senate	Single preference above-the-line OR compulsory preferential below-the-line
NSW	Legislative Assembly	Optional preferential
	Legislative Council	Optional preferential proportional: one or more preferences above-the-line OR at least 15 preferences below-the-line
Victoria	Legislative Assembly	Compulsory preferential
	Legislative Council	Proportional representation: single preference above-the-line OR at least 5 preferences below-the-line
Queensland	Legislative Assembly	Optional preferential
South Australia	House of Assembly	Compulsory preferential
	Legislative Council	Single preference above-the-line OR compulsory preferential below-the-line
Tasmania	House of Assembly	Hare-Clark: STV with at least 5 preferences marked
	Legislative Council	
Australian Capital Territory	Legislative Assembly	Hare-Clark: STV with preferences numbering at least the number of vacancies
Northern Territory	Legislative Assembly	Compulsory preferential

Source Australian and state electoral office websites¹⁶

9.23 There is also evidence of a higher incidence of voting "1" only on House of Representatives ballot papers in New South Wales and Queensland when compared with other states.¹⁷ As outlined in Table 9.1 above, New South Wales and Queensland employ optional preferential voting systems for their state elections, where voters may vote only "1" if they choose to do so.

15 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 44.

16 See also Submission No. 97, (Democratic Audit of Australia), pp. 9-10.

17 See Mr A Green, *Evidence*, Friday, 12 August 2005, p. 40; and Submission Nos 52, 97, 143, 165 (Attachment A), & 97.

- 9.24 Thus, in Queensland and New South Wales, voters are required to use different voting systems for each Parliamentary chamber which they elect: compulsory preferential voting for the House of Representatives and below-the-line Senate voting; voting by placing a single digit "1" for above-the-line Senate voting; optional preferential voting for the State Legislative Assembly and (in New South Wales), a limited compulsory preferential voting for the Legislative Council. This is a recipe for confusion.
- 9.25 Given the disparity amongst voting systems, it is not surprising to see a relatively high level of informal voting in these states with systems that are different from those in Federal Elections. According to Mr Max Mathers, a Liberal Party booth worker with over 50 years' experience:
- where you have different systems involved, they become used to one system and perhaps endeavour to apply that system subconsciously to the one which they are currently voting in, which may happen to be the wrong system and often in this case contributes to an informal vote.¹⁸
- 9.26 This high informal vote appears to occur in spite of attempts to clearly explain how to vote via material in the polling places and campaigns to educate voters in these states.¹⁹
- 9.27 This concerned the Committee as it suggests that confusion arising from the differences in voting systems may prevent some people from exercising the democratic right to vote, and have that vote counted.²⁰ The will of the electorate can be distorted by such unintentional informal voting, particularly in close elections.²¹
- 9.28 One remedy proposed has been for more consistency between the various State voting systems, with more calling for the optional preferential systems in New South Wales and Queensland to be replaced by compulsory preferential voting. This argument is furthered by evidence that Victoria has a lower informal voting rate for the Federal House of

18 Mr M Mathers, *Evidence*, Wednesday, 6 July 2005, pp. 17-18.

19 Submission No. 18, (Prof. P Bayliss).

20 Submission No. 92, (The Nationals); the presence of different systems in Tasmania and the Australian Capital Territory does not reveal a similar level of informal voting, possibly because these systems are different enough to the federal system to avoid confusion. See also submission No. 118, (Mrs D Vale MP); Mr A Hall, Federal Director, The Nationals, *Evidence*, Monday, 8 August 2005, pp. 57-58; and Mr L Ferguson MP, *Transcript of evidence*, Monday, 8 August 2005, p. 98.

21 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, p. 24.

voter recorded only the number 1 on their ballot paper, the largest recorded category of informality.⁷¹

- 9.68 Mr A Green, however, argues that encouragement to voters not to direct their preferences to other candidates is just as valid as deliberate preference deals between political parties, which engineer election results that may not necessarily reflect the will of the electorate.⁷² Mr M Mathers stated:

I feel that [the strategy of encouraging people to only vote '1' in state elections] has been a method of confusion, and it may well have been designed in that respect. But specifically it is because the system is different from that of other situations that you find that people have become confused. In particular, if you look at people, say, from Victoria, where they follow the firm preferential system right through, who then come to Queensland, where they do not have that system, they do certainly become confused and do not understand the reason for the differences. That is why, in my opinion, we had quite an increase in informal votes in the last federal election.⁷³

- 9.69 There are also concerns that encouraging people to vote "1" through a publication without placing any other preferences may constitute a misleading electoral publication under section 329 of the CEA.⁷⁴ Professor Hughes is of the view that whilst such a publication may be undesirable, it should be left to the discretion of the AEC to decide whether it encourages a single vote is misleading.⁷⁵
- 9.70 Objections about optional preferential voting becoming a *de facto* "first past the post" system can be addressed through the *partial preferential* variant of optional preferential voting. Under this arrangement, the voter is required to number a minimum number of preferences (say, three, for example), but can then choose whether they wish to complete the remainder of the ballot paper.⁷⁶ Mr Brian McRae stated:

71 Submission No. 165, (AEC), Attachment A, AEC, *Informal Vote Survey, House of Representatives, 2001 Election: Research Report Number 1, 2003*, AEC, 2003.

72 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 47; and Submission No. 73, (Mr A Green), p.35

73 Mr M Mathers, *Evidence*, Wednesday, 6 July 2005, p. 19.

74 Senator G Brandis, *Transcript of Evidence*, Wednesday, 6 July 2005, p. 12.

75 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 12.

76 Mr B McRae, Vice-President, One Nation, WA, *Evidence*, Wednesday, 3 August 2005, p. 49; see also Submission No. 98, (Mr G Ebbage), which advocates a partial preferential system, but one where the first preference is given three points, the second preference two points and the third

Representatives than do other States, even though it has a compulsory preferential voting system.²² Uniformity of voting systems, it is argued, would reduce confusion amongst voters about which method to use when they come to an election.²³

- 9.29 This, however, would be difficult to achieve as the New South Wales optional preferential system in the lower house is constitutionally entrenched and would require a referendum to make any change.²⁴ Further, as Professor Hughes²⁵ advised, it would be more likely that other states will try optional preferential voting before those states could be convinced to change their system.²⁶

False preferencing

- 9.30 Another often stated criticism of the compulsory preferential voting system is that it requires voters to vote for candidates even when they prefer not to record a vote against certain candidates.²⁷ This can be because they have not heard of a candidate, or they do not wish their vote to flow to certain candidates. Mr C Bayliss stated:

a significant cause of voting dissatisfaction, as any polling booth official can attest is the Commonwealth voting requirement of total ballot paper numbering, rather than optional preferential. Voters with strong, ideological feelings, object to having to preference parties, whose policies they dislike, in some cases intensely. This attitude is often expressed to polling booth officers.²⁸

Dictated Senate preferencing

- 9.31 As discussed above, voters can choose to vote above or below the line when voting in the Senate. If voters do not wish to vote below the line for
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22 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 3.

23 Note that Prof. Hughes argues that the problem of contamination between differing systems is less likely when there is sufficient time between State and Federal Elections: Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p.10; a gap between state and federal elections is not easy to predict due to the disparity of Parliamentary terms throughout Australia (see Chapter 7 above for further discussion).

24 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 45.

25 Prof. C Hughes is a former AEC Commissioner and Emeritus Professor, School of Political Science and International Studies at the University of Queensland.

26 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 3.

27 Submission No. 73, (Mr A Green), pp. 7, 9, 20.

28 Submission No. 40, (Mr C Bayliss).

the reasons outlined in considering forced preferencing above, they may vote above the line. There the flow of their preferences is determined according to the Group Voting Tickets of the parties (voters having ceded their right to direct their preferences). Neither option may be particularly palatable to the voter, resulting in a lack of real voting choice.²⁹ Further, as Mr Green pointed out:

the only way an elector can overcome a preference deal they disapprove of is to vote below the line. But parties offer no assistance in doing this, as how to vote cards for all parties only recommend an above the line vote.³⁰

- 9.32 It is often difficult for ordinary voters to understand how preferences will actually flow from their “1” vote to other political parties.³¹ The complexity of the Group Voting Ticket does not assist voters in understanding where their vote will eventually rest.³² In reality, the effect of the Group Voting Ticket system is that only the very few above-the-line electors who bother to inquire will have the faintest idea where their Senate preferences are going. That is so notwithstanding the provisions of s216 of the Commonwealth Electoral Act, which requires Group Voting Tickets to be displayed at polling places. Indeed, the Committee heard evidence³³ that the provisions of s216 are often not observed.
- 9.33 Furthermore, one would expect that electors who do take a careful interest in preference allocation would be likely to be those who go to the trouble to vote below-the-line. The Group Voting Ticket system for above-the-line Senate voting lacks transparency, and results in electors ceding their preference allocation decisions to the political parties themselves.
- 9.34 The issues highlighted above suggest that people are ceding their preferences to the political parties without a true understanding of the impact of their vote on preferences,³⁴ resulting in a Senate voting system that does not necessarily reflect voter intentions.³⁵ Mr A Green stated:

29 Submission No. 22, (Ms I Renwick).

30 Submission No. 73, (Mr A Green), p. 42.

31 Mr A Green, *Evidence*, Friday, 12 August 2005, pp. 54-55; Submission No. 73, (Mr A Green), pp. 39-41.

32 Prof. C Hughes also considers that the size of the voting tickets for large states can be such that they cannot be easily displayed in polling places, and are therefore not obviously available for voters. See *Evidence*, Wednesday, 6 July 2005, p. 8.

33 Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Tuesday, 26 July 2005, p. 29.

34 Submission No. 97, (Democratic Audit of Australia), p. 13.

35 Submission No. 90, (Mr D Risstrom), p. 1.

I think at the moment ... the way the ticket voting system works means that there are serious questions about whether Senate elections are now reflecting the will of the electorate or a series of deals done in the background without the voters' knowledge.³⁶

- 9.35 There is, however, a view that the STV system for voting above the line does not prevent voters from choosing their preferences. If a voter chooses to vote above the line, it is assumed that they are happy for their preferences to flow according to the voting ticket. If a voter is unhappy with the preference flow chosen by the party, they have the freedom to preference all candidates below the line.³⁷
- 9.36 Further, Professor Hughes advises that the current system for Senate elections is simple enough for most voters to understand, even if it does require voters to pass on their preference choice to their chosen political party.³⁸

Preference harvesting

- 9.37 As outlined above, when a voter votes only "1" above the line for the Senate, their preferences are determined according to the Group Voting Ticket of the parties.
- 9.38 The Group Voting Ticket system is susceptible to manipulation via a practice known as *preference harvesting*. Broadly speaking, this is a form of strategic behaviour where parties manoeuvre to keep preferences away from other parties, often the major parties, through arrangements with minor or micro parties. These deals often taken place between parties with little ideological affinity, with micro parties arranging preference deals with a number of more prominent parties in order to "harvest" their preferences as they are eliminated in the count.
- 9.39 Preference harvesting can also occur where a micro-party is registered and subsequently obtains a group box above the line in the Senate.³⁹ The names of these parties usually reflect a specific policy issue, and some voters will be attracted to these names and cast their vote in that direction. There is some evidence, however, that voters are deceived about the true

36 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 40.

37 Mr S Ciobo, *Transcript of evidence*, Wednesday, 6 July 2005, p. 6; see also Submission No. 207, (Dr K Woollard).

38 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 3.

39 On possible solution to problems associated with micro parties would be to only provide an above-the-line box to those parties running at least the number of candidates as there are vacancies: see Submission No. 56, (Mr J Kilcullen), p. 2.

nature of these parties, and wrongly believe their preferences will flow in a certain direction.⁴⁰ The Festival of Light stated:

for example, if a political party wants to change the flag – as a hypothetical illustration – they run a stooge party on ‘save the flag’ and get people who would vote against them to vote for them and then their ticket can be used to direct preferences to their own party. It is really fooling the voters into garnering votes. The voters, if they knew what was happening, would not vote for them.⁴¹

9.40 As well, it was alleged parties may engage in the practice of “assisting” the creation of minor parties, in order to harvest preferences from them.⁴² Even if this has not actually happened, there is the opportunity for it to occur under the present system.

9.41 There is, therefore, a general lack of understanding of how preference deals work in the Senate election. Mrs Susanna Flower stated:

a lot of people will just follow the card: they think, ‘Okay, that sounds good to me.’ A lot of people follow that without realising.⁴³

9.42 Complementing this view, Mr Peter Andrew stated:

it is all but impossible for even informed electors to juggle the complexities involved in working through the preferences of the minor parties and independent candidates.⁴⁴

9.43 Many voters may believe that following a voting ticket will ultimately assist a party from the same side of the political spectrum, or with similar policies, as their primary vote. This may not be the case because preference deals are based on electoral self-interest, where a party will receive certain preferences because it will assist a certain party to be elected, or cause another not to be elected.⁴⁵

9.44 Essentially, therefore, it is party discussions, not voter desire, that controls the above-the-line vote for the Senate, resulting in a situation where a

40 Submission No. 125, (Festival of Light Australia), pp. 5-6; Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Wednesday, 26 July 2005, pp. 26-27; See also Submission No. 73, (Mr A Green), p. 38.

41 Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Wednesday, 26 July 2005, pp. 13-14.

42 Submission No. 125, (Festival of Light), p. 6.

43 Mrs S Flower, Federal Candidate 2004, the Greens, *Evidence*, Thursday, 7 July 2005, p. 34.

44 Submission No 179, (Mr P Andrew), p. 1.

45 Submission No. 97, (Democratic Audit of Australia), p. 14.

party with a significantly lower vote than another party may secure a Senate seat when the other has the higher primary vote.⁴⁶ As a result, voters can feel frustrated with their Senate vote as the political parties use the lack of specified preferences above the line to manipulate the true choices of voters.⁴⁷ The Democratic Audit of Australia stated:

‘above the line’ ticket voting for the Australian Senate is not living up to the justifications for its introduction in 1984. It was meant to be an efficient and easy way for voters to register their votes, but increasingly today leads to distortion of those very preferences.⁴⁸

- 9.45 Furthermore, the Group Voting Ticket system encourages manipulation of preference flows which may lead to outcomes which do not reflect the electors' intentions. In other words, it encourages parties to make deals, for strategic reasons, which results in their voters being committed to preference distributions of which they are unaware and would not knowingly endorse. The decision of the Family First Party in some states to favour a preference distribution to other minor parties which advocated policies radically at variance with Family First's declared core values, may be an example of this type of strategic behaviour, and its consequences.

Disadvantaged independents

- 9.46 The problems associated with above-the-line voting are compounded by the significant proportion of voters who choose to vote “1” only above the line, which has an effect on the election success of independent candidates.⁴⁹ The size of the Senate ballot paper arising from the number of Senate candidates arguably encourages voters to vote “1” above the line, as it is not easy to consecutively number every square below the line without making a mistake.⁵⁰ Such mistakes make a vote informal.⁵¹
- 9.47 If people want to vote for an ungrouped independent in the Senate, they are required to vote below the line. This method of voting can be time consuming (especially in the larger states where more candidates tend to run) and there is some evidence to support the view that below-the-line

46 Submission No. 97, (Democratic Audit of Australia), p. 12; see also Submission No. 90, (Mr D Risstrom) for a discussion of the 2004 Senate election in Victoria.

47 Mr B McRae, Vice-President, One Nation, WA, *Evidence*, Wednesday, 3 August 2005, p. 48.

48 Submission No. 97, (Democratic Audit of Australia), p. 12.

49 Submission No. 90, (Mr D Risstrom), p. 3.

50 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 41.

51 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 56.

voting can result in a higher risk of informality.⁵² This makes it difficult for ungrouped independents to obtain many votes as the only method that gives them votes is unpalatable.

9.48 There is also evidence that voters do not like completing preferences for every candidate below the line, which further disadvantages ungrouped independents. Mr A Green stated:

no logic or reason is attached to such an exclusion, it is simply a provision of the act that *all* preferences must be correct for *any* preference to count.⁵³

Possible options for change

9.49 This section deals with suggestions that have been made aimed at:

- reducing the informal vote; and
- improving voter engagement in the election system by allowing them to express their true voting preferences.

9.50 These options may also avoid some of the other difficulties in the current systems outlined above. Note that the options outlined below are not mutually exclusive, so consideration of a combination of these options may have merit.

Option 1: Consistent voting systems throughout Australia

9.51 Some are of the view that the Commonwealth and the States should work together to establish a common voting system nationwide, matching the compulsory preferential voting system for the House of Representatives and other lower houses throughout Australia.⁵⁴ Others suggest introducing optional preferential voting at both the State and Federal levels to achieve this desired consistency.⁵⁵

9.52 These options, however, may be difficult because of the constitutionally entrenched nature of the New South Wales optional preferential system, and the fact that the majority of states would be required to change, were

52 Submission No. 97, (Democratic Audit of Australia), p. 10.

53 Submission No. 73, (Mr A Green), p. 9.

54 Submission No. 92, (The Nationals); see also Submission No. 89, (Mr E Jones); and Submission No. 52, (Mr P Brun).

55 Submission No. 118, (Mrs D Vale).

the optional preferential system adopted as the national model.⁵⁶ It is likely this would increase, rather than reduce, voter confusion and vote informality.

Option 2: Relaxing formality requirements in the Act

- 9.53 The incidence of informal voting could potentially be reduced through some relaxation of the overly strict formality requirements in the CEA governing House of Representatives. This would allow votes where the voter has made a genuine mistake to be included in the count, where currently such votes are classed as informal.⁵⁷
- 9.54 Similar changes could be made to the CEA to allow for ballots marked with a non-numerical indication (such as a tick or a cross, for example) also to be counted as formal.⁵⁸

Option 3: A savings provision

- 9.55 Another mechanism which could reduce the rate of informal voting is a savings provision (such as that currently employed in South Australia), which allows votes clearly cast in error to be included in the count.⁵⁹
- 9.56 This approach requires candidates to lodge at least one ticket of preferences (akin to the one lodged in the Senate) which allows certain informal votes to be “saved” and included in the count.⁶⁰ In South Australia, how-to-vote cards are posted in each polling booth, so voters are aware of how they can direct their preferences when voting for one party. Mr A Green stated:

basically, if someone has just voted No. 1 then the vote for that ballot paper will be saved and will default to the registered ticket of the party. A party cannot recommend that people just vote No. 1; it is not a way of encouraging people to just vote No. 1 and capture the preferences.⁶¹

56 See also Submission No. 97, (Democratic Audit of Australia), p. 11.

57 Submission No. 73, (Mr A Green), pp. 6, 12.

58 Submission No. 97, (Democratic Audit of Australia), p. 12; and Submission No. 73, (Mr A Green), pp. 3, 11, 13-15.

59 See Mr A Green, *Evidence*, Friday, 12 August 2005, p. 42; and Submission No. 181, (Mr S O'Brien).

60 Submission No. 73, (Mr A Green), pp. 13-15.

61 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 42.

- 9.57 The use of this system in the South Australian election increased the formal vote by four per cent compared with voting without the savings provision operating. This contributes to South Australia being the only Australian state where the lower house informal vote is lower than the upper house.⁶²
- 9.58 The benefit of this approach is that it provides a mechanism for turning an informal vote into a formal vote where the voter's intention is clear. This system does not allow votes to be counted where their preferences cannot be counted, so the problems of an optional preferential system becoming a *de facto* "first past the post system" are not encountered.⁶³
- 9.59 The operation of this system is not widely advertised, which means that it is unlikely that voters will vote informally knowing that their vote will still count.⁶⁴ It is also not permitted to publish a how-to-vote card, which advocates voting only "1", so people are not encouraged to vote informally (even though this may be very difficult to police).
- 9.60 This system, however, does raise some concerns. A savings provision effectively constructs a voter's preferences, when if a voter knew about the operation of the system in "filling in" the empty preference boxes (which it appears they do not, as it is not widely advertised), they may have directed their preferences elsewhere.

Option 4: Optional preferential voting

- 9.61 Voting for the Federal House of Representatives and below the line on the Senate ballot requires voters to number every box if the vote is to be counted as formal. One commonly suggested solution to the problems associated with this voting system is to allow for optional preferential voting.⁶⁵
- 9.62 Optional preferential voting, as the name suggests, allows voters to only indicate those preferences they wish to give, rather than having to allocate a preference to every candidate in their electorate. Preferences are exhausted with the last preference expressed, so the onus would be on the voter to ensure they expressed all desired preferences.⁶⁶

62 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 44.

63 Mr D Melham, *Transcript of evidence*, Wednesday, 6 July 2005, p. 10; and Submission No. 181, (Mr S O'Brien), p. 1.

64 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 42.

65 See for example, Submission No. 73, (Mr A Green), p. 4.

66 Submission No. 144, (PIAC), pp. 11-12.

Disadvantages of optional preferential voting

- 9.63 One commonly cited disadvantage of an optional preferential voting system is that it has the potential to become a *de facto* “first past the post” system.⁶⁷ A “first past the post” system is where the candidate who receives the highest proportion of the primary vote is elected, even if this proportion is less than 50%. This is because candidates are entirely at the mercy of the voter and their decision whether or not to include preferences, so preferences can be quickly exhausted where a large number of voters choose to vote “1” only.
- 9.64 This is particularly problematic where a large number of candidates are contesting a seat. In such a circumstance, it would be possible for a candidate to be elected with only a very small proportion of the vote, which could leave the majority of the population unrepresented.⁶⁸
- 9.65 A potential feature of campaigns run under optional preferential systems is the encouragement of voting only “1”, when the option exists to express further preferences. This effectively encourages a result based on “first past the post”, as the number of preferences that can flow to other candidates is reduced when more people just vote “1”.⁶⁹ Whilst this is not illegal *per se*, it is seen by some as being undesirable.
- 9.66 The most significant issue in instances of a vote “1” only campaign is the higher level of informal voting which may result in subsequent federal elections. This may be because voters have become used to using the optional preferential system and do not realise that voting in a Federal Election uses a different system.
- 9.67 There is a suggestion that the higher level of informal voting in Queensland in the 2001 Federal Election was directly related to the Queensland Labor Party’s “Just Vote 1” campaign in the preceding state election.⁷⁰ Analysis of the 2001 Federal Election informal vote reveals that 46.42 per cent of all informal votes in Queensland were those where the

67 See for example, Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Wednesday, 26 July 2005, pp. 34, 35. Note, however, that in many safe electoral seats, the current preferential system effectively works as a “first past the post system” because one candidate is likely to receive more than 50 % of the primary vote: see Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 11.

68 Mr B McRae, Vice-President, One Nation, WA, *Evidence*, Wednesday, 3 August 2005, p. 50.

69 See Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 7; and Submission No. 73, (Mr A Green), p. 17.

70 Mr T Gartrell, National Secretary, Australian Labor Party, *Evidence*, Monday, 8 August 2005, p. 41.

if voters were only required to fill in a certain number of boxes to qualify for a formal vote, then this would encourage those informal voters to at least have some input, while at the same time give them the option of not giving a preference to someone they are totally opposed to. The question is; how many boxes to fill in, and I would suggest (3).⁷⁷

9.71 Other identified disadvantages associated with optional preferential voting include that major parties can no longer assume that preferences from parties on the same side of the political spectrum will automatically flow to them.⁷⁸ Mr Antony Green is of the opinion that it is unusual for a party on the left or right fringes to not direct their preferences to another party on the same side of the political spectrum; this can be thwarted under an optional preferential system if the major parties do not actively seek preference deals with other parties on the same side as them. Effectively, the optional preferential system gives parties the choice of not directing their preference anywhere.

9.72 Mr Michael Danby MP, however, had a contrary view:

it would be, in fact, to enhance the power of people further out to the right and further out to the left, which is one of the principal reasons that I do not favour optional preferential voting.⁷⁹

9.73 Optional preferential voting systems also tends to favour the candidate with the highest primary vote,⁸⁰ and there are suggestions that independent candidates have difficulty polling first via primary votes, with the majority of independents being elected via the flow of preferences.⁸¹

9.74 It is suggested that the interests of minor parties and independents can also be hindered under this approach, as the system for organising preference flows loses significance where voters do not have to indicate preferences. Mr Green, however, is of the opinion that the preference bargaining power of independents and minor parties actually increases under optional preferential voting. Under such a system, the major parties

preference one point, with the successful candidate being the one with the highest number of points. This system would ensure that the second preferences of all voters would be counted.

77 Submission No. 42, (Mr B McRae).

78 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 51.

79 Mr M Danby, *Transcript of evidence*, Friday, 12 August 2005, p. 52.

80 Submission No. 73, (Mr A Green), p.18.

81 Senator A Murray, *Transcript of evidence*, Friday, 12 August 2005, p. 50; and Mr A Green, *Evidence*, Friday, 12 August 2005, p. 50.

will have to lobby more effectively to obtain the preferences of minor parties because they have the freedom not to direct their preferences.⁸²

Benefits of optional preferential voting

- 9.75 The major benefit of optional preferential voting is the potential for reduction of error-induced informal voting. It is easier to vote correctly if a voter is not required to record preferences for all candidates.⁸³ Under this system, the high incidence of informal votes for the Federal House of Representatives in New South Wales and Queensland would be reduced. This is because votes where only the first preference is expressed would be counted as formal.⁸⁴
- 9.76 This system would also allow Langer Style votes to be counted as formal.⁸⁵ This voting approach is where ballot papers requiring compulsory preferences are numbered non-consecutively, for example, 1, 2, 3, 3, 3. At present, such votes are informal, but under optional preferential voting, preferences accurately numbered could be distributed to the point of the error, thus increasing the formal vote.⁸⁶
- 9.77 This simplification in preferential voting should increase participation in the electoral system by allowing people to express their true intentions,⁸⁷ which could, in turn, encourage the election of more representative governments.
- 9.78 Another advantage of optional preferential voting is that it captures only those preferences that people actually hold, rather than requiring them to express preferences for candidates about which they know nothing.⁸⁸ One suggestion takes this desire to allow people to make political statements

82 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 50.

83 Submission No. 22, (Ms I Renwick).

84 Submission No. 18, (Prof. P Bayliss).

85 Langer Style Voting is known as such as a result of a campaign throughout the 1990s in Australia where an individual, Mr Albert Langer, advocated this form of voting as a means of making a political statement. This system effectively allowed people to express only preferences they wished to include, and was possible as a result of amendment to the CEA intended to reduce informality in House of Representatives votes. Such votes are now considered informal (and it is an offence under the Act to induce voters to vote in such a way). See Submission No. 73, (Mr A Green), pp. 12–13 for a detailed discussion of this style of voting.

86 Submission No. 165, (AEC), Attachment A, AEC, *Informal Vote Survey, House of Representatives, 2001 Election: Research Report Number 1, 2003*, AEC, 2003, pp. 2–3.

87 See Submission No. 56, (Mr J Kilcullen), p. 2.

88 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 45.

via their votes further by including a “none of the above” option on the ballot paper.⁸⁹

9.79 In response to claims that the optional preferential system creates a “first past the post” election result, supporters of this system argue that whilst this voting system can result in a candidate without majority support being elected, the same is possible under a compulsory preferential system, where parties manoeuvre their preferences to construct a majority.⁹⁰ This is because the party that is ranked third in an electorate is in a position to arrange a preference deal resulting in the candidate with the lower primary vote being elected. Mr Green stated:

the bronze medallist is determining who is winning gold and silver in every case.⁹¹

9.80 Further, Professor Hughes has undertaken analysis of election results from Queensland and New South Wales to measure the impact of optional preferential voting on election outcomes. His study reveals that in only one instance would there have been a different result under a compulsory preferential system.⁹² Anecdotal evidence also suggests that people who vote for minority parties in the New South Wales optional preferential system tend to number all their preferences anyway. This generally does not cause a “first past the post” result.⁹³

9.81 Other practical benefits of the adoption of optional preferential voting include removal of the need to decide preference distribution, a lesser need for electoral staff to educate voters on how to vote, easier scrutineering and counting of votes and it saves voter time.⁹⁴

Option 5: Above the line preferential voting in the Senate

9.82 One option to rectify concerns about the Senate voting system would be to introduce preferential above-the-line voting on the Senate ballot paper in combination with the current compulsory preferential voting below the

89 Mr B McRae, Vice-President, One Nation, WA, *Evidence*, Wednesday, 3 August 2005, p. 47; see also Submission No. 56, (Mr J Kilcullen), p. 1, which suggests the inclusion of a comment box on the ballot paper where voters can make statements if they wish to do so.

90 Submission No. 18, (Prof. P Bayliss).

91 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 47.

92 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 2.

93 Submission No. 18, (Prof. P Bayliss).

94 Submission No. 18, (Prof. P Bayliss).

line.⁹⁵ This could take the form of optional or compulsory preferential voting, both of which are discussed below. Former Senator Mr John Cherry stated:

people should be able to allocate their preferences above the line or below the line. It should be compulsory preferential but it can be above the line or below the line. You would recall how many ... got lost numbering between one and 70 on the old Senate tickets in the early 1980s. If you gave people the option of voting above the line and numbering the boxes with their party preference I think that would be a reasonable compromise.⁹⁶

9.83 The Festival of Light stated:

above-the-line voting [is] a simple, achievable compromise that is a workable solution and it eliminates all the problems associated with ticket voting.⁹⁷

9.84 If preferential voting was introduced for above-the-line voting in the Senate, section 168 of the CEA would have to be amended to automatically allocate an above-the-line voting square upon a request to the AEC for grouping under this section.⁹⁸

9.85 Table 9.2, overleaf, outlines the possible combination of voting systems for the Senate. Discussion of the components of these options follows.

95 Mr A Green and Senator A Murray, *Transcript of Evidence*, Friday, 12 August 2005, pp. 53-54; see also Submission No. 22, (Ms I Renwick); Senator B Brown, *Evidence*, Monday, 8 August 2005, p. 89; and Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Wednesday, 26 July 2005, p.14.

96 Mr J Cherry, *Evidence*, Wednesday, 6 July 2005, p. 73.

97 Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Wednesday, 26 July 2005, p. 35.

98 Submission No. 182 (AEC), p. 26.

Table 9.2 Possible Senate voting systems

Above the line		Below the line
Option 1 (current)	Single transferable vote	Compulsory preferential
Option 2	Single transferable vote	Optional preferential (at least one preference) OR Partial preferential (at least X number of preferences)
Option 3	Compulsory preferential	OR Compulsory preferential
Option 4	Compulsory preferential	
Option 5	Optional preferential (at least one preference) OR Partial preferential (at least X number of preferences)	Optional preferential (at least one preference) OR Partial preferential (at least X number of preferences)

Disadvantages of preferential voting above the line

- 9.86 The introduction of compulsory preferential voting above the line has the potential for increased complexity and informality when compared with the existing STV system. The requirement to complete more voting boxes above the line would result in increased opportunity for mistakes, and would also require voters to express preferences for parties for whom they have no interest in voting (the optional preferential voting system does not encounter this problem).⁹⁹
- 9.87 The introduction of compulsory preferential above-the-line voting in the Senate could also act to disadvantage minor parties and independent candidates in a variety of ways.¹⁰⁰
- 9.88 It is commonly thought that when voters are required to provide preferences, they usually follow how-to-vote cards, rather than exercising their choice. It is arguable that minor parties would not have sufficient resources or polling booth presence to be able to indicate where their

99 Submission No. 207, (Dr K Woollard).

100 Mr D Crabb, Secretary, Electoral Reform Society of South Australia, *Evidence*, Wednesday, 26 July 2005, p. 43; Submission No. 144, (PIAC), p. 11.

above-the-line preferences should flow and may be disadvantaged as a result.¹⁰¹

- 9.89 On the other hand, some witnesses believe that the people who would exercise their preference choice would be more likely to vote below the line, so it is unlikely that minor parties will be dramatically disadvantaged by this option.¹⁰² It is notable that the principal minor party which addressed this issue in its submission to the Committee, the Australian Greens, supported compulsory preferential above-the-line voting.¹⁰³
- 9.90 The Festival of Light believes that any increased complexity in Senate voting arising from the introduction of this system would be minimal, as the Senate voting mechanism would simply reflect what voters are required to do when voting for the House of Representatives.¹⁰⁴ It is likely that the registered parties entitled to an above-the-line voting box on the Senate ballot will largely reflect the average number of individual candidates standing for the House. While a higher number of independent, ungrouped candidates do stand for the Senate, unless these individuals have the standing to be a registered party, they would not enter the equation of above-the-line voting.
- 9.91 The Electoral Reform Society advocates the abolition of above-the-line voting for the Senate, with optional preferential voting below the line being the only option for voters.¹⁰⁵ This option does not appear to have widespread support.

Benefits of preferential voting above the line

- 9.92 Above-the-line preferential voting would remove some of the existing confusion about how preference deals on group voting tickets affect the election outcome. Voters would be in a better position to know where their votes are going because they would have the capacity to control where their preferences flow without having to resort to completing the below-the-line section of the ballot paper.¹⁰⁶

101 Senator G Brandis, *Transcript of evidence*, Wednesday, 26 July 2005, pp. 27, 85–88 and *Transcript of evidence*, Friday, 12 August 2005, p. 57.

102 Ms R Banks, Chief Executive Officer, PIAC, *Evidence*, Friday, 12 August 2005, p. 87.

103 Greens (State and Federal) Submission Nos. 39, 103, 107, 111 & 124.

104 Dr D Phillips, National President, Festival of Light Australia, *Evidence*, Wednesday, 26 July 2005, p. 26.

105 Submission No. 100, (Electoral Reform Society), p. 3; see also Submission No. 56 (Mr J Kilcullen), p. 2.

106 Submission No. 90, (Mr D Risstrom), p. 3.

- 9.93 Some commentators feel that if a voter chooses to vote above the line, then they should be required to provide a preference for every group.¹⁰⁷ Under this option, the power of the Group Voting Ticket would be removed and people would be forced to direct their preferences according to either their own desires or according to the party's how-to-vote card.¹⁰⁸ This compulsory preferential approach would also avoid the problems associated with the high level of exhausted preferences under optional preferential voting in New South Wales.¹⁰⁹
- 9.94 More importantly, compulsory preferential voting above-the-line would significantly reduce the capacity of parties to manipulate or "game" the system by making strategic deals of which the electorate, for all practical purposes, is unaware, and of which their own voters may not approve. It would, in the Committee's view, considerably advance the value of transparency, without causing undue complexity.
- 9.95 Compulsory preference voting above the line, and the subsequent abolition of Group Voting Tickets, would also remove the distortion of election results caused by preference harvesting. The Festival of Light stated:
- corruption of the Senate election process by stooge parties and candidates could be eliminated by removing preference tickets and requiring voters to indicate their own preferences.¹¹⁰
- 9.96 This option is supported by the Greens, as evidenced by Senator Bob Brown's proposed Bill to create compulsory preferential voting above the line.¹¹¹ This approach would avoid the exhaustion of preferences apparent in the New South Wales system which creates the impression of a "first past the post" system. This system could require the provision for voters to make up to a small number of mistakes in their preference ordering without invalidating their vote.¹¹²
- 9.97 Optional preferential voting for above-the-line Senate voting is also suggested as possible solution.¹¹³ This system has the benefit of allowing voters to truly express their preferences, without being forced to cast a
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107 See, for example, Submission No. 89, (Mr E Jones).

108 Submission No. 96, (Mr J Cherry), p. 23; and Submission No. 84 (Ms S Russell).

109 Submission No. 96, (Mr J Cherry), p. 23.

110 Submission No. 125, (Festival of Light Australia), p. 6.

111 *Senate Voters' Choice (Preference Allocation) Bill 2004* cited in Submission Nos 75, 77, 82, 85, 87, 100, 103, 107, 112, 116 & 139.

112 Senator B Brown, *Transcript of evidence*, Monday, 8 August 2005, pp. 89, 93.

113 Submission No. 97, (Democratic Audit of Australia), pp. 14-15.

vote about candidates they do not know about or have no wish to vote for. The Public Interest Advocacy Centre stated:

we were concerned about the level of confusion in the last election that arose from the way in which preferential deals affected the outcome in ways that people who voted would probably never have anticipated. It is an issue that we think needs to be resolved to enable the electoral process to be more transparent, so we would encourage a move to something in the order of an above-the-line preferential voting system.¹¹⁴

- 9.98 Either the optional or compulsory preferential system would arguably improve the correlation between voter intentions and the final election of candidates when compared with current systems.¹¹⁵

Option 6: Ticket voting in the House of Representatives

- 9.99 Another possible option for reducing voting complexity in the House would be to introduce ticket voting, where people could simply vote “1” for their preferred party, and rely on the party preferences as outlined in their voting tickets, or choose to number candidates individually.¹¹⁶
- 9.100 This would mirror the system applied in the Senate, so would potentially reduce the level of informal voting caused by confusion about the two Federal voting systems. It would also be physically manageable as fewer candidates would be on each ballot paper.¹¹⁷
- 9.101 This system, however, will be difficult to implement as there are not generally groups of candidates running in the House.¹¹⁸ This means the ballot paper would have one column with the parties and the other with the candidates, and would not be entirely consistent with the Senate ballot paper.¹¹⁹
- 9.102 Further, Professor Hughes suggests that whilst there may be some merit in introducing ticket voting in the House, optional preferential voting would be a better option to attempt to reduce the informal vote.¹²⁰

114 Ms R Banks, Chief Executive Officer, PIAC, *Evidence*, Friday, 12 August 2005, p. 84.

115 Submission No. 90, (Mr D Risstrom), p. 1.

116 See, for example, Mr M Mathers, *Evidence*, Wednesday, 6 July 2005, p. 18.

117 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 11.

118 See Submission No. 73, (Mr A Green), p. 12 for a more detailed discussion of the problems attached to this system.

119 See Mr D Melham, *Transcript of evidence*, Wednesday, 6 July 2005, p. 20.

120 Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 3.

Option 7: Limited number of possible preferences

9.103 Mr A Green feels that another mechanism that would alleviate the existing problems in the Senate voting system would be to retain the current single above-the-line vote, but impose a limit on the number of other parties that a single party can direct their preferences to.¹²¹ This would make it more difficult for parties to enter into complex strategic preference deals and would prevent preference harvesting. Mr A Green stated:

the standard method of voting in the Senate is that you vote for the candidates in the order you want to see elected. My argument against ticket voting as it applies at the moment under compulsory preferential voting is that parties do not have to behave that way. They can deal and gamble on the way preferences work, and that is what is distorting the system. The voters have got no say in this.¹²²

9.104 The best solution, according to Mr Green, would be to combine above-the-line preference voting, with limitations placed on the number of parties that can receive preferences on ticket votes. This option would mean that if a voter were to make a mistake in the numbering of their preferences above the line, the vote would still be counted as it could default back to the voting ticket for the intended preferences.¹²³

Option 8: Registration of political parties

9.105 Independent of any changes made to voting systems in the Federal House of Representatives and the Senate, potential limitations on the number of candidates standing for election is an important electoral issue. The increasing number of political parties standing for the Senate appears to be closely related to some problems identified with the ballot paper for the Senate.

9.106 Fewer candidates could result in fewer informal votes and would perhaps nullify the need for reforms to the Federal voting systems.¹²⁴ There is a relationship between the high numbers of candidates standing in individual electorates and complexity in how-to-vote cards. This makes it difficult for voters to clearly understand where preferences could flow.¹²⁵

121 Submission No. 73, (Mr A Green), pp. 4, 46; Mr A Green, *Evidence*, Friday, 12 August 2005, p. 56.

122 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 56.

123 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 60.

124 Submission No. 73, (Mr A Green), p.10.

125 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 42

This problem could be avoided through improved mechanisms to limit the number of candidates and parties in a single electorate. There could arguably, therefore, be some tightening of requirements for registration as a political party.¹²⁶

- 9.107 More stringent requirements on party registration would also have the benefit of excluding so-called “stooge” parties from adding to the complexity of the above-the-line vote for the Senate.
- 9.108 Professor Hughes, however, expresses the converse view based on an analysis of the informal vote in the New South Wales and Queensland in the 2004 Federal Election. He feels that possible methods for discouraging candidacy (such as limitations on registration as a political party) are unlikely to reduce informality as much as would optional preferential voting.¹²⁷

Option 9: Improved pre-election advertising

- 9.109 A number of submissions provided to the Inquiry suggested that the rate of informal voting could be reduced through more effective advertising about how to vote in federal elections.¹²⁸ Specifically, attention could be drawn to the distinction between the different systems in the House and in the Senate. Further, a concerted campaign could be run in New South Wales and Queensland to highlight the differences between their State systems and the Federal system. Mr McRae stated:

the television advertisements shown before the previous election encouraging all voters to have their say is a good idea. This however needs to be continued on a semi permanent basis with an emphasis on how the system works, and the basic philosophy behind the preferential system of voting.¹²⁹

- 9.110 The Liberal Party of Australia stated:

the absolutely critical need for a public information campaign on the operation of preferential voting and about the importance of this campaign, particularly in those states where optional

126 Mr A Green, *Evidence*, Friday, 12 August 2005, p. 55; see also Prof. C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 2.

127 Submission No. 69, (Prof. C Hughes), p. 9.

128 Mr B McRae, Vice-President, One Nation, WA, *Evidence*, Wednesday, 3 August 2005, p. 50.

129 Submission No. 42, (Mr B McRae), p. 1.

preferential voting is conducted for state elections and for local government elections.¹³⁰

The Committee's view

9.111 Having regard to the foregoing consideration, and in particular the importance of the principle of transparency, the Government members and Senator Murray have concluded that compulsory above-the-line preferential voting should be introduced for Senate elections.

Recommendation 37

9.112 **The Committee recommends that compulsory preferential voting above the line be introduced for Senate elections, while retaining the option of compulsory preferential voting below the line. Consequently, the practice of allowing for the lodgement of Group Voting Tickets be abolished. This would involve amendments to the Commonwealth Electoral Act, in particular the repeal of ss.211, 211A, 216, 239(2) and 239(3).**

Recommendation 38

9.113 **The Committee recommends that the system of compulsory preferential voting for the House of Representatives be retained.**

Recommendation 39

9.114 **The Committee recommends that the AEC be resourced to conduct a public education campaign, in advance of the next Federal Election, to explain the changes to the above-the-line Senate voting system.**

In those States where the Commonwealth and State voting systems are different (i.e. New South Wales and Queensland), the AEC's education campaign should emphasise the necessity, in Federal Elections, of voting by the compulsory preferential, as opposed to the optional preferential, method.

130 Mr B Loughnane, Federal Director, Liberal Party of Australia, *Evidence*, Monday, 8 August 2005, p. 22.

Geographical challenges in the modern age

The challenges faced on election day

- 10.1 Australia's vast distances and remote locations have always posed challenges for the smooth running of elections. Election day poses logistical problems for voters and the people who are charged with the responsibility of setting up the booths, supervising the voting, counting the votes and the return of the ballot papers to the relevant divisional returning officer.
- 10.2 If elections are held during a holiday period, some voters can find themselves not only away from their own electorate but their own state or territory. With limited pre-poll centres mainly available only in the capital cities in each state, some will not be able to travel the several hundred kilometres to cast their vote.
- 10.3 In rural and remote regions, the weather can have a double-edged impact; voters may be prevented from getting to polling booths and the returning officers may be unable to complete the counting in a timely fashion. Unseasonable weather could hold up the outcome of a close election and under very extreme conditions, the voting may be delayed for several days and those affected voters could be lodging their votes in the knowledge of what has happened elsewhere in the country.

Tyranny of distance

- 10.4 Notwithstanding the huge advances technology has made to enable people anywhere in Australia to stay in touch with one another, distance is and will remain a major challenge for many citizens.
- 10.5 Australia rightly prides itself on being a true democracy. However, for many citizens the realisation of this goal brings with it a personal expense in both time and money. A 10–12 hour round trip is not uncommon for some people on election day in order to record their vote. Technology may overcome some of the difficulties associated with the tyranny of distance, but, as past experience has shown, it is generally the remote locations that are the last to benefit from any technological advances.
- 10.6 Lack of understanding by decision makers who live outside of these remote areas can add to the inconvenience and frustration of electors in these regions when they try to exercise their democratic right. The Member for Maranoa, the Hon. Bruce Scott MP, told the Committee:

our other complaint is access to pre-polling. Once again, this demonstrates the tyranny of distance and lack of understanding of those who receive calls of complaint in Brisbane or, in some cases, at the Electoral Commission in Canberra. People thought, as is generally the case at a state level, they could go to the local courthouse in places like Longreach, Winton and Emerald and pre-poll there. No such facility was provided in the electorate of Maranoa. When these people rang those they had been told to contact, they were told, 'Oh, you can pre-poll in Maranoa.' The constituents then asked, "Where is the nearest pre-polling?" and were told, 'You can pre-poll in Dalby.' One of my constituents said, 'Do you realise that is a 12-hour drive just to pre-poll, to register my vote, because I will be interstate on polling day, and then I will have to drive 12 hours back home?'"¹

- 10.7 Mr Scott's concerns were supported by a former Divisional Returning Officer for Maranoa who told the Committee that running an election in Maranoa at any time is a very tough process.²

1 The Hon. B Scott MP, *Evidence*, 27 April 2005, Dalby, p. 2.

2 Mr W Woolcock, Divisional Returning Officer, AEC, *Evidence*, 27 April 2005, Dalby, p. 22.

it is a very large division. You have problems with distance, communication and a very large number of polling booths.³

Urban and rural divide

10.8 The 2001 ABS Census of Population and Housing showed that approximately two-thirds of the Australian population live in major cities, a further 20% live in inner regional areas, a further 10.5% live in outer regions and the remaining 3% live in remote locations (see Table 10.1).

Table 10.1 Distribution of population (%)

State/Territory	Major Cities	Inner Regional	Outer Regional	Remote/very remote
New South Wales	71.1	20.6	7.5	0.7
Victoria	73.5	21.0	5.4	0.1
Queensland	52.0	25.7	18.0	4.3
South Australia	71.6	12.3	11.9	4.2
Western Australia	69.7	11.8	9.6	8.7
Tasmania	-	63.6	33.8	2.5
Northern Territory	-	-	52.5	46.5
Australian Capital Territory	99.8	0.2	-	-
Australia	65.9	20.6	10.5	2.9

Source ABS, 2001 Census of Population and Housing

10.9 When the data in Table 10.1 is considered by State and Territory, it is the Northern Territory that has nearly half (47%) of its population living in remote areas. Western Australia is a distant second with approximately 9% and Queensland and South Australia come third with just over 4% of their populations living in similar regions.

10.10 Table 10.2 below shows that the biggest group affected by remote location is the Aboriginal and Torres Strait Islander people (30% of their population group compared to the national average of 3%).

3 Mr W Woolcock, Divisional Returning Officer, AEC, *Evidence*, 27 April 2005, Dalby, p. 22.

Table 10.2 Distribution of Aboriginal and Torres Strait Islanders (%)

Remoteness Area	Proportion of Indigenous Population	Proportion of Remoteness Area Population
Major Cities	30.5	1.1
Inner Regional	20.3	2.2
Outer regional	23.1	5.0
Remote	8.5	11.0
Very remote	17.5	38.3
Australia	100.0	2.3

Source ABS, 2001 Census of Population and Housing

- 10.11 The issue of urban and rural divide comes down to two things; how do we cater for the 500,000 Australians living in remote areas and how do we address the special needs of the over-represented group in this category, Aboriginal and Torres Strait Islanders?
- 10.12 Population projections indicate that by 2050 all states except Tasmania and South Australia will grow, with Queensland projected to increase by a massive 73 per cent. Australia's projected growth is estimated to be around 34 per cent over the same period (estimated population of 26.4 million). This will have implications for electoral boundaries and composition of a number of regional and coastal electorates.

AEC demographics

- 10.13 The AEC categorises electorates into four demographic types:
- **42 Inner Metropolitan** Divisions situated in capital cities and consisting of well established built-up suburbs.
 - **45 Outer Metropolitan** Divisions situated in capital cities and containing areas of more recent suburban expansion.
 - **18 Provincial** Divisions with a majority of population in major provincial cities.
 - **45 Rural** Divisions located outside capital cities and without a majority of population in major provincial cities.⁴

4 Submission No. 165, (AEC), Attachment A.

- 10.14 These categories do not fit well with those used in the ABS Census of Population and Housing.⁵ The AEC fourth category, rural, would appear to put all rural constituents into the same category when, in reality, the remote and very remote areas have problems that are unique to their isolation and should be accorded separate attention and action.

The Committee's view

- 10.15 The Committee considered that the AEC should use the same demographic dissection as the census.

Overcoming the urban-rural divide

Aboriginal and Torres Strait Islanders

- 10.16 In its second submission to the inquiry the AEC stated:

in the lead up to the 2004 federal election the AEC undertook a pre-election Remote Area Information Program in the remote areas of all states except Tasmania. The program employed mainly indigenous people for a period of six to eight weeks to visit remote indigenous communities to explain our electoral system and how to fully participate. A video featuring Cathy Freeman and actor David Ngoombujarra plus a brochure reinforcing the messages from the video were used to support the program. Posters and stickers featuring Indigenous personalities were also produced and distributed. The posters were also broadcast on indigenous media during the 2004 election.⁶

- 10.17 In the lead up to the election, remote mobile polling booths visited many outlying centres and stations to enable electors to cast their votes.

Remote polling

- 10.18 Remote polling booths travelled along set routes, usually over a number of days, to a series of remote communities and stations and

5 Major Cities, Inner Regional, Outer Regional, Remote/Very Remote (Table 10.1).

6 Submission No. 165, (AEC), p. 38.

collected votes. All votes collected along a particular route were considered to have been cast at a single poll. Remote mobile polling could take place up to 12 days before polling day.⁷

- 10.19 At the last federal election there were 43 remote polling booths compared to 7,729 ordinary booths. Remote mobile polling booths were used in only five electorates and two electorates accounted for 80% of the mobile booths (Lingiari, NT had 20; Kalgoorlie, WA had 14).⁸

The Committee's view

- 10.20 Clearly, there would be many other remote locations through out Australia that would benefit from such a facility in the lead up to an election.⁹

Pre-polling capabilities

- 10.21 In remote regional areas of Queensland, the practice for some time has been to hold shire elections by way of 100% postal votes.¹⁰ Unlike postal voting at federal elections this is very much managed and supervised at the local level.
- 10.22 Pre-polling in Queensland State elections is available only to those voters who can demonstrate that they will not be able to be in a position on polling day to cast their vote at a designated polling booth in their electorate.¹¹
- 10.23 A number of witnesses stated that a good starting point would be the use of the same pre-polling centres for both State and Federal elections.¹² The trained personnel are already in place if you are able to use the same people who staff the polling booths on election day. These people receive training to fulfil the duties on the day and it would seem to be a waste of a resource if the very same people could

7 Submission No. 165, (AEC), pp. 24–28.

8 Submission No. 165, (AEC), p. 28.

9 Submission No. 1, (The Hon. B Scott MP), p. 3; and Submission No. 163, (The Hon. B Katter MP), Attachment C, G.

10 Mr M Parker, CEO, Warroo Shire Council, *Evidence*, Wednesday, 27 April 2005 (Dalby), p. 13; and Mr V Becker, CEO, Ilfracombe Shire Council, *Evidence*, Wednesday, 27 April 2005, (Longreach), p. 21.

11 Mr M Rowell, Queensland Nationals, *Evidence*, Thursday, 28 April 2005, (Ingham), p. 10.

12 See *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 9.

not be used to help staff pre-polling booths in the same towns or regional centres.¹³

- 10.24 In Queensland, the State Electoral Commission (ECQ) makes use of selected courthouses, schools and post offices to help facilitate pre-polling.¹⁴
- 10.25 In a supplementary submission to the inquiry, the AEC provided details of the use of courthouses and State Government offices that are used for pre-polling purposes for state elections. All up, 127 locations are used throughout Queensland and during the last state election, they recorded 43,275 votes.¹⁵ These locations were in addition to the ECQ's own offices in Brisbane and the Gold Coast plus the 89 state returning offices (except where those offices were operated from a Magistrates Courts office). The number of venues for pre-polling at State elections greatly assists those electors who need to cast their votes in this manner. At the recent federal election, the AEC recorded more than twice the number of pre-poll votes compared to the state election but in considerably fewer locations.¹⁶ In response to a recommendation of the Minter Ellison report, the AEC has already committed to undertaking a national review of the provision of pre-poll services.¹⁷
- 10.26 Many residents in remote areas take advantage of pre-polling facilities for State elections as an insurance in the event that they may not be able to get to the polling booth because of rain or some other event.¹⁸ If similar opportunities were available at Federal Elections, particularly if local courthouses could be used for both State and Federal Elections, then many people would forgo the need to seek a postal vote.¹⁹
- 10.27 The CEO of Warroo Shire Council, Mr Michael Parker, believed that the some of the problems experienced with postal voting could be overcome if the local schools could be used for pre-polling purposes.²⁰

13 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 12; and Mr B Hoogland, CEO, Winton Shire Council, *Evidence*, p. 12.

14 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, Dalby, pp. 2-9.

15 Submission No. 168, (AEC), pp. 7-10.

16 Submission No. 168, (AEC), p. 10.

17 Submission No. 168, (AEC), p. 10.

18 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, (Longreach), p. 2.

19 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, (Longreach), p. 2.

20 Mr M Parker, CEO, Warroo Shire Council, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 12.

However, he stated that postal voting is a more efficient system – provided it works, because not everyone in a particular shire has children going to a local school.²¹

- 10.28 The Australian Labor Party in its submission argued for the establishment of additional pre-polling centres in every division in locations deemed to be accessible to the public, such as in major shopping centres, sporting venues and education institutions because it believed that this would help accommodate the ever increasing demands on family time.²²

The Committee's view

- 10.29 The Committee considered that, if the postal voting system was fail-safe, there would be little or no need to put in place pre-polling facilities. Given that every option comes at a price, it may be more cost effective to ensure the problems with postal voting are overcome, rather than spend more money on enhancing pre-polling facilities as a back-up system if postal voting breaks down.²³
- 10.30 However, in view of the evidence provided, the Committee accepts there is a case for more pre-polling facilities to be made available in Queensland. In Chapter 3, *Voting in the pre-election period*, the Committee recognises the extent of the problem, and recommends amendment of the legislation to allow the AEC to set up and operate pre-polling voting centres under urgent notice, as required.
- 10.31 The Committee also endorses the AEC's commitment to complete its comprehensive review of pre-polling arrangements by November 2005.

Postal voting

- 10.32 Experience of local shires using postal voting for their elections suggests that the more decentralised or localised the processing of the ballot papers, the better the chances of all ballot papers reaching their

21 Mr M Parker, CEO, Warroo Shire Council, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 12.

22 Submission No. 136, (Australian Labor Party), p. 7.

23 Mr M Parker, CEO, Warroo Shire Council, *Evidence*, Wednesday, 27 April 2005, (Dalby), pp. 13–14.

correct destination in a timely fashion and the quicker the response to address any issues relating to damaged or lost ballot papers.²⁴

- 10.33 Mr William Woolcock, Divisional Returning Officer, Division of Groom, in evidence, stated that arrangements are basically designed around people actually voting on election day.²⁵ He stated:

the more people there are that cast an ordinary vote, the faster and cheaper the results that we get are. Postal voting costs a lot more. The process can be flawed, as you have seen, and that the chances of that increase the more people use our postal voting system.²⁶

- 10.34 Ironically, prior to the 1999 referendum, postal votes were prepared manually and locally. Notwithstanding the fact that APVIS system of producing postal votes is far superior to the manual method, the old system was a fail-safe system in that errors could be picked up before the ballot papers were delivered to the electorate itself.²⁷

- 10.35 In the pressure-cooker environment of an election, timely and accurate responses to all electors' issues are paramount. In particular, the role played by local Divisional Returning Officers who are more in touch with the unique features of their own electorate can play a pivotal role in fast tracking problems and providing workable solutions.²⁸ These AEC officers know the geography of the electorate and the frequency and reliability of the mail services.²⁹ Many believe that most of the problems with postal voting in regional Queensland could have been overcome if distribution of the postal ballots took place at the local level.³⁰

24 Mr M Parker, CEO, Warroo Shire Council, *Evidence*, Wednesday, 27 April 2005, (Dalby), pp. 14–15.

25 Mr W Woolcock, Divisional Returning Officer, AEC, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 20.

26 Mr W Woolcock, Divisional Returning Officer, AEC, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 20.

27 Mr R Boyd, Divisional Returning Officer, AEC, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 23.

28 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 10; Mrs H Fuller, Chief Electorate Officer, Office of the Hon. B Katter MP, *Evidence*, Thursday, 28 April 2005, (Ingham), pp. 2–4; and Mr M Rowell, Queensland Nationals, *Evidence*, Thursday, 28 April 2005, (Ingham), p. 11.

29 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 11.

30 The Hon. B Scott MP, *Evidence*, Wednesday, 27 April 2005, (Dalby), p. 10; and *Evidence*, Thursday, 28 April 2005, (Ingham), p. 2.

- 10.36 The Quilpie Shire Council, in its submission, stated that extra time must be factored in for people in outlying/remote locations to receive and return their postal votes.³¹

The Committee's view

- 10.37 Issues surrounding postal votes are discussed more fully in Chapter 3, *Voting in the pre-election period*, where the Committee acknowledges that the local Divisional Returning Officers need to play a greater role in tracking postal vote applications and dealing with issues concerning lost, incorrect or damaged ballot papers.

Preferred methods of voting

- 10.38 Witnesses who appeared at the Regional Queensland hearings listed their voting preferences in the following order (while retaining the option for absentee voting):

- at a booth in their own electorate;
- pre-polling;
- electronic; and
- postal.

Polling booth

- 10.39 In an ideal world, most people would prefer to cast their vote on polling day at a booth in their own electorate. This is the most cost effective way to cast a vote and it enables the AEC to determine the outcome in the quickest possible time.

Pre-polling

- 10.40 Pre-polling would be the next best option to voting at a polling booth because the voters still know that their votes have been recorded.

Electronic

- 10.41 If physical presence while voting is not an option then electronic voting (subject to appropriate safeguards) could provide constituents with an efficient and timely alternative. The Committee has

31 Submission No. 43, (Quilpie Shire Council), p. 1.

considered electronic voting in the context of assisted voting, and more generally, in Chapter 11, *Technology and the electoral system*.

Postal

10.42 Postal voting was the least preferred option because it requires several processes and a considerable time lag before the vote is cast.³²

Absentee

10.43 It was considered that absentee voting should be available at every polling booth on election day, regardless of location of the booth.³³ Quite a number of people unexpectedly find themselves away from their own electorate on polling day and should not be disenfranchised because only selected booths have this facility.³⁴

10.44 Under section 222 of the CEA, absentee voting is only permissible in the voters' own State or Territory.

10.45 Many retirees and holiday makers can spend several months each year travelling the remote regions of Australia and are at a great disadvantage exercising their right to vote either by way of postal or pre-poll vote.

10.46 Currently, there is very limited opportunity to vote outside of an elector's own State or Territory because these pre poll centres are mainly located in the capital cities or major centres.³⁵ For holiday makers and interstate contract workers this may mean a drive of several hundred kilometres to record their vote.³⁶ And in many respects they would be more disadvantaged than people living in the remote parts of Australia.

The Committee's view

10.47 The Committee considered that some of the time lag in postal voting could be addressed through permitting electronic applications to be

32 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, (Longreach), p. 7; and Mr V Becker, CEO, Ilfracombe Shire Council, *Evidence*, Wednesday, 27 April 2005, (Longreach), p. 20.

33 Mr B Hoogland, CEO, Winton Shire Council, *Evidence*, Wednesday, 27 April 2005, (Longreach), pp. 12-13.

34 The AEC advises that absent votes may be cast at all polling places in the state or territory in which the elector is enrolled. Interstate electors may only vote at pre-poll centres prior to, or on polling day.

35 Submission No. 53, (Hinkler Divisional Council of The Nationals), p. 2.

36 Submission No. 64, (Murilla Shire Council), p. 1; and Submission No. 150, (The Western Queensland Local Government Association), p. 1.

made, as is recommended in Chapter 3, *Voting in the pre-election period*. However, although technology might eventually assist in the actual voting process in some way, it's more widespread use is largely dependent on broadband access and convincing resolution of security concerns.³⁷ Potential developments in this field are outlined in Chapter 11, *Technology and the electoral system*.

- 10.48 The Committee makes recommendations in respect of pre-poll voting in Chapter 3, *Voting in the pre-election period*.

Your call is important to us - the call centre syndrome!

- 10.49 The AEC call centres received 630,000 calls during the period 30 August and 22 October 2004 and employed 450 operators at a cost of \$2.9 million. According to AEC data, 88% of the calls were answered within 30 seconds but no data is available as to the level of inquirer satisfaction.³⁸
- 10.50 Like all call centres, they could provide a very low cost and timely service but, by their very nature, they lacked the local knowledge that can be so critical to the solving of the problem.³⁹

The Committee's view

- 10.51 The experiences conveyed to the Committee time and time again reinforced the view that call centres have become the bane of modern living. The inability to talk to the same person twice when the initial problem is not resolved only heightens the level of frustration and this is not exclusive to AEC election-time call centres.
- 10.52 The Committee believed that in 2004 it should have been possible for people to receive answers to their queries at the time they made the call.
- 10.53 AEC Information Technology should be upgraded so that voters can be told whether their postal vote application has been received, and if so when their ballot papers were despatched.

37 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, (Longreach), p. 6; Mr B Hoogland, CEO, Winton Shire Council, Wednesday, *Evidence*, 27 April 2005, (Longreach), p. 15; Mr V Becker, CEO, Ilfracombe Shire Council, Wednesday, *Evidence*, 27 April 2005, (Longreach), p. 19; Mr M Rowell, Queensland Nationals, *Evidence*, Thursday, 28 April 2005, (Ingham), p. 9; and Submission No. 62, (Bungil Shire Council), p. 1.

38 Submission No. 165, (AEC), p. 39.

39 Mrs S Doyle, *Evidence*, 27 April 2005, Longreach, pp. 5, 9-10.

Addressing the urban-rural divide

- 10.54 Australia's geography remains a challenge, and this will not change. But the range of the potential practical solutions to help overcome the urban-rural divide is expanding. Many of these are discussed in other parts of the report because they have been considered in the wider context of Federal Elections and not simply as a response to the geographical challenges.
- 10.55 Modern technology could overcome many of the difficulties faced by voters in remote locations, such as applying for postal votes and having their receipt confirmed by email. Chapter 11, *Technology and the electoral system*, discusses some potential electoral application of technology.
- 10.56 Access to pre-polling centres is an issue that was raised in the Minter Ellison report and the AEC is committed to undertaking a nation-wide review of pre-polling services. The Committee will follow up this review with the AEC before the next election to ensure that this option of voting is given due weight in the light of the other recommendation made in this report.

Technology and the electoral system

- 11.1 In age where so many day-to-day activities utilise modern technology, is the machinery of Australia's electoral system outdated? Could 'new' technology be utilised to better serve the needs of groups of voters, or in fact all voters?
- 11.2 Numerous submissions have raised the use of technology in the electoral system, albeit for a variety of purposes.¹
- 11.3 Also, several recent and important studies have looked at various electoral technologies and made assessments of their benefits and risks.²
- 11.4 In this chapter, the Committee examines different areas in which electoral technology could be utilised, analyses the advantages and disadvantages, and then provides a view on whether it is suitable within the context of the Australian electoral system.

1 See Submissions 16, 45, 46, 48, 50, 52, 54, 68, 74, 101, 120, 135, 138, 182, 184 & 187.

2 See Barry C, Dacey P, Pickering T, and D Byrne, *Electronic Voting and Electronic Counting of Votes: a Status Report*, March 2001; Barry C, Dacey P, Pickering T, and T Evans, *eVolution not Revolution: Electronic Voting Status Report 2*, September 2002; Scrutiny of Acts and Regulations Committee, *Inquiry into Electronic Democracy: Final Report*, November 2004; and, Elections ACT, *Electronic Voting and Counting System: Review*, August 2005.

Online enrolment

- 11.5 At present, the AEC has electoral enrolment forms and an enrolment verification service available on its website.³
- 11.6 However, under Section 98 (2) of the CEA, the AEC must receive an original enrolment form that is signed by the applicant and an enrolled witness, and therefore forms cannot be lodged on-line.⁴
- 11.7 Given that banks and other such organisations are able to successfully verify identity over the internet, is it then possible for the AEC to consider accepting online enrolment forms?

Advantages

- 11.8 Potentially, electronic enrolment would simplify the process for both the enrolee and the AEC, leaving behind the inaccuracy associated with manual data entry and paper-based applications.
- 11.9 In terms of developing appropriate technology, the NSW Disability Discrimination Legal Centre suggests:
- the Australian Electoral Commission could liaise and consult with banking and financial institutions or utilities or organizations (like Australia Post or Telstra), who enable their customers to transact with them online.⁵
- 11.10 As well as the possibility for new enrolments, it could also be used to allow people to update their enrolment online.

Disadvantages

- 11.11 While every attempt is made by organisations who engage in online transactions to maintain security, it appears this is not always a guarantee against the sophisticated techniques used by hackers.⁶ Therefore, it may not be impossible to guarantee that the electoral roll, and voter's identities, would not be compromised.

3 See www.aec.gov.au/_content/what/enrolment/forms.htm

4 Under paragraph (3) of Section 98, if a person is physically incapacitated and unable to sign a form, it may be signed on their behalf.

5 Submission No. 68, (NSW Disability Discrimination Legal Centre), p. 12.

6 See, for example, Dash, E, 2005, "Data Thieves Have Us All in Their Pockets", *Australian Financial Review*, 30 July, p. 29.

11.12 There also may be the potential for such a system to make the enrolment of fraudulent names and addresses simpler. For example, would it still be possible to require voters to verify their identity, in line with the recommendations contained in Chapter 2 of this report?

The Committee's view

- 11.13 While acknowledging technology of this type is evolving, the Committee is of the view that the risks associated with allowing online enrolment outweigh any potential benefit.
- 11.14 The concerns with regard to fraudulent enrolment could be lessened if the Committee's recommendation in Chapter 2 of this report (ID requirements for enrolment) was implemented, and could be enforced for online enrolments.
- 11.15 Therefore, the Committee considers that it would be unwise to dismiss online enrolment altogether, and believes it could be especially useful for the purpose of updating enrolment.
- 11.16 However, while it would be useful for the AEC to consider this matter, at this stage the Committee does not foresee online enrolment as a realistic option in the near future.

Electronic lodgement of postal vote applications

- 11.17 There are two kinds of postal voters:
- those who are registered to receive a postal vote for every election, under Section 184A of the CEA; and
 - those who have applied to receive a postal vote for a specified election, for a reason specified in Schedule 2 of the CEA.
- 11.18 Postal vote applications must be either mailed or faxed to the AEC, and must be signed by the elector and an enrolled witness.
- 11.19 The AEC has recommended to the Committee that the *Electronic Transactions Regulations 2000* be amended to permit postal vote applications to also be accepted if they are scanned and emailed to the AEC.⁷

7 Submission No. 165, (AEC), p. 5.

11.20 Another possibility is to move beyond paper-based forms, and establish an online form, where an elector could apply for a postal vote by inputting their relevant, verifiable details.

11.21 The AEC, in speculating about such a system, suggested:

they might have a form that can be completed online. You push the send button and it is submitted electronically at that time.⁸

Advantages

11.22 Allowing applications for postal votes to be submitted by e-mail would provide people who are either isolated (in rural areas or overseas) or incapacitated with another means of applying to become a postal voter.

11.23 In one of his recommendations for improving the postal voting service, the Hon. Bruce Scott MP, suggested that the AEC should “offer accessible technology for people to apply for postal votes”.⁹

11.24 In regard to claims that email access would increase the opportunity for fraud, the AEC advised:

scanned and e-mailed applications would present no greater fraud risk than a standard written application because, once received by the AEC, exactly the same checks will be applied to written and e-mailed applications.¹⁰

11.25 On line application forms are a second option, which could be verified by requiring a person to have an internet connection. As with other organisations who transact online, the AEC could use methods other than signature verification to confirm identity, such as a password.

11.26 Under Section 182 (4) of the CEA, applications for a postal vote (not a GPV application) must not be made until after the issue of the writ. Therefore, with either system, electronic lodgement would allow the AEC to process applications sooner, allowing people to receive their postal votes earlier.

8 Mr Timothy Evans, Director, Election Systems and Policy, AEC, *Evidence*, Friday, 5 August 2005, p. 75.

9 Submission No. 1, (The Hon. B. Scott MP).

10 Submission No. 74, (AEC), p. 5.

Disadvantages

- 11.27 A simplified online form would make online application especially convenient. Allowing people to apply for postal votes electronically may therefore encourage those who could otherwise vote conventionally to apply for a postal vote.
- 11.28 With the scanning and emailing of the applications, there may well be questions of accessibility, with respect to how many people actually have scanning equipment.
- 11.29 In regard to the online application form, concerns will inevitably arise about the security of the system, including the potential to fraudulently apply for a postal vote.
- 11.30 Furthermore, with the online form it would no longer be possible to check the signature on the postal vote certificate against the relevant application at the time of scrutiny.

The Committee's view

- 11.31 The Committee is of the view that electronic lodgement of postal vote applications will make the voting process simpler for many Australians. This would be particularly true, for voters in rural and remote areas of Australia, such as those in Queensland, where the Committee conducted three hearings.¹¹
- 11.32 However, the Committee maintains that postal voting should not become a form of convenience voting for those who do not need it. It is therefore important that the AEC continues to apply the provisions of the CEA stringently.
- 11.33 The Committee acknowledges that scanning and emailing a PVA does not carry the same technological risks associated with electronic enrolment or online application forms.
- 11.34 While the Committee does not claim to have wide-ranging IT expertise, it holds that it is essential for the AEC to assess and document all possible risks associated with any new system it is considering.
- 11.35 The Committee is of the view that scanning and emailing signed PVAs is the more viable option, predominantly because it will still

11 At Dalby, Longreach and Ingham, 27–28 April 2005.

allow the signature on a postal vote certificate to be checked against the application at the time of preliminary scrutiny.

- 11.36 Therefore, in Chapter 3, *Voting in the pre-election period*, the Committee has recommended that the *Electronic Transactions Regulations 2000* be amended to permit electors to submit an application for a postal vote or an application to become a general postal voter by scanning and emailing the appropriate form.
- 11.37 While the Committee can see the benefit of an online application form, it believes that security and identification issues may be prohibitive at this time. However, as with online enrolment, it may be worthwhile for the AEC to consider the matter, with a view to implementation at some time in the future.

Checking the roll on election day

- 11.38 At present, every polling place has several hard copies of a division's Electoral Roll, which are marked off by hand as electors collect their ballot papers.
- 11.39 It has long been argued that this system creates a possibility for fraudulent voting, because a person could potentially vote at every polling place within a division.
- 11.40 If it were possible to "mark" an elector off on an electronic Electoral Roll, and for polling places to communicate that fact to each other in real time, this possibility could be eliminated.

Networked checking of the electoral roll

- 11.41 Using this system, every polling place in Australia (or a designated number on trial basis) would have computers networked to the AEC's central server. As each person voted, their name could be "marked" off the roll as having voted, therefore not enabling them to vote again.
- 11.42 In regard to the existence of this type of technology, the AEC put forward a prominent example, saying:

in the United Kingdom at local government elections in 2002 in the London borough of Camden, they trialled a voting system where all attendance early voting – pre-poll voting in our parliaments – was undertaken on a direct recording electronic voting machine or DRE. They had five pre-poll

voting centres set up. They were set up in libraries in the borough, so they were in property owned by the London borough and were already linked up on a local area network operated by the borough... There was a roll loaded in each of the DREs that recorded the names of people who had already had a postal vote, so that group of people were not able to multiple vote. Then, because they were wired up on a local area network, as a person cast their vote and their name was marked off, that information was held on a shared database. So if that person or somebody endeavouring to personate that person attended another polling place or the same polling place at another time, that name was already marked off as being recorded.¹²

11.43 Moreover, in Germany, the AEC noted that:

trials [are] being conducted, which... are more aspirational than the example... in London, where they are endeavouring to set up an intranet network linking all places where polling occurs so that DREs can be plugged into those using that intranet and then that same sharing of information can occur.¹³

Advantages

11.44 This system could reduce the inaccuracy, potential fraud and costs of printing associated with paper electoral rolls.

11.45 Most importantly, because a person's name is marked off on the networked system as they vote, the potential for any individual to vote in their own name on multiple occasions is eliminated. In combination with recommendations about identification for voting (made in Chapters 2 and 5) the technology could therefore help eliminate both fraudulent voting and multiple voting.

Disadvantages

11.46 The cost and infrastructure associated with setting up such a system would be substantial. The AEC commented:

12 Mr T Evans, Director, Elections Systems and Policy, AEC, *Evidence*, Friday, 5 August 2005, p. 73.

13 Mr T Evans, Director, Elections Systems and Policy, AEC, *Evidence*, Friday, 5 August 2005, p. 73.

we currently have over 7,000 polling booths... there is a cost of wiring up those facilities which are not ours, mainly schools and other community facilities. For a one-off event every three years, a significant infrastructure may well be required.

11.47 In regard to the London example, a key element was that the council owned and controlled all of the buildings (libraries etc) where polling took place. Therefore, a local area network was already in existence in the council and the information could be shared in real time between the direct electronic voting machines at the several sites.¹⁴ By contrast, in Australia booths are often set up in buildings that the Government does not own, and which the AEC certainly does not control.

11.48 Referring to the trials being conducted in Germany, the AEC observed:

you are looking at voting that occurs across a voting period, rather than on a polling day, which means that there is a reasonable return on investment for that infrastructure.¹⁵

11.49 Given that such a system would rely on a connection between polling places, which can be thousands of kilometres away from each other, concerns would inevitably arise about electoral integrity under the technology. For example, would it be possible for someone to hack into the system and compromise the integrity of the electoral roll?

The Committee's view

11.50 The Committee believes this networked system has potential to eliminate the potential for fraudulent and multiple voting. However, the Committee has reservations, especially in relation to:

- the cost;
- the infrastructure; and
- the security of the system.

11.51 At this point, the Committee considers this combination of factors prevents any serious consideration of introducing this system.

14 Mr T Evans, Director, Elections Systems and Policy, AEC, *Evidence*, Friday, 5 August 2005, p. 73.

15 Mr T Evans, Director, Elections Systems and Policy, AEC, *Evidence*, Friday, 5 August 2005, p. 73.

However, as technology evolves, these flaws may be addressed, making the introduction of this system more feasible.

Recommendation 40

- 11.52 **The Committee recommends that the AEC investigate technology that could facilitate electronic checking of the electoral roll through networked polling places. In doing so, it will be beneficial to monitor any international developments in which such technology is utilised. The AEC should report back to the Committee about any major developments in this area.**

Barcoding

- 11.53 Using this system, every elector who is on the roll when it is closed for an election would be sent a barcode, which would be unique to that person. An elector would then be required to bring this barcode to a polling place, where it would then be scanned, and that person issued with ballot papers. The system would be linked back to a central database, where the person would be marked off the roll as having voted.
- 11.54 The H S Chapman Society proposed barcoding methodology,¹⁶ noting that the AEC, the New South Wales and Queensland Electoral Commissions, and the AEC in Victorian Council elections have all sent barcoded letters to electors for presenting at polling booths.¹⁷ The Australian Capital Territory also used barcode technology in voting, as did the AEC for the 1998 Constitutional Convention.¹⁸
- 11.55 A key aspect of the Society's proposal was that attendance would be recorded centrally through mobile telephone technology.¹⁹

Advantages

- 11.56 The H S Chapman Society advised that barcoding has a number of advantages, some of which are:

16 Submission No. 41, (H.S. Chapman Society).

17 Submission No. 41, (H.S. Chapman Society).

18 AEC Constitutional Convention Overview, www.aec.gov.au/_content/when/constitutional/overview.htm

19 Submission No. 187, (H.S. Chapman Society).

- eliminating multiple voting in the same name;
- eliminating multiple voting in different names;
- saving on printing multiple electoral rolls for each booth; and
- saving on delivery costs of rolls to and from polling places.²⁰

Disadvantages

- 11.57 While voting using barcodes is near failsafe when the barcode is in the correct hands, if someone was to obtain the barcode of another person, this may give them an unchecked ability to cast a vote on behalf of that person.²¹
- 11.58 Further, when first introduced, it is probable that many would lose, forget or ignore their barcode, leading to disenfranchisement.
- 11.59 Similar to networked checking of the electoral roll, cost and security could be major concerns.

The Committee's view

- 11.60 The Committee acknowledges the possible benefits of barcoding to eliminate potential voting fraud, and to reduce costs and inaccuracies associated with hard copy electoral rolls.
- 11.61 However, the Committee believes the potential for barcodes to be misused, lost, or ignored poses too great a risk to consider implementing a barcode system.
- 11.62 In a similar vein, the Committee also considers that some identification process would still be required to complement the barcode sent to electors. If this were the case, barcoding would not achieve the advances envisaged.
- 11.63 The Committee also believes that a system combining voter identification, with electronic checking of the roll through networked polling places, would provide all the advantages that barcoding could, with the added guarantee of identity verification.
- 11.64 However, as mentioned, the Committee still regards such a development as some way off.

20 Submission No. 187, (H S Chapman Society).

21 Senator George Brandis, *Transcript of evidence*, Friday, 12 August 2005, p. 6.

Electronic Voting

11.65 Electronic voting is blanket term used to describe a variety practices and technologies that can facilitate voting and counting.²²

11.66 In 2002, a joint report of the AEC and the Victorian Electoral Commission (VEC) stated that:

The technology is now sufficiently mature to support trials of e-voting in Australia. This could be managed with minimum risk and would test both stakeholder and public acceptance of e-voting for electors in special circumstances.²³

11.67 Generally speaking, however, there are two major concerns with the implementation of any kind electronic voting, namely:

- cost; and
- security.

11.68 In this regard, the report of the AEC and VEC noted:

The technical barriers to wide spread implementation of e-voting are considerable. There are also the democratic issues of secrecy of the elector's vote, equal access to e-voting by voters and public confidence in the system.²⁴

11.69 Despite these hurdles, Professor George Williams and Mr Brian Mercurio maintain that providing a service to blind and sight impaired voters, is the "central reason" why Australia should investigate electronic voting at a federal level.²⁵ Similarly, several groups who represent and support people with a disability, advocate the introduction of electronic voting.²⁶

The Committee's view

11.70 While acknowledging the barriers to widespread implementation of electronic voting, for reasons mentioned in the discussion of assisted

22 Barry C, Dacey, P, Pickering, T and D Byrne, *Electronic Voting and Electronic Counting of Votes: A Status Report*, March 2001, p. 2.

23 Barry C, Dacey P, Pickering T, and T Evans, *eVolution not Revolution: Electronic Voting Status Report 2*, September 2002, p. 2.

24 Barry C, Dacey P, Pickering T, and Evans T, *eVolution not Revolution: Electronic Voting Status Report 2*, September 2002, p. 19.

25 Submission No. 48, (Prof G Williams & Mr B Mercurio).

26 See Submission Nos 16, 45, 50, 54, 68, 101, 135 and 138.

voting in Chapter 5, *Election day*, the Committee is particularly keen to see a form electronic voting implemented that would allow the blind or visually impaired to cast a *secret* and *independently verifiable* vote.

- 11.71 However, because of the overriding concerns identified, the Committee believes it would only a limited trial of electronic voting would be appropriate, which is strictly targeted to people who are blind or visually impaired.

Recommendation 41

- 11.72 **The Committee recommends that a trial of an electronic voting system be implemented at an appropriate location in each electorate to assist blind and visually impaired people, who currently cannot cast a secret and independently verifiable vote.**

- **In terms of the type of electronic voting system, and the most appropriate locations, the AEC should liaise with relevant groups, and then report back to the Committee with its proposal.**
- **Following the election, the AEC should report back to the Committee on all aspects of the trial.**

Recommendation 42

- 11.73 **The Committee recommends that the AEC identify, at an early stage, any legislative changes required to allow the paper ballot output of the system (whether electronic counting or a printed ballot paper) to be counted as a valid vote.**

- 11.74 The Committee discusses below some of the most prominent electronic systems, and assess their potential to address to concerns discussed in the body of this report. In particular, it will consider which systems could best achieve the objectives of the preceding recommendations.

Direct recording electronic voting machine (DRE)

- 11.75 The DRE system was described as:

Any system where the elector casts their vote on an electronic voting machine, such as a dedicated computer terminal, touch screen computer or other purpose-built equipment in a polling place. Once recorded, the elector's vote is stored in the machine. After voting has concluded, data is transferred electronically to a counting system.²⁷

- 11.76 An example of a successfully operational DRE is the Electronic Voting and Counting System (eVACS), which was employed by the ACT Electoral Commission at the 2001 and 2004 ACT elections.
- 11.77 At the 2001 ACT election there were 16,559 votes cast and counted electronically, and at the 2004 election there were 28,169.²⁸
- 11.78 As well as the bulky PC based eVACS machine, at the 2004 election, the ACT also trialled "voting tablets"; a highly portable and robust alternative.²⁹ At this election, eVACS was deployed in four pre-poll centres, which later became polling stations on election day, and four election day only polling stations.³⁰

Advantages

- 11.79 The ACT Electoral Commission asserts the key features of its DRE, eVACS, are that it:
- eliminate[s] the need for manual counting of electronic votes, thereby removing the possibility of counting error and speeding the transmission of results;
 - [is] reliable and secure;
 - significantly reduce[s] the number of unintentional voter errors and contribute[s] to an overall drop in the proportion of informal voters at the election;
 - allow[s] blind and sight-impaired people to vote without assistance and in secret through use of headphones and recorded voice instructions; and

27 Submission No. 216, (AEC), p. 20.

28 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, p. 3.

29 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, p. 3.

30 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, p. 4.

- provide[s] on-screen voting instructions in twelve different languages.³¹
- 11.80 One of the most important advantages of DREs is to allow blind and sight-impaired electors to cast a secret and independently verifiable vote. The DREs do this by providing audible instructions to guide an elector through the voting process.
- 11.81 In a testament to the success of DREs the Canberra Blind Society, which has used the ACT's eVACS, reported:
- for the first time in over 100 years, people in the target group were able to exercise their rights as citizens of Australia and vote independently, with confidence and in privacy. While the assistance of booth attendants or friends and relatives was appreciated, a young blind lawyer summed up her feelings saying, "Being able to vote by myself has given me a sense of freedom and belonging that I have never felt before".³²
- 11.82 EAV's (discussed below) may also achieve this, but because DREs don't produce a ballot paper they have an added advantage: it would not be possible for scrutineers to single out electronic ballot papers at the time of scrutiny. This is fundamentally important if a trial of electronic voting were to be limited to specific groups of voters.
- 11.83 To ensure cost effectiveness, the AEC could use electronic voting in pre-poll centres, which then would become normal polling centres on election day. On this point, the ACT Electoral Commission notes:
- the deployment of the required hardware to polling places for a single day poses logistical challenges and is of questionable cost effectiveness. By contrast, computer voting in pre-poll centres [which become normal polling places on election day] is an effective and efficient use of resources.³³
- 11.84 Another advantage of having DREs available in the pre-poll period, as well as on election day, is that it allows blind or sight-impaired people, who may have difficulty accessing a polling place on a Saturday to vote at the time most convenient to them.

31 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, pp. 3–4.

32 Submission No. 138, (Canberra Blind Society).

33 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, p. 4.

- 11.85 The DRE setup does not utilise any internet or remote connections, and therefore the devices are easily controlled and monitored, and are at no risk of hacking.
- 11.86 While there are concerns that electronic recording and counting of votes leaves no auditable paper trail, all votes recorded could be recorded on to a CD or memory card, which are auditable.
- 11.87 With regard to the security of votes recorded electronically, the ACT Electoral Commission states:
- the transfer of electronic ballots aimed... to ensure that the same level of security was afforded electronic ballots as is given to paper ballots. In traditional paper elections, ballot papers are transferred from the polling place in a locked and sealed ballot box. To achieve the same security, electronic votes [are] copied to write-once only CD-ROMs in the polling place.³⁴
- 11.88 Evidence from the ACT election in 2004 suggests that the use of a DRE can result in a reduction in informal voting. At this election, informal rates for electronic ballots were only 1.9%, compared to 2.9% for ordinary votes.³⁵ This reduction is explained by the fact that a DRE can assist those electors who might accidentally cast informal ballots, providing an audible and written alert to the elector. The ACT Electoral Commissioner described how this would work:
- you are about to cast an informal vote. If you want to proceed, swipe your bar code; if you do not want to proceed, go back and start again.³⁶
- 11.89 In regard to electronic voting as a means to reducing unintentional informal voting, the AEC advised:
- one of the main drivers for the introduction for DREs is a complex ballot. This is the case in the ACT and the Netherlands, with multi-member constituencies and proportional representation, and the USA, with multiple elections on the one ballot paper. Complex ballot papers can lead to an increase in informal votes...³⁷

34 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, p. 15.

35 Elections ACT, *Electronic Voting and Counting System: Review*, August 2005, p. 15.

36 Mr Phillip Green, Electoral Commissioner, ACT Electoral Commissioner, *Evidence*, Monday, 8 August 2005, p. 6.

37 Submission No. 216, (AEC), p. 15.

- 11.90 There is little doubt that the Senate ballot is complicated if an elector chooses to vote below the line, particularly in the larger states such as NSW. With regard to the House of Representatives, informal voting rates have consistently increased in recent elections,³⁸ indicating growing confusion among electors about the voting system.
- 11.91 As was demonstrated in Chapter 6, *Counting the votes*, electorates consisting of large numbers of people from non-English speaking backgrounds generally have very high informal voting rates. DREs are able to display instructions in multiple foreign languages and, as mentioned, provide warnings when an elector is about to cast an informal vote. DREs, therefore, may assist those from non-English speaking backgrounds to cast a formal vote.

Disadvantages

- 11.92 As mentioned, there are two major concerns with all electronic voting systems: cost and security. While security issues are overall addressed by DREs, cost remains an issue.
- 11.93 The ACT experience demonstrates that appropriate DRE technology exists. However, in terms of its widespread deployment at Federal level, the AEC maintains that it:
- does not believe that DREs can be deployed in all polling places for a federal election in the near future. The deployment and support of DREs at over 7,700 polling places at a federal election would be an extremely expensive exercise. For example, it cost the ACT Electoral Commission \$406,000 to develop and deploy ten DREs each at four pre-poll voting centres and eight polling places at the 2001 ACT election.³⁹
- 11.94 This suggests that the cost of fitting out all polling places in Australia with DREs would clearly be unrealistic.
- 11.95 With regard to proposals to divide the costs of electronic voting systems between the States and Territories, the AEC asserts that there is:
- little scope to improve the cost structure through a joint investment in DREs by the AEC and all State and Territory

38 AEC, *Electoral Pocketbook*, 2005, p. 71. Informal rates were, 1993, 3.0%; 1996, 3.2%; 1998, 3.8%; 2001; 4.8%; and 2004, 5.2%.

39 Submission No. 216, (AEC), p. 20.

electoral agencies. Given the three to four year election cycles, the systems would not be used often enough, while the technology would continue to age. Complementary legislation establishing a similar electronic voting system would also have to be passed by the federal Parliament and all State and Territory parliaments.⁴⁰

- 11.96 Another problem for the DRE is fitting all of the Senate candidates on one screen. At the 2004 election in NSW, for example, there were seventy-eight Senate candidates.⁴¹ In the ACT the most candidates the eVACS had to deal with was thirty three.⁴²
- 11.97 Added to this is the complexity, and space requirements, associated with the above-the-line voting option in the Senate. The Senate ballot paper would need to undergo a major redesign to become suitable for a DRE screen.
- 11.98 The time it takes to cast a ballot using a DRE also appears to be of concern. The ACT Electoral Commissioner, Mr Phillip Green, stated that the eVACS took "twice as long" as a normal ballot.⁴³
- 11.99 However, when you consider that voting for the Senate would involve numbering up to double the number of candidates that have been required for the ACT, time becomes a significant consideration. The fact that the ACT has a form of optional preferential voting⁴⁴ only supports this view.
- 11.100 In terms of assisting all Australians who may not be able to vote conventionally, the AEC states:

DREs will not address the issues of access to electoral services for electors in remote locations, both in Australia and overseas, who do not have access to a reliable postal service. Electronic voting using DREs requires an elector to attend a pre-poll voting centre or divisional office, and it is their

40 Submission No. 216, (AEC), p. 21.

41 AEC, *Electoral Pocketbook*, 2005, p. 68.

42 ACT Electoral Commission, see www.elections.act.gov.au/Cand2004.html

43 Mr P Green, Electoral Commissioner, ACT Electoral Commissioner, *Evidence*, Monday, 8 August 2005, p. 10.

44 The ACT elects multi-member constituencies. The electors are only required to put preferences for the number of members that are to be elected for that seat. See, *Electoral Act 1992* (ACT), part 10.

inability to do so in the first place that makes voting difficult for these electors.⁴⁵

The Committee's view

- 11.101 The Committee believes there are two major factors limiting the widespread implementation of DREs: the time taken to vote; and the cost.
- 11.102 The Committee considers that the time taken to vote with DRE, particularly in States with a large number of Senate candidates, would be excessive. It would require large numbers of DREs at each polling place which, in turn, would add to fit-out costs that the AEC already considers exorbitant.
- 11.103 The Committee believes that the overall success of the current system of paper-based voting proves that there is no need to rush into the widespread implementation of DREs, especially when the costs may overwhelmingly outweigh the benefits.
- 11.104 At this point, the Committee considers that the DRE system is the most appropriate type of electronic voting for the purposes of assisting targeted groups, such as the visually impaired, as set out in previous recommendations. This view is supported by the AEC.

Electronically Assisted Voting (EAV)

- 11.105 For the most part, EAV's are very similar to the proposed DRE system, with the key difference being that EAV's print ballot papers.
- 11.106 The EAV voting system was described as:

a form of electronic voting... comparable to the successful e-voting system employed in the past two Australian Capital Territory parliamentary elections (2001 & 2004), but which does not contain the ingredient of electronic recording and counting of votes...EAV uses the ingredients of a standard personal computer equipped with adaptive technology for the blind and vision impaired (audio screen readers and text enlarging software) to electronically register the vote. Following this, the voter actions a print command function to

45 Submission No. 182, (AEC), p. 16.

print their ballot paper from a printer connected only to the computer's local printer port. Then, like all other voters, the ballot paper is placed in the designated ballot box. There is no Local Area Network (LAN) or Internet connectivity involved and a paper trail is maintained.⁴⁶

11.107 The Committee notes that May 2005 report of the Victorian Parliament's Scrutiny of Acts and Regulations Committee, advocated implementation of an EAV type system. It recommended the development by the VEC of a system of electronic voting machines for local and general elections in Victoria, which should, inter alia:

- permit the casting of a private, unassisted vote for the blind, those ...with limited vision, and...with low levels of English literacy;
- provide the same voting instructions as appear on the paper ballot in a range of languages other than English;
- produce a voter-verifiable paper trail to be retained by electoral officials; and
- be restricted to a closed local area network under the complete physical control of electoral officials.⁴⁷

Advantages

11.108 Summarising the benefits of EAV, Vision Australia stated:

From the perspective of the voter, electronically assisted voting has substantial benefits. Being an electronic medium, the ballot paper can be rendered in a range of formats including:

- audio- synthetic speech or human recorded voice;
- large print format;
- a variety of screen colours and contrasts;
- multiple languages;
- refreshable Braille display; and
- audio in multiple languages.

A number of computer applications can be used to provide a solution for a broad range of end users. In addition, this

46 Submission No 135, (Blind Citizens Australia), pp. 6-7.

47 Victorian Parliament Scrutiny of Acts and Regulations Committee, *Victorian Electronic Democracy*, Final Report, May 2005; Recommendation 53.

system has the ability to be used in the polling place environment.⁴⁸

11.109 From this, it is evident that this system could provide a better service not only for people who are blind or visually impaired, but also those who are not fluent in English.

Disadvantages

11.110 When discussing the EAV proposal, the AEC noted several concerns, some of which are:

- The printed ballot paper may not meet the requirement of providing electors with a truly secret ballot. As the printed and normal ballot papers will have a different appearance, these printed ballot papers will be easily identifiable during the scrutiny. As scrutineers observe the ballot count, it would be possible for people other than AEC employees to identify how electors using EAV voted in the election.⁴⁹
- Printers connected to electronic voting machines are a high-risk point of failure (for example, PC connection failures, consumables failures or paper jams can all jeopardize the effectiveness of the system).⁵⁰
- If the EAV systems are used in pre-poll voting centres, printers would need to be able to produce one hundred and fifty different House of Representatives ballot papers and eight different Senate ballot papers. This would require up to eight different printers and paper feeds (one for the House of Representatives ballot papers, one for the uniformly-sized ACT and NT Senate ballot papers, and one for each of the six State Senate ballot papers).⁵¹

11.111 The AEC notes that the ACT Electoral Commission, which has the most experience in electronic voting machines in Australia, does not support the use of printers connected to electronic voting machines.⁵²

11.112 Further to these issues, the AEC also confirmed to the Committee that it knew of no electronic voting systems anywhere in the world that produced a printed ballot paper, as EAV purportedly would.⁵³

48 Submission No 54, (Vision Australia), p. 3.

49 Submission No. 205, (AEC), p. 9.

50 Submission No. 205, (AEC), p. 10.

51 Submission No. 205, (AEC), p. 10.

52 Submission No. 205, (AEC), p. 10.

The Committee's view

- 11.113 The Committee's evaluation of the EAV approach was complicated because there is no operational EAV system at present.
- 11.114 While the Committee can see the benefit of having an electronic system that prints ballot papers, the problems associated with it may outweigh any potential benefit.
- 11.115 Of most concern was the possible compromise of the secrecy of a specific group of voters, and the difficulties associated with printing equipment.
- 11.116 In view of the development work being pursued in Victoria, aimed at producing "a voter-verifiable paper trail", the Committee considered that the AEC should monitor developments in the field rather than duplicate the activities of the VEC.

Remote electronic voting

- 11.117 In discussing this type voting, the AEC advised:

Remote electronic voting can use a variety of delivery systems. These include the Internet, an organisation's intranet, touch-tone phones using interactive voice recognition (IVR), mobile phones using short message system (SMS) text facility, or interactive digital television (iDTV). All of these delivery systems have two things in common: they are remote access systems, that is to say remote from a traditional polling place, enabling the elector to vote from home, work or any public outlet (such as an Internet café); and they are online systems, where the elector's vote is despatched in real time to a secure electronic vote store, where it is held prior to counting.⁵⁴

- 11.118 Rather than look at each piece of technology separately, the Committee instead considered the concept of remote electronic voting in a more general sense.

53 The AEC understands that a variety of electronic voting systems have been trialled at UK local government elections, but that this form of EAV has not. The AEC has confirmed with Vision Australia that they are not aware of the use of this form of EAV in the UK, and the Electoral Commission of the UK has not made mention of this form of EAV in recent reports published on electronic voting. Submission No 205 (AEC), p. 10.

54 Submission No. 182, (AEC), p. 16.

Advantages

11.119 Technology may well be sufficiently mature to allow for safe online transactions. Mrs Lindsay MacDonald noted:

I submit my quarterly Business Activity Statement online. In order to do this, I downloaded the appropriate software from the ATO, and received a digital certificate in order to communicate with them. If I can conduct my confidential business with the ATO in this manner, I believe it must be possible to develop a system for registered postal voters to access the AEC in the same way.⁵⁵

11.120 Provided that the technology does exist, then remote electronic voting could be utilised by groups of electors, or in fact, all electors. One example of this is defence force personnel serving overseas. In this regard, the Department of Defence advised:

Given the advance of secure communications and the risks associated with the attempts to apply traditional voting methods in a war zone, Defence believes that electronic voting warrants investigation in order to provide a safer, and more effective, alternative.⁵⁶

11.121 Remote electronic voting would also enable Australians living in the Antarctic to lodge a secret and verifiable vote. Under current arrangements, ballot papers are faxed to Antarctic bases, and after the close of polls the Assistant Returning Officer for each base phones the votes through to a Returning Officer in Australia.⁵⁷ Therefore:

voting is not compulsory for Antarctic electors because the secrecy of the vote cannot be assured due to the processes used to transmit the results.⁵⁸

11.122 Furthering the case for the introduction of remote electronic voting for Antarctic electors, a joint report of the AEC and VEC, stated:

Antarctic electors are also prime candidates for Internet voting for two reasons: the Electoral Commission knows who

55 Submission No. 47, (Mrs L McDonald), p. 3.

56 Submission No. 132, (Department of Defence).

57 Barry C, Dacey P, Pickering T, and T Evans, *eVolution not Revolution: Electronic Voting Status Report 2*, September 2002, p. 18.

58 Barry C, Dacey P, Pickering T, and T Evans, *eVolution not Revolution: Electronic Voting Status Report 2*, September 2002, p. 18.

they are, and the Antarctic bases are equipped with appropriate technology.⁵⁹

11.123 These premises, it seems, would also apply to defence force personnel. The Department of Defence has offered to provide operational, technical, and information security advice and assistance to the AEC.⁶⁰

11.124 Beyond targeting specific groups who are living overseas, the technology used to vote remotely could be extended to include all Australian's living overseas. However, this would undoubtedly raise questions of identity and fraud, which are not relevant to Antarctic or Defence Force electors.

11.125 Similarly, technology could be extended to allow voters in rural parts of Australia to vote remotely. In doing so, it would allow voters to avoid many of the problems discussed in Chapter 10: *Geographical challenges in the modern age*. In support of remote technology, Mrs Sonja Doyle suggested that all voters should be able to exercise their democratic right by electronic voting with a secure digital password.⁶¹

11.126 Another group of voters potentially advantaged by remote electronic voting would be disabled voters. For the physically incapacitated, it would save the inconvenience of having to travel to a polling place. For voters who are blind or visually impaired, it could allow a secret and independently verifiable vote to be cast from home.

Disadvantages

11.127 The major concern with remote electronic voting is its potential to increase the risk of vote insecurity. The 2001 report of the AEC and VEC stated:

There are two aspects to the security issue that need to be addressed. The first is to ensure that the system is not exposed to attack that would interfere with the electors' votes. The second is to provide a level of confidence as to the identification of the elector at the time of voting.⁶²

59 Barry C, Dacey P, Pickering T, and T Evans, *eVolution not Revolution: Electronic Voting Status Report 2*, September 2002, p. 18.

60 Submission No. 132, (Department of Defence), p. 4.

61 Mrs S Doyle, *Evidence*, Wednesday, 27 April 2005, p. 3.

62 Barry C, Dacey P, Pickering T, and D Byrne, *Electronic Voting and Electronic Counting of Votes: A Status Report*, March 2001, p. 14.

11.128 In regard to these concerns, the ACT Electoral Commission suggested:

Security concerns and the difficulty of providing electors with unique online identifies are still seen as obstacles that have not yet been overcome.⁶³

11.129 Moreover, in response to the United Kingdom's experience with this type of technology, Mr Oliver Heald MP, UK Shadow Secretary of State for Constitutional Affairs stated:

Remote electronic voting is even more vulnerable than all-postal voting; not only are the internet and text messaging insecure, but Pin numbers must still be sent by post to voters - and there is no way of confidently identifying that an electronic vote is being cast by the eligible voter.⁶⁴

11.130 Other disadvantages of remote electronic voting could be:

- A perceived lack of transparency in the voting process. The paper balloting system provides a transparent process, from electors voting through to the counting votes and distribution of preferences. Internet voting may be less transparent in a number of the key areas.
- An increased potential for coercion and intimidation when voting takes place outside the view of polling officials e.g. at home or in the workplace.
- Electors may vote before candidates and parties have had sufficient time to present their policies.
- The secrecy of employees' votes may be violated by unscrupulous employers if electors vote from a work place computer.
- Some candidates may concentrate their campaign messages to the Internet voters at the expense of the attendance voters.⁶⁵

63 Elections ACT, *Electronic Voting and Counting System Review*, August 2005, p. 5.

64 Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs, United Kingdom, in Deane J, "E-voting Plans Shelved", *The Independent*, 6 September 2005.

65 Barry C, Dacey P, Pickering T, and D Byrne, *Electronic Voting and Electronic Counting of Votes: A Status Report*, March 2001, p. 14.

The Committee's view

- 11.131 The Committee believes that because voting is on a Saturday, it is not too onerous a task for people who can vote in person to do so.
- 11.132 Furthermore, the Committee regards attendance at a polling place as a key contributor to Australia's democracy. If all Australians were given the opportunity to vote remotely, the Committee believes one of the best features of Australia's voting system would be removed. Therefore, even if it is technologically possible, the Committee has no desire to see widespread remote electronic voting introduced at any time in the future.
- 11.133 With regard to remote electronic voting for all Australians living overseas, the Committee believes that security and identity confirmation are concerns, and therefore does not consider this a viable option.
- 11.134 The Committee holds similar concerns for electors in remote in Australia. The Committee is of the view that if postal voting is run efficiently, it is the best way for electors in rural areas to cast their vote. While acknowledging postal voting problems prevalent during the 2004 election (as discussed in Chapter 3, *Voting in the pre-election period*), the Committee has been assured by the AEC that these problems will not occur at the next election.⁶⁶
- 11.135 The Committee does believe, however, that remote electronic voting could advantage electors stationed overseas with the defence force, Australian Federal Police (AFP) and for electors resident in Antarctica. The difference between these groups and rural and overseas electors is that the AEC can be certain of the identity of Antarctic, AFP, and defence force electors. Further, postal voting is not a realistic option while other forms of polling are problematical and could compromise secrecy.

66 See AEC, *Evidence*, Monday, 5 August 2005.

Recommendation 43

- 11.136 **The Committee recommends that the AEC trial remote electronic voting for overseas Australian Defence Force and Australian Federal Police personnel, and for Australians living in the Antarctic. The AEC should develop a proposal that considers matters such as security and verification of identity, and report back to the Committee.**
- 11.137 While the Committee advocates remote electronic voting in these specific circumstances, it is keen to stress that it does not view this trial as a precursor to wider implementation.

Campaigning in the new millennium

Modern election campaigns

- 12.1 Modern political campaigning is an increasingly professional activity.¹ Political parties and candidates use new information tools to target voters, to conduct polls, and to persuade the electorate both individually and en masse.
- 12.2 During the 2004 election period a combination of innovative and traditional communication media engulfed the electorate with a new intensity. Voters were subject to a “continuous campaign”; and they wondered who was paying for it.
- 12.3 Are Australia’s electoral laws adequate regulators of modern election campaigns in this high information environment?
- 12.4 This chapter evaluates questions about the laws governing political campaigns, specifically in relation to:
- the regulation of internet commentary;
 - the cost of modern elections;
 - overseas regulation of campaign finance;
 - expenditure controls; and
 - advertising costs and controls.

¹ Submission No. 104, (Mr P Van Onselen & Dr W Errington).

Regulation of internet commentary

- 12.5 This section of the report evaluates the potential for effective regulation of electoral material in cyberspace.

Technological challenges

- 12.6 Advances in electronic publishing systems, email and teletext technologies have enabled a more immediate and freer dissemination of viewpoints about electoral matters by candidates, members of the public and interest groups.
- 12.7 Internet technologies introduce the potential for instant interactive advertising and commentary. Material can be produced by anyone without the editorial vetting conventional to the print media and at low or no cost. Websites can be accessed at any time while chat rooms facilitate nationwide discussion in a moment. The opportunities for the generation of political commentary, of every tenor, are obvious.
- 12.8 At present, internet technologies are not subject to regulation under the CEA or Broadcasting Act, whereas other media are. In this apparent regulatory vacuum, concerns have grown that without CEA requirements for identification of an author, offended parties can not access remedies under the law.
- 12.9 Events during the last election period, when internet sites with subversive names and content were logged,² intensified political parties' attention on regulating the internet. It was suggested that electoral laws requiring authorisation of electoral material in print and on radio and television broadcasts should also apply to internet communications.³

Authorising of advertising

- 12.10 The current, pre-internet, provisions of the CEA are in section 328:

1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed, an electoral advertisement, handbill, pamphlet, poster or notice unless:

2 Eg. *Johnhowardlies.com* and *marklathamsuks.com*

3 Schubert M, "Bloggers, Spammers Face Clamp Down", *Sydney Morning Herald*, 16 March 2005.

- (a) the name and address of the person who authorized the advertisement, handbill, pamphlet, poster or notice appears at the end thereof; and
- (b) in the case of an electoral advertisement, handbill, pamphlet, poster or notice that is printed otherwise than in a newspaper – the name and place of business of the printer appears at the end thereof.

- 12.11 Section 328(2) extends these requirements to electoral video recorded matter. Television and radio advertising have separate authorisation requirements which are set out in the *Broadcasting Services Act 1922*.⁴
- 12.12 Evidence to the Committee expressed various views about the interpretation of s328 and its extension to cover internet material.

Authorising and the internet

- 12.13 The AEC previously held the view that s328 applied to electoral advertising on the internet. However, during the inquiry it reported legal advice that s328 does not apply to internet publications, although this has not been tested in the Courts.⁵
- 12.14 The Australian Labor Party considered that as electronic technologies are used to “publish or distribute “ electoral material, s328 should clearly apply to all new technologies. Accordingly, the ALP recommended that the CEA be amended to require that electoral matter circulated by the internet, email, SMS and pre-recorded telephone material should require authorisation.⁶
- 12.15 However, website publishers took a different view. They maintained that the dynamic and candid nature of internet communications would make regulation of this type both undesirable and impractical.
- 12.16 Professor John Quiggin, who operates a “blogg” website,⁷ argued that applying s328 to the internet would not be feasible legally nor

4 Administered by the Australian Broadcasting Association, Submission No. 182, (AEC), p. 7.

5 Submission No. 182, (AEC), Attachment B, *Electoral Backgrounder No. 15*, "Electoral Advertising", p. 2.

6 Submission No. 136, (ALP), p. 15; and see discussion below.

7 The term "blogg" site is derived from "web log", and is defined as an online personal journal with reflections, comments and hyperlinks provided by the writer.

technically, and would make his position as the operator of a continuing website untenable.⁸ In particular:

- the legislation would be unenforceable because websites are often published outside Australia's legal jurisdiction (eg the United States);
- anonymity is a feature of web communications, given the nature of the medium and the personal and other information exchanged (and this is unlikely to change even if the law was applied);
- any successful litigation on commentary would not be timely enough to limit the proliferation of the offending material;
- a web administrator would not have the resources to verify the names and addresses of contributing authors; and
- the regulation would unduly affect administrators of continuing sites, but would not prevent fly-by-night sites from publishing detrimental material anonymously in the lead up to an election.⁹

12.17 Mr William Bowe, also an independent website editor, had no objections to authorisation requirements, although he did have reservations about carrying editorial responsibility for material logged on his site:

I would have thought that it would be sensible for anyone running a web site that is going to make it its business to make comment on the electoral process and election campaigns to be authorised and to have an identifiable person take responsibility for what is printed on that web site. The issue, of course, is the *comments facilities* that many web logs contain.¹⁰

Reconsidering “advertising” on the internet

12.18 One option offered to the Committee was to amend the definition of electoral *advertising* matter in the legislation. It was suggested that s328 could distinguish between "electoral advertising" material *per se*, and general commentary on the net. Regulations could apply to the first, and not to the latter.

8 Submission No. 180, (Prof. J Quiggin).

9 Submission No. 180, (Prof. J Quiggin); and see *Evidence*, Wednesday, 6 July 2005, pp. 22–31.

10 Mr W Bowe, *Evidence*, Wednesday, 3 August 2005, p. 53 (Committee italics).

12.19 Professor Quiggin argued that a precedent for this is set by AEC exemptions from authorisation requirements permitted for other media. There is no requirement for the identification of the authors of “letters to the editor” in newspapers and journals. Similarly, there is no law requiring the identification of talkback radio callers during an election period.¹¹ He concluded:

on this basis, consistent application of the Electoral Act to Internet publications would appear to imply that it is permissible to publish electoral matter, without identifying details as part of ordinary editorial content, but that advertisements, presented as a discrete part of the page or site would require authorisation, whether they were paid for or published without charge.¹²

12.20 The Committee notes that the United States Federal Electoral Commission's (FEC) Inquiry into Internet Communications is considering making a distinction between paid political advertising and non-partisan commentary.¹³

12.21 Legal advisers to the FEC suggested this distinction be made based on two considerations:

- the need to preserve the robust nature and democratic value of the internet's “free low cost speech and information exchange”; and
- Supreme Court findings that internet communications are not as “invasive” as communications via traditional media.¹⁴

12.22 It was concluded that disclosure requirements should not apply broadly to internet communications.¹⁵ Instead, only paid advertisements, in the form of streaming video in banner advertisements or in “pop-ups” appearing on another entity or individual's website, should be required to comply.¹⁶

11 AEC, *Electoral Backgrounder No. 15*, p. 3.

12 Submission No. 44, (Prof. J Quiggin).

13 The inquiry commenced on 24 March 2005, following legal action against FEC rulings released after the introduction of the Bipartisan Campaign Reform Act of 2002. See Potter T and K L Lowers, “Election Law and the Internet”, Chapter 9, *The New Campaign Finance Sourcebook*, updated February 2005.

14 Internet users must be more “proactive” in accessing the medium than users of traditional media. Ref: *Reno v ACLU*, 521 U.S.844,870 in “Draft Notice of Proposed Rulemaking on Internet Communications”, Memorandum to the Federal Electoral Commission, Agenda Item, 23 March 2005, pp. 10-11.

15 Memorandum to the FEC, 23 March 2005, pp. 1, 10.

16 Memorandum to the FEC, 23 March 2005, p. 13.

The Committee's view

- 12.23 The Committee acknowledges that regulation of internet communications presents a number of practical problems, making application of s328's authorisation requirements to the internet cumbersome, and perhaps unenforceable.
- 12.24 While, for example, a web administrator may wish to comply with the authorisation requirements, it would be very difficult to enforce a law requiring maintenance of an accurate record of all contributors of commentary to a website. It is also feasible that authorisation requirements may not effectively control misleading commentary, but would certainly impose onerous and, perhaps, impossible burdens on web administrators.
- 12.25 Notwithstanding these limitations, the Committee could see merit in a proposal for targeted treatment of electoral advertisement, ie *promotional* material. The difficulty remains in making a clear distinction between this and other commentary on the internet under Australian electoral law: the scant definition within the CEA of what constitutes an advertisement¹⁷ is unhelpful; its application to the internet would need clarification by the courts.
- 12.26 The Committee judges that a distinction could be made between advertising/promotional material and the type of political debate which the internet facilitates. Such a distinction is supported by considerations that internet discussion is more akin to editorial commentary or letters to the editor.
- 12.27 With the developments in the United States in mind, the Committee suggests that authorisation requirements should at the very least be consistently applied to discrete promotional material on the internet, as it is to electoral advertisements in the print and broadcasting media.
- 12.28 To make this enforceable, the criteria for defining advertisements on the internet will need to specify that the material has been sponsored by an external organisation or individual, and is presented in a visually discrete manner.

17 CEA s4 *Interpretation* identifies **electoral advertisement**, as "an advertisement...that contains electoral matter..." **electoral matter** means matter which is intended or likely to affect voting in an election.

Recommendation 44

- 12.29 **The Committee recommends that the AEC review section 328 of the Commonwealth Electoral Act to devise authorisation requirements for electoral advertisements, as distinct from general commentary, on the internet.**
- 12.30 In drafting these amendments, the AEC should ensure that the definition of published electoral matter specifies that the authorisation requirements are also to apply to material *republished* on the internet. In this instance, the AEC should determine a cut off point for disclosure of authorisations, such as whether disclosure of the original sponsor, as well as of the immediate re-publisher of the material, will be sufficient.
- 12.31 The Committee also considers there may be merit in a broader review of authorisation requirements within s328 of the Electoral Act, to ensure greater transparency of financial disclosures or party political affiliations.
- 12.32 The AEC may consider, for example, the feasibility of setting requirements for registration of the names of web domains commenting on political matters. This could also include consideration of requirements for identification of political party sponsorship on any websites making political commentary.

Recommendation 45

- 12.33 **The Committee recommends that the AEC review section 328 of the Commonwealth Electoral Act to enhance the accountability and transparency of the electoral process.**

Misleading and defamatory internet publications

- 12.34 This section looks at regulatory responses to defamatory or misleading electoral material in the context of internet publications.

Electoral Act remedies for misleading and defamatory comment

- 12.35 The CEA has remedies for defamatory and misleading comment in electoral advertising in the print and broadcasting media. Evidence questioned whether these can be applied to the internet without significantly impeding the free exchange of ideas which characterises the internet environment. There are two relevant sections.
- 12.36 Section 329 governs misleading comment. As discussed in Chapter 5, *Election Day*, this section has been restricted through court interpretation to apply only to *the casting of a vote*; it is not a matter of influencing a voter's judgement in doing so.¹⁸ The AEC views s329 as applicable to the internet, for regulation of material such as how-to-vote cards and ballot material.¹⁹ There were some concerns that the legislation could halt all political discussion on the web during an election, given the prohibitions on circulation of "misleading" material during an election period.²⁰ This would imply a broader interpretation of s329 than is currently applied.
- 12.37 Section 350 sets out penalties for publishing false or defamatory statements and provides that:
- a person is guilty of an offence if the person makes or publishes any false and defamatory statement in relation to the personal character or conduct of a candidate.²¹
- 12.38 Section 350(2) provides that any offending person:
- may be restrained by injunction at the suit of the candidate aggrieved, from repeating the statement or any similar false and defamatory statement.
- 12.39 While this section is apparently a potent provision, the AEC had concerns that the section may be ineffective following two judgements in 2002. It recommended to the Committee in that year that s350 be removed from the CEA leaving redress for alleged defamation to be pursued in civil proceedings.²²
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18 See implications of High Court judgement *Evans v Crighton – Browne* (1981) 147 CLR section 329(1), as discussed below in the section on misleading advertising.

19 Submission 182, (AEC), p. 8.

20 Prof. J Quiggin, *Evidence*, Wednesday, 6 July 2005, p. 30.

21 CEA s350 (1).

22 Submission No. 198, (AEC), to JSCEM Inquiry on 2001 Election, pp. 4–7. *Dow Jones and Company Inc. v Gutnik* established a precedent for the AEC's regulation of defamatory comment on the internet. In *Roberts v Bass*, the High Court decided that attempting to injure a candidate during the course of a campaign was justifiable on the grounds of

Evidence on proposed removal of section 350

12.40 During the inquiry, the AEC's position was endorsed. The application of s350 to internet publications was seen as problematical in a number of respects.

12.41 Professor Quiggin advised that jurisdictional issues and the anonymous nature of internet interaction made prosecution of defamation of any type a challenge for the courts, and s350 superfluous in the internet context:

obviously, if I were going to publish something I knew to be defamatory, I would seek anonymity. In that case, I would be relying on undetectability, not on the fact that I was not breaching a provision of the Electoral Act. I would point out that the problem of anonymous defamation on the internet is far more serious outside the political sphere. After all, you can say a fair bit under decisions of the High Court in a political context that would be defamatory in other contexts. To have a special electoral provision directed at anonymous defamation seems anomalous to me.²³

12.42 There were also issues of equity and free speech. Evidence claimed that s350 would disproportionately affect private commentators running websites, rather than political parties or journalists, striking dumb political debate.²⁴ Mr David Edgar observed:

to require a single person to carefully watch what they say on the topic of politics places an onerous responsibility on them ...If they allow a reader to leave comments – as most websites do – they are required to ensure each comment can be traced back to an individual. What are the implications of the global nature of their site? Must they ensure that a South African reader must leave an address?

These decisions can only lead to a chilling effect on political speech. With apparently little to differentiate political speech, electoral material and personal opinion, the very real possibility of a not insignificant fine or expensive court case to clear one's name will lead to self-censorship.²⁵

qualified privilege, based on the implied right to freedom of communication guaranteed in the Australian Constitution.

23 Prof. J Quiggin, *Evidence*, Wednesday, 6 July 2005, p. 23.

24 Submission Nos 44; 59; 117; and 180.

25 Submission No. 117, (Mr D Edgar), p. 1.

- 12.43 Mr Bowe has personal experience of litigation under s350 as a website publisher. He maintained that the legislation is anachronistic in a modern communications environment and recommended it be removed from the Electoral Act:

I think that the section may have been drawn up in an environment that has changed quite dramatically in relation to free speech issues. In particular, with the emergence of the internet, there has been an explosion in private comment on political matters and the means of making those comments have become a lot more freely available. I would suggest that in the distance past, when this section was drawn up, if one was a publisher presumably one had vast means at one's disposal or was engaging in an attempt to influence the outcome of the election, neither of which is true of me. I think that the section, in addition to the legal matters that were raised by the Electoral Commission, is obsolete in the environment that has emerged with the emergence of the internet.²⁶

- 12.44 Senator Andrew Murray also supported the removal of the section, or its amendment to include a clause making it clear that defamatory material had *significantly affected the outcome* of an election. This might facilitate prosecution of defamatory political comment on the internet through the Court of Disputed Returns, which handles allegations of corruption of the electoral process.²⁷

The Committee's view

- 12.45 Internet communications are by their nature both ephemeral and pervasive. The feasibility of regulating misleading or defamatory commentary in such an environment effectively, poses immense obstacles.
- 12.46 As noted, the Committee's consideration of this issue takes place at a time when other democratic nations grapple with the difficulties of developing appropriate regulatory standards for internet campaigning and political commentary.
- 12.47 In interpreting its requirements for campaign disclosure, the US Federal Electoral Commissioner has distinguished between classes of

26 Mr W Bowe, *Evidence*, Wednesday, 3 August 2005, pp 52, 54. He noted that Professor Williams and Dr Orr are presently reviewing the constitutionality of s350.

27 Senator A Murray, *Evidence*, Wednesday, 3 August 2005, p. 56.

internet operator activity. A “non partisan” individual operator may spend any amount, for example, setting up a political website without being captured by electoral law. However, if he or she advocates a particular candidate, whether in a coordinated campaign with the candidate or not, expenditure disclosure rules will apply.²⁸ No more rigorous approach to regulation of “blogger” activity has been undertaken, however, given web operator outcry and the concomitant drive to preserve free speech under the First Amendment.²⁹

- 12.48 The Committee considers that these regulatory approaches in the United States are not sufficiently advanced for the Committee to form a view beyond agreement that preservation of our constitutional convention of free speech is essential. The broader implications for the regulation of truth in political advertising, more generally, are discussed later in the chapter.
- 12.49 Nevertheless, in view of the AEC’s previous opinion, and its reiteration in evidence to the current inquiry, the Committee believes that s350 should be removed and prosecution of defamation revert to existing defamation laws.

Recommendation 46

- 12.50 **The Committee recommends that the Government give consideration to amendment of the Commonwealth Electoral Act to remove section 350, which carries criminal actions and penalties for defamation against electoral candidates.**

28 Expenditure over \$250 must be disclosed by an individual operator. If there is coordination with the candidate's campaign, amounts to be disclosed are different and are based on annual contribution categories. These are set under US campaign finance law, see section below. Corporations lodging campaign material on their websites must always disclose expenditure. Any news entity carrying out a press function is not considered to be “contributing” to a campaign, so is not subject to the Federal election law. Potter and Lowers, Chapter 9, *The New Campaign Finance Sourcebook*, updated February 2005.

29 Hasen R, “Should the FEC Regulate Political Blogging?”, *Personal Democracy Forum*, 3 July 2005, p. 1, www.personaldemocracy.com/No.de/416.

Cost of modern elections

- 12.51 Election costs appear to be rising with every election campaign. This trend is occurring around the world, catalysing debate about the means and desirability of controlling campaign expenditure.
- 12.52 The costs of campaigns are carried and regulated by various arrangements in different jurisdictions. Australia's system has evolved to include mechanisms to moderate cost and make elections more equitable.³⁰ Amendments to the CEA in 1924 to require compulsory voting were introduced, for example, to increase voter turnout but also to reduce campaign expenditure.³¹
- 12.53 This section looks at the marshalling of the electoral campaign by:
- the AEC, which administers the election machinery and public awareness campaigns to expand and secure the electoral franchise; and
 - political parties and candidates, with the support of business and public organisations, which wage high profile campaigns to inform the electorate and secure votes.

The AEC

- 12.54 The AEC's orchestration of the electoral process is a massive and expensive exercise. Independent of public funding (considered below), the AEC's expenditure for the 2004 election was almost \$76 million, as set out in Table 12.1³² AEC expenditure on the previous two federal elections was approximately \$67 million spent for the 2001 election,³³ and \$62 million for the 1998 election.³⁴

30 Arrangements include provision of public funding to electoral candidates, and requirements for disclosure of campaign expenditure and of donations.

31 AEC, *Electoral Backgrounder No. 17*, p. 1.

32 To 30 June 2005. Submission No. 182, (AEC), p. 2.

33 JSCEM, *The 2001 Federal Election*, June 2003.

34 As at June 1999, JSCEM, *The 1998 Federal Election*, June 2000.

Table 12.1 2004 Federal election expenses as at 30 June 2005

EXPENSES	\$
Employee Expenses	37,008,089.38
Property Expenses	2,902,705.71
Election Supplies and Services ³⁵	13,281,785.93
Consultancy	983,655.60
Travel	1,150,282.29
Advertising and Promotion	10,193,444.89
Computer Services	2,871,444.96
Mailing Services	1,610,371.95
Printing and Publications	5,583,442.29
Legal Services	230,207.63
Training of Polling Staff	79,474.86
Other Expenses	93,022.52
TOTAL ELECTION EXPENSES	75,987,928.01
+ Public funding	41,926,158.91
TOTAL ELECTION COST	117,914,086.92

Source: Submission 182, (AEC), p. 29.

Educating the electorate

- 12.55 Educating the public about elections, sometimes at short notice, poses substantial challenges.
- 12.56 Voter education takes on an unprecedented significance and importance. New technologies and innovative approaches must be employed to ensure the widest franchise. These factors put a high demand on resources and drive up costs. As Table 12.1 shows, campaign advertising and promotion was the largest single item of AEC expenditure after wages and salaries.

Public funding

- 12.57 The other significant expenditure item for the AEC during elections is the public funding allocated to electoral candidates under Part XX, Funding and Disclosure, of the Electoral Act. The total for the 2004 Election, nearly \$42 million, compares with \$38.5 million allocated for the 2001 Federal Election.³⁶

35 Including freight, election equipment, call centre services and forms.

36 JSCEM, *The 2001 Federal Election*, June 2003.

Campaign costs

- 12.58 The substantial cost of modern election campaigns drives campaign budgets well beyond the public funding provided to electoral candidates by the AEC.³⁷
- 12.59 To address this deficiency in funds, parties and candidates rely on financial support garnered from fundraising events and from donations by organisations and private individuals. It is estimated that more than 80 per cent of funding gained by political parties comes from private sources and that, until recently, the amount of private funding has been growing.³⁸
- 12.60 The Committee's report on the 2001 Federal election recorded that in the 2001-2002 financial year political parties spent a total of \$131.5 million, more than three times the amount – \$38.5 million – allocated to them in public funding.³⁹ Total campaign expenditures for the last election are not yet available.⁴⁰ Table 12.2 charts the rise in party expenditure reported over the last two election periods.⁴¹

37 See, for example, Mr T Gartrell, National Secretary, ALP, *Evidence, Monday*, 8 August 2005, p. 37; and see discussion in Chapter 13.

38 Exhibit No. 45, (Tham J-C and D Grove), "Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections", *Federal Law Review*, Vol. 32, 2004, p. 401.

39 As at February 2003. JSCEM, *The 2001 Federal Election*, June 2003, pp. 32-35.

40 Annual returns cover the period 1 July to June 30, and are provided to the AEC by 20 October each year. See discussion of the legislation below.

41 Based on information as lodged with the AEC by February 2002. It does not incorporate amendments to returns as a result of AEC compliance reviews, nor does it include returns that were lodged after the returns generally became publicly available. See www.aec.gov.au/_content/How/political_disclosures/2001_report/page03.htm.

Table 12.2 Annual return summaries, showing total party expenditure 1999–2002

	1999-2000	2000-01	2001-02
	\$m	\$m	\$m
Political parties			
Revenue	60.97	66.86	147.24
Expenditure	61.32	63.46	136.57
Loans	10.95	16.65	16.05
Associated entities			
Revenue	70.86	52.37	63.59
Expenditure	64.79	46.15	56.34
Loans	54.18	54.71	58.10

Source AEC Funding and Disclosure Report—Election 2001, "Financial Disclosure", p. 3

- 12.61 Between 1987 and 1996 campaign expenditure overall went from 21.2 million to 32.8 million. Advertising costs were the most expensive item in election campaign budgets. Between 1987 and 1996 political advertising costs almost doubled, from \$8.6 million to \$16.5 million.⁴²
- 12.62 Estimates are that the Liberal-National Coalition and Australian Labor Party each spent some \$20 million on advertising during the 2004 election year.⁴³ This \$40 million package is an increase on former Federal election campaigns when they spent a combined \$30 million in 2001 and 1998, and \$27.2 million in 1996 on election marketing.⁴⁴

The Committee's view

- 12.63 Australia's electoral law and funding regimes are designed to ensure that political candidates are adequately resourced to conduct forceful and fair campaigns. On the basis of the figures set out above, it would appear that the cost of conducting such campaigns is growing exponentially: the AEC and political candidates commit more resources with each election.

42 Exhibit No. 45, (Tham J-C and D Grove), p. 405.

43 Submission No. 145, (Dr S Young), p. 4.

44 Cited in Miskin S, "Campaigning in the 2004 Federal Election: Innovations and Traditions", *Research Notes* (Information and Research Services), Parliamentary Library, No. 30, 2004-05.

- 12.64 The importance of effective communications within the modern electoral process is indicated by the high level of advertising expenditure for the AEC and for political parties.
- 12.65 While this is to some extent a consequence of media pervasiveness in society, the Committee is concerned that the steady and substantial increase in these costs may not be sustainable.
- 12.66 To develop an appropriate response to the apparent problem of rising campaign costs, the Committee surveyed arrangements for regulation of campaign expenditure in jurisdictions internationally.

Regulating campaign costs: overseas comparisons

- 12.67 Evidence before the Committee referred to regulatory approaches adopted by the United Kingdom, United States, Canada, New Zealand and Ireland. The main components of campaign finance regulation were :
- campaign expenditure caps;
 - disclosure obligations and private funding limits;
 - public funding allocations; and
 - controls on campaign advertising and broadcasting.

Campaign expenditure caps

- 12.68 Some countries impose expenditure caps or other limits on the monies that can be spent by candidates on an election campaign. The arrangements for Canada, New Zealand and the United Kingdom are summarised below in Table 12.3.
- 12.69 In 2001 the United Kingdom overhauled its system of party finance regulation, and now has the most comprehensive regulatory regime for campaign finance. Among other things, the *Political Parties Elections and Referendums Act 2000* (PPERA) imposed specific limits on party campaign expenditure for the year before the date of the polls and ending on the date of the poll.⁴⁵

45 Schedule 8 lists eight separate categories of campaign expenditure, including political advertising, see below.

- 12.70 Allowable expenditure is determined according to the number of seats being contested, although the amount allocated cannot fall below a prescribed minimum.⁴⁶ Any excessive allocation by a party treasurer is a punishable offence.⁴⁷

Table 12.3: Campaign expenditure limits—selected countries

Jurisdiction	Expenditure limits
Australia (Federal)	No limit
Canada (Federal)	Preselection: 20% of election expenses in that district last election; Candidates: sliding scale \$41,450 for 25,000 electors +\$0.52 per additional elector. Parties: \$0.70 per elector in constituencies contested Third Parties: \$150,000 including no more than \$3000 in particular constituency race
New Zealand	\$1 million for parties and \$20,000 per seat
United Kingdom	£30,000 ⁴⁸ per national party; under £10,000 for typical constituency campaign

Source: Professor Graeme Orr, Schedule reproduced in Submission 160, Exhibit 31, p. 50.⁴⁹

Disclosure obligations and private funding limits

- 12.71 Regulations governing the amount of private funding that political parties receive have been implemented, or reinforced, in the United States, Canada and the United Kingdom in recent years.
- 12.72 In the United States, the Federal Election Campaign Act places monetary limits on contributions to candidates and prohibits funds from some sources.⁵⁰ Special limits are imposed on individual donations, with a biennial limit of US\$101,400 and US\$61,400 for all political action committees and parties. Each Senate candidate may

46 A distinction is made in the legislation between party candidate election expenditure, and party expenditure. Only funds “incurred for the election” are affected, meaning a candidate’s own election expenses are not included. PPERA sch 9 (3) (2). (b). See discussion in Exhibit 45, (Tham, J-C and , D Grove), pp. 416-17.

47 *Political Parties Elections and Referendums Act 2000* (UK), s79 (2).

48 Adjusted up reflecting figure in Exhibit 45, (Tham J-C and D Grove), p. 417.

49 Submission No. 160, (Mr J-C Tham and Dr G Orr).

50 The current law in the area, the Bipartisan Campaign Reform Act (BCRA) was introduced in 2002, and was subject to amendment in early 2005. The Consolidated Appropriations Act of 2005 adjusted certain limits and conditions on permissible uses of campaign funds. *FEC, Record*, Vol. 31, No. 1, January 2005, p. 1.

receive US\$37, 300 per campaign from State, district and local party committees.⁵¹

12.73 The US legislation also bans donations from corporation treasury funds and from some organisations and groups, including labour organisations, national banks, government contractors and political action committees. In addition, disclosure obligations for all annual donations above \$200 apply.

12.74 Table 12.4 shows how Australia's regulation of the area compares with New Zealand, Canada and the United Kingdom.

Table 12.4 Donor limits and disclosure requirements—selected countries

Jurisdiction	Acts	Maximum amount for individual or corporation	Minimum amount for disclosure by party or donor
Australia (Federal)	Commonwealth Electoral Act	No maximum amount	\$1,500 threshold for each separate donor
Canada (Federal)	Canada Elections Act	\$5, 000 for individuals; \$1 000 for corporations and trade unions; no foreign donations	\$200: parties and candidates (and third parties spending over \$500)
New Zealand	Electoral Act	No maximum amount; no foreign donations	\$1, 000 for electorate donations \$10, 000 for "national organisations" donations
United Kingdom	Political parties, Elections and Referendums Act	No maximum amount but donations above £200 only to be made by "permissible" donors (includes individuals, trade unions and corporations); no foreign donations	£5,000 for parties; £1,000 for local branches and individuals. Individual donors must declare donations of £200 or more

Source Professor Graeme Orr, Schedule reproduced in Submission No. 160, Exhibit 31, p. 50.⁵²

Public funding allocations

12.75 In Australia, candidates receive public funding to assist with campaign expenses. Some other jurisdictions limit the use of public funding for campaign purposes.

51 In the United States, committees are established at state, district and local level to support candidates. Political action committees (PACs) are also formed by interest groups to militate support for their favoured candidates. "FAQs on BCRA and Other New Rules", www.fec.gov/pages/bcra/bcra_faq.shtml#Introduction

52 Submission No. 160, (Mr J-C Tham and Dr G Orr).

- 12.76 In the United Kingdom, specific electoral funding is limited to the entitlement of free postage for one communication to each constituent during an election.⁵³ Other public funding is not specifically tied to electoral purposes. Instead, monies are allocated to Opposition parties for performance of parliamentary functions. The amount is calculated on the seats obtained and electoral support achieved at the previous general election.⁵⁴
- 12.77 In Ireland, public funding is allocated to parties but cannot be spent on campaign advertising. It must be used only for general administration of the party, research, education and training, policy formulation and branch and member coordination of activities.⁵⁵

Controls on campaign advertising and broadcasting

- 12.78 The United Kingdom has the most rigorous controls on campaign advertising expenditure. The definition of “campaign expenditure” includes “party political” broadcasts and “advertising of any nature (whatever the medium used)”.⁵⁶ This means that expenditure on political communication is banned, as mentioned above, for a full year preceding an election. Instead, parties are allocated free airtime by broadcasting licensees and public broadcasters.⁵⁷
- 12.79 The UK also has other broadcasting controls, as do Canada and New Zealand. These countries use a combination of free airtime and broadcasting bans to moderate the political contest and to prevent an expenditure race.
- 12.80 These approaches are discussed in more detail under the section below on Advertising.

The Committee's view

- 12.81 The Committee notes that jurisdictions overseas provide a range of models for regulation of campaign finance expenditure. These models

53 Policy development grants are also allocated under the *Political Parties, Elections and Referendums Act 2000*, Exhibit 45, (Tham J-C and D Grove), pp. 408–09.

54 Known as “Short” and “Cranbourne” money. See Exhibit No. 45, (Tham J-C and D Grove), p. 408.

55 Submission No. 124, (Dr S Young), p. 5.

56 *Political Parties Elections and Referendums Act 2000* (UK), sch 9 (3) (7).

57 Submission No. 97, (Democratic Audit of Australia), pp. 3–4.

will be taken into account in the following section when evaluating options for adjustment to campaign finance regulation in Australia.

- 12.82 Senator Murray alerted the Committee to overseas prohibitions on foreign donations, as a discrete area of interest. His views are set out in the section on overseas funding and disclosure regimes in Chapter 13, *Funding and Disclosure*.

Expenditure controls

- 12.83 Unlike comparable jurisdictions overseas, Australia adopts a minimalist approach to regulation of campaign expenditure.⁵⁸ Our regime comprises:
- the provision of public funding;⁵⁹
 - candidate campaign expenditure disclosure requirements;⁶⁰
 - donation disclosure requirements;⁶¹
 - broadcasting and publisher disclosure statements;⁶²
 - three day electronic advertising ban to 6pm on polling day; with broadcasters to provide opportunity for advertising prior to this period;⁶³ and
 - the “caretaker convention” which limits all government advertising once an election is called.⁶⁴
- 12.84 For the purposes of this section, the Committee will focus on the potential of proposed expenditure options to *limit campaign expenditure*. The Committee will not engage with systemic questions about public funding and political finance disclosure, which is the subject of the following chapter. Funding controls will, however, be touched upon in the section on campaign expenditure limits.

58 For definition of electoral expenditure see CEA s308.

59 CEA s294.

60 CEA Division 5A.

61 CEA, s305A: candidates; s305B: parties.

62 CEA, ss310 and 311.

63 *Australian Broadcasting Act 1922, (ABA), Schedule 2*.

64 The convention requires among other things that the Government should avoid making major policy decisions and taking action that would “involve departmental employees in electoral activities”. See *House of Representative Practice, Fifth Edition, 2005, p. 58*.

Campaign expenditure caps

- 12.85 Prior to 1980, Australia had campaign expenditure limits in place.⁶⁵ In order to maintain parity with other major democracies, a number of submissions proposed that caps on campaign expenditure should be reintroduced. However, few put forward any developed proposals for their implementation.
- 12.86 Mr Joo-Cheong Tham and Professor Graeme Orr were exceptions, providing detailed commentary. Mr Tham noted that whereas the United Kingdom had made its regulation of the area more robust, Australia leaves campaign finance largely unregulated.⁶⁶ He and Professor Orr cited British justifications for applying controls on campaign expenditure:
- the anti-corruption rationale – with campaign expenditure controls in place, parties would not be tempted to seek larger donations, carrying the risk of corruption and undue influence; and
 - the equality/level playing field rationale – which assumes that “campaign expenditure buys votes”, so destabilizing the integrity of the electoral contest.⁶⁷
- 12.87 When applied to the Australian situation, the first principle suggested companion controls on donations should be implemented. This is discussed below.
- 12.88 The second criterion raised questions about the efficacy of campaigning to change voter opinion.
- 12.89 Although Mr Tham and Professor Orr noted that there was no true equation between campaign activity and voting patterns in Australia,⁶⁸ they considered that expenditure caps were necessary given that:
- one side or other of politics can use money to inordinately shape the landscape of political and electoral discourse. Whilst ideas need some airtime and hence money to breathe, it is unhealthy for representative democracy to allow open-

65 ABA, Schedule 2.

66 Exhibit 45, (Tham J-C and D Grove), p. 39.

67 Submission No. 160, Exhibit 31, (Mr J-C Tham and Dr G Orr), pp. 36-37.

68 Statistics did not support the view that increased campaign expenditure necessarily wins elections. For instance the biggest spender on political elections from 1974 to 1996 only won half the contests. Submission No. 160, Exhibit 31, (Mr J-C Tham and Dr G Orr), p. 37.

slather electoral expenditure, because this can skew public policy debates.⁶⁹

- 12.90 A stumbling block to proposed caps on campaign expenditure was that the courts may consider such controls an unjustified interference in free speech.⁷⁰
- 12.91 Mr Malcolm Turnbull MP raised this issue when proposing caps on donations. He suggested the burden of the law could be limited by providing that a candidate or party's compliance would be a condition of receiving public money, leaving this as optional.⁷¹
- 12.92 Tham and Orr noted that workable legislation is already place in other countries with liberal traditions. They considered that capping laws are not only feasible but are highly effective. In the UK, Labour, Liberal Democrats and Conservative parties collectively spent total of £45.5 million in 1997. In 2001, after new cap legislation was introduced there was sharp drop in campaign expenditure, to £25.1 million.⁷²

Private donations and campaign expenditure

- 12.93 Caps and controls on private donations are important features of regulatory regimes for campaign expenditure in the United States and Canada. Both apply conditions or bans on donations to political parties from unions, corporations and other organisations, and also caps on individual donations. The intention is to limit undue influence and contain campaign expenditure.
- 12.94 During the inquiry, a correlation was made between the size of private donations and increasing campaign costs in Australia.⁷³
- 12.95 The origin of these funds, and the regulations governing their receipt, has been commented on during the Committee's inquiries into successive elections. Referring to the findings of the JSCEM's seminal report on the matter (1989), Mr Turnbull observed:

as long as businesses and unions with vested interests can finance political campaigns real concerns will continue to be

69 Submission No. 160, Exhibit 31, (Mr J-C Tham and Dr G Orr) p. 39.

70 For reference: *David Lange v Australian Broadcasting Corporation* (1197) 189 CLR 520.

71 Submission No. 196, (Mr M Turnbull MP).

72 Exhibit 45, (Tham J-C and D Grove), p. 418.

73 Major parties were estimated to receive approximately \$60 million annually. Submission No.145, (Dr S Young), p. 7.

expressed. Some Australians will always have the perception, rightly or wrongly, that 'he who pays the piper calls the tune'.⁷⁴

- 12.96 The Committee evaluated proposals to moderate these perceptions along the lines adopted overseas. Options included:
- imposing restrictions on the size of donations; and
 - banning donations from certain organisations and groups.
- 12.97 The related issue of disclosure of donations and political expenditure is discussed in the following chapter.
- 12.98 One suggestion was that only individuals, not unions or corporations, should be allowed to make donations. Mr Turnbull recommended the CEA be amended so that candidates and political parties may not spend money for campaign electoral purposes other than:
- (a) funds received from the Australian Electoral Commission as part of public funding,
 - (b) donations received directly from individuals who are Australian citizens or otherwise on the electoral roll and who certify that the funds contributed are from their own or spouse's resources.
- 12.99 Mr Turnbull proposed that an annual cap on individual donations could be considered.⁷⁵ To encourage support of the measure, donations should be tax deductible, up to a certain limit.⁷⁶
- 12.100 Mr Christopher Pyne MP supported this proposal, suggesting the annual cap could be \$10,000. He predicted:
- there would be an immediate outcome from such a move—the spending by political parties on election campaigns would probably come down as it is likely less money would be available to political parties. I would hazard a guess that that would be welcomed by the voters.⁷⁷

74 Submission No. 196, (Mr M Turnbull MP), p. 1; and see JSCEM, *Who Pays the Piper Calls the Tune – Minimising the Risks of Funding Political Campaigns*, Inquiry into the Conduct of the 1987 Federal Election and 1988 Referendums, Report No. 4, June 1989.

75 To overcome a potential Constitutional challenge, as mentioned above, the new rule should provide that public funding is *conditional* on compliance with (a) and (b),

76 Submission No. 196, (Mr M Turnbull MP).

77 Submission No. 195, (Mr C Pyne MP).

- 12.101 Another view was that limits on donations from unions and corporations, as adopted in Canada, should apply. Senator Bob Brown stated:

I am in favour and the Greens are in favour of a prohibition on donations coming from other entities to political parties. That is what public funding is for. I have just been in Canada, where, nationally, they put a ban on donations coming from unions, corporations and so on. They have given very good public funding to make up for that.⁷⁸

Controls on the use of public funding for campaign expenditure

- 12.102 The aim of the public funding regime is to promote equitable and fair elections by providing a more level playing field in the political contest:

It can help secure greater equality between citizens, promote freedom of speech by increasing the range of persons who have the opportunity to meaningfully exercise that freedom, relieve politicians from the burden of fundraising and to prevent corruption.⁷⁹

- 12.103 Public funding is allotted to candidates who achieve four per cent of formal first preference votes in an election. The electoral funding rate at the last election was \$1.94 for each vote.⁸⁰

- 12.104 However, in absence of appropriate expenditure controls or caps, Mr Tham and Professor Orr considered that:

public funding of political parties has fuelled campaign expenditure. In the absence of expenditure limits, and with open slather television advertising, there is no necessary limit to campaign expenditure or, more generally, to the parties' expenditure. The only real limit is the size of the parties' budgets. Even their perception of campaign saturation is no longer a natural limitation, with the contemporary advent of 'permanent campaigning' included increased use of internal polling, direct mail, and computerised tracking of elector's views, particularly by the major parties. Thus, if the parties' budgets expand because of public funding, we should expect

78 Senator B Brown, *Evidence*, Monday, 8 August 2005, p. 95.

79 Submission No. 145, (Dr S Young), p. 4.

80 See Chapter 13 for discussion.

increases in campaign expenditure in the absence of other constraints like expenditure limits.⁸¹

12.105 With these cost drivers in place, Dr Sally Young submitted that:

Australian politicians may in future legislate again to increase the rate of public funding so that they may spend more.⁸²

12.106 Recommendations for review of public funding arrangements to control campaign expenditure included:

- the imposition of spending caps, with candidates accountable for expenditure;⁸³
- that funding should only be allocated for actual expenditure, and not be paid on a dollar amount per vote;⁸⁴
- public funding arrangements should not apply;⁸⁵ and
- parties should pay for their own campaign material.⁸⁶

The Committee's view

12.107 Despite having derived our regulatory model from the United Kingdom, Australia has rejected the UK's more interventionist approach to regulation of campaign finance matters. In this, we stand outside approaches taken in other Commonwealth countries such as Canada and New Zealand.

Advertising costs and controls

12.108 This section deals with election advertising, defined as advertisements which candidates and parties use to canvass votes during an election period.

12.109 As discussed earlier in this chapter, advertising costs are a key budgetary item for governments, political parties and candidates. The political advertising budget has increased in proportion to overall budgetary expenditure, and rises with each election.

81 Submission No. 160, Exhibit 31, (Mr J-C Tham and Dr G Orr), p. 25.

82 Submission No. 145, (Dr S Young), p. 5.

83 Submission No. 8, (Mr B Patterson), p. 1.

84 Submission No. 89, (Mr E Jones), p. 17.

85 Submission No. 125, (Festival of Light), p. 5.

86 Submission No. 130, (Mr P Andren MP), p. 5.

- 12.110 Within this budget, television broadcasting is the most expensive item. A breakdown of the 2004 advertising figures cited earlier indicates that the Coalition and the ALP each spent approximately \$6 million on direct-mail and research, \$2 million on television broadcasts, \$1 million on radio, and \$500,000 on newspaper advertisements.⁸⁷ New technologies add to this mix, with telemarketing and internet exposure⁸⁸ now used extensively.⁸⁹
- 12.111 This intense media deployment became the focus of commentary in submissions, prompting recommendations for restraint in the form of advertising prohibitions and spending limits.

Advertising bans

- 12.112 Some regulatory jurisdictions routinely include advertising and broadcasting controls as part of their campaign finance regulatory architecture.
- 12.113 As mentioned above, the UK bans expenditure on electoral advertising for the full year before an election.⁹⁰ In addition, its *Broadcasting Act 1990* provides that “any body whose object is wholly or mainly of a political nature” is not permitted to advertise on radio and television. Major parties spend around 80 per cent of expenditure on billboards and hoardings. Paid advertisements in newspapers are also unusual.⁹¹ Instead of paid advertising on television, parties are allocated free airtime by broadcasting licensees and public broadcasters.⁹²
- 12.114 New Zealand also allocates free public broadcasting time. Additionally, the NZ Electoral Commission allocates funds to parties for purchase of time on commercial broadcasters. The amount of time allocated is proportionate to the vote achieved at a previous election

87 Submission No. 145, (Dr S Young), p. 4.

88 Australia experienced a huge growth in internet use between the 2001 and 2004 elections, from 50% in 2001 to 77% in 2004. Murphy M and Burgess G, “Keys to Power”, *The Age*, 30 September 2004, p. 4.

89 Estimates from industry sources and media monitors. See Submission No. 145, (Dr S Young), p. 4.

90 *Political Parties Elections and Referendums Act 2000* (UK), Schedule 9 (3) (7).

91 Miskin S, “Political Advertising in Australia”, *Parliamentary Library Research Brief No. 5, 2004-05*, 29 November 2004, p. 16.

92 Submission No. 97, (Democratic Audit of Australia), pp. 3-4.

or, for new candidates, is based on other indicators of voter support such as party membership.⁹³

- 12.115 In the United States advertising bans or limits would conflict with First Amendment protections of free speech.⁹⁴ However, the US has some controls via advertising cost. Under the Federal Communication Act of 1934, broadcasters must sell advertising time to election candidates at the “lowest rate it has charged other commercial advertisers during the preceding 45 days, even if that rate is part of a discounted package rate”. The Act also requires that if advertising space is offered to one candidate it is offered to all.⁹⁵
- 12.116 Australia has experimented with imposition of advertising bans in the past, but these have been subsequently withdrawn when constitutional and operational problems were identified.⁹⁶
- 12.117 Controls remain limited to the provisions set out in Schedule 2 of the *Broadcasting Act 1922*. These impose a three day ban on political advertising, from Wednesday to the end of polling on Saturday. The ban is administered under a code by the Australian Broadcasting Authority.⁹⁷
- 12.118 There was no support in the evidence for advertising bans *per se*. Instead, such controls were seen as integral to proposed campaign finance regimes.

The Committee's view

- 12.119 The past experience and absence of agitation for bans indicated to the Committee that this was not an issue which required further consideration.
- 12.120 However, other more localised concerns about advertising bans emerged during the 2004 election. The Committee understands that a number of local governments have introduced by-laws to limit or ban electoral advertising, in particular election signage.

93 Submission No. 97, (Democratic Audit of Australia), pp. 3-4.

94 Miskin S, “Political Advertising in Australia”, 29 November 2004, p. 12.

95 Kaid L, and A Johnston, *Videostyle in Presidential Campaigns: Style and Content of Televised Political Advertising*, Praeger series in Political Communication, Praeger, Westport, Connecticut, 2000, p. 7, quoted in Submission No. 124, (Dr S Young), p. 6.

96 *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, in AEC, *Electoral Backgrounder No.15*, p. 9.

97 AEC, *Electoral Backgrounder No. 15*, pp. 7-8.

- 12.121 Aside from obvious practical difficulties arising from inconsistent requirements being imposed by different councils, often located within a single Federal electorate's boundaries, the Committee is concerned that these developments undermine an important principle for candidates.
- 12.122 In particular, the Committee believes that candidates for a Federal Election should enjoy uniform entitlements to advertise, and should not be subject to additional and inconsistent regulation imposed by other jurisdictions.
- 12.123 Furthermore, the Committee considers that these by-laws are possibly in breach of section 327 of the CEA, which provides for political liberty of expression,⁹⁸ and determines that State and Territory laws have no effect if they discriminate against and between electoral candidates.⁹⁹
- 12.124 The Committee therefore concludes that the AEC should assess concerns about the jurisdiction of local and State laws governing electoral signage, and determine whether Commonwealth legislation safeguards equal advertising rights for all candidates, especially where signage is erected on private property.

Recommendation 47

- 12.121 **The Committee recommends that the AEC assess local and state legislation governing electoral signage and determine whether the Commonwealth Electoral Act should be amended to preserve candidates' equivalent rights to display electoral advertising during an election period.**

Spending limits

- 12.126 As noted in the section on campaign expenditure, the United Kingdom, Canada and New Zealand have limitations on campaign expenditure, a key objective being to contain advertising expenditure.
- 12.127 In the Australian context, the lack of a comprehensive approach to campaign regulation finance regulation was thought to drive the "continuous campaign" described by Dr Young:

98 CEA s327(1).

99 CEA ss327(2) and (3).

Australian politicians are no longer confining their election campaigning to the official election campaign period but are instead, stringing their campaigns throughout the election cycle and, increasingly, pushing the costs of this 'permanent' campaigning onto taxpayers.¹⁰⁰

- 12.128 Professor George Williams and Mr Brian Mercurio, among others, made connections between the lack of controls on donations private donations, and the spiralling costs of campaign advertising by major parties:

Australia's laissez-faire approach to campaign finance and advertising laws is troubling for a number of reasons, not the least of which is that it inherently favours major parties. For instance, the fact that Australia allows unlimited donations and no expenditure caps effectively means that the parties can blitz the electorate with advertising similar to what we are used to with corporate ads, such as Coles v Woolworths or Coke v Pepsi.¹⁰¹

- 12.129 The Democratic Audit of Australia concluded that:

the laissez-faire attitude in Australia towards paid political advertising: (a) compounds inequality between political parties and; (b) creates a spending race between major political parties, with the cost of this race driving up the dependence on large corporate donations already discussed.¹⁰²

- 12.130 These various criticisms suggested a more appropriate balance of campaign broadcasting and expenditure controls are needed.

- 12.131 One proposal was that purchased television advertising time should be regulated.¹⁰³ Mr Eric Jones advocated for free airtime to counteract a system which he saw as privileging incumbent members and political parties.¹⁰⁴

100 Submission No. 145, (Dr S Young), p. 1.

101 Submission No. 48, (Prof. G Williams and Mr B Mercurio).

102 Submission No. 97, (Democratic Audit of Australia), p. 3.

103 Submission No. 97, (Democratic Audit of Australia), p. 3.

104 Submission No. 89, (Mr E Jones), p. 14.

12.132 A different approach to the problem was to regulate perceived high costs of advertising caused by the peculiarities of the Australian electoral system:

Australian political parties appear to pay up to 50 per cent more 'for advertising time than do private companies'. This is because political advertisers do not know precise election dates until they are called so they are unable to book in advance. Once they do know the election date, they want advertising time urgently and are willing to pay for dearly for it. For all of these reasons, they are often charged a very expensive rate.¹⁰⁵

12.133 Accordingly Dr Young judged:

The lack of a requirement to sell airtime to political candidates at a reasonable rate is ultimately costing Australian taxpayers through the public funding system and contributing to pushing up the increasingly high costs of election campaigning.¹⁰⁶

12.134 Overwhelmingly, however, advertising controls were discussed as a discrete but integral part of campaign expenditure architecture. The Committee was referred to overseas models for this, and for examples of approaches to broadcasting regulation.

The Committee's view

12.135 Australia's regulation of electoral advertising is commensurate with comparable approaches overseas; it is based on two principal regulatory features seen in those regimes:

- an election advertising blackout on all electronic media from midnight on the Wednesday before polling to the end of polling on the Saturday; and
- guaranteed opportunities for pre-election broadcasts.

12.136 While not obliged under the law, the Australian Broadcasting Commission provides opportunities to political parties for free-to-air advertising prior to the three day electronic media blackout.¹⁰⁷ Other

105 Submission No. 145, (Dr S Young), p. 6; and see Submission No. 160, Exhibit 31, (Mr J-C Tham and Dr G Orr), p. 26.

106 Submission No. 145, (Dr S Young), p. 6.

107 The ABC allocates free TV air-time by a decision of its Election Coverage Committee. See www.aceproject.org/main/english/pc/pce03a.htm.

broadcasters are also encouraged to offer time, paid or unpaid, at their discretion.¹⁰⁸

- 12.137 In the Committee's view, there is an appropriate balance between restriction and opportunity in the current laws. The three day ban preserves a reasonable period for review and assessment before the vote is cast. The broadcasting allocation encourages the expansion of political debate, and the clarification of important issues for the electorate in the lead up to election day.
- 12.138 The Committee supports the continued operation of these arrangements and does not consider that any further restrictions on airplay, advertising expenditure or other adjustment is warranted.

Laws governing 'misleading' advertisements

- 12.139 As previously discussed, the CEA does not seek to regulate information that will influence how an elector makes a decision.¹⁰⁹
- 12.140 Under s329(1) the AEC is relieved of making value judgements about the veracity of the content of political advertising. Instead, its role is to regulate the publications – such as how-to-vote (HTV) cards – that assist voters with the actual marking of the ballot paper, and the depositing of that paper in the ballot box.
- 12.141 Questions about material that is *factually misleading or defamatory*, in the broader sense, is discussed below under truth in advertising. Here the narrower interpretation provided by the AEC is taken.
- 12.142 In Chapter 5, *Election day*, the Committee examined issues associated with the Liberals for Forests HTV and other allegations of misleading conduct. These highlighted for the Committee the limited effect of the regulations on conduct, over and above AEC adjudication of published electoral matter.
- 12.143 In its report on the 2001 Federal Election, the Committee expressed concerns about the limited capacity of the legislation to deal with misleading conduct. To ensure that any misconduct could be immediately addressed on election day, the Committee recommended :

108 ABA Schedule 2 provides that broadcasters must provide "opportunities" for parties to access air-time but does not require that this be free.

109 This important distinction was upheld by the High Court in 1981, in *Evans v Crighton – Browne* (1981) 147 CLR.

- relevant parties should be advised of Divisional Retuning Officers (DRO)/Australian Electoral Officer (AEO) decisions on disputed material; and
- that presiding officers should advise that any continued handing out of this material will be considered by the AEC as in breach of the Electoral Act.¹¹⁰

12.144 This recommendation was supported in principal by the Government.¹¹¹

12.145 The AEC has advised that it remains steadfast in its view that s329 does not apply to misleading conduct, as against publications. Hence: “there is no regulation or section of the Act which allows us to enforce any of that”.¹¹²

The Committee's view

12.146 The Committee has arrived at the view that the visual agreement between the green Liberals for Forests HTV card and the Liberal party card could not have been effective if the name *Liberals* for Forests had not been prominent. The prominence of the name exacerbated the confusion rather than otherwise. In this respect the Committee considers that further consideration needs to be given to the registration of party names. This issue is considered in Chapter 4, *Party registration*.

12.147 The Committee made a recommendation in Chapter 5, *Election day*, based on evidence that officials are not employed in sufficient number on election days. This matter must be addressed; it has clear implications for the type of behaviour evinced at Richmond. However, without a positive judgement that an HTV card is misleading, AEC officers are in any case powerless.

12.148 The AEC's reluctance to broaden the interpretation of s329 is understandable but the inability to act, in such circumstances, discredits the integrity of the electoral process on polling day.

12.149 The Committee considers that recourse could be in review of s340 of the CEA which governs prohibition of canvassing near polling booths and s348, regulating behaviour at polling booths.

110 Recommendation 23, JSCEM, *The 2001 Federal Election*, 2003, p. 198.

111 *Government Response to the Report of the JSCEM: The 2001 Federal Election*, 2003, p. 10.

112 Mr P Dacey, Deputy Electoral Commissioner, AEC, *Evidence*, Friday, 5 August 2005, p. 79.

Recommendation 48

The Committee recommends that the AEC review Sections 340 and 348 of the Commonwealth Electoral Act with a view to addressing issues of “misleading conduct” on polling day.

Truth in advertising

- 12.150 The potential to better regulate electoral material that is misleading or defamatory has been a recurrent theme for this Committee and for the Parliament.
- 12.151 A Senate evaluation of “truth” proposals set out in *the Electoral Amendment (Political Honesty) Bill 2000* [2002] concluded that there are both legal and practical obstacles to the implementation of “truth” legislation.¹¹³ The Bill had been introduced by Senator Murray to amend the CEA to prohibit, on pain of substantial penalties, any electoral advertising material containing a purported statement of fact that is “inaccurate or misleading to a material extent”.¹¹⁴
- 12.152 Commenting on the *Evans v Crichton-Brown* (1981) judgement, and the consequent unenforceability of “truth” in political advertising under s329, the Professor Williams and Mr Mercurio submitted:

by allowing deceptive and misleading advertisements to air, Australia is potentially violating the internationally known standard for ‘free and fair’ elections. Moreover, it can be argued that the party running the deceptive or misleading advertisement denies the other parties a fair and equal piece of the electoral process. While this argument can be countered by asserting that all parties engage in such deceptive and misleading comment, such a response is unsatisfactory.¹¹⁵

113 Senate Finance and Public Administration Legislation Committee, *Charter of Political Honesty Bill 2000* [2002], *Electoral Amendment (Political Honesty) Bill 2000* [2002], *Provisions of the Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*; *Auditor of Parliamentary Allowances and Entitlements Bill 2000* [2002], August 2002, pp. 91–92.

114 The Bill provided substantial penalties of \$5,000 for individuals and up to \$50,000 for corporations. SFPALC report, p. v; and see discussion JSCEM, *The 2001 Federal Election*, p. 131.

115 Submission No. 48, (Prof. G Williams and Mr B Mercurio).

Can facts be misleading?

12.153 The Committee is aware that there could be difficulty in establishing the “fact” of a matter in an Election situation.

12.154 The interpretation of “inaccurate and misleading” under the present legislation was raised in the Committee’s public hearings. The issue for the ALP was verification of the factual content of advertising material sourced to the Reserve Bank of Australia.

12.155 The ALP maintained that :

the Liberal Party issued misleading flyers which had the effect of deceiving voters thinking that the Reserve Bank... supported their claims. This included the statement:

Over 30 years interest rates have risen to over 10% under every Labor government. Source: Reserve Bank of Australia.

No report, media release or public comment from the Reserve Bank is cited for this purely political statement. This is because none exists.¹¹⁶

12.156 The contrary view heard by the Committee was that:

statistics reveal that during the Hawke and Keating period of government, between 1983 and 1996, the standard variable home mortgage rate rose to 17 ... according to those statistics published by the RBA... Those are matters of public record, as revealed by the statistics published by the RBA.¹¹⁷

12.157 Irrespective of any complaint to the RBA, the ALP confirmed that the statistics quoted were: factual; produced by the RBA; and, indisputably, “the[re] would be those published statistics”.¹¹⁸

12.158 Senator Brown referred to an article in the Melbourne *Herald Sun* which the Australian Press Council found had misled voters about Greens’ policies. He stated:

I believe we should legislate to ensure that an independent office in the Electoral Commission has that power to challenge people, to test the veracity at least of advertising and of election material generally before it is put into the public arena. We need to defend the right of voters to be

116 Mr T Gartrell, National Secretary, ALP, *Evidence*, Monday, 8 August 2005, pp. 37–38.

117 Senator G Brandis, *Transcript of evidence*, Monday, 8 August 2005, p. 52.

118 Mr T Gartrell, *Evidence*, Monday, 8 August 2005, p. 51.

properly informed and not misled on the way to the ballot box, particularly in a system which has compulsory voting.¹¹⁹

12.159 A number of submissions also expressed concerns about authorisation tags on broadcast and other electoral advertising material. The AEC noted in its submission that most complaints of this type arise because of misconceptions that authorisation requirements under s328 require:

- the disclosure of the identity of the political party which distributed the material; and
- that authorisation requirements apply to internet or telephone advertisements.¹²⁰

Truthfulness in TV electoral advertising

12.160 Another area of commentary was the regulation of truthfulness in televised electoral broadcasts.

12.161 Prior to June 2004, complaints about the truthfulness of television electoral advertising were made to the Federation of Australian Commercial Television Stations (FACTS). FACTS could then investigate the veracity of the advertisement's content and recommend on its continued broadcasting.¹²¹

12.162 Evidence to the Committee raised concerns that FACTS, now known as Free TV Australia, no longer has the authority to monitor the truthfulness of electoral advertising.

12.163 Senator Brown submitted that television advertisements, which falsely represented Green policies in the lead-up to the election, would not have been permitted under the previous regime. He asked the Committee to review the relevant legislation and ask for reinstatement of Free TV Australia's surveillance authority over the content of television political advertising.¹²²

12.164 In its report on the 2001 election, the Committee recorded how FACTS had accepted, following legal advice, that it had no jurisdiction to vet the content of political advertising.

119 Senator B Brown, *Evidence*, Canberra, Monday, 8 August 2005, p. 67.

120 Submission 182, (AEC), p. 7.

121 Submission No. 39, (Senator B Brown), p. 2.

122 Submission No. 39, (Senator B Brown), p. 2.

- 12.165 FACTS acknowledged this in a letter to political parties, stating that it had formerly acted on the belief that the *Trade Practices Act 1987* applied to political advertising. This had led to a situation where advertisements on television were subject to stricter controls than those broadcast on radio.¹²³
- 12.166 Free TV Australia now reviews election material:
- for classification under the Commercial Television Industry Code of Practice;
 - to ensure that it complies with relevant legislation under the Broadcasting Services Act (Clause 2, Part 2 of Schedule 2) relating to provision of authorisation tags, and with state and Federal Electoral Acts; and
 - to protect broadcasters from liability under defamation laws.¹²⁴
- 12.167 Under this arrangement, electoral laws governing defamation and the prohibition of misleading information are consistently applied to both radio and television advertising (under s329 [1] and s 350). The responsibility for compliance rests with the party or candidate authorising the advertisement, and penalties apply if the requirements are not met.¹²⁵
- 12.168 As indicated, under s350 (2) candidates have the right to make a complaint about false or defamatory statements in advertising material, and to seek an injunction preventing the repeated publication of such statements. This action would be taken out against the person authorising the speech, usually a party representative or employee.
- 12.169 This approach prevents any possible incursion on the implied freedom of political communication, or “free speech” in the Australian Constitution, that would be made if legislation controlling “truth” in television political advertising was to be introduced.¹²⁶ It also removes any responsibility for adjudication of contentious matter from the AEC.

123 JSCEM, *The 2001 Federal Election*, pp. 128-29.

124 AEC, *Electoral Backgrounder No. 15*, p. 7.

125 AEC, *Electoral Backgrounder No. 15*, p. 7.

126 This conclusion being reached by the High Court in *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, in which proposed legislation, the *Political Broadcasts and Political Disclosures Act 1991*, was struck down as unconstitutional. AEC, *Electoral Backgrounder No. 15*, pp. 6, 9.

The Committee's view

- 12.170 The Committee's view remains that there is a high risk that the introduction of so-called "truth" legislation would traverse the implied freedom of political speech underpinning the democratic principles which govern our electoral processes.
- 12.171 The Committee considers that the primary objective of the regulation of electoral advertising under electoral law is that it should be consistent.
- 12.172 The present system defers decisions about the truthfulness of any advertisement to the courts. The CEA does not give the AEC authority to make judgements on matters of truth in political advertising; instead it is the offended candidate who can take action against allegedly untrue statements about that candidate and his or her policies.
- 12.173 In this respect, the Committee finds there is no foundation to ALP assertions that there was anything misleading or deceptive about the use of RBA statistics in the Liberal Party electoral advertisements. All figures quoted were verifiable and accurate, and had been issued by the Reserve Bank of Australia in official publications.
- 12.174 Of more serious import, the Committee believes that Senator Brown's representations over the inaccuracy of statements in the Melbourne *Herald Sun* article are of less than honest intent. The policies described in the article were identical to those publicly and explicitly advocated on the Greens' party website at the time. There was one exception which was a technical error, but it too had been sourced from an earlier Greens' policy announcement.¹²⁷
- 12.175 On consideration of the facts of this matter, the Committee concludes that the Australian Press Council's findings against the Melbourne *Herald Sun* article constitute an error of judgement. Nothing in the article was invented; it was entirely sourced from the Green's website and its intention was to do nothing other than to truthfully inform the public.
- 12.176 In relation to the prosecution of untruthful matters more generally, the Committee has concurred with the AEC's view that current

¹²⁷ "The *Herald Sun* ran an old policy". Senator B Brown, *Evidence*, Monday, 8 August 2005, p. 70. The Green's Corporate Tax rate, which was quoted as being 49 per cent, was an accurate reflection of the tax rate represented on the site at the time. It was later adjusted. See Mr T Smith MP, House of Representatives, *Hansard*, 17 March 2005, pp. 104-05.

mechanisms for treatment of defamatory material under s350, are deficient, and potentially unenforceable as criminal law.

- 12.177 It has therefore recommended that the Government give consideration to repealing the section, and that action be taken through civil court jurisdictions.

Funding and disclosure

- 13.1 In this chapter the Committee examines the background to the existing arrangements for funding and disclosure, and the issues raised in connection with them during the Committee's review of the 2004 election.

History

- 13.2 Australia's funding and disclosure scheme arose from the recommendations of the Joint Select Committee on Electoral Reform in its first report in September 1983. The Committee was established in May 1983 and its terms of reference were to inquire into and report on all aspects of the conduct of elections and matters related thereto, including "(a) public funding and disclosure of funds". Thus, the Committee's report included separate chapters on the "public funding of political parties" (chapter 9) and the "disclosure of income and expenditure" (chapter 10).
- 13.3 In its chapter on public funding, the Committee noted that the majority of its members considered that the arguments in support of public funding outweighed the arguments against such a scheme.¹ The majority found that, in particular, public funding would:

¹ Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 152, para. 9.20.

- remove the necessity or temptation to seek funds that may come with conditions imposed or implied;
- help parties to meet the increasing cost of election campaigning;
- help new parties or interest groups compete effectively in elections;
- relieve parties from the “constant round of fund raising” so that they could concentrate on policy problems and solutions; and
- ensure that no participant in the political process was “hindered in its appeal to electors nor influence in its subsequent actions by lack of access to adequate funds”.²

13.4 In its chapter on disclosure, the Committee noted that the majority of its members accepted that “significant” donations had the potential to influence a candidate or party, and that:

to preserve the integrity of the system the public need to be aware of the major sources of party and candidate funds of any possible influence.³

13.5 Outlining its proposals for the disclosure of donations, the Committee commented that, although its members did not agree on the basic principle of disclosure, there was “general agreement as to the details of disclosure once the majority decision was taken on the philosophical position”.⁴

13.6 The legislation establishing the funding and disclosure scheme was introduced in the House of Representatives in November 1983. Presenting the Commonwealth electoral Legislation Amendment Bill 1983, the then Special Minister of State, the Hon. Kim Beazley MP, stated that disclosure was an “essential corollary” of public funding: “they are two sides of the same coin.”⁵ He argued that public funding was a small price to pay as insurance against the possibility of corruption.

it is essential for public confidence in the political process that no suggestion of favours returned for large donations can be sustained.

2 Joint Select Committee on Electoral Reform, *First Report*, September 1983, pp. 153–155.

3 Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 164, para 10.9.

4 Joint Select Committee on Electoral Reform, *First Report*, September 1983, p. 165.

5 The Hon. K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, p. 2213.

The whole process of political funding needs to be out in the open so that there can be no doubt in the public mind. Australians deserve to know who is giving money to political parties and how much.⁶

- 13.7 Mr Beazley observed that public funding addressed the “serious imbalance in campaign funding” that threatened the health of Australia’s democracy; it ensured that the different parties offering themselves for election had an equal opportunity to present their policies to the electorate, and it also contributed to the development of an informed electorate.⁷

Public funding

- 13.8 The public funding scheme pays a specified amount per vote to registered candidates (independent or party endorsed) or Senate groups that obtain at least 4% of the formal first-preference vote in the division or the state or territory they contested. The entitlements of party endorsed candidates and Senate groups are paid direct to the relevant registered political party. There is no maximum limit to the entitlement.
- 13.9 When the scheme was established in 1983, the amount of public funding per formal first-preference vote was based on the annual primary postage rate (30c in 1983), or 90c every three years. The payment was allocated on a two-thirds/one-third division between House of Representatives and Senate votes, with 60c to be paid per House of Representatives vote and 30c per Senate vote.⁸
- 13.10 The public funding rate is indexed to the Consumer Price Index (CPI) and is adjusted twice a year to reflect CPI changes. Thus, the rate paid per formal first-preference vote at the 1984 election (a few months after the scheme was introduced), was 61c per House vote and 31c per Senate vote.

6 The Hon. K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, pp. 2213, 2215.

7 The Hon. K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, pp. 2213 and 2213

8 This Senate figure applied when the election was held on the same polling day as the House of Representatives election. For a separate Senate election, the amount was 45c per formal first-preference vote.

- 13.11 In 1995, the public funding rate was equalised for the House and Senate and increased to a new base rate of \$1.50. In percentage terms, the amount per House vote rose 50% and the amount per Senate vote (in a simultaneous election) rose 200%. As a result of inflation, the indexed rate applicable for House and Senate votes at the 1996 election was \$1.58 per vote.
- 13.12 The 1995 changes arose out of an interim report from the JSCEM *Financial Reporting by Political Parties*.⁹ Presenting the Commonwealth Electoral Amendment Bill (No. 2) 1994 in the House of Representatives, the then Minister for Administrative Services, the Hon. Frank Walker, noted the Committee's view that it took "as much effort to win a Senate vote as one for the House of Representatives" and the "illogical distinction" should be abolished.¹⁰ He added:
- the increasing emphasis on disclosure has meant that donors are far more reluctant to contribute, given that the Australian public will now be aware of their commitment. The government and the committee take the view that the increase in funding is reasonable in the circumstances and a fair price to pay for a more transparent political process.¹¹
- 13.13 The following graphs show the amounts that have been paid per House and Senate vote in each election since the funding and disclosure scheme was introduced:

9 JSCEM, *Financial Reporting by Political Parties: Interim report from the Joint Standing Committee on Electoral Matters on the Inquiry into the Conduct of the 1993 Election and Matters Related Thereto*, June 1994.

10 The Hon. F Walker, Minister for Administrative Services, House of Representatives, *Hansard*, 9 March 1995, p. 1950.

11 The Hon. F Walker, Minister for Administrative Services, House of Representatives, *Hansard*, 9 March 1995, p. 1950.

Figure 13.1 Public funding payments per vote (House of Representatives)

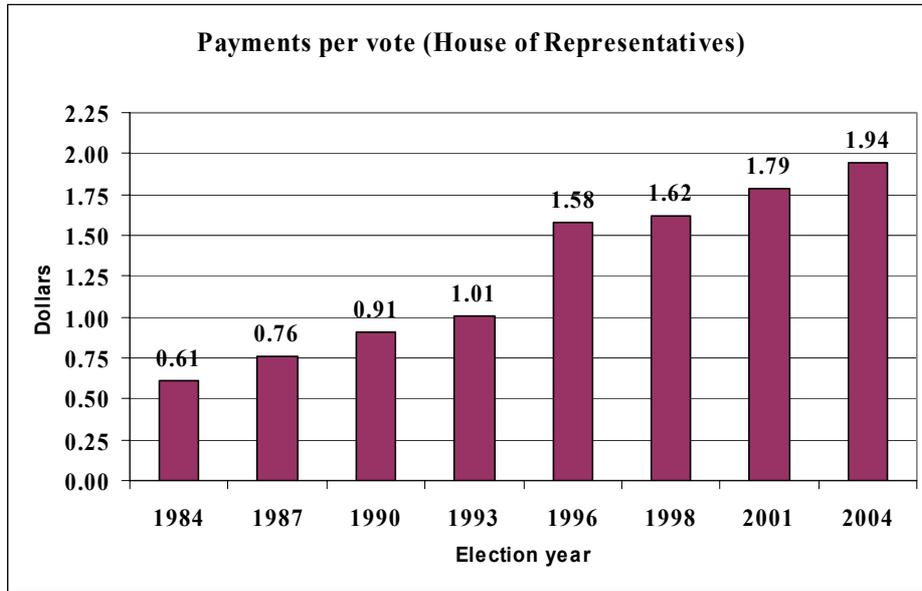
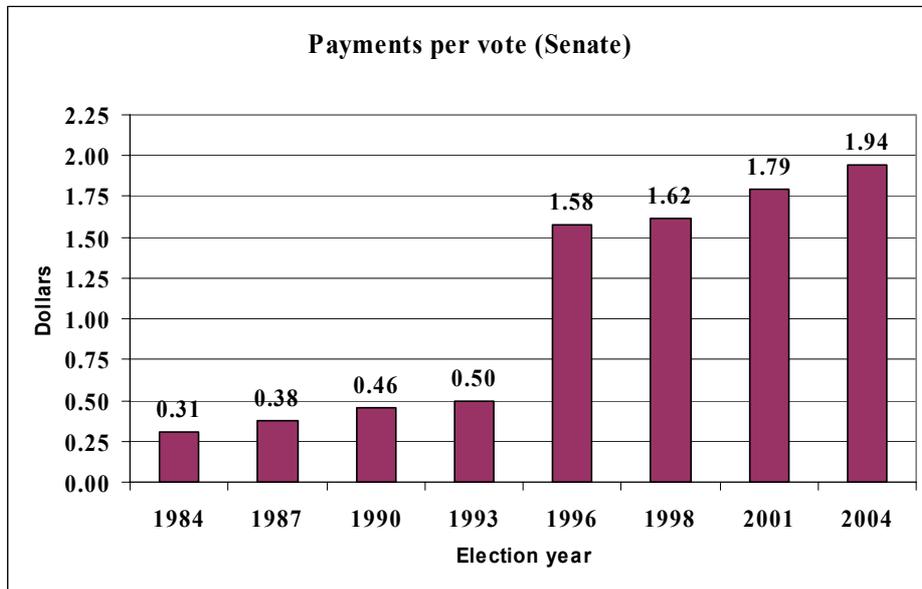


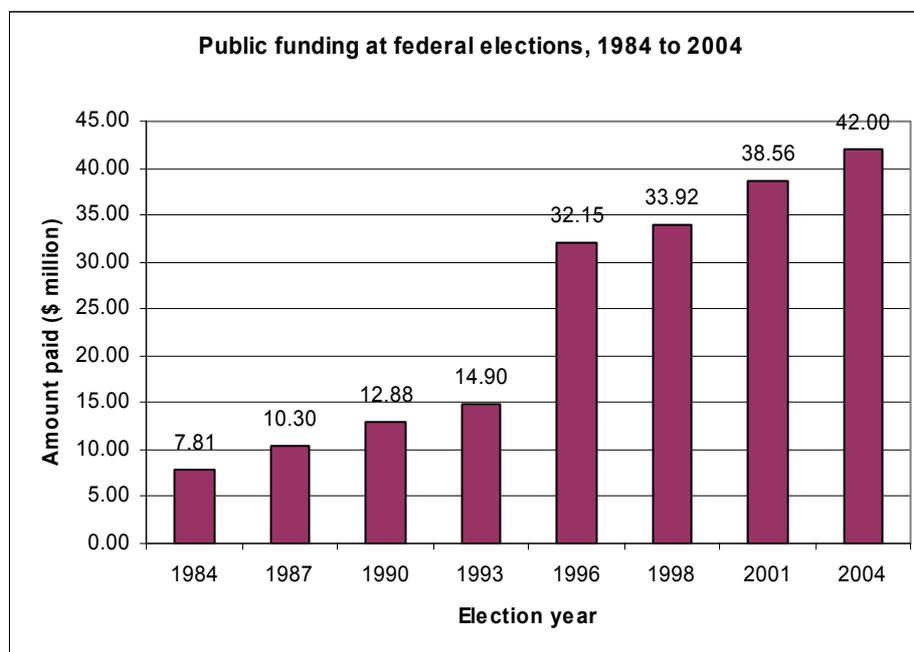
Figure 13.2 Public funding payments per vote (Senate)



13.14 The equalisation and increase in the base public funding rate resulted in a dramatic increase in the amount of public funding paid for the 1996 election over the 1993 election. However, the candidate and party election returns for the 1996 election show that the amount paid (\$32.15 million) was still less than the amount that candidates and

parties spent on the election (\$33.4 million).¹² The following graph shows the amounts of public funding paid for elections since 1984.

Figure 13.3 Total public funding payments for Federal Elections, 1984–2004



13.15 In its early years, the public funding scheme functioned as a reimbursement scheme. As the AEC summarised:

election funding entitlements were initially calculated according to the number of votes received, but parties and independent candidates were also required to submit evidence of campaign expenditure and the final payment of public funding could not exceed expenditure actually incurred.¹³

13.16 The link between payment and proof of expenditure resulted in a shortfall between payments and entitlements when eligible candidates and parties failed to supply sufficient proof for all of their campaign expenditure or the AEC ruled that some of the expenses claimed were not legitimate expenditures.¹⁴ The details of many of

12 See the tables in AEC, *Funding and Disclosure Report: Election 96, 1997*, Appendix 1 and Appendix 2, pp. 31–38.

13 AEC, *Funding and Disclosure Report: Election 96, 1997*, p. 3.

14 For example, in its funding and disclosure report for the 1990 election, the AEC noted that it had rejected claims for (among other things): expenditure before the campaign period; drinks and food for polling booth workers; laundry costs and ‘personal accoutrements’; media monitoring services provided outside the campaign period, and wages payments not supported by a formal agreement showing that the employment

these discrepancies are contained in the AEC's funding and disclosure reports for the 1984, 1987, 1990, and 1993 elections.

- 13.17 In 1995 the legislation was amended so that eligible candidates and parties received their full entitlement, regardless of election expenditure. It was argued that the change would both speed the payments process for the AEC and reduce the administrative burden on participants. The following table shows the public funding payments for Federal Elections from 1984 to 2004 and the shortfall between the payments and the entitlements.

Table 13.1 Public funding payments and shortfalls, Federal Elections 1984–2004

Year	Payment	Shortfall between entitlement and payment
1984	\$7,806,778	\$14,010
1987	\$10,298,657	\$11,742
1990	\$12,878,920	\$116,520
1993	\$14,898,807	\$27,365
1996	\$32,154,800	n/a
1998	\$33,920,787	n/a
2001	\$38,559,409	n/a
2004	\$41,926,159	n/a

Source AEC, *Election Funding and Financial Disclosure Report: Election 1990, 1991*, p. 9, and AEC, *Election Funding and Financial Disclosure Report: Election 1993, 1995*, p.10.

- 13.18 As outlined above, an underlying aim of the public funding scheme was to help candidates and parties defray the direct costs of an election campaign. It was not intended to fund on-going administrative costs or to provide a financial base from which to fight future elections. As the AEC noted in its funding and disclosure report on the 1998 election, the funding scheme:

was introduced as a strict reimbursement scheme with the Act limiting the amount of funding payable to the lesser of the funding entitlement or expenditure proven to have been incurred directly on that campaign. In administering this scheme the AEC demanded original vouchers in support of

was for the campaign. See AEC, *Election Funding and Financial Disclosure Report: Election 1990, 1991*, pp. 10–11. Claims rejected for the 1993 election included those for a post-election evaluation camp and those for repairs to an uninsured vehicle damaged during the campaign. See AEC, *Election Funding and Financial Disclosure Report: Election 1993, 1995*, p. 11.

claimed expenditure and, for example, would only accept claims for what were considered to be expenditures additional to the ongoing costs of maintaining and running a political party.¹⁵

13.19 The AEC went on to note that the changes in 1995:

did not alter the underlying principle that funding was provided to parties and candidates as a subsidy to their costs of contesting a particular federal election campaign, although that principle is not spelled out in the Act.

13.20 The debates in the House and the Senate in 1995 suggest that the AEC's interpretation may be correct: the tenor of much of the debate suggests that the changes were seen – at least by the major parties – simply as a means to alleviate the administrative and bureaucratic burden on volunteers in party branches who had been required to:

keep an account of the number of Iced Vo Vos they bought for meetings over a year [and] count the number of tea bags [the branch] had in stock.¹⁶

13.21 Although some have argued for a return to the reimbursement nature of the scheme (see the “public funding and alleged ‘profiteering’” section below), the JSCEM has noted in an earlier report that a return to a reimbursement scheme is unlikely to save any money:

the Committee believes that it would be a rare occurrence indeed if returning to a funding system based on reimbursement of campaign expenses resulted in payments being anything less than the full entitlements. Therefore, as the AEC has made clear, such a move would realise little if any savings but would simply reimpose another layer of administration and cost and also delay the payment of funding entitlements compared to the present system.¹⁷

15 AEC, *Funding and Disclosure Report: Election 96*, 1997, p. 5.

16 Mr D Connolly, House of Representatives, *Hansard*, 9 March 1995, p. 1951; and M P Slipper, House of Representatives, *Hansard*, 9 March 1995, p. 1954.

In the Senate, some complained about the time taken for public funding to be paid, arguing that parties ‘often had to pay election expenses and rely on bank drafts’ while waiting for public funding to come through, which meant parties were incurring additional costs. See Senator R Kemp, Senate, *Hansard*, 11 May 1995, p. 282.

Greens Senator Christabel Chamarette and National Party Senator William O’Chee argued against the changes, as a ‘windfall’ and a ‘government subsidy’ for parties, which would ‘become fatter and lazier and less responsive to voters and members’. Senate, *Hansard*, 11 May 1995, p. 285; and Senate, *Hansard*, 7 June 1995, p. 953, respectively.

17 JSCEM, *The 1998 Federal Election*, June 2000, p. 126.

- 13.22 Table 13.1 above shows that, even when those eligible for public funding had to provide receipts for their expenditure, the amounts paid were very close to the level of entitlements.
- 13.23 As a result of legislative changes in the 1990s, it is no longer possible to compare total campaign expenditure against the amount paid in public funding. When the public funding and disclosure scheme was introduced in 1984, all election participants were required to file election returns. In 1992, the legislation was amended so that registered political parties were required to file annual returns, rather than election returns, but it was amended again in 1995 to reinstate the requirement for parties to furnish an election expenditure return. A further amendment in 1998 once again abolished the requirement, so that parties now file only annual returns.

Disclosure of donations

- 13.24 Although “donation” is the expression commonly used to describe money given to candidates and political parties, the CEA uses the term “gift”. Section 287 of the Act defines a “gift” as:
- any disposition of property made by a person to another person ... being a disposition made without adequate consideration in money or money’s worth.
- 13.25 This means that cash and non-cash (gifts-in-kind) may count as donations, but commercial transactions (such as returns on investments) do not. Section 287 notes that an “annual subscription” to a party (for example, a membership fee) is *not* a donation.
- 13.26 Donations are disclosed to the AEC through election returns or annual returns. Candidates, Senate groups, third parties, broadcasters and publishers must file *election* returns. Registered political parties, State and Territory branches of political parties, associated entities, and those individuals or corporations who donate \$1500 or more to a political party in financial year must file *annual* returns.
- 13.27 Party-endorsed candidates do not need to disclose donations accepted or expenditure incurred on behalf of the party as these transactions are disclosed in the party’s return. Similarly, donations received or expenditure incurred by a party-endorsed candidate’s campaign committee are also incorporated into and disclosed in the party’s annual return.

13.28 The various disclosure requirements are set out in the following tables:

Table 13.2 Post-election disclosure returns

Participant	Type of return	Time frame	Due date (2004 election)
Candidates	donations received and electoral expenditure	within 15 weeks of polling day	24 January 2005
Senate groups	donations received and electoral expenditure	within 15 weeks of polling day	24 January 2005
Third parties	details of electoral expenditure, certain donations received, and donations made to candidates and others	within 15 weeks of polling day	24 January 2005
Broadcasters	electoral advertisements broadcast	within 8 weeks of polling day	6 December 2004
Publishers	electoral advertisements published	within 8 weeks of polling day	6 December 2004

Source AEC, *Electoral Pocketbook*, 2005, p. 86.

Table 13.3 Annual disclosure returns

Participant	Type of return	Time frame
Registered political parties	all amounts received and total amount paid in financial year total debts outstanding as at 30 June	within 16 weeks of the end of the financial year
State/territory branches of registered political parties	all amounts received and total amount paid in financial year total debts outstanding as at 30 June	within 16 weeks of the end of the financial year
Associated entities	all amounts received and total amount paid in financial year total debts outstanding as at 30 June may also have to disclose sources of capital deposits	within 16 weeks of the end of the financial year
Persons or organisations donating \$1500 or more in a financial year	details of each donation	within 20 weeks of the end of the financial year

Source AEC, *Electoral Pocketbook*, 2005, pp. 86-87.

- 13.29 Election returns are available for public inspection 24 weeks after polling day. For the 2004 election, they were available from Monday, 28 March 2005.
- 13.30 Annual returns are released for public inspection on the first working day in February the following year. The returns for the 2004–05 financial year (the year in which the 2004 election took place) will be available on Wednesday, 1 February 2006.

Overseas funding and disclosure schemes

- 13.31 When introducing the public funding and disclosure legislation in 1983, then Special Minister of State, the Hon. Kim Beazley, noted that Australia was simply “catching up with the rest of the democratic world in this important area of reform”:

Austria, West Germany, France, Finland, Denmark, Israel, Italy, Japan, the Netherlands, Norway, Sweden, Canada and the United States of America have all embraced this so-called radical step.¹⁸

- 13.32 According to an International Institute for Democracy and Electoral Assistance (IDEA) study published in 2003 and subsequently updated on the Internet, 71 of the 111 countries that it surveyed (that is, 64%) had a system of regulation for the financing of political parties.¹⁹

- 13.33 The IDEA study revealed some general trends in international funding and disclosure schemes:
- just over 50% of those countries in the sample have provisions for the disclosure of contributions to political parties, but most (96 countries or 86% of the sample), do not require donors to disclose contributions;
 - most countries do not have ceilings on contributions to political parties, how much donors can contribute or how much parties can raise;
 - most countries do not ban either corporate or union donations, and most do not ban foreign donations; and

18 The Hon. Kim Beazley MP, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, p. 2215.

19 Reginald Austin and Maja Tjernstrom, *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance, Stockholm, 2003, pp. 185-88.

- 65 countries (59% of the sample) have direct public funding for political parties; 79 countries (71%) have some form of indirect public funding.²⁰
- 13.34 Since 2000, several countries have reviewed their political funding and disclosure schemes, notably the United Kingdom (Political Parties Referendums and Reforms Act 2000), the United States (the Bipartisan Campaign Reform Act of 2002), and Canada (Canada Elections Act).
- 13.35 In December 2004, the United Kingdom Electoral Commission published a major report, *The funding of political parties*, which made several recommendations regarding the future financing of political parties in the United Kingdom.²¹ This report noted the importance of adequate funding for political parties, because they:
- are essential to the functioning of a sustainable, representative democracy. In order to carry out their core activities political parties require adequate levels of funding. Political parties need resources to fund their campaigns, conduct research and develop policies and manifestos to represent the electorate. They also require resources to meet the day-to-day administrative and other costs associated with running a political party.²²
- 13.36 The following table outline some of the major funding and disclosure provisions applicable in the United Kingdom, Canada, New Zealand, and the United States:

20 See the matrices on pp. 189–223 of Austin R and Tjernstrom M, *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance, Stockholm, 2003. IDEA periodically updates this database, which can be found online at: www.idea.int/parties/finance/db/comparison_view.cfm.

21 United Kingdom Electoral Commission, *The funding of political parties*, December 2004.

22 United Kingdom Electoral Commission, *The funding of political parties*, December 2004, p. 103, para. 7.1.

Table 13.4 Public funding and disclosure provisions

Country	Direct public funding	Disclosure thresholds	
		Donor	Political party
United Kingdom	yes	over £5,000	over £5,000
Canada	yes	—	all contributions received
New Zealand	no	—	over \$NZ10,000
United States	no ²³	—	over \$US200

Source: *United Kingdom Electoral Commission, www.electoralcommission.gov.uk/, Elections Canada, http://www.elections.ca, Elections New Zealand, www.elections.org.nz/, United States Federal Election Commission, www.fec.gov/.*

- 13.37 Neither the United Kingdom nor New Zealand imposes limits on donations to candidates and political parties. Canada and the United States impose inflation-adjusted limits.²⁴
- 13.38 In evidence, Liberal Party federal secretary Mr Brian Loughnane observed that, in two countries with Labour governments – the United Kingdom and New Zealand – the donation disclosure threshold was approximately \$10,000, being £5,000 or some \$12,000 in the United Kingdom and \$NZ10,000 or some \$9,350 in New Zealand.²⁵
- 13.39 The United Kingdom, New Zealand and Canada place complete bans on foreign donations. Senator Murray maintains that Australia should follow this lead, or that amendments should be made controlling these donations. In particular, he recommended that overseas entities making donations to Australian political parties and candidates should be required to comply with the regulations governing donations in their country of residence, and should certify that they have complied with these.²⁶

23 Public funding is available for presidential elections.

24 Details are available at Elections Canada: www.elections.ca and the United States Federal Election Commission: www.fec.gov

25 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 25.

26 JSCEM, *Report on the 2001 Federal Election*, Supplementary Remarks

2004 Federal Election public funding

- 13.40 As noted above, public funding was first introduced for the 1984 election and the rate paid is indexed every six months to increases in the consumer price index.
- 13.41 Payment at the 2004 Federal Election was 194.387 cents per vote. A total of \$41,926,159 was paid to 25 parties, independent candidates and Senate groups (see table below).

Table 13.4 Public funding payments, 2004 Federal Election ²⁷

Name	Amount
Liberal Party of Australia	\$17,956,326.48
Australian Labor Party	\$16,710,043.43
Australian Greens	\$3,316,702.48
National Party of Australia	\$2,966,531.27
Northern Territory Country Liberal Party	\$158,973.97
Family First Party	\$158,451.04
Pauline Hanson's One Nation	\$56,215.73
Australian Democrats	\$8,491.26
Christian Democratic Party (Fred Nile Group)	\$6,572.56
No Goods and Services Tax Party	\$5,995.20
Pauline Hanson	\$199,886.77
Antony (Tony) Windsor	\$89,562.59
Peter Andren	\$79,413.12
Robert (Bob) Katter	\$63,544.49
Peter King	\$25,730.39
Brian Deegan	\$24,449.31
Lars Hedberg	\$19,400.82
Graeme Campbell	\$12,935.18
Robert (Rob) Bryant	\$12,120.65
Robert Dunn	\$11,761.02
Margaret F Menzel	\$10,977.60
Darren Power	\$9,980.34
Bruce Haigh	\$7,381.25
Jeanette (Jen) Sackley	\$7,365.70
Samir (Sam) Bargshoon	\$7,346.26
Total	\$41,926,158.91

²⁷ AEC, *Electoral Pocketbook*, 2005, p. 85.

- 13.42 The inquiry received few submissions on public funding, and those submissions that addressed the issue offered opposing views.
- 13.43 Festival of Light Australia stated that the practice of public funding was “inappropriate” and should be discontinued:
- any group of people should be able to set themselves up as a political party, but they should be required to support themselves. If a sufficient number of people believe in what they are doing, they will not find support difficult, but it will place the duty on all political parties to create that goodwill with the community.²⁸
- 13.44 The organisation’s national president, Dr David Phillips, acknowledged in evidence to the Committee that it was difficult for any group to raise funds, but, he argued, a party that had a genuine base of support with the Australian public should be able to turn that into financial support.²⁹
- 13.45 In contrast, Mr Joo-Cheong Tham and Dr Graeme Orr supported public funding; noting that one of the scheme’s primary aims was to ensure that political participants who might otherwise not be able to afford to do so had an “equal opportunity to present their policies to the electorate”.³⁰

The Committee’s view

- 13.46 The small number of submissions canvassing public funding suggests that there is a general level of satisfaction with the public funding scheme.
- 13.47 The Committee is satisfied that the scheme continues to meet its original objectives as outlined in the opening sections of this chapter.

Public funding and alleged “profiteering”

- 13.48 The Australian Labor Party criticised the current “guidelines” for public funding, which it said allowed candidates to profit from the scheme. It alleged “blatant profiteering for personal benefit” on the

28 Submission No. 125, (Festival of Light Australia), p. 5.

29 Dr D Phillips, *Evidence*, Tuesday, 26 July 2005, p. 15.

30 Submission No. 160 (Mr J Tham & Dr G Orr), citing Submission No. 5 (Mr J Tham & Dr G Orr) to the JSCEM inquiry into disclosure of donations to political parties and candidates, p. 5. Mr Tham and Dr Orr quote the Hon. Kim Beazley’s comments when introducing the legislation establishing the funding and disclosure scheme.

part of Ms Pauline Hanson, who was paid \$199,886 in public funding, but “spent only \$35,426 on her campaign”.³¹

- 13.49 In his submission, Mr Trevor Khan queried the public funding payments to independent candidates, arguing that the current scheme had the “unintended consequence” of providing such candidates with “a unique opportunity to potentially profit personally from the electoral public funding initiatives”.³² Whereas the election process was a “very expensive and exhausting exercise” for party candidates, whose public funding was paid to the party, it could provide a “significant windfall” to independent candidates, such as Ms Pauline Hanson, for “simply standing (unsuccessfully) for election”:

I contend that the intention of the Parliament was to lessen the dependence of candidates, and particularly the Parties, on political donations from interest groups.

I do not believe it was ever the intention of the Parliament to see a personal benefit to [an] individual candidate or member.³³

- 13.50 Mr Khan recommended that independent candidates and members of Parliament be limited to receiving public funding only up to the amount required to cover their campaign costs.

- 13.51 Former Electoral Commissioner, Professor Colin Hughes, suggested in evidence to the Committee that candidates and parties should be required to produce a receipts for “an appropriate part of their expenditure” (“80% or 90%”) in order to receive their full public funding entitlement.³⁴ He noted that such a requirement was not without difficulties:

I appreciate the problem of smaller, non-professional parties who have complete novices who have never run anything in their lives suddenly running a Senate campaign or a House campaign. I can recall the first wave or so of the old system having to be applied. The poor devils out there were having to reimburse the commission for money that they could not prove having spent for months and years after the event. I think that is unfortunate and unhappy. That is not intended.³⁵

31 Submission No. 136 (Australian Labor Party), p. 15.

32 Submission No. 114 (Mr Trevor Khan), p. 4.

33 Submission No. 114 (Mr Trevor Khan), p. 6.

34 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, pp. 13, 4

35 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 4.

- 13.52 Professor Hughes said that there would need to be “flexibility” in such a scheme, but, generally, if someone was claiming \$100,000, “they ought to be able to come up with a plausible story for \$90,000”.³⁶

The Committee's view

- 13.53 The Committee acknowledges the concern that the current scheme may give rise to alleged “profiteering” on the part of some participants in the political process. However, it believes that changing the scheme to require a proven balance between a candidate’s public funding entitlement and a candidate’s campaign expenditure is fraught with difficulty, not least of which is undermining the level playing field between independent candidates and party-endorsed candidates that the scheme aims to promote.
- 13.54 The Committee appreciates that a return to a receipts-based reimbursement scheme appears to offer an easy solution to the perceived problem of candidates “profiting” from the difference between their campaign expenditure and the amount they receive in public funding. However, in the Committee’s view, a receipts-based scheme of itself is not a viable option. Given that, in order to be fair, the demand for receipts would have to apply to all candidates and parties, the result would be a system that was cumbersome to both electoral participants and the administrative body, the AEC. In addition, as noted above, the demand for receipts is not necessarily in itself a solution in that it does not mean that the expenditures claimed are justified.
- 13.55 While the Committee did not want to return to a full receipts-based system which was bureaucratic, costly and onerous, it nevertheless believes that there should be a minimum threshold of expenditure, which a candidate had to account for before a candidate or party became eligible for public funding.
- 13.56 The Committee suggests that a potential solution that is worth further consideration by the Government is raising the threshold at which public funding would be paid from the current 4% of the formal first-preference vote to, say, 5% of the formal first-preference vote. It notes that a 5% threshold is about the current level of the informal vote. Another option could be to differentiate between the threshold applicable to the Senate and the House of Representatives, given that

36 Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, p. 13.

Senate contests are State-wide and thereby result in higher public funding payments because the calculation is based on a larger number of voters than in a House of Representatives electorate.

- 13.57 If a separate Senate threshold was used, one possibility would be to relate eligibility to receive public funding for a Senate election to a proportion (possibly 50%) of a quota at a half-Senate election.
- 13.58 Because these measures are aimed at combating “profiteering” by some participants, they would not apply to sitting Members or Senators who were recontesting their seats at the election.

Disclosure

- 13.59 In Chapter 12, *Campaigning in the New Millennium*, the Committee briefly reviewed overseas practices and noted that there had been recent changes. In Australia, the basic provisions of the CEA with regard to the disclosure of donations have not altered fundamentally since the scheme was introduced.
- 13.60 The current disclosure threshold was set in 1991, when the initial threshold of \$1,000, which had been in place since 1984, was raised to \$1,500. Although the public funding rate rose 50% for a House vote and 200% for a Senate vote in 1995, the disclosure threshold remained unchanged.
- 13.61 Since 1991, there have been several attempts to increase the donor and party disclosure thresholds, with proponents arguing that:
- when these amounts were set, it was thought that there were obvious levels below which there should not be any disclosure and that, over time, these levels naturally would increase with the CPI [Consumer Price Index], inflation and other things.³⁷
- 13.62 The JSCEM has argued strongly in previous reports that the donation disclosure threshold should be increased.
- 13.63 Recommending an increase to \$5,000 in 1996, the majority of the Committee observed that the “disclosure thresholds should more accurately reflect current financial values”.³⁸ Recommending an

37 Senator the Hon. C Ellison, Special Minister of State, Senate, *Hansard*, 17 February 1999, p. 2129.

38 JSCEM, *The 1998 Federal Election*: June 2000, p. 101.

increase to \$3,000 in 1998, the majority commented that such an increase was “appropriate”.³⁹

- 13.64 In its submission to the 2004 Federal Election inquiry, the Liberal Party repeated its recommendation to earlier election inquiries that it would be “reasonable” to lift the thresholds to \$10,000. The Liberal Party stated:

it is not realistic in 2005 to think that donations below this level could raise any question of undue influence.⁴⁰

- 13.65 In evidence to the Committee, Liberal Party Federal Director, Mr Brian Loughnane, refuted the supposition that donations bought political outcomes, noting:

donations do not buy policy outcomes as asserted by some. Rather, political donations are a way for individuals or organisations to support the party of their choice. A higher donation threshold will protect individuals’ or organisations’ legitimate right to privacy and reduce the administrative burden on political parties and the taxpayer funded AEC while still providing a strong level of transparency.⁴¹

- 13.66 The Federal Director of The Nationals, Mr Andrew Hall, told the Committee that his party, which “traditionally sourced its revenue from small business” was concerned at the administrative demands of the current thresholds on those wanting to make “fairly modest” donations:

there has been an increasing compliance burden upon small businesses that wish to contribute probably what would be a fairly modest amount for a small business to a political cause because they have also been required to go through the compliance issue of disclosure to the AEC. You would hardly classify many of these small businesses as having an agenda other than that of wanting to support their party of choice.⁴²

- 13.67 However, the Australian Labor Party reiterated its view that disclosure regulations should be strengthened to ensure:

39 JSCEM, *The 1996 Federal Election*, June 1997, p. 101.

40 Submission No. 95, (Liberal Party), p. 1.

41 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 25.

42 Mr A Hall, *Evidence*, Monday, 8 August 2005, p. 59.

a complete and meaningful trail of disclosure back to the true source of funds received by, or of benefit to, political parties.⁴³

- 13.68 Emphasising Labor's opposition to an increase in the disclosure threshold, the party's National Secretary, Mr Tim Gartrell, repudiated the claim that, in 2005, donations below \$10,000 could not give rise to questions of undue influence, stating:

we categorically reject this view and believe that any raising of the threshold will have the potential to corrupt our political institutions. ... We believe the issue of funding disclosure is fundamental to the health of our democracy and the protection of the representative system of government.⁴⁴

The Committee's view

- 13.69 The Committee firmly believes that the current disclosure thresholds are too low and should be increased.
- 13.70 The Committee acknowledges the argument of those in favour of the status quo that there is a need for transparency to reduce the potential for undue influence and corruption in the political system. However, it believes that such transparency would still occur under higher disclosure thresholds.
- 13.71 In supporting an increase in thresholds, the Committee is convinced that, since under the present rules 88% of the value of disclosed donations to the major parties is greater than \$10,000, even if the disclosure threshold were increased to that amount, disclosed donations would continue to be a very high proportion of all donations. Nevertheless, higher thresholds would encourage more individuals to make donations to all candidates and parties.
- 13.72 Supporting this argument, Liberal Party federal director Brian Loughnane told the Committee that an analysis of public disclosure figures showed that "88% of all moneys disclosed as donations by the ALP and the Liberal Party last financial year were amounts of \$10,000 or more".⁴⁵
- 13.73 Thus, if an underlying aim of the scheme is to expose large donations that allegedly may exert undue influence on political decisions or policy, such an aim would continue to be met under higher thresholds

43 Submission No. 136, (Australian Labor Party), p. 5.

44 Mr T Gartrell, *Evidence*, Monday, 8 August 2005, p. 36.

45 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 25.

for disclosure. The Committee is sceptical that, in the contemporary economic environment, donations of less than the threshold it recommends could be said to exert undue influence over recipients or to engender corruption.

13.74 As a former chair of the Committee, Mr Petro Georgiou MP, observed when arguing for higher donor and party disclosure thresholds, of \$10,000 and \$5,000 respectively, in 1998 that the recommended amounts:

are certainly in line with current financial price levels. I think any suggestion that government decisions could be influenced by donations of the magnitude that would remain undisclosed under the new thresholds is quite simply ludicrous ... The Labor Party ... cannot realistically argue that threshold changes of this magnitude will lead to corruption or will compromise Australian democracy.⁴⁶

13.75 The Committee emphasises that a disclosure threshold of \$10,000 would not place Australia out of step internationally. As noted above, Australia's current disclosure threshold of \$1,500 already is considerably lower than the levels in some of its overseas counterparts. For example the party disclosure threshold in New Zealand, is \$NZ10,000, and the party and donor thresholds in the United Kingdom are both £5,000.⁴⁷

13.76 Even these sums are considered "very low", with a United Kingdom Electoral Commission report stating in a discussion of contribution limits on donations:

any cap would need to be set a very low level (in the regional of £10,000 per individual donor per annum) if the public were to be persuaded that its likely effect would be to eliminate the risk of corporate, trade union or individual interests buying influence.⁴⁸

13.77 The Committee notes that, after an in-depth review of the funding of political parties, this commission concluded that the public was not likely to consider that amounts of less than £10,000 (that is, roughly \$23,000) could purchase political influence.

46 Mr P Georgiou MP, House of Representatives, *Hansard*, 2 December 1998, p. 1180.

47 See Table 13.4 above

48 United Kingdom Electoral Commission, *The Funding of Political Parties*, December 2004, p. 105.

13.78 In terms of the second argument noted above, the Committee believes that raising the threshold levels would encourage more individuals and small businesses to make donations in that higher thresholds would:

- alleviate the administrative burden of filing a disclosure for relatively small donations; and
- ensure privacy for those who want to support the party of their choice but who may be deterred from doing so because they fear repercussions if their support were made public.

13.79 The Committee is concerned that the current low threshold for disclosure exposes donors to potential or feared political intimidation or pressure from opponents of the party to whom an individual or organisation is donating to either cease donating or make a corresponding donation to an opposing party. It agrees with those who argue that the problem of disclosure and intimidation is “very real” and notes the comments of Senator Warwick Parer who raised his concerns in the Senate in 1992:

... donors must be protected against coercion and intimidation. Every time I have raised this, people have said to me, ‘It does not really exist. You are making it up’. Anyone with any experience of the world out there knows the nonsense involved in that. ...

A businessman told me that if he gave a \$20 donation to the Liberal Party, in his honest opinion, the unions would ensure that \$200,000 worth of damage was done to his company. That is not a story that I am throwing around here for political purposes; it is a genuine belief held by people in society ... A little old lady pensioner from far north Queensland sent me through the mail a donation of \$10 but she said specifically that she did not want a receipt because she did not want anyone to know she had given it to me in case she was singled out for some sort of discrimination in the small country town from which she came.⁴⁹

13.80 The Committee believes that a higher threshold for disclosure would have a positive impact on the democratic process in that it would encourage more people – both individuals and small-business owners – to take an active part in that process. Such an outcome

49 Senator the Hon. W Parer, Senate, *Hansard*, 3 June 1992, p. 3379.

could increase the proportion of candidate and party income that comes from smaller donations, thereby reducing the dominance of corporate donations that prompts many of the concerns about alleged undue influence in politics.

Recommendation 49

- 13.81 **The Committee recommends that the disclosure threshold for political donations to candidates, political parties and associated entities be raised to amounts over \$10 000 for donors, candidates, political parties, and associated entities.**

Recommendation 50

- 13.82 **The Committee recommends that the threshold at which donors, candidates, Senate groups, political parties, and associated entities must disclose political donations should be indexed to the Consumer Price Index.**

Restrictions on donations

- 13.83 Several submissions to the inquiry proposed additions or alternatives to the existing disclosure scheme in order to allay public fears about the alleged impact of donations on politics. Generally, these additions or alternatives took the form of bans or limits on particular sources of donations.

Banning donations from particular sources

- 13.84 The Member for Sturt, Mr Christopher Pyne MP, supported the broad proposal that “donations to political parties from organisations and businesses be banned”, thereby restricting political donations “solely to individuals”.⁵⁰
- 13.85 In following Mr Pyne, the Member for Wentworth, Mr Malcolm Turnbull MP, offered a narrower version of the broad proposal,

50 Submission No. 195, (Mr C Pyne MP), p. 2, incorporating Pyne C, ‘Healthy political parties generally provide stability’, *Sunday Mail*, 12 June 2005, p. 79.

suggesting that such a ban be applied to spending on political campaigns. Mr Pyne observed:

from time to time concern is expressed in the community that trade unions and corporations use financial donations to exert influence over political parties. ... as long as businesses and unions with vested interests can finance political campaigns real concerns will continue to be expressed. Some Australians will always have the perception, rightly or wrongly, that 'he who pays the piper calls the tune' Under our system of democracy only individuals can vote or stand for parliament. I propose that the law be changed so as to provide that only individuals can financially contribute to political campaigns.⁵¹

- 13.86 Mr Turnbull noted that such a limitation would mean that political parties could not spend on a campaign any funds that they had received from trade unions or corporations.
- 13.87 Mr Turnbull went on to canvass some of the constitutional issues that might arise from such a restriction, and suggested that a modified proposal – under which the limitation on spending was conditional on the receipt of public funding such that “a candidate or party would be free to spend whatever money from whatever source they like, but would forego [sic] public funding” – would not “fall foul of the High Court”.⁵²

The Committee's view

- 13.88 The Committee appreciates the merits of the suggested changes. It can be argued, for example, that banning both union and corporate donations would answer the allegation that none of those entities has the right to donate its members' or shareholders' funds for political purposes.
- 13.89 In this context, the Committee noted that Senator Murray has argued over a considerable period of time in the public arena that the donation policies of public entities and registered organisations (including unions) should be authorised by the shareholders or members.⁵³ The basis of the vote would be share value and number of members respectively.

51 Submission No. 196, (Mr M Turnbull MP), p. 1.

52 Submission No. 196, (Mr M Turnbull MP), pp. 2-3.

53 JSCEM, *Report on the 2001 Federal Election*, Supplementary Remarks.

- 13.90 In examining the proposed bans, the Committee was conscious that such actions could lead to inequities. For example, a major concern with the suggested ban on donations from organisations and businesses to *political parties* is that it creates a disparity between parties and independent candidates who might attract funds from, say, small businesses in their local area. Such disparity would undermine the level playing field that the current scheme aims to achieve. Banning donations from organisations and businesses to *all* participants in the political process (independents candidates and political parties) would be even more detrimental to this aim.
- 13.91 The Committee was concerned that the modification that allows candidates or political parties to forgo public funding in order to “spend whatever money from whatever source they like” would result in two categories of political participants – those who accepted political funding and those who did not. Again, such a division undermines a basic principle of the public funding scheme: the provision of a level playing field for all participants. It also weakens the ability of the scheme to act as a brake on campaign spending.
- 13.92 In examining the narrower proposal that “only individuals can financially contribute to political campaigns” the Committee noted that ‘campaign electoral purposes’ were to be “broadly defined with the intention of catching all traditional campaign and electoral activities”.⁵⁴
- 13.93 The difficulty which the Committee could not resolve was that of making a distinction between campaign and other activities, especially in the current era of what political scientists and commentators have termed “permanent campaigns”. How, for example, would the line be drawn between on-going “campaign” costs and on-going administration costs? An examination of the AEC’s election funding and disclosure reports in the early years of the scheme, when candidates and political parties were required to prove election expenses in order to claim public funding reimbursement, reveals the many known practical difficulties inherent in this proposal. The Committee is especially concerned that any tie to “campaign” spending would require parties to return to filing detailed election (“campaign”) returns in addition to annual returns, a practice that Parliament legislated against in 1995 on the grounds that it was an unnecessary administrative and bureaucratic burden on volunteers in party branches.

54 Submission No. 196, (Mr M Turnbull MP), p. 2.

Limits on contributions

- 13.94 In their submission, Professor George Williams and Mr Bryan Mercurio suggested that the current disclosure regime could be broadened “to place limits on individual contributions to political parties”.⁵⁵ They argued that such limits were “by no means perfect”, but had “proved to be a potentially effective regulatory mechanism in other countries such as New Zealand and the United Kingdom”.⁵⁶
- 13.95 The Democratic Audit of Australia also highlighted overseas experience, noting that Canada had limited to \$1,000 the amount that corporations, unions or other entities could donate to a political party per year and that the United Kingdom required prior shareholder approval for corporate political donations.⁵⁷ It indicated that one of its major concerns with Australia’s current system of electoral funding and disclosure was “the lack of any restrictions over the size or source of political donations or any cap on electoral expenditure”.
- 13.96 In supporting a ban on donations from organisations and corporations, the Member for Sturt, Mr Christopher Pyne MP, argued that only individuals should be able to make donations, and:
- there would be a limit of a maximum of \$10,000 in any year from any one individual.⁵⁸
- 13.97 The Member for Wentworth, Mr Malcolm Turnbull MP, also suggested that an “annual cap on individual donations could be considered”.⁵⁹

The Committee’s view

- 13.98 One merit of the proposal to cap the amount that individuals or organisations can donate was that it could be seen as limiting the funds available to participants in the electoral process, which may have the flow-on effect of reining in the ever-increasing amount that is spent on election campaigns.
- 13.99 However, the Committee doubts that caps on donations from individuals or from organisations and businesses are feasible. Such

55 Submission No. 48, (Prof. G Williams and Mr B Mercurio), p. 5.

56 Submission No. 48, (Prof. G Williams and Mr B Mercurio), p. 5.

57 Submission No. 97, (Democratic Audit of Australia), p. 2.

58 Submission No. 195, (Mr C Pyne MP), p. 2, incorporating Pyne C, ‘Healthy political parties generally provide stability’, *Sunday Mail*, 12 June 2005, p. 79.

59 Submission No. 196, (Mr M Turnbull MP), p. 2.

limits imply an infringement on donors' freedom of political association or expression that could be challenged in court.

- 13.100 In addition, there are questions as to whether such caps are practicable. The AEC previously has recommended against donation limits, arguing that the experience in the United States, where such limits apply, "is proof that simple limits alone are not effective."⁶⁰ The AEC notes that various "contrivances" are used in the United States to circumvent the caps on donations and concludes: "The adoption of donation restrictions could be expected to be similarly flouted in Australia."⁶¹ The AEC's counterpart in the United Kingdom recently examined in detail the potential for donation limits to control party financing and concluded that there were sufficient arguments against such limits that they could not be justified at this time.⁶²
- 13.101 More generally, the Committee observed that the proposals for banning certain types of contribution, or limiting the amounts which may be donated, arise from the apprehension of a potential for corruption and undue influence. In the absence of evidence of this occurring, the Committee could not accept the proposition that "Reform in Australia is long overdue".⁶³ In fact, the evidence suggests that, after 20 years, Australia's funding and disclosure scheme is achieving its major goals.

Tax deductibility of donations

- 13.102 Under section 30-15 of the *Income Tax Assessment Act 1997*, an individual who makes a contribution worth \$2 or more to a political party registered under Part XI of the CEA in any one financial year can deduct up to \$100 in that financial year.⁶⁴ This provision does not apply to companies.

60 Submission No. 7, (AEC), of the JSCEM 2001 *inquiry into disclosure of donations to political parties and candidates*, para. 8.8.

61 Submission No. 7, (AEC), of the JSCEM 2001 *inquiry into disclosure of donations to political parties and candidates*, paras. 8.8 and 8.9.

62 United Kingdom Electoral Commission, *The Funding of Political Parties*, December 2004, pp. 79–87.

63 Submission No. 48, (Prof. G Williams and Mr B Mercurio), p. 5.

64 The contribution can be money or property purchased in the 12 months before making the contribution.

13.103 In its submission, the Liberal Party argued for a “significant increase” to the current deductibility limit of \$100, which it described as “quite inadequate”.⁶⁵ Liberal Party Federal Director, Mr Brian Loughnane, told the Committee that an appropriate deductibility figure would be “well into four figures”. Mr Loughnane added:

the support and contribution of political parties is critical to the health of Australian democracy, and I believe it merits some recognition at a significantly greater level than the current level of tax deductibility.⁶⁶

13.104 The Nationals also supported an increased level of tax deductibility for political donations, noting that deduction had not changed for “some 15 years”.⁶⁷

13.105 The Australian Labor Party opposed any increase to the tax deduction for donations to political parties. Labor’s National Secretary, Mr Tim Gartrell, said in evidence to the Committee that raising the deduction from \$100 to possibly \$5,000:

would deliver thousands of taxpayers’ dollars into party coffers, with a considerable bias towards wealth individual donors who can afford to carry the cost of the donation until their tax return arrives.⁶⁸

The Committee’s view

13.106 The Committee firmly believes that the tax deduction for donations to political parties should be higher than \$100 and that the new level of deduction should be inflation-adjusted. Arguments that the deduction should be fixed for all time are nonsensical.

13.107 The Committee notes an earlier unanimous JSCEM recommendation in 1997:

that donations to a political party of up to \$1,500 annually, whether from an individual or a corporation, are tax deductible.⁶⁹

13.108 The government members of the Committee at this time were Mr Gary Nairn MP (chair), Senator Eric Abetz, Senator the Hon. Nick

65 Submission No. 95, (Liberal Party of Australia), p. 3.

66 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 31.

67 Mr A Hall, *Evidence*, Monday, 8 August 2005, p. 60.

68 Mr T Gartrell, *Evidence*, Monday, 8 August 2005, p. 36.

69 JSCEM, *The 1996 Federal Election*: June 1997, Recommendation 61, p. 104.

Minchin, Mr Michael Cobb MP, and Mr Graeme McDougall MP. The opposition members of the Committee were Senator Stephen Conroy (deputy chair), Mr Laurie Ferguson MP, Mr Robert McClelland MP, and Senator Andrew Murray.

- 13.109 In his minority report, Senator Murray said he would propose opposing the recommendation lifting the deductibility threshold unless such a provision was available to all relevant community organisations. He recommended that “tax deductibility for donations to Political Parties and Independents mirror those available to Community organisations as a whole”.⁷⁰
- 13.110 The recommendation to raise the deduction to \$1,500 resulted in an amendment to tax legislation going before parliament in the Taxation Laws Amendment (Political Donations) Bill 1999. The Bill lapsed when the 39th Parliament was prorogued in 2001.
- 13.111 The Committee supports the proposition that a higher tax deductibility level would encourage more people to participate in the democratic process. As the Committee argued in its 1996 election report:
- an increase in the maximum deduction would encourage small to medium donations, thereby increasing the number of Australians involved in the democratic process and decreasing the parties’ reliance on a smaller number of large donations.⁷¹
- 13.112 The role of the taxation system in increased political participation has international acceptance. In its December 2004 report on the financing of political parties, the United Kingdom’s Electoral Commission observed:
- one way of encouraging political participation in the democratic process and democratic renewal at the grass roots level would be to introduce income tax relief on small donations to political parties.⁷²

70 JSCEM, *The 1996 Federal Election*, June 1997, ‘Minority report’, pp. 162-163.

71 JSCEM, *The 1996 Federal Election*, June 1997, p. 103.

72 United Kingdom Electoral Commission, *The Funding of Political Parties*, December 2004, p. 99. This report suggested that the tax-relief scheme be limited to small donations, up to a value of £200, or the first £200 of larger donations, in the financial year, with the value increased in line with inflation.

- 13.113 The Committee agrees with the statement from Mr Loughnane that raising the deductibility figure would be “an important change to assist with an important civic responsibility by Australian citizens”.⁷³

Recommendation 51

- 13.114 The Committee recommends that the *Income Tax Assessment Act 1997* be amended to increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed \$2,000 per year.**

Tax deductibility of donations to independent candidates

- 13.115 The member for Calare, Mr Peter Andren MP, noted that donations to independent candidates were not tax deductible.⁷⁴ Mr Andren has made this point previously in submissions to earlier election inquiries.⁷⁵
- 13.116 In its report on the 1996 election, the Committee stated that the inequity between independent and party-endorsed candidates should be rectified. It unanimously recommended that the taxation law be amended so that donations to an independent candidate at a Federal or State Election were tax deductible, at the same level as donations to registered political parties.⁷⁶ (As noted above, it recommended this level be raised to \$2,000).
- 13.117 The 1999 taxation law amendment Bill noted in the previous section included a provision to amend the legislation to allow income tax deductions for contributions made to independent candidates and members of parliament. The Bill lapsed when the 39th parliament was prorogued in 2001.

73 Mr B Loughnane, *Evidence*, Monday, 8 August 2005, p. 31.

74 Submission No. 130, (Mr P Andren MP), p. 1.

75 Submission No. 80, (Mr P Andren MP), to the JSCEM *Inquiry into the conduct of the 2001 Federal Election and matters related thereto*, p. 2; and Submission No. 25 (Mr P Andren MP) to the JSCEM *Inquiry into the conduct of the 2001 Federal Election and matters related thereto*, p. S83.

76 JSCEM, *The 1996 Federal Election*, June 1997, Recommendation 62, p. 104.

Recommendation 52

- 13.118 **That the *Income Tax Assessment Act 1997* be amended to provide that donations to an independent candidate, whether from an individual or a corporation, are tax deductible in the same manner and to the same level as donations to registered political parties.**

Disclosure of donations

- 13.119 The Committee's principal interest at this point was that some of the current disclosure provisions of the CEA impose a cumbersome administrative burden on donors, participants in the electoral process, and the AEC without adding to the information available.
- 13.120 In pursuing change in this area, the Committee noted Senator Murray's concern that it has been claimed that multiple donations of values less than the existing threshold could circumvent the current disclosure requirements and provide a final donation from one source vastly in excess of the declaration threshold.⁷⁷ Whilst the Committee has not received meaningful evidence that this is occurring, it notes that if it is, it is a product of the change of the original disclosure changes by the then Hawke Government in 1983.
- 13.121 Several provisions require unnecessary duplication, demanding that both donors and registered political parties lodge returns containing essentially the same details.
- 13.122 For example, section 305B of the Act requires donors who make gifts totalling \$1,500 or more in a year to the same registered political party or the same state branch of a registered political party to lodge a return giving all the details of the gift, even though that same information appears in the annual return of the registered political party or state branch of the registered political party.
- 13.123 In a similar vein, section 307 of the CEA requires candidates and groups to lodge returns, even when they have no details to disclose.
- 13.124 In respect of a candidate, the section states:

⁷⁷ Senator A Murray, *Transcript of Evidence*, Monday, 8 August 2005, p. 29.

the return shall nevertheless be lodged and shall include a statement to the effect that no gifts of a kind required to be disclosed were received.⁷⁸

The Committee's view

13.125 The Committee believes that there are good arguments for reviewing some of these provisions with a view to abolishing them, thereby streamlining the process and alleviating the burden on all concerned.

13.126 With regard to section 305A on donor returns, the Committee considers the demand for donor disclosures to be an annoying duplication of information that does not add to the identification of donors to political parties. The onus for the identification of the source of political donations should be on candidates and political parties, not donors.

13.127 The Committee agrees with Liberal Party federal secretary Mr Brian Loughnane who submitted that this section could be removed from the Act because:

to end the requirement for donor returns would reduce the administrative burden for the AEC and for donors, while in my view it would not reduce transparency for political donations, since disclosure of donations would continue to be required from political parties and candidates.⁷⁹

13.128 With regard to section 307, the Committee is of the opinion that, for candidates endorsed by a registered political party, the demand that they file a "nil return" is an unnecessary imposition on the candidate and on the AEC. Given that the agent of a registered political party files a return containing the necessary details, the demand that a party-endorsed candidate lodge a "nil return" is cumbersome and wasteful. It does not add to the transparency of the disclosure process.

13.129 The Committee suggests that Section 307 should not apply to party-endorsed candidates where the registered political party's agent is lodging a return.

"Third party" donations

13.130 A "third party" is a person or organisation under an obligation to lodge a disclosure return because of indirect involvement in Federal

78 CEA, section 307 (1)

79 Submission No. 219, (Liberal Party of Australia), p. 1.

Elections through (typically) making political donations or placing electoral advertising. Third parties are different from registered political parties, candidates, Senate groups, associated entities, broadcasters and publishers all of which have separate disclosure obligations under the CEA.⁸⁰

- 13.131 Under s305 of the CEA third parties which incur expenditure for a political purpose are required, within 15 weeks of the polling day, to disclose gifts received for the period beginning 31 days after the previous election and concluding 30 days after the current election.⁸¹
- 13.132 Under s309 (4) they are required to report on expenditure relating to the *election period* (ie from the issue of writs to the end of polling on election day), within 15 weeks of polling day.
- 13.133 The practical effect of these provisions is that, unlike other entities which report annually on funds received and disbursed for party political purposes in the period between elections and for the election period, third parties:
- only disclose donations received in the period between elections after each election;⁸² and
 - are only required to disclose expenditure made for the election period.

The Committee's view

- 13.134 The Committee concluded that financial reporting arrangements for all entities involved in the political process and covered by the CEA, should be the same in the interests of transparency and consistency.

80 AEC, *Political disclosures*,
http://www.aec.gov.au/_content/how/political_disclosures/index.htm

81 CEA s305(1); s305(A)(1); CEA s287(f); 305(1)(a), but "Subsection (1) does not apply to a person in respect of the disclosure period in relation to an election if the total amount of expenditure incurred by the person for political purposes during the disclosure period is less than \$1,000."

82 AEC, *Political disclosures*,
http://www.aec.gov.au/_content/how/political_disclosures/index.htm

Recommendation 53

- 13.135 **The Committee recommends that third parties be required to meet the same financial reporting requirements as political parties, associated entities, and donors.**

Looking to the future— education as the key to a healthy democracy

Introduction

- 14.1 In the earlier chapters the Committee addressed the mechanics and events of the 2004 Federal Election and possible changes to our electoral practices.
- 14.2 As people do not exercise power directly in Australia's representative democracy, but elect representatives to make decisions on their behalf, our democracy needs citizens who understand, appreciate and participate in it.
- 14.3 This chapter examines opportunities to encourage young people to participate to ensure that Australia remains a healthy, vibrant and forward-thinking democracy.

Participation

- 14.4 Evidence of the need for hard work to engage the up-and-coming electors with the electoral process can be seen in the generally lower participation rates among younger voters. The AEC estimates indicate that at the close of the electoral roll for the 2004 Federal Election:

approximately 82% of young Australians (17-25 years of age) were enrolled (compared with 95% of other Australians), on the electoral roll... the under-registration of eligible young people raises questions about their political interest and commitment to their civic responsibility.¹

The Committee' view

- 14.5 In this report the Committee has, from time to time, emphasised the responsibility that citizens have to enrol and to vote. But, as the overall enrolment figures, and particularly the lower proportion of younger citizens enrolled shows, more effort is needed to promote democratic opportunities as well as obligations.

Passive promotion

- 14.6 Currently there is a wealth of information about the political system which can be sought out by those who want to find out. The AEC and others intimately connected with the electoral process – the State and Territory Electoral Commissions and Parliaments – all endeavour to make a connection with the voting public and with those still at school. Most State, Territory and National Electoral Commissions have education or teacher assistance components on their websites.² Their orientation is, necessarily, towards the rights and obligations of voters and the mechanics of participation.
- 14.7 Federal, State and Territory parliaments also have similar arrangements, sometimes as part of their more general public interface. Most of the parliaments of Australia offer virtual tours of their parliament buildings on their websites, as well as arranging regular free on-site tours for schools and the public. These approaches highlight functioning of the Parliaments which results from the electoral system.

The Committee's view

- 14.8 All these sources are important for citizens' understanding of Australia's democracy. However, their effectiveness relies heavily on
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1 Print M, Saha L and K Reader Edwards, *Youth Electoral Study Report 1: Enrolment and Voting*, AEC, December, 2004, pp. 2-3, 23, www.aec.gov.au/_content/what/publications/youth_study_1

2 NSW, Victoria, Qld, SA, WA, ACT.

the initiative of the elector who is already interested in the electoral system.

- 14.9 Not all have that interest. In a long-functioning democracy such as ours, it is easy to take it for granted. This acceptance is reflected in the attitude of the voters to the outcomes of the Federal Elections. Even those who wished (and voted for) a different outcome are generally satisfied that the Government was legitimately elected.
- 14.10 The Committee considers that this predisposition is important in permitting effective functioning of a democracy. Ideally this attitude should be well grounded in an understanding of the electoral process: it should be more than an outcome of habit.
- 14.11 There are means of seeking electoral engagement which are more active.

Seeking out the first-time voter

- 14.12 One AEC initiative to improve youth registration was *Rock Enrol*. In partnership with the radio station Triple J, *Rock Enrol* utilised on-air support and a dedicated website, which encouraged enrolment by raising awareness of the importance of enrolling and voting. Another aspect of *Rock Enrol* involved promotion at the “Big Day Out” concert series and various youth-focused community events. The AEC stated:

The response to the initiative was highly positive, and the AEC received over 4000 application forms as a result of the promotion.³

- 14.13 The AEC is currently sponsoring the Youth Electoral Study, part of which is gathering data through interviews with a national sample in excess of 4,600 senior secondary students.⁴ This has found that although youth are typically stereotyped as politically apathetic, in fact:

they were interested in political issues, what to them were real issues, though not political parties and politicians. The need and challenge is to find meaningful ways to engage

3 Submission No 182, (AEC), p. 5.

4 Print M, Saha L and K Reader Edwards, *Youth Electoral Study Report 1: Enrolment and Voting*, AEC, December, 2004, p. 4, www.aec.gov.au/_content/what/publications/youth_study_1.

young people more constructively so they want to participate more directly in voting and to sustain Australian democracy.⁵

- 14.14 By the time they vote for the first time, Australians will have lived through more than half a dozen Federal Elections, but will have had no say in the outcome. One of the challenges for our democracy is to make their first opportunity to vote an eagerly awaited event, rather than an interruption to Saturday.

The Committee's view

- 14.15 Publicity aimed at encouraging those approaching their eighteenth birthday to enrol for voting should be effective, but could be more so if it were not the first new voters had heard of their obligation to enrol.
- 14.16 The Committee considers that promotion of things electoral and parliamentary would be more meaningful if the target audience were younger age groups – those in primary school.

Encouraging the pre-voting population

- 14.17 At the Federal level the Government, the Department of Education, Science and Training (DEST) promotes political awareness through funding for civics and citizenship education. In November 2004, DEST reported that the Government had allocated \$4.9 million over four years, to cover:

curriculum resources through a continuing civics and citizenship education website; national activities including Celebrating Democracy Week in schools and the National Schools Constitutional Convention.⁶

- 14.18 DEST also funds the Education Travel Rebate for visits by schools coming to the National Capital from more than 150, but less than 1,000 kilometres away. An important provision of this rebate is that schools must visit at least two “democracy related institutions” and demonstrate that their visit to the National Capital integrates into

5 Print M, Saha L and K, Reader Edwards *Youth Electoral Study Report 1: Enrolment and Voting*, AEC, December, 2004, pp. 2-3, 23, www.aec.gov.au/_content/what/publications/youth_study_1.

6 DEST *Media Release*, 11 March 2004. www.dest.gov.au/ministers/nelson/budget04/bud12_04.htm.

their class room activities.⁷ The annual rebate budget is fixed, and is distributed on a first come first served basis until funds are exhausted.⁸

14.19 The Committee was particularly interested in the range of school outreach activities directly involving the Federal Parliament in Canberra. The main programs were:

- National Capital Educational Tourism Project;
- Rotary Adventure in Citizenship; and
- Parliamentary Education Office.

14.20 The **National Capital Educational Tourism Project** (NCETP) is a partnership venture between the ACT Government, the National Capital Authority and the National Capital Attractions Association. It administers the DEST Education Travel Rebate. Mr Garry Watson noted that its aim is to:

increase the number of Australian school children visiting the National Capital as part of their school education, through visits to and participating in the educational programs offered by the National Cultural Attractions that encourage an understanding of Australian history, culture, democracy, citizenship, and values.⁹

14.21 The main entities relevant to democracy and citizenship education that schools visit are: Parliament House; the Parliamentary Education Office; Old Parliament House; the Electoral Education Centre; the National Capital Exhibition; and the High Court. The scheme also embraces Australia's historical and cultural heritage presented in the Australian War Memorial and the National Museum. Each financial year approximately 126,000 school children (mainly from Grades 5 and 6) participate in the scheme, and nine in every ten visit Parliament House.¹⁰

7 Submission No 193, (Mr G Watson), p. 1. Education Travel Rebate \$15 per student, www.edtourism.nationalcapital.gov.au/downloads/form_rebate.pdf.

8 *Education Travel Rebate*, www.edtourism.nationalcapital.gov.au/downloads/form_rebate.pdf.

9 Submission No 193, (Mr G. Watson).

10 *Education Tourism in the ACT: Domestic – School Based* www.edtourism.nationalcapital.gov.au/downloads/School_Domestic_Education_Tourism_in_the_ACT.pdf.

- 14.22 The **Rotary Adventure in Citizenship**, organised by two Canberra Rotary Clubs, brings some 50 Year 11 students from around Australia to the National Capital for a week, to learn about Parliamentary processes and ways of becoming active citizens.¹¹
- 14.23 The **Parliamentary Education Office (PEO)** in Parliament House hosts 2,250 groups (or about 79,000 students) each year. Some 18,000 of these visit under the subsidised *Citizenship Visits Program (CVP)*.¹²
- 14.24 The objective of the CVP is to provide financial assistance to final year/s primary school and secondary students from areas distant from Canberra. This aimed at enabling them to visit the national Parliament and take part in a program designed to enhance their understanding of the roles of the Houses, and the parliamentary system of government.¹³
- 14.25 The students participating in CVP must visit at a time when the full range of PEO programs are available, and take part in organised activities provided by the Parliament, spending a minimum of 2 hours in Parliament House. These should include:
- a guided tour of the Parliament including the galleries of both Houses of Parliament;
 - an education program as arranged by the PEO (which may involve students role-playing to teach them the main functions of parliament in an interactive setting);¹⁴ and
 - undertake at least one further approved activity in Canberra from a range including:
 - ⇒ participate in the hospitality program and, meet their local Member or State/Territory Senator where possible;
 - ⇒ complete a special program as organised by their local Member or State/Territory Senator; or
 - ⇒ participate in an education program at the Electoral Education Centre at Old Parliament House, ACT.¹⁵
- 14.26 Funds under CVP are allocated on a per student basis at rates varying according to distance from Canberra:
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11 www.peo.gov.au/news/archive.htm.

12 The Program is funded jointly and equally by the Departments of the Senate and the House of Representatives. Department of the Senate *Annual Report 2003–04*.

13 Citizenship Visits Program Guidelines, www.peo.gov.au/programs/cvp.htm

14 DEST, *In Focus, Civics and Citizenship Education in Your National Capital*, www.civicsandcitizenship.edu.au/cce/default.asp?id=9635.

15 Citizenship Visits Program Guidelines, www.peo.gov.au/programs/cvp.htm.

- more than 1000 km – \$40;
- more than 2000 km – \$110;
- more than 3000 km – \$230.¹⁶

14.27 The PEO has reported that, in recent years, the increased pressure of numbers on the PEO's accommodation and budget¹⁷ has meant that not all who wish to visit can do so:

any further increases in the numbers of CVP students in future years will force corresponding reductions in the numbers of non-CVP students able to participate in Education Centre programs, unless the PEO's budget allocation is increased to accommodate extra students...there were 2,885 students on the waiting list for 2003 and 2,985 for 2004, all of whom missed out on an Education Centre program, but none of whom were eligible CVP students.¹⁸

14.28 The Department of the Senate annual report of 2002-03 noted that members of the Federal Parliament have called on the Parliament to:

make rebate schemes more reflective and considerate of travel distances to the National Capital in order to allow equality of access to the parliamentary education program for all students and that such rebates reflect market pricing for those reliant on air travel.¹⁹

14.29 The PEO is also responsible for *Talkback Classroom*, which, in 2003-2004 gave more than 700 middle and senior secondary students the opportunity to engage key public figures in discussions on issues of importance to young people. This was also broadcast on ABC's Radio National *Life Matters* program.²⁰

14.30 In addition to its Parliament House work, the PEO travels to regional areas to work with teachers on Parliamentary education and provides the important Parliamentary component for a range of programs such as:

16 All students from Tasmania regardless of distance from Canberra – \$110 per student. Average subsidy in 2003-2004 was \$67.18 per student, Department of the House of Representatives Annual Report 2003-04.

17 Budget \$1.22million in 2003-2004, *Department of the House of Representatives Annual Report 2003-2004*, p.150.

18 *Department of the Senate, Annual Report, 2003-04*.

19 Mr K Wilkie MP, House of Representatives, *Hansard*, 31 May 2004, p. 29476.

20 www.peo.gov.au/news/archive.htm; and Department of the Senate, *Annual Report, 2003-04*.

- *Rotary Adventure in Citizenship* mentioned above.
- *National Youth Science Forum*, which brings approximately 300 Year 12 Science students to Canberra to stimulate interest in science as a profession. The PEO assists this two week program by providing the link between the Commonwealth Parliament and funding for science ventures.
- *ACT Constitutional Convention* involving Year 11 delegates in the Parliamentary processes of establishing a constitutional referendum.
- *ABC Heywire*²¹ writing competition which allows winners to attend the Heywire Youth Issues Forum in Canberra.²²

The Committee's view

- 14.31 The Federal Parliament has an obligation to seek out and engage with the electors of tomorrow, and the mechanism to do so is through education.
- 14.32 The Committee endorses the Federal Government's funding of civics education through schools and the related activities of DEST. The Committee encourages the Government to continue this commitment into the future, and to support DEST in expanding programs aimed at educating Australian youth about the value of our democratic institutions, and the responsibilities and benefits of Australian citizenship.
- 14.33 Mr Tony Smith MP has observed that first hand experience is a powerful teacher:

there is nothing like seeing first-hand the operation of parliament not just in question time but in debate; seeing the operation of committees; seeing members of parliament from all political persuasions...and gaining a real comprehension of how parliament works. That is absolutely vital. Before school kids come to Canberra... most of them see parliament only very fleetingly, perhaps on a sitting day through the nightly news... It is only when they actually come here and see the parliament operating that they see the full range of aspects of

21 For 16-22 year olds. www.abc.net.au/heywire/about/default.htm.

22 www.peo.gov.au/news/archive.htm.

parliamentary life and the broader legislative work that goes on here. It is only by coming here that that is conveyed.²³

- 14.34 It would be a sound investment in our future to enable as many children as possible to visit the Federal Parliament. The National Capital also houses the Electoral Education Centre and the former Parliament House; which are significantly able to contribute to the understanding of the workings of Australian democracy. All these can be experienced in the richer context of our past, as portrayed in the National Museum and the Australian War Memorial.
- 14.35 As Mr Watson, of the NCETP, said in his submission:
- the research shows that the majority of students that visit the National Capital, particularly in relation to civics and citizenship education, are from grades 5 and 6. As civics and citizenship education has now become a national priority for schooling in Australia it is essential that all possible resources are provided to assist in this education.²⁴
- 14.36 These are the age groups which the existing school curricula make most receptive to first hand experiences.
- 14.37 The Committee noticed that key components for educating children about democracy were in place:
- the Federal Parliament and associated institutions in the National Capital;
 - established visitor and participation facilities;
 - a range of educational opportunities;
 - funding assistance; and
 - an established audience.
- 14.38 The missing ingredient was coordination of State and Federal monetary input. This was despite agreement in 1999 by all State and Territory Education Ministers to the *National Goals for Schooling in the Twenty-first Century*, which included:
- an emphasis on educating students to understand their role in Australia's democracy....when they leave school, [students] should be active and informed citizens with an

23 Mr T Smith MP, House of Representatives, *Hansard*, 31 May 2004, p. 29482.

24 Submission No. 193, (Mr G. Watson).

understanding and appreciation of Australia's system of government and civic life.²⁵

Recommendation 54

- 14.39 **The Committee recommends that State, Territory and Federal education authorities coordinate their contributions to students' understanding and appreciation of Australia's system of government.**

Recommendation 55

- 14.40 **The Committee recommends that State, Territory and Federal education authorities increase their financial contribution to enable students in grades five and six to visit the National Capital to further their understanding of democracy.**

Recommendation 56

- 14.41 **The Committee recommends that the Parliament refer electoral education to the JSCEM for further examination and report.**

Tony Smith, MP
Chair
27 September 2005

25 DEST, *Civics and Citizenship Education*,
www.civicsandcitizenship.edu.au/cce/default.asp?id=8985.



Minority Report—Mr Michael Danby MHR, Deputy Chair, Mr Alan Griffin MHR, Senator Kim Carr & Senator Michael Forshaw

In this Minority Report on the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, Opposition members of the Joint Standing Committee on Electoral Matters (JSCEM) identify and discuss recommendations of the Report of the Majority that the Opposition does not support.

The Majority Report does contain many recommendations that the Opposition supports. We acknowledge the contributions that all members of the Committee have made to this Inquiry and to the development of these recommendations.

Constraints placed upon JSCEM members in relation to the timing of the tabling of the Committee's report have limited this Minority Report to addressing only those Majority recommendations that, in our view, clearly compromise the effectiveness, fairness and integrity of the *Commonwealth Electoral Act 1918* (the Act).

Introduction

Australia has a long and proud history of progressive electoral reform, dating back to the introduction of the secret ballot in Victoria in 1856, votes for women in 1894 (in South Australia) and in 1902 (federally), preferential voting in 1918, compulsory voting in 1924, proportional representation for the Senate in 1949 and votes for 18-year-olds in 1973. Governments of all parties share credit for these reforms, which in Australia have usually enjoyed bipartisan support. As a result Australia has one of the most open, accessible and democratic electoral systems in the world. We reject any proposed changes to Australian electoral laws which seek to wind back any of these reforms.

We note in particular that Australia has had no history of electoral fraud. The high degree of confidence that Australians have in the integrity of our electoral system, including the electoral roll, is shown by the fact that Australia sees almost none of the claims that elections have been “rigged” or “stolen” that mark elections in many other countries. Even in circumstances such as the federal elections of 1990 and 1998, when parties which have won a majority of the two-party vote have failed to win enough seats to win government, Australians have accepted these results with complete calm. We reject any suggestion that regressive changes to Australia’s electoral system can be justified under the pretext of “preventing electoral fraud”.

It is therefore with alarm that we note a consistent pattern in some of the recommendations put forward by the Government Majority on the Committee. This is a tendency to make it more difficult for Australians to enrol and to vote. We note that the Government Majority wants to:

- Close the electoral roll on the day the writs are issued for an election, rather than allowing citizens a five-day period to enrol or to update their enrolment details (Recommendation 4);
- Make it more difficult for citizens to enrol, or change their enrolment details (Recommendation 3);
- Make voters produce photographic or documentary identification before they can cast a provisional vote (Recommendation 20); and
- Make it more difficult for voters to cast a formal vote for the Senate, by abolishing the simple method of “above the line” voting through the introduction of compulsory preferential voting “above the line” for the Senate (Recommendation 32).

These changes would undo many reforms to the Australian electoral system which the Hawke Government put in place in 1984, after decades of neglect by previous governments. They would disenfranchise hundreds of thousands of Australians, mainly the young, those with lower levels of education, indigenous Australians and Australians from non-English speaking backgrounds. They would make it more difficult for people to enrol, and to vote outside their own electorate. They would increase the rate of informal voting in the Senate, reintroducing abuses seen at Senate elections in the past.

No satisfactory justification has been produced by Government members of the Committee for these radical and regressive changes. The only pretext offered is the need to prevent electoral fraud, particularly fraudulent enrolment. No evidence has been produced in submissions to or in testimony before this Inquiry to show of any incidence of electoral fraud in Australia, either in enrolment or in the

casting of votes. The Government is undertaking these major changes in absence of any evidence of electoral fraud. The Committee Majority itself concedes that “to date the Committee has had no evidence to indicate there has been widespread electoral fraud” (refer Chapter 5, paragraph 142 of the Majority Report).

We can only conclude that the real motivation for these recommendations by the Government Majority is the belief that if implemented they will give the Government some partisan advantage at future elections. It is evident that Government members believe that the majority of those who will be deterred or prevented from enrolling, who will be unable to cast a provisional vote, or who will cast an informal vote for the Senate, as a result of these changes, will be Labor voters, and that the cumulative effect of these changes will be to give the Government an advantage.

These measures, in tandem with the Government Majority recommendations relating to the disclosure of political donations, represent a challenge to the clear and transparency operation of our federal electoral processes. This Opposition Minority Report details the objections of committee members to changes to the Act which would allow an alarming increase in the secret and private donations flowing to political parties.

The Opposition members of the Committee reject the extreme recommendations in Chapter 13, which if adopted by the Government would raise the disclosure threshold to make secret donations of \$10,000 legal and make donations of \$2,000 tax deductible. The case for hidden donations and tax-payer subsidised rebates has not been made by Majority members. Once again we can only assume that these recommendations are designed to deliver partisan advantage to the Liberal Party.

Chapter 2: Enrolment

Recommendation 3

The Committee recommends that the Commonwealth Electoral Act be amended to require all applicants for enrolment, re-enrolment or change of enrolment details to be required to verify their identity and address.

Regulations should be enacted as soon as possible to require persons applying to enrol or to change their enrolment details, to verify their identity and address to the AEC by:

- showing or producing an acceptable identification document and a proof of address document to the AEC or a person who can attest a claim for enrolment, or,
- where such proof of identity documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the enrollee's identity and by supplying a proof of address document.
 - ⇒ Persons supplying references must have known the enrollee for at least one month and must show their own acceptable identification document or supply their drivers licence numbers to the AEC; and
- Enrolees should have the choice of providing the required documents in person to the AEC, or a person who can attest a claim for enrolment, or by posting or faxing the required documents or certified copies to the AEC with the enrolment form to which they relate.
- Where certified copies of acceptable documents are posted or faxed to the AEC, they must be certified by the enrollee to be true copies and witnessed by an elector enrolled on the electoral roll.

Where the AEC or a person who can attest a claim for enrolment receives original documents from an enrollee, the AEC must return the documents to the enrollee by hand, registered mail or other means agreed to by the enrollee. We contend that this change to the Act will make it more difficult for people to enrol or to update their enrolment, and will have the effect of increasing the number of people who are unable to vote. Those least likely to be able to comply with these requirements will be seniors, non-English speaking people or people with poor English, indigenous Australians and young voters. We point out that in all states and territories between 10 and 20% of adults do not have a driver's licence, and that many of these will also lack other forms of documentation.

Such disadvantageous changes could only be justified if it were to be shown that the current system for enrolment and re-enrolment allowed a significant level of

false enrolments or other kinds of electoral fraud. No evidence in support of these claims was shown to the inquiry.

We also point out that this recommendation is in conflict with the Government's own recent legislation, the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures Act) 2004*. This Act requires:

Applicants for enrolment must provide documentary evidence of their name and address by

- providing their driver's licence number; or
- where the applicant does not possess a driver's licence, the application must be countersigned by two persons on the electoral roll who can confirm the applicant's identity and current residential address. The counter-signatories must have known the applicant for at least one month or have sighted identification showing the applicant's name and address.

No evidence has been produced which would justify the Committee Majority's contention that this provision, enacted only last year and not yet put into operation, is now inadequate and must be replaced by a more stringent requirement.

We also point out that the extra time which would be required for the AEC to process applications substantiated with a range of verifying documentation would create a backlog of applications in the period prior to the closing of the rolls, particularly if the Majority recommendation to close the rolls on the day of the issuing of the writs were to be put into effect.

Recommendation 4

The Committee recommends that Section 155 of the Commonwealth Electoral Act be amended to provide that date and time fixed for the close of the Rolls be 8.00 P.M. on the day of the writs.

This is the most radical recommendation in the entire report. It will have the effect of disenfranchising anyone who has not enrolled by the time the writs for an election are issued, and potentially disenfranchising all voters who are not enrolled at their correct address by depriving them of an opportunity to correct their enrolment details.

This is surprising considering the submission of the Federal Secretariat of the Liberal Party, which suggested that existing enrolees should be able to change

their address details for up to three working days after the issue of the writs (Submission 219, Liberal Party of Australia).

The seven-day period for updating enrolment details was introduced as a result of the problems associated with elections up to 1983, when the roll closed at 5pm on the day the writ was issued. At the 1983 double dissolution election, approximately 90,000 voters were unable to vote when they arrived at the polling booth on election day. One witness, an AEC official who recalled the 1983 election and the lack of time before the close of rolls, said:

It created a lot of confusion and a lot of provisional votes, and a lot of people go in to vote, find they are not on the roll and just walk out (evidence of Mr Ivan Freys, 12 August 2005).

At the 2004 election, about 280,000 people enrolled or changed their enrolment in a substantive way (to either enrol, re-enrol or change their details to vote in a different electorate) in the five working days between the issuing of the writs and the closure of the roll (See table below).

State	New enrolment	Reenrolment	Transfer within a state	Transfer between states	Total voters
ACT	2,279	2,038	636	1,690	6,643
NSW	23,706	24,645	29,464	7,244	85,059
NT	835	1,160	315	1,439	3,749
QLD	10,098	13,066	18,116	8,443	49,723
SA	9,163	5,337	8,630	1,984	25,114
TAS	2,136	1,890	1,376	1,288	6,690
VIC	15,863	19,456	23,101	5,902	64,322
WA	14,736	10,903	14,408	2,763	42,810
Australia	78,816	78,495	96,046	30,753	284,110

The pretext for this proposal is that enrolments during the five working days increase electoral fraud, because the AEC does not have time to verify the information given by the enrollees. No evidence in support of this contention was presented to the Inquiry nor has it been presented to previous Inquiries.

The AEC has never said that it cannot handle the volume of applications received during the seven-day period before the rolls close. In fact it has said that the seven-day period does not prevent it taking adequate measures to prevent fraudulent enrolment. The AEC continues its checks into the integrity of the roll in

the period following the closing of the rolls to ensure people are eligible to vote, and also after the rolls close (evidence of Mr Paul Dacey, 5 August 2005). The removal of the seven-day period would therefore have little qualitative impact on the integrity of the roll.

More broadly, there is no evidence that fraudulent enrolment exists on any measurable scale or has ever influenced the outcome of any federal election. No witness or submission to this Inquiry produced evidence of fraudulent enrolment.

The AEC has said:

It has been concluded by every parliamentary and judicial inquiry into the conduct of federal elections, since the AEC was established as an independent statutory authority in 1984, that there has been no widespread or organised attempt to defraud the electoral system ... and that the level of fraudulent enrolment and voting is not sufficient to have overturned the result in any Division in Australia. That is, there is no evidence to suggest that the overall outcomes of the 1984, 1987, 1990, 1993, 1996 and 1998 federal elections were affected by fraudulent enrolment and voting (*AEC Electoral Backgrounder 14: Electoral Fraud and Multiple Voting*, 24 October 2001).

We point out that this Committee conducted a thorough investigation into the integrity of the electoral roll in 2001. During that inquiry the AEC testified that it had compiled a list of all possible cases of enrolment fraud for the decade 1990-2001, a list which included 71 cases in total, or about one per 200,000 enrolments. The AEC noted that these false enrolments were carried out for a variety of reasons not connected with a desire to influence federal election results (Report of the Inquiry into the Integrity of the Electoral Roll, 15).

Between 1990 and 2001 there were five federal elections and a referendum, at each of which about 12 million people voted: a total of about 72 million votes. The 71 known cases of false enrolment thus amounted to less than one vote per million being cast by a person who had knowingly enrolled at a false address.

The entirely theoretical threat of election results being corrupted through fraudulent enrolment does not outweigh the harm caused by potentially disenfranchising several hundred thousand voters. In an advanced democracy, particularly one which aspires to universal voting, the Parliament should be doing everything possible to see that the franchise is as wide as possible.

During this Inquiry, the Committee heard evidence from an AEC employee appearing in a private capacity that the early closure of the rolls:

would disenfranchise a lot of people. We would have had to go to a lot of expense and advertising to ensure that the rolls were as up-to-date as possible and do that on a continuing basis (evidence of Mr Ivan Freys, 12 August 2005).

The government has introduced legislation several times to implement this proposal, but each time it was rejected by the Senate, with minor party Senators joining the Opposition in voting against it. Neither Government Senators on those occasions, nor Government members of this Committee, have succeeded in producing any evidence of electoral fraud arising from enrolments after the announcement of an election.

In its submission to the 2001 JSCEM inquiry into the electoral roll, the AEC said:

The AEC is firmly of the view that, in the absence of any evidence to suggest that the opportunity to enrol or correct enrolment details in the week prior to the close of the rolls is being significantly abused, the procedure introduced on the Committee's recommendation after the 1983 election must be judged a success. It has guaranteed the franchise to large numbers of people who might otherwise have missed out on their votes, and has ensured more accurate rolls by guaranteeing people the opportunity to correct their enrolment details. Its elimination would reopen the door to sudden roll closes such as that of 1983, which cause the retention on the roll of a large number of out-of-date enrolments, and tend to force a large number of people to vote for Divisions in which they no longer reside (AEC submission to the Inquiry into the integrity of the electoral roll, October 2000).

The Report into the 2001 Federal Election of this Committee (which had then, as it does now, a Government majority) recommended unequivocally that the existing seven-day period between the issue of writs and the close of rolls be retained.

A number of submissions to the Inquiry specifically highlighted that homeless people as being particularly disadvantaged by the proposed early closure of the rolls. This is because it will dramatically reduce the opportunities for homeless people to update their address details or registration as Itinerant Electors (Submission 131). This is further proof of how those in society least deserving of disenfranchisement will be severely affected by this recommendation.

This recommendation will also cause particular problems for electors in remote or regional Australia: for example, the Premier of Western Australia, Dr Geoff Gallop MLA, argued that voters in his state without immediate access to appropriate communication facilities would be particularly disadvantaged (Submission 60).

Since no evidence has been produced to demonstrate the necessity for this change, there is no justification for the potential disenfranchising of several hundred thousand Australian voters that would flow from its implementation.

Recommendation 5

The Committee recommends:

- that the amendment to Section 155 of the Commonwealth Electoral Act to provide for the date and time of the close of the Rolls, occur as soon as possible in the life of the 41st Parliament;
- that the amendment to section 155 be given wide publicity by the Government and the AEC;
- that the AEC be required to undertake a comprehensive public information and education campaign to make electors aware of the changed close of rolls arrangements; in the lead up to the next Federal Election;
- that the AEC review, and where appropriate amend the wording of all enrolment related forms, letters, promotional material and advertising used for enrolment related activities to include a notification to electors that the rolls will close at issue of the writ for federal elections and referenda; and
- that appropriate funding be made available to the AEC in order that it may comply with these and other recommendations agreed to by the Government.

This recommendation flows from Recommendation 4, and is the majority's response to the problem of disenfranchising hundreds of thousands of Australians by closing the rolls on the day the writs are issued. We are not opposed to efforts by the AEC to encourage Australians to enrol to vote and to maintain their enrolment at their correct address. But we reject the idea that such a campaign can be an acceptable substitute for the five-day enrolment period after the issuing of the writs for an election. Essentially, this recommendation fails to understand the behaviour of those voters who only decide to correct their enrolment when the intense media coverage around the announcement of an election prompts them to do so.

The recommendation rests on two assumptions:

- That it is always possible to know the date of an election far enough in advance to be able to prepare and mount an awareness campaign on the scale that the recommendation envisages; and

- That such a campaign will persuade most or all of those who currently enrol or change their enrolment after the announcement of an election to do so before the election is announced.

An awareness campaign would have to run for weeks, if not months, before a federal election is held if it were to have the effect of encouraging the maximum number of people to enrol to vote. The first of these assumptions is, therefore, clearly false.

Currently the Prime Minister has absolute discretion in deciding the date of a federal election. In Australia this will remain the case unless the Constitution is altered to provide for fixed terms. Prime Ministers can, and frequently do, call early elections for reasons of electoral advantage. In the postwar period Australia has had 23 federal elections, of which nine (39%) were called at least six months early: in 1951, 1955, 1963, 1974, 1975, 1977, 1983, 1984 and 1998. At none of these elections would it have been possible to prepare and mount an awareness campaign of sufficient length or intensity to influence enrolment behaviour.

Mr Antony Green, a well-respected election commentator, supports this view:

If suddenly the election is called two or three months early, people will not have regularised their enrolment. You will cut young people off, as the numbers show, and you will also see a significant number of people who are currently re-enrolled at their correct address trying to vote with their old address by absents and postals. It just strikes me that you will actually see an increase in the number of people trying to vote absent and postal, and then there will be questioning about whether they live at an address or not (evidence of Mr Antony Green, 12 August 2005).

The veracity of the second assumption is more a matter of opinion, but there are strong arguments to suggest that such an awareness campaign would not have the desired outcome. It is striking that the Committee Majority, in another context, supported this view when they said:

The Committee recognises the efforts of the AEC to target electorates with high percentages of constituents from non-English speaking backgrounds. However, it is evident that, by and large, the programs such as those in the ethnic media and the election information sessions did not have a significant effect on informal voting figures. (Chapter 6, paragraph 54)

People who enrol or who change their enrolments after the announcement of an election fall into four categories:

- People who have turned 18 since the last election;
- People who have become Australian citizens since the last election;
- People who have changed their address since the last election; and
- People who have returned to Australia after a period of absence during which their enrolment has lapsed.

All these people *should* have enrolled as soon as they become eligible, and *should* have kept their enrolment up to date. The fact that they did not do so suggests that they have a relatively low level of interest in politics and a relatively low level of engagement with the political system. They are, in other words, the people least likely to respond to awareness campaigns of the type proposed.

As research into many other awareness campaigns shows, it is people with lower levels of education, poor command of English, indigenous Australians, seniors and the very young who tend to be less responsive to awareness campaigns. It is these people who are the most likely to enrol only when an election is actually called.

As suggested above, an awareness campaign around enrolling to vote and maintaining correct enrolment details would have to be conducted in the months or weeks leading up to a federal election. This, however, would present serious problems. Over the last three elections the Howard Government has grossly abused public funds by running saturation television and print “awareness campaigns” promoting various Government policies in the run-up to the election campaign proper. No doubt it will do so again at the next election.

It is well known that the proliferation of awareness campaigns, both genuine and bogus, over recent years has reduced the effectiveness of all such campaigns. An awareness campaign on enrolment would be competing with so many other campaigns that people (particularly the target groups) would tend to ignore it.

Such an advertising campaign would also entail a very large expenditure of public funding to achieve the same outcome as is currently achieved by waiting seven days after the issuing of the writs. This is particularly concerning in light of the meagre justification for the removal of this seven-day period.

Getting more than 280,000 Australians back on the roll at their correct address before an election would not be such an issue if we had fixed terms for elections, because then it would be known in advance the date on which the rolls would close. Then an awareness campaign could give a more specific message and might be more successful.

Chapter 3: Voting in the Pre-election Period

Recommendation 10

The Committee recommends:

- That the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended so that postal voters are required to confirm by signing on the postal vote certificate envelope a statement such as 'I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled';
- That the Commonwealth Electoral Act and the Referendum (Machinery Provisions) Act be amended to allow the date of the witness's signature, not the postmark, to be used to determine whether a postal vote was cast prior to close of polling.

We have no objection to this recommendation, which relates particularly to rural voters who have posted their postal ballot at a late stage, and whose ballot has not been postmarked by Australia Post until after polling day. By relying on the voters truthfulness in terms of certifying that they have completed their vote prior to the close of the poll, the Committee is rightly giving such voters the benefit of the doubt.

We note, however, the marked contrast between the Committee Majority's attitude to the integrity of the electoral roll in this recommendation and the attitude displayed in the earlier recommendations, discussed above. In those recommendations the Majority sought to make it more difficult for citizens to enrol and vote, on the pretext of guarding against fraudulent enrolment. In this recommendation the Majority is suggesting that it be made less difficult for postal voters to cast their votes.

We note also that this recommendation was framed mainly in response to the justified complaints of voters in regional areas, particularly in western Queensland, about the breakdown in the postal voting system during the 2004 election. It seems that the Committee Majority is willing to take the word of country voters about the date on which they lodge their postal vote applications, but not willing to take the word of the mass of Australian voters about their identities when they enrol to vote or when they cast declaration votes. The inconsistent approach of the Majority Committee members should be pointed out.

Chapter 5: Election day

Recommendation 25

The Committee recommends that, at the next Federal election, those wishing to cast a provisional vote should produce photographic identification. Voters unable to do so at the polling booth on election day would be permitted to vote, but their ballots would not be included in the count unless they provided the necessary documentation to the DRO by close of business on the Friday following election day. In the case where it was impracticable for an elector to attend a DRO's office, a photocopy of the identification that was either faxed or mailed to the DRO would be acceptable.

Those who do not possess photographic identification should present one of the forms of identification acceptable to the AEC for enrolment.

The early closing of the rolls, as recommended by the Committee Majority, would have the inevitable consequence of causing more voters to cast provisional votes than ever before. This recommendation would require the voter to provide photographic identification because they did not have sufficient time either to enrol or to update their enrolment details between the calling of the election and the closing of the rolls on the days the writs are issued (usually the day after the announcement).

As with previous recommendations, this recommendation will place a further obstacle in the way of people casting their vote. At the 2004 election 180,878 Australians were issued with provisional votes and 853,598 were issued with absent votes (these two categories, together with pre-poll and postal votes, being classed as declaration votes), a total of 1,034,476 votes or 8.8% of all formal votes cast. Once again, no evidence was presented to the Inquiry of fraud in the casting of declaration votes, let alone a level of fraud which would justify such a drastic change. Once again, those least likely to be able to conform to these requirements would be the elderly, first-time voters, those with lower levels of education, indigenous Australians and Australians from non-English speaking backgrounds.

Recommendation 29

The Committee does not support the introduction of proof of identity requirements for general voters on polling day at the next election.

The Committee recommends that the AEC report to the JSCEM on international experience of the operation of proof of identity arrangements and on how such a system might operate on polling day in Australia.

Whilst the Opposition agrees with this recommendation, it has further comments to make about the potential for requiring voters to provide proof of identification to be able to vote on polling day.

Recommendation 30

The Committee recommends that, at the next Federal Election, the AEC encourage voters to voluntarily present photographic identification in the form of a driver's licence to assist in marking off the electoral roll.

The Opposition disagrees with this recommendation as it is yet further proof of the Government's desire to make casting a valid vote more difficult for ordinary voters.

Liberals for Forests

In Chapter 5 the Committee Majority makes a number of inflammatory allegations regarding the actions and impact of the Liberals for Forests (LFF) group in the Division of Richmond, although the relevant recommendation appears under Chapter 12, where we have further comments to make.

Most of these allegations are made by interested parties such as National Party sources and other candidates and officials, and most of them do not stand up to scrutiny.

For example, the Majority Report asserts that only 151 people needed to alter their preference to change the outcome in Richmond, and claims, on the basis of anecdotal evidence, that this was what occurred.

However, this would have required a massive 10.6% switch in preference flows, well in excess of the preference flows received by the Coalition in most of the seats contested by LFF in NSW.

The average preference flow across the seven seats contested by the LFF in NSW was 40.31% to the ALP. Labor received only 43.19% of preferences from LFF in

Richmond. This was only 3.61% higher than the preference flow to Labor in Page, and less than 3% more than the state average.

The preference flow required to the Nationals of 67.5% is higher than any preference flow by any minor party across NSW to the Coalition other than the Christian Democratic Party.

The Majority Report makes much of alleged confusion among Liberal voters regarding the layout of LFF's how-to-vote card, and in evidence the clear similarity of these how-to-vote cards with Liberal how-to-vote's in 2001 was emphasised. However, the Government members should know that there has not been a Liberal how-to-vote card handed out in Richmond since 1996, so Richmond voters have not been exposed to this how-to-vote card for almost a decade. Even at state elections, the overwhelming majority of voters in Richmond have only seen National Party how-to-vote cards from the coalition over the last ten years. To suggest confusion with earlier designs that have never been used in the region defies logic.

The Opposition also notes that Mr Larry Anthony chose not to appear before the Committee, and given the aggressive nature of both the behaviour of Coalition members at some hearings regarding this issue as well as the expected political conclusions reached it is quite understandable that Ms Elliott declined to appear.

All of the above makes it clear that the allegations made in the Majority Report are nothing more than a political stunt on behalf of the Coalition.

Chapter 7: Parliamentary terms

Recommendations 32, 33, 34 and 35

32. The Committee recommends that there be four-year terms for the House of Representatives.

33. The Committee recommends that the Government promote public discussion and advocacy for the case for four-year terms during the remainder of the current Federal Parliament.

34. The Committee recommends that, in the course of such public discussion, consideration be given to the application of consequential changes to the length of the Senate term, and in particular, options 1 and 2.

35. The Committee recommends that any proposals be put to the Australian public via a referendum at the time of the next Federal Election. If these proposals are successful, it is intended that they would come into effect at the commencement of the parliamentary term following the subsequent Federal Election.

We welcome the decision of the Committee Majority to recommend four-year terms for the House of Representatives. We note Australia has had more than 20 years of debate on this question, during which time all the states and territories except Queensland have moved from three-year to four-year terms. We believe that the case for four-year terms has been convincingly made many times, and we welcome a community debate on how this might be achieved.

Despite this consensus, the achievement of four-year terms for the House of Representatives has been prevented by a lack of agreement on the consequences of such a change for Senate terms. There is a clear public interest in maintaining simultaneous elections for the House of Representatives and the Senate. The Opposition believes that the best way to do this, as well as to reduce the frequency of elections and to bring more certainty to the political system generally, is to have fixed terms for both houses, so that the House of Representatives will run its full term unless the Government loses a vote of confidence in the House, or calls a double dissolution election as a result of a deadlock with the Senate.

The questions to be resolved are therefore the length of the Senate term if the House of Representatives term is to be extended to four years and whether the terms of the House of Representatives should be fixed or unfixed.

The Opposition members accept that the development of a proposal which can be supported in a bipartisan manner will require all parties to approach these issues with an open mind. While we note the particular options canvassed by the Majority Report regarding the way forward to achieve four year terms, we do not agree that the process should be limited to consideration of only these options. The process outlined under the recommendations should consider any potential change that could gain strong community support, and part of the process ought to be to examine all options.

While we continue to support the policy in Labor's platform, for fixed four-year terms for both houses, we are willing to work with all other parties to develop a proposal for four-year terms for the House of Representatives which can be put to a referendum.

It seems that the proposal most likely to gain bipartisan support is a Senate term of two House of Representatives terms. This would maintain the simultaneity of House of Representatives and Senate elections, retain the institution of the half-Senate election (thus preserving the continuing role of the Senate as a house of review with a mandate different to that of the House of Representatives), and keep the quota for election to the Senate at the current 14.3 percent.

This leaves the question of whether the terms of the two houses should be linked or unlinked.

Unfixed four-year terms for the House of Representatives and fixed eight-year terms for Senators ("Senate option 1" in the Majority Report), would maintain the independence of the Senate's election timetable, but create a risk of House of Representatives and Senate elections getting out of alignment if an early election was called for the House of Representatives (as happened most recently between 1963 and 1974), an outcome generally seen as undesirable for a variety of reasons. Linking Senate terms to House of Representatives terms - by making a Senate term equivalent to two House terms, regardless of how long that is ("Senate option 2" in the Majority Report), would keep the electoral timetables of the two houses in alignment.

Chapter 8: Voluntary and compulsory voting

Recommendation 36

The Committee recommends that the questions of voluntary and compulsory voting be the subject of a specific inquiry by the Joint Standing Committee on Electoral Matters in the future.

We believe that the introduction of preferential voting in 1918 and compulsory voting in 1924 were among the greatest achievements of Australia's tradition of progressive electoral reform. (We note in passing that both were introduced by non-Labor governments, and that preferential voting was introduced principally to accommodate the emerging Country Party, ancestor of today's Nationals, who have been its greatest long-term beneficiaries.)

We are aware that some senior members of the Government wish to abolish compulsory voting, and we commend those Government members of the Committee who have, it seems, again successfully prevented the adoption of such a radical and retrograde step. No doubt they, like us, can see that current trends in democratic politics, in Australia as elsewhere, are strengthening the case for compulsory voting.

There has been a clear tendency in the major democracies over the past 30 years for voter turnout to fall. The causes of this phenomenon are complex and not relevant to this discussion, but the risk is clear – presidents and governments elected without a clear mandate from the majority of eligible voters, and thus lacking democratic legitimacy. Three structural factors in electoral systems of various countries contribute to this problem – difficulty in enrolment (particularly in the United States), first-past-the-post voting (which in a three-party system such as the UK regularly allows parties to win on a minority vote), and the absence of any legal requirement to vote, which allows apathy and disengagement from democratic politics to spread unchecked, particularly among the young and the less well-educated.

By contrast, in Australia, almost every federal, state and territory election produces a government which is either the first choice or at least the preferred choice of a majority or near-majority of adult Australians (the exceptions to this, such as the 1998 federal election, are caused by the distorting effects of the system of single-member constituencies). The current federal government was elected in 2004 with 52.6 percent of the two-party vote on a 94.7 percent turnout. However much we may oppose their actions, no-one can claim that Australian governments lack democratic legitimacy.

The principal argument for the abolition of compulsory voting is philosophical – that the state has no right to compel citizens to vote if they do not wish to. But this principal is applied very selectively by advocates of voluntary voting. They do not argue that the state has no right to levy taxes or to require citizens to wear seat-belts. Their response to this is to argue that the use of compulsion in these cases is justified by a higher social good – requiring citizens to pay taxes enables government to function for the benefit of all, and requiring them to wear seat-belts helps prevent them killing themselves and others. No such compelling benefit, they argue, exists in the case of compulsory voting.

We disagree. Requiring citizens to participate in the process of choosing their own government serves the social good ensuring that all citizens share responsibility for providing good government. No citizen in Australia can complain that they did not have the opportunity to vote a government out of office or to elect the candidates of their choice. Compulsory voting helps prevent the emergence – now seen in most major western democracies – of a large population of alienated citizens who feel no responsibility for, or connection with, the processes of government, and who have a diminished sense of respect for laws they have had no part in enacting. The growing disengagement of many people, particularly young people, from the political process is a problem in Australia as elsewhere. We do not argue that compulsory voting on its own is the solution to this problem. We do argue that abolishing it would make the problem worse.

Australians are currently asked to take about an hour of their time once every three years to vote. If the recommendations of this Inquiry are accepted, it will be once every four years. This is hardly an onerous requirement, and is amply justified by the benefits that near-universal participation in the political process brings to a healthy democracy.

We note that the Majority Report recommends that the questions of voluntary and compulsory voting should be the subject of a specific inquiry by the JSCEM in the future. We do not believe that this ought to be a priority for the JSCEM, as no compelling case has been put to alter our current system. It is also clear that there is no support of a significant nature for such an inquiry. In fact, recent public polling continues to show overwhelming public support for compulsory voting.

Chapter 9: Voting systems

Recommendation 37

That compulsory preferential voting above-the-line be introduced for Senate elections, while retaining the option of voting below the line. Consequently, that the practice of allowing for the lodgement of Group Voting Tickets be abolished. This would involve amendments to the Commonwealth Electoral Act, in particular the repeal of ss.211, 211A, 216, 239(2) and 239(3).

The Opposition remains committed to discussion and bi-partisan cooperation around ways to increase integrity in the Senate voting system. The recommendations in Chapter 9 are once again not appropriately developed to allow the Minority members to support the Majority recommendation. A number of options for reform are canvassed in the Majority Report, including the optional preferential above-the-line voting system of NSW.

The Opposition members have strong concerns that the recommended change will reduce the ability of Australians to participate fully in the electoral system, by requiring full preferential voting for the Senate and the abolition of the current very simple method of voting. This proposal will have the effect of significantly increasing the number of informal votes cast in the Senate.

In 1983, the last election under the old system, the informal vote for the Senate in New South Wales reached 11.1% – more than one voter in ten failed to cast a valid vote for the Senate in that state. At the 1984 election, the first under the new system, the Senate informality rate fell to 5.6%, and by 2004 it had fallen to 3.5%, despite a steady increase in the number of candidates.

The inevitable effect of the introduction of compulsory preferential above-the-line voting for the Senate, as proposed, will be to push up the rate of informal voting in Senate elections, depriving a significant number of voters of the ability to cast a valid Senate vote. If the national Senate informality rate were to double from the 3.7% seen in 2004, that would deprive 466,000 Australians of a valid Senate vote. As with the other changes proposed by the Committee majority, those likely to be most effected are the elderly, first-time voters, those with lower levels of education, indigenous Australians and Australians from non-English speaking backgrounds. No doubt the Committee Majority assumes that these are mostly Labor voters.

Another consequence of the proposed reintroduction of compulsory preferential voting for the Senate will be the re-appearance of the practice of ballot flooding (running numerous bogus Senate tickets so as to create a huge ballot paper and confuse voters), which was largely stamped out by the 1984 reforms. Ballot

flooding was seen most dramatically at the 1974 double dissolution Senate election in New South Wales, when 73 candidates (57 of them grouped in 18 tickets plus 16 independents) competed for ten Senate seats. It was widely said at the time that most of these tickets, which polled derisory vote totals, had been organised by the New South Wales Liberal Party. As a result, there was an informality rate of 12.3%, and since the majority of these were intended Labor votes, Labor lost a Senate seat it would otherwise have won.

The Committee majority's proposal will not require voters to number their ballot paper from 1 to 73 as voters in New South Wales had to do in 1974, since voters will be voting above-the-line for tickets rather than for candidates. But they will still have to number each ticket on the ballot paper to cast a valid vote (and presumably independent candidates also). At the 2004 Senate election in New South Wales, there were 29 tickets and six independents. If this proposal were to be adopted, the number of tickets would certainly rise through ballot flooding, so voters might well have to number up to 40 squares in the correct order. We have no doubt that this would at least double the rate of informality, and significantly alter the outcomes of close Senate elections.

The proposed change would also oblige all the parties to produce much larger and more complex how-to-vote cards to accommodate voting recommendations for the Senate. As well as being very wasteful, this would confuse and discourage a substantial number of voters and thus increase both the abstention rate and the informality rate for the House of Representatives as well as the Senate.

Chapter 12: Campaigning in the New Millennium

Recommendation 48

The Committee recommends that the AEC review sections 340 and 348 of the Commonwealth Electoral Act with a view to addressing issues of “misleading conduct” on polling day.

Several electorates on polling day 2004 saw the distribution of how-to-vote cards which were clearly designed to mislead voters into voting for a party they did not intend to vote for. This was particularly obvious when the manner in which these cards were distributed is taken into account. The Government members of the Committee devoted a great deal of time to expounding their view that the Government candidate in the Division of Richmond was defeated as a result of a deceptive how-to-vote card distributed by the Liberals for Forests group. We do not believe that the Government members proved this to be the case, but we agree with those Government members who argued that the *manner* in which a card is distributed must be taken into account, not just the content of the card itself, as the Act currently provides.

Government members tried to have it both ways on this question, by condemning what they saw as the misleading distribution of the Liberals for Forests card in Richmond, while condoning a clearly well-orchestrated campaign by the Liberal Party to deceive Australian Greens voters in the Division of Melbourne Ports by the blatantly misleading distribution of a green-coloured how-to-vote card. It was probably not a good idea for the Liberal Party to organise this stunt in the electorate of the Deputy Chair of this Committee.

We support the recommendation that the AEC conduct a review of the relevant sections of the Act, which are clearly inadequate for the purpose of preventing the misuse of how-to-vote cards to deceive voters. We believe that the practice of some state electoral authorities, of requiring how-to-vote cards to be lodged and approved in advance, and prohibiting the distribution of any other cards to voters at polling places, should be considered.

Chapter 13: Funding and Disclosure

Recommendations 49, 50 and 51

49. That the threshold at which political donations to candidates, political parties and associated entities must be disclosed be raised to \$10 000 for donors, candidates, political parties, and associated entities

50. That the threshold at which donors, candidates, Senate groups, political parties, and associated entities must disclose political donations be indexed to the Consumer Price Index.

51. That the *Income Tax Assessment Act 1997* be amended to increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed \$2,000 per year.

The object of these recommendations is to make it easier for corporate donors to give money to the Liberal Party without having to disclose it. Since the State and Territory divisions of the Liberal Party are legally separate entities, this would mean that a person could make eight separate donations of \$10,000 without having to disclose.

We are firmly opposed to any change in the current disclosure regime, and reject the weak arguments presented in the Majority Report for change. We reject as misleading the view of the Committee Majority that nearly 90% of donations would be disclosed if the threshold were raised to \$10,000, as this is a measure of total donations not a measure of the amount of each donation. If the current donors in the last round of AEC disclosure contributed a similar amount to the Liberal Party of Australia, and its state branches, then millions would go undisclosed. Raising the disclosure threshold to \$10,000 would allow large amounts of money to flow, without scrutiny, from the existing donor base of the Liberal Party.

The Minority members were surprised to see that in addition to the huge rise from \$2,000 to \$10,000 proposed for donations, that the Majority were also proposing to index the disclosure limit to the Consumer Price Index. This would see the amount increasing each at around 2-2.5% a year. This is a fundamental break with the traditional way the disclosure of political donations has been regulated, and an annual measure could lead to confusion from donors as to whether their donations falls within, or outside, the disclosure limit.

The Majority recommendation that tax deductibility for political donations be raised from \$100 to \$2,000 is an unjustified attempt to transfer private political

donations into a taxpayer subsidy. The Opposition supports public funding for the electoral process which is transparent and reflects the votes gained by political parties. We believe that a general tax-deductibility clause as outlined by the Majority will encourage individuals and other entities to make extensive political contributions, in secret, and at taxpayer expense. The potential to undermine the integrity of the political process under these changes is clear.

It is true that the disclosure threshold is lower in Australia than it is in some other countries. The Committee Majority approvingly quotes the Federal Director of the Liberal Party, Mr Brian Loughnane, to this effect. It is not surprising that Mr Loughnane should take such a view, since the Liberal Party would be the principal beneficiary of such a change. Our view is that in this and other matters of electoral law, Australia ought not to be unduly influenced by practices in other countries. As we noted at the outset, the Australian electoral system has many progressive features, some of them unique to Australia. This should be a source of pride, not of reproach.

It may be, as Mr Loughnane said, that it is not possible to influence government decisions with a donation of \$10,000. (It may be more possible with a donation of \$80,000.) But that is not the point. The point is that the public has a right to know, within reason, the sources of funding for political parties. We reject any change which makes it easier for individuals or corporations to make large donations to political parties in secret.

Mr Michael Danby MHR, Deputy Chair

Mr Alan Griffin MHR

Senator Kim Carr

Senator Michael Forshaw

October 2005



Supplementary remarks—Ms Sophie Panopoulos MP

Chapter 7

Accountability in government is not better served through prolonging the term of the House of Representatives. The proposed four year term for the House of Representatives has been discussed without the consequences for the Senate being properly considered or addressed.

In the case of the Senate, longer terms as canvassed in Options 1 and 2 of Chapter 7 create either of the following situations:

- i) An unacceptably long term of eight years for Senators
- ii) A diminution of the role of the Senate as a continuous chamber, merely for the convenience of the House of Representatives.

It is through no accident of history that the Senate is one of the most powerful upper houses in the democratic western world, and the proposal of the Committee is that the Senate be nothing more than a pale imitation of the House of Representatives.

There has been a creeping sense of disillusion in politics and political processes and this will not be solved by increasing the terms of government. The greater sense of 'ownership' that the people feel they have of their representatives, the stronger the sense of unification with the democratic process. This is best achieved through regular elections - not through lengthening parliamentary terms.

In Question 1 of the 1988 referendum, the people were asked 'to alter the Constitution to provide for 4 year maximum terms for members of both houses of the Commonwealth Parliament'. The proposal was convincingly rejected.

The benefits of a shift to four-year terms - where one of the oft-quoted reasons in their favour is that it would 'enhance business confidence' - seem entirely speculative. Our current constitutional arrangements have not negatively affected business confidence or the performance of the Australian economy. Three year

terms – or even two and a half year terms – have not dented the reforming agenda of the Howard Government.

Sophie Panopoulos MP
October 2005



Supplementary remarks—Senator Andrew Murray

1 Introduction

1.1 More is required

As always this Report is an important one, and the Chair and his Committee have done well in reviewing the conduct of the 2004 federal election so thoroughly.

These remarks of mine are deliberately characterised 'Supplementary Remarks', because although I oppose or qualify a few recommendations, (see Table 2 below), I support the Report as a whole.

I make no apology for repeating some observations made by me in previous Joint Standing Committee on Electoral Matters' (JSCEM) Reports. I do this because the issues I address remain problems, particularly in the areas of political governance and political donations and disclosure.

Despite successive references by the Senate to the Committee over several years for inquiries into political funding and disclosure, the Committee has failed to pursue these matters to their conclusion. This reflects a political cultural problem as much as anything, where inertia is encouraged by a fear that reform will hurt self-interest.

The institutional self-interest of political parties and their party organisations often acts against reforms to political governance and funding disclosure being adopted or advocated. Nevertheless there are parliamentarians from all parties that do support and advocate reform.

Getting such advocacy to be adopted by Governments is hard work. I stand to be corrected, but I cannot recall one single instance of improved accountability or transparency in political funding and disclosure initiated by the federal Coalition Government in its nearly ten years in office. The relatively minor changes that have occurred have been a result of Senate amendments.

Although there is self-evidently insufficient political support for major improvements the Democrats and others want in matters such as funding and disclosure or political governance, there does seem to be wide media and public support for significant improvements.

Coalition Government inertia in these matters is in complete contrast to major changes in this field in fellow democracies like Canada, the United Kingdom, and the United States, to take a few examples.

The JSCEM Report does tackle some significant reform topics, and the Chair and the JSCEM are to be congratulated in initiating real debate on fundamental issues. For instance, the detailed discussion in the Report on parliamentary terms, voluntary and compulsory voting, voting systems, modern campaigning and on public funding and funding disclosure is very welcome.

This is in addition to the normal fare of the Committee's reports into elections, which tend to focus more on statistical, technical, administrative and functional matters. Valuable insights and recommendations have been outlined.

The Australian Democrats have a long-standing commitment in seeking to improve the electoral process to ensure that the democratic rights of all Australians are protected and enhanced. In our view, there is no more appropriate place to address the spectrum of relevant electoral and political issues than in the JSCEM's triennial election review.

To this end, we have consistently sought to address several key issues in our Supplementary Remarks to previous JSCEM Reports. Consequently, the topics covered in these Supplementary Remarks are generally more controversial for political parties.

The issues that are arguably of greater public interest and notoriety covered in our Remarks are:

1. Political governance;
2. Constitutional reform;
3. Government advertising;
4. Funding and disclosure; and
5. Selected other matters.

In addition to our brief review of changes to electoral law since the 2001 Federal Election and the limited adoption of recommendations made by the JSCEM report into the 2001 Election, we concentrate on these five key issues.¹

In the Democrats' Minority Reports on the JSCEM's Reports into the 1996 and 1998 elections, we drew attention to voter dissatisfaction with politics, politicians, and parliaments expressed through polls and in the media. There still appears to be little improvement regarding voter and media perceptions, and no significant advance in parliamentary or political standards, or party political governance, with the notable exception of parliamentary entitlements reporting and administration.

Strong pressure by the Democrats and Labor over the last decade has resulted in the Coalition responding with radically improved reporting, accountability and administration of parliamentary entitlements. To their credit, the Coalition Government accepted the need for significant improvements in this area of federal administration.

An added hurdle to accountability and political standards that is more apparent following the 2001 election is the use and abuse of government advertising.

Given the federal resistance to better rules on funding disclosure, the eight Labor-controlled States and Territories could initiate reform and lead by example. Regrettably they have done no such thing.

Federal, State and Territory governments' resistance to significant reform may mean that aspirations to higher political standards can be characterised as idealistic and unlikely to be achieved, but in our view higher political standards remain worthy and necessary goals.

It is true that the Australian Democrats to date remain largely unsuccessful in our quest for significant improvements in party political governance, truth in political advertising, and the full disclosure of all types of political party income.

Nonetheless, our lack of success on improving these matters, in my view, does not absolve us of our obligation to continue to report on and address such important issues.

That is the purpose of these Supplementary Remarks.

1 Main sources of reference include previous JSCEM Reports on the 1996, 1998 and 2001 elections; the AEC's *Behind the Scenes* paper; transcripts from the JSCEM hearings and the 2004 election report; and submissions made to the current Senate Inquiry into Government Advertising and Accountability.

1.2 Summary of Australian Democrats position on electoral matters

The two tables within this section summarise the Democrats position on electoral matters and are included for reference purposes. The first table summarises the independent recommendations made by us to the JSCEM, whilst the second table summarises our dissenting or qualifying remarks on the recommendations of the Main Report. These recommendations are further expanded in the body of our supplementary remarks.

Table 1 Summary of Democrat Recommendations

1	Political governance
1.1	That political parties be brought under an accountability regime that includes a written publicly available constitution which must contain certain matters; protects the equal rights of members; and allows for regulatory oversight.
1.2	That the JSCEM inquire into branch stacking and pre-selection abuses in political parties.
1.3	That the <i>Commonwealth Electoral Act 1918</i> be amended to ensure that the principle of 'one vote one value' for internal party ballots be a prerequisite for the registration of political parties.
1.4	That the <i>Commonwealth Electoral Act 1918</i> and the <i>Workplace Relations Act</i> be amended as appropriate to ensure democratic control remains vested in the members of political parties.
2	Constitutional reform
2.1	That the dates of elections be fixed and preset by legislation; that if a four-year term for the House of Representatives is to be put to the people as a Referendum question that research be undertaken to determine support for fixed four-year terms; earlier closure of the Electoral Roll can only result following the implementation of fixed election terms.
2.2	That subsection 394(1) of the <i>Commonwealth Electoral Act 1918</i> be repealed.
2.3	That a referendum be held to alter the applicability of s44 of the Constitution.
2.4	That the Government review the potential for a Charter of Rights and Responsibilities to be introduced in Australia.
2.5	The <i>Commonwealth Electoral Act 1918</i> be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.
3	Government advertising
3.1	The <i>Commonwealth Electoral Act</i> should be amended to prohibit inaccurate or misleading statements of fact in political advertising, which are likely to deceive or mislead.
3.2	That blackout provisions in the Caretaker period for all non-essential government advertising be extended to cover the time from the July 1 date preceding the earliest likely date for the House of Representatives and the half-Senate election.
3.3	That mandatory standards be adopted in relation to government advertising, policed by an appropriate oversight body.
4	Funding and disclosure
4.1	No media company or related entity or individual acting in the interests of a media company may donate in cash or kind to the electoral or campaign funding of a political party.
4.2	All electoral and campaign funding is subject to a financial cap, indexed to inflation and controlled by the Australian Electoral Commission. Section 294 of the <i>Commonwealth Electoral Act 1918</i> should be amended to this end
4.3	No entity or individual may donate more than \$100 000 per annum (in cash or kind) to political parties, independents or candidates, or to any person or entity on the understanding that it will be passed on to political parties, independents or candidates.
4.4	The donations loophole be closed that allows nine separate cheques to be written at a value just below the disclosure level, made out to the separate federal state and territory divisions of the same political party.

4.5	Additional disclosure requirements to apply to Political Parties, Independents and Candidates for fundraising and political donations.
4.6	Additional disclosure requirements to apply to political parties that receive donations from trusts or foundations. Should be obliged to return the money unless predetermined declarations of interest and/or relationship are made.
4.7	Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor's identities are made.
4.8	Donations from overseas entities must be banned outright. Donations from Australian individuals living offshore should be permitted.
4.9	The <i>Commonwealth Electoral Act 1918</i> should specifically prohibit donations that have 'strings attached.'
4.10	The Corporations and Workplace laws be amended so that shareholders and members of registered organisations are required to periodically approve company or union political donations policies.
4.11	Where the Australian Electoral Commission conducts elections for registered and other organisations, the same provisions governing disclosure of donations for political organisations should apply.
5	Other matters
5.1	That the JCSEM initiate a cooperative inter-state consultation process to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions, and to take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.

Table 2 Dissenting or qualifying remarks on the findings of the Main Report

Chapter 2	Enrolment
Recommendation 3	This recommendation needs to be agreed with the States and Territories to ensure that the Joint Roll arrangements remain operative and integrated. If the States and territories oppose this recommendation, further consultation should occur before implementation.
Recommendation 4	The JSCSEM has recommended an earlier closure of the Roll. The Democrats could support that if Federal Elections were based on fixed terms, since voters would know the election date in advance. In the absence of fixed terms we maintain that the rolls should remain open as at present, for seven days after the issue of the writs. Voters do not attach great importance to keeping their details up-to-date on the electoral roll outside of an election. It defies reality and human nature since hundreds of thousands of voters only update their details when an election looms. We fear that if implemented, the recommendation by the JSCSEM for earlier closure of the rolls in the present system will result in voters being removed from the roll before they are able to amend their details. If this early closure arises from a concern that the AEC cannot check applications properly, that is only a danger for new enrolments. Persons already on the roll are validly on the roll, although their address details may need updating.
Chapter 4	Registration of political parties
Recommendation 18	This recommendation will almost certainly result in some presently-registered political parties losing party status. In some cases a name-change may be forced on them if they wish to retain registration. The recommendation arises from behaviour that is known in commercial law as 'passing off'. 'Passing off' has long been an issue in Australian political life, where one political party attempts to deceive voters that it is another party for which they might have voted. A number of political parties, including the Democrats, have been victims of such behaviour. The Democrats would have preferred the behaviour rather than the name of an existing political party to be the focus of law change.
Chapter 13	Funding and disclosure
Recommendation 49	The Democrats oppose this recommendation. We see no case for less disclosure.

Recommendation 50	The Democrats oppose this recommendation, unless it is to become a standard for all advocacy in civil society, properly constrained and defined. In my minority report, JSCEM, <i>The 1996 Federal Election</i> , June 1997, pp. 162–163, I said I would propose opposing the recommendation lifting the deductibility threshold unless such a provision was available to all relevant community organisations. I recommended that 'tax deductibility for donations to Political Parties and Independents mirror those available to Community organisations as a whole'. I remain of that view. As a rule, tax concessions should operate to general principles, not for special interests.
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1.3 Legislation changes since the 2001 Federal Election

The JSCEM Report of the Inquiry into the Conduct of the 2001 Federal Election proposed no less than 34 recommendations to be adopted to enhance the functioning of future elections. Within these recommendations there were 13 proposed changes to electoral law, two of which were implemented. Five other amendments to the *Commonwealth Electoral Act 1918* (CEA) not covered within the scope of the 2001 JSCEM Report were also enacted. The legislative changes made during the 40th Parliament are summarised in Tables 3 and 4 below.

Table 3 2001 JSCEM Report Recommended Amendments

<ul style="list-style-type: none"> Increasing the penalty for multiple voting and making each additional occasion a separate offence, as well as increasing the penalty for false witnessing of enrolment forms (JSCEM Recommendation # 1);
<ul style="list-style-type: none"> Extending the time in which Australians overseas can either apply for eligible overseas elector status or enrol from outside Australia for eligible overseas elector status, from two to three years (JSCEM Recommendation # 5);
<ul style="list-style-type: none"> Allowing scrutineers to be present at pre-poll voting centres, and govern the behaviour of scrutineers at pre-poll voting centres (JSCEM Recommendation # 16); and
<ul style="list-style-type: none"> Removing the roll from sale in any format and extending the end-use restrictions for roll information to all forms of the roll to prevent the use of the roll for purposes other than those permitted by the <i>Commonwealth Electoral Act 1918</i>. (JSCEM Recommendations # 29 and # 31).

Table 4 Other amendments

<ul style="list-style-type: none"> Including the sex and date of birth of electors on the certified list as a check on fraudulent voting;
<ul style="list-style-type: none"> Amending the prohibition that prevents prisoners voting so that it affects prisoners serving a sentence of three years or more (instead of five years or more as previously);
<ul style="list-style-type: none"> Allowing registered political parties and independent members of parliament to be provided, on request, with certain information about where electors voted on election day; and
<ul style="list-style-type: none"> Allowing for the use of a measure of error in determining the ACT and NT's entitlement to representation in the House of Representatives.

2 Political governance

Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture and its level of transparency and accountability. There is no doubt that improvements to the quality and acceptance of political governance should be focused on as a reform priority.

2.1 Regulation

The natural inclination of political parties is towards self-regulation. That natural inclination means that since political parties control the legislature, the regulation of political parties is relatively perfunctory, in marked contrast to the much stronger regulation for corporations or unions. True, the registration of political parties is well managed, as a necessary part of election mechanics, yet the conduct of political parties apart from election mechanics is often poor.

It is in the conduct of political parties that great public interest resides and where corrupted processes can result in real dangers. Corrupted processes are most evident in issues such as branch-stacking, pre-selection rorts, and abuses of party political power.

Political parties by their role, function, importance and access to public funding are not private bodies but are of great public concern. The courts are catching up to that understanding.² Nevertheless, the common law has been of little assistance in providing the necessary safeguards. To date the Courts have been largely reluctant to apply common law provisions (such as on membership or pre-selections) to political party constitutions, although they have determined that disputes within political parties are justiciable.

Political parties are fundamental to Australian society and its economy. They wield enormous influence over the lives of all Australians. Political parties need the very proper and necessary safeguards and regulations that are there for corporations or unions – for the same reason - it is in the public interest.

The integrity of an organisation rests on solid and honest constitutional foundations. Corporations and Workplace Relations Law provide a model for organisational regulation. The successful functioning of a company or a union is based on its constitution, which must conform to the legal code. Political parties do not operate on the same foundational constructs. What is surely indisputable is that the public interest has to be served. Political parties have to be more

2 *Baldwin v Everingham* (1993) 1 QLDR 10; *Thornley & Heffernan* CLS 1995 NSWSC EQ 150 and CLS 1995 NSWSC EQ 206; *Sullivan v Della Bosca* [1999] NSWSC 136; *Clarke v Australian Labor Party* (1999) 74 SASR 109 & *Clarke v Australian Labor Party (SA Branch), Hurley & Ors and Brown* [1999] SASC 365 and 415; *Tucker v Herron and others* (2001), Supreme Court QLD 6735 of 2001.

accountable because of the public funding and resources they enjoy, and because of their powerful public role.

The Democrats have argued for a set of reforms that would bring political parties under the type of regulatory regime that befits their role in our system of democracy and accountability. The present CEA does not address the internal rules and procedures of political parties.

The AEC dealt with a number of these issues in Recommendations 13-16 in the AEC Funding and Disclosure Report Election 98. Recommendation 16 asks that the CEA provide the AEC with the power to set standard, minimum rules which would apply to registered political parties where the parties own constitution is silent or unclear. This was a significant accountability recommendation.

The JSCEM's 1998 Report recommended (No.52) that political parties be required to lodge a constitution with the Australian Electoral Commission (AEC) that must contain certain minimal elements. This recommendation was a significant one, but we believed it did not go far enough.

In this Report, in Recommendation 19, to its credit the JSCEM has again recommended that political parties be required to lodge a constitution with the AEC that must contain certain minimal elements.

For many years the Democrats have campaigned for the following reforms as being necessary to make political parties open and accountable:

- The CEA should be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitution of companies;
- Party constitutions should be required to specify:
 - ⇒ The conditions and rules of membership of the party;
 - ⇒ How office-bearers are preselected and elected;
 - ⇒ How preselection of political candidates is to be conducted;
 - ⇒ The processes that exist for resolution of disputes and conflicts of interest;
 - ⇒ The processes that exist for changing the constitution; and
 - ⇒ The processes for administration and management.

The Party would be free to determine the content under each heading, subject in some cases to certain minimum standards being met.

- Political parties' constitutions should provide for the rights of members in specified classes of membership
 - ⇒ To take part in the conduct of the Party's affairs either directly or through freely chosen representatives;
 - ⇒ To freely express choices about Party matters, including the choice of candidates for elections at genuine periodic secret ballots; and

- ⇒ To exercise a vote of equal value with the vote of any other member in the same class of membership as the member.
- Political parties exercise public power, and the terms on which they do so must be open to public scrutiny. Party constitutions should be publicly available documents updated at least once every electoral cycle. (The JSCEM were once told by the AEC that a particular party constitution had not been updated in their records for 16 years!) The fact that most party constitutions are secret prevents proper public scrutiny of political parties;
 - The AEC should be empowered to oversee all important ballots within political parties to ensure that proper electoral practices are adhered to. At the very least, the law should permit them to do so at the request of a registered political party. The law should be proactive and should also cater for the future possibility of an American Primary type system; and
 - The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty.

Simply put, all political parties must be obliged to meet minimum standards of accountability and internal democracy. Given the public funding of the elections, the immense power of political parties (at least of some parties), and their vital role in our government and our democracy, it is proper to insist that such standards be met.

In Antony Green's 2004 election submission to the JSCEM, he stated that a critical deficiency in the CEA is the lack of rules governing political parties.³ Specifically, he points to the loose definition of political party membership with reference to the case of Pauline Hanson and David Ettridge of One Nation⁴ as an example of the impact of reduced governance standards.

The increased regulation of political parties is not inconsistent with protecting the essential freedom of expression and the essential freedom from unjustified state interference, influence or control. Greater regulation would offer political parties better protection from internal malpractice and corruption, and the public better protection from its consequences, and it would reduce the opportunity for public funds being used for improper purposes. It would also go some way towards addressing the public's often poor perception of politicians and politics.

I am delighted that the JSCEM has agreed with many of these points (see Chapter 4). Our own recommendations, which include some of the JSCEM's, are that:

3 Submission No 73, (Mr A Green), pp1-2; see also 4.10 in the Report.

4 Both Hanson and Ettridge were charged and sentenced for Electoral Fraud, which was later overturned. The key issue of debate in the case concerned the arbitrary definition of what it means to be a member of a political party.

Recommendation 2.1

That political parties be brought under the type of accountability regime that should go with their place in our system of government:

- a) **The *Commonwealth Electoral Act* be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of Companies;**
- b) **Party constitutions should be written and be publicly available by being published on the AEC website, and be updated to the AEC at least once every electoral cycle;**
- c) **The minimum requirements for the constitution of a registered political party are that they include:**
 - **The aims of the party, which must include contesting federal elections;**
 - **The structure of the party;**
 - **the conditions and rules of membership of a Party;**
 - **how office-bearers are preselected and elected;**
 - **how preselection of political candidates is to be conducted;**
 - **the processes that exist for the resolution of disputes and conflicts of interest;**
 - **the processes that exist for amending the constitution;**
 - **the processes for administration, management and financial management;**
 - **the procedures for winding up the party;**
- d) **Rights of members:**
 - **Political parties' constitutions should provide for the rights of members in specified classes of membership;**
 - **To take part in the conduct of the party's affairs either directly or through freely chosen representatives;**
 - **To freely express choices about party matters, including the choice of candidates for elections at genuine periodic secret ballots;**
 - **To exercise a vote of equal value with the vote of any other member in the same class of membership as the member.**
- e) **The relationship between the party machine and the party**

membership requires better and more standard regulatory, constitutional and selection systems and procedures, which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and the members. Specific regulatory oversight should include:

- **Scrutiny of the procedures for the preselection and election of candidates for public office and party officials in the constitutions of parties, to ensure they are democratic;**
- **The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty; and**
- **All important ballot procedures within political parties should be overseen by the AEC to ensure proper electoral practices are adhered to, if a registered political party so requests. The law should be proactive and should also cater for the future possibility of an American Primary type system.**

The above recommendation may well not go far enough in addressing the scourge of branch-stacking and pre-selection abuse that is widely reported to occur in many political parties, but it is a start. A Member or Senator who has won their seat through branch stacking or pre-selection abuse can be seen as morally corrupt. A Member or Senator that is pre-selected as a result of financial, union or any other patronage is beholden. That such parliamentarians can then rise to power in government or parliament is a concern.

Regrettably, no political party is safe from attempted branch stacking or pre-selection abuse. However, it is the energy and determination with which branch stacking is dealt with, that distinguishes the standards of the political parties concerned.

Recommendation 2.2

That the JSCEM inquire into branch stacking and pre-selection abuses in political parties.

2.2 One Vote One Value

‘One vote one value’ is a fundamental democratic principle recognised by Article 25 of the International Covenant on Civil and Political Rights. Since the 1960s the Labor Party has been particularly strong about the principle of ‘one vote one

value', first introducing legislation in the Federal Parliament in 1972/3. In recent years the ALP has taken the matter to the High Court with respect to the Western Australian electoral system. They should therefore be expected to support 'one vote one value' as a principle within political parties.

The democratic principle of 'one vote one value' is well established, and widely supported. As far back as February 1964 the US Supreme Court gave specific support to the principle.

During the 1970s, 1980s, and 1990s the principle of 'one vote one value', with a practical and limited permissible variation, was introduced to all federal, State and Territory electoral law in Australia, except Western Australia. That state finally ended the lower house gerrymander in 2005.

In my view it should be a precondition for the receipt of public funding that a registered political party comply with the 'one-vote one-value' principle in its internal rules.

At least one political party in Australia (the ALP) has internal voting systems that result in gerrymandered elections for conventions, preselections and various other ballots. This is largely as a result of the exaggerated factional voting and bloc power of union officials who are allowed to use the large numbers of union members, the great majority of whom are not party members, to achieve and exercise power within the political party.

If more powerful votes are also directly linked to consequent political donations and power over party policies, then the dangers of corrupting influences are obvious.

If 'one vote one value' were translated into political parties' rules, it would mean that no member's vote would count more than another's, which would seem one way of doing away with undemocratic and manipulated pre-selections, delegate selections, or balloted matters.

We made a similar recommendation in our Minority Report on the JSCEM's Inquiry into the 1998 election. The JSCEM subsequently took this up as Recommendation 18 in its *User friendly, not abuser friendly* report.

Recommendation 2.3

That the *Commonwealth Electoral Act 1918* be amended to ensure that the principle of 'one vote one value' for internal party ballots be a prerequisite for the registration of political parties.

I and other Democrats have made a number of speeches in the Senate and elsewhere over the years concerning the accountability and governance of political

parties. Democrat Issue Sheets have reflected these views, and Democrat traditions and perspectives support these views.

Among other things the proposition has been put that political parties, in addition to their overriding duty to the Australian public, must be responsible to their financial members and not to outside bodies (hence, 'one vote one value'). In Australia this is particularly relevant with respect to the ALP.

There are two legislative avenues that could be pursued in this regard - the CEA and the Workplace Relations Act (WRA). The JSCEM have taken the first step with its recommendation to introduce one vote one value in political parties in its report on the integrity of the roll. The WRA could be amended to insert provisions regulating the affiliation of registered employee and employer organisations to political parties.

These provisions would be contained in the chapter of the WRA which relates to the democratic control of organisations by their members. Such an approach might wish to:

- Prohibit the affiliation, or maintenance of affiliation, of a federally or state registered employee or employer organisation with a political party unless a secret ballot of members authorising the affiliation has been held in the previous three years; and/or
- Require a simple majority of members voting to approve affiliation to a political party, subject to a quorum requirement being met.

This proposition is popular with some ALP reformers who aim to make the process of trade union affiliation to political parties more transparent and democratic. By way of background, the ALP is the only registered political party that allow unions to affiliate to it and to exercise a right to vote in internal party ballots, such as in the pre-selection of ALP candidates.

Unions affiliate on the basis of how many of their union members (the great majority of whom are not party members), their committee of management chooses to affiliate for. The more members a union affiliates for, the greater the number of delegates that union is entitled to send to an ALP state conference. Individual members of that union have no say as to whether they wish to be included in their union's affiliation numbers or not. Affiliation fees paid to the ALP by the union is derived from the union's consolidated revenue.

Some proposed amendments that could deal with the inherently undemocratic nature of the present system might be as follows:

- (a) Any delegate sent to a governing body of a political party by an affiliated union has to be elected directly by those members of the union who have expressly requested their union to count them for the purpose of affiliation. As an added protection, the AEC could be asked to conduct such an election and the count would be by the proportional representation method;

- (b) Definitions would need to comprehensively cover any way a union may seek to affiliate to a political party e.g. by affiliating on the basis of the numbers of union members or how much money they may donate to a political party etc;
- (c) Any union delegates that attend any of the governing bodies of a political party that the union is affiliated to, must be elected in accordance with the CEA; and
- (d) Individual members of the union would need to give their permission in writing before the union can include them in their affiliation numbers to a political party. No person should be permitted to be both a voting party member in his or her own right, and also be part of the affiliation numbers of a union. Such people effectively exercise two votes, in contravention of the 'one vote one value' principle.

Recommendation 2.4

That the *Commonwealth Electoral Act 1918* and the *Workplace Relations Act* be amended as appropriate to ensure democratic control remains vested in the members of political parties. Specifically with respect to registered organisations to

- **Require them to have secret ballot provisions in their rules (developed by them)**
- **Prohibit the affiliation, or maintenance of affiliation, of a federally or State registered employee or employer organisation with a political party unless a secret ballot of union members authorising the affiliation has been held at least once in a federal electoral cycle; and**
- **Require a simple majority of union members voting to approve affiliation to a political party, subject to a quorum requirement being met.**

3 Constitutional reform

There is no Commonwealth body that is responsible for reviewing the Constitution, an eminently important task if Australia is to continue to evolve and grow as a nation. Even if such a body did exist, it is arguably the responsibility of the Parliament, hence the importance of the JSCEM from the Democrat's perspective.

By its nature and make-up, the JSCEM is suited for the task of Constitutional review and reviewing means of advancing our democracy. It has not ever taken up that full task, but it has attended to specific issues, such as four-year terms, fixed terms and Section 44 problems.⁵

3.1 A case for reform

There might well be agreement in the community that the Australian constitution needs modernising and reform, but there is always disagreement over the content and extent of any reform. This Report is the proper place for putting at least a summarised case for some constitutional change.

The provisions in the Constitution were drafted at the turn of the twentieth century and must be modernised in order to accurately reflect the evolution of our country's policies and practices. Although the Senate or the House of Representatives can in theory put matters before the people in their own right, in practice initiating change to the Constitution via referendum has been the sole prerogative of the Prime Minister. Section 128 of the Constitution provides that where a constitutional amendment is supported by only one House of Parliament, the Governor-General 'may' submit it to a referendum once the procedures set out in the section are satisfied. Of course, the Governor-General acts on the Government's advice in exercising this power, giving control of the process to the Prime Minister.

Even where there is Parliamentary unanimity on a case for reform over a long period (such as with section 44), for political, practical and financial reasons there is generally little enthusiasm for the referendum process. One answer to that barrier to action is to present a package of reforms in unison. Nevertheless, without political unanimity, precedent shows that it is just as hard to get a package of reforms approved at referendum, as it is to get a single issue approved.

The Australian Democrats have campaigned for constitutional reform over the last 29 years. They have been at the forefront of the public debate. That campaign remains as current now as then. Democrats' Senator Macklin proposed a raft of

5 Section 44 of the Constitution addresses the terms of disqualification of the right to stand for public office.

bills in 1987, which were effectively a package of legislative initiatives designed to remedy inadequacies in the Constitution:

- *The Constitution Alteration (Democratic Elections) Bill 1987 aimed to guarantee the right to vote and to guarantee that every citizen's vote will be treated equally ('one vote one value');*
- *The Constitution Alteration (Fixed Term Parliaments) Bill 1987 provided for the present three-year term for the House of Representatives to be increased to four years and for the new four-year electoral cycle to be fixed;*
- *The Constitution Alteration (Electors' Initiative) Bill 1987 sought to give citizens the right to initiate referenda upon gaining 5% in the electors petition;*
- *The Constitution Alteration (Parliament) Bill 1987 sought to prevent a Constitutional crisis created by a deadlock in the Senate by breaking the nexus created by section 24 of the Commonwealth Constitution; and*
- *The Constitution Alteration (Appropriations for the Ordinary Annual Services of Government) Bill 1987 sought to resolve the contentious issues of the Senate's power to block supply.*

Current on the Senate Notice Paper are later generations of those Bills and other new Bills.

Senator Murray has introduced the following Bills affecting the Constitution:

- *Constitutional Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000; and*
- *State Elections (One Vote One Value) Bill 2001.*

Senator Murray and Senator Stott Despoja have jointly introduced:

- *Constitutional Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001*

And Senator Stott Despoja has introduced the

- *Republic (Consultation of the People) Bill 2002*

Despite its topicality and public interest, we do not intend to dwell here on the community desire for greater input into the appointment of Australia's Governor-General, or the bigger issue of the campaign for a Republic, except to say that the Parliament needs to keep the process alive.

3.2 Four year fixed election terms

It is pleasing to note that the Main Report is again focusing on the potential for implementing four year terms for the House of Representatives. As the Report notes (7.18), this has been a consistent and unanimous aspiration of the Committee.

It is a topic that the Democrats and I have addressed consistently in the past. I note that the recommendation by the Main Report for a referendum to be held to decide the legitimacy of changes to election terms has been a key recommendation by the Democrats in the past two JSCEM reports.

Snap and early elections are called for personal and party advantage, arbitrarily, sometimes capriciously, and always on a partisan basis. Elections held on a pre-determined date ensure stability and responsibility by both Government and Opposition. If introduced for the Federal parliament it would allow for sound party and independent preparation and for fairer political competition.

It would also effectively increase the average life of Australian governments. Federal Elections over the last century have been held on average about every 2 years 7 months. Australia should not have held more than 32 elections at the most last century. Instead they had 38, which represents a significant additional election cost of between \$800m and \$1 b in today's money.⁶ Fixed terms would therefore prevent the unnecessary waste of taxpayer's dollars from being spent on snap elections. These issues were also canvassed in the Democrats' 1996 and 1998 JSCEM Federal Election Minority Reports.

In the Democrats 2004 Election Issue Sheet entitled 'Four Year Fixed Terms' we stated that:

We believe that Parliamentary terms should be four years for the House of Representatives and eight years for the Senate. We also believe that it is even more important that terms be fixed. This would end the power of the Prime Minister to call elections according to the dictates of political expediency, and would increase stability and continuity in the electoral cycle.

Despite our support for longer terms, the Democrats recognise that the advantages of longer parliamentary terms seem to be almost entirely anecdotal. Has there been any research to discover whether these advantages have actually been realised in those Australian states and other countries which converted to longer terms? It would have been useful for the Report to have made some attempt to address this issue.

The Democrats had a lengthy and supportive section on longer terms in our Supplementary Remarks on the JSCEM Report into the 2001 election.

Chapter 7 rightly emphasises the importance of the Australian political tradition/norms – 7 of our 9 lower houses have 4-year terms. As Chapter 7 of the Main Report recognises, changing the House of Representatives term also entails making changes to the terms of the Senate. How the States have addressed this situation is relevant, and two states have 8-year terms for the upper house.

6 For further detail, refer Bennett S, "Four-Year Terms for the House of Representatives?", *Research Paper No. 2 2003-04*, Department of the Parliamentary Library, September 2003

The Democrats have consistently argued that fixed terms are more important than longer terms, but they have equally consistently supported four-year terms for the House of Representatives as well.⁷ Fixed terms could be set by legislation. Four-year terms will require constitutional change by referendum.

Both internationally and in Australia, longer terms are strongly supported because they ensure enough time for a Government to fully implement its policy agenda. As documented in the Main Report there is political unanimity on four-year terms and the Democrats support the findings of the Committee in seeking to advance this cause.

Looking at the terms of parliaments in the 30 OECD countries, and with reference to the Main Report, Australia is in the backward minority of four countries that have terms of less than three years for their lower houses.⁸ A majority have five-year terms, so giving their governments a reasonable period to implement their policy agenda, and for the people to judge their performance.

As the Report indicates (7.50), although the USA in theory stands out as the odd man out, (with Congress elected every two years), in practice the government (namely the President), accords with international norms, being elected on a four-year fixed term with a pre-set election date.

If a Referendum were to be held to determine whether the House of Representatives should move to four-year terms as recommended by the Democrats in previous years and by this Main Report, it would require a view to be taken on Senate terms. I agree that a feasible alternative would be to move from 3/6 to 4/8. There is some concern at Senators having an eight-year term, because of the need to confirm popular support at more regular intervals.

Eight-year terms will concern voters because being stuck with a dud for 8 years is worse than being stuck with a dud for 6 years. Our earlier recommendations on political governance might assist in this regard as they should have the effect of helping improve the potential standard of Senators.

Whilst it is refreshing to see serious consideration for longer and possibly fixed terms, the Main Report needs to deal more fully with the serious problem of unsuitable constitutional arrangements to manage simultaneous House of Representatives/Senate terms. This is a problem which is magnified when considering longer and/or fixed terms. Currently a general election comes about with a dissolution of the House of Representatives. A double dissolution under section 57 of the Constitution involves the dissolution of both Houses. The 'simultaneous House of Representatives/Senate terms' option would involve dissolving half of the Senate.

7 Senator Macklin introduced the *Constitution Alteration (Fixed Term Parliaments) Bill* in 1987, followed up later by Senator Murray who tabled the *Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) Bill 2000*.

8 Refer Table 7.2 in the Main Report

At present the Senate continues in office. The proposal could mean that, for long periods, (or at least the length of an election), there would be no Parliament. If legislation were required to deal with some serious emergency, such as terrorist attacks or a disease pandemic, legislation could not be passed and governments would either have inadequate powers or would resort to arbitrary powers.

Is the caretaker convention adequate for this eventuality? Would it be jettisoned? Similarly, unlike at present when the Senate continues its Committee work (except by convention for the period of the election) during those periods there would be no Parliament to scrutinise and hold government accountable.

It would seem to me that if the Constitution is to be amended, it should be amended so that the terms of members of *both* Houses end on the day before the day on which the terms of their successors begin, as is currently the case with senators, including the territory senators who go out whenever the House of Representatives is dissolved.

This arrangement could apply regardless of whether the parliamentary term is fixed and regardless of the length of the term. At any time during an election the 'outgoing' Parliament could meet to deal with an emergency, and, provided that the handover date were suitably arranged, there would always be a Parliament to call upon.

Moreover, the Houses should meet when they decide to meet, and should not be able to be dismissed, either by prime ministerial decree through the Speaker, or by the power of prorogation. We need to consider in circumstances of constitutional change whether prorogation should be abolished.⁹

This option of 'simultaneous House of Representatives/Senate terms' is a proposal which has been put to referendum and rejected before. The lack of support for this option with the Australian public should be noted.

The main reason for opposing the simultaneous House of Representatives/Senate terms proposal was that it would increase prime ministerial power, and the scope for electoral manipulation, by allowing the Prime Minister to dissolve half of the Senate whenever he decided to dissolve the House of Representatives.

The same objection would likely arise even if the first three years of a four-year term is 'fixed': the Prime Minister would still be able to manipulate the Senate term by dissolving half of the Senate. The Senate would no longer be a fixed-term, continuing body.

If this option is put again the same objection will certainly be raised again. In my view any lengthening of the House of Representatives term will only be successful if this objection is dealt with, as the public have consistently fought measures which provide greater powers to the Prime Minister.

9 *Beware the monarchical gargoyle in our constitution* Harry Evans Canberra Times 25 February 2005

With reference to the Main Report, I am surprised a fixed four-year term is dismissed out of hand just because the current Prime Minister opposes it. Fixed terms are an accepted feature of a number of states and territories in Australia. Why wouldn't the people of Australia prefer it?

If the option for the major parties is the system to continue as it is, or the option is (for arguments sake) a four year fixed term – being perhaps the only change the Australian people might accept – would the majors still dismiss it out of hand? The answer appears to be that the Liberal Party would.

My view is that the Committee should encourage the Government to research such propositions that fall within broad principles we all accept – such as longer terms, stability, and continuity with Australian political norms.

I cannot really see why a fixed three-year period within an unfixed four year term should be an acceptable option but not the option of a fixed four-year term. By all means state the objections, although some stated objections to a full fixed term surely apply equally to a fixed three years within a four-year term.

Recommendation 3.1

- (a) That the dates of elections be fixed and preset by legislation;**
- (b) That if a four-year term for the House of Representatives is to be put to the people as a Referendum question, that further research be undertaken to determine support for fixed four year terms;**
- (c) That the closure of the Electoral Roll earlier than seven days after the issue of the writs only apply after the implementation of fixed election terms.**

3.3 Simultaneous Federal/State elections

The Democrats are of the opinion that simultaneous federal/state elections should not be banned outright – they should at least be at the discretion of the governments concerned. Why shouldn't a federal by-election be able to be held simultaneously - with state or local elections; or a state by-election during a federal election; or a federal referendum during local government or state elections - at the discretion of a government or as agreed between governments?

Australians are in frequent election mode, with nine governments holding Federal, State and Territory elections, and local government elections, as well as referenda and plebiscites at all three levels of government. The issue is simply one of cost and convenience. For instance, greater efficiency is achieved in the United

States of America where simultaneous elections are a long-standing, regular and unexceptional feature of their election system.

In 1922 the CEA was amended to prevent simultaneous Federal and State elections. The 1988 Constitutional commission recommended that this provision be repealed, and the Democrats urge Government to acknowledge this finding by amending the law.

If fixed dates for elections were to also become a reality, it would open up the possibility for simultaneous elections as well, although these could eventuate anyway, if they were not prohibited by the CEA. We recommended in our 1998 JSCEM Minority Report that subsection 394(1) of the CEA be repealed.

Recommendation 3.2

That subsection 394(1) of the *Commonwealth Electoral Act 1918* be repealed.

3.4 Section 44 problems

Subsection 44(i) of the Constitution has provoked litigation in the past, the leading case being *Sykes v Cleary* (No.2) of 1992. We dealt with the issue of section 44 in our 1996, 1998 and 2001 Minority Reports, as has the JSCEM itself (recommendation No.57 in its 1998 report). There is unanimous support for change.

Subsection 44(i) says 'that a person could not seek election to the parliament if that person was a citizen of another country or owed an allegiance of some kind to another nation'. We accept that this should be replaced with the simple requirement that all candidates for political office be Australian citizens.

This section was drawn up at a time when there was no concept of Australian citizenship, when Australian residents were either British subjects or aliens. It was designed to ensure the Parliament was free of aliens as so defined at that time. The Senate Standing Committee on Constitutional and Legal Affairs in its 1981 Report: *The Constitutional Qualifications of Members of Parliament*, recommended that Australian Citizenship be the constitutional qualification for parliamentary membership, with questions of the various grades of foreign allegiance being relegated to the legislative sphere.

The Constitutional Commission, in its Final Report of 1988, recommended that subsection 44(i) be deleted and that Australian citizenship instead be the requirement for candidacy, with the Parliament being empowered to make laws as to residency requirements.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Report of July 1997 recommended that subsection 44(i) be replaced by a provision requiring that all candidates be Australian citizens, and it went further to suggest the new provision empower the Parliament to enact legislation determining the grounds for disqualification of members in relation to foreign allegiance. This Report also recommended that subsection 44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions empowering the parliament to specify other offices which would be declared vacant should the office holder be elected to parliament.

Whilst some offices, such as those of a judicial nature, must be resigned prior to candidacy, no provision is made for other offices to be declared vacant upon a candidate being successfully elected. It would be absurd, of course, if public servants could retain their positions after having been elected to parliament. It is essential that a mechanism be put in place declaring vacant certain specified offices upon their holders being elected.

Subsection 44(iv) has its origins in the Succession to the Crown Act 1707 (UK). Its purpose there was essentially to do with the separation of powers, the idea being to prevent undue control of the House of Commons by members being employed by the Crown. Obviously times have changed, even though the ancient struggle between executive and parliament continues to this day. Whilst this provision may have been appropriate centuries ago, the growth of the machinery of government has meant that its contemporary effect is to prevent many thousands of citizens employed in the public sector from standing for election without any real justification.

The Australian Democrats have a long history of trying to rectify this part of the Constitution. In February 1980 former Democrats Senator Colin Mason, moved a motion which resulted in the inquiry by the Standing Committee on Constitutional and Legal Affairs into the government's order that public servants resign before nomination for election. Again, this section featured in the *Sykes v. Cleary* (No.2) litigation.

The 2000 Bill below proposes to delete subsection 44(iv) and substitute a requirement that only judicial officers must resign their positions prior to election, as well as empowering the parliament to legislate for other specified offices to be vacated. We have sought to alter subsection 44(iv) four times through the:

- *The Constitution Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1985;*
- *The Constitution Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1989;*
- *The Constitution Alteration (Qualifications and Disqualifications of members of the Parliament) Bill 1992; and*

- *The Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000.*

The last paragraph of section 44 should also be deleted in its entirety. Indeed, the Standing Committee on Legal and Constitutional Affairs Report of July 1997 noted that if its recommendations concerning subsections 44(i) and 44(iv) were accepted, the last paragraph of subsection 44 should be deleted. We concur with that view.

Recommendation 3.3

That the following questions be put to the people as Referendum questions:

- (a) That subsection 44(i) of the Constitution be replaced by a requirement that all candidates be Australian citizens and meet any further requirements set by the Parliament.**
- (b) That subsection 44(iv) of the Constitution be replaced by provisions preventing judicial officers only from nominating without resigning their posts, and giving Parliament power to specify other offices to be declared vacant should an office-holder be elected.**
- (c) That the last paragraph of section 44 of the Constitution be deleted.**

3.5 Political Rights and Freedoms

Although there has been many a campaign for a Bill of Rights, there is stronger support for a legislated Charter of Political Rights and Freedoms. The Australian Capital Territory is the only Australian legislature to act on this front so far. It would be better if there were one Australian standard in this vital area. Unlike a number of other countries, Australians do not have their rights and responsibilities reflected in the Constitution, nor (mostly) in legislation, which is why we have seen indigenous, women and homosexual Australians compelled to seek international help in addressing unjust treatment and discrimination.

Anti-terrorism security concerns in the USA have resulted in the Patriot Act, which restricts a number of rights and liberties. However that legislation sits amongst US Constitutional guarantees of the Bill of Rights. These guarantees ensure that all citizens shall be secure in their persons and protects them against unreasonable search and seizure. The Constitution provides Americans with a right to due process and the right to a fair and speedy public trial among other things.

These Constitutional guarantees known as the US Bill of Rights provide the background against which legislation like the Patriot Act is interpreted.

Australia has no such entrenched constitutional guarantees yet the Government shows no compunction in 'borrowing' the Patriot Act ideas as a basis for its own security legislation.

Australia has also been borrowing its security legislative ideas from the United Kingdom, but in the United Kingdom the Human Rights Act 1998 acts as a control measure against which the Courts can interpret their anti-terrorism legislation. Again Australia has no Human Rights Act to provide a safeguard.

If Australia is going to enact legislation which impacts so stringently on its citizens' human rights, it is essential that it makes it either makes it constitutionally clear, or legislatively clear that it does respect those human rights.

The Democrats have attempted to establish a comprehensive human rights standard for Australia and introduced the Parliamentary Charter of Rights and Freedoms Bill 2001. The Democrats proposed Charter of Rights was an implementation of the International Covenant on Civil and Political Rights. It sets out certain fundamental rights and freedoms including the right to equal protection under the law, the right to a fair trial, freedom of expression and freedom of religion.

Recommendation 3.4

That the Government review the potential for a Charter of Rights and Responsibilities to be introduced in Australia.

We recommended in our 1998 Minority Report that the CEA be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote. It is important to understand that, although prisoners are deprived of their liberty whilst in detention, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in detention should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court. Nonetheless, following the 2001 Federal Election restrictions on the rights of prisoners were strengthened by increasing the disqualification criteria from individuals serving 5 years or more to individuals serving 3 years or more.

The Report urges the Government to disenfranchise any citizen serving a jail sentence. This is an extra-judicial penalty. If it is considered necessary to add the removal of citizenship rights to the deprivation of liberty, then that too should be a matter for judicial determination.

There is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In WA, for example, there is a scheme whereby fine defaulters lose their license rather than go to prison, yet this has not been introduced uniformly in Australia. Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence lose the right to vote? This is inequitable and unacceptable.

Australia is a signatory to the International Covenant on Civil and Political Rights Article 25. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status. This clearly runs contrary to the letter and spirit of the Covenant.

A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.

Recommendation 3.5

The Commonwealth Electoral Act be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.

3.6 An insufficiently representative House of Representatives¹⁰

The Main Report has not addressed the issues of democratic representation at all, which is a great pity, because those issues go to the heart of democratic needs – the right to be represented. The 2004 Federal Election again demonstrated the weakness that democratically speaking, large numbers of voters who gave their primary vote to minor political parties are not directly represented in the House of Representatives.

In 2004, Australia's two major parties, the Liberal and Labor parties, secured 78.11% of the House of Representatives vote, up from 74.9% in 2001. The Labor Party secured a primary vote of 37.64%, and the Liberal party 40.47%. Of the minor parties, the National Party (12 members) and the (Northern Territory) Country Liberal Party (1 member), gained representation in the House of Representatives, with 5.89% and 0.34% of the national vote respectively. Three Independents were successful. Of the minor parties not represented in the House

¹⁰ For figures used in this section see the AEC 2004 Electoral Pocketbook.

of Representatives, the most notable were the Australian Greens (6.98%) and the Family First Party (2%). Overall, over 13% of voters, nearly one in six, were not represented in the House of Representatives at all.

Federal Election after Federal Election shows that approximately one quarter of all Australian voters are not major party voters. These voters largely remain unrepresented in the House of Representatives. This situation has led to campaigns to make the House of Representatives more representative, with suggested reforms ranging from full proportional representation, to a 'top-up' party list system to adjust unequal outcomes.

The Australian Democrats have previously proposed that the present system be adjusted for the House of Representatives with a form of 'mixed member proportional voting', which provides a compromise between the competing principles of local representation and fair representation. There have been moves towards proportional voting systems in recent years in unicameral parliaments such as New Zealand, and the new parliaments of Scotland and Wales.

Although seven political parties¹¹ are represented in the two Federal houses of Parliament, many commentators still focus on bipartisan not cross-party politics. Australia is still commonly described in two-party terms.

Australia is a multi party system, but its political discourse often exhibits a two-party mentality. Typical of multi party democracies, the Australian Federal Government is comprised of a coalition of three parties.¹² Like many democratic governments too, its power is disproportionate to its support since 59.5% of voters did not give their primary vote to the Government in the House of Representatives. Conversely and disproportionately however, it holds 58% of the House of Representatives seats.¹³

The nearly proportional representation nature of the Senate (within¹⁴ States and Territories) provides a useful and desirable democratic counter to the distorted nature of House of Representatives representation. This is reflected in the Government's share of votes and seats. In the Senate the Government had 45.09% of the national primary vote in 2004, up from 41.8% in 2001 (a 3.29% increase), yet it holds 51.3% of the seats, up from 46.0% in 2001 (a 5.3% increase).

The role of the Senate as a brake on the excesses of an unrepresentative House of Representatives (including Executive power) continues to be the subject of attack.

11 The Liberal Party of Australia and the Northern Territory Country Liberal Party; the Australian Labor Party; the National Party of Australia; the Australian Democrats; the Australian Greens; and the Family First Party.

12 The Liberal Party of Australia, the Northern Territory Country Liberal Party and the National Party of Australia.

13 As a coalition of The National Party, the Country Liberal Party and the Liberal Party.

14 As opposed to *between* States and Territories. The Federal Constitution allows for equal Senate representation of States, despite great disparities between State voting populations (a Tasmanian's Senate vote has 13x the value of a NSW Senate vote).

There are powerful organisations and individuals who still seek to make our parliamentary democracy less democratic, less accountable and less progressive, by making the Senate less proportionally representative and more subservient to the House of Representatives.

The Government's success in obtaining a majority in the Senate in the 2004 election and the consequential restrictions on democratic process witnessed in the Senate to date will please such forces.

After the 2004 election 91.6% of Australians were represented by their party of choice in the Senate, a significant reduction since 2001. Historically it has been the Senate, free of the dominance of the Executive, which preserves the essence of the separation of powers, not the House of Representatives. Historically it has been the Senate that protects the sovereignty of the people, not the House of Representatives, which is dominated by representatives of a minority of voters with a majority of seats.

The 2004 election result which provided the Government with an outright majority has reduced the capacity of the Senate to operate as an independent house of review. To all intents and purposes the Senate is now also beholden to the Executive.

4 Political and Government Advertising

4.1 Truth in Political Advertising

The Australian Democrats have actively campaigned to introduce 'truth in political advertising' legislation in Australia since the early 1980s. Our Minority Report on the 1996 election had an extensive section on this topic. I welcome the committee's attention to this important topic in Chapter 12 of the Main Report.

The Coalition parties, in their dissenting report to the JCSEM inquiry into the 1993 election supported the reinstatement of 'truth in political advertising'. In Government they have subsequently resiled from that view. Political advertising in Australia must be better controlled. Legislation should be enacted to impose penalties for failure to represent the truth in political advertisements. The enforcement of such legislation would advance political standards, promote fairness, improve accountability and restore trust in politicians and the political system.

The need for improved controls on political advertising in Australia is important because elections are one of the key accountability mechanisms in our system of government. Where 'facts' are used, advertisements disseminated during an election campaign must be legally required to represent the truth. Advertisements purporting to represent 'facts' must be legally required to do so accurately. In this way politicians can be held accountable for election promises designed to win over the electorate. A case in point is the tacit use of the Reserve Bank to bolster Government statements about interest rates in the 2004 election. This is a significant issue discussed in Labor's submission to this report that highlights the need for greater legal controls on accurate media representation.

In 1983 the Commonwealth Parliament introduced laws regulating political advertising in section 392(2) of the CEA, but these were repealed again prior to the 1984 election.

In 1985 the South Australian Parliament enacted the *Electoral Act 1985 (SA)*. Section 113 of the South Australian Act makes it an offence to authorise or publish an advertisement purporting to be a statement of fact, when the statement is inaccurate and misleading to a material extent. 'Electoral advertisement' is defined to mean an advertisement containing electoral matter. 'Electoral matters' are matters calculated to affect the result of an election.

The legislation has been tested in the Supreme Court of South Australia, where it was held to be constitutionally valid. Further, it did not infringe the implied guarantee of free political communication found by the High Court to exist in the Commonwealth Constitution.

The Commonwealth Parliament has examined proposed legislation similar to the South Australian Electoral Act concerning truth in political advertising. In 1995 it considered amendments to the CEA in this regard. Provision was to be made prohibiting persons, during an election, from printing, publishing, or distributing any electoral advertisement containing a statement that was untrue, or misleading or deceptive. However with the dissolution of the Commonwealth Parliament for the 1996 election, the amendments lapsed.

Experience teaches that when the competitive interests of political parties are at stake, only the force of law will ensure that reasonable standards on truthfulness are upheld. Following an Inquiry by the Senate Finance and Public Administration Committee into this matter, I revised and reintroduced my Electoral Amendment (Political Honesty) Bill 2003 that legislates for truth in political advertising. Whilst the Main Report addresses the scope of this Bill and the potential impact of misleading statements during the election period, the committee recommendation on this matter is limited to “addressing issues of misleading conduct on polling day”.

From the Democrats perspective, ignoring the period leading up to polling day does not go far enough. All inaccurate or misleading statements of fact in political advertising, regardless of its proximity to election day should be addressed. This recommendation is reinforced by the submission to the JSCEM by Dr Sally Young who asserts that the trend in electoral advertising is towards a “continuous campaign” that is carried out over the length of an election cycle, not just the period leading up to an election or, as the committee implies in their recommendation, merely the election day.¹⁵

Recommendation 4. 1

The *Commonwealth Electoral Act* should be amended to prohibit inaccurate or misleading statements of fact in political advertising, which are likely to deceive or mislead.

4.2 Extending the Caretaker Period convention for advertising

The concern about the propriety of government advertising practices leads to the need to extend the Caretaker Period convention.

Part of the limited accountability in government advertising arguably stems from the application of flexible election terms. With fixed election terms, formal blackout periods for electoral and campaign advertising with set dates can be implemented. Presently however, it is difficult if not impossible to ascertain with

¹⁵ Submission No 145, (Dr S Young)

confidence what is legitimate government advertising that happens to share proximity to an election and what is better described as party political advertising. A case in point is the government's use of advertising to promote measures announced in the budget which happened to coincide with the timing of the 2004 federal election. The obvious result of this coincidence is a favourable media outcome for the Government. According to Dr Young in her submission to the 2004 JCSEM, incumbent governments in Australia benefit heavily in election terms due to access to government advertising.¹⁶ This has two outcomes:

1. there is a trend towards permanent campaigning with the sophisticated use of government advertising to support party political goals; and
2. the cost of such an outcome is progressively borne by the public.

Achieving a solution in parity of access to resources is of paramount importance to an equitable political system. A logical approach would be to extend the caretaker period to the July 1 date preceding the earliest likely Federal Election date that can occur for both the House of Representatives and the half-Senate election. This way any government advertising during this period would receive greater scrutiny as per current Caretaker norms.

Recommendation 4.2

That blackout provisions in the Caretaker period for all non-essential government advertising be extended to cover the time from the July 1 date preceding the earliest likely Federal Election date that can occur for both the House of Representatives and the half-Senate election.

4.3 Improved guiding principles for government advertising

The Democrats believe that this whole area needs legislative correction or an appropriate restraining mechanism such as a Senate Order. Strong independent oversight is needed to oversee government publicity and advertising. Principles¹⁷ similar to the following should form the basis for determination of whether government publicity and advertising is genuine, or whether it has partisan and political content:

- Information campaigns should be directed at the provision of objective, factual and explanatory information. Information should be presented in an unbiased and equitable manner;

16 Submission No 145, (Dr S Young)

17 These principles are largely drawn from 'Taxation Reform Community Education and Information Programme' ANAO 1998

- Information should be based on accurate, verifiable facts, carefully and precisely expressed in conformity with those facts. No claim or statement should be made which cannot be substantiated;
- The recipient of the information should always be able to distinguish clearly and easily between the facts on the one hand, and comment, opinion and analysis on the other;
- When making a comparison, the material should not mislead the recipient about the situation with which the comparison is made and it should state explicitly the basis for the comparison;
- Information campaigns should not intentionally promote party-political interests, nor should they give rise to a reasonable perception that they promote any such interests. To this end:
 - ⇒ Material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument;
 - ⇒ Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups; and
 - ⇒ Material should avoid party-political slogans or images; and
- Campaigns should be supported by a statement of the campaign's objective. The oversight body or committee would be entitled to consider whether this objective is legitimate, and whether the campaign is adapted to achieving the stated objective. Campaigns, which have little chance of success, should not be pursued.

Any Committee would need to be empowered to order a public authority to do one or more of the following things:

- To immediately stop the dissemination of any government publicity that is for political purposes and that does not comply with the principles.
- To modify the content, style or method of dissemination of any such government publicity so that it will comply with the principles.
- To stop expenditure on any such government publicity or to limit expenditure so that the publicity will comply with the principles.

Recommendation 4.3

That mandatory standards be adopted in relation to government advertising, policed by an appropriate oversight body.

5 Funding and disclosure

The aims of a comprehensive disclosure regime should be to prevent, or at least discourage, corrupt illegal or improper conduct; to stop politicians being or being perceived to be beholden to wealthy and powerful organisations, interest groups or individuals; and, to protect politicians from pressure being brought to bear on them from 'secret' donors.

The Australian Democrats have a long history of activism for greater accountability, transparency and disclosure in political finances.¹⁸ We dealt with funding and disclosure issues at length in our Minority Reports on the JSCEM reports into the 1996, 1998 and 2001 elections. Progress in getting greater accountability in political funding and disclosure is slow, so we are obliged to repeat some of our previous themes.

These disclosure proposals can be seen from two perspectives – improving present principles, or establishing new principles. The first should in theory be easiest, but in practice it is not so. For instance it is a present principle that the source of a donation should be known, but there is great resistance to ensuring that is so with respect to clubs, trusts, foundations and foreign donations.

5.1 The role of the media

The value of funding disclosure rests on the premise of availability of and accessibility to documentation for public scrutiny. This is the role of the media as governmental scrutineer. Comprehensive public scrutiny can only be achieved if issues such as political donations are covered by the mass media.

This interrelationship between disclosure by the media to the public is potentially undermined according to a recent report by the Democratic Audit of Australia.¹⁹ The Democratic Audit report says that the symbiotic relationship that the media maintains with government may lead in some cases to a reluctance to fully cover political donations for fear of a backlash in government access. They say the result could be reduced public pressure on the government due to lack of scrutiny by the media regarding funding sources and consequentially, reduced transparency.

There have been suggestions by a member of the House of Representatives that members of the media should be required to declare all conflicts of interest that may reflect on their reporting of political matters.

18 A useful reference to our views is *the dangerous art of giving* Australian Quarterly June-July 2000 Senator Andrew Murray and Marilyn Rock.

19 Tennant-Wood, R. 2004, "The role of the Media in the public disclosure of electoral funding." Democratic Audit of Australia – December 2004

Important points have been raised, that will need even more attention if media concentration continues. It is vital that any potential perception of political influence over the media, or vice versa, is avoided.

The following is recommended:

Recommendation 5.1

No media company or related entity or individual acting in the interests of a media company may donate in cash or kind to the electoral or campaign funding of a political party.

5.2 Uncontrolled campaign funding

We believe that democracy is best served by keeping the cost of political party management and campaigns at reasonable and affordable levels. Although in any democracy some political parties and candidates will always have more money than others, money and the exercise of influence should not be inevitably connected. One step forward in setting a limit on expenditure is to set a limit on donations – to apply a cap, or ceiling.

With reference to the Main Report, such limitations do apply in other democratic systems around the world. The cost of campaigning in Australia is growing exponentially and constitutes a barrier to entry. Other governments have recognised the importance of placing restraints on campaign expenditure.

Several submissions to the JSCEM following the 2004 elections called for the imposition of restraints which the Main Report duly noted. Indeed, with reference to Chapter 12 of the Main Report, there appears to be significant cross-party support for such reform with commentators including the Liberal Members Mr Malcolm Turnbull MP²⁰ and Mr Christopher Pyne MP,²¹ the Greens Bob Brown MP²² and academics Mr Tham Dr Young and Professor Orr.²³ The ALP's supplementary report has also alluded to concerns about the level and control of campaign funding.²⁴

In their submission to the JSCEM, Tham and Orr stressed the importance of combining improved disclosure laws with donation caps and expenditure limits, since “disclosure on its own is a weak regulatory mechanism, and probably

20 Submission No 196, (Mr M Turnbull)

21 Submission No 195, (Mr C Pyne)

22 Submission No 39, (Senator B Brown)

23 Submission No 160, (Mr J Tham and Dr G Orr); Submission No 199, (Mr J Tham and Dr G Orr - supplementary)

24 Submission No 201, (Australian Labor Party - supplementary)

merely 'normalises' corporate donations".²⁵ Tham and Orr suggest improving disclosure laws to include:

- expanding the definition of 'associated entity' in the CEA to more accurately capture the financial relationships that exist within political parties;
- payments from fundraisers, party conferences and similar events are classified as gifts and that all parties be required to submit gift reports which include the status of all donors; and
- removing delays in the timing of disclosure, by potentially requiring quarterly disclosure statements and even weekly statements during an election period.

For these improvements to be effective donation caps that limit actual or perceived undue influence by individuals or corporations would also need to be implemented.

Limiting the level of funding for election campaigns is also an issue raised by Professor Williams and Mr Mercurio in their submission to the 2004 JSCEM, to the extent that increased costs of campaigning heavily favours major parties.²⁶ As Williams and Mercurio state, unrestricted campaign expenditure which is heavily concentrated on advertising has the effect of crowding out minor party voices and is further evidence of a lack of equity in the current system.

In their 'Political Donations' Issue sheet for the 2004 federal election, the Democrats recommended that a cap or ceiling of \$100 000 be imposed on any donation made to political parties, independents or candidates. While this is higher than the caps recommended by others, the Democrats took the view that the new principle of a cap, to even be considered, would need to be at a high level.

Despite this support for placing limitations on funding from both international models and from domestic commentary outlined in the Main Report, there is no recommendation forthcoming from the JSCEM to this end. In contrast, the Democrats do propose a legislated amendment that places an indexed cap on electoral and campaign funding, with the amount to be set and controlled by the AEC:

25 Submission No 160, (Mr J Tham and Dr G Orr); Submission No 199, (Mr J Tham and Dr G Orr - supplementary)

26 Submission No 48, (Professor G Williams & Mr B Mercurio)

Recommendation 5.2

All electoral and campaign funding is subject to a financial cap, indexed to inflation and controlled by the AEC. Section 294 of the *Commonwealth Electoral Act 1918* should be amended to this end.

Recommendation 5.3

No entity or individual may donate more than \$100 000 per annum (in cash or kind) to political parties, independents or candidates, or to any person or entity on the understanding that it will be passed on to political parties, independents or candidates.

Ultimately, minimising or limiting the public perception of corruptibility associated with political donations requires a good donations policy that should forbid a political party from receiving inordinately large donations. Of concern is the Liberal Party's advocacy for increased threshold values before disclosure requirements apply. In their submission to this report, the Liberals argue for increasing the threshold from \$1,500 to \$10,000.²⁷ The current threshold for disclosure of donations is a generous individual sum.

A major problem is that at present it is alleged (see evidence to the Committee) that it is possible that significant sums have and can be made without disclosure. For instance, nine separate cheques for \$1,499 can be made to the separate federal, state and territory divisions of the same political party, totalling \$13,491.

The same principle could be used to write nine separate cheques for \$9,999 for the separate federal, state and territory divisions of the same political party, totalling \$89,991.

The Democrats oppose raising the disclosure level from \$1,500 to \$10,000.

Recommendation 5.4

The donations loophole be closed, that allows nine separate cheques to be written at a value just below the disclosure level, made out to the separate federal, state and territory divisions of the same political party .

27 Submission No 95, (Liberal Party of Australia - Federal Secretariat)

5.3 Hidden funds

It is essential that Australia has a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure. The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in electing representatives, in the formulation or execution of public policy, and helping protect politicians from the undue influence of donors.

Some political parties, in seeking to preserve the secrecy surrounding some of their funding, claim that confidentiality is essential for donors who do not wish to be publicly identified with a particular party. But the privacy considerations for donors, although in some cases perhaps understandable, must be made subordinate to the wider public interest of an open and accountable system of government. Further, if donors have no intention of influencing policy directions of political parties, they would not be dissuaded by such a transparent scheme. As Tham and Orr state, “transparency is viewed as a method of deterring corruption and undue influence directly, or, indirectly, by discouraging large amounts of private funding”.²⁸

Recommendation 5.5

Additional disclosure requirements to apply to Political Parties, Independents and Candidates:

- a) **any donation of over \$10 000 to a political party should be disclosed within a short period (at least quarterly) to the Electoral Commission who should publish it on their website so that it can be made public straight away, rather than leaving it until an annual return;**
- b) **professional fundraising must be subject to the same disclosure rules that apply in the *Commonwealth Electoral Act 1918* to donations.**

One of the key screening devices for hiding the true source of donations is the use of Trusts. As a consequence, the Democrats continue to recommend strong disclosure provisions for trusts that provide electoral donations. The AEC has dealt with some of these matters in Recommendations 6-8 of its 1998 Funding and Disclosure report concerning associated entities. The Labor Party²⁹ has given in-principle support to some of the AEC’s recommendations, which the Democrats welcome. More recently, the Labor Party has also suggested increasing powers to

28 Submission No 160, (Mr J Tham and Dr G Orr); Submission No 199, (Mr J Tham and Dr G Orr - supplementary)

29 Media Release 2 June 2000

audit disclosure returns of political parties. This is a sensible and practical solution to a troubling problem and has the support of the Democrats.

Recommendation 5.6

Additional disclosure requirements to apply to political parties that receive donations from trusts or foundations. They should be obliged to return the money unless the following is fully disclosed:

- a declaration of beneficial interests in and ultimate control of the trust estate or foundation, including the trustees;
- a declaration of the identities of the beneficiaries of the trust estate or foundation, including in the case of individuals, their countries of residence and, in the case of beneficiaries who are not individuals, their countries of incorporation or registration, as the case may be;
- details of any relationships with other entities;
- the percentage distribution of income within the trust or foundation; and
- any changes during the donations year in relation to the information provided above.

Another key screening device for hiding the true source of donations are certain ‘clubs’. Such clubs are simply devices for aggregating large donations, so that the true identity of big donors is not disclosed to the public.

Recommendation 5.7

Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor’s identities are made.

5.4 Overseas donations

A number of countries ban foreign donations to domestic political parties, including Canada, New Zealand and the United Kingdom.

The Main Report does attend to the contentious issue regarding the question of political parties receiving large amounts of money from foreign sources – both

entities and individuals. It is neither necessary nor desirable to prevent individual Australians living overseas from donating to Australian political parties or candidates. There is no case, and it is fraught with danger, for offshore based foundations, trusts or clubs to be able to donate funds, because those who are behind those entities are hidden and beyond the reach of Australian law. Although foreign entities with shareholders or members are more transparent, none of these entities are capable of being audited by the AEC. By banning donations from overseas entities and closing the loophole, this problem is significantly mitigated.

Recommendation 5.8

Donations from overseas entities must be banned outright. Donations from Australian individuals living offshore should be permitted.

5.5 Conflicts of Interest

In most cases, donors appear to make donations to political parties for broadly altruistic purposes, in that the donor supports the party and its policies, and is willing to donate to ensure the party's candidates and policies are represented in parliament. Nevertheless, there is a perception (and probably a reality), that some donors specifically tie large donations to the pursuit of specific policies they want achieved in their self-interest. This is corruption.

Recommendation 5.9

The *Commonwealth Electoral Act 1918* should specifically prohibit donations that have 'strings attached.'

The practice of companies making political donations without shareholder approval and without disclosing donations in annual reports must end. So must the practice of unions making political donations without member approval. It is neither democratic nor is it ethical. Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) should be given the right either to approve a political donations policy, to be carried out by the board or management body, or the right to approve political donations proposals at the annual general meeting. This will require amendments to the relevant acts rather than to the CEA.

Recommendation 5.10

The Corporations and Workplace laws be amended so that either:

- a) Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) must approve a political donations policy at least once every three years; or in the alternative
- b) Shareholders of companies and members of registered organisations (or any other organisational body such as mutuals) must approve political donations proposals at the annual general meeting.

Under the Registered Organisations schedule of the WRA, elections are conducted under the auspices of the AEC. It would seem self evident, in the public interest and for the same reasons - that the same provisions governing disclosure of donations for political organisations should apply to industrial or other organisations for whom the AEC conducts elections.

Controversy sometimes attends union elections. Trade unions are an important institution in Australian society and union elections have become far more expensive to campaign in today than ever before. Many people and organisations contribute to union election campaigns. As for political elections the public and members of those unions in particular should have the right to know the source of any campaign donations above a minimal amount.

Recommendation 5.11

Where the AEC conducts elections for registered and other organisations, the same provisions governing disclosure of donations for political organisations should apply.

6 Selected other matters

6.1 How-to-Vote provisions

How-to-vote provisions vary widely in the various electoral acts governing the elections for our nine parliaments. Political parties contesting elections at all levels of government would benefit significantly from consistent and common practices across the nine jurisdictions. There is certainly enough experience to form a final view in each political party who contest elections across Australia, which should provide a basis for negotiation for State, Territory and federal practices to be made as consistent as possible.

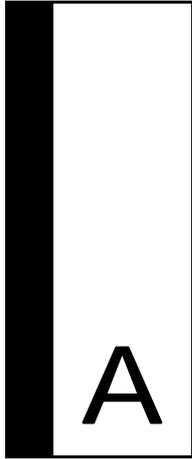
How-to-vote card regulation is an area badly in need of harmonisation and common practice. In our Minority Report on the 1996 election we urged the JCSEM and the Parliament to address the need for better regulation. In the 1998 Report we urged the committee to initiate a cooperative inter-state parliamentary committee to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions. This approach is picked up in the Report (5.71).

We remain of the view that how-to-vote cards should be displayed in polling booths rather than handed out. We recognise that there is doubt as to the practical effects of such a system. The best way to find out is to trial the proposal. The advantages of the proposal are self evident, against the costs, aggravation and harassment of the present system. The greatest loss from changing current practices would probably be the motivational effect and camaraderie associated with turning out for your candidate and promoting his or her how-to-vote.

Recommendation 6.1

That the JCSEM initiate a cooperative inter-state consultation process to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions.

That the AEC take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.



Appendix A

Submissions to the inquiry

No.	Received from
1	The Hon. Bruce Scott, MP
2	Mr Mark Powell
3	Mr Robert Cowley
4	Mr Bob Patterson
5	Mrs Josie Bamber
6	Mr Stanley Roth
7	Mr Eddie Kendell
8	Mr Peter Hickey
9	Mr Laurie Ferguson, MP
10	Mr Dick Adams, MP
11	Mr Eero Laurila
12	Ms Kay Fielden
13	Mr Michael Doyle
14	Mr R. Deacon
15	Mrs Anne Bailey
16	Guide Dogs Victoria
17	Mrs Jenny Miller
18	Professor Emeritus Peter Bayliss
19	Mr Marcus Beresford
20	Retina Australia (NSW) Inc.
21	Mr G. H. Schorel-Hlavka

22	Ms Ilona Renwick
23	Name and contact details confidential
24	Mr Peter Stiphout
25	Confidential
26	Mrs Mary Emmott
27	Association of Australian Christadelphian Ecclesias
28	Communication Project Group – Dr Kathryn Gunn
29	Mr Stan Lewin
30	Ms Alison Cousland
31	Mr Noel Abrahams
32	Paroo Shire Council
33	Ms Beverley Stubbs
34	Mr John Clarkson
35	Mr Bruce Kirkpatrick
36	Mrs Juliet Kirkpatrick
37	Mr Garry Meehan
38	Ms Bronwyn Smith
39	Senator Bob Brown
40	Mr Christopher Bayliss
41	H S Chapman Society
42	Mr Brian McRae
43	Quilpie Shire Council
44	Dr John Quiggin
45	RPH Adelaide Inc.
46	Mrs Sonja Doyle
47	Mrs Lindsay MacDonald
48	Professor George Williams and Mr Bryan Mercurio
49	Senator Ruth Webber
50	People with Disability Australia Inc.
51	Warroo Shire Council
52	Mr Peter Brun
53	The Nationals (Hinkler Divisional Council)
54	Vision Australia
55	Ms Kimberley Fischer and Mr Stephen Bounds

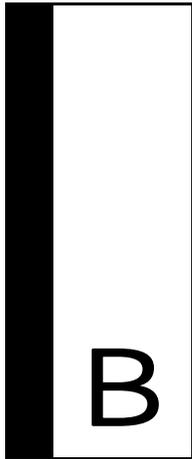
56	Mr John Kilcullen
57	Mr John Klumpe
58	Dr Lisa Hill and Mr Jonathon Louth
59	Mr William Bowe
60	Dr Geoff Gallop, Premier of Western Australia
61	Mr Peter Jessop
62	Bungil Shire Council
63	The Nationals (Roma Branch)
64	Murilla Shire Council
65	Mr Gerald Breen
66	Mr Michael Wilson
67	Mr Dino Ottavi
68	NSW Disability Discrimination Legal Centre
69	Professor Emeritus Colin Hughes
70	Australian Institute of Credit Management
71	Mr Alan Skyring
72	Mr Richard Gunter
73	Mr Antony Green
74	Australian Election Commission
75	Mr Brian Loftler
76	Mr Peter Kelly
77	Ms Sally Francis
78	Mr Roger Keyes
79	Mr Mark Byrne
80	Ms Elizabeth Ingham
81	S A Ward
82	Ms Christine Hooper
83	Ms Anne McKay
84	Ms Susan Russell
85	Mr J Craig McKay
86	Magennis Weate
87	Dr Judy Lambert
88	Mr Bruce McQueen
89	Mr Eric Jones

90	Mr David Ristrom
91	The Nationals (Wide Bay Divisional Council)
92	The Nationals (Federal Secretariat)
93	Winton Shire Council
94	The Hon. Arch Bevis, MP
95	Liberal Party of Australia (Federal Secretariat)
96	Senator John Cherry
97	Democratic Audit of Australia
98	Mr Graham Ebbage
99	The Hon. Bob Katter, MP
100	Electoral Reform Society of South Australia
101	Royal Society for the Blind
102	Mr Kris Hanna, MP, South Australian Parliament
103	Waverley Greens
104	Mr Peter van Onselen and Dr Wayne Errington
105	Professor Brian Costar and Mr David Mackenzie
106	Professor Brian Costar
107	Australian Greens
108	Mr John Wright
109	Australian Financial Conference
110	FCS Online
111	Tasmanian Greens
112	Ms Helen Hutchinson
113	Mr Lawrence Milburn
114	Mr Trevor Khan
115	Mr John Pyke
116	Ms Anna Bridle
117	Mr David Edgar
118	Mrs Danna Vale, MP
119	Mr Jon Stanhope, Chief Minister, Australian Capital Territory
120	The Hon. Jackie Kelly, MP
121	Democratic Labor Party
122	Dr Pam Muggeridge
123	Mr David Patton

124	Braidwood Greens
125	Festival of Light Australia
126	Confidential
127	Mr Glenn Ryall
128	The Hon. Philip Ruddock, MP
129	The Hon. Pat Farmer, MP
130	Mr Peter Andren, MP
131	PILCH Homeless Persons' Legal Clinic
132	Department of Defence
133	The Hon. Peter Dutton, MP
134	Mr Ivan Freys
135	Blind Citizens Australia
136	Australian Labor Party
137	Mr Cameron Riley
138	Canberra Blind Society
139	Mr Gosta Lynga
140	Mr Julian Hinton
141	Name and details confidential
142	Mr Phil Paterson
143	Mr T M Mathers
144	Public Interest Advocacy Centre
145	Dr Sally Young
146	Mr Jim Dannock
147	Mr Brian Cunningham
148	Mr Michael O'Reilly
149	Mr Keith Rex
150	Western Queensland Local Government Association
151	CAST (Civic Action Skills Teachers)
152	Mr Ray Jordan
153	Senator Len Harris
154	Mr Stan Ghys
155	Ms Alexandria Hicks, Mr Henry Pinski and Mr Ari Suss
156	Senator the Hon. Paul Calvert
157	Mr Don Willis

158	Ms H Watkins Butterworth
159	Sir David Smith
160	Mr Joo-Cheong Tham and Dr Graeme Orr
161	Mr David Patton (supplementary)
162	Mr Bruce Kirkpatrick (supplementary)
163	The Hon. Bob Katter, MP (supplementary)
164	Mrs Sonja Doyle (supplementary)
165	Australian Electoral Commission
166	Liberals for Forests
167	Mr Martin Mulvihill
168	Australian Electoral Commission (supplementary)
169	Dr Graeme Orr (supplementary)
170	Professor Emeritus Colin Hughes (supplementary)
171	Australian National University
172	Australian Electoral Commission (supplementary)
173	The Nationals, Mr Andrew Sochacki
174	University of Western Australia
175	Mr Michael Doyle (supplementary)
176	Mr Stephen Luntz
177	Electoral Reform Society of South Australia (supplementary)
178	Mr Arthur James
179	Mr Peter Andrew
180	Dr John Quiggin (supplementary)
181	Mr Shawn O'Brien
182	Australian Electoral Commission (supplementary)
183	Mr Bill Howell
184	The ACT Electoral Commission
185	Council for the National Interest Western Australian Committee
186	Mr Bruce Kirkpatrick (supplementary)
187	H S Chapman Society (supplementary)
188	Mr Antony Green (supplementary)
189	Mr Bruce Kirkpatrick (supplementary)
190	Australian Financial Conference (supplementary)
191	FCS Online (supplementary)

192	Mrs Jennifer Collett
193	National Capital Educational Tourism Project – Mr Garry Watson
194	Mr Peter Wilkinson
195	Mr Christopher Pyne MP
196	Mr Malcolm Turnbull MP
197	Mr Julian Sheezel
198	Confidential
199	Mr Joo-Cheong Tham and Dr Graeme Orr (supplementary)
200	Unity Party WA
201	Australian Labor Party (supplementary)
202	Communication Project Group (supplementary)
203	Mr Phil Paterson (supplementary)
204	The Nationals (supplementary)
205	Australian Electoral Commission (supplementary)
206	Dr Keith Wollard (supplementary)
207	Dr Keith Wollard (supplementary)
208	Name and Details Confidential
209	Mr J Highfield
210	Mr P S Morgan
211	Mr Peter Newland
212	Mr Terence Healy
213	Mr Michael O'Reilly
214	Mr Michael O'Reilly (supplementary)
215	National Party Women (Qld) – Maroochydore Electorate
216	Australian Electoral Commission (supplementary)
217	Democratic Labor Party (supplementary)
218	Dr Mal Washer MP
219	Liberal Party of Australia (Federal Secretariat) (supplementary)
220	Professor Matt Qvortrup
221	Australian Electoral Commission (supplementary)



Appendix B

List of Exhibits

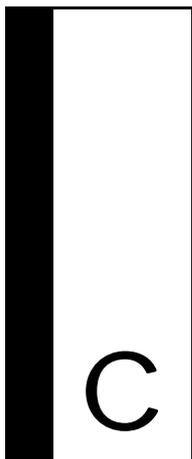
No.	Description
1	<i>Senate Voters' Choice (Preference Allocation) Bill 2004</i> , presented by Senator Bob Brown (related to Submission No. 39)
2	Mr Peter Van Onselen and Dr Wayne Errington, "Electoral Databases: Big Brother or Democracy Unbound?", <i>Australian Journal of Political Science</i> , Vol. 39, No. 2, July 2004, pp. 349–366. Presented by Mr Peter Van Onselen and Dr Wayne Errington (related to Submission No. 104)
3	Mr Peter Van Onselen and Dr Wayne Errington, "Political Party Databases: Proposals for Reform", <i>Australian Journal of Professional and Applied Ethics</i> , Vol. 6, No. 1, 2004, pp. 82–87. Presented by Mr Peter Van Onselen and Dr Wayne Errington (related to Submission No. 104)
4	<i>Copy of submission from Mr Richard Gunter to JSCEM 2004 Federal Election Inquiry</i> , presented by Mr Richard Gunter (related to Submission No. 71)
5	<i>Court case: Re Mr Skyring's applications</i> , presented by Mr Alan Skyring (related to Submission No. 71)
6	<i>Court case: Ex parte: Alan George Skyring</i> , presented by Mr Alan Skyring (related to Submission No. 71)
7	<i>Memo to Governor General and inclusion of court case</i> , presented by Mr Alan Skyring (related to Submission No. 71)
8	<i>Memo to re-constituted committee inquiring into the children overboard affair</i> , presented by Mr Alan Skyring (related to Submission No. 71)

- 9 *Court case: Gunter v Jersey et al*, presented by Mr Alan Skyring (related to Submission No. 71)
- 10 *Court case: re Skyring's applications*, presented by Mr Alan Skyring (related to Submission No. 71)
- 11 *Court case: Skyring v Commissioner of Taxation - Commonwealth of Australia*, presented by Mr Alan Skyring (related to Submission No. 71)
- 12 *Photocopy of envelope addressed to Mr Skyring showing he has returned to sender (High Court)*, presented by Mr Alan Skyring (related to Submission No. 71)
- 13 *Court case: Skyring v Graham Kingsley Ramsey*, presented by Mr Alan Skyring (related to Submission No. 71)
- 14 *Article: Subject "Royal Charter"*, presented by Mr Alan Skyring (related to Submission No. 71)
- 15 *Court case: Gunter v Attorney General*, presented by Mr Richard Gunter (related to Submission No. 72)
- 16 *Court case: Gunter v Attorney General*, presented by Mr Richard Gunter (related to Submission No. 72)
- 17 *Court case: Muldowney v Australian Electoral Commission*, presented by Mr Richard Gunter (related to Submission No. 72)
- 18 *Court case: Gunter v Governor General*, presented by Mr Richard Gunter (related to Submission No. 72)
- 19 *Correspondence and court cases between Mr Gunter and Australian Government Solicitor*, presented by Mr Richard Gunter (related to Submission No. 72)
- 20 *Copy of Notice of Motion in court case*, Mr Richard Gunter (related to Submission No. 72)
- 21 *Correspondence with solicitor & court case: Gunter vs De Jersey*, presented by Mr Richard Gunter (related to Submission No. 72)
- 22 *Supreme Court Rules*, presented by Mr Richard Gunter (related to Submission No. 72)
- 23 *Taxation Laws Amendment (Political Donations) Bill 1999*, presented by Mr Peter Andren (related to Submission No. 130)
- 24 *Postal voting pamphlet - Liberal Party*, presented by Mr Peter Andren MP (related to Submission No. 130)
- 25 *Postal voting pamphlet - The Nationals*, presented by Mr Peter Andren MP (related to Submission No. 130)

- 26 *Postal voting pamphlet - Australian Labor Party*, presented by Mr Peter Andren MP (related to Submission No. 130)
- 27 *Letter from Senator Sandy MacDonald - re upgrade of facilities at Mount Panorama*, presented by Mr Peter Andren MP (related to Submission No. 130)
- 28 *Letter from Senator the Hon Bill Heffernan to residents of Calare - re economic priorities*, presented by Mr Peter Andren MP (related to Submission No. 130)
- 29 *Article: "Money Removes Pollies from Reality"*, *The Australian*, 31 March 2005, presented by Mr Peter Andren MP (related to Submission No. 130)
- 30 *The Nationals how-to-vote card from the Richmond Electorate*, Presented by Mr Andrew Sochacki, public hearing, 6 July 2005
- 31 *Liberals for Forests how-to-vote card from the Richmond Electorate*, Presented by Mr Andrew Sochacki, public hearing, 6 July 2005
- 32 *Advertising material from the Nationals from the Richmond Electorate*, presented by Mrs Susanna Flower, public hearing, 6 July 2005
- 33 Professor Colin Hughes, "Fixed Term Parliaments: The Constitutional Issues", in *Fixed Term Parliaments: Proceedings of the Third Annual Workshop of the Australasian Study of Parliament Group*, 1982, presented by Professor Colin Hughes, (related to Submission No. 170)
- 34 Professor Colin Hughes, "Extended and/or Fixed Term Parliamentary Terms", in *South Australian Constitutional Conference: Conference Book*, 1981, presented by Professor Colin Hughes, (related to Submission No. 170)
- 35 Electoral and Administrative Review Commission, *Report on Queensland Legislative Assembly Electoral System*, November 1990, presented by Professor Colin Hughes, (related to Submission No. 170)
- 36 Queensland Constitutional Review Commission, *Report on the Possible Reform of and Changes to Acts and Laws that relate to the Queensland Constitution*, February 2000, presented by professor Colin Hughes, (related to Submission No. 170)
- 37 *Postal Vote Application*, presented by the Australian Electoral Commission, (related to Submission No. 168)
- 38 *Postal vote ballot papers sent to constituent*, presented by the Australian Electoral Commission, (related to Submission No. 168)

- 39 *Postal vote returned to AEC correct format*, presented by the Australian Electoral Commission, (related to Submission No. 168)
- 40 *Postal vote with Senate ballot paper returned in unauthorised envelope*, presented by the Australian Electoral Commission, (related to Submission No. 168)
- 41 *Postal vote returned to AEC missing Senate ballot paper*, presented by the Australian Electoral Commission, (related to Submission No. 168)
- 42 *Mullholland vs the AEC*, presented by the Democratic Labor Party, (related to Submission No. 121)
- 43 *Affidavit of Applicant: Mullholland vs AEC*, presented by the Democratic Labor Party, public hearing, 25 July 2005
- 44 *Discussion Paper - Bring Home Democracy: Enfranchising Australia's Homeless*, presented by Professor Brian Costar and Mr David Mackenzie, public hearing, 25 July 2005
- 45 Mr Joo-Cheong Tham and David Grove, 'Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections', in, *Federal Law Review*, vol. 32, 2004, pp. 397-424, presented by Mr Joo-Cheong Tham, public hearing, 25 July 2005
- 46 *Communication needs of people with disabilities*, presented by Dr Kathryn Gunn, public hearing, 26 July 2005
- 47 *Blind Citizens Australia: Information Pack*, Blind Citizens Australia, (related to Submission No. 158), public hearing, 25 July 2005
- 48 *Graphs on Government Advertising since 1990*, presented by the Australian Labor Party (related to Submission No. 159), public hearing, 8 August 2005
- 49 *Graphs on Government Advertising since 2004*, presented by the Australian Labor Party (related to Submission No. 159), public hearing, 8 August 2005
- 50 *Liberal Party how-to-vote card from the Melbourne Ports Electorate*, presented by Mr Michael Danby MP, public hearing, 5 August 2005
- 51 *The Greens' how-to-vote card from the Melbourne Ports Electorate*, presented by Mr Michael Danby MP, public hearing, 5 August 2005
- 52 *Liberal Party how-to-vote card from the Melbourne Ports Electorate*, presented by Mr Tony Smith MP, public hearing, 5 August 2005
- 53 Victorian Government, "Want to work longer hours for less pay?", *The Border Mail*, 8 August 2005, p. 6, presented by Ms Sophie Panopoulos MP, public hearing, , 8 August 2005

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- 54 Australian Labor Party, *Abetz Plan to Turn Political Donations into 'Hush Slush' Funds*, presented by Senator George Brandis, public hearing, 8 August 2005
- 55 *Minutes of the Queensland Greens Management Committee Meeting on 8 August 2002*, presented by Senator George Brandis, public hearing, 8 August 2005
- 56 *Political Party Annual Return – Queensland Greens*, presented by Senator George Brandis, public hearing, 8 August 2005
- 57 *Maps of Telstra's CDMA coverage in Australia*, presented by the H.S Chapman Society, public hearing, 12 August 2005
- 58 *Example of Barcode*, presented by the H.S Chapman Society, public hearing, , 12 August 2005
- 59 *Example of Different Types of Barcodes*, presented by the H.S Chapman Society, public hearing, 12 August 2005
- 60 *Skywire's Products and Services Overview for 2005*, presented by the H.S Chapman Society, public hearing, 12 August 2005
- 61 Dr Graeme Orr, *Submission to Senate Finance and Public Administration References Committee inquiry into government advertising and accountability July 2004*, presented by Mr Joo-Cheong Tham and Dr Graeme Orr (related to Submission No. 160)
- 62 Mr Joo-Cheong Tham and Dr Graeme Orr, *Submission to Joint Standing Committee on Electoral Matters inquiry into the disclosure of donations to political parties and candidates*, presented by Mr Joo-Cheong Tham and Dr Graeme Orr (related to Submission No. 160)



Appendix C

List of Hearings and Witnesses

Wednesday, 27 April 2005 – Dalby

Mr Bruce Scott MP, Federal Member for Maranoa

Warroo Shire Council

Mr Michael Parker, Chief Executive Officer

Australian Electoral Commission

Mr Robin Boyd, Divisional Returning Officer, Division of Fairfax

Mr William Woolcock, Divisional Returning Officer, Division of Groom

Ms Shandra Baker

Mr Alfred Thompson

Wednesday, 27 April 2005 – Longreach

Mrs Sonja Doyle

Winton Shire Council

Mr Bob Hoogland, Chief Executive Officer

Ilfracombe Shire Council

Mr Vaughn Becker, Chief Executive Officer

Ms Shelley Colvin

Thursday, 28 April 2005 – Ingham

Office of the Hon. Bob Katter MP

Mrs Helen Fuller, Chief Electorate Officer

Queensland Nationals

Mr Marcus Rowell, State Member

Australian Electoral Commission

Ms Anne Bright, Australian Electoral Officer for Queensland

Mr Doug Orr, Assistant Commissioner, Elections

Mr Octavian Sencariuc, Divisional Returning Officer

Ms Kellie White

Wednesday, 6 July 2005 – Brisbane

Emeritus Professor Colin Hughes

Mr T M Mathers

Professor John Quiggin

Association of Australian Christadelphian Ecclesias Inc

Mr John Quill, Secretary

Mr Richard Gunter

Mr Alan Skyring

Mr John Clarkson

The Hon. Arch Bevis, Federal Member for Brisbane

Mr John Cherry

Thursday, 7 July 2005 – Tweed Heads

The Nationals

Mr Andrew Sochacki, Chairman, Richmond Electorate

Ms Bronwyn Smith

The Greens

Mrs Susanna Flower, Federal Candidate 2004

Mr Thomas Tabart, Secretary, Tweed Greens

Australian Electoral Commission

Mr Michael Averay, Divisional Returning Officer for Richmond

Monday, 25 July 2005 – Melbourne**Institute for Social Research, Swinburne University**

Professor Brian Costar, Professor of Politics

Mr David MacKenzie, Senior Research Fellow

University of Melbourne

Mr Joo-Cheong Tham, Law Lecturer

PILCH Homeless Persons Legal Clinic

Mr Philip Lynch, Coordinator and Principal Solicitor

Guide Dogs Victoria

Ms Joan Smith, Public Education Coordinator

Ms Christine Dodds, Public Relations Coordinator

Vision Australia

Mr Tony Clark, Business Manager

Blind Citizens Australia

Ms Nadia Mattiazzo, Victorian Advocacy Officer

Mr John Power, National Policy Officer

Mr Michael Doyle**Mr Stanley Lewin****Ms Alison Cousland****Democratic Labor Party**

Mr John Mulholland, Secretary/Registered Officer

Tuesday, 26 July 2005 – Adelaide

RPH Adelaide Inc.

Mr Hans-Joachim Reimer, General Manager

Royal Blind Society for the Blind of South Australia

Mr Tony Starkey, Access Project Officer

Festival of Light Australia

Dr David Phillips, National President

Mrs Roslyn Phillips, Research Officer

Mr David D'Lima, Field Officer

Electoral Reform Society of South Australia

Mr Deane Crabb

Communication Project Group

Dr Kathryn Gunn

Wednesday, 3 August 2005 – Perth

University of Western Australia, Department of Political Science and International Relations

Associate Professor David Denmark

Mr Philip Paterson

Liberals for Forests

Dr Keith Woollard, Secretary

One Nation, Western Australia

Mr Brian McRae

Mr William Bowe

Australian Electoral Commission

Ms Jennie Gzik, Australian Electoral Officer for Western Australia

Friday, 5 August 2005 – Canberra

Australian Electoral Commission

Mr Robert Campbell, Electoral Commissioner
Mr Paul Dacey, Deputy Electoral Commissioner
Ms Barbara Davis, First Assistant Commissioner Business Support
Mr Timothy Evans, Director, Election Systems and Policy
Mr Tim Pickering, First Assistant Commission Electoral Operations

Minter Ellison Consulting

Ms Philippa Horner, Consultant

Minter Ellison

Mr Denis O'Brien, Partner

QM Technologies Pty Ltd

Mr Paul Mansfield, General Manager, Queensland

Monday, 8 August 2005 – Canberra

Australian Capital Territory Electoral Commission

Mr Phillip Green, Electoral Commissioner

Sir David Smith

Liberal Party of Australia, Federal Secretariat

Mr Brian Loughnane, Federal Director

Australian Labor Party

Mr Tim Gartrell, National Secretary

The Nationals

Mr Andrew Hall, Federal Director

Senator Bob Brown, Senator for Tasmania

Australian Greens

Mr Ben Oquist, Adviser to Senator Bob Brown

Friday, 12 August 2005 – Sydney

HS Chapman Society

Dr Amy McGrath, President

Mr William Kirkpatrick, Member and former Chairman

Mr Peter Brun

Mr Ivan Freys

Mr Antony Green

Australian Institute of Credit Management

Mr Terry Collins, Chief Executive Officer

Perceptive Communications Pty Ltd, trading as FCS OnLine

Ms Margo Fitzgibbon, Director and Commercial Manager

Mr John Elmgreen, Lawyer

Australian Finance Conference

Mr Ron Hardaker, Executive Director

People with Disability Australia

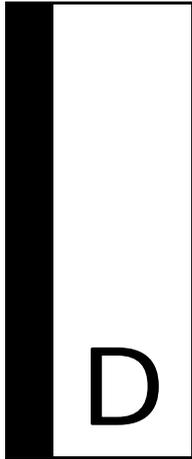
Ms Alanna Clohesy, Deputy Director, Advocacy

Mr Digby Hughes, Senior Advocate

Public Interest Advocacy Centre Ltd

Ms Robin Banks, Chief Executive Officer

Ms Jane Stratton, Policy Officer



Appendix D

Summary of the Minter Ellison inquiry and the AEC's response

- 1.1 On 29 October 2004, the AEC contracted Minter Ellison to conduct an inquiry into postal voting at the 2004 Federal Election. The terms of reference were as follows:
- To investigate the problems encountered in certain aspects of postal voting at the 2004 Federal Elections and to provide a report on the following key matters:
 - ⇒ what went wrong with postal voting processing;
 - ⇒ how the AEC dealt with issues as they arose;
 - ⇒ an examination of the context and process failures and successes; and
 - ⇒ recommendations for any changes that should be made for the future.
 - Specifically, the inquiry was to address the following non-inclusive list of issues:
 - ⇒ the initial deluge of postal vote applications;
 - ⇒ delays in delivery;
 - ⇒ the 568 postal vote certificates sent to incorrect addresses;
 - ⇒ the delayed regeneration of 68 ACT and 2,043 Queensland spoilt postal vote certificate envelopes;
 - ⇒ The 1,832 spoilt postal vote certificates envelopes from a central print batch lodged on 20 September 2004 that were not regenerated; and
 - ⇒ The inclusion of New South Wales Senate ballot papers in some mailouts of postal voting material for Queensland.

- The inquiry was also asked to consider:
 - ⇒ Whether APVIS is the optimum method of preparing and distributing postal voting materials; and
 - ⇒ Whether risks to servicing voters in country and remote parts of Australia might be reduced by alternative methods.
- 1.2 Minter Ellison delivered its report on 20 December 2004, and it contained 27 recommendations in three broad areas:
- providing greater certainty and effectiveness in the process by which postal votes are processed through to the preliminary scrutiny;
 - ensuring that the process under which postal voting material is produced and distributed to electors operates in a timely and efficient way; and
 - ensuring that the AEC is in a position to keep stakeholders informed on postal voting matters.
- 1.3 Generally, the AEC supports 23 of the Minter Ellison recommendations, notes two of the recommendations and does not support two of the recommendations. It noted that a number of the Minter Ellison recommendations require legislative change.

Minter Ellison recommendation 1

The exemption for PVAs from s.9 of the *Electronic Transactions Act 1999* be removed so as to allow applicants for a postal vote to lodge the completed PVA electronically.

The AEC's response

- 1.4 Supported – seeking amendment to exemption from ETA (define acceptable electronic transactions as those that transmitted a reproduction of an original PVA that had been signed by the elector) to allow voters to scan a completed PVA and email it to the AEC.

The AEC's recommendation

- 1.5 That the JSCEM recommend that the Electronic Transaction Regulations 2000 be amended to permit electors to submit an application for a postal vote or an application to become a general postal vote by scanning and emailing the appropriate form.

Minter Ellison recommendation 2

Australian electors overseas have the same opportunity to register as GPs as those in Australia.

The AEC's response

- 1.6 Supported – remove ambiguity to clarify that GPV provisions apply to electors overseas; amend CEA to provide that being a member of the defence forces serving overseas is grounds for registering as a GPV.

The AEC's recommendation

- 1.7 That the JSCEM recommend that the *Commonwealth Electoral Act 1918* be amended to specifically permit eligible overseas electors and Australian defence force personnel serving overseas to become general postal voters.

Minter Ellison recommendation 3

The rules about GPVs be clarified – an elector enrolled in a Division should not be able to apply to be registered as a GPV once an election is called (though any application made before then should continue to be processed by the AEC).

- This would clarify which rules apply during the election period.
- As the grounds are almost identical, it would still be open to the elector to apply for a postal vote in that election.

The AEC's response

- 1.8 Not supported – no advantage to electors because GPVs effectively become PVAs after the close of rolls; if it were implemented, the cut-off point should be the close of rolls, not the issue of writs, to avoid confusion when an enrolment is accompanied by a GPV.

Minter Ellison recommendation 4

A reference be included in the GPV application form to the fact that the completed form can be returned to the AEC by fax.

The AEC's response

- 1.9 Supported – extend same provisions for lodging PVAs to GPVs.

Minter Ellison recommendation 5

The AEC explore options for having other Commonwealth agencies that are located in rural areas (such as Centrelink) to accept completed PVAs on behalf of the AEC.

The AEC's response

- 1.10 Not supported – no advantage to electors, as even if other agencies collected completed PVAs, they would still have to be sent onto the AEC;

greater chance for delays as would have to rely on the agency staff giving this highest priority.

Minter Ellison recommendation 6

The AEC modify its PVA to:

- either require the elector to indicate, or to give the elector the option of indicating, why they require a postal vote; and
- if they choose to do so, to nominate a date by which the postal voting material would need, for that reason, to be received at the postal address nominated.

The AEC's response

- 1.11 Point 1: noted – previous discussed by JSCEM, but the Government did not support amendment; difficult to see whether will apply further rigour to the application process.
- 1.12 Point 2: supported – must manage voter expectations in the information on the PVA; take account of issues in postal delivery and variables in the production of PVPs.

Minter Ellison recommendation 7

The AEC take up the suggestion discussed with Australia Post that a process be developed on RMANS for ensuring that matters relevant to the postal delivery schedules applicable to the delivery points at the postal address, or in the postcode area, of the applicant are available to the DRO at the time the decision is made whether an application should go to Central or Local print - this would allow the delivery points that receive only 1 or 2 deliveries a week to be flagged.

The AEC's response

- 1.13 Supported – dependent on Australia Post's ability to supply mail delivery information compatible with the RMANS address register; would allow the call centre operation to decide whether local print or central print will be the best option for timely receipt of the PVP.

Minter Ellison recommendation 8

The rules about the receipt of PVAs from electors be changed so that a postal vote should be regarded as not having been made if it reaches the DRO after 6pm on the Thursday before polling day but the DRO should be required, if it is received after 6pm on the Thursday, but before 6pm on the Friday, to take reasonable steps to inform the applicant that the PVA has not been accepted.

The AEC's response

- 1.14 Supported in principle – amend CEA to provide a PVA should be regarded as not having been made if reaches DRO etc after 6pm on the Wednesday before polling day (Thursday is too late); would require the DRO etc to take reasonable steps to inform the applicant the PVA has not been accepted; DRO etc that receives a PVA between the last mail clearance on the Friday week before polling day and 6pm on the next Wednesday must attempt delivery of PVP by most practicable means.

The AEC's recommendation

- 1.15 That the JSCEM recommend that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to require that:
- for postal vote applications received up to and including the last mail on the Friday eight days before polling day, the AEC be required to deliver the postal voting material to the applicant by post unless otherwise specified by the applicant;
 - for postal vote applications received after the last mail on the Friday eight days before polling day and up to and including the last mail on the Wednesday before polling day, the AEC be required to post or otherwise deliver the postal voting material by the best means possible; and
 - for postal vote applications received after the last mail on the Wednesday before polling day, the applications be rejected on the grounds that delivery of postal voting material cannot be guaranteed, and that reasonable efforts be made to contact the applicants to advise them of the need to vote by other means.

Minter Ellison recommendation 9

It should be made clear that the DRO's obligation is to arrange for the delivery of the postal ballot papers to the GPV or applicant, and that it is at the DRO's discretion whether it is posted or other arrangements for its delivery are made:

- the DRO's decision should be determined by what method is most likely to ensure that the voting material is received in time for the GPV or applicant to record their vote before the close of the poll; and
- this will allow the DRO to take into account the location of the voter, Australia Post delivery times for ordinary post for that location, whether the elector has indicated that they will be away from their postal address after a certain day, how close polling day is etc.

The AEC's response

- 1.16 Noted – seek legal advice to clarify these issues and maybe propose amendments once advice received.

Minter Ellison recommendation 10

The AEC consider making a special point in the public education campaign associated with the next election of highlighting the difficulties associated with electors leaving it to the last week in the election period to lodge a PVA.

The AEC's response

- 1.17 Supported – will consider this when reviewing the voter services phase of the campaign in 2005.

Minter Ellison recommendation 11

The rules are changed so that:

- electors can, prior to the close of the polls, return their completed PVCs, envelope and ballot papers into the possession of the AEC by any convenient means, or post the material (provided that if posted, it is received within 13 days of polling day); and
- the AEC is then responsible for ensuring it is delivered to the appropriate DRO in time for it to be included in the preliminary scrutiny.

The AEC's response

- 1.18 Supported – amend postal voting provisions of CEA to allow return of completed PVC by any convenient means other than post to a range of AEC officers as current arrangements could be seen as being restrictive; still within 13 days of polling day.

The AEC's recommendation

- 1.19 That the JSCEM recommend that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow electors to return their postal votes to any employee of the AEC by any convenient means and the AEC then deliver the postal vote to the appropriate Divisional Returning Officer within 13 days after polling day.

Minter Ellison recommendation 12

The rules for admitting PVC envelopes into the preliminary scrutiny are changed to say that, where the PVC envelope is not in the possession of the AEC before the close of the poll:

- it should only be accepted into the preliminary scrutiny where it is received through the post within 13 days after the close of the poll and the witness signature is dated with a day or date on or before polling day; and
- if there is no signature date, then irrespective of whether or not there is a legible postmark, the envelope should be rejected.

The AEC's response

- 1.20 Supported in principle – amend CEA to allow the date of the witness's signature, not the postmark (no definition of postmark and are technical difficulties associated with mail deliveries and pick ups), to be used to determine whether a postal vote was cast prior to close of polling; previously rejected by JSCEM; require voter to confirm that they voted before 6pm on polling day through declaration block.

The AEC's recommendation

- 1.21 That the JSCEM recommend that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended so that postal voters are required to confirm by signing on the postal vote certificate envelope a statement such as 'I certify that I completed all voting action on the attached ballot paper/s prior to the date/time of closing of the poll in the electoral division for which I am enrolled.'

Minter Ellison recommendation 13

The AEC takes steps through its public education activities to ensure that the public is informed of the importance of a witness date.

The AEC's response

- 1.22 Supported – AEC to consider how best to inform electors of witness responsibility during review of public awareness campaign; note that any enlargement of the election advertising campaign would add significant to AEC's election costs.

Minter Ellison recommendation 14

APVIS, or at any rate a form of centralised, computer-based printing and production system to support the distribution by the AEC of postal voting material, be retained.

The AEC's response

- 1.23 Supported – can't process current/expected volume of PVAs without support of centralised, computer-based printing and production system.

Minter Ellison recommendation 15

The flexibility to determine whether postal voting material should be produced centrally or through a local computer-based system in the office of DRO's be retained.

The AEC's response

1.24 Supported – local print is essential for when voting material is required immediately.

Minter Ellison recommendation 16

The AEC establish a planning team as soon as possible consisting of representatives of relevant areas in the AEC (ie the ESP Section, State and Territory Head Offices, DROs, the Public Awareness Media and Research Branch and Parliamentary and Ministerial Section) with the task, taking account of experience in the 2004 election, of:

- mapping each stage in the postal voting process
- identifying what needs to be done, by whom and in what timeframe, to ensure that each stage in the process is achieved effectively and efficiently
- undertaking a comprehensive risk assessment of each part (ie identification of risks, their removal or minimisation)
- formulating risk recovery procedures for each part of the process (identification of what would have to be done, who would do it, what resources would need to be available etc)
- undertaking an assessment of resources needed to achieve the outcomes, where additional resources may be required and a process for securing those additional resources
- identifying where contractors, service providers or stakeholders are involved or potentially affected, and what their roles and responsibilities would be
- preparing a report for the AEC Executive on planning for, and the development and implementation, of
 - ⇒ the RFT process for the provision of postal voting material for the next election, or
 - ⇒ if the AEC proposes to renew its contract with QM Technologies without a new RFT process, the negotiation of a new contract for those services
- ensuring that, drawing on the outcome of the work outlined above, the report to the Executive deals comprehensively with all the requirements recommended for inclusion in the RFT and/or contract negotiations (see recommendation 19 below)

- for the purpose of preparing the report, consulting with other Commonwealth agencies with similar mail processing service requirements and with expertise and experience in dealing with mail houses and involved in the provision of bulk personalised printing services (such as the Australian Taxation Office, Centrelink and possibly the Australian Bureau of Statistics).

The AEC's response

- 1.25 Supported – established diverse and representative postal voting working party in April 2005 to consider these matters and to thoroughly map each stage of the postal voting process.

Minter Ellison recommendation 17

The AEC contract the services of a person with expertise and experience in the mail house industry and in contract management, under the direction of relevant AEC officers, to:

- take responsibility for the development of relevant documentation to support
 - ⇒ the RFT process for the APVIS contract
 - ⇒ the tendering and contract negotiation
- develop the QA and FRS documentation for the next election
- manage the RFT preparation, tender evaluation, contract negotiation and implementation
- provide training to AEC QA staff in the lead up to the election (and share supervisory responsibilities for them during the contract)
- advise the AEC on relevant developments in new technology.

The AEC's response

- 1.26 Supported in principle – will consider most appropriate way to ensure that relevant skills and expertise are available during tendering, evaluation and contract implementation; recognise cost implications.

Minter Ellison recommendation 18

The AEC consider ways in which the resources available to the ESP Section can be supplemented, both during the period immediately prior to, and in the election period.

The AEC's response

- 1.27 Supported – will explore addition of short-term resources to ESP section prior to and during election to undertake specific tasks, eg quality assurance, user support and contract fulfilment.

Minter Ellison recommendation 19

The RFT (if this process is relevant), and the contract for the production of postal voting material for the next election, fully set out the AEC's requirements, namely:

- the scope of the services to be provided including, at a minimum, the receipt, storage, processing and secure disposal of data, programming and development services, personalised printing, compilation of PVPs containing personalised and other material, lodgement of PVPs with Australia Post or other carriers as specified from time to time, provision and management of base stock etc
- how those services are to be delivered, in particular, that there is sufficient printing and mail processing capacity to manage both the production of PVPs and regenerated spoils in a timely way, including if necessary a 'Local Print' option
- management matters including, at a minimum, security of personal information, quality management systems, disaster recovery and business continuity, reconciliation and job tracking (including management and regeneration of spoils and their tracking), maintenance of job documentation, staff management
- account management matters including, at a minimum, staff of management team – responsibilities and reporting, financial management, reporting, performance management, corporate management, identification of staff who will have managerial responsibility and the staff with 'on-the-ground' responsibility for performance under the contract
- transition issues ie how a new contractor (or a new site of an existing contractor) will put in place processes and procedures necessary to support the performance of the contract, and post contract
- reports that the AEC would require including, at a minimum, transfer report – daily confirming receipt of all data, detailed daily progress report on PVC and PVP production and lodgement, incident reports (within a nominated time), stock report on production, use and levels of base stock, system development report, management report, assurance certificates about compliance with all the requirements of contract, certificate of destruction of data/spoils etc
- service levels that focus on each element of the production process that is vital to the performance required by the AEC, measure the contractor's performance on that element and provides an incentive to the contractor to 'get it right' – these service levels would therefore:

- ⇒ include 'service debits' that will apply to each service level breach ie specific financial penalty for each breach of each kind of service level
- ⇒ set out the method by which the service level is to be checked eg contractor to inform AEC, AEC audit or review, problems reported by recipients or Australia Post, failure to provide reports of required content or at required time
- ⇒ include the full range of matters, strict compliance with which is an AEC requirement
- where it is proposed that more than one production site be used, that there are arrangements in place that will assure the same level of quality and performance at each site, and that each site will be applying the same (agreed) processes and procedures
- what arrangements are to be made with Australia Post for discounts under the Process Improvement Program, the implications for the way production is managed between sites and within a site, and the rules to apply in relation to 'virtual' lodgements
- what Quality Assurance arrangements the AEC will want for observing the compliance by the contractor with its Quality Assurance obligations.

The AEC's response

1.28 Supported – will develop an RFT taking account of requirements above.

Minter Ellison recommendation 20

Any contract negotiated for the provision of postal voting material for the next election specifically cover the matters listed above.

The AEC's response

1.29 Supported – will prepare a contract taking account of requirements in Recommendation 19; will seek specialist legal advice from appropriately skilled and experienced legal firm during contract negotiation.

Minter Ellison recommendation 21

Such a contract include a requirement that:

- each party keep the other fully informed about any material changes in circumstance between the finalisation of the contract and the time at which the contract services are to be provided; and
- the implications of any decisions that may impact on either party's roles and responsibilities under the contract are fully discussed.

The AEC's response

- 1.30 Supported – will prepare a contract taking account of requirements above.

Minter Ellison recommendation 22

The issue of whether Central Print should be more or less 'de-centralised' (ie the number of sites to be used) should be considered in light of the circumstances that prevail at the time of the tendering process and during contract negotiation, and again before the election period if the circumstances require it.

The AEC's response

- 1.31 Supported – will determine appropriateness of multiple processing sites for central print during evaluation of tenders or development of new contract with QM Technologies.

Minter Ellison recommendation 23

The rules for determining whether postal voting material is produced by Central Print or Local Print at any particular election or at any particular time in an election period should be determined as part of the preparation for a particular election in light of the circumstances then prevailing, but the following may provide some guidance:

- where files are small and require special treatment and may result in substantial downtime in order to process (eg may require a change of material to be inserted in mail processing), they should not be sent to Central Print at least in the first week (if at all) if they can be effectively and efficiently handled through Local Print
- where more than one site is to be used and the work is divided between them by reference to the State or Territory in which the recipient of the PVP is enrolled (thus only requiring the insertion of certain kinds of Senate ballot papers), serious consideration needs to be given to the risks of compromising that division in order to get postal advantages
- every effort should be made to minimise the number of small files to be processed, particularly in the first week of production.

The AEC's response

- 1.32 Supported – AEC and contractor to jointly develop and document the process design.

Minter Ellison recommendation 24

The AEC, with a view to increasing its availability, undertake a comprehensive review of pre-polling which would consider the following matters:

- its advantages over postal voting (eg security, immediate inclusion of the vote in scrutiny etc)
- whether it provides a genuine alternative to postal voting
- its capacity to respond as demand requires
- whether it is resourced appropriately
- whether it is advertised appropriately
- whether the CEA should be amended to remove the necessity for gazettal of the opening hours (and possibly of the place proposed to be used as a pre-poll place), provided the AEC takes appropriate steps to ensure they are appropriately advertised (including on web site etc).

The AEC's response

- 1.33 Supported – will conduct thorough review of current pre-poll voting arrangements by November 2005 to determine most appropriate locations and days and times of operation for pre-poll voting centres for the next election, and the most appropriate content and media for advertising.
- 1.34 Need to consider both postal voting and pre-poll voting in terms of service to the elector and admin of the service; postal voting has many advantages to the elector, but pre-poll has some advantages for admin; PVAs now more easily accessible, so postal voting more prevalent than pre-poll voting in 2004 for the first time; recognise cost implications of increasing the numbers of pre-poll voting centres.
- 1.35 Gazettal of times of operation of pre-poll voting centre makes it difficult for the AEC to extend the period of operation to meet unexpected demand.

The AEC's recommendation

- 1.36 That the JSCEM recommend that the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 be amended to replace the requirement to gazette the location and time of operation of pre-poll voting offices with a requirement to publicise the location and time of operation of pre-poll voting offices.

Minter Ellison recommendation 25

The AEC computer and data recording and retrieval systems be upgraded to allow real-time information to be extracted by DROs

on the progress of the production of PVPs for individual postal voters.

The AEC's response

- 1.37 Supported – will enhance data in RMANS about PVA to include date the PVP was lodged with Australia Post, to increase the amount of information that can be supplied to individual electors about the progress of their vote.

Minter Ellison recommendation 26

In the lead up to the next election, the AEC:

- discuss with the Minister's office options for a [sic] establishing a process for the provision of information about emerging issues during the election period, identifying which staff are to be involved, how and to whom requests for urgent briefing are to be handled, and how issues are to be followed up, and reported on, by the AEC (this would provide an opportunity for a discussion about the kind of information that the AEC feels able to provide during an election period, and in what form, and any perceived sensitivities)
- formulate guidelines reflecting the outcome of those discussions that would be available to all relevant staff prior to the election.

The AEC's response

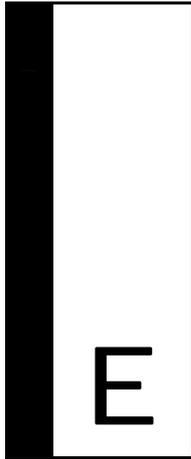
- 1.38 Supported – will make arrangements to meet with the Minister's office to advice above; include caretaker conventions to apply once an election is announced.

Minter Ellison recommendation 27

The AEC continue with its recent initiative of providing regular briefings to political parties and use that opportunity to explore options for protocols about the provisions of information in the period leading up to, and during, the next election period.

The AEC's response

- 1.39 Supported – will determine most effective and least time consuming manner of providing briefings to all political parties and candidate



Appendix E

Close of rolls enrolment transactions by type – States and Territories – 2004 Federal Election

	New enrolment (a)	Reenrolment (b)	Reinstatement (c)	Transfer in intra-state (d)	Transfer in inter-state (d)	Intra-area transfer (d)	No change enrolment (e)	Address renumber (f)	Total Enrolment transactions (g)	Transfer out intra-state (h)	Transfer out inter-state (h)	Objection (i)	Death deletion (j)	Duplicate deletion (k)
ACT	2,279	2,038	54	636	1,690	2,572	1,084	6	10,359	636	2,075	2,656	105	1
NSW	23,706	24,645	483	29,464	7,244	26,486	8,242	176	120,446	29,464	9,084	51,294	2,359	58
NT	835	1,160	31	315	1,439	1,250	698	0	5,728	315	1,280	507	54	10
QLD	10,098	13,066	359	18,116	8,443	20,736	5,799	169	76,786	18,116	5,766	102	1,072	94
SA	9,163	5,337	29	8,630	1,984	8,773	3,363	52	37,331	8,630	2,927	89	890	26
TAS	2,136	1,890	6	1,376	1,288	3,128	1,274	1	11,099	1,376	1,209	5	130	4
VIC	15,863	19,456	310	23,101	5,902	22,530	11,326	162	98,650	23,101	5,624	34,617	1,375	63
WA	14,736	10,903	93	14,408	2,763	13,040	7,637	14	63,594	14,408	2,788	259	271	52
Australia	78,816	78,495	1,365	96,046	30,753	98,515	39,423	580	423,993	96,046	30,753	89,529	6,256	308

(a) Inclusion of an elector's name on the roll based on the receipt of a claim, where no previous enrolment record exists.

(b) Inclusion of an elector's name on the roll based on the receipt of a claim, where a non-current record exists.

(c) Re-instating an elector's name to the roll from a non-current enrolment record where the removal of the elector was in error.

(d) Alteration of an elector's enrolment details based on the receipt of an enrolment claim form, or in some circumstances written notice, from an elector. A 'transfer in intrastate' means the

elector's enrolled address moved from one division in a state to another division in the same state. A 'transfer in interstate' means the elector moved from their previous enrolled

address to an address in a division in another state or territory. An 'inter-area transfer' is an alteration to an elector's enrolled address within one division.

(e) The elector submitted an enrolment form that was identical to the elector's current enrolment details and no change was required.

(f) Alteration of a currently enrolled elector's address details after the receipt of information from the appropriate authority that the address details have been amended.

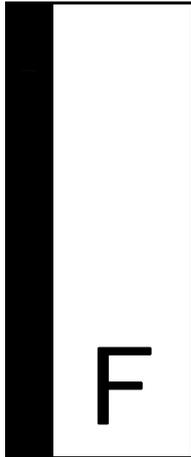
(g) Total enrolment transactions that added, amended or confirmed an elector's enrolled address.

(h) These transfers **out** are the incidental transfers of the electors who were transferred into a new division (see above note (h)).

(i) Removals from the roll as a result of the objection process under Part IX of the Electoral Act.

(j) Removals from the roll as a result of the elector's death under section 110 of the Electoral Act.

(k) Removals from the roll as a result of an elector having duplicate records.



Appendix F

Schedule 4 & 5 from the Electoral and Referendum Amendment Regulations 2000

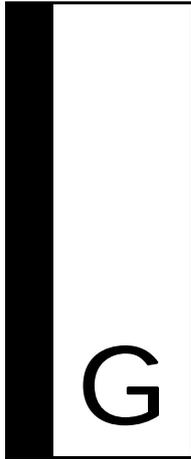
Schedule 4 – Persons who can attest claims for enrolment (regulations 11, 12, 13)

Item	Persons
401	Accountant who is a registered tax agent
402	Bank officer, except the manager of a bank travel centre
403	Building society officer
404	Chartered professional engineer
405	Clerk, sheriff or bailiff of a court
406	Commissioner for Affidavits of a State or Territory
407	Commissioner for Declarations of a State or Territory
408	Commissioner for Oaths of a State or Territory
409	Credit union officer
410	Diplomatic or consular officer, except an honorary consular officer, of an Australian embassy, high commission, or consulate
411	Employee of a community, ethnic or remote centre who counsels or assists clients as part of the employee's duties
412	Employee of a women's refuge, or of a crisis and counselling service, who counsels or assists victims of domestic violence, sexual assault or sexual abuse as part of the employee's duties
413	Fellow of the Association of Taxation and Management Accountants
414	Finance company officer
415	Full-time or permanent part-time employee of the Commonwealth, or a State or Territory, or a Commonwealth State or Territory authority

416	Full-time or permanent part-time teacher currently employed at a school or tertiary institution
417	Holder of a current liquor licence or his or her nominee
418	Holder of a current pilot's licence
419	Holder of a statutory office for which an annual salary is payable
420	Leader of an Aboriginal or Torres Strait Islander community
421	Licensed or registered real estate agent
422	Manager of a building society or credit union
423	Marriage celebrant within the meaning of the <i>Marriage Act 1961</i>
424	Marriage counsellor within the meaning of the <i>Family Law Act 1975</i>
425	Master of a merchant vessel
426	Member of an Aboriginal and Torres Strait Islander Community Council or Regional Council
427	Member of the Association of Consulting Engineers
428	Member of the Defence Force
429	Member of the ground staff of an airline that operates a regular passenger service
430	Member of the Institute of Company Secretaries of Australia
431	Member of the non-teaching or non-academic staff of a primary or secondary school or tertiary education institution
432	Member of the staff of a person who is a member of: (a) the parliament of the Commonwealth or a State; or (b) the legislature of a Territory; or (c) a local government authority of a State or Territory
433	Member of the staff of a State or Territory electoral authority
434	Member of the staff of the Australian Electoral Commission
435	Minister of religion within the meaning of the <i>Marriage Act 1961</i>
436	Person employed as a remote resource centre visitor
437	Police aide
438	Postal manager or other permanent Australia Post employee
439	Prison officer
440	Registered nurse or enrolled nurse
441	A person who is not described in a preceding item in this Schedule who is authorised in writing by at least 3 persons described in items in the Schedule
442	A person who is not described in a preceding item in this Schedule before whom statutory declarations may be made under a law of the Commonwealth, a State or a Territory

Schedule 5 Original documents (regulation 12)

Item	Original documents
501	Australian birth certificate, or an extract of an Australian birth certificate, that is at least 5 years old
502	Australian Defence Force discharge document
503	Australian marriage certificate
504	Certificate of Australian citizenship
505	Current Australian driver's licence or learner driver's licence
506	Current Australian passport
507	Current Australian photographic student identification card
508	Current concession card issued by the Department of Veterans' Affairs
509	Current identity card showing the signature and photograph of the card holder, issued by his or her employer
510	Current pension concession card issued by the Department of Family and Community Services
511	Current proof of age card issued by a State or Territory authority
512	Decree nisi or a certificate of a decree absolute made or granted by the Family Court of Australia
513	Document of appointment as an Australian Justice of the Peace
514	A document that is not mentioned in a preceding item in this Schedule that is accepted by the Electoral Commission as evidence of the identity of a person



Appendix G

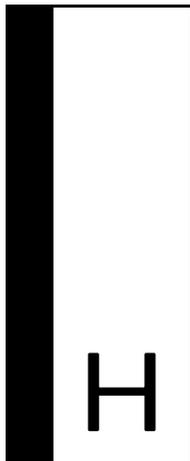
Countries with compulsory voting

Country	Status*	Population *	Constitutional or legal authority/comments/penalty
Argentina	Free	36 900 000	Constitution. Article 37. Introduced 1912 by 'Saénz Peña Law'. Enshrined in Constitution in 1994. Some exceptions – health, distance. Various penalties: Fine. Not entitled to hold public office for 3 years.
Australia	Free	19 900 000	Introduced 1924. <i>Commonwealth Electoral Act 1918</i> , section 245. Fine of \$20.
Austria	Free	8 200 000	Compulsory in 2 provinces, Tyrol and Vorarlberg, for provincial and presidential elections. Fine 1000 schillings for failure to vote without valid reason.
Belgium	Free	10 400 000	Constitution. Article 48. Adopted 1831. Revised 1920. Persons unable to vote personally may give power of attorney to family member. Penalties are official reprimands or fines.
Bolivia	Partly free	8 600 000	Constitution. Title 9. Electoral regime, Chapter 1. Suffrage. Article 219. 'Suffrage constitutes the foundation of the representative democratic regime and it is based on the universal, direct and equal, individual and secret, free and obligatory vote; on a public counting of votes, and on a system of proportional representation.' Electoral Code. Chapter 2. Suffrage. Article 6. 'obligatory, because it constitutes a responsibility which cannot be renounced.'
Brazil	Free	176 500 000	Constitution. Article 14. Compulsory for citizens 18 years and over. Optional for illiterates and those over 70, and for those between 16 and 18 years. Fine
Chile	Free	15 800 000	Constitution. Article 15. 'in popular voting, vote shall be personal, egalitarian and secret. In addition, for citizens it shall be compulsory.'

Country	Status*	Population *	Constitutional or legal authority/comments/penalty
Cyprus	Free	900 000	Electoral Bill. Voting is compulsory and failure to vote constitutes a criminal offence. Fine of up to CY 200. Chapter 8, article 6 of Bill for the Registration of Electors and the Registrar of Electors makes registration compulsory. Failure to register: imprisonment of up to one month or fine of up to CY75 or both. Provisions applicable for unjustifiable failure to vote or register.
Ecuador	Partly free	12 600 000	Introduced in 1905. Constitution and National Law of Elections. Optional for illiterates or for over 65. Penalty: deprivation of civil rights
Egypt	Not free	72 100 000	Constitution. Article 62. 'Participation in public life is a national duty.'
Fiji Islands	Partly free	900 000	1998 Constitution. (Suspended 2000). Chapter 6, part 2, sections 54-57. \$20 fine for failure to vote, \$50 for failure to register
Greece	Free	11 000 000	Constitution of the Hellenic Republic, 1975, revised 1986. Article 51, Paragraph 3. 'The members of Parliament shall be elected through direct, universal and secret ballot by citizens who have the right to vote, as specified by law. The law cannot abridge the right to vote except in cases where minimum voting age has not been attained or in cases of illegal incapacity or as a result of irrevocable criminal conviction for certain felonies. Paragraph 5. 'Exercise of the right to vote shall be compulsory. Exceptions and penalties shall be specified each time by law.' Presidential Act No 92/9-5-94. Article 6. Paragraph 2. 'exercise of the right to vote is compulsory.' Law No 2623/25.6.98 provides voting is not compulsory for citizens over 70, or for electors overseas on national or European election days.
Italy	Free	57 200 000	Constitution. Article 48.2 'the vote is personal and equal, free and confidential. Voting is a civic duty'. Failure to vote may be noted on official papers.
Liechtenstein	Free	40 000	Voting is compulsory, but no penalty applies for failure to vote.
Luxembourg	Free	500 000	CIA Factbook: Parline. Fine
Nauru	Free	10 000	Compulsory for Nauruans aged over 20.
Paraguay	Partly free	6 200 000	Constitution. Article 118. Suffrage is a right, a duty, and a public function of a voter. It is the basis of a representative democracy. It is based on universal, free, direct, equal and secret voting, as well as on a publicly supervised vote count and a proportional representation system. Ley
Peru	Free	27 100 000	Constitution. Article 31. 'Voting is individual, equal, free, secret and obligatory up to the age of 70. It is optional after that age.'
Singapore	Partly free	4 200 000	Parliamentary Elections Act 1959. \$5.00 penalty.
Switzerland	Free	7 300 000	The small canton of Schaffhausen has compulsory voting on all cantonal matters and in referenda.

Country	Status*	Population *	Constitutional or legal authority/comments/penalty
Thailand	Free	63 100 000	Constitution 1997. Chapter IV, Section 68. 'Every person shall have a duty to exercise his or her right to vote at an election' The person who fails to vote without notifying the appropriate cause of the inability to attend the election shall lose his or her right to vote as provided by law. The notification of the inability to attend the election and the provision of facilities for the attendance thereof shall be in accordance with the provisions of law.'
Turkey	Partly free	71 200 000	AEC. See also 'Elections Round Up: Turkey' in <i>Representation</i> , Vol. 36, No. 2, Summer 1999, p.188.
Uruguay	Free	3 400 000	Constitution. Article 77. 'Suffrage shall be exercised in the manner determined by law, but on the following bases: Compulsory inscription in the Civil Register. Secret and compulsory vote. The law, by an absolute majority of the full membership of each chamber, shall regulate the fulfilment of this obligation.' Fine
TOTAL		606 750 000	

Source Freedom status and population statistics taken from *Freedom in the World 2004: The Annual Survey of Political Rights and Civil Liberties*, 2004. List of countries with compulsory voting taken from the IDEA Voter Turnout, www.idea.int/vt/compulsory_voting.cfm)



Appendix H

Full distribution of preferences for the Richmond Electorate

Candidates	Party	Ex No	1 st Pref	Exclusion 1		Exclusion 2		Exclusion 3		Exclusion 4		Exclusion 5		Exclusion 6	
				Tfr	Votes										
LEES, Craig	FFP	5	1626	50	1676	216	1892	131	2023	326	2349	0	0	0	0
JEFFERYS, Dean	NDP	1	341	0	0	0	0	0	0	0	0	0	0	0	0
WATT, Allan	VET	2	617	39	656	0	0	0	0	0	0	0	0	0	0
TYLER, Fiona	LFF	4	1417	26	1443	73	1516	57	1573	0	0	0	0	0	0
FLOWER, Susanna	GRN	6	9751	166	9917	79	9996	369	10365	589	10954	1006	11960	0	0
WINTON-BROWN, Timothy	DEM	3	913	17	930	47	977	0	0	0	0	0	0	0	0
# ELLIOT, Justine	ALP		28059	29	28088	111	28199	234	28433	144	28433	441	29018	10542	39560
ANTHONY, Larry	LIB		36095	14	36109	130	36239	186	36425	514	36939	902	37841	1418	39259
			78819	341	78819	656	78819	977	78819	1573	78819	2349	78819	11960	78819

Elected