
The Parliament of the Commonwealth of Australia

Report on the conduct of the 2007 federal election and matters related thereto

Joint Standing Committee on Electoral Matters

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Chair's foreword

The publication of this report into the conduct of the 2007 federal election marks 25 years since the implementation of major reforms to the *Commonwealth Electoral Act 1918* which were implemented by the *Commonwealth Electoral Legislation Act 1983* and came into effect for the 1984 federal election. These reforms included changes to redistribution processes, the implementation of public funding of election campaigns and the establishment of the Australian Electoral Commission (AEC).

This report continues the tradition of examining and reporting on the conduct of federal elections and relevant legislation which has been carried out by the Joint Standing Committee on Electoral Matters and its predecessor, the Joint Select Committee on Electoral Reform.

Federal elections in Australia are remarkably complex logistical events. The 2007 election was the largest electoral event undertaken in Australia's history, with 13,646,539 electors on the electoral roll, to whom 13,364,359 sets of ballot papers were issued, with some 12,930,814 actually being counted in House of Representatives Elections.

Australian citizens enjoy a fundamental right to vote which has its basis in sections 7 and 24 of the Constitution. It is evident, however, that at least 466,794 electors were unable to exercise the franchise correctly at the 2007 election, either because they were not on the electoral roll, or they were on the roll with incomplete or incorrect details. Much of this disenfranchisement results from changes to the *Commonwealth Electoral Act 1918* made following the 2004 election.

The 2007 election was notable also because it demonstrated clearly that Australians have increasing expectations that electoral services and information should be provided in a convenient fashion that reflects and responds to increasingly busy lifestyles.

This was reflected by a significant increase in early and declaration voting, increases in the number of enrolment forms sourced from the Internet and a

growing reluctance on the part of electors to interact with the AEC using the paper-based and physical mail systems mandated by the Commonwealth Electoral Act. The downward trend in enrolment participation evident between June 2005 and June 2007 required the AEC to undertake unprecedented and costly enrolment stimulation activities, including the expenditure of some \$24 million in advertising costs, to arrest the decline in the lead up to the 2007 election.

Measures aimed at modernising the means of communication between electors and the AEC feature prominently in this report. Many recommendations are aimed at ensuring enrolment and voting processes are modernised so that they meet the expectations of the community both now and into the future.

Where modernisation has been recommended, the committee has sought to ensure that the integrity of the electoral systems and processes is maintained. Such is the case with home division pre-poll votes, which the committee recommends should be cast as ordinary votes wherever practicable. This will have the effect of meeting community expectations for convenience with the added benefit that more votes will be counted by the AEC on election night.

The committee looked closely at many aspects of existing electoral legislation, including amendments to the Commonwealth Electoral Act made in the lead up to the 1998 election and especially those made following the 2004 election – with a view to determining if they have had the effect of limiting or restricting the franchise.

Where evidence has shown this to be the case, recommendations aimed at restoring safety net provisions that had been repealed or amended by the previous government, have been made. Such measures seek to restore and protect the franchise. This is demonstrated by the first recommendation: that the traditional 7 day close of rolls period be reinstated.

Changes to formality rules made after the 1996 election, to address ‘Langer style voting’ caused a significant rise in the number of ballot papers ruled informal – particularly those with genuine numbering errors, cast by elderly and confused electors which had previously been saved. Some 91,354 votes were ruled informal at the 2007 election due to non-sequential numbering errors. Too many genuine electors are being disenfranchised in order to address Langer style voting. Whilst the rate of informality is lower in 2007 than in 2004, it is still significantly higher than in 1996. This report recommends returning to the previous safety net, whilst continuing to advocate retention of full preferential voting.

The years leading up to the 2007 election saw the creation and perpetuation of the mythical ‘straw man’ of electoral fraud. The straw man has been used to create and perpetuate an erroneous view that electoral fraud is commonplace and to overstate its potential effects. It is worth quoting from the AEC’s first submission to the inquiry in which the AEC stated categorically: ‘Turning first to entitlement,

it can be clearly stated, in relation to false identities, that there has never been any evidence of widespread or organised enrolment fraud in Australia’.

The committee formed the view that amendments to enrolment and voting processes made by the former government on the back of this straw man, made no difference to electoral integrity, but had the effect of disenfranchising many thousands of otherwise eligible voters at the 2007 election.

Provisional voters were required to show proof of identity at the time of voting or within 5 working days following the election. This amendment, implemented under the guise of eliminating non-existent electoral fraud, effectively disenfranchised some 27,529 electors whose provisional votes were rejected out of hand as a result. It must be kept in mind that only 64 cases of multiple voting were referred to the Australian Federal Police following the 2004 election and 10 in 2007. It is obvious that the amendment to provisional voting was heavy-handed and unnecessary, especially when the elector signature on the provisional vote envelope could have easily been compared to the signature on the original enrolment forms held by the AEC to confirm the identity of the voter.

Census data reveals that Australians are increasingly mobile. In 2006, almost 7.5 million people (43.1 per cent) lived at a different address than five years earlier. Prior to the 2007 elections the former government removed a long-standing safety net, which protected the franchise of electors removed from the roll in error by the AEC, by reinstating them to the roll where they subsequently lodged a declaration vote for the same electorate, or in some limited circumstances in the same state or territory from which they had been removed.

At the 2004 election some 77,231 electors were added to the electoral roll after the close of rolls. This was down from a high of 97,425 electors in 1998, and was made up mainly of electors reinstated to the roll after having been removed in error by the AEC in circumstances like those outlined above. In contrast, at the 2007 election the roll grew by only 1,466 electors because of these amendments.

The fundamental right of Australian citizens to participate in free and fair elections to choose the government of their choice has been eroded by such amendments. Many of the recommendations contained in this report seek to reform electoral legislation so that it facilitates and protects enrolment and voting, instead of placing obstacles in the way of those who seek to exercise the franchise.

Methods of communication are changing rapidly, with society relying more on electronic interactions than in the past.

Electoral legislation is, however, overly prescriptive and reflective of the paper-based age in which it was created. As a result, methods and processes prescribed in the legislation are becoming increasingly ineffective in achieving

acceptable rates of enrolment between elections. Paper-based enrolment processes appear to discourage electors, especially those who are highly mobile, from maintaining up-to-date enrolment and they prevent the AEC from being innovative and creative in response.

The Commonwealth Electoral Act requires amendment to allow the AEC to become innovative and devise modern day strategies to increase enrolment and electoral participation. These strategies must permit electronic communications and must allow flexibility in the design, delivery and receipt of electoral forms to suit the differing needs of electors. It is important that the Commonwealth Electoral Act provide flexibility so that the AEC may develop modern strategies to encourage electoral participation amongst younger Australians.

A number of recommendations are aimed at achieving these ends. These include: allowing the AEC to receive information from electors via an enrolment website, allowing postal vote applications to be lodged electronically, lowering the provisional enrolment age from 17 to 16 years, and encouraging schools and other education providers to participate in the enrolment process by receiving a small bounty for each valid enrolment form they receive and forward to the AEC.

The evidence and submissions received by the committee provide a wealth of information and will no doubt provide interested people with much statistical and empirical evidence to assist their further research into electoral matters.

This report contains election data from a number of elections and from a variety of sources. That data is used in order to show the effects of changes to electoral legislation made by the former government.

Much of the data used for this comparison may also be of use to others. These selected data can be found at Appendix C to the report.

I express thanks to former Electoral Commissioner Mr Ian Campbell, new Electoral Commissioner Mr Ed Killesteyn and the staff of the Australian Electoral Commission, who met information requests in a professional and timely manner.

I thank the Members and Senators of the committee for their work and contribution to this report, in particular the Deputy Chair Mr Scott Morrison and the leader of the Greens Senator Bob Brown.

Finally I would also like to thank the committee secretariat for their work in preparing this report.

Daryl Melham MP
Chair

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Membership of the Committee

Chair	Mr Daryl Melham MP	
Deputy Chair	Mr Scott Morrison MP	
Members	Mr Michael Danby MP	Senator Simon Birmingham
	Hon Bruce Scott MP	Senator Bob Brown
	Mr Jon Sullivan MP	Senator Carol Brown
		Senator Steve Hutchins
		Senator the Hon Michael Ronaldson

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr Kai Swoboda
Technical Advisor	Mr Terry Rushton
Research Officer	Ms Margaret Atkin
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Terms of reference

On 27 February 2008, the Special Minister of State requested the Committee to conduct an inquiry with the following terms of reference:

That the Joint Standing Committee on Electoral Matters inquire into and report on the conduct of the 2007 election and matters related thereto.

On 12 March 2008, the Senate agreed to the following resolution:

1. That the following matters be referred to the Joint Standing Committee on Electoral Matters for inquiry and report:

All aspects of the 2007 Federal election and matters related thereto, with particular reference to:

- a. the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;
- b. the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;
- c. the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;
- d. the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;
- e. the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;

- f. the availability and efficacy of 'free time' provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;
 - g. the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;
 - h. the relationship between public funding and campaign expenditure; and
 - i. the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.
2. That in conducting the review the committee undertake hearings in all capital cities and major regional centres and call for submissions.

On 14 May 2008 the Senate agreed to the following resolution:

That the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008 be referred to the Joint Standing Committee on Electoral Matters as a particular part of its inquiry into all aspects of the 2007 Federal Election for inquiry and report not before June 2009.



List of abbreviations

ABS	Australian Bureau of Statistics
ADF	Australian Defence Force
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFP	Australian Federal Police
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
ARO	Assistant Returning Officer
APVIS	Automated Postal Vote Issuing System
ATSIEIS	Aboriginal & Torres Strait Islander Electoral Information Services
CDPP	Commonwealth Director of Public Prosecutions
CEA	Community Electoral Assistants
CEIO	Community Education and Information Officer
CDR	Court of Disputed Returns
CRU	Continuous roll update
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DRE	Direct recording electronic [voting machine]

DRO	Divisional Returning Officer
ECA	Electoral Council of Australia
EOE	Eligible overseas elector
EVM	Electronic voting machine
FCA	Federal Court of Australia
FTE	Full time equivalent
FTR Act	<i>Financial Transaction Reports Act 1988</i>
GPV	General postal voter
GVT	Group voting tickets
Hanover	Hanover Welfare Services
JCPAA	Joint Standing Committee on Public Accounts and Audit
JSCEM	Joint Standing Committee on Electoral Matters
NACARAS	Northern and Central Australia Remote Area Strategy
NTR	National Tally Room
PDA	Personal Data Assistant
PILCH	Public Interest Law Clearing House
POI	Proof of identity
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i>
PVA	Postal vote application
PVP	Postal voting pack
SAAP	Supported Accommodation Assistance Program
TEC	Tasmanian Electoral Commission
TES	Targeted enrolment stimulation



Summary and recommendations

3 Enabling the franchise

Under the current legislation, the electoral roll closes for new enrolments on the day that the writ is issued. If a future election was to be announced on the same day as the writs are issued, there would merely be hours during which new enrolments could be accepted by the Australian Electoral Commission.

The committee can see no valid reason why it should be necessary to continue with close of rolls arrangements that serve to disenfranchise electors and that require unsustainable levels of funding to be expended in order to partly mitigate their effect.

There is no evidence that fraudulent activity was reduced as a result of the amendments to the close of rolls. On the contrary, there is no evidence available that indicates systemic fraudulent activity exists.

Recommendation 1 (paragraph 3.61)

The committee recommends that Section 155 of the *Commonwealth Electoral Act 1918* be repealed and replaced by a new section which provides that the date fixed for the close of the rolls shall be 7 days after the date of the writ.

There is a need to ensure integrity in elections and electoral enrolment. A number of changes to the Commonwealth Electoral Act were instituted by the previous government on the pretext of enhancing electoral integrity.

It is not accepted that it is desirable nor necessary to disenfranchise otherwise eligible electors in order to enhance integrity, especially as there is no credible evidence to suggest that measures like proof of identity for provisional voting have increased that integrity.

A simple comparison of the signature of the voter against the signature of the elector on a previous enrolment form is all that is required. The Australian Electoral Commission has advised it has the ability to do such checks and the Commission should carry out such a check wherever doubt exists in the mind of the Divisional Returning Officer as to the bona fides of the elector who casts a provisional or other declaration vote.

Recommendation 2 (paragraph 3.114)

The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 that require provisional voters to provide proof of identity:

- be repealed; and
- that the *Commonwealth Electoral Act 1918* be amended so that where doubt exists in the mind of the Divisional Returning Officer as to the bona fides of an elector who casts a declaration vote, that the Divisional Returning Officer is to compare the signature of the elector on the declaration envelope to the signature of the elector on a previously lodged enrolment record before making the decision to admit or reject the vote.

At federal elections from 1984 to 2004, the Commonwealth Electoral Act provided for electors who had been removed from the roll on the grounds of alleged non residence, who cast declaration votes for an address in the same electoral division from which they had been removed, to have their House of Representatives and Senate votes admitted to the count. Similarly, where such electors claimed to be enrolled at an address in the same state or territory, but in a different electoral division to that from which their names had been removed, their Senate votes were admitted but their House of Representatives votes were not.

The tradition of providing safety nets, such as allowing the reinstatement of electors in the circumstances outlined above, is consistent with the aim of ensuring electoral legislation does not create unreasonable barriers for those who qualify for enrolment and voting and who, rightfully, expect to be able to exercise their franchise at elections and referenda.

Recommendation 3 (paragraph 3.127)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who has lodged a declaration vote at an election has been removed from the roll by objection action on the ground of non-residence and

(a) the omission occurred after the election prior to the election to which the scrutiny relates, or

(b) where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the omission from the roll was made before the last such redistribution, then:

- if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but
- if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.

In preference to undertaking follow up enrolment action to seek a completed enrolment form, the Commission should amend its declaration envelopes to include a field on which electors may provide their driver's licence number at the time of voting. The provision of such information should be voluntary and its provision should not be deemed necessary in order to determine any elector's eligibility to cast a vote.

In cases where electors voluntarily provide their driver's licence or Australian passport number, or where that elector has previously met the proof of identity provisions for enrolment, the Australian Electoral Commission should be empowered to update the enrolment details of the elector on the basis of the information supplied on the declaration envelope at the time of casting the declaration vote. Similarly, provision of the driver's licence or Australian passport number should be sufficient to classify any elector as having met the proof of identity provisions for enrolment without the necessity to also fill in a new proof of identity compliant enrolment form.

Recommendation 4 (paragraph 3.129)

The committee recommends that the Australian Electoral Commission amend declaration vote envelopes to include fields in which electors may enter their driver's licence or Australian passport number, and:

- in those cases where electors provide a driver's licence or Australian passport number, or the elector has previously met the proof of identity requirements for enrolment, and the information provided on the envelope at the time of voting is sufficient to allow update of the electoral roll, the Australian Electoral Commission should update the roll on the basis of the information provided on the declaration envelopes; and
- in other cases the Australian Electoral Commission undertake appropriate follow up action to encourage the elector to enrol through the normal enrolment process.

Current postal voting arrangements can lead to delays in the delivery and processing of postal vote applications and postal votes. The situation is that some electors are clearly disenfranchised because of postal delivery issues, despite them meeting all obligations in relation to correct lodgement of postal votes. Detailed evidence gathered by the committee has demonstrated how such electors, who post valid postal votes before polling day can be disenfranchised, should their postal vote be one of the less than 10 per cent of mail items that is postmarked by Australia Post. This situation, while generally acknowledged to be an issue in rural and remote areas, applies equally to mail posted at one of the 15,000 post boxes across the country, including those in metropolitan areas.

However, the use of the postmark as a determinant of timeliness remains an independent verification that postal votes have been cast before the close of the poll, notwithstanding the number of postal votes which are ruled ineligible because of Australia Post's administrative arrangements.

There are a number of possible alternatives to the present timeframes and cut-off, including the provision of special election services by Australia Post to validate postal votes posted prior to polling day. On balance, the only solution to this problem that is presently available is to determine the validity of postal votes based on the witness date.

Recommendation 5 (paragraph 3.159)

The government consider amending the *Commonwealth Electoral Act 1918* to:

- allow the date of the witness signature on the postal vote certificate to be the determining date for validity of postal votes; and
- to require postal voters and witnesses to confirm that the required voting actions were completed prior to the close of poll in the state/territory in which the electoral division for which the voter is enrolled, is located.

The requirement to provide both the signature of an applicant and a signature of a witness on postal vote applications can lead to delays where electors make errors in filling out a postal vote application form. There appears to be no strengthening of integrity associated with the provision of witness and applicant signatures on postal vote applications.

There were some 50,000 postal voting applications lodged at the 2007 election which required rectification and it was necessary to write to the electors concerned and request them to resubmit compliant applications. Such practices are clearly time consuming and costly, with no apparent benefit to the integrity of the system arising.

Removing the need for signatures on postal vote applications will allow postal vote applications to be made electronically, significantly reduce the lodgement of defective postal vote applications, provide both savings in time and cost and have no adverse effect on the integrity of postal voting.

Recommendation 6 (paragraph 3.185)

The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to remove the requirement that postal vote applications be signed by an applicant and a witness, in order to facilitate the lodgement of postal vote applications online, electronically, or in written form, to reduce the incidence of postal vote applications being deemed defective, thus leading to delays in the delivery of postal voting packs to electors.

4 Maintaining an effective electoral roll

Overall, the proof of identity changes for enrolment have served to restrict the franchise. However, all electors, not just first time enrollees, should be required to prove their identity, but, once they have complied with the proof of identity requirements on the first occasion, that fact should be recorded on the electoral roll and they should not have to meet those requirements again, except when changing name.

The current arrangements for tiers 2 and 3 of the proof of identity scheme are burdensome and they disadvantage some Australians. Further, the current hierarchical arrangement for proof of identity, which sees different weightings applied to the various tiers, is unnecessary and overly complicated.

Recommendation 7 (paragraph 4.54)

The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 which provide that proof of identity for enrolment purposes be required, be amended to:

- require that proof of identity be required for each elector once only; and
- that proof of identity may be established by the provision of a drivers licence number, Australian passport number, or the signature of another person on the Commonwealth electoral roll who shall witness and attest to the identity of the applicant. Any one of these are to be considered as acceptable forms of proof of identity for electors enrolling within Australia.

A further effect of the proof of identity measures was to require that all changes to the electoral roll initiated by electors required them to submit a fully proof of identity compliant enrolment form. The repeal of section 105(1)(ba) of the Commonwealth Electoral Act has severely restricted the ability of the Australian Electoral Commission to act on information provided by electors. Prior to repeal of this section, the Commission was able to update the electoral roll on the basis of information provided by electors on declaration envelopes and elector information reports lodged with the Commission or other electoral authorities at the time of voting.

There is no need to impose barriers or to make electors jump a series of hurdles in order to exercise the franchise which should be freely available to those who are entitled to exercise it. Section 105(1)(ba) should be reinstated to the Commonwealth Electoral Act in a form that will allow the Australian Electoral

Commission to alter the address details of enrolled electors who have previously satisfied the proof of identity measures for enrolment, on the basis of information provided by electors in written form.

Recommendation 8 (paragraph 4.62)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to reinstate section 105 (1)(ba) in a form that will allow the Australian Electoral Commission to alter the address details for enrolled electors who have previously satisfied the proof of identity measures for enrolment, on the basis of information provided by electors in written form to the Australian Electoral Commission.

There is a history of enrolment decline between elections, and there is substance to the theory that an impending election is one of the best catalysts for electors to take enrolment action. Increased efforts must be made in between elections to continue growth.

A mix of strategies is required to arrest the decline in enrolment and to bring the roll up to a level that reflects the proportion of the population eligible to be electors. The mix must include some newer, more streamlined ways to facilitate and encourage interactions between electors and the Australian Electoral Commission.

The enrolment website concept proposed by the Australian Electoral Commission is a move in the right direction and presents opportunities for more timely, direct interaction between electors and the Commission. Under the Commission's proposal, no unauthorised person will be permitted to access elector records for the purposes of updating the roll. Electors who have satisfied proof of identity integrity checks will be permitted to transmit data by that facility to the Commission, who in turn will carry out the same level of data integrity checking as is currently performed on hard copy enrolment forms received.

The Australian Electoral Commission is confident that the existing integrity processes for enrolment update are sufficient to support online receipt of updated enrolment information from electors.

Recommendation 9 (paragraph 4.143)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for the creation, implementation and maintenance of an enrolment website designed to facilitate the receipt and use of information provided electronically by enrolled electors, in order to update the electoral roll.

Such a facility should only be provided for use by currently enrolled electors, who must be required to provide sufficient information to satisfy the Australian Electoral Commission that they are in fact the elector to whom the information relates, in the absence of a signature from the elector.

The facility must not allow any unauthorised access to the electoral roll and must not permit information contained on the electoral roll to be accessed or amended directly by any person other than an appropriately authorised Australian Electoral Commission officer.

Information provided through the facility must only be used by authorised Australian Electoral Commission officers to update the electoral roll, where that information has been subjected to and satisfies the same data integrity checks as is performed on information received through the submission of signed enrolment form.

Some electors expect information provided to one government agency will be used to update the electoral roll, or at least, that they hold an expectation that such updates are possible. Electors who provide information to government agencies like Centrelink, which have stringent proof of identity processes of their own, should be permitted to allow the agency to provide data to the Australian Electoral Commission for the purposes of directly updating the electoral roll.

There are two elements to such a process which are necessary to ensure that the process has the required degree of integrity. The first is that the elector must provide their proactive and specific consent to opt in for the data to be used to update the electoral roll. The second is that there must be surety that the proof of identity processes used by the respective government agencies have sufficient integrity to maintain the confidence of stakeholders. It is appropriate that the Minister approve the agencies from which the Australian Electoral Commission receive data for the purposes of effecting direct update to the electoral roll.

Recommendation 10 (paragraph 4.150)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the Australian Electoral Commission to receive and use information for the purposes of directly updating the electoral roll, where that information has been:

- provided by an elector or electors to an agency approved by the Minister as an agency which performs adequate proof of identity checks; and
- the elector or electors have indicated their proactive and specific consent to opt in for the information to be used for the purposes of directly updating the electoral roll, and
- the data has been provided by that agency to the Australian Electoral Commission for the purposes of updating the electoral roll.

Whilst there have been calls for enrolment to be granted automatically to those entitled to exercise the franchise, there are concerns that the dynamic nature of the roll, combined with the requirement that an elector must reside at an address for a specified period before being entitled to enrol in respect of that address work against moving to an automatic enrolment model.

However, the proof of identity processes required to establish a person's eligibility to become an Australian citizen are sufficiently rigorous to enable applicants to be admitted to the roll, firstly on a provisional basis, as is currently the case, with the voting franchise granted once the applicant has become an Australian citizen and they provide their proactive and specific consent to opt in.

Recommendation 11 (paragraph 4.159)

The committee recommends that in order to facilitate the enrolment of new citizens, that:

- section 99A be amended to allow that a person who makes an application to become an Australian citizen in accordance with the *Australian Citizenship Act 2007*, be provisionally enrolled on the Commonwealth electoral roll at the time of making the application for citizenship, where they provide proactive and specific consent to opt in, with voting entitlement gained automatically once Australian citizenship has been granted; and
- section 99B of the *Commonwealth Electoral Act 1918*, which provides that applicants for citizenship may apply for provisional enrolment in an election period, should be repealed as the amended section 99A will render it unnecessary.

There is merit in lowering the provisional enrolment age to 16 years of age, especially given that the rate of 16 year olds in full time study is significantly greater than the rate of 17 and 18 year olds.

Encouraging electoral involvement whilst the majority of younger Australians are in schools will have a twofold effect. Firstly, potential electors will be identified and encouraged to enrol at an earlier age, thus assisting the Australian Electoral Commission to engage with them at the optimum age to encourage continued involvement in the electoral process. Secondly, the Commission will be able to utilise the 'school bounty scheme' (discussed in chapter 5) as an incentive for education providers to encourage younger Australians to maintain up to date enrolment details, whilst such involvement might also encourage education providers to discuss the electoral process with young people on a more regular basis.

Recommendation 12 (paragraph 4.172)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to change the minimum age for provisional enrolment from 17 to 16 years.

The committee has recommended a number of changes to the enrolment provisions of the Commonwealth Electoral Act in order to encourage greater participation and to remove some of the barriers to enrolment which currently exist.

There are benefits to be gained from achieving a much higher degree of harmonisation between the different systems and the Commonwealth government should enter into discussions with state and territory governments with a view to achieving a greater degree of harmonisation.

Recommendation 13 (paragraph 4.177)

The committee recommends that the Australian Government enter into discussions with the State and Territory governments with a view to achieving a harmonised enrolment regime which leads to the use of a single enrolment form or enrolment process for the purposes of Commonwealth and state/territory enrolment.

5 Election and enrolment — State and Territory issues

One area where an additional program can be delivered at a state and territory level at relatively minor cost is to introduce a 'bounty' scheme to schools and other educational institutions in order to encourage the promotion of enrolment amongst students. Such a bounty should be paid on a \$ per enrolment form collected by each school.

The introduction of such a scheme nationwide would complement other changes suggested by the committee in this report, including provisional enrolment for 16 year olds and online enrolment update (see chapter 4). Both of these changes are designed to facilitate greater participation in the electoral process especially by young Australians.

Recommendation 14 (paragraph 5.62)

The committee recommends that, in order to encourage the enrolment of young Australians, the Australian Electoral Commission introduce a national 'Schools Bounty Scheme' under which government and non-government schools, universities and technical colleges and the like would receive a specified amount for valid enrolment forms collected and forwarded to the Australian Electoral Commission.

It is important that the Australian Electoral Commission national office and state and territory offices work closely together to improve enrolment participation by determining:

- what strategies work best at a national level
- whether successful state-based strategies might also be effective in other jurisdictions; and
- whether any particular strategies are indeed only relevant to a single jurisdiction.

The committee encourages the Australian Electoral Commission to examine these issues closely, with a view to ensuring national consistency wherever possible in the state/territory-based activities and strategies undertaken to facilitate roll management activities.

Recommendation 15 (paragraph 5.71)

The committee recommends that the Australian Electoral Commission ensure national consistency wherever possible in the state/territory-based activities and strategies undertaken to facilitate roll management activities.

There is merit in developing state and territory-based enrolment targets that reflect each jurisdiction's contribution to the current national target of having 95 per cent of potential electors enrolled. Such targets should be part of the Australian Electoral Commission's internal performance management framework to underpin the national target and be reported in the agency's annual report.

Recommendation 16 (paragraph 5.73)

The committee recommends that the Australian Electoral Commission develop state and territory-based enrolment targets that reflect the contribution that is expected by each state and territory to the national enrolment target. Such targets should take account of the particular challenges faced in each state and territory and be reported annually in the Australian Electoral Commission's annual report.

6 Increasing the participation of Indigenous and homeless electors

While many of the factors that reduce participation by Indigenous electors are not directly within the Australian Electoral Commission's control, efforts by the Commission to engage Indigenous electors and provide flexible voting services will, nevertheless, make a difference to lifting Indigenous participation.

The re-introduction of an ongoing program to engage Indigenous electors is an essential element for enabling greater participation by Indigenous electors. The proposal put forward by the Australian Electoral Commission should form the basis for such a program. The costs of establishing such a program and providing for its continued operation are significant and the committee welcomes the Australian Government's commitment in the 2009-10 Budget to allocate \$13 million to such a program over the next four years.

Additional flexibility for mobile polling at town camps would complement the establishment of such a program.

Recommendation 17 (paragraph 6.47)

The committee recommends that the Australian Government provide ongoing and appropriate funding for the Australian Electoral Commission to establish, deliver and maintain a program similar in purpose to the former Aboriginal and Torres Strait Islander Electoral Information Service program to provide ongoing engagement with Indigenous electors.

Recommendation 18 (paragraph 6.48)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the provision of remote mobile polling at town camps, such as in Darwin and Alice Springs.

The itinerant voting provisions of the Commonwealth Electoral Act do not provide sufficient flexibility to facilitate the enrolment of many homeless electors. The incorporation of a definition of homelessness within the Act, as adopted in Victorian electoral legislation, will facilitate the enrolment of electors who

otherwise find it difficult to enrol and maintain their enrolment under the itinerant enrolment provisions.

Recommendation 19 (paragraph 6.99)

The committee recommends the *Commonwealth Electoral Act 1918* be amended to incorporate a definition of homelessness modelled on those in the Victorian *Electoral Act 2002* to facilitate enrolment or continued enrolment of homeless persons. This definition should include persons living in:

- crisis accommodation; or
- transitional accommodation; or
- any other accommodation provided under the *Supported Accommodation Assistance Act 1994*.

The limited flexibility of the mobile polling provisions under the Commonwealth Electoral Act do not provide for the provision of targeted voting services to homeless people.

Recommendation 20 (paragraph 6.102)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow mobile polling and/or pre-poll facilities to be provided at such locations and at such times as the Australian Electoral Commission deems necessary for the purposes of facilitating voting.

For example, mobile polling or pre-poll facilities should be able to be provided where there is likely to be sufficient demand for such facilities by homeless and itinerant electors, or in such other circumstances as warrant their use.

Where electors seek assistance from electoral officials, it is important that electoral officials treat each elector with respect and understanding. Client-specific training should be part of the training package for all polling officials where appropriate.

Recommendation 21 (paragraph 6.104)

The committee recommends that the Australian Electoral Commission ensure that staff engaged in providing advice or services to electors with special needs (eg homelessness, sight impaired) be provided with appropriate training on how to communicate effectively and with sensitivity to the needs of such electors.

7 Responding to the increased demand for early voting

At the 2007 federal election, more than 2 million of the 13.3 million votes issued were early votes. The trend to early voting now sees almost one in five electors casting their vote before polling day.

A significant implication of the trend to increased numbers of early and declaration votes is the extra time taken for the election result to become clear as the Australian Electoral Commission undertakes the additional scrutiny processes required. The Commission's proposal to ameliorate these effects by issuing home division pre-poll votes – which account for around 60 per cent of all pre-poll votes – as ordinary votes, is supported. This would allow a significant number of extra votes to be counted on election night.

Electors who cast such votes should be required to sign a declaration that can be kept for evidentiary purposes – in a similar manner to the standards of integrity that are applied to declaration votes.

Recommendation 22 (paragraph 7.74)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow pre-poll votes cast at a pre-poll voting centre in an elector's home division prior to polling day to be cast as ordinary votes, wherever practicable.

Recommendation 23 (paragraph 7.75)

The committee recommends that, in order to ensure a continuing high standard of integrity applies to votes cast as home division pre-poll votes, electors who cast ordinary votes at pre-poll voting centres should still be required to sign a declaration at the time of voting, indicating that they are entitled to a pre-poll vote. A record of such declarations is to be kept by the Australian Electoral Commission for evidentiary purposes.

Recommendation 24 (paragraph 7.76)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require pre-poll votes cast as ordinary votes in an elector's home division prior to polling day to be counted on polling night in the same manner as ordinary votes cast in polling places on polling day, wherever practicable.

A complementary change would be to broaden eligibility for an early vote to include an elector being absent from their home division on election day. With thousands of absent votes being cast in divisions adjoining an elector's home division, such a change is likely to lead to a lower number of absent votes as

electors who are unable to vote within their division on polling day, take up the opportunity to vote in a pre-poll centre.

The effect of such a change would be that votes previously cast as absent votes could be issued as ordinary home division pre-poll votes. There would be no change to the high standard of integrity that applies to these votes, with the committee recommending earlier that a signed declaration continue to be required.

Recommendation 25 (paragraph 7.79)

The committee recommends that schedule 2 of the *Commonwealth Electoral Act 1918* be amended to provide that being absent or expecting to be absent from an elector's home division on polling day be a valid ground of application for postal or pre-poll voting.

Eligibility for an early vote should be broadened to allow electors who fear for their personal safety to be given a wider range of opportunities to cast their vote.

Recommendation 26 (paragraph 7.80)

The committee recommends that schedule 2 of the *Commonwealth Electoral Act 1918* be amended to allow fear for personal safety to be a ground for applying for pre-poll or postal votes.

Wherever possible, the Australian Electoral Commission should conduct as much of the preliminary scrutiny of pre-poll and postal votes received in home divisions before polling day as possible, prior to polling day, in order to increase the number of early votes counted in a timely manner following the close of the polls. Such a move should facilitate earlier counts for these votes and provide more timely information about the election result.

Recommendation 27 (paragraph 7.86)

The committee recommends that, where possible, the Australian Electoral Commission should, prior to polling day, conduct as much of the preliminary scrutiny of pre-poll and postal votes on hand in home divisions as is possible, in order to increase the number of early votes counted in a timely manner following the close of the polls.

Additional flexibility should be introduced into mobile polling arrangements to allow the Australian Electoral Commission to provide better services to electors in certain circumstances. The committee's recommendation in relation to how mobile polling can be applied to homeless and Indigenous electors (see chapter 6), is equally applicable to special hospital mobile polling as well as instances where the Commission considers that mobile polling is an appropriate strategy to service voting needs, such as at major sporting and other social events that coincide with an election period.

In relation to mobile polling and other polling services targeting mine workers, the committee endorses a range of improvements to provide better services to these electors.

Recommendation 28 (paragraph 7.106)

The committee recommends that the Australian Electoral Commission implement its proposed mobile polling and other election services to cater for mine workers in Western Australia for future elections. Such arrangements should also be provided in other states with a large number of mine workers such as Queensland and South Australia.

In relation to special hospital mobile polling services, additional flexibility should be provided, including amending the definition of ‘hospital’ and ‘special hospital’ to reflect the types of facilities covered by section 41-3 of the *Aged Care Act 1997*. In addition, the time period for conducting mobile polling at special hospitals should be extended from five days before polling day to twelve days before polling day.

Staff working in residential aged care facilities should also be able to cast a vote at the mobile polling facility.

Recommendation 29 (paragraph 7.109)

The committee recommends that the definition of ‘hospital’ and ‘special hospital’ in the *Commonwealth Electoral Act 1918* be amended to reflect the current definitions of aged care under the *Aged Care Act 1997*, and that any person residing or working in a residential aged care facility, including staff, should be able to vote at the mobile polling facility.

Recommendation 30 (paragraph 7.110)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to extend the period during which special hospital mobile polling may be conducted, to 12 days before polling day.

Of those electors who had admitted to multiple voting at the 2007 election, 82 per cent cited confusion, poor comprehension or were aged — of those in the aged category, 98 per cent were aged 70 or over. In order to reduce confusion about whether an elector has already voted at an election and to reduce the number of instances where electors vote more than once, the presiding officer of a mobile polling team should provide patients or residents of hospitals or special hospitals who have voted with that mobile polling team with a receipt or letter, to indicate that they have, on that date, cast a vote with that mobile polling team.

Recommendation 31 (paragraph 7.112)

In order to mitigate against possible accidental multiple voting, the committee recommends that the presiding officer of a mobile polling team be required to provide patients and residents of hospitals or special hospitals who vote with that mobile polling team, with a receipt or letter to indicate that they have, on that date, cast a vote with that mobile polling team.

While the Australian Electoral Commission can face limited choices about the siting of pre-poll voting centres, every effort should be made to ensure that political parties and candidates have the opportunity to provide relevant information to electors. Where possible, the Commission should engage in discussions with shopping centre management aimed at facilitating campaign activity around pre-poll voting centres located within shopping centres and seek to formalise these arrangements before an election is announced so that political parties and candidates are aware of what activity will be permitted.

For a range of reasons, not all pre-poll facilities will be able to provide unlimited access for campaign workers. Where such access is not possible, the Australian Electoral Commission should work with the political parties and candidates to find other solutions, such as providing a dedicated space at the entrance to such facilities where campaign workers may offer how to vote material or, alternately arrange for the provision of a table or counter where such material can be made available to electors.

Recommendation 32 (paragraph 7.122)

The committee recommends that where a pre-poll voting centre (which may be a Divisional Returning Office) is to be located within a shopping centre, the Australian Electoral Commission work with shopping centre management to arrange appropriate access by campaign workers during the times where voting is possible, including where appropriate, specifying a requirement as part of its lease arrangements, that provides full access for parties and candidates to conduct their how to vote activities. Where such an arrangement is not feasible, the Australian Electoral Commission should ensure that political parties and candidates are advised of the alternative arrangements to be put in place to allow how to vote material to be made available in these centres.

Decisions about the relative complexity of the postal vote application form essentially involve judgements about the level of material that is considered necessary or essential and what content, if any, is of less importance. Legal advice received by the Australian Electoral Commission indicates that the provision of information in relation to an elector's eligibility to cast an early vote is an essential

part of the application. Other elements of the application, however, might be simplified, or even excluded entirely, depending on judgements made by the Commission and advice provided by other stakeholders.

On balance, the postal vote application should be changed to a more user friendly style and that only that section of the form requiring completion by an applicant for a postal vote be gazetted as the approved form. Such an approach will be complementary to the committee's recommendation regarding the removing requirement for a applicant and witness signatures on the application in order to facilitate lodgement online, electronically or in printed form (see recommendation 6).

Recommendation 33 (paragraph 7.148)

The committee recommends that, in conjunction with the recommendation removing the requirement for applicant and witness signatures, the postal voting application form:

- be made simpler and more user-friendly;
- be gazetted at least 3 months prior to the expected date of an election where practicable; and
- only that section of the form requiring completion by an applicant for a postal vote be gazetted as the approved form.

8 Formality issues

The reduction of informality recorded at the 2007 election compared to the 2004 elections is welcomed. While the decline in the overall informality rate is a positive outcome, concerns remain about the persistently high levels of informality recorded in some divisions, particularly in south western Sydney.

Although harmonisation of voting systems appears to provide some opportunity to reduce informality, it is not necessary to harmonise this aspect of electoral arrangements — decisions about what voting system is appropriate for each jurisdiction should be left to each respective parliament to determine.

With the drivers of higher informality generally well understood, it is important that the Australian Electoral Commission continue its efforts to address informality, particularly in areas that consistently record relatively high levels of informality.

Recommendation 34 (paragraph 8.38)

The committee recommends that the Australian Electoral Commission increase efforts to improve electors' understanding of the federal voting systems and take appropriate measures to reduce the rate of informal voting, especially in electorates with a high percentage of electors from non-English speaking backgrounds.

Full preferential voting for House of Representatives elections is supported. That said, it is important that where an elector expresses a clear preference but makes a mistake when completing the ballot paper, the vote should be included in the count up to the point where the mistake is made.

The savings provisions that existed in the Commonwealth Electoral Act between the 1984 and 1996 elections, to include those ballot papers where there are non consecutive numbering errors in the count up to the point at which the numbering errors began, should be reinstated.

While the Australian Electoral Commission has noted the potential re-emergence of campaigns advocating for optional preferential voting, this does not justify the exclusion of up to 90,000 votes where electors have expressed clear preferences for a number of candidates but may have made mistakes in numbering their ballot paper.

The reinstatement of such a provision would need to be accompanied by an appropriate penalty provision to deter the advocacy of a vote other than in accordance with full preferential voting

Recommendation 35 (paragraph 8.73)

The committee recommends that:

- Section 240 (2) of the *Commonwealth Electoral Act 1918*, which provides that the numbers on House of Representatives elections ballot papers are to be consecutive numbers, without the repetition of any number, be repealed, and
- the savings provision contained in paragraph 270 (2), repealed in 1998, which provided that in a House of Representatives election in which there were more than three candidates, and where a full set of preferences was expressed on the ballot paper, but there were non-consecutive numbering errors, the preferences would be counted up to the point at which the numbering errors began, at which point the preferences were taken to have 'exhausted', be reinstated to the *Commonwealth Electoral Act 1918*, and

- the Government amend the *Commonwealth Electoral Act 1918* to provide a penalty provision sufficient to deter the advocacy of 'Langer style voting'.

The closeness of the result in the division of McEwen and the resulting Court of Disputed Returns petition was a relatively rare event in the context of federal elections. That said, the reversal of almost one-quarter of the Australian Electoral Officer's decisions in respect of the 643 reserved ballot papers is of concern and may be seen as putting community confidence in election results at risk. There is also the possibility of increased disputation, as candidates in tight election contests may be encouraged to take their chances by having the results of elections reviewed by a different decision maker.

The review process adopted by the Australian Electoral Commission following the decision by the Court of Disputed Returns on the McEwen petition is supported and the proposed response by the Commission in implementing the recommendations of the review should provide for a greater understanding by electoral officials and scrutineers about rulings on formality.

Recommendation 36 (paragraph 8.112)

The committee recommends that the Australian Electoral Commission adopt all recommendations contained in the report entitled *Review of Ballot-Paper Formality Guidelines and Recount Policy* prepared for the Australian Electoral Commission by Mr Alan Henderson, except for recommendation A(v) which is the subject of recommendation 37.

It is of concern that those ballot papers which were considered formal by the Divisional Returning Officer, even though they did not contain the initials of an issuing officer nor a watermark, were not annotated by the Officer in such a way as to reflect the requirements of section 268(2) of the *Commonwealth Electoral Act*. Section 268(2) should be amended to require a Divisional Returning Officer who rules a ballot paper to be formal despite the ballot paper not containing either the initials of a issuing officer or the official mark, to annotate the ballot paper with the words 'I am satisfied that this is an authentic ballot paper'.

This would be complementary to the Australian Electoral Commission's suggestion to amend the wording of section 209A in order to allow for ballot papers to be printed with a 'feature approved by the Electoral Commission'. In combination, these amendments will serve to eliminate confusion about ballot paper formality.

Recommendation 37 (paragraph 8.113)

The committee recommends that section 268(2) of the *Commonwealth Electoral Act 1918* be amended to provide that in those cases where the Divisional Returning Officer responsible for considering the question of the formality of a ballot paper, is satisfied that the ballot paper is not informal, because the Divisional Returning Officer is satisfied that it is an authentic ballot paper on which a voter has marked a vote, the Divisional Returning Officer be required to annotate the ballot paper with the words 'I am satisfied that this is an authentic ballot paper'.

Recommendation 38 (paragraph 8.118)

The committee recommends that paragraph 209A(b) of the *Commonwealth Electoral Act 1918* and paragraph 25A(b) of the *Referendum (Machinery Provisions) Act 1984* be repealed, and replaced with the words 'a feature approved by the Electoral Commission'.

9 Modernisation and sustainability of electoral administration

The Australian Electoral Commission, like many public sector organisations, faces significant cost pressures in the delivery of its services and the need to find savings to meet savings targets imposed by a whole of government efficiency dividend. As a public sector agency, the Commission should not be immune from the overall objectives of such a policy, which encourages agencies to innovate and become more efficient in the delivery of services.

The 2009-10 Budget did not address the issue of the application of the efficiency dividend to small agencies, as examined in 2008 by the Joint Standing Committee on Public Accounts and Audit. Further, the 2009-10 Budget included an additional \$6 million of savings over four years from a range of activities, including electoral education services in several capital cities.

Recommendation 39 (paragraph 9.27)

The committee recommends that the Australian Electoral Commission be resourced appropriately in order that it continue to provide high quality electoral services to the Australian population and to do so in a manner that does not compromise the integrity of the electoral system.

The National Tally Room plays an important part in elections and should be provided by the AEC at future elections. For a voting population that includes persons from every element of Australia's diverse population and who are, for that one night, focussed on the electoral process more intently than at any other point in time, the National Tally room represents a transparent and accessible

symbol of actual participation in the most inclusive electoral process in the world, one which determines the future of the nation.

Recommendation 40 (paragraph 9.44)

The committee recommends that the Australian Electoral Commission be required to continue with staging the National Tally Room at future elections.

The Australian Electoral Commission's proposals that more flexible arrangements be established for the authorisation of approved forms are supported. Such an approach will allow the Commission to design forms that are targeted at different groups of electors and initiatives and facilitate the design of forms for the types of electronic transactions that the committee has supported in this report relating to updating enrolment details and applying for postal votes (see chapters 3 and 4).

Recommendation 41 (paragraph 9.50)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide a flexible regime for the authorisation by the Australian Electoral Commission of approved forms, which will:

- allow for a number of versions of an approved form;
- enable forms to be tailored to the needs of specific target groups; and
- facilitate online transactions.

Giving the Australian Electoral Commission additional flexibility to share workloads across its divisional offices within a state or territory will lead to a more effective use of resources within the Commission.

That said, the divisional office structure, which gives the Australian Electoral Commission a physical presence in almost all of the 150 divisions across the country, is a significant asset to the Commission. The physical presence of a Commission office and dedicated staff in a division give the Commission a capacity to draw on local knowledge and experience when conducting roll maintenance activities and delivering electoral education. The administrative and electoral capacity, or the importance of maintaining divisional offices, should not be reduced.

Recommendation 42 (paragraph 9.58)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the Australian Electoral Commission to manage its workloads in non-election periods by allowing enrolment transactions to be processed outside the division for which the person is enrolling, provided that those transactions are processed by a division that is within the same state or territory. This will permit workloads to be managed in the same manner as is currently permitted during election periods.

At recent elections in their jurisdictions, the ACT, Western Australian, Queensland and Victorian Electoral Commissions have used electronic means to mark electors' names from the roll before providing them with ballot papers, either on polling day at some or all polling places, or at some, or all, pre-poll voting centres. At the ACT Legislative Assembly election in 2008, no hardcopy certified lists were used at all – total reliance was placed on personal data assistant devices as the storage medium for the lists of voters, and the hardcopy lists (one per polling place) which were provided as an emergency backup did not have to be used.

There are considerable benefits for the Australian Electoral Commission in being able to use electronic certified lists in some situations. It is important that if such lists are to be used, appropriate security measures be put in place, such as those used by the ACT Electoral Commission for the 2008 ACT election, to protect the security of the equipment and data.

Recommendation 43 (paragraph 9.66)

The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to enable the use of electronic certified lists in polling places and pre-poll voting centres, with appropriate measures implemented to ensure the security of the equipment and data.

The Australian Electoral Commission have outlined a number of 'technical' and 'operational' amendments to the Commonwealth Electoral Act that the Commission considers necessary to update and modernise sections of legislation.

The changes suggested by the Commission to make electoral legislation clearer (in the case of technical changes), or work more efficiently (in the case of operational amendments) are supported.

Recommendation 44 (paragraph 9.72)

The committee recommends that the technical and operational changes proposed by the Australian Electoral Commission in submission 169, Annex 10, with the exception of those relating to photographing and photocopying of the roll (s 90A), (see recommendation 52) and prisoner voting (ss 93(8AA), 208(2)(c) and 221(3)) (see recommendation 47), be incorporated into the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* when other amendments to these Acts are progressed.

Throughout the report a number of changes have been recommended relating to the Commonwealth Electoral Act. Wherever appropriate, consequential changes should also be made to the Referendum (Machinery Provisions) Act.

Recommendation 45 (paragraph 9.74)

The committee recommends that any recommendations in this report that propose amending the *Commonwealth Electoral Act 1918* should, where also appropriate, be incorporated into the *Referendum (Machinery Provisions) Act 1984*, to ensure consistency between the provisions applying to elections and referenda.

10 Modernising regulatory arrangements

Penalties imposed by the Commonwealth Electoral Act are, in some cases, significant. For example, electoral bribery is subject to a penalty of \$5,000 or imprisonment for two years, or both.

While the committee intends to examine in detail the events in the division of Lindsay once court proceedings are concluded, the court judgements in several of the cases relating to the events in the division of Lindsay, where fines of less than \$1,000 were imposed, have clearly demonstrated that the penalties imposed under the Commonwealth Electoral Act for the distribution of unauthorised material are inadequate.

Recommendation 46 (paragraph 10.23)

The committee recommends that the penalties imposed under s 328 of the *Commonwealth Electoral Act 1918* (\$1,000 for a natural person and \$5,000 for a body corporate) be revised to ensure that they provide a greater deterrent.

11 Other issues

The decision of the High Court of Australia in *Roach v Electoral Commissioner* has implications for the application of the current provisions in the Commonwealth Electoral Act in relation to the voting rights of prisoners.

It is necessary to amend the Commonwealth Electoral Act to repeal those provisions found to be unconstitutional by the High Court of Australia. The previous three-year disqualification is appropriate.

Recommendation 47 (paragraph 11.12)

The committee recommends that the Government amend the *Commonwealth Electoral Act 1918* to reinstate the previous three-year disqualification for prisoners removed from s 93(8)(b) in 2006, to reflect the High Court of Australia's judgement in *Roach v Australian Electoral Commissioner* that s 93(8AA) and s 208(2)(c) are constitutionally invalid.

Electors who are travelling overseas with an intention to take up residence in another country are required to notify the Australian Electoral Commission and take appropriate steps to maintain their enrolment. The taking of actions such as these are valid indicators of electors' actual and continuing interest in Australian electoral politics and their preparedness to act on their franchise.

Requirements for eligible overseas electors to regularly update their enrolment and vote in Australian elections are appropriate and form a valid method of measuring whether a continuing interest in Australian political affairs exists. The existing eligibility provisions relating to eligible overseas electors in the Commonwealth Electoral Act are supported.

Recommendation 48 (paragraph 11.39)

The committee recommends that current provisions of the *Commonwealth Electoral Act 1918* regarding the eligibility of overseas electors to enrol and vote at elections be retained.

A previous recommendation, in a separate report on electronic voting by the committee for the discontinuation of electronically assisted voting as conducted at the 2007 election, has not closed the door on electronic voting. Changed circumstances, including improvements in technology and higher levels of demand may lead to electronic voting or other alternatives being reconsidered at some time in the future.

The Australian Electoral Commission's continued efforts to examine alternative approaches for assisted voting for electors who are blind or have low vision are welcomed. The Commission's efforts to develop alternative arrangements that will

provide secret and independent voting for electors who are blind or have low vision that are viable and that will be sustainable over the longer term are supported.

Recommendation 49 (paragraph 11.44)

The committee recommends that the Australian Electoral Commission continue to work with organisations representing electors who are blind or have low vision to investigate the viability and sustainability of assisted voting arrangements aimed at providing secret and independent voting for electors who are blind or have low vision.

A table in section 90B of the Commonwealth Electoral Act sets out the persons and organisations to whom the Australian Electoral Commission must give information in relation to the rolls and certified lists of voters, and specifies the information to be given and the circumstances in which it is to be given. Items 7 to 10, 11 to 14, and 15 in the table specify information to be given to Senators and Members of the House of Representatives; all of those items refer to the supply of ‘a copy’ or ‘copies’ of either certified lists or rolls, and thereby require the supply of hardcopy documents.

The Australian Electoral Commission’s proposal that the Commonwealth Electoral Act be amended to provide for the supply of a copy of a roll or certified list in electronic format, rather than just a hard copy format, where a Senator or Member of the House of Representatives elects to do so, is supported.

Recommendation 50 (paragraph 11.48)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended so that:

- where an item in the table in s 90B of the Act entitles a Senator or Member to receive one copy of a roll or certified list, that item be amended to permit the Senator or Member to opt for the relevant copy to be supplied in electronic rather than hardcopy form; and
- where an item in the table in s 90B of the Act entitles a Senator or Member to receive three copies of a roll or certified list, that item be amended to permit the Senator or Member to opt to receive one of the copies in electronic rather than hardcopy form, and to receive either zero, one or two hardcopies.

There is not necessarily a single ‘correct’ system by which surplus votes for Senate candidates are transferred when a candidate is elected or eliminated from the count. The existence of anomalies, such as that which lead to a change in counting system from the inclusive Gregory method to the weighted inclusive Gregory

method for upper house elections in Western Australia, does not reduce the legitimacy of a voting system.

Proposed changes in segmentation arrangements to a 'reiterative' approach are not supported. Although counting under the current system is conducted by computer, the committee considers that one of its strengths is that it can be conducted manually if necessary, thereby providing greater transparency and redundancy than a counting system that may only be conducted by computer. There appears to be no benefit in moving to a new counting system when the system that is currently used has general acceptance and legitimacy.

Recommendation 51 (paragraph 11.77)

The committee recommends that the current counting system used for Senate elections be retained.

Companies providing proof of identity services for the financial sector are provided with limited information (name and address only) from the electoral roll. The use for which this roll information may be used is strictly limited to identity verification for the purposes of the *Financial Transaction Reports Act 1988* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. The roll information must not be used for any other purpose. Subsection 90B(4) of the Commonwealth Electoral Act does not permit the Australian Electoral Commission to provide date of birth information for these purposes.

A very high value is placed on ensuring that, wherever possible, elector information should remain private and that there be no wider secondary use of such information. Such an approach is required to ensure that potential electors are not dissuaded from enrolling because they hold a perception that their information will be shared across a number of spheres for non-electoral related purposes.

The current arrangements relating to the provision of electoral roll information to prescribed organisations for the purposes of identity verification under the *Financial Transaction Reports Act 1988*, or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, should be retained.

Recommendation 52 (paragraph 11.93)

The committee recommends that the current arrangements relating to the provision of electoral roll information to prescribed organisations for the purposes of identity verification under the *Financial Transaction Reports Act 1988* or carrying out customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* be retained.

On a related matter, s 90A of the Commonwealth Electoral Act does not explicitly prohibit the photographing and photocopying of the roll that is available for public inspection. The Australian Electoral Commission suggested that if the recording of the roll by electronic device is not stopped, it will allow for the recording of electoral roll information on a large scale and potentially result in inappropriate use of electoral roll information.

Given the pace of technological developments, it is important to specify that making a copy or copies of the electoral roll that is available for public inspection should be prohibited, whilst recognising also that it may still be necessary for authorised persons to copy the information for legitimate purposes.

Recommendation 53 (paragraph 11.96)

The committee recommends that the current provisions of the *Commonwealth Electoral Act 1918* relating to the inspection of electoral rolls be amended to explicitly prohibit the unauthorised photographing or photocopying of any roll that is made available for public inspection.