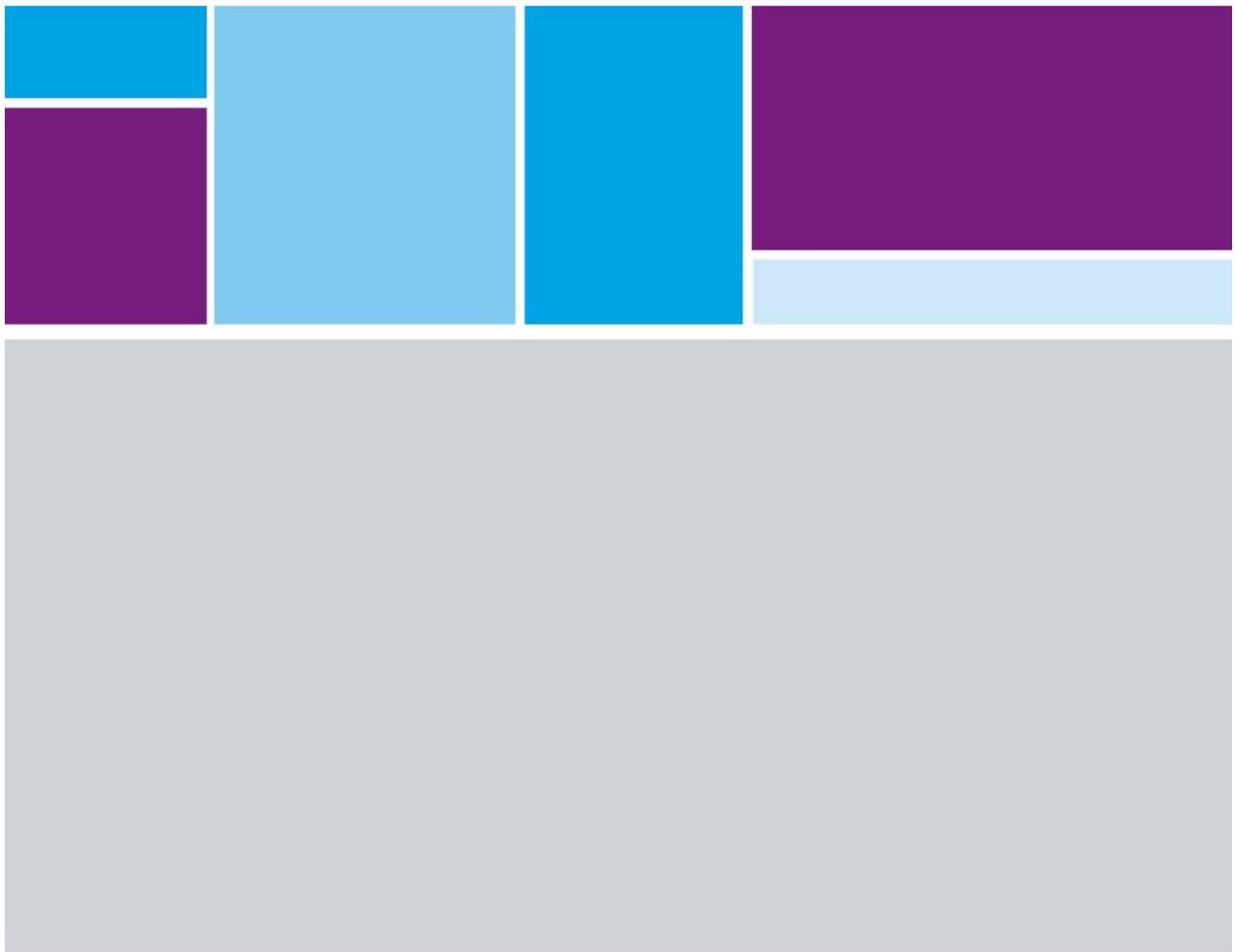


Second Supplementary Submission to the Joint Standing Committee on Electoral Matters on the Conduct of the 2010 Federal Election

24 May 2011



AEC

Australian Electoral Commission

Contents

1. Introduction.....	2
2. Enrolment.....	3
2.1 Enrolment mechanisms.....	3
2.2 Election specific enrolment integrity checks	6
2.3 External assessment of roll integrity.....	8
3. Redistributions.....	11
3.1 Background.....	11
3.2 Timing of redistributions	12
3.3 Period for review of further objections	15
3.4 Consideration of 'anticipated' projection times.....	17
4. Party Registration and Candidate Nominations	19
4.1 Remove gazettal requirements for party registration	19
4.2 Addressing large Senate ballot papers.....	20
5. Polling.....	25
5.1 Number of polling staff	25
6. Counting	26
6.1 Re-count of Senate votes to determine order of election in event of a double dissolution.....	26
7. Administration.....	33
7.1 Approved forms.....	33
8. Summary of Recommendations.....	34

1. Introduction

1.1.1 On Tuesday 23 November 2010, the Special Minister of State, the Honourable Gary Gray AO MP, requested the Joint Standing Committee on Electoral Matters (JSCEM) to inquire into and report on all aspects of the 2010 federal election and matters related thereto. This submission is supplementary to those already provided in support of that inquiry, includes responses to requests for information taken on notice at the public hearing attended by the Australian Electoral Commission (AEC) in Canberra on 4 March 2011, and provides information and recommendations on a range of other specific issues that have arisen from consideration of submissions and evidence to the JSCEM.

1.1.2 The content of this submission is divided into separate sections under the following headings:

- 2. Enrolment
- 3. Redistributions
- 4. Party Registration and Candidate Nominations
- 5. Polling
- 6. Counting
- 7. Administration
- 8. Summary of Recommendations

2. Enrolment

2.1 Enrolment mechanisms

2.1.1 As requested by the JSCEM, this section provides further discussion on possible models of direct enrolment and direct update.

Direct enrolment and direct update

2.1.2 Any proposed approach to direct enrolment of electors and direct update of the roll can draw on the Victorian (VIC) and New South Wales (NSW) experience of implementing recently enacted legislation which provides the authority to the Electoral Commission (VIC) or the Electoral Commissioner (NSW) to commence enrolment action in respect of a person, if it is considered that a person is entitled to be enrolled but has not enrolled or is not correctly enrolled.

2.1.3 The approach taken by NSW and Victoria and possible models for the Commonwealth have been outlined in the AEC's main submission (submission 87, paragraphs 3.8.2 – 3.8.14) to this inquiry as well as the AEC's submissions (no. 2 and 2.1) to the JSCEM's *Inquiry into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections, 2009*.

2.1.4 In the following discussion, the term 'direct' is used to indicate actions initiated by the AEC rather than actions initiated by an elector. 'Enrolment' refers to transactions where a person is enrolling for the first time (and re-enrolling after a hiatus where there is no current record), whereas 'update' refers to updating an elector's address details for an existing enrolment. For these purposes a change in name is considered a new 'enrolment' and not an 'update'.

Implementation of NSW and VIC automatic enrolment provisions

2.1.5 The Victorian Electoral Commission (VEC) has advised that it has directly enrolled 6 522 electors in three exercises using student data supplied by the Victorian Curriculum and Assessment Authority (VCAA) which was cross-checked against Victorian births, deaths and marriages data to identify students born in Victoria. Approximately 30 per cent of this group were enrolled prior to the Victorian state election on 27 November 2010 and the remaining 70 per cent on 8 February 2011.

2.1.6 The VEC has advised that, as at 11 April 2011, of the 6 522 students directly enrolled:

- (i) 1 410 (21.6 per cent) have updated their enrolment for Commonwealth purposes; and

- (ii) 5 112 (78.4 per cent) have not updated their enrolment for Commonwealth purposes.

2.1.7 The VEC is currently developing plans to extend direct enrolment and update involving use of VicRoads data to enrol electors who have changed their address (direct update) or who have been removed from the roll in respect of a former address (direct enrolment).

2.1.8 Prior to the NSW state election on 26 March 2011, the New South Wales Electoral Commission (NSWEC) had 'SmartRolled' 44 393 electors (97.78 per cent of the 45 407 electors contacted). Some 47.5 per cent of transactions were 'direct enrolments' and 52 per cent were 'direct updates'.

2.1.9 Following the NSW state election, the NSWEC anticipates it will be 'SmartRolling' up to 10 000 electors per week, subject to further analysis of the recent results.

Agencies providing data

2.1.10 For over 10 years, the AEC has been using data from third party government agencies to identify unenrolled eligible persons and electors not enrolled correctly and to contact these persons through its Continuous Roll Update (CRU) program. A direct enrolment or direct update model would build on the established practice of using data from third party agencies to identify eligible electors. Data on potential address updates or new enrolments could initially be drawn from that currently used for these purposes by the AEC. These include:

- State and territory motor registry data via the National Exchange of Vehicle and Driver Information System;
- Australia Post change of address data;
- Centrelink data;
- Department of Immigration and Citizenship citizenship data; and
- Department of Foreign Affairs and Trade passport data.

Risk assessment

2.1.11 There are broadly three risks that need to be mitigated in relation to any system of direct update or direct enrolment. These are:

- the risk of incorrectly enrolling an individual who is not eligible;
- the risk of enrolling an eligible person at an incorrect address; and
- the risk of a fraudulent enrolment, either updating an address of an existing fraudulent enrolment, or adding a new enrolment which is fraudulent.

2.1.12 It is a priority for the AEC to ensure that any legislative change to enable direct enrolment of eligible electors and direct updates for electors already on the roll maintains the highest standard of roll integrity. Moreover, any implementation of a

system of direct enrolment or direct update would be implemented with an abundance of caution. Accordingly, the essential risk mitigation approach to the risks identified in the paragraph above would be based on rigorous screening of the data supplied by the third party agency. A system of data screening could operate as follows:

- Data from third party agencies would be assessed by the AEC for appropriateness of use. Based on particular checks applied by the third party in collecting particular personal information, records may be assessed as being suitable for use in relation to establishing aspects relating to a person's identity, an entitlement to enrol (e.g. data relating to date of birth, place of birth or citizenship status) or in relation to establishing a current residential address.
- Data received would be checked for any markers that would suggest ineligibility, e.g. not 18, not a citizen.
- Data would be checked against AEC enrolment records to establish whether or not a person is enrolled or has been previously enrolled, and used to establish what further checks are required before enrolling or updating enrolment. Date of enrolment would be compared against the currency of the data record supplied by the third party to determine further action.
- Address data would be checked against the AEC address register to establish whether or not an address was valid for enrolment purposes.
- Where required, other data sources which have particular characteristics to establish age, birth, citizenship, or death would be used to establish, confirm or validate one or more aspects of a person's entitlement.
- Where required, other data sources which have particular characteristics to establish a persons' residential address, will be used to establish, confirm or validate a person's address.

2.1.13 In addition to the above data screening process, the AEC would manage risks relating to enrolment by:

- making information regarding our processes for direct enrolment and direct update broadly available to stakeholders and the public;
- advising each elector of the AEC's intent to enrol or update the enrolment of him or her before finalising the enrolment or enrolment update;
- pursuing the ongoing processes for maintaining integrity of the electoral roll outlined in the AEC's main submission to the JSCEM (paragraphs 3.7.1 to 3.7.6 refer); and
- conducting election specific integrity checks in relation to enrolment (such as those outlined below).

2.2 Election specific enrolment integrity checks

- 2.2.1 The process outlined above to subject third party agency data to rigorous screening would be supplemented by checks undertaken to identify fraudulent enrolment transactions, as introduced after the 2007 election. These enrolment checks include a global assessment of unusual patterns of enrolment in the immediate period before and after the election, as well as a localised analysis of selected electorates, and individuals within them detected as having moved into and out of the electorates in the immediate period both before and after the election.
- 2.2.2 Global checks involved a comparison and analysis of enrolment patterns in the three months prior to the close of rolls for the 2010 election against those for the 2007 election. In this period for the 2010 election, there were a total of 1 082 814 new enrolments, re-enrolments and changes of address. This is comparable to the same period in 2007 when there were 1 105 522 such enrolments.
- 2.2.3 The volume and type of enrolments for all divisions in these periods were compared and analysed to see if there were any significant variations between the two events. Inter and intra-state enrolment transfers were included in the analysis. Based on this analysis, there were no significant variations.
- 2.2.4 Local checks involved conducting a close of rolls transactional analysis for ten seats.¹ This analysis was to identify any instances where electors enrolled for a division in the three month period leading up to the close of rolls and then transferred back to their previously enrolled address in the three month period following the election.
- 2.2.5 The ten seats were:
- Cunningham and Robertson in NSW;
 - Bowman and Rankin in QLD;
 - Boothby in SA;
 - Corangamite, Lalor and McEwen in VIC; and
 - Curtin and Hasluck in WA.
- 2.2.6 McEwen and Bowman were selected because they were the two closest seats in 2007 with very small margins (31 and 64 votes respectively). Corangamite, Hasluck, Robertson and Boothby were chosen because they were close seats at the 2010 election. Lalor, Rankin, Curtin and Cunningham were chosen as stable 'safe', control seats.
- 2.2.7 Thirty-three electors across seven divisions were identified based on the criteria.
- The maximum number of incidences identified for any division was seven.

¹ The AEC has previously advised JSCem that this analysis involved *nine* seats. The Division of Boothby was included in the close of rolls transaction analysis but was not detailed in previous advice to the JSCem.

- McEwen had the highest number of instances with seven electors moving back to their original address. This represents 0.12% of all enrolment forms processed in the three months to the close of rolls.
- Corangamite had six instances which represented 0.15% of all enrolment forms processed in the three months to the close of rolls.
- The highest percentage was in Boothby, with 0.17% (five electors). The ages of the majority of electors returning to their previous address were found to be within the 18-26 age bracket which is consistent with the movement of youth out of and back into the family home.

2.2.8 At the JSCem public hearing of 4 March 2011, the AEC advised that as part of its close of rolls transaction analysis, it would be contacting 33 electors who, based on a sample analysis of nine seats, had been identified as having enrolled for a division in the three month period leading up to the close of rolls and then transferred back to their previously enrolled address in the three month period following the election, to provide an explanation of why this occurred. The AEC undertook to provide the results of this to the JSCem once available.

2.2.9 AEC staff phoned the 33 electors identified using contact information provided on their enrolment application. At least three calls were attempted for each elector over a three day period, with 26 electors successfully contacted.

2.2.10 Staff used a prepared script, confirmed the elector's identity and then asked the elector to provide a reason why they moved just prior to the 2010 election and then moved back to their old address within three months after the election. The electors spoken to by staff all provided an explanation, with no dissent or refusal to co-operate.

2.2.11 Key findings were as follows:

- 21 electors were aged 18 to 25;
- 11 electors had taken on financial commitments they couldn't afford, including mortgages, so had to move back home with parents;
- 7 electors had moved for employment which didn't continue or succeed;
- 3 electors were university students who had moved campuses;
- 4 electors had broken relationships or short-term marriage separations; and
- 1 elector had problems with a landlord.

2.2.12 Of the seven electors not contacted, two were not contactable because the phone was disconnected, four did not respond to the call or message and one did not provide any contact details on the enrolment application. The six electors who could not be reached via phone were spread over four divisions so no clusters were apparent.

2.2.13 These results did not provide the AEC with any evidence of enrolment fraud and no further action will be taken.

2.3 External assessment of roll integrity

- 2.3.1 Since 2000, roll integrity and the efficacy of AEC management of the Commonwealth electoral roll have been the subject of several reviews by the JSCEM and audits by the Australian National Audit Office (ANAO). In August 2000 the then Special Minister of State requested that the JSCEM examine the issue of electoral roll integrity and enrolment fraud. The JSCEM report, *User friendly, not abuser friendly: Report of the inquiry into the integrity of the electoral roll*, made 18 recommendations relating to management of the electoral roll, electoral fraud management and regulating political parties.
- 2.3.2 A key recommendation from that inquiry was that the ANAO 'conducts a data-matching exercise with a sample of the Commonwealth Electoral Roll as part of its current performance audit of the Australian Electoral Commission's management of the roll'.²
- 2.3.3 In 2001-02, the ANAO concluded its performance audit into the integrity of the electoral roll.³ The objectives of the audit were twofold. The first objective was to provide an opinion on the integrity of the electoral roll. For the purpose of the audit, integrity was defined as:
- accuracy – the electoral roll contains correct and up-to-date information relating to individuals;
 - completeness – the electoral roll includes all individuals who are eligible to enrol;
 - validity – the electoral roll includes no-one ineligible to enrol; and
 - security – the electoral roll is protected from unauthorised access and tampering.⁴

The second objective was to examine the effectiveness of the AEC's management of the electoral roll in ensuring the roll's accuracy, completeness, validity and security.⁵

- 2.3.4 The ANAO conducted independent testing of the roll as well as undertaking extensive fieldwork to determine electoral roll integrity. Overall, the ANAO report concluded that the electoral roll was of high integrity and that it could be relied on for electoral purposes.⁶ The report also included 12 recommendations aimed at improving the AEC's management of the roll, all of which were agreed to by the AEC.⁷

² JSCEM, Report of the Inquiry into the Integrity of the Electoral Roll, Recommendation 13, (May 2001) p. 70.

³ Australian National Audit Office, *Audit Report No.42 2001-02 Integrity of the Electoral Roll*.

⁴ *Audit Report No.42 2001-02 Integrity of the Electoral Roll*, pp. 8-9.

⁵ *Audit Report No.42 2001-02 Integrity of the Electoral Roll*, p. 9.

⁶ *Audit Report No.42 2001-02 Integrity of the Electoral Roll*, p. 11.

⁷ *Audit Report No.42 2001-02 Integrity of the Electoral Roll*, pp. 20-23.

- 2.3.5 Subsequently, in October 2002 the JSCem tabled its review into the ANAO's *Audit Report No.42 2001-02 Integrity of the Electoral Roll*. Its review of the audit's analysis of roll integrity addressed, among other things, 'the four components of integrity, namely accuracy, completeness, validity and security'.⁸ The review also made a number of recommendations, which largely complemented those made by the ANAO.
- 2.3.6 One recommendation was that the ANAO undertake a follow-up audit that would allow the JSCem to review, before the following election, the AEC's progress in implementing the ANAO recommendations. The Committee's recommendations were given full or in-principle support by the Government.
- 2.3.7 In 2003-04, the ANAO conducted the recommended follow-up audit. The objective of this audit was to determine the progress made by the AEC in implementing the ANAO's recommendations, taking into account any changed circumstances, or new administrative issues, affecting implementation of those recommendations.⁹
- 2.3.8 In *Audit Report No.39 2003-04 Integrity of the Electoral Roll—Follow-up Audit*, the ANAO concluded that progress on implementing the audit report recommendations had been slow.¹⁰ However, the AEC noted that progress had been limited as funding to progress implementation of both the ANAO and the government-supported recommendations was not made available to the AEC until November 2003.¹¹
- 2.3.9 The components of roll integrity have been slightly amended by the AEC since the original ANAO definitions were developed. The AEC expanded the definition of roll integrity by adding:
- processing correctness – information provided by persons and organisations is entered correctly and completely on the roll, addresses are correctly and completely described, classified and aligned; and
 - referring to 'entitlement' rather than 'validity' – the individual meets all legislative qualifications for enrolment on the electoral roll (information provided by the individual is tested to detect and prevent enrolment fraud).
- 2.3.10 In *Audit Report No.28 2009-10 The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, the ANAO stated that 'The most significant long-term issue facing the AEC remains the state of the electoral roll. Notwithstanding the significant effort made by the AEC to recover and improve the enrolment rate prior to the 2007 federal election, on polling day the enrolment rate was well below the target of 95 per cent of the estimated eligible population.'

⁸ JSCem, *The Integrity of the Electoral Roll: Review of ANAO report no. 42 2001-2002, Integrity of the Electoral Roll*, p. 5.

⁹ *Audit Report No.39 2003-04 Integrity of the Electoral Roll—Follow-up Audit*, p. 10.

¹⁰ *Audit Report No.39 2003-04 Integrity of the Electoral Roll—Follow-up Audit*, p. 14.

¹¹ *Audit Report No.39 2003-04 Integrity of the Electoral Roll—Follow-up Audit*, p. 13.

As a result, an estimated 1.1 million eligible electors were missing from the rolls on polling day.¹²

- 2.3.11 The AEC sees its responsibility as ensuring that its activities cover all aspects of roll integrity, as defined by the ANAO and subsequently endorsed by the JSCEM, to ensure that proper and transparent processes and policies are in place to maintain roll integrity.

¹² *Audit Report No.39 2003-04 Integrity of the Electoral Roll—Follow-up Audit*, p. 15.

3. Redistributions

3.1 Background

3.1.1 In its current inquiry, the JSCEM has heard from a number of witnesses and received submissions expressing concerns regarding some aspects of the redistribution process, following the redistribution of federal electoral boundaries in Victoria in 2010. The AEC's response to these matters is set out below.

3.1.2 Redistribution arrangements specified in the *Commonwealth Electoral Act 1918* (the Electoral Act) broadly seek to ensure that: as nearly as practicable, each state and territory gains representation in the House of Representatives in proportion to the state or territory's population; and there are approximately the same numbers of electors in each division in a given state or territory. A redistribution is necessary when:

- the number of members in the House of Representatives to which a state or territory is entitled has changed;
- the number of electors in more than one third of the divisions in a state or one of the divisions in the Australian Capital Territory or Northern Territory deviates from the average divisional enrolment for that state or territory by over ten per cent for a period of more than two months; or
- a period of seven years has elapsed since the previous redistribution.

3.1.3 The current redistribution provisions were broadly devised in 1983 by the Joint Select Committee on Electoral Reform. In its review of the effectiveness and appropriateness of the redistribution provisions in 1995, the JSCEM noted the central features of the redistribution system introduced by the 1983 reforms were:¹³

- a non-discretionary formula for the timing of redistributions;
- a clear limit on the time that can elapse between redistributions;
- the removal of the Parliament's power of veto over redistributions;
- a reduction in the Government's discretionary power over the composition of bodies responsible for redistributions; and
- a requirement that Redistribution Committees aim for equal numbers of electors in each of a State's divisions (otherwise referred to as electorates) three and a half years after a redistribution.

¹³ Joint Standing Committee on Electoral Matters, 1995, *Electoral Redistribution: Report on the Effectiveness and Appropriateness of the Redistribution Provisions of Parts III and IV of the Commonwealth Electoral Act 1918*, Parliamentary paper 481/1995, Tabled 2 May 1996, Parliament of the Commonwealth of Australia, Canberra, pp. 2-3.

3.2 Timing of redistributions

- 3.2.1 As outlined above, the Electoral Commission is required to direct a Commonwealth redistribution for a state within 30 days of the expiration of a period of seven years since the previous redistribution (subsection 59(2)(c) of the Electoral Act). In the case of the redistribution of Victoria's federal electoral boundaries in 2010, the previous last redistribution determination date was 29 January 2003; therefore the redistribution of Victoria was required to commence within 30 days of 29 January 2010.
- 3.2.2 In addition, the Electoral Act operates to defer the requirement to conduct a redistribution where a redistribution would otherwise commence 'within one year before the date of expiry of a House of Representatives by effluxion of time' (subsection 59(3)). Should the seven years expire during the last year of the life of a House of Representatives, the redistribution is to commence within 30 days of the first meeting of the next House of Representatives (subsection 59(4)). In the case of Victoria, the House of Representatives of the 42nd parliament had been due to expire on 11 February 2011, one year and 12 days from the expiry of the seven year period since the date on which the Victorian federal electoral boundaries were last distributed.¹⁴ As the time periods specified in the Electoral Act under paragraph 59(2)(c) and subsection 59(3) did not overlap in this instance, the redistribution could not be deferred.
- 3.2.3 In its current inquiry, the JSCEM received a number of expressions of concern relating to the prescribed timing of redistributions as set out in the Electoral Act, specifically in relation to those provisions which allow a redistribution to occur in the same year as an anticipated election.¹⁵ Some stakeholders have expressed the view that the impact of these provisions in 2010 caused confusion for the voting public and led to a significant workload for candidates, parties, and interested community members in Victoria.
- 3.2.4 In its 2011 submission to the JSCEM,¹⁶ the National Party recommended that section 59 of the Electoral Act should 'allow the Electoral Commissioner some discretion, within certain parameters, to postpone a redistribution if it is too close to the next election.'
- 3.2.5 Mr Antony Green also proposed in his submission to the JSCEM¹⁷ that there should be a discretion by the Electoral Commissioner to postpone a redistribution. Mr Green recommended that, '(t)he strict redistribution timetable in Section 59 of the Commonwealth Electoral Act be removed and replaced by a provision that

¹⁴ The last Federal Election was held on 24 November 2007; however the new Parliament did not meet until 12 February 2008.

¹⁵ Mr Antony Green, Submission 88, pp. 3-4; Liberal Party of Australia, Submission No. 94, p. 4; The Nationals, Submission No. 93, p. 10.

¹⁶ Submission 93, at page 10.

¹⁷ Submission 88, at page 4.

gives the Electoral Commissioner the flexibility to determine whether a redistribution is too close to the date of the next election.’

- 3.2.6 The AEC does not support the proposition that the Electoral Act should be amended to provide the Electoral Commissioner with a discretionary power to defer a redistribution. The redistribution timing provisions are fundamentally intended first to ensure that redistributions will be conducted with sufficient frequency to limit malapportionment and secondly, to ensure that the timing of redistributions cannot be, or perceived to be, manipulated for political advantage. The legislative provisions associated with the timing of redistributions, introduced during the 1984 legislative electoral reforms, operate to ensure that there is a clear and distinct separation between the decision makers’ discretion and the determinations of the redistribution process. Ultimately, they constitute an integral element of a neutral and apolitical redistribution process.
- 3.2.7 Prior to 1984, Governments of the day had significant opportunities to influence the redistribution process, including through the exercise of discretion as to the timing and acceptance of redistributions. The 1984 amendments sought to establish redistribution rules based primarily on objective criteria, leaving little scope for the exercise of any discretion as to the timing of redistributions, and no scope at all for the exercise of discretion by any Government of the day on such timing.
- 3.2.8 The Liberal Party, in responding to the matters raised by the circumstances which led to the Victorian redistribution in 2010, has argued that the Electoral Act, ‘should be amended to ensure that there is never any possibility of a redistribution process happening in the third year of the life of a Parliament. We suggest that this can be achieved by amending the Act so that the direction to commence a redistribution cannot be given within one year and eleven months (not the present one year) before the date of expiration of a House of Representatives by effluxion of time. This would ensure that redistributions are triggered at the latest at the start of the second year of the life of a Parliament and that their outcome is in place by the end of that second year.’¹⁸
- 3.2.9 However, the AEC would suggest a cautious approach to alterations of timing provisions for the redistribution process. Extensions to the deferral period for redistribution boundary processes are likely to diminish the capacity for redistributions to be accurately assessed in relation to such factors as population changes. With considerations such as an increasingly mobile population emerging in Australia, a decision to extend substantially the deferral date for the redistribution process would be considered to be a set-back to an exemplary redistribution standard.

¹⁸ Submission 94, at page 4.

3.2.10 Moreover, the proposal to further defer the redistribution process would not guarantee the same events as the Victorian circumstance would not occur again in the event of another 'early election' being called.

3.2.11 Factors that significantly impacted on stakeholders' experiences of the 2010 Victorian redistribution included the following.

- (i) On 21 October 2010, following consideration of objections regarding the Redistribution Committee's proposed redistribution, the augmented Electoral Commission announced a redistribution proposal which was deemed 'significantly different' to the Redistribution Committee's proposal. As a result, the augmented Electoral Commission sought public comment on the revised proposal, which, because of the existing provisions for public input, was required to be considered in time for the augmented Electoral Commission to put forward a public announcement by the date of 9 November 2010. The further review process and consultation required due to the augmented Electoral Commission's proposal being 'significantly different' to that of the Redistribution Committee, delayed the final announcement for the redistribution and caused an increased strain on parties wishing to provide comments or objections into the further inquiry.
- (ii) Whilst the House of Representatives of the 42nd Parliament was not due to expire until 2011, it was widely expected that a federal election would occur in 2010. Although subsection 59(4) effectively reduces the likelihood of redistributions coinciding with a federal election, it does not cater for 'early' federal elections; which are difficult to predict by their very nature. In addition, it is likely that a number of the stakeholders with an interest in the drawing of Victoria's federal electoral boundaries would have had an interest in the Victorian state election. (The Victorian state election was held on Saturday 27 November 2010.)

3.2.12 Despite the factors outlined above, however, there has been no other circumstance since the 1984 redistribution provisions were introduced where a federal election and redistribution have conflicted in the manner which occurred during 2010.

3.2.13 The AEC sees no inherent need to apply a new approach to deferring redistributions, because the current approach fulfils the purpose for which the redistribution provisions were intended. The Victorian case of 2010 was atypical and needs to be assessed in the light of the considerable benefits which flow from having redistributions taking place in accordance with a prescribed and predictable timetable.

Recommendation 1: The AEC **recommends** that no new or significantly altered approach be taken to deferral of redistributions.

- 3.2.14 The AEC notes that since January 2008, six redistributions have been completed, all raising particular issues of concern to the community and political stakeholders. The AEC suggests that it may be opportune for the JSCEM to consider a wider inquiry into the operation of the redistribution provisions of the Electoral Act.

3.3 Period for review of further objections

- 3.3.1 As a result of the 2010 redistribution of federal electoral boundaries in Victoria, concerns have been expressed that the Electoral Act does not provide for a fixed period of consultation where an augmented Electoral Commission undertakes a second round of consultation regarding a proposed redistribution.
- 3.3.2 During the JSCEM's public hearing on 2 March 2011, Senator Birmingham sought the views of Mr Antony Green regarding the process for public input following the release of the significantly revised redistribution proposal for Victoria by the augmented Electoral Commission.

Senator BIRMINGHAM—Chair, there is one other area that I do not think we have touched on—that is, redistributions. Mr Green, you have highlighted the timing issue. I want to ask you about one other factor that came out of the Victorian experience, and that of course was the dramatic change from the draft plan to the final order of the commission. Do you have any views or reflections on the manner in which that occurs and the opportunity that provides, with a final order, for appropriate comment and feedback? It is one of the great challenges. If you are going to have a draft and a consultation on the draft you have to expect changes; but when those changes are so sweeping should there be a step taken back to a further full phase of consultation?

[...]

Mr Green—I will just say this: if it is dramatic enough to force another round of consultation then it should also have the same period of consultation.

- 3.3.3 The Electoral Act requires the augmented Electoral Commission to complete its consideration of initial objections, initial comments and further objections, including hearing the submissions at public inquiries, before the expiration of the period of 60 days after the closing date for comments on objections. In Victoria's case, the expiration of the 60 day period was 9 November 2010.
- 3.3.4 The timeframe imposed by the legislation determines the period in which further objections can be lodged and the scheduling of further hearings. Other than imposing the 60 day limit, the Electoral Act does not specify timeframes for the submission of further objections, as it does for the initial objections and comments.

Nor does the Electoral Act provide for the submission of comments about the further objections.

- 3.3.5 Public inquiries to consider objections against the proposed redistribution were first held on 14 and 15 October 2010. On 21 October 2010 the augmented Electoral Commission made a public announcement releasing proposed boundaries that, in its opinion, were 'significantly different' to those of the Redistribution Committee. Members of the public were invited to submit objections about the augmented Electoral Commission's revised proposal. In the light of the legislative time constraints, submission of the further objections closed at 6pm on 1 November 2010. This allowed a total of 12 calendar days for lodging objections.
- 3.3.6 The public inquiry into the further objections was held on 8 November 2010. This date was selected to give members of the public some time to review and consider the further objections which were published on the AEC website.
- 3.3.7 Two hundred and seventy-eight further objections were lodged, compared to only 129 initial objections and 40 comments, suggesting that the time was sufficient to enable submissions to be lodged. Five people appeared at the further public hearings in Melbourne. This was comparable to the response at the initial public hearings where nine people appeared at Shepparton and eight people in Melbourne. The augmented Electoral Commission announced its final decision regarding the federal election boundaries on 9 November 2010.
- 3.3.8 The Electoral Act is largely silent regarding the process for public input for further objections. On the basis of the view that the second round of consultation needs a sufficient and mandated period of time in order to ensure a fair and equitable review process and to ensure some level of consistency with the first round process, the AEC is of the view that the Electoral Act should be amended to allow for a period of 28 days for further objections and 14 days for comments on the further objections, consistent with the timeframes for initial objections outlined under subsection 68(2). In cases where further objections were sought, the 60 day period currently prescribed by the Electoral Act could also be extended by 42 days. It is anticipated that the extended period would allow time for the additional public hearings to occur, if they were required. By allowing sufficient viewing and public access time to this stage of the inquiry, the AEC believes that the augmented Electoral Commission would be able to be seen to make appropriately informed decisions about the final determination of boundaries with a higher avenue for review of the second round objection.

Recommendation 2: The AEC **recommends** that the Electoral Act be amended to prescribe a fixed period in which the augmented Electoral Commission undertakes a second round of consultation. The AEC proposes that the fixed period allow for a period of 28 days for further objections and, subsequently, a period of 14 days for comments on further objections.

Recommendation 3: The AEC **recommends** that the 60 day period specified for the augmented Electoral Commission's consideration of objections be extended by 42 days in order to accommodate for the further objection process outlined above.

- 3.3.9 It should be noted that any proposed legislative change to the deadline for second round consultations would delay the final determination date; which would also impact on the projection time of the redistribution and of the projection enrolment data.

3.4 Consideration of 'anticipated' projection times

- 3.4.1 The Redistribution Committee is required to ensure in its determinations that boundaries be drawn so that, as far as practicable, three years and six months after the redistribution has been completed, the enrolment in each electoral division will not vary from the state average by more than 3.5 per cent. The Electoral Act provides separate provisions for the projection time if, as a consequence of population trends, another redistribution is expected sooner than seven years.
- 3.4.2 In the Electoral Act, the projection time is defined at subsection 63A(1) for the purposes of applying sections 66 and 73 in relation to a redistribution (the current redistribution) of a state or territory. Subsection 63A(5) of the Electoral Act, provides that the 'starting time for the projection' is the time of making the determination referred to in subsection 73(4).
- 3.4.3 For the redistribution of Tasmania in 2009, the Redistribution Committee and the augmented Electoral Commission took the projection time as being 15 August 2012 when, it had been calculated, the projected average divisional enrolment of Tasmania would be 73 007, yielding a permissible range for projected divisional enrolments of 70 452 to 75 562. But the augmented Electoral Commission subsequently decided to make its determination, by notice published in the *Commonwealth of Australia Gazette*, on 16 February 2009, and the projection time, being the end of the period of three years and six months after the time of making the determination, was therefore determined as 16 August 2012, not 15 August 2012. In its determination, the augmented Electoral Commission also acknowledged that it could not have brought its determination forward to 15 February 2009, since that was a Sunday, when the *Gazette* is not published.
- 3.4.4 The augmented Electoral Commission stated in its 2009 Redistribution of Tasmania into Electoral Divisions Report¹⁹ that it was satisfied that 'one day, or

¹⁹ Augmented Electoral Commission for Tasmania, 2009, *2009 Redistribution of Tasmania into Electoral Divisions*, Australian Electoral Commission, Canberra, viewed 20 March 2011,

even two days, makes no material difference to the calculation of the projected enrolment figures in question, and its determination under section 73(1) is unaffected, except that it is made on the basis of the application of section 73(4) of the Electoral Act to the correct projection time calculated from the gazettal on 16 February 2009’.

- 3.4.5 The determination by the augmented Electoral Commission for the 2009 Tasmanian redistribution highlighted the need for further clarity in the definition of ‘starting time for the projection’ in subsection 63A(5). A determination date is inevitably slightly ambiguous at the point in which a projection date is identified because of other constraints relating to the Electoral Act. As a consequence of this, the AEC is of the view that clearer definition at subsection 63A(5) is required, through legislative amendment.

Recommendation 4: The AEC recommends that the definition at subsection 63A(5) for the ‘starting time for the projection’ be amended to refer to the anticipated time of making the determination referred to in subsection 73(4).

<http://www.aec.gov.au/Electorates/Redistributions/files/2008/tas/final/2009-final-report-redistribution-tasmania.pdf>.

4. Party Registration and Candidate Nominations

4.1 Remove gazettal requirements for party registration

4.1.1 Part XI of the Electoral Act requires the following notices to be placed in the *Commonwealth of Australia Gazette*:

- notice of an application to register a political party;
- notice of an application to change the registered name and/or abbreviation of political party; and
- notice of any change made to the Register of Political Parties, for example change of Registered Officer details.

4.1.2 At the inception of the Commonwealth party registration scheme in 1984, placing notices on government websites was not an option.

4.1.3 The AEC now makes the Register of Political Parties available on the AEC website. When applications are received to register a new party or change the name and/or abbreviation, the AEC advertises them on its website, along with information on how to object to the registration or change. The AEC also sends an email alert to approximately 2 000 people who have nominated on the AEC website to receive party registration notifications. In addition, the AEC advertises the application in ten newspapers around Australia and the *Commonwealth of Australia Gazette* as required.

4.1.4 With the increased general use of the internet, it is unlikely that anyone would see a notice in the *Commonwealth of Australia Gazette* without already seeing it in one of the 10 newspapers, or receiving an email alert from the AEC. The information on the AEC website is more helpful to its clients than the notices placed in the Commonwealth Gazette. In the same way that approved forms under section 4 of the Electoral Act are now published on the AEC website instead of in the *Commonwealth of Australia Gazette*, party registration notices should also be published on the AEC website.

Recommendation 5: The AEC **recommends** that Part XI of the Electoral Act be amended so that notices about party registration previously to be published in the Commonwealth Gazette are now to be published on the AEC website.

4.2 Addressing large Senate ballot papers

- 4.2.1 At the JSCEM public hearing of 4 March 2011, AEC views were sought on issues surrounding the size of the NSW Senate ballot paper. This discussion supplements exhibits and evidence provided by Mr Doug Orr, State Manager and Australian Electoral Officer for New South Wales on pages EM47, EM48 and EM52 of the hearing transcript.

Background

- 4.2.2 The current design of the Senate ballot paper is specified in section 209 and Schedule 1 of the Electoral Act and in the Electoral and Referendum Regulations 1940 (the Regulations). The Electoral Act requires that Senate ballot papers be laid out in a landscape design, with squares for those groups that have lodged Group Voting Tickets (GVTs) at the top of the ballot paper (the 'above-the-line' portion of the paper), followed by a thick black line, followed by the names of individual candidates organised in groups across the paper in the 'below-the-line' portion.
- 4.2.3 The Electoral Act and the Regulations provide further specification (for example, subsections 210(3) and 210A(4)) that is designed to ensure that the ballot paper layout is not used to unfairly emphasise some candidates or groups of candidates over others.
- 4.2.4 The Regulations allow for some modification to the House of Representatives ballot paper if there are more than 30 candidates, in which case the ballot paper can be laid out across two or more columns. Currently there is no flexibility in the layout of the Senate ballot paper.
- 4.2.5 New South Wales is acutely impacted by the above-noted constraints because of the number of candidates and groups that nominate for election to the Senate for NSW. The table below sets out the number of candidates, groups and ungrouped candidates that have stood for election to the Senate in NSW for the last seven federal elections.

Table 4.1 – Candidates and groups standing for election to NSW Senate, 1993-2010

Election	Vacancies	Candidates	Candidates per vacancy	Groups	Ungrouped
1993	6	66	11.0	21	8
1996	6	63	10.5	18	9
1998	6	69	11.5	22	9
2001	6	65	10.8	23	4
2004	6	78	13.0	29	4
2007	6	79	13.2	25	4
2010	6	84	14.0	32	5

4.2.6 For the 2010 election the NSW Senate ballot paper contained the largest number yet of candidates and groups, with 84 candidates distributed across 33 columns. Eleven of the columns comprised groups of two unendorsed candidates (an increase from three in 2007), 21 were groups endorsed by registered political parties and the final column consisted of ungrouped candidates.

Issues

4.2.7 To fit all candidate names on the NSW Senate ballot paper at the 2010 election, the font was reduced to a size where legibility was marginal. Additionally, one candidate's surname had to be split over two lines.

4.2.8 As part of the tendering process for the NSW ballot paper contract prior to the 2010 federal election companies tendering were asked to advise the size of the largest ballot paper they could produce. Advice indicated that the width of the NSW Senate ballot paper used at the 2010 election, 1020 millimetres, was the widest ballot paper that tenderers were able to produce. The AEC will adopt a similar approach ahead of the next election so as to take account of opportunities available through developments in printing production processes.

4.2.9 A related concern is the extent to which the existing size of the ballot paper in reflecting a large number of candidates contesting the Senate election, strikes an appropriate balance between providing voters with a choice of candidates, representative of the diversity of the voters' views and interests, and the countervailing need to ensure ballot papers are not so unwieldy and difficult to complete that, in effect, they operate to diminish the capacity of voters to exercise their franchise.

4.2.10 It is useful to contemplate the results of the 2010 Senate election in NSW when considering whether the Electoral Act currently has this balance right. There were 4 152 524 formal votes cast. Of the 84 candidates, exactly half received fewer than 200 first preference votes each (i.e., less than 0.005% of the total formal vote each). The total of the formal votes polled by all 42 of them was 2 697 (i.e., 0.06% of the total formal vote overall). None of them came from a group which had a candidate elected; all of them lost their deposits.

4.2.11 Mechanisms such as deposits and requirements for multiple nominators are widely used to balance the principles of ensuring voters have a choice of representative candidates with the need to ensure candidature is serious.

4.2.12 For example, following the 1999 NSW State election for the Legislative Council, where 264 candidates nominated for 81 groups, the NSW Parliament passed legislation which:

- altered the rules of registration for political parties (including requiring proof of 750 members, a registration fee of \$2 000, and requiring parties who wish to contest the election as a registered political party to be registered for one year before the election);
- changed 'above-the-line' voting arrangements;
- altered group voting ticket arrangements; and
- changed the minimum number of candidates required to obtain a group voting square (which effectively increased the deposit fees for candidates seeking a group voting ticket square).

4.2.13 As a result of these changes the number of groups contesting the 2003 NSW Legislative Council election fell to 15. However, owing to the increase in the minimum number of candidates required to obtain a group voting square the number of candidates rose to 284.

4.2.14 Possible remedies to address the usability and production problems posed by the NSW Senate ballot paper are canvassed below in two sections. An option not discussed below is changing the Senate ballot paper layout. The AEC is of the view that the current Senate ballot paper layout, which provides electors with a choice of casting their vote either 'above-the-line' or 'below-the-line,' is firmly embedded in federal electoral practice following its introduction over 25 years ago.

The status quo

4.2.15 The increase in the number of groups contesting election to the NSW Senate suggests that further increases in the number of groups nominating should be expected at future elections. If the current Senate ballot paper design is unchanged, any future increase in the number of groups will further erode the legibility of the ballot paper by requiring the AEC to consider one, or more likely both, of the following options:

- a reduction in the column width of groups, which may require hyphenation of candidate names and group names across multiple lines; and
- a reduction in the size of font used.

Options for change

Establishing equity in the requirements for either an endorsed or unendorsed group to qualify for a separate column on the ballot paper

4.2.16 With limited exceptions there are currently three primary ways to nominate for election to the Senate:

- nomination of a group of endorsed candidates by a registered political party;
- nomination of a group of unendorsed candidates by 50 electors; and
- nomination of a single unendorsed candidate by 50 electors.

4.2.17 The first two nomination methods also qualify the group to have its own column and to lodge a GVT with the Returning Officer to secure a square 'above-the-line' on the ballot paper. An incumbent Senator also has the option of lodging an individual voting ticket and appearing in a column on the ballot paper as if he or she were part of a group.

4.2.18 Registration as a political party carries additional obligations under the Electoral Act that are not required of unendorsed groups. For example, an eligible political party must demonstrate that it has and maintains at least 500 unique members. In contrast it could be argued that groups of unendorsed candidates are advantaged by only needing to have 50 nominators to obtain their own column and square 'above-the-line' on the ballot paper.

4.2.19 This apparent anomaly has been addressed in at least one state jurisdiction, with Tasmania requiring the same number of nominators – 100 – as the number of people required to register a political party. An equivalent provision at the federal level would require candidates running in unendorsed groups to be nominated by 500 electors.

Indexation or alteration of the nomination deposit requirements

4.2.20 The nomination deposit permits genuine candidates to nominate for election while discouraging those with little prospect of being elected. Deposits were last set in 1998 at \$500 for House of Representatives and \$1 000 for Senate candidates respectively. The AEC notes that if the same index had been applied to nomination deposits as is applied to the public funding rate, the nomination deposits would now be in the order of \$700 for the House of Representatives and \$1 400 for the Senate without increasing the value of the deposit in real terms.

- 4.2.21 By comparison, the NSW Legislative Council requires a minimum of 15 candidates before a group can have a square 'above-the-line'. The nomination deposit for a single candidate is \$500. However, the amount of the deposit for a candidate included in a group comprising more than ten candidates (but not more than 21 candidates) is \$5 000 divided by the number of candidates in that group.

Conclusion

- 4.2.22 The AEC is of the view that the NSW Senate ballot paper does not currently strike an appropriate balance between providing voters with a choice of candidates representative of their views and interests, and the countervailing need to ensure ballot papers are not so unwieldy and difficult to complete that, in effect, they operate to diminish the capacity of voters to exercise their franchise.
- 4.2.23 As an immediate step the AEC recommends that the JSCEM alter the nomination requirements for Senate candidates.

Recommendation 6: The AEC **recommends** that the nominations regime for Senate candidates be amended to:

- increase the number of nominators required by a candidate who wishes to contest a Senate election as a member of an unendorsed group; and / or
- increase and index the deposit requirements.

5. Polling

5.1 Number of polling staff

5.1.1 In response to a question raised at the JSCEM public hearings on 4 March 2011 by Senator Ryan, who sought information regarding polling day staffing, ‘...the number of officials you have, temporary and permanent – who were employed on polling day, working from 2004 to 2010’,²⁰ the AEC has prepared the following information.

Table 5.1 - Total number of staff employed on polling day for the 2004, 2007 and 2010 elections

Work class description	2004	2007	2010
Temporary (casual) staff primarily employed for polling day	61 756	63 911	62 851 (1)
Temporary (non ongoing) staff	161 (3)	154	146 (2)
Permanent (ongoing) staff	782 (3)	748	821 (2)
Total	62 699	64 813	63 818

Note:

- (1) Data excludes temporary staff employed for pre-polling and post-polling positions included in the AEC’s main submission (submission 87) which showed an overall increase in staffing compared to 2007 across the election event.
- (2) Permanent (ongoing) and temporary (non ongoing) staff are employed under the *Public Service Act 1999*. All AEC staff contribute in some way to the successful conduct of the federal election so all AEC ongoing and non ongoing staff are included in the data provided.
- (3) Data represents non ongoing and ongoing staff as at 30 June 2004. The AEC had in place a different payroll system for the permanent (ongoing) and temporary (non ongoing) staff in 2004 and it has not been possible to reliably extract comparable data for polling day 2004.

²⁰JSCEM, Public Hearings, transcript, (4 April 2011) Canberra, p. EM18.

6. Counting

6.1 Re-count of Senate votes to determine order of election in event of a double dissolution

Background

6.1.1 The AEC has identified some potential points of uncertainty in the interpretation of Senate ballot paper preferences in the event of a re-count under section 282 of the Electoral Act following a double dissolution election. It is the view of the AEC that section 282 should be amended to clarify those uncertainties.

6.1.2 Section 13 of the Australian Constitution provides among other things that:

‘As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of three years, and the places of those of the second class at the expiration of six years, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.’²¹

6.1.3 Under section 13, it is up to the Senate to determine the basis on which it will so allocate ‘long’ and ‘short’ terms following a double dissolution. The approach taken in the past is described as follows in the online version of *Odgers’ Australian Senate Practice Twelfth Edition*:

‘After a general election for the Senate, following simultaneous dissolutions of both Houses, it is necessary for the Senate to divide senators into two classes for the purpose of restoring the rotation of members (Constitution, s. 13).

On the seven occasions that it has been necessary to divide the Senate for the purposes of rotation, the practice has been to allocate senators according to the order of their election. An example of the effective part of the resolution passed is that used following simultaneous dissolutions in 1974: “the name of the Senator first elected shall be placed first on the

²¹The Australian Constitution, Part II: The Senate, available at: <http://www.aph.gov.au/senate/general/constitution/par2cha1.htm>.

Senators' Roll for each State and the name of the Senator next elected shall be placed next, and so on in rotation".

In its report of September 1983 the Joint Select Committee on Electoral Reform proposed that "following a double dissolution election, the Australian Electoral Commission conduct a second count of Senate votes, using the half Senate quota, in order to establish the order of election to the Senate, and therefore the terms of election" (PP 227/1983, para 3.39). The committee also recommended that there should be a constitutional referendum on "the practice of ranking senators in accordance with their relative success at the election" so that "the issue is placed beyond doubt and removed from the political arena" (*ibid.*). The Commonwealth Electoral Act was subsequently amended to authorise a re-count of the Senate vote in each state after a dissolution of the Senate to determine who would have been elected in the event of a periodical election for half the Senate (s. 282).

Following the 1987 dissolution of the Senate, the then Leader of the Government in the Senate, Senator John Button, successfully proposed that the method used following previous elections for the full Senate should again be used in determining senators in the first and second classes respectively (SD, 14/9/1987, p. 17).

The Opposition on that occasion unsuccessfully moved an amendment to utilise section 282 of the Commonwealth Electoral Act for the purpose of determining the two classes of senators, in accordance with the September 1983 recommendation of the Joint Select Committee on Electoral Reform. According to the leading Opposition speaker, Senator Short, the effect of using the historical rather than the proposed new method was that two National Party senators would be senators in the first (three-year) class rather than the second (six-year) class, whilst two Australian Democrat senators would be senators in the second rather than the first class (SD, 15/9/1987, p. 97).

On 29 June 1998 the Senate agreed to a motion, moved by the Leader of the Opposition in the Senate, Senator Faulkner, indicating support for the use of section 282 of the Commonwealth Electoral Act in a future division of the Senate (29/6/1998, J.4095). The stated reason for the motion was that the new method should not be adopted without the Senate indicating its intention in advance of a simultaneous dissolution, but it was pointed out that the motion could not bind the Senate for the future (SD, 13/5/1998, pp 2649-51, 29/6/1998, pp 4326-7). An identical motion was moved by Senator Ronaldson (Shadow Special Minister of

State) on 22 June 2010 and agreed to without debate (22/6/2010, J.3652).’²²

- 6.1.4 In preparing for the 2010 election, the AEC took the opportunity to re-examine the provisions of section 282 of the Electoral Act, and as a result, has identified a number of respects in which the provision would benefit from clarification.

Current legal provisions

- 6.1.5 Section 282 of the Electoral Act currently provides as follows.

- ‘(1) Where the scrutiny in an election of Senators for a State held following a dissolution of the Senate under section 57 of the Constitution has been completed, the Australian Electoral Officer for that State shall conduct a re-count of the ballot papers in the election in accordance with subsections 273(7) to (30) (inclusive) as if:
 - (a) in subsection 273(8) “half” were inserted before “the number of candidates”; and
 - (b) the only names of candidates appearing on the ballot papers were the names of the candidates elected at the election and the numbers indicating preferences had been altered accordingly.
- (2) Sections 280 and 281 do not apply in relation to a re-count under subsection (1).
- (3) The result obtained in a re-count under subsection (1) in relation to a Senate election shall not affect the result of that election.
- (4) Where, in a Senate election:
 - (a) an elector has marked a ballot paper according to subsection 239(2); and
 - (b) the elector has also marked the ballot paper in such a way that, had it not been marked according to subsection 239(2), the ballot paper would have been informal;

the ballot paper shall be treated, for the purposes of this section, as if the only marking on the ballot paper were the marking according to subsection 239(2).’

²² *Parliament of Australia*, January 2010, ‘Odgers’ Australian Senate Practice Twelfth Edition’, available at: <http://www.aph.gov.au/senate/pubs/odgers/pdf/odgers.pdf> p. 102, 103

6.1.6 Subsection 273(8) of the Electoral Act, as deemed to be modified in its effect, in relation to a re-count conducted under section 282, by paragraph 282(1)(a), provides as follows:

- ‘(8) The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by 1 more than half the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected.’

6.1.7 Paragraph 268(1)(b) of the Electoral Act states as a general rule that for a ballot paper to be formal, it must bear a first preference vote for at least one candidate:

- ‘(1) A ballot paper shall (except as otherwise provided by section 239, and by the regulations relating to voting by post) be informal if:

...

- (b) subject to section 269 and subsection 270(1), in a Senate election, it has no vote indicated on it, or it does not indicate the voter’s first preference for 1 candidate and the order of his or her preference for all the remaining candidates’.

6.1.8 Section 269 of the Electoral Act provides for ticket voting (‘above-the-line’ voting), a mechanism which, because of the requirements of subsections 211(1) and 211A(1), always leads to a voter providing as his or her vote a full preference ordering for all the candidates. Section 270 of the Electoral Act makes provision, as follows, for certain ballot papers marked ‘below-the-line’ to be formal even when they do not show a complete preference ordering for all candidates:

- ‘(1) Where a ballot paper in a Senate election:
- (a) has the number 1 in the square opposite to the name of a candidate and does not have that number in the square opposite to the name of another candidate;
- (b) has:
- (i) in a case where there are more than 9 candidates in the election—in not less than 90% of the squares opposite to the names of candidates, numbers in a sequence of consecutive numbers commencing with the number 1 or numbers that with changes to no more than 3 of them would be in such a sequence; or

- (ii) in any other case—in all the squares opposite to the names of candidates or in all those squares except one square that is left blank, numbers in a sequence of consecutive numbers commencing with the number 1 or numbers that with changes to no more than 2 of them would be in such a sequence; and
 - (c) but for this subsection, would be informal by virtue of paragraph 268(1)(b);
- then:
- (d) the ballot paper shall not be informal by virtue of that paragraph;
 - (e) the number 1 shall be taken to express the voter's first preference;
 - (f) where numbers in squares opposite to the names of candidates are in a sequence of consecutive numbers commencing with the number 1—the voter shall be taken to have expressed a preference by the other number, or to have expressed preferences by the other numbers, in that sequence; and
 - (g) the voter shall not be taken to have expressed any other preference.
- (3) In considering, for the purposes of subsection (1) whether numbers are in a sequence of consecutive numbers, any number that is repeated shall be disregarded.'

Issues

Votes which were informal at the section 273 scrutiny

- 6.1.9 One issue which should be clarified is whether certain informal ballot papers not counted in the original section 273 scrutiny may be eligible to be counted in the section 282 scrutiny. An example of a case in which this issue could arise would be a ballot paper marked only 'below-the-line', which showed a first preference for two candidates ('A' and 'B'), and had consecutive numbers from 2 onwards marked against all the other candidates. This ballot paper would have been informal at the section 273 scrutiny, since it did not show a first preference for one and only one candidate. If, however, candidate A was elected at the section 273 scrutiny but candidate B was not, then the ballot paper in question would, if

included in the section 282 scrutiny and deemed to be modified in accordance with paragraph 282(1)(b) of the Act, show a well-formed preference ordering for all 12 elected candidates.

- 6.1.10 In the past, the AEC has taken the view that a ballot paper which was informal for the purposes of the section 273 scrutiny is not to be included in the section 282 scrutiny. That position, however, has depended on the interpretation of the expression 'the ballot papers in the election' as used in subsection 282(1). Given the subtlety of the point, it would in the AEC's view be preferable for the Electoral Act to be amended to put the issue beyond doubt.

Recommendation 7: The AEC **recommends** that section 282 of the Electoral Act be amended to make it clear that ballot papers which were informal for the purposes of the section 273 scrutiny are not to be included in the section 282 scrutiny.

Formal ballot papers from the section 273 scrutiny which at the section 282 scrutiny do not show a first preference for one and only one candidate

- 6.1.11 At the scrutiny conducted pursuant to section 273, every formal ballot paper must, because of the combined effects of sections 268, 269 and 270, show a unique first preference for one and only one candidate.
- 6.1.12 At a re-count conducted under section 282, however, certain ballot papers which were able to be counted as first preferences at the section 273 scrutiny may no longer be capable of being counted as a first preference for any candidate.
- 6.1.13 An example of this would be a ballot paper marked only 'below-the-line' which shows a first preference for a single candidate ('A'), has a figure 2 marked against two other candidates ('B' and 'C'), and then has 3, 4, 5 ... correctly marked against the remaining candidates. The effect of paragraphs 270(1)(e) and (g) and subsection 270(3) is that such a ballot paper is formal, expresses a first preference for candidate 'A', but is not taken to express any other preference.
- 6.1.14 Consider a situation in which candidate 'A' was not elected at the section 273 scrutiny, but candidates 'B' and 'C' were. At the section 282 re-count, it is necessary in the first instance to ascertain 'the number of first preference votes given for each candidate' (ie, each of the 12 elected candidates). Thereafter, the quota is determined by 'dividing the total number of first preference votes by 1 more than half the number of candidates required to be elected ...'. Since the ballot paper in this example expressed a first preference for candidate 'A' and no other preference, it should not be included in the ascertained number of first preference votes given for any candidate in the section 282 re-count. Accordingly, it should not be counted in 'the total number of first preference votes' when calculating the quota.

6.1.15 This point of interpretation has given rise to some confusion in the past. At the various section 282 scrutinies conducted (manually) after the most recent double dissolution, in 1987, different approaches appear to have been taken in different states. Some states correctly excluded such votes from the calculation of the quota. Others, however, included them in the calculation, but then recorded the votes in question as 'exhausted' at the first count of the section 282 scrutiny. Again, it would be preferable for the issue to be clarified.

Recommendation 8: The AEC **recommends** that section 282 of the Electoral Act be amended to make it clear that if a ballot paper, at the section 282 re-count, is not capable of being counted as a first preference vote for any of the 12 elected candidates deemed to be on the ballot paper, it is not to be included in the 'total number of first preference votes' figure used for the calculation of the quota.

Exhausted votes

6.1.16 A final case which the AEC would wish to draw to the Committee's attention is exemplified by a ballot paper marked only 'below-the-line' which shows a unique first preference for candidate 'A', has a figure 2 marked against candidates 'B' and 'C', and has consecutive numbers from 3 onwards marked against all the other candidates. At the section 273 scrutiny, the effect of paragraphs 270(1)(e) and (g) and subsection 270(3) is that such a ballot is deemed to show a first preference for candidate A, and no other preferences.

6.1.17 If, however, candidates A and B were elected, but candidate C was not, the question arises of whether, at the section 282 scrutiny, the ballot paper should be deemed to show a first preference for candidate A, a second preference for candidate B, and subsequent preferences for the other candidates elected at the section 273 scrutiny.

6.1.18 The view taken by the AEC in the past is that section 270 provides an all-encompassing statement of the circumstances in which a ballot paper marked with incorrect preferences 'below-the-line' may nevertheless be formal, and of the preferences which are deemed to have been marked on such a ballot paper.

Recommendation 9: The AEC **recommends** that section 282 of the Electoral Act be amended to avoid confusion and make clear that where a ballot paper was deemed not to show a preference for a particular candidate for the purposes of the section 273 scrutiny, it is also to be deemed not to show a preference for that candidate for the purposes of the section 282 scrutiny.

7. Administration

7.1 Approved forms

7.1.1 The Electoral Act refers in a number of places to the use of 'an approved form' and 'the approved form' to execute particular administrative functions. Section 4 of the Electoral Act defines 'approved form' as being a form that is approved by the Electoral Commissioner in writing and is published.

7.1.2 The current definition of 'approved form' was introduced in 2010, following a recommendation by the JSCEM in its *Report on the conduct of the 2007 federal election and matters related thereto* that supported the AEC administering a more flexible forms regime. The relevant recommendation read as follows:

'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.'

7.1.3 References in legislation to 'the approved form' still can be found in provisions relating to various applications for enrolment, provisional enrolment, and special category enrolment including under subsections 94(1), 94A(2), 95(2), 96(2), 98(2), 99A(4), 99B(2) and 104(2).

Recommendation 10: The AEC **recommends** that references in the Electoral Act to 'the approved form' be changed to 'an approved form' to provide consistency in terminology and to ensure the intent of the JSCEM's recommendation to allow for a number of versions of an approved form is clearly reflected in the legislation.

8. Summary of Recommendations

Recommendation 1: The AEC **recommends** that no new or significantly altered approach be taken to deferral of redistributions.

Recommendation 2: The AEC **recommends** that the Electoral Act be amended to prescribe a fixed period in which the augmented Electoral Commission undertakes a second round of consultation. The AEC proposes that the fixed period allow for a period of 28 days for further objections and, subsequently, a period of 14 days for comments on further objections.

Recommendation 3: The AEC **recommends** that the 60 day period specified for the augmented Electoral Commission's consideration of objections be extended by 42 days in order to accommodate for the further objection process outlined above.

Recommendation 4: The AEC recommends that the definition at subsection 63A(5) for the 'starting time for the projection' be amended to refer to the anticipated time of making the determination referred to in subsection 73(4).

Recommendation 5: The AEC **recommends** that Part XI of the Electoral Act be amended so that notices about party registration previously to be published in the Commonwealth Gazette are now to be published on the AEC website.

Recommendation 6: The AEC **recommends** that the nominations regime for Senate candidates be amended to:

- increase the number of nominators required by a candidate who wishes to contest a Senate election as a member of an unendorsed group; and / or
- increase and index the deposit requirements.

Recommendation 7: The AEC **recommends** that section 282 of the Electoral Act be amended to make it clear that ballot papers which were informal for the purposes of the section 273 scrutiny are not to be included in the section 282 scrutiny.

Recommendation 8: The AEC **recommends** that section 282 of the Electoral Act be amended to make it clear that if a ballot paper, at the section 282 re-count, is not capable of being counted as a first preference vote for any of the 12 elected candidates deemed to be on the ballot paper, it is not to be included in the 'total number of first preference votes' figure used for the calculation of the quota.

Recommendation 9: The AEC **recommends** that section 282 of the Electoral Act be amended to avoid confusion and make clear that where a ballot paper was deemed not to show a preference for a particular candidate for the purposes of the

section 273 scrutiny, it is also to be deemed not to show a preference for that candidate for the purposes of the section 282 scrutiny.

Recommendation 10: The AEC **recommends** that references in the Electoral Act to 'the approved form' be changed to 'an approved form' to provide consistency in terminology and to ensure the intent of the JSCEM's recommendation to allow for a number of versions of an approved form is clearly reflected in the legislation.