

Election Preparation

- 3.1 The period between the calling of an election and polling day is a period of intense activity on the part of the AEC, political parties and candidates. This activity includes the formal requirements for calling the election and nominating candidates, as well as publicity and advertising.

Notification of an election and election writs

- 3.2 The AEC raised concerns about a number of formalities, namely:
- how it is notified of a forthcoming election;
 - its role in preparing election writs; and
 - the method of certifying the names of the successful candidates on the writs.¹
- 3.3 The following outlines the context in which these concerns arise, followed by consideration of the submissions on these points.

The role of election writs in an election

- 3.4 An election writ is a legal document that ‘commands’ an electoral officer to hold an election, and specifies the dates for the close of rolls, the close of nominations, polling day and the return of that writ.

¹ Submission (AEC, no. 147), pp. 9-11, Transcript of Evidence, 16 August 2002 (Mr A Becker), pp. EM68-70.

- 3.5 The provisions governing election writs are detailed in sections 12 and 32 of the Constitution, and Part XIII of the Electoral Act. The function of election writs and how they fit in to the stages of an election is described below.²

Determination of an election date

- 3.6 Under the Constitution, the Governor-General has the power to prorogue the Parliament and dissolve the House of Representatives.³ However, as a matter of convention, the Prime Minister determines when he or she wishes an election to be held, subject to the constitutional requirement that the term of the House of Representatives shall be a maximum of three years.⁴ It is the convention that the Prime Minister visit the Governor-General to request that an election be held on the date chosen by the Prime Minister.⁵ In 2001, the Prime Minister visited the Governor-General on Friday, 5 October, and announced the election date the same day.

Dissolution of the House of Representatives

- 3.7 In the event of a House of Representatives and half-Senate election, as was the case in 2001, the House of Representatives is dissolved and the Parliament is 'prorogued'. This has the effect that Senators are 'discharged from attendance' until Parliament is summoned again after the election.⁶

2 The process described is the process for a 'normal' federal election as occurred in 2001, that is, a full House of Representatives election and a half Senate election. The process has differences when other types of elections are held, for example a double dissolution election in which case both houses of parliament are dissolved and there is a full Senate election as well as a full election for the House of Representatives. IC Harris, *House of Representatives Practice – Fourth edition*, Department of the House of Representatives, Canberra (2001) pp. 94-98, was relied on to compile this description.

3 Constitution, sections 5 and 32.

4 Constitution, section 32.

5 *House of Representatives Practice* notes, 'It is clear that it is incumbent on the Prime Minister to establish sufficient grounds for the need for dissolution, particularly when the House is not near the end of its three year term. The Governor-General makes a judgement on the sufficiency of the grounds. It is in this situation where it is generally recognised that the Governor-General may exercise a discretion not to accept the advice given.' *House of Representatives Practice*, (2001), as above p. 7.

6 According to *House of Representatives Practice*, 'Prorogation terminates a session of Parliament; dissolution terminates a Parliament ... the decision to prorogue the Parliament therefore does not attach to it the same significance as a decision to dissolve the House of Representatives'. When the parliament is prorogued, Senate standing committees are still empowered to meet. However, the practice of proroguing the Parliament immediately before dissolution of the House of Representatives has been said to be aimed at removing the possibility of the Senate sitting following the dissolution of

- 3.8 Parliament is dissolved by a proclamation.⁷ The Office of Legislative Drafting, under instructions from the Department of Prime Minister and Cabinet, prepares a proclamation of dissolution of the House of Representatives. The proclamation is signed by the Governor-General and published in the *Commonwealth Gazette*.⁸ In 2001, the dissolution occurred on Monday, 5 October.

Preparation and issue of writs

- 3.9 As noted above, election writs direct an electoral officer to conduct an election.⁹ Writs must be issued within ten days after the dissolution or expiry of Parliament.¹⁰ In 2001, Parliament was dissolved on Friday, 5 October 2001, and the writs were issued on Monday, 8 October 2001.
- 3.10 Different processes exist for the preparation and issue of writs for elections for the House of Representatives, the Senators for the States and the Senators for the Territories. The power to issue writs is a matter of constitutional law. The preparation of the writs is a matter of convention. In the discussion below, the issue of writs is examined first, although in practice obviously writs are prepared first.
- 3.11 The Governor-General issues eight writs for the election of Members of the House of Representatives, one writ for each State and Territory. The Governor-General also issues the two writs for the election of Senators for the Northern Territory and the Australian Capital Territory.¹¹ The House of Representatives writs are directed to the Australian Electoral Commissioner. The writs for the Territory

the House. In the event of a double dissolution election, both the House of Representatives and the Senate are dissolved. *House of Representatives Practice*, (2001), as above, pp.225-228.

- 7 Constitution, section 5. Prorogation by the Governor-General may also be by proclamation 'or otherwise'. See *House of Representatives Practice*, (2001), as above, p. 226.
- 8 The practice has been established that immediately prior to the hour of dissolution, the Official Secretary to the Governor-General, accompanied by the Clerk of the House, the Deputy Clerk and the Serjeant-at-Arms, reads the proclamation. The officers then return and the Clerk of the House posts a copy of the proclamation at the door of the House of Representatives Chamber. A 19-gun artillery salute is fired at the precise time of dissolution to mark the end of the Parliament. Officers of the Senate attend the reading of the proclamation on the occasion of a simultaneous dissolution of both Houses. They do not attend when only the House is being dissolved.
- 9 *Commonwealth Electoral Act 1918*, section 154.
- 10 Constitution, sections 12 and 32.
- 11 Constitution, section 32 and *Commonwealth Electoral Act 1918*, section 151. For a by-election, it is the Speaker who has the power to issue the writ, and it is the Speaker to whom the writ is returned (Constitution, section 33).

Senators are directed to the Australian Electoral Officers (AEOs) for the Northern Territory and the Australian Capital Territory.¹²

- 3.12 The Governor of each State issues a writ for the election of Senators for that State.¹³ On the Governor-General's agreement to the Prime Minister's request for an election, the Prime Minister:
- informs the Governor-General of the requirements of section 12 of the Constitution (which provides that the State Governors issue writs for the election of State Senators);
 - states that it would be desirable that the States adopt the polling date proposed by the Commonwealth; and
 - requests the Governor-General to invite the State Governors to adopt a suggested date.¹⁴
- 3.13 The Governor-General then writes to the State Governors advising them of the intention to hold an election and seeking their co-operation in issuing the writs. As a matter of courtesy, the Prime Minister also writes to the State Premiers advising them of the intention to hold an election and the writs are subsequently prepared by the respective Premier's departments. State Governors act on the advice of the State Government.
- 3.14 While the practice is for the State Governors to fix times and polling places for Senate elections identical with those for the elections for the House of Representatives, under the Constitution, State Parliaments do have the power to make laws under which different dates for Senate polls could be set,¹⁵ provided that any date so chosen is a) a Saturday, and b) satisfies the Constitutional requirement that an election to fill vacant Senate places shall be made 'within one year before the places are to become vacant', that is, within one year before the conclusion of the six-year term for the positions in question.¹⁶

12 *Commonwealth Electoral Act 1918*, sections 154 and 153 respectively.

13 Constitution, section 12.

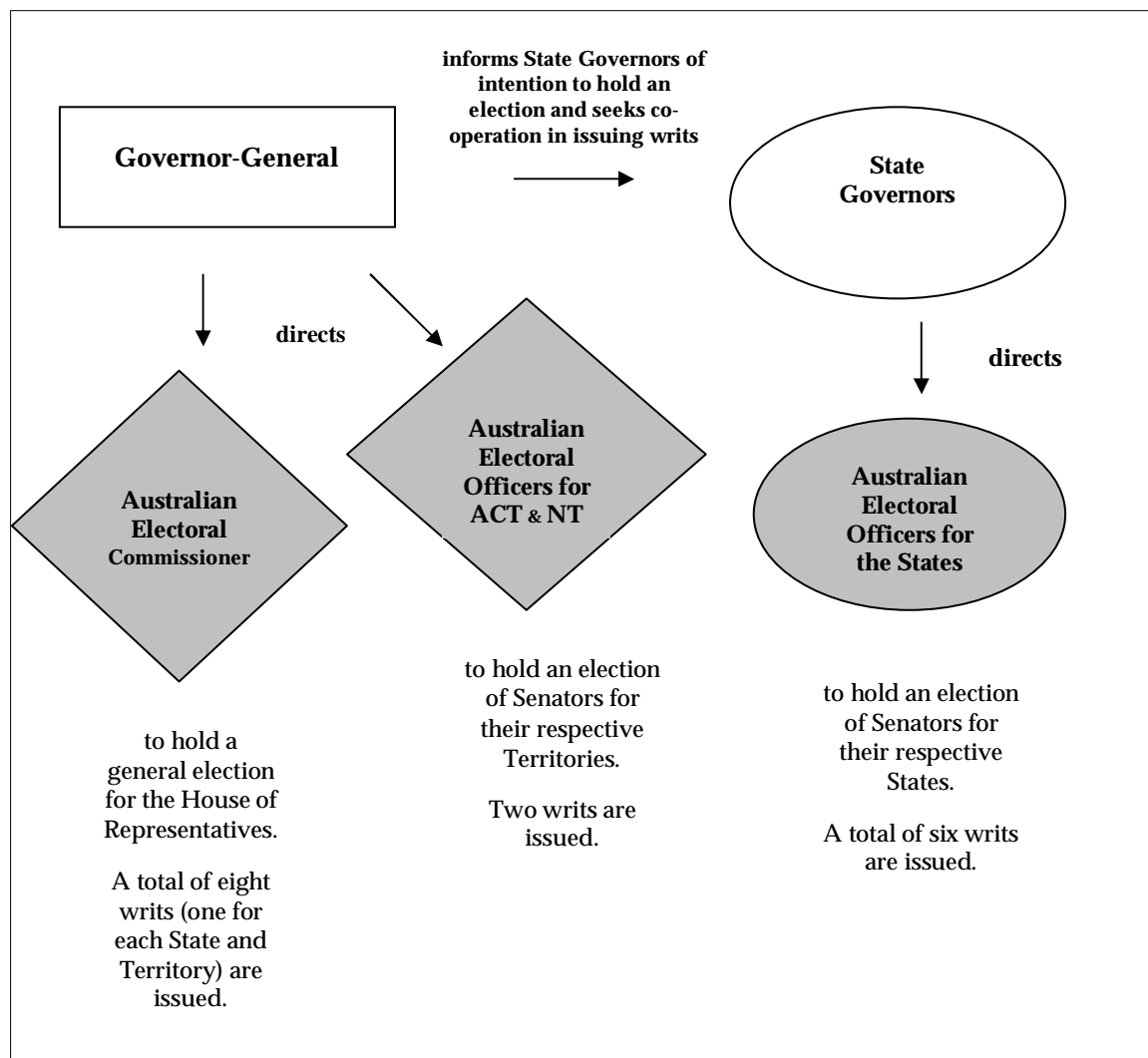
14 JR Odgers, *Australian Senate Practice – Tenth Edition*, Department of the Senate (2001), p.123.

15 Section 9 of the Constitution provides in part that 'The Parliament of a State may make laws for determining the times and places of election of Senators for the State'.

16 Constitution, section 13. On 2 April 1974 the Premier of Queensland used these powers to cause a writ to be issued for a half-Senate election for Queensland (periodical elections for half of the Senate were to be held on 18 May 1974). This followed the announcement, earlier on 2 April, that Queensland Senator Vince Gair had accepted appointment as Australia's next Ambassador to Ireland. Senator Gair had not at that time resigned as a Senator – the effect of issuing a writ prior to the vacancy arising was that the vacancy

- 3.15 The writs for the elections of Senators for the States are directed to each State's respective Australian Electoral Officer.¹⁷
- 3.16 Figure 3.1 below illustrates the process of issuing writs for the House of Representatives, the writs for the State Senators, and the writs for the Territory Senators.

Figure 3.1 Issue of federal election writs



Sources AEC submission no. 147, p. 9; Commonwealth Electoral Act 1918, sections 153, 154; Constitution, section 12, 32; IC Harris, House of Representatives Practice – Fourth Edition (2001); JR Odgers, Australian Senate Practice – Sixth Edition (1991).

would then be filled by choice of the State Parliament or Governor, and not at the election on 18 May. Speculation was that filling of Senator Gair's position at the election would have improved the ALP federal Government's chances of controlling the Senate from the start of the new Senate term on 1 July 1974. Both Houses of the Parliament were ultimately dissolved on 11 April. See JR Odgers, *Australian Senate Practice – Sixth Edition* (1991), pp. 55-62.

¹⁷ Commonwealth Electoral Act 1918, section 153.

- 3.17 Each writ specifies:
- the date for the close of nominations of candidates;
 - the date for the close of the rolls;
 - the date for polling day; and
 - the date for the return of the writ to the Governor-General (House of Representatives and Territory Senate writs) or the State Governors (State Senate writs).¹⁸
- 3.18 Writs for the House of Representatives and Territory Senate elections are prepared by the AEC in discussion with the Federal Executive Council Secretariat in the Department of Prime Minister and Cabinet, and the Office of the Special Minister of State.
- 3.19 The election writs for the Senators for the States are prepared by the State Premier's Departments, in consultation with the respective State Australian Electoral Officers.

Declaration of the poll and return of writs

- 3.20 As well as being the authority by which an election is held, the writ is the authority by which a candidate is declared elected. As soon as practical after it has been determined that a candidate has been elected, the result is declared.¹⁹ For a House of Representatives seat, the declaration of the poll is made by the relevant Divisional Returning Officers.²⁰ The declaration of the poll for the Senate is made by the Australian Electoral Officer for that State or Territory.²¹
- 3.21 When all polls for House of Representatives Divisions within a State or Territory have been declared, the Electoral Commissioner certifies on the writ the name of the successful candidate for each Division and forwards the writ to the Governor-General.²² Following the

18 *Commonwealth Electoral Act 1918*, section 152. Sections 283 and 284 of the Electoral Act stipulate provisions for the return of the writs (paragraphs 3.33 to 3.40 refer).

19 *House of Representatives Practice*, (2001), as above, p. 98.

20 *House of Representatives Practice*, (2001), as above, p. 98. The declaration in each Division need not necessarily occur on the same day, however, as the time for counting will vary from Division to Division.

21 AEC Factsheet, *How the Votes are Counted* at: http://www.aec.gov.au/_content/What/voting/votes_count.htm, accessed 30 May 2003. Given the more complicated nature of the Senate voting system, it is some weeks before all Senators are declared elected.

22 *House of Representatives Practice*, (2001), as above, p. 98. *Commonwealth Electoral Act 1918*, section 284. In a by-election for a Division of the House of Representatives, an election writ addressed to the Electoral Commissioner, signed by the Speaker of the House and

declaration of the result in a Senate election, the AEO for a State or Territory certifies on the writ the names of the candidates elected for the State or Territory and returns the writ to the Governor of the relevant State, or in the case of the ACT and the NT, to the Governor-General.²³

- 3.22 The Electoral Act stipulates that the names of candidates elected be certified on the reverse side of the original writ.²⁴ The writs must be returned within 100 days of their issue.²⁵

The AEC's concerns in relation to notification of the election and election writs

- 3.23 The AEC raised three issues in relation to the notification of an election and election writs: the form of advice to the AEC of the election; the appropriateness of the AEC as the body to prepare the writs for the House of Representatives and the Territory Senators; and the method of certifying the names of the successful candidates on the writs.

Notification

- 3.24 In both its written and oral submissions, the AEC indicated that it wished to receive a formal notification of the election, noting that it had never received such formal advice.²⁶ The AEC stated that, in 2001, the notification of the federal election, which was the basis for it preparing writs, was in the form of a faxed press release from the Prime Minister's Office.²⁷ Prior to 2001, the AEC has prepared writs for the general election of the House of Representatives and the Territory Senators on the basis of informal telephone calls from officers of the Department of Prime Minister and Cabinet to the Electoral Commissioner.

embossed with the House of Representatives seal, is, on the declaration of the poll, returned to the Speaker. *House of Representatives Practice*, (2001), as above, pp. 92, 98.

23 *Oggers Senate Practice -- Tenth Edition*, (2001), as above p. 130. *Commonwealth Electoral Act 1918*, section 283.

24 *Commonwealth Electoral Act 1918*, section 283.

25 *Commonwealth Electoral Act 1918*, section 159.

26 Transcript of Evidence, 16 August 2002 (Mr A. Becker), p. EM69. Mr Becker remarked that the press release was 'the most formal' advice they had ever received, Transcript of Evidence p. EM69; Submission (AEC, no. 147), p. 10.

27 Submission (AEC, no. 147), p. 10, Transcript of Evidence, 16 August 2002 (Mr A Becker), pp. EM68-70.

- 3.25 The Committee suggested that the AEC liaise with the Department of Prime Minister and Cabinet regarding notification procedures.²⁸ The AEC subsequently advised the Committee that it had written to the Department of Prime Minister and Cabinet regarding procedures, and that the matter was being dealt with administratively.²⁹

Preparation

- 3.26 The AEC's second concern related to which entity should prepare the writs. As noted above, the writs for the House of Representatives and Territory Senators are prepared by the AEC, and the writs for the State Senators are prepared by the State Premier's Departments.
- 3.27 The AEC's submission suggested that the Office of Legislative Drafting (OLD) might be a 'more appropriate organisation' than the AEC to prepare the House of Representatives and Territory Senator writs (on the basis of a brief from the Department of Prime Minister and Cabinet).³⁰ The AEC submitted that while the OLD is 'a specialist legal drafting office, servicing all Commonwealth agencies', 'one of OLD's functions is to draft non-legislative matters, of which the writs would be an example'.³¹
- 3.28 The AEC advised the Committee that:
- In New South Wales, Queensland, Western Australia and South Australia the writs for the State elections are prepared by the Premier's Department (or equivalent) and in the Northern Territory the Cabinet Office. It is only in Victoria and Tasmania that the State electoral bodies prepare writs for the State elections.³²

Committee comment

- 3.29 The Committee can see no reason why, given the long established Commonwealth practice, the AEC is not the appropriate body to prepare writs. Insofar as it is relevant, the comparison with the practice for State and Territory elections is not compelling because it is not consistent across all jurisdictions.

28 Transcript of Evidence 16 August 2002 (Mr P Georgiou, MP; Senator R Ray), p. EM70.

29 Submission (AEC, no. 174), p. 56.

30 Submission (AEC, no. 147) p 10.

31 Submission (AEC, no. 190) p. 8.

32 Submission (AEC, no. 147) p 10. The AEC later advised that ACT Elections (the ACT's electoral authority) also prepares election writs for ACT Legislative Assembly elections.

Format of writs

3.30 The AEC raised concerns about the physical form of returned writs:

In order to have the requisite information [that is, the names of the candidates declared elected] on the reverse side of the writ [as required by section 283 of the Electoral Act], the original writs must be processed through a printer or photocopier which involves the inherent risk of damaging or destroying a writ in that process. Any error made during this process cannot be corrected as it is an original writ.³³

3.31 The Committee has been advised that there is no indication of any writ being destroyed in the printing or photocopying process. Nonetheless, in the interests of prudence, the Committee supports the AEC's recommendation that the Electoral Act be amended to allow the name of each candidate elected to be included in an attachment to the writ, rather than printed or photocopied on the reverse side of the original writ.

Recommendation 9

3.32 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the name of each candidate elected to be included in an attachment to a writ, rather than printed or photocopied on the reverse side of the original writ.**

Return of writs

3.33 In the course of this inquiry, members of the Committee expressed an interest in ensuring a uniform closing date for petitions to the Court of Disputed Returns.³⁴ The High Court sitting as the Court of Disputed Returns is the body that determines any disputes as to the validity of an election or a return.³⁵

33 Submission (AEC, no. 147), p. 11.

34 Transcript of Evidence 16 August 2002 (Senator R. Ray, Senator A. Murray), pp. EM69-70.

35 *Commonwealth Electoral Act 1918*, section 354. See also *House of Representatives Practice*, pp. 101-102.

- 3.34 A petition to the Court of Disputed Returns must be filed within 40 days after the return of the writ to which the petition relates.³⁶ Accordingly, the return date of a writ determines the closing date for petitions disputing the election to which that writ applies.³⁷
- 3.35 As outlined above, there are 16 writs for a federal election for the House of Representatives and the Senate (whether it is a half-Senate election or a full Senate election). All such writs for a general election are *returnable* by the same day.³⁸ For the 2001 election, the writs were all returnable by 16 January 2002.
- 3.36 However, the *return date* of a writ is the date the writ is in fact returned, that is the date on which the writ, having been endorsed with the names of the successful candidates, comes into the possession of the person authorised to act on it – in the case of a general election the Governor-General.³⁹ As described in paragraph 3.21, the writ for a State or Territory is returned after all the polls in that State or Territory have been declared, and this is likely to differ between States and Territories.
- 3.37 The return date of the eight writs for the House of Representatives was 6 December 2001. The return dates of the eight Senate writs for the 2001 federal election ranged from 3 December 2001 (Tasmania) to 7 December 2001 (Victoria).⁴⁰ Accordingly, the closing dates for petitions to the Court of Disputed Returns following the 2001 federal election ranged from 12 January 2002 to 16 January 2002.
- 3.38 In response to the concerns raised by the Committee, the AEC advised that it had proposed to the Office of General Counsel (OGC) two options for amending the Electoral Act to allow ‘a uniform commencement and closing date for petitions to the Court of Disputed Returns’.⁴¹ The amendments would either:
- deem all writs to be returned on the date of the return of the last writ; or

36 *Commonwealth Electoral Act 1918*, subsection 355(e).

37 *Commonwealth Electoral Act 1918*, subsection 355(e).

38 *House of Representatives Practice*, (2001) as above, p. 98.

39 *House of Representatives Practice*, (2001) as above, p. 98. (See also paragraphs 3.20 and 3.21 above).

40 Submission (AEC, no. 147), pp. 11-12.

41 Submission (AEC, no. 186), p. 13.

- require that the 40-day period be counted from the day of the return of the last writ.⁴²

3.39 The OGC advised the AEC that it preferred the second of these options. This is in line with the current mechanism used in ATSIC elections, where the 40-day period begins after the last declaration of a poll in a round of ATSIC elections.⁴³

Committee comment

3.40 Presently, a petition to the Court of Disputed Returns must be filed within 40 days after the return of the writ to which the petition relates, leading to varying closing dates for petitions as the different writs are returned. The Committee considers the broader question of the operation of the Court of Disputed Returns to be worthy of further examination in the future.

Nominations and registrations

Nominations

3.41 The Electoral Act provides that any Australian citizen who is over the age of 18, and who is either eligible to vote or qualified to become an elector, may nominate as a candidate for election to the House of Representatives or the Senate.⁴⁴ This is subject to the Constitution, which sets out grounds for ineligibility for election. Section 44 provides:

Any person who –

- (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or
- (iii) is an undischarged bankrupt or insolvent; or

42 Submission (AEC, no. 186), p. 13.

43 Submission (AEC, no. 186), p. 14.

44 *Commonwealth Electoral Act 1918*, section 163. Accordingly, a nominee does not have to be on the roll to nominate.

- (iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or
- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;

shall be incapable of being chosen or of sitting as a Senator or a member of the House of Representatives.⁴⁵

- 3.42 Members of State or Territory legislatures are also ineligible to nominate for election to the Senate or the House of Representatives.⁴⁶
- 3.43 In each election, a person may only be nominated for one seat in the House of Representatives or one seat in the Senate.⁴⁷
- 3.44 As specified in the writs for the 2001 election, nominations for candidature for the House of Representatives and the Senate closed at 12 noon on Thursday, 18 October 2001.⁴⁸ A total of 1,324 candidates nominated for the 2001 federal election: 285 for the Senate and 1,039 for the House of Representatives.⁴⁹
- 3.45 An unusual situation arose in 2001 when Ms Roslyn Dundas nominated as a candidate for the Australian Democrats for both the ACT Legislative Assembly election being held on 20 October 2001, and the federal Senate election being held on 10 November 2001. Neither section 164 nor section 165 of the Electoral Act prevented Ms Dundas from having these two simultaneous nominations, because she was not a member of a State or Territory legislature when nominations for the Senate closed on 18 October 2001, and section 165 only prevents multiple nominations in the same *federal* election.

45 The Australian Constitution, available at: <http://www.aph.gov.au/senate/general/constitution/index.htm>, accessed Feb 2003. Sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

46 *Commonwealth Electoral Act 1918*, section 164.

47 *Commonwealth Electoral Act 1918*, section 165.

48 *Commonwealth Electoral Act 1918*, section 175.

49 Submission (AEC, no. 147), p. 12.

- 3.46 Ms Dundas won the Legislative Assembly seat of Ginninderra, although the result was not declared until 5 November 2001.⁵⁰ At this point, had Ms Dundas wanted to withdraw her Senate candidacy, she could not have done so because section 177 of the Electoral Act only permits nominations to be withdrawn up until the close of nominations, and nominations had closed two days before the ACT Assembly's election.
- 3.47 Ultimately, Ms Dundas was not successful in the Senate election. Nevertheless, this case illustrates the possibility of a candidate simultaneously nominating and successfully contesting two elections.
- 3.48 The AEC has advised that:

As nominations closed for the federal election on 18 October 2001, before polling day for the ACT Legislative Assembly election, Ms Dundas was still only a candidate for the ACT Legislative Assembly when she nominated as a candidate for the Senate. In other words, Ms Dundas did not offend section 164 of the Act.

Anticipating the Ms Dundas might be elected to the ACT Legislative Assembly, the AEC sought legal advice as to whether the ACT Senate election could continue if Ms Dundas was elected to the ACT Legislative Assembly. On the basis of this advice, the AEC believes that Ms Dundas' election to the Legislative Assembly did not require any action in relation to the ACT Senate election.⁵¹

Deposits

- 3.49 Under the Electoral Act, candidates must pay a deposit to a Divisional Returning Officer or Australian Electoral Officer as part of the nomination process. The deposit is \$350 for House of Representatives candidates and \$700 for Senate candidates.⁵² The candidate's deposit is returned to the candidate after an election if they are elected. The

50 The ACT's electoral system, Hare-Clark, often produces an outcome which is unknown for at least a week after polling. Jim Chalmers, 'Commentary: The Australian Capital Territory Election of 20 October 2001' (2002) *Australian Journal of Political Science*, 37(1):165-168.

51 Submission (AEC, no. 199), p. 15.

52 *Commonwealth Electoral Act 1918*, section 170. The deposit may be paid by a person other than the candidate, or in the case of political parties, by a party on behalf of all its nominated candidates.

candidate's deposit is also returned to the candidate after the election if they are not elected when:

- the candidate is an ungrouped Senate candidate, and their total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that State or Territory;
- the Senate candidate's name is included in a group, and the sum of the first preference votes polled by all the candidates in the group is at least four per cent of the total number of formal first preference votes in that State or Territory;
- the person is a candidate for the House of Representatives, and their total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that Division.⁵³

3.50 Mr Ronald Munro submitted that the deposit should be raised to \$10,000 for both the House of Representatives and the Senate and that deposits not be returned unless a candidate secures 10 per cent of the first preference votes. This would discourage some candidates and therefore keep the size of ballot papers 'manageable'.⁵⁴

Committee comment

3.51 The Committee considers Mr Munro's proposed \$10,000 deposit would unduly inhibit participation in the democratic process.

Signatures

3.52 Candidates who are endorsed by a registered political party may be nominated for election by either the registered officer or deputy registered officer of that political party, or by 50 or more electors who are entitled to vote at the election for which the candidate is standing. A candidate who is not endorsed by a registered political party must be nominated by 50 or more electors who are entitled to vote in the election. The 50 electors must be enrolled in the Division for which the candidate is standing (for the House of Representatives) or in the

53 AEC, *Candidates' Handbook 2001*, available at: http://www.aec.gov.au/_content/how/procedures/candidates_handbook.htm, accessed February 2003.

54 Submission (Mr R Munro, no. 50), p. 1.

State or Territory for which the candidate is standing (for the Senate).⁵⁵

3.53 Mr Peter Andren MP (Independent Member for Calare) recommended that the Electoral Act be amended:

so that incumbent Independent members ... need not provide 50 signatures at each election after their first, but be able to be nominated by just one other person, enrolled in the Division in question.⁵⁶

Committee comment

3.54 The Committee generally supports Mr Andren's proposal but considers that it should not apply to Independent incumbents elected as candidates endorsed by a registered political party and who subsequently left that political party to sit as Independents.

Recommendation 10

3.55 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that incumbent Independent Members and Senators who were elected as Independents need not provide 50 signatures at each election after their first or subsequent elections, but may be nominated by just one other person, who is enrolled in the relevant Division, State or Territory.**

Registration of political parties and party names

3.56 A political party must be registered by the AEC if it wishes to have its party name printed next to its candidates' names on ballot papers.⁵⁷ The Electoral Act sets out the requirements that political parties must meet to be registered. These requirements include that:

- the party has a minimum of 500 members, or at least one member who is a member of a State or Territory Parliament or the federal Parliament;

55 *Commonwealth Electoral Act 1918*, section 166. See also AEC, *Candidates' Handbook 2001*, available at: http://www.aec.gov.au/_content/how/procedures/candidates_handbook/index.htm, accessed February 2003.

56 Submission (Mr P. Andren MP, no. 80), p. 2.

57 Submission (AEC, no. 147), p. 44.

- the party lodges a constitution with the AEC; and
 - the party pays a \$500 registration fee.⁵⁸
- 3.57 The party register closes the day before the writs are issued.⁵⁹ For the 2001 federal election, the register closed on 7 October 2001, with a total of 64 parties listed.⁶⁰
- 3.58 Before registering a political party, the AEC must undertake a public consultation exercise, including publishing a notice of application in a newspaper in each State and Territory, and inviting submissions regarding the eligibility of the proposed new political party and the proposed name of the new political party.⁶¹

'Inappropriate' party and candidate names

- 3.59 The issues of 'inappropriate' voter, candidate and party names have been raised by the AEC in a number of previous inquiries, and were raised again in this inquiry.⁶²

Inappropriate candidate names

- 3.60 Candidates must nominate using the name under which they are enrolled to vote, or if they are not enrolled, the name under which they are entitled to enrol.⁶³
- 3.61 Under the Electoral Act, AEC officers may refuse to enrol a person if the name is:
- fictitious, frivolous, offensive or obscene;
 - not the name by which the person is usually known;
 - not written in the English alphabet; or
 - 'contrary to the public interest'.⁶⁴

58 *Commonwealth Electoral Act 1918*, Part XI – Registration of Political Parties.

59 Submission (AEC, no. 147), p.44.

60 The submission from the AEC (no. 147, p. 44) lists all the political parties registered for the 2001 federal election. Election funding and disclosure requirements are discussed in chapter six of the report.

61 *Commonwealth Electoral Act 1918*, section 132.

62 See JSCEM, *The 1996 Federal Election: Report on the Inquiry into the Conduct of the 1996 Federal Election and matters related thereto*, Parliament of Australia, June 1997, and JSCEM, *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, Parliament of Australia, June 2000.

63 *Commonwealth Electoral Act 1918*, subsection 166 (2).

- 3.62 The introduction of the ‘fictitious’ and ‘frivolous’ grounds is quite recent. The *Electoral and Referendum Amendment Act (No. 1) 2001*, which came into effect in July 2001, contains provisions giving AEC officers the power to refuse to include fictitious or frivolous names on the electoral roll. Transitional arrangements in the Act also allowed for the removal of existing inappropriate names from the roll. However, these transitional arrangements have lapsed,⁶⁵ and there is now no provision to allow the AEC to remove inappropriate names from the roll should they ‘slip through the net’.⁶⁶
- 3.63 The new provisions relating to ‘fictitious’ and ‘frivolous’ names have been tested in several cases. For example, Mr Nigel Freemarijuana is an enrolled Queensland voter who nominated as a candidate for the 2001 election. The name ‘Nigel Freemarijuana’ is the voter’s legal name, having been registered by deed poll in 1996. In 2001, the AEC removed Mr Freemarijuana’s name from the roll and replaced it with his given name, David Nigel Quinlan. Mr Freemarijuana appealed to the Administrative Appeals Tribunal (AAT) and was successful in having his legally registered name reinstated to the roll.⁶⁷ The AAT found that:
- To require a person to be enrolled under a name by which they are not known could distort the electoral process. In our view there is a strong public interest in the applicant being enrolled in his legal name – the name he is generally known by.⁶⁸
- 3.64 In its submission to this inquiry, the AEC submitted that the effect of recent AAT decisions is that a name cannot be rejected as ‘frivolous’ or ‘fictitious’ if it is the person’s legal name used for everyday purposes.⁶⁹

64 *Commonwealth Electoral Act 1918*, section 98A. These provisions would preclude an individual attempting to nominate using an ‘inappropriate’ name even if they were not on the roll, as the Act requires that candidates nominate using their enrolled name or the name under which they would be entitled to enrol.

65 The transitional arrangements were only in place until sections 93A and 98A of the Electoral Act commenced, later in July 2001.

66 Submission (AEC, no. 147), p. 23.

67 Submission (AEC, no. 147), p. 21. See *Freemarijuana and Australian Electoral Officer for Queensland* [2001] AATA 917, 6 November 2001.

68 *Freemarijuana and Australian Electoral Officer for Queensland* [2001] AATA 917 (6 November 2001).

69 Submission (AEC, no. 147), p. 23.

- 3.65 The AEC recommended that a definition of ‘frivolous’ and ‘fictitious’ be included in the Electoral Act and that a review be conducted of the ‘inappropriate names’ already on the roll.⁷⁰
- 3.66 The Committee requested that the AEC advise it on an appropriate form of words for such a legislative definition. The AEC reconsidered its recommendation, concluding that it is ‘now of the opinion that, regardless of the definition, these terms are likely to be unenforceable’.⁷¹ The AEC subsequently recommended that the terms ‘frivolous’ and ‘fictitious’ be removed from section 98A of the Electoral Act.⁷²

Committee comment

- 3.67 The Committee considers that where a person is generally known by a legally registered name for a period of at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the ‘fictitious’ and ‘frivolous’ grounds.

Recommendation 11

- 3.68 **The Committee recommends that where a person has been generally known by a legally registered name for at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the ‘fictitious’ and ‘frivolous’ grounds set out in section 98A of the *Commonwealth Electoral Act 1918*.**

Inappropriate party names

- 3.69 Some submissions to the inquiry raised concerns about political parties with similar names.⁷³
- 3.70 Section 129 of the Electoral Act specifies that a party may not register a name which so nearly resembles that of another party that it is likely to be confused with or mistaken for the other party’s name or its abbreviation or acronym.⁷⁴

70 Submission (AEC, no. 147), p. 23.

71 Submission (AEC, no. 199), p. 16.

72 Submission (AEC, no. 199), p. 16.

73 Submission (ALP, no. 153; Ms R. Gibbs, no. 140).

74 *Commonwealth Electoral Act 1918*, paragraph 129(d).

3.71 Several submitters asserted that, notwithstanding this prohibition, some parties have been allowed to register while having a similar name to an existing party.⁷⁵ The concern is that this may mislead voters by suggesting that two parties have a close political connection.⁷⁶ The Australian Labor Party (ALP) cited the ‘Curtin Labor Alliance’ as an example.⁷⁷ According to the ALP:

parties have a legitimate concern that other parties with no association to it should be precluded from using the organisation’s name or part of their name.⁷⁸

3.72 On 14 August 2001, the ALP objected to the registration of the Curtin Labor Alliance on three counts:

- the use of the name ‘Curtin’ was inappropriate and unauthorised;
- the use of the word ‘Labor’ was likely to confuse and mislead voters; and
- the Curtin Labor Alliance was a front party for another organisation, the Citizens Electoral Council.⁷⁹

3.73 The AEC responded to each of the ALP’s three objections. First, in relation to the use of the word ‘Curtin’ the AEC considered that:

the provisions of the Act do not allow the AEC to reject an application where a person’s name has been used in the name of the party, and as the AEC determined that this word was not part of any other registered party name it did not breach the provisions of section 129 of the Act.⁸⁰

3.74 In relation to the ALP’s objection to the use of the word ‘Labor’, the AEC based its response on precedents established by the AAT. In the case of *Keith Woollard v. Australian Electoral Commission*, a decision by the AEC that the name ‘liberals for forests’ too closely resembled that of the Liberal Party of Australia was overturned on appeal to the AAT. The AEC submitted that:

75 Submission (ALP, no. 153; Ms R. Gibbs, no. 140).

76 Submission (ALP, no. 153), p. 10.

77 See also submission (Ms Ruth Gibbs, no. 140).

78 Submission (ALP, no. 153), p. 10.

79 Tim Gattrell, ‘Labor Challenges Far Right Group Behind Curtin Labor Alliance’, *Labor Herald*, September 2001. <http://www.alp.org.au/laborherald/sept2001/la.html>, accessed 29 May 2003.

80 Submission (AEC, no. 203), p. 11.

In relation to the term ‘Labor’, the AAT found in the ‘liberals for forests’ case that the resemblance between the names of the Liberal Party and liberals for forests was limited and subsequently set aside the decision of the Commission not to register liberals for forests. Also, given that another currently registered party also used the same spelling of Labor (that is, the Democratic Labor Party), the AEC believed that there were insufficient grounds to reject the application on that basis.⁸¹

3.75 Finally, in relation to the ALP’s claim that the Curtin Labor Alliance was a front party of the Citizens Electoral Council, the AEC submitted that it:

conducted cross checking against all available party membership lists, including the Citizens Electoral Council, and found that none of the Curtin Labor Alliance members had been identified as members by the Citizens Electoral Council for registration purposes.⁸²

3.76 The ALP asked the AEC to review this decision, based on a belief that the AEC had misapplied the relevant section of the Electoral Act as expressed in the ‘liberals for forests’ case. The appeal was dismissed and the ALP did not pursue the matter with the AAT.

3.77 The ALP recommended that the AEC be required to report to the Committee on legislative options for reforming the rules governing registration of political parties, to restrict the use of the name or part of the name of a recognised organisation.

3.78 In response, the AEC asserted that such a report was not warranted. The AEC advised that its views on necessary changes to party registration provisions in the Electoral Act are set out in previous AEC submissions and reports.⁸³ Nevertheless, at the request of the Committee, the AEC outlined three options for consideration:

- an amendment to the Act to provide that words such as ‘liberal’ or ‘labor’ could only be used by particular parties;
- listing certain words that could not be used by more than one party; or

81 Submission (AEC, no. 203), p. 11.

82 Submission (AEC, no. 203), pp. 11-12.

83 Submission (AEC, no. 181), p. 33.

- the retention of the status quo.⁸⁴
- 3.79 The AEC suggested that the two options for change would require consideration as to whether the legislation would restrict only future applicants or also cover any currently registered parties.
- 3.80 The AEC favoured maintaining the status quo because it enables the AEC to use its discretion in determining when a new party name might be likely to be confused with, or mistaken for, another party's name.⁸⁵

Committee comment

- 3.81 The Committee notes the potential for both options for change to have an impact on well-established parties with similar names, for example, the Australian Labor Party and the Democratic Labor Party.
- 3.82 The Committee is of the view that banning names in the abstract may have a number of unintended consequences and is therefore not convinced that it is the best path to pursue.
- 3.83 While the AEC is obliged under subsection 141(7) of the Electoral Act to give relevant persons associated with the reviewable decision 'written notice' of that decision, the Committee considers that the AEC has a wide discretion in the level of detail it is required to provide in the notice. The Committee believes that the provision of detailed reasons, with reference to the Electoral Act, should be mandatory. Those reasons should be published to assist the understanding of the application of the relevant provisions.

Recommendation 12

- 3.84 **The Committee recommends that the AEC be required to provide detailed reasons for a decision, with reference to the *Commonwealth Electoral Act 1918*, to all parties involved in an application under section 129 of the Act, and that those reasons be published to assist the understanding of the application of the relevant provisions.**

84 Submission (AEC, no. 181), p. 33-34.

85 Submission (AEC, no. 181), p. 34.

Public awareness campaign

- 3.85 A significant component of the AEC's election preparations is its public awareness campaign. The AEC is responsible for informing the voting public about:
- how, when and where to enrol;
 - when and where to vote using services such as pre-poll and postal voting;
 - how to correctly complete a ballot paper for each of the House of Representatives and the Senate; and
 - the role of the AEC in the election.⁸⁶
- 3.86 As for other recent elections, the public awareness campaign for the 2001 federal election consisted of:
- national and local advertising;
 - public relations activities;
 - a national call centre;
 - internet sites, including the Virtual Tally Room (VTR);⁸⁷
 - responses to email enquiries; and
 - distribution of various publications.⁸⁸
- 3.87 The total cost of the public awareness campaign for the 2001 federal election was over \$17 million, including \$10.4 million for the advertising campaign, \$3.6 million for enquiry services and \$1.7 million for an election leaflet.⁸⁹ Table 3.1 presents the AEC's public awareness campaign costs for the 1998 and 2001 elections.

86 Submission (AEC, no. 147), p. 17; AEC. 2002. *Behind the Scenes*. p. 35.

87 For further background on the internet site, see submission (AEC, no. 147) p.19. The VTR is discussed further in chapter five of this report.

88 These publications included *Nominations Pamphlet, Candidates' Handbook, Scrutineers' Handbooks, National Electoral Divisional Profiles, Electoral Backgrounders, 2001 Federal Electoral Boundaries Map, National List of Candidates, 2001 Election Night Guide, and Fact Sheets*. AEC. 2002. *Behind the Scenes*. p. 39.

89 Submission (AEC, no. 147), p. 17. On the election leaflet, Ms Ruth Gibbs submitted that the AEC could more effectively inform voters via a personal letter drop if it had more funding. Submission (Ms R. Gibbs, no. 140), p. 1.

Table 3.1 Summary of public awareness campaign expenditure, 1998 and 2001.

Expenditure item	Cost (\$)	
	1998	2001
Advertising campaign	8 870 782	10 408 504
Election leaflet (mailed to households)	1 463 302	1 712 340
National tally room provision	363 165	615 270
Public information materials and support*	1 300 372	4 459 146
<i>Education & Information Service</i>	--	245 324
<i>Enquiry services</i>	--	3 670 873
<i>Internet</i>	--	38 646
<i>Public relations campaign</i>	--	264 460
<i>Market research and surveys</i>	--	239 843
Election statistics and results*	94 108	83 765
<i>Media and result centre</i>	--	16 729
<i>Newsfiles (publication)</i>	--	49 687
<i>Pocketbook</i>	--	17 349
Total	12 091 729	17 279 025

Source *Data for 2001: AEC submission no. 181 p. 36, Data for 1998: AEC. Electoral Pocket Book, p. 63.*

Note * *The AEC was not able to provide precisely comparable figures across the two federal elections 'because of changes to the way the public information campaign was organised for the 2001 federal election'. Figures in bold are used to calculate total expenditure across 1998 and 2001, not those in italics. AEC submission no. 202, p. 12.*

AEC advertising

- 3.88 All Australians over the age of 18 were targeted in the AEC's advertising campaign. Special target groups were also identified, namely: electors from non-English speaking backgrounds; electors with print-reading disabilities; Aboriginal and Torres Strait Islander electors; electors living in remote areas; and young electors.⁹⁰
- 3.89 A two-pronged strategy of national and State-based advertising began on Sunday, 7 October 2001, and ran until 5pm on polling day. At the national level, the campaign consisted of 15 different television advertisements, 14 different radio advertisements and ten different press advertisements. State and Territory advertising sought to complement the national campaign by informing voters of local pre-poll and polling booth arrangements. Of the total media budget, 66 per cent was spent on mainstream television, five per cent on mainstream radio and 21 per cent on mainstream press advertising. Expenditure in ethnic and indigenous media accounted for approximately eight per cent of total advertising costs.⁹¹

90 Submission (AEC, no. 147), p. 17. The under-enrolment of Aboriginal and Torres Strait Islander electors is discussed in chapter two at paragraphs 2.321 to 2.328.

91 AEC, 2002, *Behind the Scenes*, p. 36.

3.90 Table 3.2 (below) elaborates the AEC's advertising expenditure at the 2001 federal election, by advertising phase.

Table 3.2 AEC Advertising costs by election phase – 2001 federal election

Advertising Phase	Cost in \$
Enrolment:	2 883 294
Press	229 608
Radio	338 602
TV	2 026 571
Production costs	288 512
Voter services:	1 406 828
Press	483 056
Radio	123 346
TV	789 389
Production costs	11 036
Formality:	3 585 355
Press	797 784
Radio	195 204
TV	2 500 584
Production costs	91 783
Other items:	
Other production in relation to above	620 480
Non campaign (polling place material)	1 774 262
Other related expenditure	138 285
Total advertising	10 408 504

Source AEC submission 181 pp. 36-37

Advertising and informal voting

3.91 Mr Peter Andren MP expressed concern about the content of the information distributed in his electorate of Calare, and the possibility that this campaign may have increased the level of informal voting.⁹²

3.92 Mr Andren reported anecdotal evidence from his scrutineers that:

many of the informal votes in Calare involved people voting 1, 2, 3 & 4, but not filling in the other boxes on the ballot paper.⁹³

3.93 His concern was that this may have been linked to the mock ballot paper presented in AEC newspaper advertisements. This stated, 'Number the boxes from 1 to 4 in the order of your choice'.⁹⁴ He

92 Informal voting is further discussed in chapter four.

93 Submission (Mr P. Andren MP, no. 80), p. 4.

94 Submission (Mr P. Andren MP, no. 80), p. 4.

recommended that the AEC compile data on the number of informal votes that included a first, second, third and fourth preference only.⁹⁵

- 3.94 The AEC responded that it has not assessed the number of informal ballot papers thus marked, as this category was not included in its informal ballot paper survey. The AEC asserted that an analysis of incomplete papers marked only from 1 to 4 would be a ‘separate time consuming’ exercise as these papers are now in storage.⁹⁶
- 3.95 The AEC also expressed some reluctance to change the format of the generic ballot paper used in advertisements. Print and electronic media is often not restricted to a single Division, and the campaign is usually prepared well in advance of the election and close of nominations.⁹⁷ This means that mock ballot papers used in advertisements in most cases can only present a notional number of boxes rather than the actual number of candidates for a particular Division.⁹⁸ The AEC also noted that all advertisements clearly indicate the need to ‘number every box’, which Mr Andren had acknowledged in his submission.⁹⁹

Committee comment

- 3.96 The Committee takes Mr Andren’s points and recommends that the AEC conduct market research on its advertisements and improve them in light of the results of this research.

Recommendation 13

- 3.97 **The Committee recommends that the AEC:**
- **conduct market research on the impact of advertising using the concept of numbering the boxes 1 to 4; and**
 - **make appropriate improvements to its advertising in light of the results of the research.**

95 Submission (Mr P. Andren MP, no. 80), p. 5.

96 Submission (AEC, no. 181), p. 15.

97 Submission (AEC, no. 181), p. 15.

98 Submission (AEC, no. 181), p. 15-16.

99 Submission (Mr P. Andren MP, no. 80), p. 4.

National call centre

- 3.98 A telephone enquiry service has formed part of the AEC's public awareness campaign since 1996.¹⁰⁰
- 3.99 In 1996, the service forwarded callers to their nearest available electoral office or dedicated call centre to have their queries answered. This service operated from 8am to 8pm, Monday to Friday, during the election period.¹⁰¹ The service answered a total of 317,799 calls, of which 29,220 (or nine per cent) were made on the day the rolls closed. Nearly as many calls as were answered, were not answered: 310,825 calls were unanswered, that is, callers received an engaged signal.¹⁰²
- 3.100 When the telephone enquiry service operated just before the 1998 federal election, the AEC expanded it to seven days a week for the period of the campaign, with extended hours of operation on key dates such as the close of rolls.¹⁰³ The service responded to 533,451 calls. Despite the longer hours of operation than for previous elections, the service did not answer 610,171 calls.¹⁰⁴
- 3.101 Advice from Telstra suggested that many of the callers might have been successful in having their call answered on a second or third attempt, but that an increase in call centre staff would have alleviated the problem of unanswered calls.¹⁰⁵ This advice caused the AEC to re-consider its call centre strategy for the 2001 election.
- 3.102 For the 2001 federal election, the AEC outsourced the operation of the telephone enquiry service to United Customer Management Solutions (UCMS) at a cost of \$2.4 million. AEC officers trained a total of 1,600 call centre operators. The centre operated daily from two sites, one in Melbourne and one in Canberra. The Melbourne site, operating from 2 October 2001 to polling day, 10 November 2001, handled the majority of all calls made to the service. The Canberra site handled calls from 2 October to 16 November 2001.¹⁰⁶
- 3.103 Across both sites, the centre answered a total of 513,347 calls (82.6 per cent of all calls made to the service). However, 50 per cent of calls
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100 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13

101 AEC, Submission to the 1996 federal election inquiry, p. S146.

102 AEC, Submission to the 1998 federal election inquiry, p. S342.

103 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13; AEC Submission to the 1998 federal election inquiry, p. S342.

104 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13.

105 JSCEM, *The 1998 Federal Election*, (2000), as above, p. 13.

106 Submission (AEC, no. 147), p. 18.

made on the day the rolls closed (68,365 out of 136,077 calls) were not answered 'due to congestion'.¹⁰⁷

- 3.104 An AEC evaluation determined that the call centre service provided by UCMS had 'problems of a technical nature together with issues related to staffing, training, liaison and accuracy of information'.¹⁰⁸ The consequence of that assessment was that alternative call centre solutions would be examined for future events.
- 3.105 The AEC advised that in-principle agreement has now been reached for Centrelink to provide the National Call Centre function at the next electoral event.¹⁰⁹

Committee comment

- 3.106 The Committee is concerned with the number of unanswered calls on the day the rolls closed for the 2001 federal election, particularly given that arrangements put in place for that election were intended to have been an improvement on those for the 1998 election campaign. The AEC acknowledged that the number of calls missed was an issue of concern and said that it expects the transfer of the service to Centrelink will improve the situation. The Committee will no doubt examine call centre performance after the next election.

Other means of improving election awareness

Civics education

- 3.107 The Committee received submissions suggesting that electoral knowledge in the community could be improved by means other than the AEC's public awareness campaigns.¹¹⁰ For example, Mr David Combe recommended that the topic of elections be incorporated into primary and secondary education curricula 'so as to re-enforce the values of democracy to our young students'.¹¹¹ Mr Ian Bowie suggested that 'the Australian Parliament embark on a program of education about the ways of our democracy, both of the electorate

107 Submission (AEC, no. 147), p. 12.

108 The AEC considered legal action, but decided not to pursue the matter. This decision was made 'mindful of the significant costs and resources necessary to follow this course of action, the fact that UCMS incurred a financial loss on the project, and whilst not timely to the AEC, attempts had been made by UCMS to rectify the situation'. Submission (AEC, no. 190), p. 10.

109 Submission (AEC, no.190), p.10.

110 Submissions (Mr D. Combe, no. 19; Dr V Yule, no. 26; Mr I Bowie, no. 67).

111 Submission (Mr D. Combe, no. 19), p. 1.

and of its members/potential members'.¹¹² Mr Bowie cited programs in NSW aimed at informing potential and elected local councillors.

- 3.108 The Committee notes that the Commonwealth Government funds a *Discovering Democracy* program, which provides curriculum materials, professional development for teachers, and national activities for civics education in primary and high schools.¹¹³ It is supervised by a Civics Education Group, chaired by Dr John Hirst. The program was funded with \$18 million from 1997 to 2000. Following program evaluation in 1999, it received additional funding of \$13.6 million to June 2004. In 1999, education ministers also agreed to the development of student performance indicators for civics and citizenship education, with an emphasis on civic knowledge and understanding, and citizenship participation skills and values.
- 3.109 The Australian Parliament's Parliamentary Education Office aims to encourage active and informed participation in and awareness of Australian parliamentary democracy.¹¹⁴ The AEC operates three Electoral Education Centres in Canberra, Melbourne and Adelaide, which conduct electoral education sessions for groups.¹¹⁵ Members and Senators contribute to civics education by, for example, participating in civics education in their electorates; meeting constituents at open forums and talking with them on talkback radio; and meeting school groups visiting Parliament House.

Distribution of information on candidates and policies

- 3.110 Two submissions complained of insufficient information being available regarding candidates and their policies. Ms Heather Small expressed concern that insufficient information is provided on candidates listed 'below the line' on the Senate ballot paper. She recommended that an information circular, similar to that used for Hobart City Council elections, containing candidates' names, photos, professions, biographical details, party affiliations, policies and intended preference distributions, be distributed to all electors several weeks before the election.¹¹⁶ Mr Mark Hurd recommended that a

112 Submission (Mr I. Bowie, no. 67), p. 1.

113 See *Discovering Democracy* internet site: <http://www.curriculum.edu.au/democracy/>, accessed 13 May 2003.

114 Parliamentary Education Office internet site: <http://www.peo.gov.au>, accessed 14 February 2003.

115 AEC internet site: http://www.aec.gov.au/_content/how/education/centres.htm, accessed 14 February 2003.

116 Submissions (Ms H. Small, nos. 130 & 173).

small 'policy summary' be submitted by every candidate and made publicly available.¹¹⁷

- 3.111 Other submissions expressed concern that media coverage of electoral information was inadequate and resulted in electors being unable to make informed voting decisions at the 2001 election.¹¹⁸ These submissions were mostly critical of the perceived lack of media coverage of minor parties during the campaign.
- 3.112 Submissions also called for broader opportunities for all parties, including minor parties, to appear in nationally televised debates.¹¹⁹ The Greens NSW recommended that legislation be enacted to compel broadcasters to include in televised debates the leaders of parties that have candidates in more than half of the House of Representatives seats.¹²⁰

Committee comment

- 3.113 The Committee supports the widest possible facilitation of political debate and believes the range of existing information sources and programs serves Australia adequately.

Regulation of political campaigning

- 3.114 Political parties and candidates publicise their electoral platforms through mail-outs, television and radio broadcasts, and print advertising. By virtue of their political nature, these campaigns tend to provoke some controversy. This section discusses concerns raised in submissions about: the definition of electoral advertisements; inconsistencies between television and radio in the broadcasting of political content; the practice of 'push polling'; government advertising; regulation of the factual content of political advertising;

117 Submission (Mr M. Hurd, no. 1), p. 1.

118 Submissions (Mr D. Combe, no. 19; Dr V. Yule, no. 26; Friends of the Earth, no. 32; Rev. S. Slucki, no. 72; Greens, NSW, no. 158). One submission was so critical of the media's role in election campaigns that it called for the complete abolition of political advertising on television, Submission (Dr. V. Yule, no. 26) p. 4.

119 Submissions (Greens, NSW, no. 158; Mr D. Combe, no. 19; Rev. S. Slucki, no. 72; Dr V. Yule, no. 26).

120 Submission (Greens NSW, no. 158) p. 2.

how-to-vote cards; and the use of parliamentary entitlements for campaigning.¹²¹

Definition of electoral advertisements

3.115 Section 331 of the Electoral Act provides that:

where an article or paragraph in a [newspaper, magazine or other periodical, whether published for sale or for distribution without charge] contains electoral matter (whether or not the article was inserted for payment) the proprietor of the journal must cause the word ‘advertisement’ ... to be printed as a headline to the article or paragraph ...

3.116 Section 331 applied only to paid advertisements in newspapers until 1998, when the section was substantially amended by the *Electoral and Referendum Amendment Act 1998*. The 1998 amendments were intended to ensure that the requirement for a heading of ‘advertisement’ applied to advertisements in printed matter other than newspapers.¹²² However, in evidence to the 1998 federal election inquiry, the AEC noted that section 331 now implies that all political commentary in any journal must be labelled as an advertisement.¹²³

3.117 This Committee’s predecessor therefore recommended that section 331 be amended to make clear that it is meant to apply only to advertisements, and not to all electoral matter in newspapers and magazines.¹²⁴ This recommendation was supported by the Government, and provisions to implement this are contained in the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002.

3.118 Given that this legislation was pending, the application of section 331 caused some uncertainty at the 2001 election. On 8 October 2001, the AEO for Queensland issued a letter to Queensland newspapers reminding them of the need to use the heading ‘advertisement’ on electoral matter. The Liberal Party submitted that this action caused:

121 In addition to the regulatory proposals discussed in this section of the report, some submissions made comments directed at political parties’ internal practices. For example, Mr Combe proposed that less ‘paper junk mail’ be distributed by political candidates (submission (Mr D. Combe, no. 19) p. 1), while Dr Valerie Yule asserted that political parties too often allowed their policies ‘to be draped in secrecy’ for unveiling at an opportune moment. Submission (Dr V. Yule, no. 26), p. 2.

122 JSCEM. *The 1998 Federal Election*, p. 33.

123 AEC, submission to the 1998 federal election inquiry, p. S371.

124 JSCEM. *The 1998 Federal Election*, pp. 32-33. See also submission (AEC, no. 174), p. 39.

considerable confusion concerning newsletters inserted into community newspapers, since it failed to clarify whether the AEC was defining such inserts as journals. If a journal, the insert would have needed to bear the word 'advertisement' in 10 point type or larger (section 331 of the Commonwealth Electoral Act). Parties have traditionally regarded such inserts as pamphlets and thus only needing to meet the authorisation requirements of section 328 [which requires the name and address of the person who authorised the pamphlet, and of the printer, to appear at the end of the pamphlet]. Given the uncertainty caused by the AEC letter, at least one newspaper organisation decided not to proceed with an order of electoral newsletters.¹²⁵

- 3.119 In response to the Liberal Party's submission, the AEC asserted that its letter to Queensland newspapers indicated that the newspapers should seek their own legal advice if clarification was required, and that the content of the letter 'was not incorrect or misleading, and therefore did not require correction.'¹²⁶
- 3.120 During the 2001 election campaign, in response to a complaint, the AEC advised the Liberal Party that the inserts in question, provided that they were not paginated as part of a newspaper, were not journals and so did not need the heading of 'advertisement'.¹²⁷ The Liberal Party expressed concern to this inquiry about the time taken for the AEC to produce this advice, noting that it came 11 days after the AEC's letter to the newspapers.¹²⁸
- 3.121 The AEC responded that it only received complaints from the Liberal Party and the ALP on 16 October 2001 and, following receipt of advice from the Director of Public Prosecutions, responded to both three days later, on 19 October 2001.¹²⁹ In a supplementary submission, the Liberal Party reiterated its argument that the AEC should:

125 Submission (Liberal Party of Australia, no. 149), p. 4.

126 Submission (AEC, no. 181), p. 29.

127 Submission (Liberal Party of Australia, no. 149), p. 4.

128 Submission (Liberal Party of Australia, no. 149), p. 4.

129 The AEC received complaints from both the Liberal Party and the ALP that Quest newspapers in Queensland decided not to include pamphlets containing electoral matter unless they contained the heading 'advertisement', submission (AEC, no. 181), p. 29.

respond in a timely fashion to time-urgent inquiries from parties and candidates during an election campaign.¹³⁰

Committee comment

- 3.122 The Committee considers that no action should be taken in relation to section 331 pending consideration by Parliament of the relevant provisions of the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002.

Inconsistencies in broadcasting of election advertisements

- 3.123 The Liberal Party claimed that inconsistent standards currently apply to the broadcasting of political advertisements on television and radio.¹³¹ The Party's Federal Director, Mr Lynton Crosby, told the inquiry that:

We have had a practical problem with differing attitudes taken by the Federation of Australian Commercial Television Stations on the one hand and the Federation of Australian Radio Broadcasters on the other.¹³² Whilst it does not relate to the Electoral Act, the situation is that the Federation of Australian Commercial Television Stations have a very detailed process for the approval of television advertisements before they will allow them to be aired – no television station will run a television ad, as you know, unless it receives an authorisation number from the Federation of Australian Commercial Television Stations – whereas in relation to radio it is open slather; there is no approval or vetting process. At the last election radio scripts were run that were rejected by the Federation of Australian Commercial Television Stations as being false, untrue and unsustainable, but they were able to be run on radio. We think that there needs to be some capacity for consistency between the treatment of these things, otherwise we are allowing false and misleading statements to be perpetuated at least in some media.¹³³

130 Submission (Liberal Party of Australia, no. 183), p. 2.

131 Submission (Liberal Party of Australia, no. 149), p. 4; Transcript of Evidence 16 August 2002 (Mr L. Crosby), p. EM91.

132 The Federation of Australian Commercial Television Stations and the Federation of Australian Radio Broadcasters have since been renamed, respectively, Commercial Television Australia and Commercial Radio Australia.

133 Transcript of Evidence 16 August 2002 (Mr L. Crosby), p. EM91.

- 3.124 After the Liberal Party's submission was received, the Federation of Australian Commercial Television Stations (FACTS, since renamed Commercial Television Australia) advised political parties that it now accepted that it should not seek to regulate the factual content of election advertising.
- 3.125 FACTS had been vetting advertisements during the election in the belief that the Trade Practices Act applied to political advertising. On 8 October 2002, however, FACTS wrote to the political parties in the following terms:

As you are aware, to date FACTS has been seeking verification of statements made in political advertisements and has handled complaints in this context.

In light of a recent Legislation Committee report discussed in this letter and legal advice obtained by FACTS, FACTS will no longer seek substantiation for statements made in political advertisements and will not consider complaints regarding the accuracy of such statements ...

FACTS will continue to review political advertisements prior to broadcast by commercial television stations for the purposes of:

- classifying the advertisement under the Commercial Television Industry Code of Practice [the classification system used for all material broadcast on commercial television];
- ensuring the advertisement includes the authorisation tag [at the end of the advertisement] required by the Broadcasting Services Act... ; and
- assessing whether the advertisement contains defamatory material.

Push polling

- 3.126 The term 'push polling' does not have a universally accepted meaning. Here it is used to describe representations made in the guise of independent market research with a view to influencing electors' voting intentions. This is distinct from telephone canvassing, where statements (which may be false and prejudicial) are designed to influence voting intentions, but are not made in the guise of independent market research.
- 3.127 The Liberal Party's submission alleged that the ALP engaged in push polling during the 2001 federal election campaign. The submission

recommended, first, that fines be imposed on parties and companies that engage in push polling,¹³⁴ and second, that all those undertaking ‘advocacy calls’ in conjunction with an election campaign be required to release their scripts publicly.¹³⁵ The submission noted that this was the current practice of the Liberal Party.

Committee comment

- 3.128 The Committee notes the difficulty in regulating polling undertaken by political parties – indeed, in 1995 one of its predecessors began an examination of this issue but found considerable difficulty in defining the term ‘push polling’. Given the competitive nature of the Australian party political system, problematic polling practices tend to be quickly made public, with the potential for political embarrassment to the offending party and the risk of defamation proceedings against that party.

Regulation of the factual content of political advertising

- 3.129 Subsection 329(1) of the Electoral Act makes it an offence to print, publish or distribute, during election periods, ‘any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote’.¹³⁶ This section applies to radio and television broadcasts and other material.
- 3.130 In the past the AEC has received complaints that have been based on a mistaken belief that subsection 329(1) prohibits ‘untrue’ political advertising.¹³⁷ In fact, as decided by the High Court, subsection 329(1) only prohibits material that gives misleading information about obtaining and marking a ballot paper and depositing it in a ballot box.¹³⁸ It does not regulate the content of political messages directed at influencing the choice of candidates by voters.
- 3.131 In 1984 the Electoral Act was amended to proscribe advertisements containing statements that were untrue and likely to be misleading or deceptive. The relevant provision of the Act (subsection 329(2)) was repealed eight months after coming into force, following a recommendation by the Joint Select Committee on Electoral Reform

134 Submission (Liberal Party of Australia, no. 149), p. 3; Transcript of Evidence 16 August 2002 (Mr L. Crosby), p. EM95.

135 Submission (Liberal Party of Australia, no. 149), p. 3.

136 AEC, *Electoral Backgrounder 12*, ‘Election Advertising’, paragraph 21.

137 AEC, submission to the 1996 federal election inquiry, p. S175.

138 See *Evans v Crichton-Browne* (1981) 147 CLR 169.

(JSCER).¹³⁹ The JSCER considered subsection 329(2) to be flawed primarily because the determination of whether or not a statement was 'true' seemed:

necessarily to involve a political judgement, based on political premises [and that] to require the courts to enter the political arena in this way [was undesirable].¹⁴⁰

3.132 The JSCER determined that the safest course was to leave decisions as to the truthfulness of political advertising to electors and the laws of defamation.¹⁴¹

3.133 The AEC has no role in determining whether messages directed at influencing the choice of candidates are true or untrue. Candidates who believe that they have been defamed may pursue action in accordance with the common law of defamation, or section 350 of the Electoral Act.¹⁴²

3.134 Recently, there have been moves to re-introduce into the Electoral Act sanctions for 'untrue' political advertising. Senator Andrew Murray has introduced into the Senate a Bill to amend the Electoral Act to prohibit any electoral advertisement containing a purported statement of fact that is 'inaccurate or misleading to a material extent'.¹⁴³ Penalties of \$5,000 for individuals and \$50,000 for bodies corporate would apply to breaches of this provision.

3.135 Senator Murray argued that the Bill, if enacted, would:

require political advertising to meet similar standards of probity and honesty as commercial advertising must meet under the Trade Practices Act.¹⁴⁴

139 JSCER, *Report of the Inquiry in the Conduct of the 1993 federal election, and matters related thereto*, Parliament of Australia, November 1994, p. 108.

140 JSCER, *Second Report*, Parliament of Australia, 1984, p. 21. Other justifications given for the repeal of the legislation concerned the time it would take parties seeking legal advice on each advertisement and the belief that political advertising should be distinguished from other types of advertising as it sought to promote 'intangibles, ideas, policies and images' and that these could not be subject to legislative regulation (pp. 15-28).

141 JSCER, *Second Report*, (1984), as above, pp. 26-27.

142 AEC, 'Election Advertising', *Electoral Backgrounder 12*, paragraph 50.

143 *Electoral Amendment (Political Honesty) Bill 2000 [2002]*. While this is a Private Senator's Bill, it also encapsulates the policy of the Australian Democrats on accountability.

144 Senator Murray, *Charter of Political Honesty Bill 2000 and Electoral Amendment (Political Honesty) Bill 2000*, Second Reading speech, Senate *Hansard*, 10 October 2000, p. 18198.

- 3.136 Under section 52 of the *Trade Practices Act 1975*, advertising, like other conduct in trade and commerce, can be challenged if it is misleading or deceptive, or likely to mislead or deceive.
- 3.137 In considering Senator Murray's Bill, the Senate Finance and Public Administration Legislation Committee (2002) highlighted four points which distinguished the trade practices model from proposals seeking to regulate political advertising:
- firstly, there is an implied constitutional right to freely discuss political matters;
 - second, given that political parties and candidates have at their disposal a number of means of communicating their political message to the electorate apart from advertising, regulation of advertising might be considered somewhat artificial;
 - third, the Trade Practices Act penalises breaches of the Act through civil remedies only, such as damages and injunctions, while Senator Murray's proposals to regulate advertising would include criminal penalties; and
 - fourth, legal action taken under the Trades Practices Act in corporate advertising cases generally takes longer than the period of an election campaign, that is, the time in which resolution would be required for electoral cases.¹⁴⁵
- 3.138 The majority of the Senate Finance and Public Administration Legislation Committee recommended:
- that the Electoral Amendment (Political Honesty) Bill 2000 [2002] not proceed because in its current form, it does not present an effective or workable solution to prevent dishonest electoral advertising.¹⁴⁶
- 3.139 The Senate Committee identified a number of areas where amendments should be made to Senator Murray's proposal, including the appropriateness of the penalties.¹⁴⁷ In his minority report, Senator
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145 Senate Finance and Public Administration Legislation Committee (SFPALC), *Report on the Charter of Political Honesty Bill 2000 [2002]; Electoral Amendment (Political Honesty) Bill 2000 [2002]; Provisions of Government Advertising (Objectivity, Fairness and Accountability) Bill 2000; Auditor of Parliamentary Allowances and Entitlements Bill [No. 2]*, Parliament of Australia, 29 August 2002, p. 92. At: http://www.aph.gov.au/Senate/committee/fapa_ctte/political_honesty/report/report.pdf, accessed 13 May 2003.

146 SFPALC, Report tabled 29 August 2002, as above, p. 93.

147 SFPALC, Report tabled 29 August 2002, as above, p. 93.

Murray indicated that he would carefully consider the recommendations made by the Committee with a view to refining the Bill.¹⁴⁸

- 3.140 On a related matter, in its submission the Liberal Party called for clarification of whether the provisions of the Trade Practices Act relating to misleading and deceptive conduct apply to election broadcasting, in that:

it seems that the Federation of Australian Commercial Television Stations believes that [the provisions do apply] while the Australian Competition and Consumer Commission believes that they do not.¹⁴⁹

- 3.141 As noted at paragraph 3.125, the Federation of Australian Commercial Television Stations subsequently advised political parties in writing that it accepts that the Trade Practices Act does not apply to political campaigning.

Committee comment

- 3.142 The Committee notes evidence to the Senate Committee inquiry of Mr Andy Becker, former South Australian Electoral Commissioner (now Australian Electoral Commissioner), that the South Australian legislation on truth in political advertising opened up opportunities for individuals to disrupt the electoral process via nuisance complaints, and that in his opinion the legislation had not had any appreciable effect on the nature of political advertising in South Australia.¹⁵⁰
- 3.143 The Committee agrees with the AEC's submission to the 1998 federal election inquiry, that any regulation of 'truth' in political debate would be unwise and unworkable, particularly if the AEC were the body appointed to undertake such regulation.¹⁵¹ Further, the AEC argued that being tasked with the role of 'umpire' in such matters may also diminish its perceived political neutrality in the conduct of elections.¹⁵²

148 SFPALC, Report tabled 29 August 2002, as above, p. 131.

149 Submission (Liberal Party of Australia, no. 149) p. 4.

150 SFPALC, Report tabled 29 August 2002, as above, pp. 88-89.

151 See AEC submission to 1998 federal election inquiry, p. S376.

152 See AEC submission to 1998 federal election inquiry, p. S376.

How-to-vote cards

- 3.144 The use of how-to-vote material was an issue in some submissions to this inquiry. As in previous election inquiries, some submissions called for the abolition or restriction of how-to-vote cards.¹⁵³ In the past, such recommendations have been motivated by various concerns such as cost, environmental waste, harassment of voters and difficulties faced by smaller parties and independents.¹⁵⁴ Recommendations made to this inquiry were no different.
- 3.145 Submissions to this inquiry suggested that how-to-vote cards be replaced with lists or posters placed in each ballot box.¹⁵⁵ For example, Mr B Joy recommended that the system currently used in South Australia be adopted. There, how-to-vote cards from each candidate are fixed to the wall of each polling booth, and spares are kept by the Officer in Charge.¹⁵⁶
- 3.146 The Committee is of the view that the distribution of how-to-vote cards on election day mobilises democratic participation and keeps political parties in touch with their membership base.¹⁵⁷ In relation to the specific recommendation that how-to-vote cards be fixed to individual polling booths, the Committee considers that the display of how-to-vote cards would pose a significant problem, given that political parties or candidates whose material is posted in less noticeable sections of the box may feel aggrieved.¹⁵⁸

Authorisation and registration

- 3.147 The issue of authorisation and registration of how-to-vote material was raised by the federal member for Barton, the Hon. Robert McClelland, MP. Mr McClelland's submission alleged that the Unity candidate for Barton for the 2001 election, Mr John Lau, distributed a how-to-vote card with a different order of preferences to that authorised by the Unity Party. Mr McClelland argued that the result

153 Submissions (Mr B Joy, no. 107; Rev S Slucki, no. 72; Dr V Yule, no. 26; Salt Shakers, no. 135; The Progressive Labour Party, no. 66).

154 See JSCEM. *The 1996 Federal Election*, (1997) as above, p. 94 and *The 1998 Federal Election*, (2000), as above, pp. 37-42

155 Submissions (Mr B Joy, no. 107; Rev S Slucki, no. 72; Dr V Yule, no. 26; Salt Shakers, no. 135; The Progressive Labour Party, no. 66).

156 Submission (Mr B Joy, no. 107) p. 1. Section 66(1) of the *Electoral Act 1985 (South Australia)* stipulates that HTV cards must be submitted to the Electoral Commissioner so they may be arranged in poster form.)

157 Transcript of Evidence 12 August 2002 (Mr P. Georgiou MP), p. EM24.

158 Transcript of Evidence 2 October 2002 (Senator R. Ray), p. EM181.

of this difference was that the Liberal candidate was preferenced above the Labor candidate, which was in contradiction to the publicly stated Unity Party position on preferences.

- 3.148 Mr McClelland concluded that the current law is not clear in relation to 'false' how-to-vote cards, and recommended that the Committee consider whether it is necessary to:

expand the concept of electoral irregularity to include a situation where a candidate issues voting instructions which are contrary to those issued by the Party which they represent or purport to represent.¹⁵⁹

- 3.149 The production of how-to-vote cards is regulated under the Electoral Act in two ways. First, how-to-vote cards must be properly authorised under section 328 of the Act. Authorisation of a how-to-vote card requires the name and address of the person responsible for the advertisement to be clearly cited, as well as the name and place of the business that printed it.¹⁶⁰

- 3.150 Second, subsection 329(1) stipulates that:

A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorise to be printed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.

- 3.151 Three court decisions have provided some judicial interpretation in this area, namely, *Bray v Walsh*,¹⁶¹ *Evans v Crichton-Browne*,¹⁶² and *Webster v Deahm*.¹⁶³ In the case of *Evans v Crichton-Browne*, for example, the High Court held that the phrase 'in relation to the casting of a vote' referred to the act of recording or expressing the elector's political judgment in obtaining and marking a ballot paper and depositing it in the ballot box, and not to the formation of that political judgment.

159 Submission (Mr R McClelland, MP, no. 81), p. 2

160 AEC, 'Misleading and Deceptive Electoral Advertising 'Unofficial' How-To-Vote Cards', *Electoral Backgrounder 3* at:

http://www.aec.gov.au/_content/how/backgrounders/03/index.htm .

161 (1976) 15 SASR 293

162 (1981) 147 CLR

163 (1993) 116 ALR 222

- 3.152 In this inquiry, both the AEC and Mr McClelland argued that section 329 had been construed narrowly by the courts.¹⁶⁴ The AEC has, however, noted that subsection 329(1) may apply to ‘unofficial’ how-to-vote cards in some instances:

When determining whether an ‘unofficial’ HTV [how-to-vote] card breaches section 329(1) of the Act, it is necessary to compare the official and unofficial cards and consider whether the unofficial card is so similar to the official card that it is likely to mislead a voter into thinking it is the official card and thereby mislead the voter in casting a vote. If a card is, in fact, ‘likely to mislead or deceive an elector in relation to the casting of a vote’, the person who printed, published, distributed, caused, permitted or authorised the printing, publishing or distribution may have committed an offence under section 329(1). In those circumstances it is open to the AEC to refer the matter to the AFP for investigation.¹⁶⁵

- 3.153 In relation to Mr McClelland’s specific concern, the AEC submitted that:

there were a number of differences between the HTV cards apart from the different authorisation and distribution of preferences. [However,] the HTV card in question did in fact have an authorisation and did not attempt to mislead the public about how to obtain and mark a ballot paper. The HTV card in question was therefore legal.¹⁶⁶

- 3.154 The AEC therefore concluded that:

while the AEC understands Mr McClelland’s position, the AEC has no powers to resolve what was in essence an internal dispute within the Unity Party.¹⁶⁷

- 3.155 In his submission, Mr McClelland also recommended that all candidates be required to lodge their how-to-vote cards with the AEC 48 hours before polling day.¹⁶⁸

164 Submissions (AEC, no. 174, p.15; Mr R McClelland MP, no. 81), and Transcript of Evidence 11 November 2002 (Mr R McLelland MP), p. EM274.

165 AEC, *Electoral Backgrounder 3*, as above, p. 4.

166 Submission (AEC, no. 181), p. 16.

167 Submission (AEC, no. 174), p. 15. The question of AEC powers was previously raised in the Committee’s Report on the 1998 federal election. While that Committee recommended that the AEC develop and expanded authorisation regime for how-to-vote cards, the Government was not completely supportive. Without legislative authority, the AEC have been reluctant to take up any responsibility in relation to authorisation.

- 3.156 The States of Victoria and NSW require how-to-vote cards to be registered with their respective State Electoral Commissioner. Registration must occur at least eight days before polling day in NSW and seven working days before polling day in Victoria.¹⁶⁹
- 3.157 The AEC did not support Mr McClelland's recommendation requiring how-to-vote cards to be lodged in advance of the election. The AEC submitted that a regime of how-to-vote card registration would be 'administratively unworkable', with parties likely to register more than one card in order to maintain flexibility in preference allocation until polling day.¹⁷⁰ In addition, the AEC maintained that the cost burden associated with administering the system would not be justified by any potential benefit.¹⁷¹ The AEC stated that, in fact:
- if the Unity Party candidate [had] registered their HTV card, registration would not prevent the situation that arose in Barton.¹⁷²
- 3.158 The AEC suggested that legislative change would be required to prevent candidates producing how-to-vote cards at variance with their own political party, even with compulsory registration. However, the AEC argued that any such legislation could be unconstitutional, insofar as it may be construed as limiting individual candidates' freedom of political expression.¹⁷³

Committee comment

- 3.159 The Committee does not consider it practical to regulate internal disputes between candidates and their parties, for the reasons expressed by the AEC. The Committee also does not support registration of how-to-vote cards in advance of election day. Aside from imposing a further administrative burden on parties, candidates and the AEC at a critical time, it is likely that some political parties would lodge 'multiple' how-to-cards in order to keep their options open until polling day. The Committee considers it prudent for political parties to have dispute resolution mechanisms in their procedures.

168 Submission (Mr R McClelland MP, no 81), p. 3

169 Submission (AEC, no. 181), pp. 19-20.

170 Submission (AEC, no. 181), p. 17-19.

171 Submission (AEC, no. 181), p. 19.

172 Submission (AEC, no. 181), p. 20.

173 Submission (AEC, no. 181), p. 20.

Entitlements of incumbent candidates

- 3.160 Some submissions raised the issue of the entitlements of incumbent candidates. For example, Mr Ian Bowie recommended the restriction of mail-outs conducted by Members of Parliament using their postage allowances. He believed these ‘may give unfair advantages to sitting members’.¹⁷⁴
- 3.161 The ALP noted the uncertainty of its Members and Senators as to the limits on the material they could produce and distribute during the campaign. The submission referred to the difficulty incumbent ALP candidates faced in obtaining detailed guidance on this issue.¹⁷⁵ The ALP recommended:
- that the guidelines for the use of parliamentary entitlements, particularly during election campaigns, be clarified, and the clarification promulgated well in advance of the next election;
 - that details of entitlements be tabled in Parliament (in addition to travel costs); and
 - ‘[t]hat an independent Auditor of Parliamentary Allowances and Entitlements be established, with appropriate powers of investigation.’¹⁷⁶
- 3.162 The ALP’s proposal for the establishment of an independent Auditor of Parliamentary Allowances and Entitlements was previously contained in the *Auditor of Parliamentary Allowances and Entitlements Bill 2000 [No. 2]*, which was introduced by the Leader of the Opposition in the Senate.¹⁷⁷ The Senate Finance and Public Administration Legislation Committee was supportive of the object of the Bill in assisting Members of Parliament to observe the rules and regulations governing the use of parliamentary entitlements and allowances. Nevertheless, that Committee recommended that the Bill not proceed because the proposed legislation was flawed ‘and because other options for ensuring compliance with the rules and regulations governing the use of parliamentary entitlements have not been fully considered.’¹⁷⁸

174 Submission (Mr I. Bowie, no. 67), p. 2.

175 Submission (ALP, no. 153), p. 11.

176 Submission (ALP, no. 153), p. 12.

177 SFPALC, Report tabled 29 August 2002, as above, p.74.

178 SFPALC, Report tabled 29 August 2002, as above, p.74.

- 3.163 Mr Peter Andren MP recommended that this Committee review the Auditor General's Report on Parliamentarians' Entitlements and forthcoming report on the Members of Parliament Staff Act, with a view to producing recommendations aimed at ensuring the system of entitlements available to MPs, Senators and Ministers is transparent, not open to misuse and not able to be used for party political purposes both before and during election campaign[s].¹⁷⁹
- 3.164 In Audit Report No. 5 2001-2002, *Parliamentarians' Entitlements: 1999-2000*, the ANAO noted that '[a] particular need for greater clarity and certainty regarding the eligibility of entitlements usage by Parliamentarians arises during periods of by-elections and general elections.'¹⁸⁰
- 3.165 At the time of writing, the ANAO's report on the Members of Parliament Staff Act had not been tabled.

Committee comment

- 3.166 The Committee recognises that, as acknowledged by the ANAO,¹⁸¹ it is difficult to define exhaustively 'parliamentary business', 'electorate business' and 'party business' - terms that are fundamental to determining eligibility for entitlements. However, the Committee does consider that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns should be clarified.

Recommendation 14

- 3.167 **The Committee recommends that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns be clarified, and that the Department of Finance and Administration establish a telephone hotline from the day of the issue of the writs to provide advice on the guidelines to incumbent candidates.**

179 Submission (Mr P. Andren MP, no. 80) p. 7.

180 ANAO, *Parliamentarians' Entitlements: 1999-2000*, Audit Report No. 5 2001-2002, p. 98.

181 ANAO, *Parliamentarians' Entitlements*, as above, pp. 97-98.

Government advertising

- 3.168 Some submissions raised the issue of advertising by incumbent governments that is perceived to be political.¹⁸²
- 3.169 Dr Valerie Yule submitted that:
- The Party in Power must not put any advertising material for its party on a government-funded website, even under the guise of 'press-releases'.¹⁸³
- 3.170 The Committee sought to clarify Dr Yule's submission at the public hearing on 12 August 2003, asking whether Dr Yule was referring to:
- governments advertising and promoting prior to elections and using pseudo program promotion as a pre-election campaign or ... just ... direct advertising.¹⁸⁴
- 3.171 Dr Yule responded that she 'meant direct advertising, because certainly you have to know what the government has been doing. They have to inform the people.'¹⁸⁵
- 3.172 Friends of the Earth referred to government advertising prior to the announcement of the election date, which 'promoted the achievements of the coalition government.' Following this observation, Friends of the Earth recommended that elections be publicly funded as a budget item and thus 'open to public scrutiny.'¹⁸⁶
- 3.173 The ALP cited examples of government advertising campaigns that it claimed were 'political in purpose and targeted at swinging voters'.¹⁸⁷ The ALP recommended:
- the implementation of recommendations of the Auditor-General's 1998 report, *Taxation reform – Community Education and Information Program, Audit Report No. 12*;
 - the implementation of guidelines on government advertising proposed by the Joint Committee on Public Accounts and Audit (JCPAA); and

182 Submissions (Dr V. Yule no. 26; Friends of the Earth, no. 32; ALP, no. 153).

183 Submission (Dr V. Yule, no. 26) p. 4.

184 Transcript of Evidence 12 August 2003 (Ms J. Hall MP), p. EM4.

185 Transcript of Evidence 12 August 2003 (Dr V. Yule), p. EM4.

186 Submission (Friends of the Earth, no. 32), p. 2.

187 Submission (ALP, no. 153), p.5.

- extending the requirement under section 310 of the Electoral Act that broadcasters disclose details of election advertising, to require quarterly disclosure of all broadcast non-program matter containing political matter.
- 3.174 As indicated in part by the ALP's recommendations to this inquiry, a number of previous inquiries have considered whether and how to either clarify existing regulation of government advertising, or regulate it further.
- 3.175 The Auditor-General's Report to which the ALP recommendations referred, stated that it would be helpful if 'conventions, principles and guidelines that provide more specific guidance on the use of government advertising' were developed and adopted.¹⁸⁸ The Report added that:
- it is primarily a matter for the Parliament and/or Government to develop and adopt appropriate guidelines that clearly define and articulate characteristics of government advertising which differentiate between Government and party-political material.¹⁸⁹
- 3.176 The Report included suggested principles and guidelines based on those proposed or existing in other jurisdictions.¹⁹⁰
- 3.177 Aspects of the Audit Report, *Taxation Reform – Community Education and Information Programme*, were reviewed by the JCPAA, as part of an inquiry that also included a review of government information and advertising arrangements with a view to assisting to determine 'appropriate guidelines for taxpayer funded programs'.¹⁹¹
- 3.178 The JCPAA's report on this inquiry, *Guidelines for Government Advertising*, contained a single recommendation, namely that the Government adopt the guidelines for government advertising that the Committee had drafted.¹⁹² These guidelines were similar to those proposed by the Auditor-General.¹⁹³

188 ANAO, *Taxation Reform: Community Education and Information Programme*, Audit Report No. 12, 1998-1999, paragraph 2.19.

189 ANAO, *Taxation Reform*, as above, paragraph 2.19.

190 ANAO, *Taxation Reform*, as above, Appendix 1.

191 JCPAA, *Report 377, Guidelines for Government Advertising*, September 2000, Terms of Reference.

192 JCPAA, *Report 377*, as above, p. 3.

193 According to the SFPALC Report tabled 29 August 2002, as above, pp. 23-23.

- 3.179 The Government is in receipt of the report of the JCPAA. At the time of writing, there had been no Government response to the JCPAA's recommendation.¹⁹⁴
- 3.180 Legislation has been proposed in the past to seek to regulate government advertising further. The Senate Finance and Public Administration Legislation Committee reported on two relevant bills in August 2002.¹⁹⁵ The Government Advertising (Objectivity, Fairness and Accountability) Bill 2000 sought to set down minimum standards (based on the guidelines devised by the ANAO and revised by the JCPAA) to regulate government advertising to prevent it being used for party political purposes. The Bill proposed that a designer of a campaign that breached prescribed standards could be subject to penalties.¹⁹⁶ The Senate Committee did not support the introduction of this Bill because of 'severe reservations about the proposed creation of a serious criminal offence defined by reference to vague and uncertain guidelines', and also the involvement of courts in essentially political matters.¹⁹⁷
- 3.181 The Charter of Political Honesty Bill 2000 [2002] proposed the establishment of a Government Publicity Committee that would 'monitor and enforce compliance by public authorities with statutory guidelines for government advertising campaigns.'¹⁹⁸ The Senate Committee did not support the introduction of the relevant part of this Bill because of concerns about the composition of the proposed Government Publicity Committee.¹⁹⁹
- 3.182 The Senate Committee noted that '[b]ecause of flaws in the two bills, the Committee believes that more detailed consideration of the regulation of government advertising is essential', and that this should be referred to a proposed parliamentary joint standing committee on a code of conduct for members of parliament 'for further consideration and development of appropriate guidelines',

194 JCPAA website at:

<http://www.aph.gov.au/house/committee/jpaa/CEIP/contents.htm#contents>, accessed 15 June 2003.

195 SFPALC, Report tabled 29 August 2002, as above.

196 SFPALC, Report tabled 29 August 2002, as above p. 1, and paragraph 6.52. This Bill was introduced by then-Leader of the Opposition, the Hon Kim Beazley MP.

197 SFPALC, Report tabled 29 August 2002, as above p. viii.

198 SFPALC, Report tabled 29 August 2002, as above p. vii. The Bill was introduced by Senator Andrew Murray. The guidelines were similar to those proposed in the *Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*, Report p.1.

199 SFPALC, Report tabled 29 August 2002, as above p. viii.

using the guidelines proposed by the Auditor-General and the JCPAA as a basis.

Committee comment

- 3.183 The Committee believes that, while there is agreement that political advertising by governments is inappropriate, there are significant difficulties in defining what constitutes government advertising for political purposes and the issue of political matter in government advertising goes well beyond the election context. However, the Committee notes that within the immediate context of elections, both ALP and Liberal Party/National Party governments have been committed to observing the caretaker convention that government advertising should be terminated on the calling of an election.²⁰⁰

²⁰⁰ Some advertisements are allowed within the parameters of the caretaker conventions, for example, Defence Force recruiting.

