

AUSTRALIAN ELECTORAL COMMISSION

**SUPPLEMENTARY SUBMISSION
TO THE JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS' INQUIRY INTO THE 2001 FEDERAL ELECTION**

**FIFTH SUBMISSION IN RESPONSE TO QUESTIONS ON
NOTICE**

**Canberra
24 April 2003**

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Recommendations

Recommendation 1:

That the JSCEM recommend that section 306B be amended to remove, or at least, reduce the possibility that the section may be found constitutionally invalid.

Recommendation 2:

That the JSCEM recommend the Act be amended to remove section 350.

FIFTH SUBMISSION TO QUESTIONS ON NOTICE

1. Introduction

1.1 This submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its 'inquiry into the conduct of the 2001 federal election', as advertised in the national press on 25 May 2002.

1.2 The submission details AEC responses to questions on notice provided by the JSCEM in February and March 2003 and in addition contains two recommendations as a result of recently reviewed legal advice and two High Court decisions.

1.3 At the time of publishing, the AEC was preparing responses to other questions on notice provided through March, and anticipates that further questions will be provided by the JSCEM. The AEC will respond to these questions in later submissions.

1.4 The AEC has on previous occasions commented on issues similar to those responded to here. Where this has occurred, the submission provides references to those previous comments.

2. Amendments to the *Commonwealth Electoral Act 1918*

2.1 The AEC wishes to make two recommendations to amend the *Commonwealth Electoral Act 1918* (the Act) as a result of recently reviewed legal advice in one instance, and two recent High Court decisions in another. The first instance relates to section 306B, regarding funding and disclosure, and the second instance relates to section 350, regarding defamation.

Section 306B

2.2 As a result of legal advice, the AEC now believes that an amendment to the *Commonwealth Electoral Amendment Bill (No. 1) 2002*, introduced during debate in the Senate, will require further amendment if it is to be made workable.

2.3 Section 306B of the Act was inserted as a result of an amendment moved by Senator Brown. Division 4 of Part XX of the Act, of which section 306B is a part, relates to the disclosure of donations to political parties and candidates. The purpose of section 306B, as stated in Senator Brown's media release of 16 September 2002, is to 'require political parties to return donations that are received from companies that go broke'. Section 306B currently states:

Where:

(a) a political party, a candidate or a member of a group receives a gift from a corporation being a gift the amount of which is equal to or exceeds \$1,000; and

(b) the corporation within a period concluding one year after making the gift has been wound up in insolvency or wound up by the court on other grounds;

an amount equal to the amount of the gift is payable by the political party to the liquidator and may be recovered by the liquidator as a debt due to the liquidator by action, in a court of competent jurisdiction against:

(c) in the case of a gift to or for the benefit of a political party or a State branch of a political party:

(i) if the party or branch, as the case may be, is a body corporate—the party or branch, as the case may be; or

(ii) in any other case—the agent of the party or branch, as the case may be; or

(d) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

Note 1: The gift received by the liquidator is an asset of the corporation to be distributed under the provisions of the Corporations Act 2001.

Note 2: This section applies to gifts made after the commencement of this provision.

2.4 As a result of advice from the Australian Government Solicitor (AGS), the AEC now believes that certain aspects of section 306B may be found by a court to be constitutionally invalid because they may effectively impose a tax (section 55 of the Constitution). In particular, it may be considered by a court to impose a tax on party agents, candidates' agents, Senate group agents, or members of a Senate group, who did not actually receive the sum in question. These agents or members of a Senate group will still be required to pay back the amount concerned out of their own money and they will not have a common law right of reimbursement from the principal (the political party, candidate, or Senate group). This is especially significant given that the courts have, in general, not considered political parties to be subject to common law until recently and then only in certain limited circumstances.

2.5 The AEC believes that section 306B could result in an unfair imposition on agents or Senate group members and seeks the support of the JSCEM in having the flaws in section 306B corrected.

Recommendation 1:

That the JSCEM recommend that section 306B be amended to remove, or at least reduce, the possibility that the section may be found constitutionally invalid.

Defamation and section 350 of the Act

2.6 Late in 2002 the High Court delivered two judgments that have a significant bearing on defamation litigation, particularly in cases relating to election campaigns. The two judgments were *Dow Jones & Company Incorporated v Gutnick*, and *Roberts v Bass*.

2.7 Of significance is that both judgments contain elements suggestive of significant changes in defamation law. There is an increasing complexity in the relationship between constitutional provisions concerning political communication (or more accurately, 'speech attracting privilege') and disputes about the alleged defamation of a candidate during election campaigns. As a result the AEC has some concerns about the relevance of maintaining the defamation provision, section 350, in the Act.

2.8 Section 350 of the Act states:

(1) A person is guilty of an offence if the person makes or publishes any false and defamatory statement in relation to the personal character or conduct of a candidate.

(1A) Subsection (1) does not apply if the person proves that he or she had a reasonable ground for believing, and did believe, the statement to be true.

(2) Any person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate in contravention of this section may be restrained by injunction at the suit of the candidate aggrieved, from repeating the statement or any similar false and defamatory statement.

2.9 In essence, the section provides for an offence for defamation of a candidate, a defence to the offence, and provides for a candidate to seek an injunction to restrain any person from repeating a defamatory statement.

2.10 According to the Director of Public Prosecutions' (DPP's) records, there has not been any prosecution for defamation under section 350 of the Act.

2.11 The AEC received six formal written complaints about breaches of section 350 of the Act during the 2001 federal election. Of the six complaints received by the AEC, five were referred to the DPP for legal advice. Of the five complaints referred to the DPP, none of the complaints were considered to disclose an offence under section 350. No referrals relating to section 350 of the Act were forwarded to the DPP during the 1998 Federal election.

2.12 The fact that there has been no prosecution under this provision is explained by the fact that the threshold necessary to disclose an offence in criminal defamation matters is such that the DPP must be able to establish beyond reasonable doubt that the content was defamatory.

2.13 Further, a majority of States have repealed common law criminal libel by enacting relevant legislation. Hence, candidates concerned about defamation can seek relief through civil proceedings within the relevant jurisdiction.

Cases

2.14 The issue that arose in *Dow Jones & Company Inc v Gutnick* concerned the publication of a story in an on-line version of *Barron's* magazine published by Dow Jones & Company Incorporated. The on-line version of *Barron's* dated 28 October 2000 carried an article which made several references to Mr Joseph Gutnick, a leading Australian businessman. Mr Gutnick complained that the references to him in the article defamed him.

2.15 The primary legal issue in the Gutnick case concerned where an alleged defamatory matter had been published. Mr Gutnick's Counsel contended that the defamation occurred in Victoria (where Mr Gutnick lives and where the headquarters of his businesses are located), as the on-line edition of *Barron's* was available to readers in Victoria via the

World Wide Web. Accordingly, Mr Gutnick sought relief for the alleged defamation through Victoria's courts.

2.16 The High Court determined that Mr Gutnick could seek relief through Victoria's courts because the article was available to people in Victoria and by implication, where Mr Gutnick had a reputation that could be damaged. This has a direct bearing on the enforcement of section 350 as it is now conceivable that the AEC will be asked, during an election period, to act upon material published on the internet.

2.17 *Roberts v Bass* also concerned defamation, although the significance of this case resides in the relationship between defamation law and the regulation of speech in political matters. *Roberts v Bass* is important because of the High Court's application of pre-existing case law relating to (a) speech protected by 'qualified privilege' and (b) an implied right to freedom of communication in political matters guaranteed by the Australian Constitution.

2.18 *Roberts v Bass* concerned the publication and distribution of electoral material in the seat of Florey during the State election in South Australia held in October 1997, for which Mr Sam Bass was the sitting member and endorsed candidate of the Liberal Party.

2.19 By majority, the High Court upheld an appeal by Mr Roberts and Mr Case (who distributed the material) from a judgment in the Supreme Court of South Australia.

2.20 The basis of the High Court decision was that attempting to injure the political credibility of a candidate in the midst of an election campaign was defensible on the grounds of qualified privilege. The implication for the AEC is that an offence against section 350 will become even more difficult for the AEC to demonstrate.

2.21 In light of the Gutnick decision, the AEC is concerned that there may be a high degree of ambiguity, related to identifying the relevant jurisdiction and thus identifying relevant defamation law, surrounding the operation of section 350 with respect to material 'published' on the internet.

2.22 In terms of the *Roberts v Bass* decision, the AEC is concerned that section 350 of the Act will be rendered a 'dead' provision. That is, that the DPP will be unlikely to prosecute any matters arising under section 350 unless they disclose such a high level of criminal intent as to disclose an offence attracting a criminal sanction. Previous experience suggests that this is unlikely.

2.23 Moreover, given the amount of attention devoted to the relationship between the Commonwealth Constitution, statute and the common law (for example in the discussion of the Lange decision within the *Roberts v Bass* case), the AEC is of the view that in the unlikely event that proceedings did arise under section 350, constitutional issues relating to the implied guarantee of freedom of political communication would arise.

2.24 Finally, removing section 350 from the Act would not prevent people from seeking redress for defamation during election periods through civil proceedings in their relevant jurisdictions.

2.25 Consequently, the AEC recommends that the JSCEM consider amending the Act to remove section 350.

Recommendation 2:

That the JSCEM recommend the Act be amended to remove section 350.

3. Enrolment processes

CRU and young electors

3.1 The JSCEM asked whether the following statement, which expresses its understanding of Continuous Roll Update (CRU) activities, was correct:

When the data matching process shows that a change has occurred at an address, or that there may be a new elector (eg where school records indicate that people are turning 17), the AEC sends letters and enrolment forms to the occupants, inviting them to enrol or update their details.¹

3.2 The AEC can confirm that where the AEC receives information from any source that a person may need to change their enrolment or they have reached the age of enrolment, whether they are 17 or 18, a letter and enrolment form is sent out.

3.3 Enrolment of young people was extensively discussed by the AEC in submission 174. In that submission, the AEC indicated that:

The AEC undertakes national monthly mail outs to 17 to 24 year old potential electors utilising data supplied by Centrelink and a number of State and Territory motor registries. These mailings resulted in the generation of 71,922 enrolments in 2000/01 and 61,716 in 2001/02.

In addition to the monthly mailing, the AEC, in partnership with State and Territory electoral authorities, undertakes the following ongoing youth enrolment initiatives:

- inclusion of enrolment forms in Year 12 results mail outs in Queensland;
- incentive programs with secondary schools for the collection of enrolment forms from eligible students in South Australia, Western Australia, Tasmania and the ACT; and
- inclusion of enrolment forms in a number of State agency COA advices.

The above joint initiatives generated approximately 50,589 enrolments in 2000/01 and 86,117 in 2001/02.

Further CRU initiatives are administered directly by State and Territory electoral authorities. The youth programs include:

- The Victorian Electoral Commission's (VEC) Happy Birthday card campaign, which uses Victorian Board of Studies data to mail individually addressed letters (including an enrolment form) to 17 year olds, which resulted in 22,638 enrolment forms in 2000-2001 and 15,768 enrolment forms in 2001-2002.

¹ JSCEM correspondence.

- VEC mail outs of enrolment forms to ex-Year 12 students who have applied for entry into tertiary institutions, which resulted in 1,734 enrolment forms in 2000-2001 and 1,904 enrolment forms in 2001-2002.
- VEC mail out of enrolment forms to young licensed drivers utilising VicRoads data.
- The South Australian Electoral Office's (SEO) inclusion of enrolment forms in new rental tenancy advices.

The AEC is continuing to seek access to a broader range of data with a specific emphasis on increasing youth enrolment. The AEC is also looking to expand the schools incentive program to incorporate all States and Territories, public and private schools and youth and community organisations.²

3.4 As implied from the final paragraph above, the AEC cannot claim to be able to provide all young people with enrolment forms when they become eligible for enrolment. It should also be noted that if the AEC is able to provide an enrolment form to a 17 year old and that person fails to enrol, they may be sent further enrolment forms when the AEC receives data that indicates they are eligible for enrolment but have not yet enrolled. In other words, a young person may be sent material following their 17th and 18th birthday, provided they have not previously enrolled.

Enrolment form processing

3.5 The JSCEM asked whether the following is a correct summary of the process followed by Divisional staff when an enrolment form is received by the AEC:

- ensure all information on the electoral form is complete, and where it is not, contact the applicant to seek further information;
- enter the data into the computerised Roll Management System (RMANS) which is on-line in each Divisional Office;
- check whether an automatic match is made against existing records for that person;
- where a match is found on the Current File, link the information from the new application, and move the previous record to the Deleted File;
- conduct further checks where a match is found on the Deleted File (indicating, for example, that the matched record belongs to a deceased person);
- flag any enrolment where no valid match with a previous enrolment record is found as 'new to RMANS'; and
- write to the elector acknowledging their enrolment.

3.6 The AEC can confirm that this is a correct summary of the process. The summary is derived from a detailed description of how an enrolment form is processed contained in the AEC's submission 26 to the JSCEM's inquiry into the integrity of the electoral roll. That description is included below because it provides greater detail about what is checked on an

² 2002. AEC. *Submission 174*, paragraphs 31.7-31.11.

enrolment form and about some of the systems the AEC uses to match enrolment forms with previously enrolled electors:

When a person applies for federal enrolment, they must complete an electoral enrolment form and provide their full name, residential address, phone number, postal address, former surname, date of birth, country of birth, citizenship details, former enrolled address, and make a signed and dated declaration that they are eligible to enrol and that the information they have provided is true and complete. The electoral enrolment form must also be signed and dated by a witness, who must declare that they saw the applicant sign the form and that they are satisfied that all statements made by the applicant in the form are correct. Divisional staff are generally responsible for receiving and processing these electoral enrolment forms.

Divisional staff must ensure all information on the electoral enrolment form is complete, and where this is not so then further inquiries will be made of the applicant. The information on the enrolment form is then entered into the computerised RMANS system on-line in each Divisional office, and an automatic match is made of the new application against existing records on RMANS for that person. Previous enrolment records are held on-line back to 1997 in the case of South Australia (see part 4.4 of submission No 30 of 29 July 1996), and at least to 1991 for all other States and Territories.

Enrolment records are identified within the RMANS database as being on the Current File, the Deleted File or the Archived File. The main benefit of such file attribution within a single database is that it limits the number of searches required to match existing records. Where a match is found with a record on the Current File, the information on the new application is linked, and the matched previous record is moved to the Deleted File.

RMANS uses "Sounds-like" (Soundex) name matching software for online enrolment inquiries by Divisional staff and other authorised personnel. In addition, the AEC has developed a number of in-house software applications for RMANS that allow various inquiry criteria to be used. These include inquiry by address, by given name and surname variations, by recognised substitute given names and surnames ("Mike" for "Michael" etc.) and by "fuzzy" date of birth.

In cases where a match is found with a deleted record, RMANS provides a warning if the deletion reason indicates that the matched record belongs to a deceased person. Any such matches are followed up by Divisional staff. Where no valid match with a previous enrolment record is found, the enrolment is flagged as new to RMANS. In cases where it appears that an enrolment applicant may have a previous enrolment history or where there is a possibility of change of name (such as by marriage) further RMANS searches are undertaken and enrolment applicants may be required to provide further information.

All electoral enrolment forms are digitally imaged and the images can be retrieved at the Head Office level should Divisional staff wish to check, for example, the signature of an applicant or witness for electoral enrolment...

Once Divisional staff have processed a new electoral enrolment or processed a change to an existing enrolment, the AEC writes to the elector acknowledging their enrolment. ... Any of this mail that is marked "return to sender" is followed up by Divisional staff and, where necessary, action is taken to correct enrolment details or remove names from the Roll.

The AEC undertakes regular de-duplication exercises on RMANS at the State or Territory level. A third party name matching routine (NADIS) is used to investigate possible duplicate enrolments which may have been missed by the Soundex matching software or by the manual processing. In 1999-2000, there were 7,586 duplications picked up by the RMANS de-duplication exercises. It should be noted that whilst possible duplications might be signalled by RMANS

at the original point of enrolment entry, they are not cleared from the system until the AEC is able to verify that they are in fact duplications, in order to protect the franchise. The administrative process of de-duplication, undertaken on RMANS at the State/Territory level, should not be taken as an indicator of enrolment fraud.

Once an elector is recorded on RMANS the enrolment history of that elector can be tracked over time. When an elector wishes to transfer enrolment on moving address, the elector must advise the AEC so as to enable the RMANS enrolment record for that elector to be amended. In the processing of an enrolment transfer, RMANS requires the operator to confirm that the enrolment transfer relates to the elector already recorded on RMANS for another location before processing can proceed.³

Checking of enrolment anomalies

3.7 On a related matter, the JSCEM asked about what specific anomalies would prompt Divisional staff to undertake further checking of the elector details contained in enrolment forms.

3.8 For the purposes of responding to this question, it should be noted that an anomaly in an enrolment form does not imply that the enrolment form is fraudulent.

3.9 Divisional staff are provided with two comprehensive manuals to assist them in processing enrolment forms, including processes for dealing with anomalies. These are the General Enrolment Manual (GEM) and the RMANS manual.

3.10 It is important to distinguish between anomalies that come to light as a result of processing an enrolment form on the RMANS system and those anomalies that are detected by the good observation of the Divisional staff. For example, a Divisional staff member might observe that a series of correct enrolment forms have been witnessed by the same person. The AEC does not maintain an exhaustive list of these latter anomalies.

3.11 It is possible to provide a description of some of the anomalies that can occur while processing an enrolment form on the RMANS system. This process is described below. At various stages in processing, anomalies will prompt the suspension of processing while checking is carried out.

3.12 Before data entry can begin, the person entering the data needs to define the source of the data. This is represented by three codes:

- E – A standard enrolment form;
- W – An elector may inform a Divisional Returning Officer (DRO) in writing that they have moved address within a Division without having to provide an enrolment card (section 101(5) of the Act). The 'W' code represents this correspondence; and
- A – An amendment to an enrolment that does not require notice from an elector (section 105 of the Act). Primarily, this involves

³ 2000. AEC. *Submission 26* to the Inquiry into the integrity of the electoral roll, paragraphs 10.2-10.10.

corrections to an enrolment where mistakes have been made by the AEC.

3.13 Salutation or title is validated on entry against a list of pre-defined titles. If the salutation or title is acceptable but not yet defined to the system the enrolment will be suspended and the salutation or title defined before it can be used for enrolment purposes. Some titles, such as honours prefixes, are identified as restricted. If one of these titles is used the enrolment process is suspended until the title can be checked.

3.14 Surname is validated on entry for valid characters (no numerics for instance) and inappropriate names. If the surname is invalid for either of these reasons, an initial check is made that the surname has been entered accurately. If it has been, then further checking will be required into the inappropriate name, or if the name is not inappropriate, the validation rules will need to be relaxed to allow the surname to be accepted. Given names and former surnames are processed in the same way as surnames. It should be noted that at this stage the validation process is only checking the validity of the name as a name. The system has not yet attempted to match the name with an existing elector.

3.15 Date of Birth is entered in the format DD/MM/YYYY and is validated on entry. Processing is halted and further checking will be required if the data entered indicates that the person is under 17 years of age. The system warns if the date indicates the elector is over 100, and in some cases further checking may be undertaken.

3.16 Address data is then entered into the fields of: Habitation; Flat/Unit; Street Number; Street Name; Street Type; and locality. This data is validated on entry. The data in these fields must exist on the street and locality file, which contains valid street names and valid locality names.⁴ The system will not accept invalid data so, if the data does not exist on the street and locality file, and provided the data entered is correct, the enrolment will be suspended and further checking will be required. Data in the Flat/Unit and Street Number fields will also be validated for format, with the enrolment being suspended until further checking is carried out if an anomaly arises.

3.17 At this point the person entering the data will be required to press a function key to move to the next screen. This action triggers a host of checking of the address, the name, and the date of birth. In relation to the address, the system has previously checked Habitation, Street and Locality for valid data and data in the Flat/Unit and Street Number fields has been validated for format. Now the address information is checked against the RMANS Address Register. Processing will be suspended pending further checking if:

- the address is not on the Register;
- the address is flagged as non-enrollable;
- the address is flagged as inactive;

⁴ Gazetted localities and official streets, but not private roads.

- the enrolment limit attributed to the address is exceeded; or
- the street part for an unnumbered address is not clear.

3.18 Once all the automated Address checking is completed and any anomalies are resolved the system then matches with the name and date of birth to check if a previous record for the person exists. If there is a single match and everything appears to be straightforward and there is no postal address the processing continues and may be completed.

However, the process is suspended pending further checking if:

- there is a match made with an elector on the 'DELETED FILE' and the deletion reason or subsequent information indicates that the record refers to a person who is deceased;
- there is a match made with an elector on the 'DELETED FILE' and the deletion reason or subsequent information indicates that the record refers to a person who was deleted for reasons of unsound mind;
- there is a match made with an elector on the 'DELETED FILE' and the deletion reason indicates that the record refers to a person who was deleted because they were not a citizen;
- there is a match of some special category elector codes (codes applied to special category electors such as itinerant or Norfolk Island electors) and the new form does not indicate that they are to apply to the latest enrolment;
- there are multiple possible matches;
- the former name details have been entered and there is no match;
or
- the person is over 18 years and there is no match.

3.19 If the enrolment is identified as a new enrolment or the elector has indicated that they are not an Australian Citizen by birth, citizenship is checked and the process is suspended pending further checking if:

- there is no match on the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) database; and
- there is a match on the DIMIA database but the status on the DIMIA record is other than 'acquired'.⁵

3.20 If there is a postal address to be added or amended the combination of locality, State and Post Code is validated on entry. If the postal address is an Australian postal address and the data combination is not valid, the process is suspended pending further checking.

3.21 Where a match is made with an existing record the linking of the records and the movement of a previous record from the 'CURRENT FILE' to the 'DELETED FILE' is automated.

⁵ 'Acquired' is the technical term for applicants for citizenship who have been provided with an Australian citizenship number, and are therefore Australian citizens.

3.22 It should be emphasised that, while the list of anomalies is not exhaustive, enrolments or changes to enrolment are not added to RMANS while anomalies exist. It should also be noted that this process applies at all times, including during the close of roll period.

Citizenship and address checks during the close of rolls

3.23 In submission 190, the AEC indicated that citizenship and address register verification are increasingly rigorous and time consuming and will impact on enrolment processing during future roll closes.⁶ The JSCEM asked what impact these citizenship and address register verification processes will have.

3.24 When a person applying for enrolment cannot be found on the DIMIA database the citizenship verification checking can sometimes take days or weeks to resolve. In these circumstances DIMIA undertake an investigation of each case in order to determine citizenship eligibility. Therefore, the AEC, in some cases, may need to exclude the unresolved cases from the roll and, if the eligibility is resolved in favour of the person before polling day, their name would be added to the notebook (additions list) roll. It is preferable not to have anyone on the notebook roll.

3.25 The verification of addresses, in some cases, can also be time consuming because it may involve contacting local councils or land authorities to identify whether or not the address on the enrolment form is a valid address for enrolment.

Flagging new enrolments

3.26 The JSCEM asked why new enrolments are flagged.⁷ New enrolments are flagged to assist in the analysis of enrolment trends, statistical reporting, and to provide this information in roll products such as ELIAS. The flagging does not imply that there are concerns about the accuracy of these enrolments. As indicated in paragraph 3.22 above, the new enrolments are not added to RMANS until all anomalies have been checked. By the time a new enrolment is flagged, it has been accepted as a legitimate enrolment.

Direct address change

3.27 The JSCEM asked the AEC to expand on how a process of direct address change for enrolment would operate. Direct address change was discussed by the ALP in its submission to the inquiry,⁸ and was commented on by the AEC in submission 174.⁹ The issue has been previously discussed by the AEC during the JSCEM's inquiry into the integrity of the electoral roll.¹⁰

⁶ 2003. AEC. *Submission 190*, paragraph 2.22.

⁷ 2000. AEC. *Submission 26* to the Inquiry into the integrity of the electoral roll, paragraph 10.6; see quote above.

⁸ 2002. Australian Labor Party. *Submission 152*, p7.

⁹ 2002. AEC. *Submission 174*, paragraphs 31.20-31.23.

¹⁰ 2000. AEC. *Submission 26* to the inquiry into the integrity of the electoral roll, paragraph 11.4.5.

3.28 It should be noted at the outset that procedures for direct address change have not been developed. However, if the JSCEM were considering direct address change, the AEC proposes that a complete match of all necessary details with a trusted agency will be required before any enrolment details were changed.

3.29 Once the complete match had been achieved, the enrolment details would be changed and an acknowledgement card, advising the elector of the direct enrolment change, would be posted to the elector. If the card was not delivered it is highly likely it would be returned to the AEC. In these circumstances all returned mail would be investigated as to the reason why the acknowledgement was not delivered. The investigation would then determine the next course of action.

3.30 At this stage, the AEC has not identified the agencies that could be used as trusted agencies for the purposes of direct address change. The AEC is aware that some people do not necessarily have their residential address recorded with every agency. For example, some young drivers retain their parent's address for their licence and motor vehicle registration. The AEC would be cautious in developing the list of trusted agencies to overcome problems of this sort.

Indigenous enrolment

3.31 The JSCEM asked what effect the closure of the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) had on the enrolment of Aboriginal and Torres Strait Islanders.

3.32 Ethnic origin is not recorded on the electoral roll, so it is not possible to accurately quantify the effect the establishment or closure of the ATSIEIS program had on enrolment levels. The ATSIEIS program was previously known as the Aboriginal Electoral Education Program (AEEP) which was established in 1979 and was gradually expanded through the early 1980's. Prior to 1984 it was an offence to encourage Indigenous Australians to enrol and very little enrolment related work was undertaken. The emphasis on enrolment was increased after 1984 but, as the AEEP and then ATSIEIS programs were expanded over a long period, there was no particular time when enrolment would have suddenly increased.

3.33 At the time of the ATSIEIS program's de-funding by the government in 1996, it was the view of appropriate Australian Electoral Officers (AEOs), such as the AEO for the NT, that the roll, in terms of Indigenous enrolment, was in reasonably good order in rural and remote areas of Australia.

3.34 Since that time, indications from ATSIC elections are that enrolment levels have declined and that it is likely that more people are not correctly enrolled. During the 2001 ATSIC pre-election information and education program Indigenous field staff undertaking enrolment activities collected 6,625 enrolment cards nationally. This compares with 4,047 collected enrolment cards for the 1999 ATSIC election, and 2,800 for the 1996 ATSIC election, held just after the ATSIEIS program ceased.

Reinstatement of provisional electors

3.35 The Liberal Party, in its submission to the inquiry, raised the matter of return to sender mail received by Mr Jim Lloyd MP, Member for Robertson. The JSCEM was advised by the AEC that this was probably the result of provisional voters being reinstated to the roll.¹¹ The JSCEM asked for the AEC to confirm the chain of events the Liberal Party was discussing.

3.36 The chain of events discussed by the Liberal Party, which are a result of the actions of section 105(4) of the Act, were described by the AEC in submission 88 to the JSCEM's inquiry into the 1998 federal election in the following terms:

In relation to the reinstatement of the enrolment of provisional voters, the AEC is concerned that where an elector has been removed by objection under sections 116 and 118 of the Electoral Act, and the elector then casts a provisional vote and claims to have moved to an address within the subdivision (effectively the Division) of previous enrolment, the DRO is required to reinstate that elector to that address and admit the vote.

The notice of determination of the admissibility of the declaration vote must be sent to the elector, but in many cases it is either returned unclaimed or with a notation that the person is not living at that address. The DRO then has to again take objection action under sections 116 and 118 to remove the elector from the roll for that address. And so the cycle continues.

Clearly, many of these reinstated electors are not living at the address they claim as their enrolled address, and may not have lived there for some years. In effect, the AEC is obliged to incorrectly update the Roll, which loses a measure of integrity in the process.

The simplest solution is to not require reinstatement if admitting the provisional vote. Enrolment action should be taken, but reinstatement of the elector to the roll should be conditional on a roll review exercise that demonstrates that the elector is living at the address. That is, the simple move to break the nexus between admitting the vote and reinstatement of enrolment does not affect the franchise, but does improve the accuracy of the roll.¹²

3.37 It should be noted that the declaration envelope asks electors to advise their current permanent address and their claimed enrolled address. In some cases, the elector will advise a current permanent address that is different to their claimed enrolled address, but still within the same Division. In these cases, the elector will be reinstated to the roll for the current permanent address. However, in other cases the elector will advise the same address for their current permanent address and their claimed enrolled address. In such cases, in accordance with subsection 105(4), the AEC has no option but to reinstate them to the claimed enrolled address, even if the AEC suspects that the elector does not in fact reside at that address. These are the reinstatements that generally result in RTS mail.

3.38 The version of ELIAS provided to parliamentarians immediately after the 2001 federal election would have contained the reinstatements

¹¹ 2002. AEC. *Submission 174*, paragraph 29.22.

¹² 1999. AEC. *Submission 88* to the Inquiry into the 1998 federal election, paragraphs 9.12.3-9.12.6.

required by section 105(4) of the Act, including those where the AEC suspects that the elector does not in fact reside at that address. This would have generated Mr Lloyd's return to sender mail problem.

3.39 As indicated in submission 174, the solution to this problem, which is to break the nexus between a provisional vote and reinstatement for the previous enrolled address, is currently before the parliament in the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002*.¹³ This solution involves repealing subsections 105(4) and 105(5) of the Act.

Counting of 18 year olds

3.40 The JSCEM asked whether its understanding that the number of 18 year olds reported in the AEC's close of roll enrolment figures includes those who enrolled as 18 year olds, plus those 17 year olds who enrolled when 17 but who turned 18 before the election, was correct.

3.41 The AEC can report that this understanding is not correct. In submission 190, the AEC provided close of roll reports in two forms. The first was the Enrolment Activity Report, which generates a report of those people entitled to be added to the roll for the election. The second was the card processing statistics, that is, enrolment cards entered into RMANS.

3.42 As indicated in submission 190, there are important differences between these two measures, particularly in the handling of 17 and 18 year olds. Enrolment Activity Reports record the date at which an elector becomes eligible to vote because they turn 18, regardless of when they actually enrolled. It does not count 17 year olds when they enrol. Card processing statistics record the number of cards processed, regardless of age. This report will count 17 year olds when their enrolment form is processed, but will not count them when they turn 18.¹⁴

Close of rolls – total number of enrolments

3.43 The JSCEM asked the AEC to confirm that the total number of enrolments during the close of rolls period is higher than the number of individuals who enrolled in that period.

3.44 Assuming by this that the JSCEM means the total number of enrolment transactions (Enrolment Activity) will be higher than the number of cards processed, then the AEC can confirm that this is the case. The total number of enrolment transactions would normally be higher than the total number of enrolment cards processed in the close of rolls period, because enrolment cards from 17 year olds received in the previous 12 months can mature (that is, the person turns 18) and be included in the number of enrolment transactions.

¹³ 2002. AEC. *Submission 174*, paragraph 29.22.

¹⁴ 2003. AEC. *Submission 190*, paragraphs 2.13-2.16.

Close of rolls – transaction numbers

3.45 The JSCEM indicates that the AEC has informally argued that with improvements to the CRU process, the number of new enrolments and enrolments requiring updating during the close of roll period will gradually decrease.

3.46 At the time the AEC made this informal argument, it was not possible to make anything more than an assumption about the effect of the CRU process on the number of enrolment transactions during the close of roll period.

3.47 The number of enrolment transactions during the close of rolls period is influenced by the circumstances of each federal electoral event. Influential circumstances may include the proximity of state electoral events, the level of community interest in the election, and the proximity of CRU mail outs, which may increase the number of enrolment cards in the community. As the circumstances of each federal electoral event are unique, it is likely that the AEC's informal assumption may never prove to be accurate.

3.48 A more sophisticated analysis of enrolment activity may provide some evidence to indicate what effect, if any, the CRU is having on the number of enrolment transactions during the close of roll period. However, a number of further electoral events will be necessary before it will be possible to determine whether any effect exists.

Inappropriate names

3.49 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. The transitional arrangements in the Act also allowed the removal of existing inappropriate names from the roll. The JSCEM asked how long these transitional arrangements were in place.

3.50 The Explanatory Memoranda for this Act provides an explanation for the transitional arrangements:

The provision will ... give DROs and AEOs the power to review existing names on the roll and replace any that do not meet the new requirements. The name would be replaced with the last appropriate name under which the person was enrolled. If the person had not previously been enrolled under an appropriate name, the DRO or AEO would seek written advice from the elector as to the last appropriate name by which the person had been generally known in the community (documentation would need to be provided by the person to support the use of this name). If the elector complies with the request and the DRO or AEO is satisfied that the name meets the new requirements, the DRO or AEO will be required to have the electors enrolment altered to replace the unacceptable name with the acceptable name. If the elector does not comply with the request, then the DRO or AEO will be required to have the electors name removed from the roll and notify the elector accordingly.¹⁵

¹⁵ *Electoral and Referendum Amendment Act (No. 1) 2001: Explanatory Memoranda*, paragraph 11.

3.51 The transitional arrangements have no end date in order to allow DROs and AEOs to review inappropriate names whenever they come to light. Consequently, the transitional arrangements are still in place.

4. Nominations

Nominating for multiple elections

4.1 The JSCEM asked the AEC to confirm that according to section 165 of the Act, a person may only nominate for one seat in the House of Representatives or one seat in the Senate, in each election. The AEC can confirm that this is an accurate reflection of section 165. This section was inserted in the Act as part of the *Commonwealth Electoral Legislation Amendment Bill 1983*. The Explanatory Memoranda for that Act indicates that this section:

...prohibits a person standing as a candidate for two or more elections held on the same day.¹⁶

4.2 Prior to the insertion of this section in the Act it was possible to nominate as a candidate in more than one election held on the same day.

5. Funding and disclosure

5.1 In its submission to the current inquiry, the Australian Labor Party (ALP) recommended that the AEC report to the JSCEM on the issues and 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.¹⁷

5.2 In response, the AEC has advised that its views were contained in its post-election Funding and Disclosure reports and in submissions to the lapsed JSCEM funding and disclosure Inquiry.¹⁸ Included in the latter were the following recommendations:

That section 129 of the Electoral Act be amended to require that the AEC will refuse an application for registration if the proposed name of the party is the same as, or so closely resembles as to cause confusion, the name of a recognised (as defined) organisation where that organisation has advised the AEC that it does not agree to the use of the name by the party.¹⁹

and

That section 129 of the Electoral Act be amended to require that the AEC will refuse an application for registration if the proposed name of the party contains the name of a person.²⁰

5.3 These recommendations notwithstanding, in submission 181 to the current inquiry, the AEC provided the JSCEM with three options, advising that its preferred option would be to retain the status quo. The options were:

¹⁶ *Commonwealth Electoral Legislation Amendment Bill 1983: Explanatory Memoranda*, p33.

¹⁷ 2002. Australian Labor Party. *Submission 153*, recommendation 18.

¹⁸ 2002. AEC. *Submission 174*, paragraph 31.3.

¹⁹ 2001. AEC. *Submission 15* to the Funding and disclosure inquiry (lapsed), recommendation 16.

²⁰ 2001. AEC. *Submission 15* to the Funding and disclosure inquiry (lapsed), recommendation 17.

Option 1:

Alter the Act to specifically provide that words such as 'liberal' or 'labor' can only be used by particular parties (effectively copyright certain words). Consideration would need to be given to whether the legislation would restrict use to only future applicants or also cover currently registered parties....

Option 2:

Alter the legislation so that certain words (which would be listed) cannot be used by more than one party. Consideration would need to be given to whether the legislation would restrict use to only future applicants or also cover any currently registered parties....

Option 3:

Leave the legislation as it stands.²¹

5.4 The JSCEM asked the AEC to explain why, of these three options, it indicated a preference for the status quo when it had previously made recommendations relating to the regulation of political party names.

5.5 Given that the AEC had in submission 174 directed the JSCEM to its previous recommendations, the AEC assumed the JSCEM was interested in options for dealing with this issue additional to those presented in the AEC's submissions to the funding and disclosure inquiry.

5.6 Consequently, the AEC's statement at paragraph 12.12 of submission 181 indicates that the three options identified by the AEC in that submission are in addition to its previous (unadopted) recommendations and are a result of the JSCEM's request for the AEC to comment on the ALP's recommendation.

5.7 The AEC is not advocating the retention of the status quo over the adoption of its recommendations. The AEC is simply stating that, of the three options the AEC provided in submission 181 in addition to its previous recommendations, the AEC favours the status quo option.

5.8 If the JSCEM is minded to make a recommendation on this matter, the AEC suggests that the JSCEM adopt the AEC's recommendations quoted above.

5.9 Any recommendation from the JSCEM needs to be couched in terms that recognise that the AEC cannot be expected to know the names of all organisations or persons. That is, the AEC should only be required to reject such usage where the AEC is either made aware or becomes aware during the processing of the application that the name of the party or part of the name of the party is that of a recognised organisation or person (as defined).

²¹ 2003. AEC. *Submission 181*, paragraphs 12.9-12.21.