

**GOVERNMENT RESPONSE TO
JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS (JSCEM) REPORT**

“THE 1998 FEDERAL ELECTION”

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Recommendation 1

That the AEC assess the effectiveness of its staff selection procedures to ensure that it continues as an independent, professional and ethical organisation that is respected by the people who use its services. (para 2.12)

Response

Supported. The Government is committed to ensuring that the AEC remains an independent, professional and ethical organisation. AEC personnel recruitment procedures require applicants to state that they have no active political affiliations. Selection procedures for polling place staff require staff to sign undertakings concerning their conduct. These procedures are reviewed regularly and necessary improvements made. A further assessment of staff selection procedures will take place as recommended.

Recommendation 2

That the AEC devise a procedure for ensuring that polling for federal elections is not compromised in any way by the AEC's obligations to conduct other elections, and that the AEC ensure there is appropriate liaison between it and State and Territory electoral offices concerning the conduct of overlapping elections, including ensuring that State and Territory officials receive appropriate training and information on the requirements of federal electoral legislation. (para 2.14)

Response

Supported. Section 394 of the *Commonwealth Electoral Act 1918* (the Electoral Act) prohibits the conduct of State or Territory elections on the same day as a federal election, without the authority of the Governor-General. The Electoral Council of Australia (ECA), comprising all federal, State and Territory Electoral Commissioners, is aware of the possibility of overlapping parliamentary elections, and its members are able to advise their respective governments when conflicts might arise. ECA consultation also ensures that training and information on the conduct of federal, State and Territory elections is provided to electoral officials as required.

Recommendation 3

That section 155 of the Electoral Act be amended to provide that for new enrolments, the rolls for an election close on the day the writ is issued, and for existing electors updating address details, the rolls for an election close at 6.00 pm on the third day after the issue of the writ. (para 2.26)

Response

Supported. Equivalent changes should be made to the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act). The Government believes that the potential for enrolment fraud at the time of the close of rolls is sufficiently high to warrant this change. The costs for the implementation of this recommendation will be approximately \$52,000 in an election year, as there will be some offset savings, and approximately \$264,000 in a non-election year.

Recommendation 4

That the time period for enrolling as an overseas elector be a uniform two years from the date of departure from Australia, regardless of whether the elector was previously enrolled in Australia. (para 2.29)

Response

Supported. Sections 94 and 94A of the Electoral Act presently provide different time periods within which persons may make an application for enrolment from outside Australia (two years) or for treatment as an 'eligible overseas elector' for those persons already enrolled (one year). This is an anomaly that should be corrected. The time limit should be standardised at two years.

Recommendation 5

That the relevant sections of the Electoral Act and the Referendum Act be amended to allow overseas electors to use a photocopy of their passport certified by the elector to confirm their personal details in circumstances where it is not possible to obtain an authorised witness' signature when either enrolling as an overseas elector or making a postal vote from overseas. (para 2.32)

Response

Supported. The Government believes that the use of a certified photocopy of the relevant page of a passport, instead of an authorised witness, to confirm identity when overseas, should be permitted when difficulties are encountered finding an authorised witness when applying for or casting an overseas postal vote, or in finding an eligible witness when applying for enrolment from overseas.

Recommendation 6

That the AEC investigate and report on the potential impact of the proposed changes to the witnessing and enrolment provisions effected by *Electoral and Referendum Act (No 1) 1999*. This report should include information on:

- The potential financial impact of these changes on new enrollees;
- The potential impact on enrolment numbers; and
- The potential cost to the AEC of setting up and administering these new systems.

Where the changes have been implemented, the AEC should provide details of studies it has done on the potential impacts and the actual impacts. (para 2.36)

Response

Not supported. The Government is aware that some concerns have been expressed by the Joint Roll partners in the States about the possible impact of the new federal enrolment identification requirements in the *Electoral and Referendum Amendment Act 1999*. The Government does not share these concerns and believes that, given the extent of discussions on this issue and amendments made to the draft regulations to accommodate these concerns, a further investigation is unnecessary. Although the proclamation of the relevant provisions of the amending Act and the promulgation of the necessary regulations has not yet taken place, the AEC is well advanced in the development of operational systems to support the new legislative requirements. Accordingly, the Government continues to urge the States to cooperate in strengthening the enrolment provisions.

Recommendation 7

That the *Commonwealth Electoral Act 1918* be amended to make the basis of enrolment the elector's address, and that the objection provisions be amended such that an elector can be removed from the Roll when it can be shown the elector no longer lives at their enrolled address.

If an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general election; and

If an elector moves outside their enrolled Division, but remains within the State/Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count.

Response

Supported. The recommendation will convert the basis for enrolment to a more realistic address-based system, replacing the current subdivisational-based enrolment system, which is no longer operating efficiently in maintaining accurate enrolments. The Government believes that this important change to the enrolment system will contribute to improving the accuracy of the rolls, in conjunction with the Continuous Roll Update (CRU) systems, such as the Address Register, now being developed and implemented on the computerised roll management system, RMANS.

Recommendation 8

That the *Commonwealth Electoral Act 1918* be amended to allow the Divisional Returning Officer to exclude from enrolment any name that is invalid, and that the criteria for determining an invalid name be developed by the AEC in consultation with the Office of Parliamentary Counsel. (para 2.55)

Response

Supported. Some individuals are changing their names by deed poll into grammatical strings containing a political message, and then enrolling with the intention of nominating as candidates and appearing on the ballot paper with free publicity for their cause. The Government believes this is a perversion of the enrolment system which should be addressed. The legislative means by which Divisional Returning Officers (DROs) will be empowered to reject such obviously inappropriate names from enrolment will require special attention in the drafting process so as not to inadvertently preclude the enrolment of genuine but unusual names. Cooperation with State/Territory Registrars, through the appropriate channels, as indicated in recommendation 9, will be necessary. Appeal rights with respect to any administrative action on individual enrolment applications are already available in the legislation, and will be further improved in the legislative response to recommendation No 10.

Recommendation 9

That the federal Attorney General appeal to his or her respective state and territory counterparts through the Standing Committee of Attorneys' General that there is a need for each state or territory Registrar of Births, Deaths and Marriages to tighten their criteria in relation to the registration of legal names. (para 2.56)

Response

Supported. The Government will refer this matter to the Standing Committee of Attorneys-General for consideration and action as appropriate. The occasional decisions made by the State/Territory Registrars of births, deaths and marriages (BDM) in accepting inappropriate name changes are having long-range impacts on federal and State/Territory electoral systems. DROs are obliged to accept enrolment name changes, which are effectively grammatical strings carrying a political message, if the application is supported by evidence such as a valid deed poll (or other equivalent documentation) from State/Territory BDM Registries, as well as documented community recognition.

Evidence of community recognition, including documented transactions with government agencies such as local utilities, Centrelink and Medicare, and other correspondence, usually becomes available following the settlement of a valid deed poll. After securing enrolment, the elector is then at liberty to nominate as a candidate for election, and obtain free publicity for the cause by appearing on the ballot paper, with little prospect of electoral success. The Government believes this is a perversion of the electoral system which should be addressed. A consistent and cooperative federal/State/Territory approach to the regulation of inappropriate name changes is worth pursuing.

Recommendation 10

That Part X of the *Commonwealth Electoral Act 1918* be amended to make decisions by a Divisional Returning Officer in relation to the enrolment of names appealable to the Australian Electoral Officer and the Administrative Appeals Tribunal. (para 2.58)

Response

Supported. (Although the actual legislative amendment required will depend on the passage of the Administrative Review Tribunal Bill 2000.) For a particular class of enrolment decisions made by DROs under section 105(1)(b) of the Electoral Act, relating to the alteration of names on the roll, there are no specific appeal rights available, as there are for all other administrative decisions relating to enrolment. The Government believes that this is an omission in the legislation that should be corrected so as to allow electors to challenge any administrative decision affecting their enrolment. It will also provide an additional level of protection for electors with genuine but unusual name changes, as opposed to electors seeking inappropriate name changes, as addressed in recommendations 8 and 9.

Recommendation 11

Subject to the JSCEM acceptance of matters raised in the AEC's internet issues paper, that the publicly available Commonwealth Electoral Roll be provided on the AEC internet site for name and address/locality search purposes, and that the Roll be provided in CD-Rom format with the same search facility to public libraries without internet access. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll. (para 2.65)

Response

Supported in principle. The Government needs to be assured that electors' privacy will be appropriately protected and needs to look at this issue again after further consideration by the JSCEM following publication of the AEC's review of sections 89-92 of the Electoral Act which will cover the issue of placing the roll on the internet. The implementation costs of this recommendation are expected to be in the order of \$208,000 in the first year and approximately \$87,000 in subsequent years.

Recommendation 12

That the *Commonwealth Electoral Act 1918* be amended to allow access to an electronic version of the marked Roll and that this right of access should be extended to both candidates and party political organisations. (para 2.72)

Response

Supported in principle. Section 189(3) of the Electoral Act and Section 62 of the Referendum Act allow the inspection of postal vote applications from the third day after polling until the election can no longer be questioned. From paragraph 2.71 of the JSCEM report, it appears that it is this facility that the JSCEM has recommended for electronic access. Subject to prior consultation with the Privacy Commissioner, the Government agrees that this section should be amended to allow the AEC to provide, on request, electronic lists of the names and addresses of postal vote applicants to registered political parties and candidates, within the time period currently specified. House of Representatives candidates would be entitled to the list for the Division in which they stood for election and Senate candidates to the lists for all Divisions in the State or Territory in which they stood for election. Federally registered political parties would be entitled to electronic lists of postal vote applicants for the States and

Territories in which they are organised. The costs for this recommendation would be approximately \$56,000 each election year.

Recommendation 13

That the *Commonwealth Electoral Act 1918* be amended to include a schedule setting out an alternate layout for the Senate ballot paper and that the AEC consult with the Joint Standing Committee on Electoral Matters on the alternate design. (para 2.82)

Response

Supported. The Government is concerned that the increasing numbers of Senate candidates are having a detrimental impact on the size, cost and appearance of the Senate ballot paper. Later recommendations 49 to 54 will strengthen the party registration process to deter candidates from appearing on the Senate ballot paper when they have no realistic chance of electoral success.

Schedule 1 of the Electoral Act specifies only one format for the Senate ballot paper and there is no flexibility permitted for adopting a more appropriate layout for large numbers of candidates, within the technical constraints of production and usage. The Senate ballot paper has already reached the limitations of paper width for efficient production purposes, and has reached the limit of acceptable typeface point size standard for the printing of candidates and group names to be legible at the polling booth. In order to maintain efficiencies in the production and cost of ballot papers and other election equipment, such as declaration vote envelopes and ballot boxes, it should be possible to extend the depth of the Senate ballot paper to allow for the vertical layering of the candidate names. This layout alternative for the Senate ballot paper should be fixed in the schedule to the Electoral Act.

Recommendation 14

That s211 of the *Commonwealth Electoral Act 1918* be amended to allow for the amendment or withdrawal of Group Voting Ticket statements up to the closing time for the lodgement of such statements; that such amendment or withdrawal may only be made by the person who lodged the original statement; that a further statement may be lodged prior to the closing time following the withdrawal of the original statement by any persons eligible to do so under s211(6); and that should a Group Voting Ticket statement be withdrawn, and a new statement not be lodged for the group prior to the closing time for lodgement, the group will not have a Group Voting Ticket square printed on the ballot paper. (para 2.84)

Response

Supported. The original representative of a Senate group should be able to amend or withdraw a group voting ticket (GVT) statement at any time up to the closing time for lodgement, and following a withdrawal, any person eligible to do so under section 211(6) of the Electoral Act should be able to lodge a further GVT statement. If a new statement is not lodged then the Group will not have a GVT square printed on the ballot paper.

However, the recommendation should be extended to allow, under the same conditions, a further withdrawal and/or amendment of a GVT statement, subsequent to the first withdrawal and/or amendment. Further, it should be possible to delegate the responsibility for accepting such amendments and/or withdrawals to GVT statements if the original AEC officer is not available at a later time.

Recommendation 15

That the *Commonwealth Electoral Act 1918* be amended to ensure that the return of deposit for Senate candidates is made to the person who paid the deposit. (para 2.86)

Response

Supported. The process for the return of deposits for bulk nominations for the House of Representatives works well in practice. The Government believes that a similar process should be available for Senate groups. Section 173 of the Electoral Act should be amended to provide that where a candidate is part of a Senate group, and the nomination deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it.

Recommendation 16

That ss 177 and 180 of the *Commonwealth Electoral Act 1918* be amended to allow, up until the close of nominations, for the substitution of another candidate for a Division in a bulk nomination, where a candidate for that Division in a bulk nomination dies or withdraws their consent to act. (para 2.90)

Response

Supported. The Government believes that the death or withdrawal of a candidate before the close of nominations should not invalidate a bulk nomination for the House of Representatives, and that a substitute candidate should be allowed to be nominated, and the deposit returned, as necessary, within the terms of sections 177 and 180 of the Electoral Act. This would extend the same candidate replacement rights for bulk nominations as are already available for single nominations.

Recommendation 17

That s331 of the *Commonwealth Electoral Act 1918* and s124 of the *Referendum (Machinery Provisions) Act 1984* be amended to reflect that only electoral advertising in journals needs to be labelled as advertising. (para 2.96)

Response

Supported. Section 331 of the Electoral Act and section 124 of the Referendum Act should be amended to clarify that only electoral advertising must be labelled as advertising in journals, including newspapers. The previous amendment in relation to the publication of electoral matter in journals was not properly drafted, and the situation now is that, technically, even newspaper editorials and opinion columns commenting on an election should contain the heading "advertisement". This was clearly not the original intention of the Parliament. These

amendments would not weaken the legislation but simply clarify that only electoral advertisements in journals must be labelled.

Recommendation 18

That the *Commonwealth Electoral Act 1918* be amended so the full address clearly identifying a physical location is given for authorisation purposes. (para 2.102)

Response

Supported. The Government believes a precise definition is required to remove any doubts about the application of the authorisation requirements for electoral advertising. A definition of "address", to include street number, street name, and suburb/locality, as applicable, should be included in the relevant provisions of the Electoral Act and the Referendum Act.

Recommendation 19

That the AEC develop an expanded authorisation regime for How To Vote cards which will:

- define How To Vote cards broadly so as to include How To Vote cards that are narrative in nature;
- ensure the authorisation details include the name of the political party of origin or the name of the independent candidate as well as the other authorisation details; and
- include a requirement for the authorisation details to be printed prominently (in 12 point) on each printed side of the How To Vote card.

The authorisation regime should ultimately be included in the *Commonwealth Electoral Act 1918*. (para 2.129)

Response

Supported in principle. The problem of second and later preference how-to-vote (HTV) cards, that could, in breach of section 329 of the Electoral Act, mislead voters, will not be resolved by an unenforceable authorisation regime, or administrative guidelines, given the recent history of litigation on this subject.

The Government does not support the first dot point of the recommendation, because HTV cards, including those of a narrative character, are already encompassed in the definitions of "electoral advertising" containing "electoral matter" set out in sections 328(5) and 4(1) of the Electoral and Referendum Acts respectively. A definition of HTV cards would only encourage disputes about interpretation, and in any case, the Government believes that the improved authorisation requirements should apply to all electoral advertisements governed by section 328(1) of the Electoral Act, not just HTV cards.

Further, the Government does not support the second and third dot points of the recommendation. They are too prescriptive and unnecessary.

Recommendation 20

The AEC conduct an investigation to determine the reasons for the changes in the pattern of declaration voting. (para 2.156)

Response

Supported. However, such an investigation is unlikely to show any useful analytical outcome because of the lack of baseline comparative data on the factors most likely to have affected changes in the pattern of declaration voting in recent times. Declaration voting has increased from 12.74% of total votes in 1993, to 13.78% of total votes in 1996, to 17.90% of total votes in 1998.

The AEC has already reported that absent, postal and pre-poll voting probably increased at the 1998 federal election because polling day was scheduled during school holidays and some major sporting and cultural events. The AEC has also reported that an increase in postal voting has undoubtedly been stimulated by the mass distribution of postal vote applications by the major political parties. Other factors affecting voter behaviour, such as changing work patterns, that make it difficult for some to vote on a Saturday, may also have an impact.

And finally, the AEC has reported that provisional voting can be expected to increase if an election is held soon after an electoral redistribution, or if major objection action to cleanse the roll has been effected before the close of rolls for an election. However, the impact of these factors on the accuracy of the rolls, and the consequent level of provisional voting, should be progressively neutralised with the development and implementation of continuous roll update (CRU) procedures and systems referred to elsewhere.

Recommendation 21

That the AEC modify its pre-poll voting form so that voters are requested to tick off the reason why they require a pre-poll vote from a list of permitted reasons in the legislation. (para 2.158)

Response

Not supported. The Government does not believe that there is any present justification for requiring pre-poll voters to provide a written record of their reasons for casting such a vote, as there is no evidence that the pre-poll voting system is being misused or abused. The grounds for making a pre-poll vote are the same as for postal voting in Schedule 2 of the Electoral Act, but an application for a pre-poll vote is made in person to the responsible AEC officer under section 200C(2) of the Electoral Act. The AEC already ensures that the grounds for a pre-poll vote in Schedule 2 of the Electoral Act are clearly displayed in pre-poll voting centres, and drawn to the attention of applicants as necessary.

Recommendation 22

That the AEC review its current practices to ensure that the information communicated to the candidates and the public in relation to pre-polling facilities is clear and correct. (para 2.166)

Response

Supported. The AEC will review advertising for pre-poll centres and will consider more frequent and less detailed pointer advertisements in newspapers providing the AEC call centre number so that specific information can be relayed directly to voters by telephone. The AEC already advises candidates individually in writing about the location of relevant pre-poll voting centres.

Recommendation 23

That the AEC seek agreement, where appropriate, from the owners of the premises on which a pre-poll is located to ensure that no unreasonable restriction is placed on the right of persons to distribute the customary election material or for voters to receive that material at or in the vicinity of the pre-poll. (para 2.173)

Response

Supported. The AEC already seeks the agreement of the owners of private premises, such as shopping malls, to allow canvassing outside pre-poll voting centres to take place without unreasonable restrictions.

Recommendation 24

That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to process votes cast in the Antarctic as pre-poll votes. (para 2.175)

Response

Supported. On polling day for an election, Antarctic voters place their completed ballot papers in a ballot box, and at the close of polling, the votes on the ballot papers are electronically transmitted to the designated Australian Electoral Officer (AEO) for Tasmania by the Assistant Returning Officer. The AEO then transcribes the votes onto postal ballot papers, completes the accompanying declaration envelopes on behalf of the Antarctic voters, and despatches the postal vote materials to the appropriate Divisional Returning Officers for processing. The Government believes it would be more appropriate for Antarctic votes to be processed as pre-poll votes rather than as postal votes. Antarctic electors do not make a postal vote application, but cast their votes by attending at an Antarctic station, which is a polling booth for the purposes of the election, similar to a pre-poll voting centre.

Recommendation 25

That section 209(5) of the *Commonwealth Electoral Act 1918* and section 25(4) of the *Referendum (Machinery Provisions) Act 1984*, requiring the production of separate postal ballot papers, be deleted so as to allow the same ballot paper to be used for all forms of voting. (para 2.178)

Response

Not supported at the present time. The Government is taking action to strengthen electoral integrity and this should take precedence over administrative and cost efficiencies.

Recommendation 26

That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to specifically allow for the replacement of spoiled, lost or undelivered postal ballot papers on written application from the elector. If the AEC receives two or more sets of ballot papers from an individual elector as a result of a request for replacement ballot papers, the AEC should discard any second or subsequent set of ballot papers received and keep a record of such occurrences to determine whether there is an intention to multiple vote. (para 2.184).

Response

Not supported. The Government opposes this recommendation as it could potentially open a loophole for abuse and believes there are real grounds for doubting that it could work in practice.

Recommendation 27

That paragraph 7 of Schedule 3 of the *Commonwealth Electoral Act 1918* and paragraph 7 of Schedule 4 of the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling if there is no post mark or if the post mark is illegible. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration. (para 2.191)

Response

Not supported. The Government opposes this recommendation because it may lead to the electoral system being open to manipulation. The Australian Electoral Commission should investigate the feasibility of Australia Post being required to postmark every piece of electoral matter.

Recommendation 28

That the AEC modify its postal voting form so that voters are requested to tick off the reason why they require a postal vote from a list of permitted reasons in the legislation. (para 2.200)

Response

Supported in principle. The AEC will amend the approved postal vote application form so that the grounds permitted for a postal vote, contained in Schedule 2 of the Electoral Act and Schedule 3 of the Referendum Act, are included (in abbreviated form as necessary). The Government believes it is unnecessary for the electors to indicate under which particular ground they are applying for a postal vote.

Recommendation 29

That the AEC only issue one set of postal ballot papers and discard any second or subsequent application form request except where the second or subsequent request is to replace spoiled, lost or undelivered ballot papers on written request from the elector as set out in Recommendation 26. (para 2.207)

Response

Supported in principle. This recommendation is in response to difficulties that have arisen from the mass distribution of postal vote applications by the major political parties. Aged or confused electors who receive unsolicited postal vote applications from more than one political party may fill in and return multiple postal vote applications. Because DROs must issue postal voting materials if valid applications are received, these electors may then go on to cast multiple postal votes. This problem was addressed administratively at the 1998 federal election by contacting postal vote applicants who had sent in more than one application to confirm that only one set of postal voting materials should be issued.

In order to minimise the problem of inadvertent multiple postal votes at the point of application, the Government believes that the AEC should continue to deal administratively with the receipt of multiple postal vote applications. Upon receipt of any subsequent postal vote application, the AEC will contact the applicant to establish why a second application has been received and whether it is necessary to issue further postal voting material (eg first despatch not received). The DRO consulting with multiple postal vote applicants, where practicable, should avoid the unnecessary issuance of multiple sets of postal voting materials. This will assist in preventing inadvertent multiple postal voting at the point of application. It will have the additional advantage of assisting in identifying fraudulent multiple postal vote applications, before the votes are cast.

However, the Government believes that, for those inadvertent multiple postal votes that do survive the applicant check (which could occur with overseas voting, for example), there should be a mechanism to prevent their entry into the count. This should occur at the preliminary scrutiny of declaration votes, where signatures and other information, such as the date of receipt, on the declaration envelope can be used to distinguish and disallow inadvertent multiple postal votes. Legislative provisions should be made to disallow the admission to the count of multiple pre-poll votes. Signature checks will determine which of the multiple postal or pre-poll votes was signed by the voter and only the first received of these will be counted.

Further, there should be a mechanism applied to prevent the entry into the count of fraudulent declaration votes, of any kind, whereby signature checks are carried out on multiple declaration votes for the same voter and only the declaration vote carrying the signature of the voter is admitted to the count.

Regardless, where (after polling day) further scrutiny has commenced whilst preliminary scrutiny is ongoing, any declaration vote already admitted to the count will be deemed to be the declaration vote that should have been admitted and any subsequent votes will not be able to be admitted to the count.

An elimination process at the preliminary scrutiny has already been successfully tested at the 1997 Constitutional Convention election, which was conducted entirely by postal voting. However, in this case further scrutiny did not commence until after the cut off date for the receipt of all votes.

Any multiple declaration envelopes that are disallowed at the preliminary scrutiny stage, should not be discarded, but should be set aside for later investigation into fraudulent multiple voting as necessary.

Recommendation 30

That reply paid envelopes supplied by political parties with postal vote application forms that are addressed to return to the political party, the name of the political party be part of the address on the envelope. (para 2.212)

Response

Not supported. The Government believes that the flexibility, as to whether the party name should appear on the envelope or not, should be retained.

Recommendation 31

That the AEC review its mobile polling arrangements and training to ensure good management of mobile polling teams. (para 2.234)

Response

Supported. The AEC will review the training and management of all remote mobile polling teams, particularly those in the Northern Territory, before the next federal election.

Recommendation 32

That the *Commonwealth Electoral Act 1918* be amended to allow registered political parties to appeal AEC decisions on the location of polling places. (para 3.4)

Response

Supported in principle. The Government believes that there should be an ability to appeal against the siting of a booth for an electorate outside that electorate and also against the abolition of small booths – particularly in regional and rural electorates. The AEC will develop a system for notifying registered political parties of creations and abolitions of polling places.

Recommendation 33

That the AEC develop guidelines in relation to the provision of special polling facilities, and that these guidelines be a disallowable instrument. (para 3.17)

Response

Not supported. The recommendation assumes that before the election dates are announced and Parliament is dissolved, any special events likely to occur on polling day can be known and planned for in advance. Further, it contemplates an operational planning regime for the AEC that would be unworkable given the many contingencies that arise in the weeks leading up to a federal election. Regulations enabling the provision of a new type of polling place which would be open only to those voters who had paid entry to a particular function would be one of the ramifications of expanding special polling facilities in the manner sought by the JSCEM. As would the provision of polling places at functions where alcohol is being sold and consumed. This recommendation needs further development by the JSCEM to include details about the specific polling facilities sought.

Recommendation 34

That the *Commonwealth Electoral Act 1918* be amended to ensure that, where a photocopied ballot paper is issued, the issuing officer must initial the ballot paper in order for it to be considered formal. (para 3.23)

Response

Supported. Subsection 268(2) of the Electoral Act and subsection 93(3) of the Referendum Act already provide that, if a ballot paper does not contain the initials of the polling official, then the DRO is responsible for deciding that it is an authentic ballot paper on which a voter has marked a vote. This allows photocopied ballot papers to be declared formal at the scrutiny stage, in the presence of scrutineers. It also ensures that voters are not disenfranchised because a polling official has failed to initial a photocopied ballot paper.

However, section 215 of the Electoral Act and section 26 of the Referendum Act should be amended to make it clear that all ballot papers, including photocopied ballot papers, must be initialled by the proper officer. The Government believes that this recommendation should be extended to require the authenticating initials to appear on the top right-hand corner of the front of the ballot paper, within a circle that should be printed on the ballot paper during production, and will be apparent after photocopying. Requiring the ballot paper to be initialled on the front instead of the back, without in any way impinging on the formality of the ballot paper, will ensure that issuing officers are constantly reminded of their duty. The Schedules to the Electoral Act and the Referendum Act setting out the format of the ballot papers would need to be amended to reflect the new initialling provisions.

Recommendation 35

That the *Commonwealth Electoral Act 1918* be amended to allow the AEC to send penalty, enrolment objection and determination notices to the latest known address of the voter at the time of the dispatch of the notice. (para 3.52)

Response

Supported. Section 245(6) of the Electoral Act and section 45(6) of the Referendum Act should be amended to allow the DRO to send, by post or other means, the second penalty notice for failure to vote to the latest known address of the elector at the time of the despatch of that notice. Section 245(9) of the Electoral Act and section 45(9) of the Referendum Act should be amended similarly. Finally, Part IX of the Electoral Act should be amended to allow for despatch of enrolment objection notices and enrolment determination notices, by post or other means, to the latest known address of the elector at the time of despatch.

Recommendation 36

That the *Commonwealth Electoral Act 1918* be amended to explicitly prevent scrutineers from providing assisted votes. (para 3.64)

Response

Supported. The Government believes that scrutineers should not be permitted to assist voters at polling booths because of the potential for undue influence on voters by the representatives of candidates and political parties. Similar amendments should be made to the Referendum Act.

Recommendation 37

That the AEC report to the Committee on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders before the next federal election. (para 3.80)

Response

Supported. The AEC will publish a report on options for the future delivery of electoral information and education services to Aboriginals and Torres Strait Islanders, and for the conduct of enrolment reviews in Aboriginal and Torres Strait Islander communities. This will involve a one-off cost of \$10,260.

Recommendation 38

That the nexus between provisional voting and reinstatement be broken by deleting ss 105(4) and 105(5) of the *Commonwealth Electoral Act 1918*. (para 3.93)

Response

Supported. The Government believes that the nexus between provisional voting and reinstatement should be broken by deleting sections 105(4) and 105(5) of the Electoral Act, in order to improve the accuracy of the rolls. This recommendation is linked to recommendations 7 and 39.

Recommendation 39

That the *Commonwealth Electoral Act 1918* be amended so that:

- if an elector has moved within the Division they are enrolled for since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote for the Division and the Senate will be counted;
- if an elector has moved outside the Division they are enrolled for but within the same State or Territory since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote for the Senate will be counted; and
- if an elector has moved outside the State or Territory they are enrolled for since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote will not be counted. (para 3.96)

Response

Supported in principle. The Government believes, however, that it is inappropriate to count any vote for a person not correctly enrolled and therefore does not support the counting of votes as indicated in the first and second dot points of the recommendation. The Government accepts that currently the provisions of Schedule 3 of the Electoral Act require the admission of provisional votes in certain limited circumstances where the voter's name is not on the current electoral roll. However, the Government believes that these circumstances need to be further restricted so that instead of the AEC checking the roll back to the second previous election or the last redistribution and admitting the votes of those voters who appeared on the roll during that time, the AEC would only be required check back to the last election or the last redistribution, whichever is the latter. It is also the Government's view, that these voters should not be reinstated to the electoral roll unless the AEC has carried out the necessary investigation to confirm that the voter is, in fact, entitled to be enrolled at the address claimed in the declaration vote. The Government's support of recommendation 7 is in line with its response to this recommendation.

Recommendation 40

That the AEC review its procedures for updating the Commonwealth Electoral Roll following notification of the death of an elector. (para 3.135)

Response

Supported. To facilitate the automated removal of names of deceased electors from the rolls, the Registrars of Births Deaths and Marriages in the States/Territories have provided the AEC with electronic information on deaths. This consolidated information, known as the Fact of Death File, is currently being evaluated and new operational procedures will be implemented as soon as the systems for the electronic matching of death data are brought on line. This will enable the matching of deceased electors across State/Territory boundaries and will allow the

identification of deceased electors who are enrolled in a different State/Territory from where their death is registered.

Recommendation 41

That the *Commonwealth Electoral Act 1918* be amended to allow Divisional Returning Officers some discretion as to the location for the declaration of the poll. All candidates should be consulted prior to the selection of the location. (para 4.17)

Response

Supported in principle. Section 284 of the Electoral Act should be amended to allow a declaration of the poll for the House of Representatives to take place other than in the Divisional Office where nominations were received. This would accord with the more flexible provisions for the declaration of the poll for the Senate. Such decisions should be taken by Divisional Returning Officers in consultation with the Australian Electoral Officer for the State/Territory.

However, the Government does not believe that candidates should be consulted about the location of the declaration of the poll, as this should remain the prerogative of the AEC in the context of all relevant operational factors. Candidates are advised in writing of the location for the declaration of the poll, and the convenience of candidates, party workers and the media is always taken into account in determining locations.

Recommendation 42

That the AEC conduct targeted public education programs prior to the next federal election, to more fully explain the full preferential voting system for the House of Representatives. (para 4.40)

Response

Supported. The AEC will examine and implement improved mechanisms for delivering information and education on the full preferential voting system before the next federal election. Implementation of this recommendation will involve costs of approximately \$685,000 each election year.

Recommendation 43

That section 216 of the *Commonwealth Electoral Act 1918* be amended so that group voting ticket information can be provided in booklet format rather than in poster format. (para 4.68)

Response

Supported. For practical reasons relating to the increasing size of the GVT posters, and consequential difficulties in display in pre-poll voting centres, section 216 of the Electoral Act should be amended so that group voting ticket information can be provided in booklet format or in poster format, depending on which format best suits the polling location. The GVT booklets will be available in all AEC offices and other relevant polling locations, but will not be provided automatically to postal voters, because of the substantial additional postage costs

involved. Postal voters will only be provided with the GVT information on request, and the booklet will be published on the AEC website. The implementation cost of this recommendation will be approximately \$138,000 per election year.

Recommendation 44

That the disclosable sum received from a person or organisation during a financial year be increased from \$1,500 to \$3,000. (para 5.20)

Response

Supported. The Government accepts that the minimum disclosure threshold is set at an unrealistically low level.

Recommendation 45

That the minimum donation before a donor is required to lodge a return be increased from \$1,500 to \$3,000. (para 5.25)

Response

Supported. The Government accepts that the minimum disclosure threshold is set at an unrealistically low level.

Recommendation 46

That the AEC conduct a feasibility study on moving to a system of electronic lodgement of annual disclosure returns. (para 5.30)

Response

Supported in principle. The Government sees many benefits in electronic lodgement of disclosure returns. The AEC will be looking at options for the electronic lodgement of not only annual disclosure returns but also election disclosure returns.

Recommendation 47

That the AEC ensure that technical or minor mistakes are not brought within the provision of s315(2) of the *Commonwealth Electoral Act 1918*. (para 5.33)

Response

Supported. The Government understands that the AEC has never sought to prosecute technical or minor mistakes made by persons on disclosure returns and is confident that the *Prosecution Policy of the Commonwealth* provides adequate protection in this regard.

Recommendation 48

That section 311A of the *Commonwealth Electoral Act 1918*, concerning annual returns by Commonwealth departments, be deleted and inserted in the Joint Committee of Public Accounts and Audit guidelines for the production of annual reports. (para 5.36)

Response

Supported. The Government understands that section 311A of the Electoral Act was inserted by an Opposition amendment to section 20 of the *Political Broadcasts and Political Disclosures Act 1991*. The AEC has no role in administering this provision other than as a reporting agency like any other. The Joint Committee of Public Accounts and Audit (JCPAA) is responsible, under sections 63 and 70 of the *Public Service Act 1999*, for approving guidelines for annual reports of departments and agencies. In the light of this, and in view of the way the provision has operated to date, the Government believes that section 311A should be removed from the Electoral Act and that it would be more appropriate for the JCPAA to review the continuing relevance of and need for any continuing similar requirements as part of its broader responsibility for annual report requirements.

Recommendation 49

That eligibility for federal registration by a political party requires that political parties must have either 500 members as defined under section 123(3) of the *Commonwealth Electoral Act 1918* or have at least one member who is a member of the federal parliament. (para 5.56)

Response

Supported. The Parliament has already passed legislation, in the *Commonwealth Electoral Amendment Act (No. 1) 2000*, implementing this recommendation. The combined costs for implementation of this recommendation and for related recommendation 54 are expected to be approximately \$72,000 in the first year and approximately \$58,000 in subsequent years.

Recommendation 50

That the definition of a member of a political party at section 123(3) of the *Commonwealth Electoral Act 1918* be expanded to include the requirements that a person must:

- have been formally accepted as a member according to the party's rules;
- remain a valid member under party rules;
- not be a member of more than one registered political party unless the parties themselves have sanctioned it; and
- have paid an annual membership fee. (para 5.57)

Response

Not supported. The Government disagrees with this recommendation as it is intrusive into the affairs of political parties. The issue of an annual membership fee may have some "freedom of association" problems in that the only way a person could join a political party would be to pay a fee.

Recommendation 51

That a fee of \$5000 be required to accompany an application for the registration of a political party and \$500 for an application to change either the registered name or abbreviation of a political party. (para 5.65)

Response

Supported in principle. The Parliament has already passed legislation, in the *Commonwealth Electoral Amendment Act (No. 1) 2000*, implementing a fee to accompany an application for party registration or a change to either the registered name or the registered abbreviation of a political party.

Recommendation 52

That the AEC investigate and report on the effectiveness of the current criteria for the registration of party names and how the AEC might improve the criteria for the registration of party names to disallow inappropriate and unrepresentative names being registered. (para 5.69)

Response

Supported. The AEC will report on improving the provisions governing the registration of political party names and abbreviations.

Recommendation 53

That the registered abbreviation of a political party be restricted to either an acronym, or a shortened version, of the party's registered name and it should be no longer overall than the registered party name. (para 5.72)

Response

Supported. This amendment would ensure that the original intention of the Electoral Act in providing for the registration of an abbreviated party name was observed.

Recommendation 54

That the AEC be authorised to conduct reviews of the continuing eligibility of registered political parties after every federal election. The AEC should be able to require parties to produce documentation in support of their application for registration and their continued right to remain registered. The standard of documentation and the verification undertaken by the AEC can be the same as if the party were first applying to register. The AEC should also have the power to deregister a political party if it fails to produce the documentation requested by the AEC in support of its continuing right to remain registered. (para 5.80)

Response

Supported. These powers are essential if the AEC is to be able to perform its role in ensuring that only those political parties that continue to be eligible for federal registration actually remain registered. The implementation costs for this recommendation are incorporated with those shown for Recommendation 49.

Recommendation 55

That given adequate public support, a referendum be held to amend the constitution so that the act of nomination by a candidate for the House of Representatives or Senate be recognised as immediately extinguishing any allegiance to a foreign country provided the candidate is also an Australian citizen. (para 5.96)

Response

Supported. The Government, however, does not support the holding of a referendum without a clear indication of widespread support for the measure being proposed.

Recommendation 56

That in section 354 and 383 of the *Commonwealth Electoral Act 1918* and section 139 of the *Referendum (Machinery Provisions) Act 1984*, "Federal Court of Australia" be substituted for the "Supreme Court of the State or Territory." (para 5.114)

Response

Supported.

Recommendation 57

That section 382 of the *Commonwealth Electoral Act 1918* be deleted. (para 5.117)

Response

Supported. The Government recognises that it is the Director of Public Prosecutions who institutes legal proceedings on behalf of the Commonwealth and agrees that this section should be repealed.

Recommendation 58

That as part of its public education program prior to the next federal election the AEC target as an education priority the process and outcomes of the redistribution of electoral boundaries in those electorates where a redistribution has occurred since the previous federal election. (para 5.124)

Response

Supported. The AEC already publishes Electoral Newsfiles in hard copy and on the AEC website on progress in each redistribution of a State or Territory. The householder leaflet

published for each federal election also provides information on the outcomes of redistributions for particular Divisions. The AEC call centre for each federal election provides similar information. The Electoral Act already requires the AEC to notify the public at various points in time during the process of a redistribution.

Recommendation 59

To amend section 28 of the Constitution to increase the House of Representatives term from three years to four years. (para 5.129)

Response

Supported in principle. The Government would only consider such a referendum proposal when a satisfactory solution to the parallel timing of Senate elections was found.

ALP Minority Report

In its Minority Report, the ALP opposes Recommendations 3, 17, 27, 36, 38, 44, 45 and 50.

The Government notes the ALP opposition to Recommendations 3, 17, 36, 38, 44 and 45, but has indicated its support for each of these recommendations for the reasons stated in the Government response.

In relation to Recommendations 27 and 50, the Government has not supported these recommendations in the Government response for similar reasons as those expressed by the ALP.

Further, in regard to Recommendation 11, the ALP has indicated that any further action in relation to this recommendation should await finalisation of the AEC's review of sections 89-92 of the CEA as recommended by the JSCEM report on the 1996 Federal Election. The Government is also of this view.

Democrat Minority Report

Democrat Recommendation 3.1

That section 91 be amended to ensure that the end uses of the electoral roll are satisfactory from a privacy and security perspective.

Response

Supported in principle. The AEC has commenced a review of the relevant sections of the Electoral Act and the Government intends to revisit this question following the AEC's report.

Democrat Recommendation 3.2

That both the caretaker conventions for government advertising and general government advertising conventions be legislated.

Response

Not supported. The Government recognises existing Parliamentary oversight of government advertising and does not see a need for further legislation on this matter.

Democrat Recommendation 3.3

That the JCSEM (sic) initiate a cooperative inter-state parliamentary committee to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions.

Response

Not supported. The Electoral Council of Australia, comprised of the Chief Electoral Officer for each State and Territory and key personnel from the Australian Electoral Commission, already provides a forum for exchange of information by officers about developments in electoral procedures amongst the States, the Territories and the Commonwealth. The Government sees little advantage in creating another Committee to do the same thing.

Democrat Recommendation 3.4

That the AEC take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.

Response

Not supported. The problems inherent in attempting to display how-to-vote cards for all candidates during polling would be most apparent during a Senate election. There would be no advantage to trialing this proposal at a by-election for the House, even if a practical proposal had been recommended.

Democrat Recommendation 3.5

The preferable method of regulation of political advertising is by legislation:

- a) The *Commonwealth Electoral Act* should be amended to prohibit inaccurate or misleading statements of fact which are likely to deceive or mislead;
- b) The above amendments should be modelled on the South Australian legislation, which has worked effectively since its introduction, is limited to election periods, and excludes election material other than advertisements.

Response

Not supported. Neither the Government nor the majority of the Committee is convinced that this proposal could be satisfactorily implemented.

Democrat Recommendation 4.1

The Commonwealth Electoral Act be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.

Response

Not supported. The Government believes it is appropriate that prisoners forfeit their franchise for the period of their imprisonment.

Democrat Recommendation 6.1

Additional disclosure requirements to apply to Political Parties and Candidates: Any donation of over \$10000 to a political party should be disclosed within a short period to the Electoral Commission who should publish it on their website so that it can be made public straight away, rather than leaving it until an annual return.

Response

Not supported. The Government believes that the annual disclosure requirements are sufficient.

Democrat Recommendation 6.2

Additional disclosure requirements to apply to Donors: Political parties that receive donations from Trusts or Foundations should be obliged to return the money unless the following is fully disclosed:

- a declaration of beneficial and ultimate control of the trust estate, including the trustees;
- a declaration of the identities of the beneficiaries of the trust estate, including in the case of individuals, their countries of residence and, in the case of beneficiaries who are not individuals, their countries of incorporation or registration, as the case may be;
- details of any relationships with other entities;
- the percentage distribution of income within the trust;
- any changes during the donations year in relation to the information provided above.

Response

Not supported. The Government believes this proposal would place an unnecessary burden on political parties and donors.

Democrat Recommendation 6.3

Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor's identities are made.

Response

Not supported. The Government believes this proposal would place an unnecessary burden on political parties and donors.

Democrat Recommendation 6.4

That the JSCEM and AEC give closer scrutiny to donations from overseas.

Response

Not supported. The Democrats have the option of bringing this matter before the postponed JSCEM inquiry into electoral funding and disclosure.

Democrat Recommendation 6.5

As we did following the AEC's 1996 Funding and Disclosure Report, the Democrats will move amendments to the Act of those recommendations that are relevant to higher standards, if the Government's response to the AEC's recommendations proves inadequate.

Response

Comment noted however, there is no recommendation requiring a response.

Democrat Recommendation 6.6

A ceiling should be placed on the amount of money any corporation or organisation can donate to a political party.

Response

Not supported. The Democrats have the option of bringing this matter before the postponed JSCEM inquiry into electoral funding and disclosure.

Democrat Recommendation 6.7

The Act should specifically prohibit donations which have 'strings attached'.

Response

Not supported. The Democrats have the option of bringing this matter before the postponed JSCEM inquiry into electoral funding and disclosure.

Democrat Recommendation 6.8

The following initiatives would bring political parties under the type of accountability regime that should go with their place in our system of government:

- a) The *Commonwealth Electoral Act* be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of Companies;
- b) Requiring registered parties to demonstrate after each federal election that they still retain the required number of members;
- c) Only enabling a person's name and details to be put forward as a member of one political party (unless the political parties concerned themselves agree otherwise).
- d) Broaden the scope for objection to proposed names and abbreviations to reduce the prospect for misleading or deceptive names being approved.
- e) The key constitutional principles of political parties should include:
 - the conditions and rules of membership of a party;
 - how office-bearers are preselected and elected;
 - how preselection of political candidates is to be conducted;
 - the processes that exist for dispute resolution;
 - the processes that exist for changing the constitution.
- f) The relationship between the party machine and the party membership requires better and more standard regulatory, constitutional and selection systems and procedures, which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and the members. Specific regulatory oversight to include:
 - Scrutiny of the procedures for the preselection of candidates in the constitutions of parties to ensure they are democratic;
 - All important ballot procedures within political parties to be overseen by the AEC to ensure proper electoral practices are adhered to.

Response

Not supported. The Government believes that the majority of this recommendation would result in an unwarranted intrusion into the activities of political parties. The Government notes that some of the matters covered in this recommendation are addressed in Recommendations 50, 52, and 54 of the Committee's report, and that legislation dealing with paragraph (c) has already been enacted.

Democrat Recommendation 6.9

That the JSCEM and the AEC give closer scrutiny to branch stacking and pre-selection procedures.

Response

Not supported. The Government does not believe that the intrusion of the AEC into such matters is appropriate. The purpose of the Electoral Act is to govern the conduct of federal elections, not to administer the internal affairs of political parties.

Democrat Recommendation 6.10

That the *Commonwealth Electoral Act 1918* be amended to ensure the principle of 'one vote one value' be a prerequisite of political party processes.

Response

Not supported. It is not appropriate for the Electoral Act to be used as a mechanism to govern the internal affairs of political parties.

Democrat Recommendation 6.11

- a) That s44(i) of the Constitution be replaced by a requirement that all candidates be Australian citizens and meet any further requirements set by the Parliament.
- b) That s44(iv) of the Constitution be replaced by provisions preventing judicial officers only from nominating without resigning their posts, and giving Parliament the power to specify other offices to be declared vacant should an office-holder be elected.
- c) That the last paragraph of s44 of the Constitution be deleted.

Response

Supported in principle. This recommendation, in part, reflects a similar proposal to Recommendation 55 from the majority report. The Government remains to be convinced that there is sufficient public support for this measure to warrant the public expenditure on the referendum process.

Democrat Recommendation 6.12

That the dates of elections be fixed and preset by legislation.

Response

Not supported. The Government does not support fixed Parliamentary terms.

Democrat Recommendation 6.13

That subsection 394(1) of the *Commonwealth Electoral Act 1918* be repealed.

Response

Not supported. Negotiation prior to holding concurrent elections is required under the existing provision and the Government would not want to change that to a situation where a Federal election and a State election could be held on the same day without prior negotiation and approval.

GENERAL

In responding to this report, the Government wishes to take the opportunity to foreshadow that it will also be pursuing the following reforms:

1. **Abolition of the Vote for Prisoners:**
The Government believes that this matter, a recommendation of the JSCEM report into 1996 election, should again be pursued. At present, only prisoners serving a sentence of 5 years or more lose their right to vote. The Government believes that the right to vote should be revoked for all prisoners.
2. **Review of Penalties under the Electoral Act:**
The Government believes that the review by the AEC and Attorney-General's Department of penalties under the Electoral Act, as recommended by the JSCEM report into 1996 election should be finalised as soon as possible. Adequate penalties for breaches of the Electoral Act will go a long way towards deterring potential offenders.
3. **Increased Penalties for Multiple Voting:**
Increased penalties for multiple voting should help to ensure that such cases will be given higher priority for investigation by the AFP. The Government wishes to legislate for this as a matter of urgency in light of recent allegations in Queensland of systemic abuse of the electoral system.