



Electoral Commissioner

Mr Trevor Rowe
Secretary, Joint Standing Committee on Electoral Matters
Parliament House
Canberra ACT 2600



West Block
Parkes ACT 2600

PO Box E201
Kingston ACT 2604

Telephone (02) 6271 4400
Facsimile (02) 6271 4554

Joint Standing Committee on Electoral Matters	
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Secretary	<i>[Signature]</i>

Dear Mr Rowe

INQUIRY INTO THE 2001 FEDERAL ELECTION: SUPPLEMENTARY SUBMISSION

Please find enclosed a supplementary submission to the inquiry into 2001 federal election.

The supplementary submission provides the AEC's responses to the issues raised in submissions to, and public hearings of, the inquiry as at 1 November 2002.

The AEC understands that the JSCEM will be holding further public hearings and that there is the possibility that further submission will be authorised. The AEC will respond to these at a later date.

The AEC will be happy to provide further information on any of the issues discussed in this supplementary submission. Please contact Gabrielle Paten on (02) 6271 4480 if you wish to discuss this matter further.

Yours sincerely

Andy Becker
Electoral Commissioner

8 November 2002

AUSTRALIAN ELECTORAL COMMISSION

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

RESPONSE TO ISSUES RAISED DURING THE INQUIRY

**Canberra
8 November 2002**

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List of abbreviations

ABS	Australian Bureau of Statistics
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFP	Australian Federal Police
AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSEIS	Aboriginal and Torres Strait Islander Electoral Information Service
CCD	Census Collection District
COA	Change of Address
CRU	Continuous Roll Update
CSSS	Computerised Senate Scrutiny System
DPP	Commonwealth Director of Public Prosecutions
DRO	Divisional Returning Officer
ERR	Electoral Roll Review
GVT	Group Voting Ticket
HTV card	How To Vote card
JSCEM	Joint Standing Committee on Electoral Matters
OIC	Officer in Charge
PM&C	Department of Prime Minister and Cabinet
PVA	Postal Vote Application
RMANS	Roll MANagement System
RTS	Return to Sender
SEO	South Australian Electoral Office
VEC	Victorian Electoral Commission
VTR	Virtual Tally Room

AEC supplementary submission to the JSCEM's inquiry into the 2001 federal election: Response to issues raised during the inquiry

1. Preamble

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 provides AEC responses to issues raised in submissions to, and public hearings of, the inquiry that were available for comment as at 1 November 2002. The AEC will respond to later submissions and public hearings at a later date.

1.3 The AEC has not commented on all issues raised during the inquiry. Rather, the AEC has responded to submissions and witnesses for which one or more of the following apply:

- they are major stakeholders (such as major political parties and Members of Parliament);
- they are interest groups (such as those representing the homeless or Australians overseas);
- they raise issues about which the AEC can usefully comment; and
- they make allegations about the conduct of elections and the management of the Commonwealth Electoral Roll (the roll) that the AEC believes should be responded to.

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 Submission 18 – Mr Michael Williams

2.1 Mr Williams is an overseas elector who claims that he has endeavoured to remain a participating voter, but alleges that the AEC has not responded to any of his communications via e-mail, fax, or letter.

2.2 Following a review of Mr Williams' submission, he was contacted by email to obtain details of his complaints. Following receipt of this information, checks of the relevant State head office and divisional office records were undertaken to attempt to locate the correspondence mentioned, however no record of any correspondence from him was located. The AEC will continue to communicate with Mr Williams to attempt to resolve any outstanding issues.

3 Submission 27 – Mr Bryan Gaensler

3.1 In his submission, Mr Gaensler claims that the Australian consulate in New York typically only obtains its polling material a couple of days before the election. From his discussion of the issue it is clear he is referring to postal votes, as he indicates he is five hours from the consulate and it is not easy for him to attend in person.

3.2 Postal voting material for overseas posts is delivered in two stages. Generic material for the 2001 election was dispatched on or about 15 October 2001, and ballot papers were dispatched on 25 October 2001.

3.3 It was not possible for the AEC to supply, or for posts to issue, ballot papers until after the close of nominations and the ballot draw, which was conducted on 19 October 2001. All postal and pre poll voting material for the Australian consulate in New York was delivered by 30 October 2001. This was 10 days before polling day (Australian time), not the 'couple of days before the election' claimed by Mr Gaensler.

3.4 Ordinarily, the ballot papers could have been dispatched from Australia and delivered to overseas posts in a much shorter timeframe than occurred in 2001 – probably by one week or more. For the 2001 election, courier deliveries within Australia and to all overseas posts were considerably delayed in the wake of the 'September 11' terrorist attacks in the US and the ensuing anthrax terrorism scares. Postal services within the US and Australia were likewise delayed.

3.5 Once Mr Gaensler had received his postal voting material, he had the option of returning his postal vote to the Australian consulate in New York on or before polling day, or to his Divisional Returning Officer (DRO) in Australia within 13 days after polling day. These options were clearly stated in the material supplied to Mr Gaensler.

3.6 He also indicates that his enrolled address in Australia is his father's address in St Ives, New South Wales. When his father recently moved, he claims he was advised that in order to change his enrolment address he would have to return to Australia.

3.7 In fact, there is no provision for eligible overseas electors to amend their enrolment address. Subsection 94(3) of the *Commonwealth Electoral Act 1918* (the Act) indicates that eligible overseas electors have their names retained on the roll for the subdivision for which they applied to be an overseas elector until either they are removed from the roll by passage of time or failure to vote in an electoral event, or they return to Australia and re-enrol for their new address under subsections 99(1) and 99(2) of the Act.

4 Submission 39 – Mr and Mrs Wynn

4.1 Mr Wynn indicates he worked as a vote issuing officer for the AEC in Queensland at the last federal election. He makes a number of observations about the conduct of polling in his polling booth, one of which is that the bundles of Senate ballot papers, which were supposed to number 100, were often irregularly numbered, including one bundle of 123 Senate ballot papers.

4.2 The number of ballot papers in a pack can vary from the nominal quantities. Senate ballot papers and some House of Representatives ballot papers are shrink wrapped in bundles determined by weight. Unfortunately, there can sometimes be variations through this process.

4.3 Although House of Representatives ballot papers in some States have benefited from the addition of numbered butts, this has not eliminated the problem of some packs not having the correct numbers of ballot papers. For this reason, polling staff are required to check count the numbers of Senate and House of Representatives ballot papers before they start issuing from the packs allocated to them, and to record any discrepancies. Unopened packs are presumed to contain the purported number.

5 Submission 45 – Ms Gina Behrens

5.1 Ms Behrens indicates that the 'vote early and vote often' joke is now a possibility with modern transport. She asks why there is no computerised certified list in each polling booth so that when a name is crossed off the roll it is crossed off everywhere.

5.2 A number of difficulties apply to using a computerised certified list at polling booths. These difficulties are primarily logistical and budgetary. Specifically, such a proposal would require one computer at each ordinary vote issuing point. At the 2001 federal election there were more than 21,000 issuing points – at an estimated price of \$2,000 per unit the cost for the hardware alone would have been \$42,000,000. In order to have the effect desired by Ms Behrens, that is, the prevention of multiple voting, these machines would all have to be networked so that a common roll is marked off.

5.3 While the AEC believes that Ms Behrens' suggestion is a good one, the costs and logistics of introducing such a system will be prohibitive. In 1998, commenting on the possible introduction of computerised voting, the JSCEM noted:

...the Committee cannot justify the level of public expenditure required to computerise the voting system...¹

6 Submission 71 – The Festival of Light

6.1 The Festival of Light claims that the AEC should be able to guarantee the integrity of every stage of the electoral process but cannot because of inadequate procedures for producing electoral rolls and for voting at the polling booth on election day. The submission argues that under current circumstances, the AEC cannot positively demonstrate the absence of significant electoral fraud.²

6.2 The submission asks why there are no legal requirements for personal identity checks and proof of residence checks for individuals applying to get on the roll. The submission claims that no other institution in society would accept such a system as the current enrolment system.³

¹ Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election*, paragraph 4.85.

² Festival of Light. 2002. *Submission 71 to the Inquiry into the 2001 federal election*, p1.

³ Festival of Light. 2002. *Submission 71 to the Inquiry into the 2001 federal election*, p1.

6.3 The Festival of Light appears to misunderstand the processes by which the roll is maintained and the checks that are undertaken to ensure the highest possible level of accuracy. The Commonwealth Electoral Roll is a 'continuous' document, with enrolment additions, transfers and deletions occurring as a continuous stream of changes, rather than a 'static' document compiled at one time for a particular electoral event. For example, in 2000-2001, the AEC processed a total of 2.3 million enrolment forms, including changes to enrolment details, transfers of enrolment and re-enrolments, and new enrolments.

6.4 The AEC maintains a balance between encouraging enrolment in line with the requirements of legislation and not overly interfering in the lives of electors. It should be remembered that the majority of electors do not inform the AEC in a timely manner of changes to their electoral details. Of the 2.3 million enrolments processed during 2000-01, only around 40% resulted from the elector advising the AEC in the first instance.⁴

6.5 To overcome the lack of prompt advice from many electors, the AEC undertakes a range of activities to obtain accurate enrolment information and update the roll.⁵ Extensive descriptions of the activities undertaken by the AEC to maintain the accuracy of the roll are contained in submission 26 to the inquiry into the integrity of the electoral roll.

6.6 As part of its recent audit of the accuracy of the roll, the Australian National Audit Office (ANAO) data-matched names and dates of birth from the roll with Medicare records. The results matched 95.6% of names and dates of birth to Medicare. The ANAO indicated the results were of a high quality, with just under 84% of records matched exactly.⁶ The ANAO considered from its review of AEC procedures to ensure the validity of enrolments that these procedures are generally effective and provide assurance as to the validity of the roll.⁷

6.7 There will always be some cases of enrolment fraud that the AEC cannot detect through its own procedures, particularly cases of identity fraud. Identity fraud is a problem affecting all government agencies. The evidence over the past decade indicates that identity fraud against the electoral system is not perpetrated for the purposes of defrauding federal elections, but usually for other criminal purposes or to 'test the system'.⁸

6.8 The Festival of Light recommends that, as a solution to the perceived problems with the integrity of the electoral roll, prospective electors enrol personally at AEC offices with proof of identity and proof of address.⁹

6.9 As part of the 1996 federal election inquiry, the AEC prepared a submission discussing various methods of requiring proof of identity for enrolment. One method investigated was for all enrolment applicants, without exception, to appear in person before an electoral officer in order to enrol or

⁴ Australian National Audit Office. 2002. *Audit Report No. 42 2001-2002*, paragraph 2.4.

⁵ Australian National Audit Office. 2002. *Audit Report No. 42 2001-2002*, paragraph 2.5.

⁶ Australian National Audit Office. 2002. *Audit Report No. 42 2001-2002*, paragraph 4.39.

⁷ Australian National Audit Office. 2002. *Audit Report No. 42 2001-2002*, paragraph 4.126.

⁸ Australian Electoral Commission. 2001. *Submission 66 to the Inquiry into the integrity of the electoral roll*, paragraph 12.13.

⁹ Festival of Light. 2002. *Submission 71 to the Inquiry into the 2001 federal election*, p2.

change their enrolment details. The proposal indicated that at the interview, the applicant would be required to produce for the electoral officer documentary evidence of eligibility. The electoral officer would examine the documentary evidence produced by the applicant before a decision was made to enrol the applicant, in accordance with either a categorisation of documentary evidence of identity, or, alternatively, evaluation using the more flexible Department of Foreign Affairs and Trade style approach for the issuing of passports.

6.10 The submission indicated that, in 1995-1996, 2,238,701 such personal interviews would have been required. This equates to an average of over 50 interviews per divisional office per working day, a figure that could not be met without significant augmentation of current AEC staffing.¹⁰

6.11 The Festival of Light indicates that the current system of marking people's names off the roll allows the AEC to check for multiple voting after the election but cannot prevent multiple voting on the day.

6.12 The submission correctly points out that after the 1998 federal election, 56% of multiple voters appeared to come from a non English speaking background and 13% were over the age of 70. The Festival of Light argues that the fact that these 300 or so cases were not investigated seems to indicate an attitude on the part of the AEC that is not conducive to the integrity of the voting system. The submission argues that with the roll being made available to all candidates, it would be very easy for people to vote in the names of other people on the roll without detection.¹¹

6.13 The statistics quoted by the Festival of Light are from AEC submission 239 to the 1998 federal election inquiry and relate not to multiple voting but to dual voting. The AEC stands by its decision not to investigate apparent dual voting in cases where the most likely reason for dual voting are language and cultural difficulties, or old age and frailty.

6.14 In fact, the AEC's attitude to multiple voting is directly focussed on the integrity of the electoral system. As explained in part 46 of AEC submission 210 to the 1998 federal election inquiry, immediately following each electoral event, the Australian Electoral Officers (AEOs) in each of the States and the Northern Territory actively review all relevant information, such as polling booth reports, and statistical data arising from the election, particularly in marginal divisions, to determine whether any electoral fraud sufficient to have affected the result of any election is indicated. If such irregularities are discovered, the AEC is empowered to petition the Court of Disputed Returns under section 357 of the Act to seek an appropriate remedy.

6.15 Section 355(e) of the Act provides that petitions disputing an election must be filed with the High Court within 40 days of the return of the writ for the election. The AEC takes very seriously its public responsibility to review any indicative evidence of electoral fraud in this time frame, and any person who believes that electoral fraud might have occurred in a particular division is entitled to raise their concerns with the AEC in the first instance, for prompt

¹⁰ Australian Electoral Commission. 1996. *Submission 98 to the Inquiry into the 1996 federal election*, paragraphs 5.2.1-5.2.2.

¹¹ Festival of Light. 2002. *Submission 71 to the Inquiry into the 2001 federal election*, p3.

investigation (see for example part 10.2 of submission 88 to the 1998 federal election inquiry).

6.16 On the other hand, if the number of suspected multiple votes in an election does not exceed the winning margin, and therefore would not change the result, then there is no further action required, beyond identifying, investigating, and prosecuting the perpetrators, with the assistance and advice of the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (DPP).¹²

6.17 The Festival of Light recommends the AEC implement an auditable process that prevents multiple voting, including such controls as each voter nominating a single polling booth at which they are authorised to vote and/or requiring positive identification before an elector is issued with voting papers.¹³ Reverend Stefan Slucki makes a similar recommendation in submission 72.

6.18 This recommendation amounts to the introduction of 'precinct' voting. The basic principle underlying this recommendation appears to be that if the number of electors permitted to attend a polling place is kept sufficiently small, and the electors permitted to vote at that polling place are constrained to come from a particular geographical area, acts of personation or multiple voting will be noticed and prevented.

6.19 However, the AEC has in the past provided to the JSCEM evidence questioning the efficacy of such a hypothesis. Countries that restrict polling place access usually set the number of voters per polling place between 500 and 1,000, with 750 a common figure. Currently, the average number of electors in a metropolitan polling place is about 2,000.

6.20 Precinct voting is very similar to subdivisional voting. In 1983, the last general election before the introduction of division wide ordinary voting, less than 1 in 6 electors were located in a subdivision smaller than 5,000 enrolments, and more than 2 in 5 were in subdivisions larger than 10,000. The 1983 election was not an isolated case. In 1974, 78.7% of electors were enrolled for subdivisions with enrolment greater than 5,000.

6.21 If the Festival of Light recommendation were adopted, large scale voter confusion and inconvenience could result. When this issue was last considered by the JSCEM (following the 1996 federal election), the AEC calculated that, if subdivisional boundaries had been used in divisions such as Blaxland, depending on the number of polling places permitted per subdivision, the percentage of intradivisional absent votes would vary between 19% and 26% of the votes issued.¹⁴

6.22 The Festival of Light claims that most provisional votes are allowed for people who claim to have moved within the Division in which they are voting. The submission goes on to argue that this should be sufficient grounds for a requirement of proof of identity, and recommends that this be adopted.

¹² Australian Electoral Commission. 1999. *Submission 239 to the inquiry into the 1998 federal election*, paragraphs 3.14 – 3.17.

¹³ Festival of Light. 2002. *Submission 71 to the Inquiry into the 2001 federal election*, p3.

¹⁴ Australian Electoral Commission. 1999. *Electoral reform implementation plan in response to Recommendation 1 of the 1996 federal election inquiry*. paragraphs 4.1.1.3 – 4.1.1.7.

6.23 During the inquiry into the integrity of the electoral roll, the inclusion of gender and date of birth on the certified lists was discussed as being a technically feasible method of improving proof of identity checks at polling booths. At the time the AEC pointed out that such a proposal could be introduced, subject to: increased programming costs; a slight reduction in the legibility of the certified lists, which are limited in the amount of information that can be included in a single line of text in a readable font; and a possible increase in polling official error, given the further actions required to mark off the certified lists.

6.24 There are other factors that must be weighed in the balance of such a proposal. The first issue is personal privacy in the polling booth. Should electors be requested to do so, they may have objections to providing their date of birth to a polling official in a public place, perhaps in hearing distance of family, friends, and complete strangers. The introduction of such changes might be met with resistance from some sectors of the voting population, such as the elderly. The second issue involves those electors who simply do not know their date of birth, such as some Indigenous and migrant Australians. Such persons might provide a guesstimate of their date of birth at enrolment, and subsequently forget or misplace this information. This suggests that a declaration vote should be available in such circumstances, rather than denying the franchise to those who are unable or unwilling to respond to a question about their date of birth.¹⁵

6.25 In its report on that inquiry, the JSCEM recommended (recommendation 5) the adoption of this proposal. The government response supported the recommendation.

7 Submission 73 – Professor Colin Hughes

7.1 Professor Hughes' submission comments on moves to close the roll on the issue of a writ for an election. He points out that, other than in 1983, the rolls had been closing with the issue of the writs many days after the announcement of the election. All that the 1983 amendment introducing the current arrangements did was formalise the current practice at that time.

7.2 He further comments that the Shepherdson, ANAO, and JSCEM inquiries into the integrity of the electoral roll all found no evidence that there are significant numbers of fraudulent enrolments, which suggests that no change to the legislation is required.

7.3 The AEC is on record repeatedly expressing its concern at suggestions to abolish or shorten the period between the issue of the writs and the close of the rolls. That period clearly serves a useful purpose for many electors, whether to permit them to enrol for the first time (tens of thousands of electors), or to correct their enrolment to their current address so that they can vote in the appropriate electoral contest (hundreds of thousands of electors). The AEC considers it would be a backward step to repeal the provision which guarantees electors this seven day period in which to correct their enrolment.

¹⁵ Australian Electoral Commission. 2001. *Submission 66 to the Inquiry into the integrity of the electoral roll*, p881.

8 Public Hearing 2 October 2002 – Professor Colin Hughes

8.1 Senator Bartlett raised the increase in declaration voting with Professor Hughes and questioned whether the restrictions on having a postal or pre poll vote should be repealed so that declaration voting would be a free option for those who might choose not to vote on polling day. Professor Hughes was unaware of any public disquiet seeking free access to declaration voting and expressed reluctance at the idea of lessening the ‘civic occasion’ aspect of voting at one’s local polling place.¹⁶

8.2 The AEC has no strong view on the type of voting that Parliament might choose as the norm and recognises that increasing numbers of local government elections are now being conducted successfully entirely by postal vote. While the instance of declaration voting has been increasing, the AEC would, however, see a change from the norm of voting at one’s local polling place as being a significant change in electoral practice that should have widespread discussion before implementation. Recent trials in May 2002 in the United Kingdom local government elections indicated that postal voting had in fact assisted in raising the level of participation in non compulsory voting elections.

8.3 It should be noted that costs would be a significant consideration in the implementation of this sort of change.

9 Submission 77 – Mr Bruce Kirkpatrick

9.1 Mr Kirkpatrick claims that he visited the AEC State head office in New South Wales to inquire about pre poll voting and was supplied with a pre poll vote despite pointing out to the AEC officer that he would be in the State on polling day. He claims this is against the law for pre poll voting.¹⁷

9.2 Schedule 2 of the Act lists the qualifications for applying for a postal vote or a pre poll vote. While not being in the State of enrolment is one of the grounds for applying for a pre poll votes, there are in fact 10 other grounds, all of which could involve the voter being in the State at the time. The most likely cause of the circumstance Mr Kirkpatrick describes is that the polling official assumed Mr Kirkpatrick’s claim for a pre poll vote was reasonable, and that, although he claimed he was going to be in the State, he was eligible for a pre poll vote under one of the other grounds. In order to claim a pre poll vote, Mr Kirkpatrick would have been required to fill in a pre poll vote certificate on which he would have to declare that he was eligible to claim this form of vote.

9.3 The AEC’s *Pre-Poll Voting Procedures Manual* states that:

To obtain a pre-poll vote, a voter must:

- Provide a reason in support of the request; and
- Supply an enrolled address so that the vote can be issued for the elector’s correct division.

¹⁶ Transcript p189.

¹⁷ Mr Bruce Kirkpatrick. 2002. *Submission 77 to the Inquiry into the 2001 federal election*, p2.

Any elector... whose reason for applying for a pre-poll vote meets one or more of the special circumstances... must be issued with a pre-poll vote...¹⁸

9.4 A poster listing the grounds for a pre poll vote must be displayed prominently at every place where pre polling takes place.¹⁹

9.5 Mr Kirkpatrick claims that in the current circumstances, voters can vote on polling day at a number of different polling booths and are able to vote over an extended number of weeks before polling day. He argues that this leads to increased opportunities for the unscrupulous to perpetrate voting fraud.²⁰

9.6 This complaint is similar to that of the Festival of Light at submission 71 above. A full explanation of how multiple voting fraud is handled is at paragraphs 6.14 - 6.16.

9.7 Mr Kirkpatrick also claims that the opportunity for fraud is enlarged when declaration envelopes are opened without scrutineers present. He provides no details or evidence that this had happened.²¹

9.8 The procedures for the preliminary scrutiny of declaration votes are contained at Schedule 3 of the Act. Subsection 266(5) of the Act states that the preliminary scrutiny of declaration votes is to be taken as part of the scrutiny, and subsection 265(1)(C) indicates that all proceedings at the scrutiny shall be open to the inspection of scrutineers.

9.9 The AEC has no record of scrutineers who wished to attend a preliminary scrutiny being excluded. Without further specifics as to the instance to which he is referring, the AEC cannot ascertain the veracity of his claim.

9.10 The submission restates a complaint made to the JSCEM in October 2000 about an incident at the Bondi Junction polling booth during the 1998 federal election, in which a ballot paper was allegedly not placed in a declaration envelope and then in the ballot box in the presence of the voter.²²

9.11 Mr Kirkpatrick's allegations are anecdotal only, and are similar to allegations made by Dr McGrath to the 1998 federal election inquiry, which suggested a misunderstanding by her of the relevant legal provisions.²³

9.12 Mr Kirkpatrick alleges that 500 voters at the 1995 Queensland State election in the State Division of Mundingburra were illegal voters and were removed from the roll before the by-election in 1996. He also alleges that the AEC workers at a retirement village had been advising patients that they were not entitled to vote and that this practice ceased when Liberal Party scrutineers were present.²⁴

9.13 The result of the 1995 Queensland State election for the State district of Mundingburra was challenged in the Queensland Court of Disputed

¹⁸ Australian Electoral Commission. 2001. *Election 2001: Pre poll Voting Procedures Manual*, p8.

¹⁹ Australian Electoral Commission. 2001. *Election 2001: Pre poll Voting Procedures Manual*, p28.

²⁰ Mr Bruce Kirkpatrick. 2002. *Submission 77 to the Inquiry into the 2001 federal election*, p3.

²¹ Mr Bruce Kirkpatrick. 2002. *Submission 77 to the Inquiry into the 2001 federal election*, p3.

²² Mr Bruce Kirkpatrick. 2002. *Submission 77 to the Inquiry into the 2001 federal election*, p3.

²³ Australian Electoral Commission. 2001. *Submission 76 to the Inquiry into the integrity of the electoral roll*, paragraph 7.7; and see also Australian Electoral Commission. 2001. *Submission 210 to the Inquiry into the 1998 federal election*, paragraph 46.48.

²⁴ Mr Bruce Kirkpatrick. 2002. *Submission 77 to the Inquiry into the 2001 federal election*, p3.

Returns on the grounds, in part, that there were 22 cases of multiple voting and 39 cases of personation. None of these allegations was proven to the satisfaction of the Court, although the Mundingburra district election was voided on other grounds.²⁵

9.14 The Shepherdson Inquiry investigated alleged false enrolments at the by-election that followed the Court of Disputed Returns decision. The Inquiry report was able to identify within the terms of reference two false enrolments at the Mundingburra by-election in 1996.²⁶

9.15 It is worth remembering that, despite widespread allegations of fraud, the Shepherdson Inquiry revealed no evidence to suggest widespread fraudulent enrolments.²⁷

9.16 Mr Kirkpatrick's allegations about polling at a nursing home in Mundingburra are misdirected. The Electoral Commission of Queensland conducted the Queensland State election and the subsequent Mundingburra by-election.

10 Submission 80 – Mr Peter Andren MP, Member for Calare

10.1 Mr Andren discusses a number of issues, such as the tax deductibility of independent campaign expenses, which are beyond the scope of the AEC to answer. As a result, the AEC has not responded to these recommendations.

10.2 Mr Andren recommends the repeal of s184AA of the Act, which allows candidates to provide Postal Vote Applications (PVAs) to voters. He argues that, from the perspective of independent candidates, the high cost of producing and mailing PVAs makes this an unrealistic option for them, putting candidates in the major parties at an advantage.

10.3 In its main submission to this inquiry, the AEC expresses its concern about the increasing practice of widespread distribution of party PVAs, particularly the procedure adopted by parties of having completed PVAs returned via their offices, the delays in passing on these forms to the AEC and the potential this practice has for disenfranchising electors. The AEC concedes that political parties are unlikely to stop the widespread distribution of PVAs.²⁸

10.4 Mr Andren also indicates that many of his scrutineers reported to him that a large number of the informal votes cast gave four preferences only. He argues that these voters may have been influenced by the AEC advertising campaign that featured a mock ballot paper and the words 'number the boxes from 1 to 4 in the order of your choice.'

²⁵ Australian Electoral Commission. 2000. *Submission 26 to the Inquiry into the Integrity of the Electoral Roll*, paragraph 2.6.

²⁶ Joint Standing Committee on Electoral Matters. 2001. *User Friendly not Abuser Friendly: Report of the inquiry into the integrity of the electoral roll*, p16.

²⁷ Queensland Criminal Justice Commission. 2001 *The Shepherdson Inquiry: An Investigation into Electoral Fraud*. pXIV.

²⁸ Australian Electoral Commission. 2002. *Submission 147 to the Inquiry into the 2001 federal election*, paragraph 6.2.20.

10.5 The AEC advertising campaign clearly indicated - as Mr Andren acknowledges in his submission - that electors were required to number every square on the green House of Representatives ballot paper. In fact, in the Division of Calare, the informality rate was 3.28% which was well below the rate for New South Wales (5.4%) and Australia overall (4.8%).

10.6 Due to the differing number of candidates in divisions across Australia, the AEC uses a generic ballot paper in its public awareness activities, but still emphasizes the need to number every square.

10.7 The AEC has undertaken a substantial informal ballot paper survey for the House of Representatives that involved the examination of every informal ballot paper recorded at the 2001 federal election. Details of this survey have been published on the AEC web site as *Research Report Number 1* and can be accessed at:

http://www.aec.gov.au/_content/what/voting/research_2001Elections.htm.

10.8 While this survey did not specifically examine how many ballot papers were numbered 1, 2, 3, 4 only, it did conclude that the influence of optional preferential voting at a State level (including New South Wales) may have been one of several influencing factors in higher levels of informality. The AEC is currently considering strategies to address these levels of informality.

11 Submission 81 – The Hon. Robert McClelland MP, Member for Barton

11.1 Mr McClelland's first concern is that he sent two letters to the AEC, one to the DRO for Barton on election day and one to the Electoral Commissioner on 14 February 2002, neither of which has been responded to.²⁹

11.2 On the release of his submission, the AEC checked its records to ascertain what had happened to Mr McClelland's correspondence. The AEC acknowledges that Mr McClelland sent a letter to the Electoral Commissioner on 14 February 2002 and that this letter was mistakenly not responded to. The AEC is currently working on a response to that letter. With regard to the letter to the DRO for Barton on polling day, the AEC made a judgement that this was a written confirmation of a telephone discussion, and as such did not require a response.

11.3 Mr McClelland's main concern is that on polling day, the Unity Party candidate distributed How To Vote (HTV) material that was different to the HTV material authorised by the Unity Party. Essentially, on the candidate's ticket, the preferences for the ALP and the Liberal Party were swapped, favouring the Liberal Party.³⁰

²⁹ The Hon. Robert McClelland MP, Member for Barton. 2002. *Submission 81 to the inquiry into the 2001 federal election*, p1.

³⁰ The Hon. Robert McClelland MP, Member for Barton. 2002. *Submission 81 to the inquiry into the 2001 federal election*, p1.

11.4 During the course of the day, Mr McClelland alleges the AEC adopted several different positions in relation to the matter, which in itself further aggravated the anxiety of campaign workers and exacerbated the situation.³¹

11.5 In order to explain the AEC's actions on polling day in relation to this issue, it is necessary to explain the application of sections 328 and 329 of the Act. Section 328(1) of the Act requires electoral advertisements to be identified by the name and address of the authoriser and the name and place of business of the printer. Section 329 states that a person shall not publish anything that is likely to mislead or deceive an elector about how to cast a vote. This section has been interpreted very narrowly by the High Court:

the words in s. 161(e) "in or in relation to the casting of his vote" refer to the act of recording or expressing the elector's political judgment, eg in obtaining and marking a ballot paper and depositing it in the ballot box, and not to the formation of that judgment.³²

11.6 In other words, on the day, the AEC had to determine two matters: did the HTV card in question contain an authorisation; and did the HTV card attempt to mislead the public about how to obtain and mark a ballot paper. The HTV card in question did in fact have an authorisation and did not attempt to mislead the public about how to obtain and mark a ballot paper. The HTV card in question was therefore legal.

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

11.8 Mr McClelland recommends that the JSCEM consider a legislative amendment to expand the concept of electoral irregularity to encompass a situation where a candidate issues voting instructions that are contrary to the voting instruction of the party they represent.³³

11.9 The primary function of section 328 of the Act is to ensure that anonymity does not become a protective shield for irresponsible or defamatory statements, where there is no legal recourse for those whose interests may have been damaged by such statements. It is not intended to regulate who produces HTV cards, simply to ensure that the source of the card is transparent.

11.10 A number of attempts have previously been made by the JSCEM to enhance the authorisation regime for HTV cards (see for example recommendation 19 of the *Report on the 1998 federal election*). However, these attempts have primarily been directed at improving the transparency of the authorisation. The recommendation above may be construed as limiting the freedom of political expression of candidates, which may cause a constitutional difficulty.

³¹ The Hon. Robert McClelland MP, Member for Barton. 2002. *Submission 81 to the inquiry into the 2001 federal election*, p2.

³² *Evans v Crichton-Browne* (1981) 147 CLR 169.

³³ The Hon. Robert McClelland MP, Member for Barton. 2002. *Submission 81 to the inquiry into the 2001 federal election*, p2.

11.11 Mr McClelland also recommends some administrative action that would require candidates to lodge their HTV cards with the AEC 48 hours before polling day.³⁴

11.12 The registration of HTV cards was considered during the review of the 1990 federal election. In its report, the JSCEM indicated that one method of overcoming the problem of the distribution of misleading and deceptive HTV cards would be to have them registered with the AEC so that unregistered material could not be circulated. The JSCEM considered that while such an approach might overcome the difficult problem of misleading and deceptive publications, it could not support such a system because it would be almost impossible to enforce. In addition, the JSCEM felt that registration would represent bureaucratic interference in the political process and restrict the work of political parties.³⁵

12 Submission 95 – Ms Julia Irwin MP, Member for Fowler

12.1 Ms Irwin's submission concerns the high informal vote in the Division of Fowler, which recorded the highest informal vote in the country at the 2001 federal election. Ms Irwin points out that as Fowler has the highest proportion of electors born outside Australia and the highest number from non English speaking backgrounds, this is an obvious factor influencing the high informal vote.³⁶

12.2 Ms Irwin makes six recommendations to reduce the level of informality in Fowler.

12.3 The AEC has undertaken a substantial informal ballot paper survey for the House of Representatives, which involved the examination of every informal ballot paper used at the 2001 federal election. Details of this survey have been published on the AEC web site as *Research Report Number 1* and can be accessed at:
http://www.aec.gov.au/_content/what/voting/research_2001Elections.htm.

12.4 Following this survey, the AEC is currently considering a range of options to address the higher levels of informal voting experienced at the 2001 federal election. These options include the targeting of divisions and polling places with high levels of informal voting and electors from culturally and linguistically diverse backgrounds. While the AEC agrees in principle with some of the tactics suggested, such as the use of videotapes in selected polling places showing how to cast a formal vote, there are significant issues of resourcing and timing to be considered. It should be noted that a variety of factors influence informality, including the number of candidates, so the use of videotapes cannot be relied upon alone to address this issue. In fact the figures supplied in Ms Irwin's submission show that the results at particular booths can still be high when this tactic is employed. These matters will be

³⁴ The Hon. Robert McClelland MP, Member for Barton. 2002. *Submission 81 to the inquiry into the 2001 federal election*, p3.

³⁵ Joint Standing Committee on Electoral Matters. 1990. *Report of the inquiry into the 1990 federal election*. paragraphs 5.17 – 5.22.

³⁶ Ms Julia Irwin MP, Member for Fowler. 2002. *Submission 95 to the Inquiry into the 2001 federal election*, p4.

considered by the AEC as it develops a communication plan for the next federal election.

12.5 Ms Irwin recommends (recommendation number 4) that:

...the AEC review the level of resources available at polling places with a review to reducing delays in voting. This may include the use of morning only staff.

12.6 The AEC has considered increasing staff as suggested by Ms Irwin, however, attendance by electors is variable and can depend on local and unforeseen circumstances, so the use of morning only staff, for example, may not be a solution to this problem. It should be noted that DROs have the discretion now to manage peaks in electors' attendance at some polling booths. DROs are directed to address as a priority the employment of staff who speak relevant community languages at polling places.

13 Submission 97 – The Electoral Reform Society of South Australia

13.1 The Society recommends the abolition of above the line voting in the Senate, to be replaced by optional preferential voting for all candidates.³⁷ Mr Eric Locket makes a similar recommendation in submission 98. This issue was also raised at both the 1998 and 1996 federal election inquiries.

13.2 In the *Report on the 1998 federal election*, the JSCEM noted the wide acceptance of above the line voting in the Senate (94.9% of voters at the 1998 federal election voted that way).³⁸ In the 1996 report, the JSCEM indicated that it would prefer to use other methods (such as mechanisms for reducing the number of nominations) to make below the line voting more attractive, rather than abolish above the line voting.³⁹

13.3 The Society indicates that while Group Voting Ticket (GVT) booklets were supposed to be prominently displayed in polling booths, at many polling booths the booklets appeared not to be on display at all or the electoral officials were not aware of its existence.⁴⁰ This is an issue also raised by Mr Mark Hurd in submission 1 and Mr Robert Bon in submission 38.

13.4 The 2001 federal election was the first election where the GVT booklet was used. The AEC is aware of some difficulties that arose in relation to the display of GVT booklets within some polling places, and will take the Electoral Reform Society of South Australia's comments into account when reviewing and revising procedures for the next federal election.

13.5 The Electoral Reform Society proposes that, in the Senate election, where a candidate receives more votes than the quota for election, any

³⁷ Electoral Reform Society of South Australia. 2002. *Submission 97 to the Inquiry into the 2001 federal election*, p2.

³⁸ Joint Standing Committee on Electoral Matters. 2000. *The 1998 federal election*, paragraph 4.67.

³⁹ Joint Standing Committee on Electoral Matters. 1997. *Report of the inquiry into the 1996 federal election*, paragraph 3.51.

⁴⁰ Electoral Reform Society of South Australia. 2002. *Submission 97 to the Inquiry into the 2001 federal election*, p2

surplus votes exceeding the quota be distributed on a different basis to that currently used.⁴¹

13.6 Currently, transfer values are calculated by expressing the candidate's surplus votes as a percentage of the number of votes received by the candidate in all counts so far. For example, if at the third count the candidate has received 100,000 votes in total (being 60,000 1st preferences, 20,000 votes transferred from the first count and 20,000 votes transferred from the second count) and the quota is 90,000 votes, the transfer value is 0.1 of all 100,000 votes.

13.7 In essence, the Electoral Reform Society's alternative proposal is that transfer values should be calculated by expressing the candidate's surplus votes as a percentage of the number of votes received by the candidate in the last transfer of votes. Thus, using the same example, the transfer value would be 0.5 and would only be applied to the last 20,000 votes transferred to that candidate – the votes received in previous counts would be ignored.

13.8 The current approach is required by section 273 of the Act. A brief explanation of the former provisions (in the section 135 of the pre 1983 Act) and the reasoning behind the current provisions is set out at pages 130-3 of JSCEM's *Report No.2* of 1986.

13.9 Whether the Electoral Reform Society's proposal would give a materially different outcome to that currently being obtained is doubtful. Whilst the possibility of a different outcome exists, in most States that could only affect the last vacancy to be decided and would depend on the preferences received by an excluded candidate in the last round having a significantly different profile to those received by that candidate in other rounds. The AEC is not aware of any evidence that this is so. However, to the extent that it is different, the AEC believes that favouring the votes received in the last round over the totality of the votes for the candidate does not faithfully represent the distribution of the preferences of all of the electors who voted for that candidate.

13.10 The AEC's firm view regarding the latter issue is that, because the transferred votes were already discounted through the application of the transfer value in the previous round, they should not be further discounted before the transfer value applicable to the current round is applied. To do otherwise would distort the distribution of preferences and would ultimately result in the number of votes taken into account in the second and subsequent counts being less than the number of votes available.

13.11 The cost of modifying the existing Computerised Senate Scrutiny System (CSSS) to definitively model and test the effects of the Electoral Reform Society's proposal on the 1998 and 2001 Senate election results would be about \$12,000.

13.12 The AEC is also concerned that the Electoral Reform Society's evidence at the hearings of 8 October 2002 indicates a misapprehension of the current and former bases for calculating second and subsequent transfer

⁴¹ Electoral Reform Society of South Australia. 2002. *Submission 97 to the Inquiry into the 2001 federal election*, p3

values. A reading of pages 243-244 of the transcript for that day suggests that:

- transfer values were formerly calculated as a percentage of the surplus votes from the last count; and
- votes gained by way of transfer are now being transferred at full value but should be discounted by some factor before the transfer value applicable to the current round is applied.

13.13 The JSCEM report cited above notes that the former process involved a random selection of ballot papers transferred to the candidate's tally at the last count, rather than a percentage calculation applied to all ballot papers in that transfer.

14 Submission 103 – Council for the National Interest

14.1 The Council recommends that roll accuracy be checked using data from the Australian Bureau of Statistics (ABS).

14.2 Section 13 of the *Census and Statistics Act 1905* makes it clear that the ABS cannot release personal information provided to it that might be used to identify the individuals who provided the information. The effect of this section of the *Census and Statistics Act 1905* means that the AEC cannot data match names or addresses with ABS records.

14.3 However, as the ANAO noted, the 2001 Census will provide the AEC with the opportunity to compare the roll to census results through a comparison of the potential and actual numbers of electors.⁴² The AEC will compare a copy of the roll taken on census night with census results in the near future. Census data will help the AEC to better target its Continuous Roll Update (CRU) process and general enrolment activities by identifying divisions with high mobility rates and high risk factors for non-enrolment.

14.4 The Council also recommends the AEC conduct biennial habitation surveys to recheck the rolls.

14.5 Prior to amendments to the Act in 1995, section 92 required the AEC to conduct Electoral Roll Reviews (ERR) by a national 'door-knock' at least once every two years. These ERR exercises were on the scale of the census and were highly resource intensive, requiring the employment of thousands of ERR Officers to visit every habitation in the nation. However, because of the high mobility of the Australian population, this periodic snapshot of the roll became rapidly dated, particularly around the time of the close of rolls for an election. Further, ERR exercises typically produced almost 60-70% no-change information every two years. Finally, tensions between the Joint Roll partners arose over when to conduct an ERR, with each jurisdiction wanting the ERR as close as possible to their own electoral event.⁴³

14.6 The AEC still conducts targeted doorknocks as part of the CRU process. The CRU, which replaced the national door knock, is extensively

⁴² Australian National Audit Office. 2002. *Audit Report No. 42 2001-2002*, paragraphs 2.110 – 2.112.

⁴³ Australian Electoral Commission. 2000. *Submission 26 to the Inquiry into the Integrity of the Electoral Roll*, paragraph 11.1.1.

described in section 11 of the AEC's submission 26 to the inquiry into the integrity of the electoral roll.

14.7 As part of the ANAO *Audit Report No. 42 2001-2002: Integrity of the Electoral Roll*, the ANAO data matched the roll with Medicare records. The results matched 95.6% of names and dates of birth to Medicare. The matching results were of a high quality, with just under 84% of records matched exactly.⁴⁴ This kind of accuracy could not have been achieved using the ERR.

14.8 The submission recommends that the roll be published and put on display at local government offices as a way of encouraging local electors to check the rolls and advise of any anomalies.

14.9 The AEC's views on the public availability of the electoral roll are set out in its *Review of access to the electoral roll and elector information*, contained at Attachment D of the AEC's submission 147 to the 2001 federal election inquiry.

14.10 The Council recommends that State registrars of death advise the AEC of deaths so these names can be removed from the roll. Section 108 of the Act requires all State registrars of births, deaths and marriages to forward to the AEC at the end of each month the details of all registered deaths in that State.

14.11 The Council recommends that each polling booth to be equipped with an electronic version of the roll for recording who has voted to prevent multiple voting. Ms Gina Behrens (submission 45 above) also made this recommendation. The AEC response to that recommendation is at paragraphs 5.2 – 5.3.

14.12 Finally the Council recommends that every voter must produce some proof of identity before being given a ballot paper. This recommendation is similar to a recommendation made by the Festival of Light, and has been responded to at paragraphs 6.23 – 6.25 above.

15 Submission 106 – Mr John Rogers

15.1 Mr Rogers states that the computer program for the Senate scrutiny has not been developed using appropriate 'trusted computing' standards, has not been independently validated for its correctness by a body recognised as competent in the field, and is opaque in its operation. On this basis he claims that there is the possibility that votes could be incorrectly distributed. He recommends that all future computer programs used to run elections be developed using the trusted computing system and that the full details of all voting systems be made public so the voters are able to verify personally that the process is undertaken according to law.⁴⁵

15.2 The CSSS was independently assessed and verified, at the time of its development and prior to deployment, by the ANAO. The AEC also offered the source code to political parties to analyse and independently verify.

⁴⁴ Australian National Audit Office. 2002. *Audit Report No. 42 2001-2002*, paragraph 4.39.

⁴⁵ Mr John Rogers. 2002. *Submission 106 to the Inquiry into the 2001 federal election*, p1.

15.3 The Senate scrutiny system is currently being redeveloped to be included in the Easycount application, which is a system that enables a range of scrutiny methods to be undertaken electronically. It is intended to seek accreditation of the new system to Australian Standard *ISO9126*. The accreditation is likely to be provided by an independent service such as BMN International.

15.4 The CSSS operates on stand alone machines. It does not operate in a networked environment. Hacking is therefore not an issue for the automated Senate scrutiny. Easycount will also operate on stand alone machines.

15.5 At the close of each day during a Senate scrutiny, reports are printed from CSSS and provided to scrutineers. At the commencement of the next day, before any data entry has occurred, the same reports are printed and once again provided to scrutineers for comparison. This enables a physical check that no data has been altered or lost, or new data added.

15.6 The CSSS is a vote counting system, not a vote recording system. Data is entered from the ballot papers, which have been completed in polling places or by postal voters. The Senate ballot papers are retained for the term of the Senators elected. In the event of the system crashing during a scrutiny, with attendant data loss, the count is not compromised. The data is simply re-keyed from the ballot papers, and the scrutiny started once again from the beginning.

16 Submission 108 – Mr Barry Wakelin MP, Member for Grey

16.1 Mr Wakelin is concerned that the level of assisted voting on remote mobile booths is high and that the informal vote on these remote mobile booths is unusually low.

16.2 He indicates he remains totally opposed to the methodology of collecting votes from all remote communities under the title of mobile booths. He indicates that listing the communities separately would respect the dignity and the value of the individual vote in each community.

16.3 Section 234 of the Act provides that where an elector who satisfies the Officer In Charge (OIC) of a polling place or of a remote mobile polling team by virtue of paragraph 227(8)(c), that they are physically incapacitated, illiterate or unable to vote without assistance, the elector can either appoint a person to assist them in completing their ballot paper, or ask the OIC to assist them. Where the elector is assisted by the OIC, scrutineers are entitled to observe.

16.4 The AEC has previously commented on Mr Wakelin's concerns at submission 176 to the JSCEM inquiry into the conduct of the 1998 federal election. In that submission the AEC noted that a high level of formal voting in any particular area or amongst any particular group may indicate simply that the voters are well informed and highly motivated. Further, and at a more objective level, much the same level of attention and resources is applied by

the AEC to pre poll voting and postal voting as to mobile polling, and pre poll and postal voters also show low informal voting rates.⁴⁶

16.5 At the public hearing in Adelaide on 8 October 2002, Mr Wakelin indicated that:

There is a great need to give fair and transparent awareness of individual rights to vote according to their beliefs and not on what one or two people in the polling booth area may be encouraging voters to do.⁴⁷

16.6 When pressed by Senator the Hon Robert Ray to provide evidence or details of AEC staffing swaying voters, Mr Wakelin was unable to do so. The AEC absolutely refutes the implication of Mr Wakelin's statement that polling staff who assist voters are encouraging voters to vote in a particular way.

16.7 The AEC has a number of concerns with Mr Wakelin's recommendation that each community on a mobile poll be treated as a separate polling place. The first is with the secrecy of the vote. On mobile polls, votes from a number of small communities are mixed in a single ballot box, decreasing the likelihood that votes from individuals within particular communities can be identified. The same practice is applied to mobile teams in special hospitals for the same reason. The second concern is that under Mr Wakelin's recommendation, each community would require its own ballot box and associated materials, increasing the logistical and operational problems with the mobile polls. In the case of remote mobiles undertaken by light aircraft, this suggestion could significantly increase the cost of conducting the mobile poll because the additional materials would require the hire of a larger aircraft, which may not be feasible due to the size of the relevant airstrips.

17 Submission 126 – Mr Geoff Field

17.1 Mr Field makes a number of recommendations relating to the operation of polling booths including:

- the establishment of a hotline for polling officials to allow them to check the enrolment of voters who do not appear on the roll;
- providing all AEC staff with t-shirts for easy identification; and
- the use of computer based training packages for polling booth staff.

17.2 Leaving aside the prohibitive cost of providing laptop computers with enrolment databases, and the associated training and support overheads, the provision of an enrolment hotline would in many respects be counter productive.

17.3 At the 2001 election, some 852,000 absent votes were cast. Of these, nearly 753,000 (88%) were fully admitted – without recourse to a hotline. Of the remainder, 68,000 (8%) were rejected – in over 95% of cases because the voters were neither enrolled nor eligible for reinstatement to the roll. Another 31,000 (4%) had only their Senate ballot papers counted, because the voters voted for the wrong division. Some 14,000 of the admitted votes (2% of the

⁴⁶ Australian Electoral Commission. 1999. *Submission 176 to the Inquiry into the 1998 federal election*, paragraph 39.38.

⁴⁷ Transcript, p218.

absent vote total) were also cast by voters who were not enrolled but who were found at the preliminary scrutinies to be eligible for reinstatement to the roll.

17.4 Whilst an enrolment hotline might result in the correct issuing of some votes where voters currently claim to be enrolled in the wrong division, it is unlikely that this would benefit many of them. That is because it is only where the voter admits to being unsure of their enrolment details that the hotline might be queried.

17.5 The main objection to the use of a hotline as proposed is that it would slow down the voting process without significantly enhancing the voting franchise. Such queries are likely to take at least one minute each – and sometimes much longer (especially if the person is not currently enrolled) – and could lead to polling staff becoming embroiled in arguments about whether or where the person is or should be enrolled. There is also the risk that some electors, finding themselves not enrolled for the event, would decide not to vote even though at the preliminary scrutinies they might be found eligible to be reinstated to the roll and to have their votes counted.

17.6 When provisional voters are included (since their names too aren't found on the certified lists at the polling booth), close to 25% of declaration voters attending polling places might need their enrolment queried via the hotline. The question still remains as to what proportion of these voters would avail themselves of access to the hotline, and how many of the correctly enrolled ones would unnecessarily do likewise. Whatever the proportions, a commensurate increase in declaration voting staffing would be required.

17.7 Finally, and contrary to Mr Field's claims, the measure would not affect the number of electors being advised that their votes had been rejected or the number of these from whom re-enrolment is sought. That is because some 95% of the absent and provisional vote rejections are due to the voter not being enrolled at the roll close and not being eligible to have their names reinstated to the roll.

17.8 With regard to t-shirts, the logistics and expense of supplying some 60,000 t-shirts to polling officials in all parts of Australia do not warrant this initiative. At an optimistic unit price of \$15, there would be an additional \$900,000 added to the overall election cost. There would also be significant costs and issues associated with distribution.

17.9 In relation to training, the AEC introduced computer based training packages for polling booth staff as a pilot for training declaration vote issuing staff at the 2001 federal election. This package can be used (at the DRO's discretion) instead of the face to face training sessions these staff are otherwise required to attend. A similar package was used for training polling staff at overseas posts.

17.10 Extension of the current compute -based training packages to other polling staff, either as a substitute for face to face training or as a supplement to the existing training manuals, is under review.

18 Submission 129 – The Hon. Bob Katter MP, Member for Kennedy

18.1 Mr Katter claims that people with an enduring power of attorney are not able to sign applications for postal votes for those over which they have power. He asks the JSCEM to consider a legislative change to allow people who have responsibility for others in this way to sign applications for a postal vote.

18.2 Previous legal advice has confirmed that, under section 336 of the Act, applicants must sign PVAs in their own handwriting. Provision is made for applicants unable to sign to make their mark on the application and have it appropriately witnessed.

18.3 Nevertheless, it is extremely unfortunate that Mr Katter's constituent was unable to vote at the last election. The AEC will investigate making it clearer, on its relevant forms in the future that a personal signature or mark is required and that a power of attorney cannot be used.

19 Submission 131 – Mr Neil Worrall

19.1 Mr Worrall alleges the AEC sold microfiche copies of the roll between 1990 and 2000, and that the AEC did this as a direct result of lobbying from the business community. He claims that selling the roll in this way breached the *Privacy Act 1988*. Finally, Mr Worrall alleges that the AEC provided more information on the microfiche version of the roll than is contained in the printed version of the roll.

19.2 The sale of microfiche rolls was enabled by the *Electoral and Referendum Amendment Act 1990*, which amended section 90 of the Act to allow for the production of the rolls by microfiche.

19.3 Contrary to Mr Worrall's assertion, the AEC decided a number of years ago to provide microfiche rolls for purchase in order to improve access to up to date enrolment information through public libraries and other such institutions, as the microfiche are produced on a six monthly basis and in a more compact form than the printed rolls which are produced only once in the life of a parliament.

19.4 In response to concerns about the sale of enrolment information that can be easily scanned and used for commercial purposes, the AEC Management Board decided at its March 2000 meeting to cease production of microfiche rolls for the purposes of sale. The microfiche rolls will remain available for public inspection, and the printed rolls will remain available for public inspection and sale.⁴⁸ The microfiche rolls do not contain any more information than the printed versions of the roll.

19.5 The sale of enrolment information (including privacy concerns) is an increasingly contentious issue that has been explored further in the AEC's

⁴⁸ Australian Electoral Commission. 1999. *Submission 257 to the Inquiry into the 1998 federal election*, p2429.

Review of access to the electoral roll and elector information (Attachment D to AEC submission 147 to the 2001 federal election inquiry).

20 Submission 133 – Mr Peter Brun

20.1 Mr Brun argues that there are a number of databases that by their very function are required to be more accurate than the roll, including databases held by Medicare, Centrelink, the Australian Taxation Office (ATO), the State motor registries and others. He argues that the roll could be created using these databases at the time of the election.⁴⁹

20.2 Mr Brun recommends that when an election is called, the roll would be generated by one of the above organisations tapping into the other organisations. Once the roll is prepared, a mail out to all electors would occur informing them that they are on the roll. The names of people whose letters are returned to sender would be placed on a provisional roll, and would be entitled to vote provided they could provide some form of identity. Those not on either roll would also be provided a provisional vote. Provisional votes would only be counted in instances of a close result and only when checked through a doorknock.⁵⁰

20.3 All of the databases identified by Mr Brun as an alternative to the roll present problems with accuracy. While Medicare and ATO data may be relatively comprehensive in terms of the number of people covered, the addresses on these databases are not likely to be as up to date as those on the roll.

20.4 Centrelink and motor registry data would not be comprehensive enough to ensure that the details of everybody with an entitlement to vote were contained on the databases. All of the databases would contain data on people who would not be eligible to vote, such as non citizens, which would need to be cleansed in order to produce an accurate roll.

20.5 Mr Brun alleges that he did a check of return to sender (RTS) mail in the Division of Wentworth in July 2001. He claims that of the 1700 RTS envelopes received from the July mail out, the vast majority remained on the roll in September 2001.⁵¹

20.6 A check of the AEC's objection processing records for the Division of Wentworth revealed that objection (notification) letters were mailed on 24 August 2001 to 958 electors. On 3 October 2001 (12 days prior to the close of rolls), determination letters were posted to 817 electors advising that their names had been removed from the electoral roll.

20.7 Because the RTS mail referred to by Mr Brun was returned to a candidate, as opposed to a sitting member, the AEC would not have followed up on this RTS mail, so cannot comment on the veracity of Mr Brun's claim.

20.8 Mr Brun also alleges that in February 1999, he doorknocked the New South Wales seat of Coogee using January 1999 roll data. He indicates that

⁴⁹ Mr Peter Brun. 2002. *Submission 133 to the Inquiry into the 2001 federal election*, p1.

⁵⁰ Mr Peter Brun. 2002. *Submission 133 to the Inquiry into the 2001 federal election*, p2.

⁵¹ Mr Peter Brun. 2002. *Submission 133 to the Inquiry into the 2001 federal election*, p3.

he doorknocked only addresses with more than three surnames enrolled at it or two couples listed at the same address. From this review he claims to have identified 22 people who were not eligible to be on the roll for that State division.⁵² In a State seat with a high population turnover, the AEC does not regard this as an unusual number of people to identify.

20.9 Finally, Mr Brun briefly identifies three other alleged cases of high numbers of inaccurate enrolments:

- In the Division of Parramatta at the 2001 federal election, he alleges a mail out by the sitting member resulted in 800 RTS letters;
- He alleges that Mr Jim Lloyd MP, Member for Robertson identified 4,000 names that needed to be removed from the roll in 1998.
- He alleges that following the 1990 federal election there were 474 RTS mail letters as a result of an AEC mail out.⁵³

20.10 In relation to Mr Brun's allegations about Parramatta, on 18 January 2001 the DRO for Parramatta received 583 RTS envelopes (involving 663 electors) from the Member for Parramatta. The results of investigations into these envelopes are as follows:

Envelope insufficiently addressed for delivery:	9
Envelope was posted to an old postal address:	15
Elector claims to be still living at enrolled address:	8
Elector registered as an overseas elector:	2
Elector has never been enrolled:	1
Elector has already been deleted from roll:	359
Elector has objection action pending:	24
Elector will have objection action following this investigation:	245

20.11 On 5 September 2001 the DRO received another 356 envelopes (involving 381 electors) from the Member for Parramatta. The results of investigations are as follows:

Envelope insufficiently addressed for delivery:	3
Envelope was posted to an old postal address:	20
Elector has already been deleted from roll:	111
Elector has objection action pending:	43
Elector will have objection action following this investigation:	204

20.12 A point to bear in mind in relation to RTS mail is that it cannot be guaranteed by the AEC that the comments made on the envelopes (in other words, 'not known at this address') accurately reflect the true residential status of electors in each instance. For example, the notation made by Australia Post may not be correct or the comment may have been made by the resident in order to prevent further, unsolicited, mail being received from political parties or candidates. Therefore, the AEC, in accordance with the Act, can only remove an elector's name from the roll if it receives 'hard' evidence that the elector has lost their entitlement to be enrolled.

⁵² Mr Peter Brun. 2002. *Submission 133 to the Inquiry into the 2001 federal election*, p3.

⁵³ Mr Peter Brun. 2002. *Submission 133 to the Inquiry into the 2001 federal election*, p3.

20.13 The only allegations of enrolment fraud known to the AEC in relation to Mr Lloyd at the 1998 federal election is that detailed in his submission to the JSCEM's inquiry into the 1998 federal election. In this submission, Mr Lloyd expresses concerns about both the levels of provisional voting in his seat and recently deceased people who were on the roll.⁵⁴

20.14 In relation to Mr Lloyd's concerns about provisional voting, the AEC carried out a detailed study of provisional votes in the Division of Eden Monaro for the 1998 federal election, with the conclusion that there does not appear to have been any unusual activity occurring in relation to provisional voting at the 1998 federal election. At the time, the AEC indicated the same conclusion applied to the Division of Robertson.⁵⁵

20.15 In relation to Mr Lloyd's allegations about deceased voters, the AEC discussed this allegation in detail at section 10.2 of Submission 88 to the 1998 federal election inquiry.

20.16 The AEC cannot find any evidence of Mr Lloyd discussing 4,000 names being removed from the roll.

20.17 In relation to Mr Brun's final allegation, in the absence of specific evidence, the AEC assumes he is referring to allegations made regarding the Division of Richmond. These are responded to when discussing Dr McGrath's appearance before the JSCEM below.

21 Submission 135 – Salt Shakers

21.1 The Salt Shakers recommend the adoption of electronic voting and voter identification before the next federal election. They assert that this could be done using an expanded tax file number system combined with date of birth, passport number or home address information that would be verified on a computer at the polling place before voting. If this system cannot be implemented, the Salt Shakers recommend that as a minimum requirement for voting, some form of proof of identity should be required, and computer terminals at each polling place to verify this information.⁵⁶

21.2 Ms Gina Behrens (submission 45 above) makes a similar suggestion about electronic copies of the certified lists in polling place. The AEC has provided comments on this suggestion at paragraphs 5.2 – 5.3.

21.3 Proof of identity at polling places is discussed in relation to a similar recommendation by the Festival of Light at paragraphs 6.23 – 6.24 above.

22 Submission 144 – Mr Don Mitchell

22.1 Mr Mitchell recommends the adoption of a circular ballot paper to prevent the donkey vote. The Joint Standing Committee on Electoral Reform has previously considered the circular ballot paper in 1983.⁵⁷

⁵⁴ Mr Jim Lloyd MP, Member for Robertson. 1999. *Submission 141 to the Inquiry into the 1998 federal election*.

⁵⁵ Australian Electoral Commission. 1999. *Submission 176 to the Inquiry into the 1998 federal election*, paragraph 36.1.

⁵⁶ The Salt Shakers. 2002. *Submission 135 to the Inquiry into the 2001 federal election*, pp1-2.

⁵⁷ Joint Select Committee on Electoral Reform: 1983. *First Report*, p67 and related transcripts

23 Submission 145 – Homeless Persons' Legal Clinic

23.1 The Homeless Persons' Legal Clinic makes 16 recommendations aimed at enabling homeless people to meaningfully participate in federal elections. These recommendations broadly cover: changes that would be required to normal enrolment mechanisms to enable homeless people to enrol; alternatively, changes that would be required to the itinerant elector provisions to enable homeless people to enrol as itinerant electors; and increased levels of service provision to homeless voters. The Council for Homeless Persons (submission 105) and the Big Issue (submission 150) make similar recommendations.

23.2 During their appearance before the JSCEM on 12 August 2002, representatives of the homeless indicated that amendments to the itinerant voter provision were probably the most appropriate mechanisms to address the problem of low homeless enrolment.⁵⁸

23.3 Even if this suggestion is adopted, the submission from the Homeless Persons' Legal Clinic regarding the enrolment of homeless people proposes a number of detailed amendments to the Act. The AEC has not fully considered the implications of the proposed amendments. However, while the AEC considers that the provisions relating to enrolment by itinerant persons do apply to homeless people, it also acknowledges that this is not entirely clear.

23.4 The AEC is supportive of the thrust of the submission regarding the enrolment of homeless people, and recommends that the Act be amended to clarify that homeless people can enrol under the itinerant provisions.

23.5 In relation to the recommendation concerning service provision to homeless voters, the AEC will include the homeless as a target group in the preparation of the communication plan for the next federal election. This plan will include strategies to educate homeless people about their rights and how to exercise those rights.

24 Submission 146 – H S Chapman Society

24.1 The AEC notes that the H S Chapman Society has made several submissions to the inquiry, which raise various issues of alleged irregularity in electoral procedures. The AEC wishes to place on the public record the fact that many of the allegations raised before this JSCEM by the Society have been comprehensively dealt with by past JSCEM Inquiries. While the AEC welcomes informed discussion about the conduct of federal elections it sees little benefit in raising unrelated (and, in many cases, already addressed) allegations from past events and non federal elections in the context of this inquiry. Nonetheless, for the record, the AEC will address the allegations as follows:

24.2 The H S Chapman Society argues that the red slashes and the red symbol on the back of the postal vote envelopes mean that these votes cannot be considered to have the greatest secrecy because they can be

⁵⁸ Transcript, p36.

identified.⁵⁹ The red symbols on postal vote envelopes are intended to make them easier to identify in the sorting process so Australia Post could give them priority. The AEC has no record of difficulties with tampering or the loss of these envelopes.

24.3 The Society claims that voters at pre poll voting are not policed in any way to ensure they qualify to receive them. The Society alleges that the conditions for claiming such a vote are not always posted in the most obvious place so voters are aware of them.⁶⁰ This is a similar claim to that made by Mr Kirkpatrick (submission 77 above), and the AEC's response is discussed in detail there (paragraphs 9.2 – 9.4).

24.4 The Society argues that the use of the Virtual Tally Room (VTR) should be reviewed because on one occasion during the republic referendum, the results for a polling place were reversed in transit.⁶¹

24.5 On referendum night the DRO for Hume noted that figures from three polling places in his Division seemed inconsistent with the trends of surrounding booths. The biggest was Young, which received media attention. The votes had been correctly counted, but the results had been transposed on the results slip, and rung through incorrectly. Although there was no fresh scrutiny for the Referendum, the DRO sought approval from the AEO to do one on the three polling places, and the results were corrected.

24.6 All federal election results are subject to a fresh scrutiny where any transcription errors are corrected.

24.7 The H S Chapman society has previously sought permission for access to divisional offices for scrutineers to allow the input of results on polling night to be scrutinised. These requests have been refused as there is no additional value in this procedure being scrutinised considering the other scrutineering procedures available. Polling places ring the results, which have been scrutineered, through to a staff member in the divisional office who enters the figures, which are publicly available for scrutiny on a polling place by polling place basis after polling day. It should also be remembered that all ballot papers are rechecked in the divisional office following polling day. This check is also open to scrutineers.

24.8 The submission alleges that before the February 2001 State election in Queensland that the AEC had to send out 850,000 enrolment related letters in the State. This included 600,000 to people who were incorrectly enrolled and 250,000 who were not enrolled.⁶²

24.9 The facts are as follows. On 22 January 2001, the AEC in Queensland mailed approximately 835,000 letters to residences and individuals. This mail out included some 200,000 letters to persons in the 18 to 25 year age group, with the remainder addressed to residences throughout the State. The letters

⁵⁹ H S Chapman Society. 2002. *Submission 146 to the Inquiry into the 2001 Federal Election*, p1, see also Transcript, p172.

⁶⁰ H S Chapman Society. 2002. *Submission 146 to the Inquiry into the 2001 Federal Election*, p1.

⁶¹ H S Chapman Society. 2002. *Submission 146 to the Inquiry into the 2001 Federal Election*, p1, See also Transcript, p174

⁶² H S Chapman Society. 2002. *Submission 146 to the Inquiry into the 2001 Federal Election*, p2.

were generated through the data match of a major State database against the RMANS database.

24.10 The Queensland mail out had been planned since September 2000 in conjunction with the Queensland Electoral Commission. However, due to the calling of an early Queensland State election, it clashed with the close of rolls period for that election. Notwithstanding this, the mail out did not affect the accuracy of the rolls for that election other than in positive ways, with enrolment transactions in the roll close week totalling over 69,000, compared with the 1998 election total of some 35,000.

24.11 As can be seen below in relation to mail outs generated by Centrelink data, data matches of this sort generally result in mail outs numbering in the hundreds of thousands, so the Queensland mail out referred to above should not be regarded as anything other than a standard process. It certainly does not imply that the AEC had some concerns over the State of the Queensland roll.

24.12 The Society asks why the AEC has not participated in the Social Security data match, which takes place every 24 hours.⁶³ The AEC does in fact data match with Centrelink.

24.13 In November 1999, the AEC started receiving monthly loads of records from Centrelink of clients who had changed their address (Change Of Address data) and new 17 and 18 year old clients. This data was added into the CRU program in the second half of 2000.

24.14 In 2000-2001, 1,283,251 Centrelink Change of Address (COA) records were received and this resulted in 628,226 letters being mailed to people and addresses where enrolment did not appear to be up to date. Comparable figures for 17 and 18 year olds are 205,147 records received and 119,300 letters sent. Enrolments and enrolment changes resulting from each mail out were 279,792 and 32,855 respectively.

24.15 In 2001-2002, 1,275,295 Centrelink COA records were received and this resulted in 429,631 letters being mailed to people and addresses where enrolment did not appear to be up to date. There were 142,521 resulting enrolments transactions. In relation to 17 and 18 year olds, 140,945 records were received and 87,843 letters mailed, which resulted in 24,148 enrolments.

24.16 In 2001, the AEC also received a full download of records of all Centrelink client names, date of births and addresses. This data was used in the Background Review Pilot, along with full downloads of a number of State transport databases. The intention of a Background Review is to confirm/validate enrolments at addresses so that the emphasis of the CRU program can be targeted at those addresses that are not confirmed because enrolment details do not appear to be correct. The results of the Pilot were encouraging and the AEC will continue to use Centrelink data for this purpose in the future. It is also planned to use transport data from all States and territories in such reviews. This data is accessed through the AEC's Joint Roll Arrangements with its State and Territory counterparts.

⁶³ H S Chapman Society. 2002. *Submission 146 to the Inquiry into the 2001 Federal Election*, p2.

25 Submission 170 – H S Chapman Society

25.1 In submission 170, Dr McGrath names the polling booth where she claimed at the 2 October 2002 public hearing the number of votes do not reconcile as the Mt Gravatt East School. The Mt Gravatt East School was a dual booth for the Districts of Mansfield and Mount Gravatt.

25.2 The AEC notes that this reference is to a Queensland State election, which is not within the terms of reference of the current inquiry. Nonetheless, the Queensland State Electoral Commissioner has advised the AEC of the following facts in relation to this matter.

25.3 Mt Gravatt was the 'visitor' (that is, the polling booth was in the District of Mansfield) and based on 1998 figures (prior to the 1999 redistribution) the booth was expected to take relatively few votes. In the event, there was high demand there on the day.

25.4 The complaint about reconciliation of ballot paper numbers was made by a scrutineer who had left the booth before the count was complete. The staff initially did have some difficulty reconciling the ballot papers, but eventually all papers were reconciled and this was attested to by a scrutineer who remained to the end of the count. The scanning reconciliation and a subsequent manual check of the relevant certified lists confirmed the ballot paper balance with there being only two papers short of those issued.

25.5 The complainant was given all the relevant information in a series of letters.

25.6 The AEC has procedures in place to cope with situations such as this, so it is unlikely that this situation would have occurred at a federal electoral event.

26 Public Hearing 2 October 2002 – Dr Amy McGrath

26.1 Dr Amy McGrath claims that she is concerned about the rise in declaration voting because she has not been able to find a politician who understands the declaration vote process.⁶⁴ Later in the hearing, she claims that declaration votes are never entirely checked. She indicates that what she means in this instance is that the signatures on the declaration certificates must be checked with other signatures provided by the person.⁶⁵ Later in the hearing, Dr McGrath indicates that what she is referring to are checks that are mandated rather than discretionary.⁶⁶

26.2 A number of people have raised concerns about the declaration vote scrutiny at this inquiry. As indicated previously, the procedure for the preliminary scrutiny of declaration votes is contained at Schedule 3 of the Act. The preliminary scrutiny is also extensively detailed in the *Scrutineers' Handbook*.⁶⁷ The AEC cannot understand why someone wishing to be

⁶⁴ Transcript p165.

⁶⁵ Transcript p166.

⁶⁶ Transcript p171.

⁶⁷ Australian Electoral Commission. 2001. *Election 2001: Scrutineers' Handbook*, pp19-21.

informed about the preliminary scrutiny of declaration votes would find it difficult to be informed about this process.

26.3 Sections 3 and 3A of Schedule 3 of the Act indicate that it is mandatory for signatures on postal vote declarations to be compared with the signatures on PVA forms. No other check of signatures is required in the preliminary declaration scrutiny process.

26.4 In submission 98 to the 1996 federal election inquiry, the AEC discussed the possibility of introducing signature checks for the other forms of declaration voting. In that submission the AEC pointed out that with the other forms of declaration voting, the certificates are witnessed by polling officials who witness that the elector signing the certificate is the elector to whom the ballot-papers and certificate were issued.

26.5 Comparing signatures on declaration vote certificates with signatures on the elector's latest claim for enrolment as part of the preliminary scrutiny process would need to overcome basic practical difficulties, such as quality and accessibility of signature records; and the difficulties of judging whether signatures are of the same person, especially in comparing the signatures of elderly or ill electors.⁶⁸

26.6 Dr McGrath has some concerns about the potential centralisation in the AEC. She claims that at one point staffing in divisional offices was down to one or a half a staff member, but that it has now been restored to three or four.⁶⁹ Later Dr McGrath states that it is her view that there should be a DRO for every electorate.⁷⁰

26.7 The AEC's ability to maintain the current divisional office structure is discussed in detail in the AEC's funding submission (submission 166) to the current inquiry.

26.8 Dr McGrath claims that there was evidence of fraud in the Division of Richmond in 1990 and that the AEC conducted an investigation into this.⁷¹

26.9 These allegations were first made by the National Party of Australia on behalf of a Mr Greene, the Richmond campaign director for the National Party, in submission 70 to the inquiry into the 1990 federal election. During that inquiry, the AEC responded that:

The one matter ... arising from this submission that remains outstanding is the reference made in it to 432 persons allegedly enrolled not only for Richmond but also for another Division. In fact the Richmond Divisional Office has not, as alleged ascertained that there were 432 persons so enrolled, and suspects that Mr Greene has misconstrued a different statistic, relating to votes admitted in Richmond for the Senate but not the House of Representatives. Mr Greene has not to date been able to provide the Commission with any names of or further and better particulars relating to the 432 persons referred to.⁷²

⁶⁸ Australian Electoral Commission. 1996. *Submission 98 to the Inquiry into the 1996 federal election*, paragraphs 10.4.2 – 10.4.4.

⁶⁹ Transcript, p165.

⁷⁰ Transcript, p166.

⁷¹ Transcript, p167.

⁷² Australian Electoral Commission. 1990. *Submission 76 to the Inquiry into the 1990 federal election*, p S506.

26.10 Dr McGrath claims the AEC has a duty of care to investigate all claims of electoral fraud and that the AEC is not proactive in investigating. She claims it is not her job to investigate claims of fraud.⁷³

26.11 The AEC investigates every allegation made where there is enough information available to allow for investigation. In this submission, for example, the AEC conducted investigations into two allegations made by Mrs Chris Gallus MP relating to enrolment, and an allegation by Mr Gaensler into the availability of voting materials in New York.

26.12 The AEC cannot investigate generalised or unsubstantiated claims that fraud is occurring. In such cases, the AEC can simply restate that the AEC has procedures in place to check for anomalies in enrolment and voting, that such procedures are effective in detecting anomalies, whether these be innocent or fraudulent, and that the evidence from these procedures is that these sorts of unsubstantiated claims have no basis.

26.13 The AEC also will not devote precious resources to investigating claims that have already been investigated and proved false, such as the Richmond claim above. Restating a disproved claim of fraud at future inquiries does not make that claim any more accurate.

26.14 Dr McGrath claims that declaration votes are both scanned and correlated after the declaration of the poll so it is not possible to ascertain whether people multiple voted using declaration votes before the declaration of the poll. Senator Ray points out that this is a totally wrong understanding.⁷⁴

26.15 For the 2001 federal election, scanning of the certified lists, which is the process by which multiple and non voting are detected, began on 12 November 2001, two days after the election.⁷⁵ Dr McGrath's concerns probably relate to the fact that scanning cannot be completed until either all declaration votes have been returned to the relevant division or the thirteen day period for the return of declaration votes has expired. In particularly safe divisions where the number of outstanding declaration votes would have no impact on the result, the poll may be declared before the 13 day period is complete. At the 2001 federal election, the Divisions of Wakefield and Grey were declared on 16 November 2001.⁷⁶

27 Submission 148 – The Southern Cross Group

27.1 A large number of submissions from Australians overseas have been made to this inquiry. The vast majority raise issues similar to those raised by the Southern Cross Group. These have been responded to here.⁷⁷ The key argument of the Southern Cross Group is that Australian citizens outside Australia are treated as if they are of lesser value and have fewer privileges

⁷³ Transcript, p170.

⁷⁴ Transcript, p171.

⁷⁵ Australian Electoral Commission. 2002. *Behind the Scenes: Election 2001*, p32.

⁷⁶ Australian Electoral Commission. 2002. *Behind the Scenes: Election 2001*, p32.

⁷⁷ Specifically, submissions 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 28, 29, 30, 31, 33, 34, 41, 42, 43, 44, 48, 49, 51, 52, 53, 54, 55, 59, 60, 61, 64, 65, 68, 69, 70, 75, 76, 78, 79, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 94, 96, 99, 100, 101, 102, 104, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 134, 137, 138, 139, 142, and 161 to the Inquiry into the 2001 federal election.

that Australians in Australia. The argument runs that 500,000 Australians overseas are currently disenfranchised simply because they live overseas.⁷⁸

27.2 Sections 94, 94A, and 95 of the Act govern enrolment by Australians living overseas. Enrolment by Australians living overseas was first introduced in 1953 and was directed specifically at servicemen serving overseas.⁷⁹ This entitlement was extended to the current arrangements in 1983,⁸⁰ and has been slightly modified on a number of occasions since.

27.3 The Explanatory Memoranda for the 1983 Bill makes it clear that these sections of the Act are intended to apply to the 'enrolment entitlements of electors who are temporarily living overseas but who intend to return to live in Australia within a period of years.' Recommendations 1 – 11 of the Southern Cross Group are clearly aimed at breaking the nexus between enrolment and voting rights and a temporary absence from Australia. The AEC believes that a consideration of the approach to overseas voting rights needs to occur before the sort of amendments being recommended here are adopted.

27.4 One of the Southern Cross Group's other recommendations is that further research into electronic voting and enrolment methods be pursued as a matter of urgency with a view to their introduction and use as a way of supporting the right to vote by Australians overseas. The AEC discusses the possibility of such a proposal at section 5.6 of submission 147 to the JSCEM's inquiry into the 2001 federal election.

27.5 Finally, the Southern Cross Group recommends that regardless of the outcome in respect of its recommendations in this submission, the AEC establish a register of overseas electors as an online data base, accessible by registered individuals: to maintain up to date voter details; to notify the calling of elections; and to facilitate the control of postal and absentee votes by overseas electors.⁸¹

27.6 The AEC maintains an up to date web site containing information about up coming electoral events, detailing enrolment and voting procedures, and providing electronic versions of most of the relevant forms (including overseas enrolment forms and postal vote application forms). Judging by the submissions made to the JSCEM by members of the Southern Cross Group, they are technologically literate and maintain a close interest in Australian affairs. The AEC believes the resources currently available to enrolled Australians overseas should be sufficient for them to maintain enrolment.

28 Public hearing Friday 20 September 2002 – Southern Cross Group

28.1 At this hearing, Mr Danby asks whether the AEC has ever detected instances of fraud by overseas electors.⁸² The AEC has been able to identify one attempted fraudulent enrolment from an overseas voter. The attempted fraud occurred in the Division of Kingsford Smith in 1992. The alleged

⁷⁸ The Southern Cross Group. 2002. *Submission 148 to the Inquiry into the 2001 federal election*, p6.

⁷⁹ Hansard, 26 November 1953, p576.

⁸⁰ *Commonwealth Electoral Legislation Amendment Bill 1983: Explanatory Memoranda*, p18

⁸¹ The Southern Cross Group. 2002. *Submission 148 to the Inquiry into the 2001 federal election*, pp3-4.

⁸² The Southern Cross Group. 2002. *Submission 148 to the Inquiry into the 2001 federal election*, p112.

offender was not eligible to enrol because of their age. The AFP was unable to identify the offender.⁸³

29 Submission 149 – Liberal Party of Australia

29.1 The Liberals allege that a situation arose in the Division of Petrie, where a Democrat HTV card incorrectly identified a Green candidate as an independent. The Liberals successfully argued that the card was misleading and the AEO Queensland asked the Democrats to stop distributing it. After some time it became clear that the Democrats were continuing to distribute these cards. After being approached, the presiding officers at the polling booths indicated that they did not have the power to stop the Democrats from handing out the card. The AEO Queensland confirmed that this was the case. The Liberal Party argues that there may be a gap in the authority of AEC staff to prevent the distribution of misleading material at polling booths.⁸⁴

29.2 The events at Petrie are basically as described by the Liberal Party. Following the complaint, the AEC decided that the Democrats were distributing an incorrect HTV card. The AEO for Queensland contacted the Democrats State Secretary to ask them to cease distribution. This was done and a replacement HTV card was issued.

29.3 At one polling place (Bald Hills) Liberal booth workers may have got the message before the Democrat booth workers, so they went to the OIC to ask for action. The AEO for Queensland then contacted the Democrats State Secretary again and received confirmation that she had sent out new cards and that she would contact Democrat workers to ensure they understood which HTV cards were to be used. The OIC of Bald Hills was then informed by the DRO that the Democrats were in the process of replacing the HTV cards.

29.4 The discussion about the powers of the OICs and consistency and timeliness in AEC decision making on polling day continued when the Liberal Party appeared before the JSCEM on 16 August 2002. At that hearing, Mr Lynton Crosby, then Federal Director of the Liberal Party, argued variously that:

- if the OIC is invested with the power at the local level to oversee the conduct of voting it is not a big step to give them sufficient power to ensure that the material distributed at the polling booth is in accord with the Act;
- there should be a standard process in place for dealing with a complaint about a breach of the Act; and
- every OIC, every DRO, and every AEO seem to make decisions for themselves without regard to decisions being made elsewhere.⁸⁵

29.5 Notwithstanding the possible contradiction between Mr Crosby's first and third points, the AEC will attempt to respond to these concerns.

⁸³ Australian Electoral Commission. 2000. *Submission 26 to the Inquiry into the Integrity of the Electoral Roll*, Attachment 20, p1.

⁸⁴ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p1.

⁸⁵ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p3.

29.6 Under subsection 203(2) of the Act, the Electoral Commission appoints presiding officers to preside at polling places on polling day. Presiding Officers are commonly referred to as OICs. In order to come to an understanding of this issue, it is necessary to understand the limits to the powers of an OIC.

29.7 On polling day, the OIC establishes the perimeters of polling place using a notice signed by the DRO under subsection 340(2) of the Act. Under subsection 340(1), no canvassing for votes can occur within six metres of the polling place. Except for specific circumstances, the OIC has no legal power to take action in relation to events that occur outside this six metre limit. This is commonly known as the six metre rule.

29.8 The specific circumstances under which an OIC can take action in relation to events that occur outside the six metre limit are derived from two sources. The first is section 241 of the Act, which specifically empowers OICs to adjourn polling because of riot, open violence, storm, tempest, flood or other event of this sort.

29.9 The second source is the *Polling Place Management Procedures Manual* for OICs. This manual provides practical advice on how to handle disturbances or other problems outside the polling place. The manual advises OICs that in the first instance they should attempt to resolve these problems and that common sense should be the rule of thumb. If the issue cannot be resolved using this method, the OIC is directed to contact the DRO.⁸⁶

29.10 As can be seen, the OIC currently has no power to ensure that material distributed by canvassers is in accord with the Act. Complaints about material distributed at polling places would be referred by the OIC to the DRO, who would then refer it to the AEC's central office via the State head office for a decision about the legality of the material. The level at which a decision is made about the material will depend on the complexity of the issues involved. Very obvious breaches of the Act, such as a complete lack of authorisation, would be dealt with at the DRO or head office level.

29.11 Before polling day, the central office arranges with the DPP and the Federal Court to have resources available on polling day to assist in dealing with more complex issues. Complex issues are referred to the DPP for preliminary advice as to whether they constitute a breach of the Act.

29.12 If a decision is made that the material is legal, this advice is provided to State head offices and DROs, who then pass the advice on to OICs. If the material is considered to breach the Act, the AEC contacts the relevant political party to advise them of that fact and asks them to withdraw the offending material. Generally, political parties agree to withdraw the material and it is their responsibility to inform their polling booth volunteers to cease distributing the material. The AEC will then inform the DRO, who will inform the OICs of the decision, who may be empowered to advise the party booth workers to cease distribution of the offending material.

⁸⁶ Australian Electoral Commission. 2001. *Election 2001: Polling Place Management Procedures Manual*, p57.

29.13 If the offending material is not removed, the AEC has the power under section 383 of the Act to seek an injunction from the Federal Court to prevent the distribution of the material. It should also be noted that, if a candidate wishes to do so, they could also seek an injunction to prevent the distribution of material.

29.14 The advantage of the current system for determining the legality of material distributed on polling day is that decisions made by the AEC are based on as thorough investigation of the evidence as possible to protect the AEC from claims of bias in its decision making. Another advantage of the current system is that a single decision is made about a particular item, ensuring consistency of application across Australia.

29.15 At the public hearing, the debate then moved on to the possibility of reversing the onus of injunctions under section 383 of the Act to the effect that the injunctioned party would have to prove why the injunction was not warranted, rather than the current arrangement where the party injunctioning must prove that the injunction is warranted.⁸⁷ The AEC can identify some problems with this suggestion.

29.16 Firstly, it has been suggested by the Australian Government Solicitor (AGS) that reversing the onus of the injunction may amount to an inappropriate exercise of judicial power by an officer of the Commonwealth. The AEC suggests that legal advice will need to be obtained before such a recommendation could be made.

29.17 Secondly, if the AEC has 150 DROs exercising these powers across the country during an election period and on polling day, with all the other distractions and responsibilities that DROs have on that day, the AEC is likely to get a widely varying interpretation of the scope of the power. This in itself may give rise to petitions to the Court of Disputed Returns, if a party can allege that they were denied the right to circulate certain electoral material, and that they had to go to the Federal Court to get the matter 'overturned'. A party may be able to demonstrate a likely effect on their election chances, due to being unable to advertise at a very important period of the election.

29.18 Thirdly, it can safely be assumed that the Federal Court does not have registries in each division, so a candidate in a regional or rural area, whose material was 'blocked' by a DRO, would have very little recourse to a timely resolution of the issue.

29.19 Fourthly, it would be a very expensive exercise for a candidate to get a determination of the DRO overturned.

29.20 Fifthly, empowering the DROs to be able to ban certain material in no way ensures that the power will be exercised any more or any better than it is currently being exercised. Such a regime may discourage DROs from acting to ban material, because they may be averse to being the subject of litigation action by parties on polling day.

29.21 The Liberal Party argues that there is a continuing need to improve the accuracy of the roll. The submission uses the example of a mail out by Mr

⁸⁷ Transcript, p94.

Jim Lloyd MP, Member for Robertson following the 2001 federal election. From this mail out of 600 letters, 60 were returned. The Liberal Party alleges that when he brought this up with the AEC, the AEC indicated that this was probably the result of provisional voters being returned to the roll following the election. Mr Lloyd alleges that one of these voters who returned to the roll was someone who never resided at the address because the property was an investment property. The Liberal Party indicates that this points to the difficulties with the system of provisional votes as it is presently administered.⁸⁸

29.22 What Mr Lloyd has identified is the nexus between lodging a provisional vote and being reinstated on the roll. During the inquiry into the 1998 federal election, the AEC recommended that this nexus be broken to avoid people being reinstated for addresses where they did not live. The JSCEM recommended this change at recommendation 7 of the 1998 federal election report, and the proposal is currently contained in the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002*.

29.23 The Liberal Party recommends that the AEC should be required to mail a personalised letter to every person on the roll at a time no more than 12 months before the likely date of the next general election.⁸⁹

29.24 This recommendation is in essence similar to the ERR conducted by the AEC prior to 1995. One of the difficulties with the ERR was that because of the high mobility of the Australian population, this periodic snapshot of the Roll became rapidly dated, particularly around the time of the close of rolls for an election. Further, ERR exercises typically produced almost 60-70% no-change information every two years.⁹⁰ ERRs were also extremely costly and resource intensive. While a mail out would not cost as much, there would be a cost implication. If the JSCEM is considering this, the AEC will need additional funds to implement the recommendation. The AEC estimates this will cost an additional \$5m for each mail out.

29.25 The Liberal Party points to a provision in the Victorian *Electoral Act 2002* that allows for registered parties and independent MPs to obtain on request the names and addresses of electors who voted (other than silent electors and itinerant voters), whether they voted personally or by post, and, if they voted at a voting centre for the electorate for which they were enrolled, the voting centre at which they voted. The Liberal Party argues that this is a useful provision, which aids the work of parties and members, and it would be useful for the Commonwealth Act to contain a similar provision.⁹¹

29.26 A similar proposal was made by the ALP at the 1998 federal election inquiry, but in relation to the marked roll of postal voters. The AEC's response was that there is not, and never has been, any public access entitlement to the marked Commonwealth roll (or certified lists of voters). It has been long accepted that the marked certified lists of voters (postal or otherwise), which contain personal information about the voting behaviour of individual electors,

⁸⁸ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p1.

⁸⁹ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p1.

⁹⁰ Australian Electoral Commission. 2000. *Submission 26 to the Inquiry into the Integrity of the Electoral Roll*, paragraph 11.1.1.

⁹¹ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, pp2-3.

should not be publicly available, and the provisions of the *Privacy Act 1988* and the *Freedom of Information Act 1982* reflect this principle.⁹² The AEC's position on this proposal has not changed.

29.27 The Liberal Party also discusses an incident in Queensland. The Liberal Party argues that, as a result of a letter sent by the AEO Queensland to all newspapers reminding them of their obligation to use the term 'advertisement' on electoral material, a number of community newspapers were concerned that a pamphlet that was going to be inserted in the papers was in fact a journal rather than a pamphlet, and would thus attract the 'advertisement' requirement. The Liberal Party states that this issue was only resolved some ten days later when AEC legal advice confirmed that the pamphlets were not part of the newspaper and therefore did not need the term 'advertisement'.⁹³

29.28 Section 331 of the Act, which requires any published article or paragraph containing electoral matter to contain the heading 'advertisement', was amended by the *Electoral and Referendum Amendment Act 1998*. Previously, section 331 applied only to paid newspaper advertisements. The 1998 amendment extended the requirement to articles and paragraphs containing electoral matter and published in any 'journal', defined as 'a newspaper, magazine or other periodical, whether published for sale or for distribution without charge'.

29.29 The drafting of the 1998 amendment does not accurately reflect the intention of the Parliament. The requirement for the heading 'advertisement' now applies to *any* electoral matter published in a newspaper or magazine, including for example, newspaper editorials, and commentary and opinion by newspaper journalists. These are the clear terms of the provision as it now stands in the Act, despite the fact that the heading to section 331 still reads 'Heading to electoral advertisements', and despite the words of the Explanatory Memorandum to the 1998 amending Act:

29.30 The AEC believes that to remove any doubts that section 331 is meant to apply only to advertisements, and not to all electoral matter in newspapers and magazine. On this basis the AEC recommended a change to the section at the 1998 federal election inquiry.⁹⁴ This was adopted as recommendation 17 of the 1998 federal election report. The Government response supported the recommendation. The amendment is currently being considered as part of the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002*.

29.31 The Liberal Party expresses a degree of concern about the perceived failure of the AEC to respond during the election campaign to all campaign related letters that went from the Liberal Party campaign headquarters to the AEC. The Liberal Party indicates that 14 letters were sent from campaign headquarters to the AEC formally raising various matters on which AEC

⁹² Australian Electoral Commission. 1999. *Submission 174 to the inquiry into the 1998 federal election*, paragraph 42.38.

⁹³ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p3.

⁹⁴ Australian Electoral Commission. 1999. *Submission 88 to the inquiry into the 1998 federal election*, paragraph 6.7.1 – 6.7.3.

action was sought. The Liberal Party alleges that only four responses from the AEC were received before election day.⁹⁵

29.32 Throughout the election period, the AEC central office keeps a record of complaints received and the action taken in relation to these complaints. A review of this record has revealed the following complaints by the Liberal Party, all of which were responded to. In certain instances, the AEC sought legal advice to ensure the accuracy of its responses. When legal advice was sought, there was often a delay of some days in responding to complaints. The AEC can only find one Liberal Party complaint that was made before polling day that was responded to after polling day, a complaint by Mr Cameron Thompson MP, Member for Blair, in relation to material published in an Ipswich newspaper.

29.33 The AEC has written to the Liberal Party to ascertain what correspondence the Liberal Party is referring to, and if necessary will take corrective action to ensure that complaints are all responded to in future.

Table 1: Correspondence received from the Liberal Party.

Date of complaint	Subject	Progress
09/10/01	Crosby regarding Postal Vote Application pamphlet distributed by Beazley MP (Brand) and Thomson MP (Wills).	Responded to on 11/10/01 by the Deputy Electoral Commissioner.
09/10/01	Crosby complaint regarding a letter to electors from a candidate in Petrie.	Responded to on 16/10/01 by the Deputy Electoral Commissioner following legal advice.
10/10/01	Crosby regarding impartiality of staff at AEC Call Centre.	Responded to on 15/10/01 by the Deputy Electoral Commissioner.
16/10/01	Crosby regarding folding of candidates' newsletters in Quest Qld newspapers.	Responded to on 19/10/01 following legal advice.
18/10/01	Crosby complaint regarding One Nation website suggesting that Pauline Hanson is incumbent QLD Senator	Responded to on 23/10/01 by First Assistant Commissioner Elections following legal advice.
19/10/01	Burston complaint regarding ALP pamphlets in Lilley without authorisation.	Responded to on 24/10/01 by First Assistant Commissioner Elections following legal advice.
30/10/01	Morrison regarding Democrat How To Vote card in Warringah.	Responded to on 6/11/01 by the Deputy Electoral Commissioner following legal advice.
31/10/01	Burston regarding unauthorised Howard pamphlets in Bennelong.	Responded to on 6/11/01 by the Deputy Electoral Commissioner following legal advice.

⁹⁵ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p3.

1/11/01	Crosby regarding ABA website authorisation.	Responded to on 7/11/01 by the Deputy Electoral Commissioner following legal advice.
5/11/01	Crosby regarding Emerson (ALP) radio commentary on petrol prices.	Responded to on 7/11/01 by the Deputy Electoral Commissioner following legal advice.
6/11/01	Nairn MP regarding Whan (ALP) letter to constituents	Responded to on 6/11/01 by the Deputy Electoral Commissioner.
7/11/01	Burston regarding Democratic Socialist Party pamphlet on war forum.	Responded to on 8/11/01 by the Deputy Electoral Commissioner following legal advice.
7/11/01	AEO WA referral candidate Thomas (Division of Brand) against Woollard (Liberals for the Forests) Independent.	Responded to on 9/11/01 by the Deputy Electoral Commissioner following legal advice.
8/11/01	Burston regarding Susie Douglas (Nats) your Coalition MP Moncrieff advertising.	Responded to on 10/11/1 by the Deputy Electoral Commissioner following legal advice.
8/11/01	Burston regarding Australia Asia Worker Links pamphlet being unauthorised.	Responded to on 9/11/01 by the Deputy Electoral Commissioner following legal advice.
8/11/01	Crosby regarding Bankstown students' association nuclear pamphlets being unauthorised.	Responded to on 9/11/01 by the Deputy Electoral Commissioner following legal advice.
8/11/01	Burston regarding Democrat How To Vote in Boothby.	Responded to on 9/11/01 by the Deputy Electoral Commissioner following legal advice
9/11/01	Burston regarding ALP rock CDs to youth in Vic.	Responded to on 9/11/01 by the Deputy Electoral Commissioner following legal advice.
9/11/01	Thompson MP re Ipswich newspaper commentary by Ripoll and Wendt (ALP).	Responded to on 22/11/1 by the Deputy Electoral Commissioner following legal advice.
10/11/01	AEO Qld referred complaint by Lib candidate (Division of Moncrieff) regarding Nationals How To Vote cards	Responded to on 10/11/01 by Australian Electoral Officer for Queensland.
12/11/01	Complaint by Nairn MP - letter by Baz and letter by Whan (ALP).	Responded to on 13/02/2 by the Electoral Commissioner.

29.34 The Liberal Party argues that it would be very useful if the AEC could publish a description of how arrangements for voting at special hospitals operate.⁹⁶ The AEC will produce a publication on polling at special hospitals. The publication will not be produced until the outcome of the AEC's recommendations concerning mobile polling in special hospitals⁹⁷ is known.

29.35 One of the issues that rose late in the campaign was the use of loudspeakers at polling booths to broadcast electoral material. While the speakers themselves would be outside the six metre limit, their messages would be heard within the limit. The Liberal Party requests a clarification of the Act to ensure that it covers the use of such media for the transmission of electoral material.⁹⁸ The AEC sought legal advice on this issue during the 2001 federal election. The legal advice indicated that the broadcasting of electoral material at polling places was unlikely to be a breach of the Act unless the source of the broadcast was within the six metre limit.

29.36 Finally, the Liberal Party argues that:

The Committee should give some consideration to the role of the Australian Electoral Commission and consider the desirability of some fundamental reform. Recent history has shown both the problems the AEC has had with regard to the integrity of the electoral roll and the inability of the AEC to act adequately to deal with unauthorised material being circulated and other such breaches of the Commonwealth Electoral Act. Serious consideration needs to be given to splitting the AEC and having two separate bodies, one to maintain the electoral roll and one to run elections.⁹⁹

29.37 The AEC refutes the above claims absolutely. The ANAO Audit has previously determined that the electoral roll is of high quality (refer previous comments concerning the Festival of Light at paragraphs 6.3 – 6.7), so allegations of 'problems the AEC has had with regard to the electoral roll' are without substance. The AEC also believes that it dealt with all claims of unauthorised material being circulated at the last election positively, proactively, and as expediently as liaison with relevant agencies such as the AGS, the DPP, and the AFP allowed. This is evidenced by reference to the Table 1 above. In conclusion, the AEC is of the view that no logical argument has been submitted by the Liberal Party to split the enrolment and election functions into separate bodies. Clearly the criticisms cited bear no relationship to any argument for separation of functions.

29.38 When discussing his proposal, Mr Crosby referred to the New Zealand model as being an example of the sort of structure he envisaged.¹⁰⁰ The New Zealand Government recently established an Election Framework Taskforce to provide advice on significant structural and legislative changes for the configuration of the conduct of election.¹⁰¹ The Taskforce reported in June 2001. The Taskforce concluded that:

⁹⁶ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p4.

⁹⁷ Australian Electoral Commission. 2002. *Submission 147 to the Inquiry into the 2001 federal election*, section 6.7.

⁹⁸ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p4.

⁹⁹ Liberal Party of Australia. 2002. *Submission 149 to the Inquiry into the 2001 federal election*, p5.

¹⁰⁰ Transcript, p91.

¹⁰¹ Elections Framework Taskforce. 2001. *Report of the Elections Framework Taskforce*, paragraph 1.

..a single agency with integrated responsibility would be an improvement on the status quo. Integrated responsibility would provide a more solid base for planning and development, particularly in relation to the future use of technology... Integrated legal responsibility would also improve accountability and reduce confusion. Better service for voters, candidates and political parties should be the result.¹⁰²

29.39 It should be noted that the roll is the key factor in how the AEC undertakes a number of election tasks including scanning of certified lists, non-voter and multi-voter followup, declaration vote scrutinies and the automated postal vote issuing system.

30 Submission 151 – Mr Perry Ballard

30.1 Mr Ballard is a regular polling place official at federal electoral events. He makes a number of suggestions for improving the operation of polling places.

30.2 In relation to Mr Ballard's recommendation about customer service training, the AEC is mindful of the need for its polling place procedures manuals to focus on polling officials' core responsibilities. Whilst the manuals themselves are highly service focussed, it is not appropriate to reprint the full text of the AEC *Customer Service Charter* in these documents. However, staff and electors are able to access the *Customer Service Charter* through AEC offices or the web site. In addition, the AEC has conducted a customer workshop in every State since the federal election and has gained worthwhile client perspectives from these activities, which will be incorporated into planning and policy development for the conduct of future elections.

30.3 Mr Ballard recommends that the AEC directly notify electors of new and changed polling place locations, rather than rely on advertising. Where appropriate (for example to relieve pressure on other polling places), the AEC already writes to electors living near a new polling place to inform them of its existence. The AEC prefers a flexible approach in this regard because experience has shown that, even in the absence of such an advice, many of the 'target' electors will be aware of the new venue as a result of the AEC's other advertising.

30.4 Mr Ballard recommends that the larger polling places have two queue controllers, 'one to ask how many are voting today and hand out the relevant forms, the other to direct voters to the next available desk.'

30.5 The AEC's *National Polling Place Resources Policy*, which has been in place since 1987, provides for polling places issuing more than 2,900 ordinary votes to be allocated both an inquiry officer and queue controller. That policy also provides that polling places issuing more than 1,000 ordinary votes be allocated an inquiry officer or queue controller, and sometimes both. Additional staff may be employed where appropriate.

30.6 The queue controller's role includes:

- organising electors into a single main queue;
- directing electors to ordinary issuing points;

¹⁰² Elections Framework Taskforce. 2001. *Report of the Elections Framework Taskforce*, paragraph 4.

- issuing voter time cards;
- directing identifiable absent voters to the declaration vote queue/issuing point(s); and
- identify electors needing assistance and assist them or refer them to the inquiry officer, second in command or OIC, as appropriate.

30.7 The inquiry officer's role includes:

- attending to the needs of electors waiting in the queue; and
- providing assistance to electors who require help casting a vote.

30.8 The above arrangements should more than satisfy Mr Ballard's concerns.

30.9 Mr Ballard also complains that polling places commonly run out of enrolment forms. In such instances additional stocks can be obtained from Polling Place Liaison Officers as the need arises.

30.10 Mr Ballard advances three proposals on the future conduct of elections.

30.11 Firstly, he proposes that all the applicable forms be posted to voters. Judging by the thrust of his proposal, it would appear that Mr Ballard is contemplating a hybrid postal/attendance ballot, in which ballot papers (and perhaps certificate envelopes also) are posted to all voters, and these are then returned by the voters in person to the appropriate polling places. This would seem to have all of the costs of a postal ballot coupled with the inconvenience of an attendance ballot.

30.12 If indeed all votes were to become postal votes under Mr Ballard's proposal, the main effect would be to greatly increase the time and cost of obtaining any kind of result after the close of the poll. It would also add about \$5m to the AEC's election related postage bill.

30.13 Secondly, he proposes that polling places be equipped with 'swipe machines' to record voters' details from their Medicare cards, instead of using certified lists. Medicare cards could not be used for this, because they:

- do not uniquely identify the individual who is voting (in other words more than one person might be named on the card);
- are issued to people who are not eligible to vote; and
- don't provide enough information for the polling official to be able to determine the division in which an eligible elector is entitled to vote.

30.14 Mr Ballard also contends his proposal would avoid the need to send letters to or fine people for not voting. The AEC sees no connection between the use of technology for recording votes and penalising those who fail to vote. The existing error level in this regard is considered acceptably low. The AEC does not believe that moving from the marking of names off certified lists to the use of Medicare cards or other forms of voter card would materially improve this.

30.15 Thirdly, he proposes that laptop computers be used in all polling places to record enrolment updates. Apart from cost issues associated with the provision of the proposed hardware and communications infrastructure, enrolment processing is a specialised task for which polling officials are not

trained. Adding this function to polling places would also require an increase in staffing to offset the additional workload.

30.16 Mr Ballard's submission includes a proposal to increase the amount paid to polling officials who work later than 8pm on polling day.

30.17 Current polling official payments are made on a package basis, and are based on a nominal:

- 15-hours' work on polling day for OICs, commencing at 7:00am and concluding at 11:00pm (including two 30 minute meal breaks);
- 14.5-hours' work on polling day for second in commands, commencing at 7:00am and concluding at 10:30pm (including two 30 minute meal breaks); and
- 13-hours' work on polling day for Assistant Presiding Officers, commencing at 7:30am and concluding at 9:30pm (including two 30 minute meal breaks).

30.18 The contention that it is only the smaller polling places that finish early, and only the larger polling places finish late, is also not supported by the facts. Much depends on the efficiency with which the polling staff complete their post polling duties. Relatively few polling staff work for more than an hour beyond the nominal contract times and many work somewhat less. The AEC sees no particular justification for adding another layer of complexity to the polling official employment regime, the existing one serves to encourage post poll efficiency in the polling place.

31 Submission 153 – Australian Labor Party

31.1 The ALP submission focuses primarily on funding and disclosure and enrolment.

31.2 The ALP indicates that its guiding principles with regard to electoral funding and disclosure is that there must be a complete and meaningful trail of disclosure back to the true source of funds received by political parties. On this basis, the ALP makes 10 recommendations for the improvement of the disclosure regime.¹⁰³

31.3 The AEC has made a comprehensive submission to the JSCEM's funding and disclosure inquiry. Issues relating to the majority of the ALP's funding and disclosure recommendations are discussed in this submission. A copy of this submission is at Attachment F of submission 147 to the 2001 federal election inquiry.

31.4 In relation to enrolment, the ALP alleges that there is significant under enrolment amongst homeless Australians and that the efforts by the government to close the rolls at the time of the issue of the writs will further disenfranchise groups of this sort. The ALP then makes the same point about young people, and Indigenous Australians.¹⁰⁴

¹⁰³ Australian Labor Party. 2002. *Submission 153 to the Inquiry into the 12001 federal election*, pp2-3.

¹⁰⁴ Australian Labor Party. 2002. *Submission 153 to the Inquiry into the 12001 federal election*, pp5-6.

31.5 The AEC discusses matters relating to the enrolment of homeless people in relation to the Homeless Persons' Legal Clinic submission (submission 145) above.

31.6 In relation to the enrolment of young people, the AEC's commitment to CRU provides for targeted enrolment programs to encourage youth enrolment.

31.7 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.

31.8 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.

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

31.10 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.
- 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.

31.11 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.

31.12 In relation to Indigenous enrolment, at the 1998 federal election inquiry, the AEC recommended the reinstatement of the Aboriginal and Torres Strait Islander Electoral Information Service (ATSEIS), a program that educated Indigenous people in the federal electoral system and functioned as an

enrolment review program in Indigenous communities.¹⁰⁵ ATSEIS was abolished in 1996.

31.13 In response the JSCEM recommended the AEC report to the JSCEM on options for an integrated education and enrolment service for Aboriginal and Torres Strait Islanders.¹⁰⁶ The AEC will be preparing a report following the evaluation of the education program for the Aboriginal and Torres Strait Islander Commission (ATSIC) elections currently being held.

31.14 If the JSCEM is inclined to make recommendations along the lines of that made by the ALP in relation to enrolment, additional funding will be required.

31.15 The ALP suggests an alternative approach to roll integrity, using a model proposed by the Victorian Government. The proposal is that those applying for enrolment or a transfer of enrolment would be required to provide their driver's licence number on the enrolment form.¹⁰⁷

31.16 The view of electoral authorities at this time is that the current system does not require changing. However motor vehicle licence data would be a reasonable tool for verifying identity, provided there was national coverage, particularly for new enrolments.

31.17 Nonetheless, this data would have serious deficiencies if used to verify all claims, particularly the addresses of applicants. Also there is still a portion of the eligible population who do not have a licence. Using an analysis of data from the ABS and the roll, the AEC tentatively estimates that there is likely to be in excess of 1.5 million persons or 12% of the electorate who are eligible to enrol but who do not have a motor vehicle licence. This group is made up of young people, the elderly and for the ages in between a higher than average incidence of women, Indigenous, and disabled persons. In a situation such as this, the model also proposes that the applicant find a witness with a driver's licence.

31.18 For the proposal to be implemented, it would require cooperation between the various State and Territory motor registries and electoral agencies, meet privacy legislation and have political support at all levels as it is unlikely that federal legislation would be sufficient to allow its introduction nationally if a single enrolment card for both State and Commonwealth enrolment is to be continued.

31.19 The ALP also discusses the prospect of direct address change for enrolment.¹⁰⁸

31.20 Direct address change was proposed as part of the revision of the Victorian electoral legislation earlier this year, but did not survive the passage through parliament. The proposal would have provided the VEC the discretion to use authoritative information received from trusted government sources and from electors themselves to update the electoral register without

¹⁰⁵ Australian Electoral Commission. 1999. *Submission 210 to the Inquiry into the 1998 federal election*, paragraph 49.5.

¹⁰⁶ Joint Standing Committee on Electoral Matters. 2000. *The 1998 federal election*, recommendation 37.

¹⁰⁷ Australian Labor Party. 2002. *Submission 153 to the Inquiry into the 12001 federal election*, p6.

¹⁰⁸ Australian Labor Party. 2002. *Submission 153 to the Inquiry into the 12001 federal election*, p7.

the need for the elector to return a completed enrolment form. The VEC would have written to all electors whose details have been changed in this manner, enabling any electors whose details were incorrect to alert the VEC.

31.21 An example of such authoritative information is the change of address notifications received from voters in postal municipal elections. These notifications include the voters' enrolment details, including date of birth, and are signed by the voters. The voters would expect that such information would be used to update their enrolment, instead of having to fill out another form to enrol for their new address.

31.22 Another group that would benefit from such a proposed change are elderly and infirm people who take up permanent residence in an assisted care facility. In many cases, such people do not change their enrolment from their former residential address, and during an election, are issued with absent ballot papers if their enrolled address is outside the electorate where the assisted care facility is located. It is very stressful to elderly people to be queried by electoral officials regarding where they may be enrolled.

31.23 The AEC supports this proposal and can see some efficiencies in processing enrolments if it were to be introduced for Commonwealth purposes. Again it would require complementary State legislation if the single enrolment form were to be used for both State and Commonwealth purposes.

32 Submission 158 – The Greens NSW

32.1 In their submission, The Greens (NSW) proposes that the AEC provide details of the number of open gates and entrances at each polling place.

32.2 For the AEC, the collection and dissemination of this information is problematic. The difficulty is that whether a particular gate at a school, for example, is open on polling day may be little more than a matter of chance. Any advice received by the AEC in this regard could be nullified on polling day as a result of last minute decisions (or oversight) by the owners of the venues concerned. In any event, some entrances at some venues are so wide that providing the number of such entrances would be of little practical value.

33 Submission 162 – The Hon. Chris Gallus MP, Member for Hindmarsh, Parliamentary Secretary for Foreign Affairs

33.1 Chris Gallus' concerns about the integrity of the electoral roll stem from two sources: an alleged lack of checks to prevent electors from safe electorates enrolling in a marginal electorate to influence the result; and an alleged lack of appropriate process in AEC divisional offices.

33.2 The submission claims that the AEC maintains that although the system has few safe guards to prevent illegal enrolments, such enrolments are not widespread, but the AEC does not provide any evidence to support such an assertion.¹⁰⁹

¹⁰⁹ The Hon. Chris Gallus MP, Member for Hindmarsh. 2002. *Submission 162 to the Inquiry into the 2001 federal election*, p1.

33.3 These claims are similar to those made by the Festival of Light above. The AEC has responded to these claims at paragraphs 6.3 – 6.7.

33.4 Chris Gallus alleges that 1043 people were enrolled in the Division of Hindmarsh for the 2001 federal election who were not entitled to vote in Hindmarsh. She points out that the AEC is unable to determine how many of those ineligible voters actually did vote in Hindmarsh.¹¹⁰

33.5 In order to ascertain the basis of these claims, the AEC has reviewed the correspondence and actions of the Hindmarsh divisional office and can provide the following explanation.

33.6 A letter from Chris Gallus dated 1 October 2001 was received by DRO Hindmarsh on 3 October 2001 attaching approximately 1,000 photocopied envelopes of RTS mail that were returned to her office. She requested the AEC investigate and remove electors from the roll where appropriate.

33.7 The DRO for Hindmarsh determined that this could not be done at the time as subsection 118(5) of the Act prevents the removal of names from the roll by objection action after the close of rolls. As the election was called on 5 October 2001, the objection process could not be completed before the close of rolls.

33.8 A letter from Chris Gallus dated 16 January 2002 to the DRO for Hindmarsh was received attaching approximately 500 photocopied envelopes of RTS mail. She requested the AEC investigate whether these persons voted in the Division of Hindmarsh at the 2001 federal election.

33.9 On 27 February 2002, the DRO for Hindmarsh received a letter from Chris Gallus dated 21 February 2002 attaching approximately 565 photocopied envelopes of RTS mail. Once again, she requested the AEC investigate whether these persons were eligible to be on the roll and whether they voted for Division of Hindmarsh at the 2001 federal election.

33.10 After the 2001 federal election and its aftermath, during the period between 3 December 2001 and 9 July 2002, the divisional office in Hindmarsh undertook processing of these 2,065 photocopied RTS envelopes, involving some complex follow up and objection action, where applicable, in accordance with procedures.

33.11 During this period there was no communication with Chris Gallus' office as to the progress of the work. A factor in this lack of communication was the ill health of the DRO during 2002 and his extended sick leave. In the handover between the DRO and the acting DRO for Hindmarsh, there was a breakdown in communication about what communication had taken place with Chris Gallus' office about this matter.

33.12 On 9 July 2002 the DRO for Hindmarsh, returned from sick leave, sent a letter to Chris Gallus after speaking to a member of her staff, clarifying AEC processes for dealing with RTS mail. In the letter, the DRO also provided statistics on the outcome of the divisional actions taken on the January and February 2002 batches of RTS mail (totalling 1,065 photocopied envelopes of

¹¹⁰ The Hon. Chris Gallus MP, Member for Hindmarsh. 2002. *Submission 162 to the Inquiry into the 2001 federal election*, p2.

RTS mail). This letter indicated that 755 of the 1,065 electors identified through the RTS mail investigation were no longer on the roll for Hindmarsh.

33.13 On 22 July 2002, the DRO for Hindmarsh received a letter from Chris Gallus dated 19 July 2002, asking how many of the 755 electors no longer on the roll for Hindmarsh were on the roll for the 2001 federal election and how many had voted.

33.14 Once action is taken and original RTS mail destroyed, AEC procedures do not require that the people involved in each batch of RTS mail be able to be identified later.

33.15 Because of this, on 7 August 2002, the acting DRO for Hindmarsh sent a letter to Chris Gallus that, amongst other things, indicated that copies of RTS mail from the 755 electors had been destroyed as there was no further action required, and therefore, that it was not possible to determine whether the electors concerned had voted for the Division of Hindmarsh at the 2001 federal election.

33.16 At the 20 September 2002 JSCEM hearing, this emerged as an issue for Chris Gallus. She believes that the AEC should be able to identify such people by RTS batch, and then be able to cross check where they might have voted at previous elections. She appears to believe that these 755 electors, who re-enrolled elsewhere, may have voted in Hindmarsh at the 2001 federal election when they were not entitled so to do.

33.17 As the AEC has indicated, because the AEC followed standard procedure in relation to RTS mail, the AEC has no way of checking whether the 755 electors were legitimately on the roll for the Division of Hindmarsh at the 2001 federal election, or indeed whether these 755 electors voted.

33.18 Notwithstanding this, it appears that Chris Gallus has mistakenly identified the 1,065 electors (including 755 not on roll), for which statistics were provided in the AEC's 9 July 2002 letter, as being those sent to the AEC prior to the 2001 election. In fact, the Division of Hindmarsh received these letters from Chris Gallus in January and February 2002. Therefore no objection action by the AEC with respect to these electors could have affected the roll for the Election 2001.

33.19 Information was provided to Chris Gallus in the 7 August letter that 199 electors who did not respond to AEC letters had objection action initiated against them, but it was not possible to determine whether they had voted for the Division of Hindmarsh at Election 2001.

33.20 Whilst the normal objection action was initiated on RTS mail sent by the DRO, where there was no response from the 199 electors, there was no objection action taken, despite information to the contrary given to Chris Gallus in the above letter. This was caused by a misinterpretation of source documents from the objection process, due in part to an imperfect handover process between the DRO and the acting DRO for Hindmarsh.

33.21 On 20 August 2002, the acting DRO for Hindmarsh received a letter from Chris Gallus dated 12 August 2002, asking if it was possible that 954 electors (the 755 no longer on roll, plus 199 objections) were enrolled and may have voted for the Division of Hindmarsh at Election 2001.

33.22 On 28 August 2002 the acting DRO Hindmarsh sent a letter to Chris Gallus re-iterating there was no information available to determine if any of the 755 electors in question voted in Hindmarsh on 10 November 2001.

33.23 To reiterate:

- For those RTS letters received from Chris Gallus prior to the election, no lawful action could have been taken at the time by the Division of Hindmarsh as a result of the action of subsection 118(5) of the Act.
- Chris Gallus believed that the 755 RTS envelopes she refers to in her submission and at the public hearing had been sent to the AEC before the election, which was not the case. These envelopes were received in January and February 2002.
- Where mail is returned unclaimed to the Members of Parliament, it does not necessarily indicate that the electors concerned have either lost their entitlement to be on the roll at that address or their right to vote.
- The acting DRO Hindmarsh found no evidence of illegal enrolment while the processing of the various batches of RTS mail sent by Chris Gallus' office to divisional office.
- The lack of communications from the Hindmarsh divisional office during the investigation into the RTS mail probably contributed to Chris Gallus' misunderstanding about the outcome of her request. The AEO South Australia has instigated new procedures for communication with Members of Parliament that should rectify this problem.

33.24 For the 1998 federal election, Chris Gallus had the following complaints about the AEC's management of the election in her Division:

- She alleges that she was advised that pre polling in the Division would start on Tuesday. She queried this with the DRO who confirmed that pre polling would start on Tuesday. She claims that on the Monday morning she was informed by voters that the pre polling shop front in the Division of Hindmarsh had opened.
- She alleges that the division office discarded some PVA forms. She claims that after a number of complaints, the AEC addressed the issue and assured her that all the formerly abandoned PVAs had been retrieved.
- She claims her husband, who had made a pre poll vote, received a postal ballot paper. She claims that he called the AEC to ask what to do with the ballot paper and was advised to throw it out.¹¹¹

33.25 In relation to the opening of pre polling, the *Commonwealth Gazette* no. S462, 14 September 1998 indicates that the Hindmarsh pre poll voting centre in Glenelg opened on Tuesday 15 September 1998. The election journal of the DRO for Hindmarsh at the time indicates that Chris Gallus' representative at the ballot draw was advised of the Tuesday opening date for the pre poll. The journal also records that Chris Gallus complained that the

¹¹¹ The Hon. Chris Gallus MP, Member for Hindmarsh. 2002. *Submission 162 to the Inquiry into the 2001 federal election*, p3.

pre poll had opened on the Tuesday when she had been advised it was to open on the Wednesday.

33.26 With regard to the complaint about the AEC losing PVA forms, the AEC can find no evidence of either losing the forms or of Chris Gallus complaining about lost forms in either the files from that election or in the DRO's journal.

33.27 The AEC can find no evidence of the verbal complaint made by her husband in relation to the receipt of a postal vote after he had made a pre poll vote, nor is there any record of this complaint in the DRO's journal.

33.28 Going back to 1993, Chris Gallus describes an incident in which somebody enrolled for a house at which they did not reside. The people in the house complained to Chris Gallus, who then complained to the AEC. She claims that the AEC had no intention of following up this complaint.¹¹² During her appearance before the JSCEM on 20 September 2002, she indicated she probably did not provide the AEC with the name of the alleged offender or the name of the voters at whose house he had enrolled.¹¹³ Under these circumstances, it would not be possible for the AEC to take any action.

34 Public Hearing Friday 20 September 2002 – The Hon. Chris Gallus MP, Member for Hindmarsh, Parliamentary Secretary for Foreign Affairs

34.1 During the public hearing, Chris Gallus indicated she had asked the parliamentary library to conduct a study of census data comparing the number of people in a Census Collection District (CCD) at the 2001 census with the number of people in the CCD who voted. Chris Gallus indicates that the numbers did not equate. In particular, she quoted the example of CCD 4092018 in which there were 649 citizens over 18, of which only 460 voted.¹¹⁴

34.2 The AEC has conducted a similar study to that prepared for Chris Gallus in order to explain the outcome reached by the parliamentary library. The AEC suspects that Chris Gallus misquoted the CCD that she identified, and that she actually meant CCD 4092108, which returned a similar result to the one quoted by Chris Gallus. This CCD contains the Southern Cross complex of five habitations, including a nursing home and hostel where there were 134 people enrolled on census night 2001 (there were a total of 306 people enrolled at the whole complex at this date).

34.3 In the AEC's experience, many older people in these complexes do not enrol for these complexes because they believe they will return to their own homes. This results in an apparent under enrolment in a CCD such as this.

34.4 Providing this is the CCD Chris Gallus is referring to, it should be noted that by the close of rolls for the 2001 federal election enrolment in this CCD was actually only 515. The AEC speculates that, given the nature of the complex, infirm residents of the nursing home and hostel would have accounted for a significant number of those who did not vote.

¹¹² The Hon. Chris Gallus MP, Member for Hindmarsh. 2002. *Submission 162 to the Inquiry into the 2001 federal election*, p4.

¹¹³ Transcript, p128.

¹¹⁴ Transcript, p123.

34.5 There are a number of reasonable explanations for the other smaller discrepancies noted by Chris Gallus in relation to the other CCDs measured by the parliamentary library. These are:

- the number of Australians who were overseas on census night (well over 300,000 - though figures relate to residents not necessarily citizens);
- the net undercount in the Census;
- British subjects who were on the roll on 25 January 1984 (According to Chris Gallus, the parliamentary library measured only Australian citizens over the age of 18);
- the number of registered overseas electors;
- possible citizens in the number who did not state their citizenship on their census forms (591,952 nationally); and
- the number of changes to the roll that occurred during the close of roll period, even given the very short time between the census and close of roll.

35 Submission 164 – Federal Privacy Commissioner

35.1 The Federal Privacy Commissioner argues that most citizens remain unsure of how their personal information contained on the roll is used, for what purpose and by whom.¹¹⁵

35.2 In fact, the enrolment form contains a quite detailed description of who has access to roll information. The AEC's web site also has extensive information about which public sector organisations have access to roll information and under what circumstances. This information is directly linked to the enrolment page. This information can be viewed at: http://www.aec.gov.au/_content/what/enrolment/forms.htm

35.3 The Privacy Commissioner has a concern that where the range of permitted secondary purposes to which the roll can be put is allowed to expand, it becomes increasingly difficult for individuals to track what organisations collect and use roll information.¹¹⁶ The Privacy Commissioner recommends that the range of secondary purposes for which the roll can be used be subject to strict scrutiny, public discussions and specific endorsement by parliament.

35.4 The AEC's *Review of access to the electoral roll and elector information*, Contained at Attachment D of submission 147 to the current inquiry, details variety of forms of access to elector information. All of these forms of access are based in sections of either the Act or the *Electoral and Referendum Regulations 1940* (the Regulations). Any amendment to these forms of access would require an amendment to either the Act or the Regulations, and would therefore be subject to parliamentary scrutiny.

¹¹⁵ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election*, paragraph 2.

¹¹⁶ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 12.

35.5 The Privacy Commissioner also recommends that where additional secondary purposes are permitted, efforts should be made by the AEC to ensure that individuals are made aware of how their personal information may be used and to whom it is disclosed.¹¹⁷

35.6 Public access to information about the secondary purposes to which the roll is put is discussed in relation to the Privacy Commissioner's recommendation 1 above.

35.7 In relation to data matching, the Privacy Commissioner believes that the purpose of data matching should be narrowly defined as being to maintain the accuracy of the electoral roll.¹¹⁸ As the Privacy Commissioner points out, this narrow definition already exists in section 92(1) of the Act.¹¹⁹

35.8 The Privacy Commissioner believes that recommendations 9 and 10 of the AEC's *Review of access to the electoral roll and elector information* would significantly increase the AEC's power to collect information without the individual being aware that such a collection may occur. These recommendations relate to expanding the AEC's ability to access information for data matching purposes. The Privacy Commissioner indicates that strong privacy protections should be in place before such additional collection powers are granted.¹²⁰

35.9 As the Privacy Commissioner indicates,¹²¹ the AEC acknowledges that it may be necessary to undertake consultation with the Privacy Commissioner before implementing such a proposal.

35.10 The Privacy Commissioner indicates that ideally, where extended data matching of this sort is going to occur, the secondary purposes for the use of the roll should be limited to the narrowest possible range.¹²²

35.11 The AEC concurs with this position. The AEC is already concerned that the number of organisations with access to electors' personal information may discourage some electors from enrolling and exercising their democratic rights.¹²³

35.12 At paragraph 43 of the Privacy Commissioner's submission, he indicates that if greater powers are granted to the AEC to data match, then greater restrictions on the end use of the data should be implemented as well.¹²⁴ Recommendation 3 of the AEC's *Review of access to the electoral roll and elector information* effectively makes the same point, indicating that

¹¹⁷ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* Recommendations 2 and 3.

¹¹⁸ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 34.

¹¹⁹ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 35.

¹²⁰ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 39.

¹²¹ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 38.

¹²² Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 42.

¹²³ Australian Electoral Commission. 2002. *Review of access to the electoral roll and elector information*, paragraph 17.

¹²⁴ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 43.

end use restrictions should apply to all information relating to electors on the roll, regardless of the medium.¹²⁵

35.13 The Privacy Commissioner recommends that should an expansion of data matching be necessary, consideration should be given to identifying a small number of optimal data sources, rather than giving a blanket power of demand for data.¹²⁶

35.14 The AEC sees some advantages in a wide power of demand. This would allow the AEC to flexibly target the best information to data match. The AEC believes such flexibility will provide measurable benefits in terms of the cost effectiveness and accuracy of the AEC data matching activities.

35.15 The Privacy Commissioner recommends that the Act be amended to become technology neutral in relation to the use of the publicly available roll.¹²⁷ This recommendation is also made by the AEC at Recommendation 1 of the *Review of access to the electoral roll and elector information*.

35.16 At recommendation 8, the Privacy Commissioner recommends that the use or disclosure of data derived from the roll by political parties for commercial purposes should be prohibited. As was pointed out by the JSCEM, end use restrictions and penalties already apply to copies of the roll supplied to political parties.¹²⁸

35.17 The Privacy Commissioner does not support the ANAO's suggestion that silent elector status become an option for all electors on the basis that this would compromise the transparency and openness of the electoral process.¹²⁹ The AEC concurs with this assessment.

36 Public hearing 2 October 2002 – Federal Privacy Commissioner

36.1 During the appearance of the Privacy Commissioner, the JSCEM Chair indicated that the AEC had at some point implied that political parties had sold electronic copies of the roll to the private sector for commercial purposes.¹³⁰

36.2 To the best of the AEC's knowledge, it has not made such an allegation. The AEC believes that Chair may be alluding to an AFP investigation sparked by an ALP allegation about the provision of roll information relating to the age of electors at the 1996 federal election. A full description of this incident can be found at paragraphs 7.55 - 7.58 of the JSCEM's *Report on the inquiry into the 1996 federal election*.

¹²⁵ Australian Electoral Commission. 2002. *Review of access to the electoral roll and elector information*, Recommendation 3.

¹²⁶ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* Recommendation 5.

¹²⁷ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* Recommendation 7.

¹²⁸ Transcript, pp148 – 149.

¹²⁹ Federal Privacy Commissioner. 2002. *Submission 164 to the Inquiry into the 2001 federal election* paragraph 62.

¹³⁰ Transcript, p150.

37 Public hearing Friday 16 August 2002 – Australian Electoral Commission

37.1 AEC funding matters absorbed a great deal of the JSCEM's attention during the AEC's appearance before it on 16 August 2002. Matters raised during the hearing relating the AEC's funding situation have been dealt with in a separate submission (submission 166).

37.2 The JSCEM raised a number of questions concerning the AEC's proposal to review the Act, including:

- Who will conduct the proposed review of the Act?
- How much will the review cost?
- When will the AEC be conducting the review?
- How long will the review take?
- If a review of the whole Act doesn't go ahead, a particular Division of the Act could be targeted. Which Divisions would be the AEC's priorities?¹³¹

37.3 The AEC will respond to these questions in a separate submission currently being prepared.

37.4 In relation to the issue of informing the AEC about the calling of an election, Senator Ray asked who the Department of the Prime Minister and Cabinet (PM&C) officer was that faxed the press release announcing the election to the AEC.¹³² Later in the hearing, the AEC was asked if it had raised the election announcement issue with PM&C to see if it can be dealt with administratively.¹³³

37.5 The PM&C officer who faxed the media release to the AEC was a relatively junior officer in the Department and was unlikely to have been responsible for deciding the level of communication between PM&C and the AEC on the day the election was called. On this basis, the AEC does not believe it would be appropriate to release the officer's name.

37.6 The AEC has written to PM&C to begin the process of developing appropriate procedures to rectify the problems relating to the calling of the election and the preparation of the writ.

37.7 Senator Ray indicated that he has a concern with writs being returned on different dates, and asked if anything could be done about this.¹³⁴

37.8 Since the introduction of the data entry of below the line Senate ballot papers and the electronic distribution of Senate preferences at the 1998 federal election, the Electoral Commission has returned the writs issued to it at the one time. This comprises the eight writs for elections for the House of Representatives (one for each State and Territory) and the two Territory writs for the election of Senators (Australian Capital Territory and Northern Territory).

¹³¹ Transcript, pp62 and 67.

¹³² Transcript, p68.

¹³³ Transcript, p70.

¹³⁴ Transcript, p69.

37.9 Writs for the election of Senators for the States are issued by and returned to the State Governors. Should the JSCEM recommend a uniform date for return of writs, the Electoral Commissioner could ask the AEO for each State to deliver that State's writ, endorsed with the result of the election, on a pre-arranged day so that all writs were delivered on the same day.

37.10 This action would not, alone, ensure a uniform date for the close of the period for lodging petitions with the Court of Disputed Returns. The achievement of a uniform date for the end of the period for lodging an election petition would be dependent on planning and co-ordinating the delivery of endorsed writs in accordance with the schedules of 7 vice-regal representatives, such that each of them physically received the relevant writs on the same day. While this is a matter the AEC is prepared to negotiate at each election if the JSCEM so recommends, a successful outcome may not be easy to achieve.

37.11 In 2001 the intention of the AEC was for AEOs to return the writs on the same day. However the availability of the respective governors to receive the writs was such that the writs were returned on different days.

37.12 The provision of subsection 153(2) of the Act appears to offer an example of an alternative solution. Subsection 153(2) provides that a writ is deemed to be issued at 6.00 pm regardless of the actual time during that day on which the writ was issued. It may be possible, for the purpose of the filing of election petitions (that is, for the purposes of paragraph 355(e)), for a legislative amendment to deem all writs at a general election to be returned on the day on which the last of them is returned. Such an amendment, if successful, would ensure a uniform closing date for petitions to the Court of Disputed Returns. The AEC has not explored the feasibility of such an amendment with the AGS at this time.

37.13 During the hearing, Senator Ray asked if the AEC could include in the VTR an indication of the number and type of votes to be counted on a particular day during the count.¹³⁵

37.14 The AEC has considered such a facility as part of the re-development of its web site and computerised election night and post election inquiry systems. However, the collection and display of this constantly changing data is not feasible at this stage due to a combination of technical and resource constraints and the fact that the amount of time spent entering these figures would distract divisional staff from undertaking the actual counts.

37.15 In relation to public awareness of postal voting, at page 73 of the transcript, The Chair said:

You say...that people knew all about voting and that 93% felt they were effective in their votes and their knowledge. But in the section on postal voting you identify a number of points of ignorance amongst the public. Could you connect the effectiveness of the campaign with the problems in postal voting?

37.16 This data comes from market research conducted by the AEC. The market research commissioned by the AEC involved four separate surveys comprising:

¹³⁵ Transcript, p72.

- 1) a benchmark survey conducted prior to the campaign announcement;
- 2) enrolment advertising tracking research;
- 3) voting services advertising tracking phases; and
- 4) formality tracking research and post election survey.

37.17 Electors were asked a wide variety of general and specific questions. Two questions from the report are relevant to the issue.

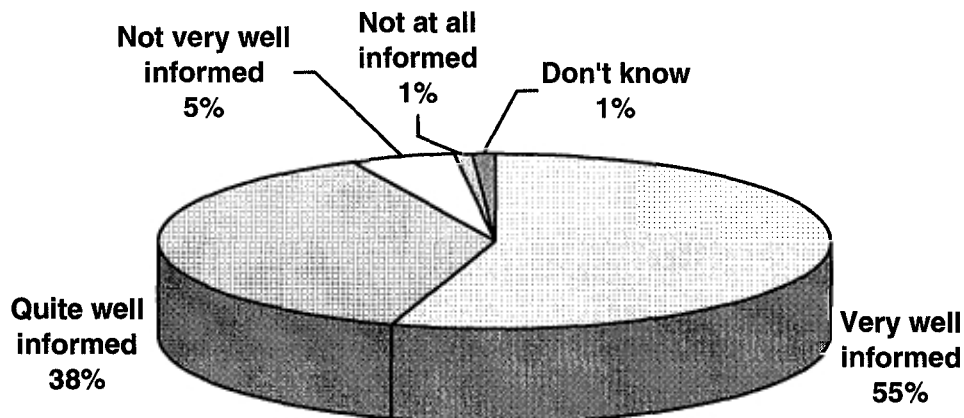
37.18 Firstly, voters were then asked if they felt informed about how to vote formally:

Thinking now specifically about the way of filling out the ballot papers for the federal election. Did you personally feel you were well informed or not well informed about the **correct** way of filling in the ballot papers? Were you ...?

- Very well informed
- Quite well informed
- Not very well informed
- Not at all informed

37.19 The results are illustrated below.

% of electors who felt informed how to vote correctly



37.20 Clearly, the vast majority of voters (93%) felt informed about how to fill in the ballot papers so as to make their vote count. (This is the same total 'informed' figure reached in 1998.) In fact, more than half the voters felt 'very well' informed about how to vote formally.

37.21 Further data analysis showed that the 6% of voters who indicated that they were not well informed were not over-represented amongst a particular sex, age group, main language group, disability status, location, education level, employment status or income level. In other words, this 6% are just a random representation of the population of Australian electors.

37.22 Secondly, voters were also asked:

Do you think that some people on the electoral roll are allowed to vote before election day? [YES/NO/DON'T KNOW]

37.23 The vast majority of voters, 4 in 5 people (81%), were aware that some people on the electoral roll are allowed to vote before election day.

37.24 Awareness of the availability of voting services was lowest among:

- Overseas born people (74% versus 84% for Australian-born people);
- Voters who mainly speak a language other than English in the home (62% versus 83% for those who speak English as the main language in the household);
- Those aged 18-24 years (18-24 years: 65%, 24-35 years: 82%, 36-45 years: 85%, 46-54 years: 82% and 55 years and over: 83%);
- People with lower levels of education (70% for primary school educated versus 87% for university educated);
- Those with a lower household income (Less than \$20,000: 76%, \$20,000 - \$40,000: 82%, \$40,000 - \$80,000: 85%, \$80,000 and over: 83%); and
- People in New South Wales (78%) and South Australia (78%) versus Australian Capital Territory/Northern Territory (89%), Queensland (85%) and Western Australia (85%).

37.25 The AEC is still concerned that nearly 20% of electors are unaware that some people on the electoral roll are allowed to vote before polling day and this is confirmed by our experience through enquiries to our call centre and dealings with electors at pre poll centres.

37.26 The Committee asked how many people have been disenfranchised by posting their postal ballot back after the Friday before polling day.¹³⁶

37.27 The RMANS declaration scrutiny system shows that 6,652 postal votes were rejected on the grounds that the vote was cast after the close of the poll. This means the vote was signed, witnessed or postmarked after polling day. This group of votes contains the number of voters disenfranchised as a result of posting their postal vote back to the AEC after the Friday before polling day, but it is not possible to differentiate between those postal votes that were given a postmark after polling day even though they were completed before polling day, and those that were not completed until after polling day.

37.28 Finally, Senator Murray asked whether the AEC could compare HTV regulation with the States with a view to uniform regulation and provide a submission to JSCEM advising of the outcome.¹³⁷

37.29 The AEC has written to the chair of the Electoral Council of Australia requesting that the next meeting of the Council consider the question of how to regulate HTV cards, starting with a comparison of current arrangements across the jurisdictions. The AEC will report back to the JSCEM on the outcome of this process.

¹³⁶ Transcript, p83.

¹³⁷ Transcript, p87.

38 Conclusion

38.1 As indicated in the preamble to this submission, the AEC anticipates that it will respond to issues raised in further submissions and public hearings at a later date. The AEC can also provide further information on the matters discussed in this submission on request of the JSCEM.
