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The Parliament of the Commonwealth of Australia

# **The 2001 Federal Election**

**Report of the Inquiry into the conduct of the 2001 Federal Election, and matters related thereto**

**Joint Standing Committee on Electoral Matters**

June 2003  
Canberra

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ISBN



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## Foreword

This report on the conduct of the 2001 federal election marks the 20<sup>th</sup> anniversary of the Joint Standing Committee on Electoral Matters and its predecessor the Joint Select Committee on Electoral Reform. These committees have made an important contribution to the conduct of free and fair Australian federal elections, by reviewing the conduct of each election since 1983 and making recommendations for improvement to electoral law and practice in Australia.

The conduct of a federal election is one of Australia's greatest participatory exercises. In 2001, over 12 million people cast their vote, more than 1,300 candidates stood for election to 150 House of Representatives seats and 40 Senate seats, and over 60,000 AEC staff were involved in the conduct of election day, along with thousands of party and candidate workers and volunteers.

In all, the Committee has made 34 recommendations either to amend the Electoral Act, or for the AEC to change its practices in relation to election management. It is worth noting that this report is unanimous. (Two members have also made joint supplementary remarks.)

The recommendations cover many aspects of election management, including the management of the electoral roll, preparations for the election, the conduct of polling, the scrutiny and publication of election results, and the regulation of political parties, donations and electoral campaigning.

Two of the Committee's recommendations, if implemented, would result in a significant change to electoral procedures. The integrity of the electoral roll has been the subject of public debate for a number of years. Confidence in the electoral system should not be undermined because the proof of identity required to vote to determine the government of Australia, is less than that required, for example, to become a member of a video library.

A number of proposals to strengthen the requirements for enrolment have been made over the years. The most recent were contained in legislation which was

passed by the Parliament in 1999, however the associated regulations to implement the new changes were disallowed in the Senate.

The Committee has reached a unanimous proposal to strengthen enrolment procedures, which may resolve the impasse over this issue. The Committee agreed on a streamlined proof of identity requirement that:

- addresses proven cases of manipulation;
- sets standards that all people entitled to vote can reasonably meet;
- is consistent with proof of identity requirements in other areas of Australian life; and
- reassures the public that barriers against roll manipulation have been strengthened.

The Committee recommends that people making a first-time enrolment, those seeking re-enrolment, and those transferring their enrolment details, first be required to provide proof of identity and address, via a driver's licence or similar form of documentation or where this is not possible, by a written confirmation of identity and address given by any two persons on the electoral roll. Applications could be made either in person by producing the required identification, or by post by providing photocopied versions of the required documentation. This scheme should be introduced with a three-year sunset clause.

The Committee believes that its proposed scheme strikes the appropriate balance between the need for an electoral roll with high integrity and high inclusiveness, that maximises voting by those entitled to do so, while minimising the opportunities for electoral manipulation.

The Committee proposes that similar proof of identity and address requirements be applied to voters making a provisional vote. Under the current provisions of the Electoral Act, there is a real possibility that many provisional voters are casting votes for Divisions in which they no longer reside. The Committee's proposal would overcome this loophole in the Act.

The above recommendations are perhaps the most far-reaching of the Committee's 34 recommendations. However, the Committee considers that all its recommendations will contribute to ongoing reform of the Electoral Act and election management procedures.

The Committee thanks all organisations and individuals who made submissions to this inquiry and appeared at public hearings. Participation in such inquiries is an important contribution to the work of the Australian Parliament.



Finally, I would like to thank my Committee colleagues and the Committee Secretariat for their work throughout this inquiry. I commend the report to the Parliament.

**Petro Georgiou MP**  
**Chair**





## **Membership of the Committee**

**Chair**            Mr Petro Georgiou MP

**Deputy Chair** Mr Michael Danby MP

**Members**        Mr John Forrest MP

Ms Jill Hall MP  
(25 June 2002 to 19 August 2002)

Mrs Sussan Ley MP  
(to 5 December 2002)

Mr Daryl Melham MP  
(until 25 June 2002 and from 19 August 2002)

Ms Sophie Panopoulos MP  
(from 5 December 2002)

Senator Andrew Bartlett

Senator George Brandis  
(from 28 August 2002)

Senator Jeannie Ferris  
(until 28 August 2002)

Senator Brett Mason

Senator Andrew Murray

Senator Robert Ray

## **Committee Secretariat**

**Secretary**

Mr Trevor Rowe (to February 2003)

Mr Russell Chafer (from February 2003)

**Principal Research Officers**

Mr Alex Olah (to February 2003)

Ms Bronwen Jagers (from February 2003)

Ms Sonia Palmieri

**Additional Research**

Mr Andrew Bomm

**Administrative Officers**

Mr Shane Read

Ms Katie Hobson



## **Terms of reference**

In May 2002 the Special Minister of State, Senator the Hon Eric Abetz, referred to the Committee an inquiry with the following terms of reference:

*That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2001 Federal Election and matters related thereto.*





## List of abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFHO	The Australian Federation of Homelessness Organisations
AFP	Australian Federal Police
AGS	Australian Government Solicitor
ALP	Australian Labor Party
ANAO	Australian National Audit Office
APVIS	Automated Postal Voting Issue System
ARO	Assistant Returning Officer
ATL	Above The Line voting on Senate ballot papers
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEIS	Aboriginal and Torres Strait Islander Electoral Information Service
CCPM	Case Categorisation and Prioritisation Model
CJC	Criminal Justice Commission
CRU	Continuous Role Update
DFAT	Department of Foreign Affairs and Trade

<b>DIMIA</b>	<b>Department of Immigration and Multicultural and Indigenous Affairs</b>
<b>DPP</b>	<b>Department of Public Prosecutions</b>
<b>DRO</b>	<b>Divisional Returning Officer</b>
<b>DVD</b>	<b>Digital Video Disc</b>
<b>EOE</b>	<b>Eligible Overseas Elector</b>
<b>ERSSA</b>	<b>Electoral Reform Society of South Australia</b>
<b>FoL</b>	<b>Festival of Light</b>
<b>GPV</b>	<b>General Postal Votes</b>
<b>HPLC</b>	<b>Homeless Persons' Legal Clinic</b>
<b>HREOC</b>	<b>Human Rights and Equal Opportunity Commission</b>
<b>HTV</b>	<b>How-to-vote</b>
<b>HWS</b>	<b>Hanover Welfare Services</b>
<b>International IDEA</b>	<b>International Institute for Democracy and Electoral Assistance</b>
<b>JSCEM</b>	<b>Joint Standing Committee on Electoral Matters</b>
<b>OGC</b>	<b>Office of General Council</b>
<b>OIC</b>	<b>Officer in Charge</b>
<b>OLD</b>	<b>Office of Legislative Drafting</b>
<b>PVA</b>	<b>Postal Vote Application</b>
<b>PVC</b>	<b>Postal Vote Certificate</b>
<b>RMANS</b>	<b>(AEC's) Role Management System</b>
<b>SAAP</b>	<b>National Supported Accommodation Assistance Program</b>
<b>SCG</b>	<b>Southern Cross Group</b>
<b>SIMs</b>	<b>Service Identity Modules</b>
<b>TCP</b>	<b>Two-candidate preferred</b>
<b>UCMS</b>	<b>United Customer Management Solutions</b>
<b>VAP</b>	<b>Voting age population</b>
<b>VTR</b>	<b>Virtual Tally Room</b>



# List of recommendations

## 2 The Electoral Roll

### Recommendation 1

The Committee recommends that all applicants for enrolment, re-enrolment or change of enrolment details be required to verify their name and address. Regulations should be made under the *Commonwealth Electoral Act 1918* to require people applying to enrol to provide documentary evidence of their name and address:

- by showing or providing a photocopy of their driver's licence or other document or documents accepted by the AEC in a particular case (or, in the event that all States and Territories make driver's licence records available to the AEC for data-matching purposes, by providing their driver's licence number); or
- where such documents cannot be provided, by supplying written references given by any two persons on the electoral roll who can confirm the person's identity and current residential address. These persons must have known the enrollee for at least one month.

The Committee endorses the amendment which has been made to the *Commonwealth Electoral Act 1918* which requires that only a person who is enrolled to vote may witness an enrolment form. However, the Committee does not consider it necessary that the witness be within a specified class of people, given the other safeguards that would be introduced by its recommended scheme.

Increased penalty provisions should be introduced for false declarations including:

- false enrolments;
- false claims by the witnesses; and

- false claims by enrollees including that they are unable to produce primary forms of identification.

Provisions introducing requirements for verification of identity on enrolment should be introduced with a sunset clause of three years. An independent investigation into the operation of such provisions should be conducted to enable an assessment of the benefits and disadvantages of the scheme, including such matters as whether the scheme improves the roll's integrity, and whether concerns that identity requirements will increase disenfranchisement are justified. (para 2.123)

### Recommendation 2

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that:

- a person whose name does not appear on the certified list of electors used on election day, who claims to have remained resident within the Division of last enrolment, shall only be issued with a provisional vote where they can validate, by producing proof of name and address, before the close of polls, that they have remained resident within the Division of last enrolment. In such cases the elector would be issued with a provisional vote for both the House of Representatives and the Senate. This would be subject to the existing requirement that the objection action that removed the elector from the roll was actioned after the last redistribution or previous federal election, whichever is later; and
- where a provisional vote is admitted from a person whose name could not be found on the certified list of electors used on election day, verification that the elector is at their claimed address shall take place by way of a habitation review as soon as practicable after the election, and only persons whose address is verified shall be reinstated to the roll. (para 2.146)

### Recommendation 3

The Committee recommends that the existing seven-day period between the issue of writs and the close of rolls be retained. (para 2.175)

### Recommendation 4

The Committee recommends that subsection 94A(1) of the *Commonwealth Electoral Act 1918* be amended so that expatriate Australians applying for Eligible Overseas Elector status are not required to state the reason why they left Australia. (para 2.234)

#### Recommendation 5

The Committee recommends that subsection 94A(2) of the *Commonwealth Electoral Act 1918* be amended so that the current two-year cut off point for application for Eligible Overseas Elector status be extended to three years. (para 2.235)

#### Recommendation 6

The Committee recommends that the AEC provide comprehensive information on overseas voting entitlements and enrolment procedures to all electors who contact the AEC about moving overseas. (para 2.244)

#### Recommendation 7

The Committee recommends in relation to homeless electors:

- that the itinerant elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* be amended so as to make clear their applicability to homeless persons;
- that the AEC continue its efforts to simplify the itinerant elector application form and ensure that its applicability to homeless persons is made more apparent; and
- that the AEC target homeless persons in its next public awareness campaign, informing them about itinerant elector enrolment. (2.312)

#### Recommendation 8

The Committee recommends that the AEC investigate the completeness of the electoral roll, with a view to further reducing the percentage of those Australians eligible to be on the roll, but not currently enrolled. (para 2.330)

### 3 Election Preparation

#### Recommendation 9

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

#### Recommendation 10

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that incumbent Independent Members and Senators who were elected as Independents need not provide 50 signatures at each election after their first or subsequent elections, but may be nominated by

just one other person, who is enrolled in the relevant Division, State or Territory. (para 3.55)

#### Recommendation 11

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

#### Recommendation 12

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

#### Recommendation 13

The Committee recommends that the AEC:

- conduct market research on the impact of advertising using the concept of numbering the boxes 1 to 4; and
- make appropriate improvements to its advertising in light of the results of the research. (para 3.97)

#### Recommendation 14

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

## 4 Voting

#### Recommendation 15

The Committee recommends that postal votes cast on or before polling day, received by an AEO, ARO or another DRO other than the DRO for the elector's home Division, after the close of poll, be included in the scrutiny if it is subsequently received by the home DRO within 13 days after the close of the poll. (para 4.24)

**Recommendation 16**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to explicitly allow scrutineers to be present at pre-poll voting centres. (para 4.63)

**Recommendation 17**

The Committee recommends that the AEC report to it in detail on how mobile polling currently operates, exactly where it believes mobile polling should take place, how mobile polling should be administered, and who should be entitled to cast their vote at a mobile polling station. (para 4.86)

**5 Election Day and the Scrutiny****Recommendation 18**

The Committee recommends that at the next federal election, the AEC conduct a pilot scheme using computers at the ten polling booths which had the largest number of absentee votes at the 2001 federal election, in order to provide electronic or on-line access to the Certified List for the purpose of verifying the enrolment details of those voters seeking to make an absent vote. (para 5.16)

**Recommendation 19**

The Committee recommends that the AEC review the evidence to this inquiry regarding polling booth administration, and take account of it in its future planning for election day administration and staff training. (para 5.24)

**Recommendation 20**

The Committee recommends that the AEC do more in its planning stages to improve access to polling places. The Committee also recommends that more effort be made with respect to determining the number and location of entrances at each polling place. (para 5.30)

**Recommendation 21**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical and safety reasons. (para 5.36)

**Recommendation 22**

The Committee recommends that subject to advice from the AEC, section 340 of the *Commonwealth Electoral Act 1918* be amended so as to prohibit

the broadcast of political material which is clearly audible within the six metres surrounding a polling place on election day. (para 5.48)

#### **Recommendation 23**

The Committee recommends that the AEC ensure that DRO/AEO decisions regarding disputed campaign materials are communicated as quickly as possible to polling booth presiding officers.

Presiding officers should be empowered to advise all relevant parties of the DRO/AEO decision regarding disputed materials, and to advise that any continued handing out of materials considered by the AEC to be in breach of the *Commonwealth Electoral Act 1918* may be restrained via Federal Court injunction. (para 5.70)

## **6 Other Issues**

#### **Recommendation 24**

The Committee recommends that the suggested technical amendments to the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* at Appendix F of this report, with the exception of amendment 18 ('No State Referendum or Vote to be held on polling day'), be made. (para 6.7)

#### **Recommendation 25**

The Committee recommends that co-location of AEC Divisional Offices not proceed, and that the AEC be given funding to ensure a minimum of three full-time electoral staff (or equivalent) in each House of Representatives Division. (para 6.31)

#### **Recommendation 26**

The Committee recommends that the AEC provide all candidates with written advice of the date on which pre-polling will commence, seven days prior to that date. (para 6.40)

#### **Recommendation 27**

The Committee recommends that public access to the roll in AEC Divisional Offices be provided by a regularly updated electronic list of all names and addresses of electors enrolled for the relevant Division, with the provision of all other Divisions held in particular offices such as the State Head Office.

Hard copies of the roll should continue to be printed once in the life of a Parliament and be available for public inspection in AEC Divisional Offices. (para 6.69)

**Recommendation 28**

The Committee recommends that an internet enquiry facility be provided whereby electors can verify their own electoral enrolment details, and as much of the detail of any elector's enrolment as the enquirer is able to provide.

This facility should not replace public access to the full electoral roll in AEC offices as recommended in Recommendation 27. (para 6.73)

**Recommendation 29**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the electoral roll is no longer available for sale in any format. (para 6.77)

**Recommendation 30**

The Committee recommends that the certified lists provided to candidates during an election *not* contain the gender and date of birth details that will appear on the certified lists used by polling officials if the relevant legislation is passed by the Parliament. (para 6.95)

**Recommendation 31**

The Committee recommends that end-use restrictions and related penalties for wrongful disclosure or commercial use apply to all information relating to electors which is contained in the electoral roll, regardless of the medium of supply. (para 6.98)

**Recommendation 32**

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended so that the penalty for accepting an anonymous donation above the limits nominated in the Act shall be an amount double the sum received through that anonymous donation. (para 6.121)

**Recommendation 33**

The Committee recommends that, at each federal election inquiry, the AEC report to the Committee on all cases of overseas donations made during the previous parliament. (para 6.124)

**Recommendation 34**

The Committee recommends that the AEC seek definitive advice on the constitutional validity of section 306B of the *Commonwealth Electoral Act 1918* and if necessary, address the substantive issue in more appropriate legislation such as in insolvency law. (para 6.133)







# **Executive summary**

## **Chapter one – Introduction**

The 2001 federal election coincided with Australia's celebration of one hundred years of Federation and the establishment of a national Parliament. Over 12 million people voted at the 2001 federal election. The 150 seats of the House of Representatives were contested by 1,039 candidates. Another 285 candidates contested 40 seats in the Senate. Several hundreds of thousands of volunteers were involved in election activity.

Total outgoing expenditure by political parties in the 2001-2002 financial year was over \$131.5 million. The AEC's expenditure on the election was over \$67 million.

### **Voter turnout**

By international standards, at over 94 per cent voter turnout in Australian elections is remarkably high.

The magnitude of difference in voter turnout is illustrated by comparing the 98.45 per cent voter turnout in the 2001 Australian election with a turnout of 75.4 per cent in New Zealand 2002, 59.4 per cent in the UK 2001 House of Commons election and 67.5 per cent in the US presidential election. Factors contributing to differential voter turnouts are canvassed.

### **Completeness of the electoral roll**

Not all eligible Australians are enrolled to vote. The AEC and the ANAO estimate that 95 or 96 per cent of Australians are on the roll, with around 550,000 entitled Australians not on the roll.

## **Method of voting**

The vast majority of votes in federal elections are cast by electors in their enrolled Division on polling day. Known as 'ordinary votes', these accounted for 84 per cent of all votes cast at the 2001 federal election.

A significant number of votes were cast through postal, pre-poll, provisional and absent votes. Collectively known as 'declaration votes', these constituted the balance of almost 16 per cent of votes cast.

Absent votes constitute the largest number, followed by pre-poll and postal votes. Provisional votes have traditionally accounted for a small proportion of all votes cast.

## **Composition of the Parliament**

The 2001 federal election resulted in the Coalition being returned to government for a third term, with an increased majority in the House of Representatives. The Coalition won a total of 82 seats, the Australian Labor Party won 65, and three seats were won by Independents. The composition of the Senate remained diverse with the Liberal Party, the National Party and the Australian Greens increasing their representation.

## **Scope and conduct of the inquiry**

On 13 May 2002, the Special Minister of State, Senator the Hon. Eric Abetz, requested that the Committee inquire into and report on 'all aspects of the conduct of the 2001 federal election and matters related thereto'. The inquiry was advertised in all major newspapers.

The Committee also wrote to all Members and Senators and Senators-elect; State Premiers, Territory Chief Ministers, and the Administrators of External Territories; the Australian Electoral Commissioner, and State and Territory Electoral Commissioners; registered political parties; and the heads of university government and politics departments.

The Committee received 203 submissions to this inquiry from a variety of individuals and organisations, and held eight public hearings.

## **Structure of the report**

The report is primarily chronological in its examination of significant elements in the conduct of the 2001 federal election.

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## Chapter two – The Electoral Roll

Australia's electoral roll is the bridge between the right to vote and the ability to exercise that right. Australian democracy depends on an electoral roll with high integrity and high inclusiveness, that maximises voting by those entitled to do so while minimising the opportunities for electoral manipulation.

Achieving integrity and inclusiveness requires careful balance. Confidence in the democratic process can be eroded by the perception that the electoral roll can be manipulated, or that it excludes people entitled to vote.

Submissions to the inquiry raised concerns about:

- the appropriateness and reliability of the AEC's Continuous Roll Update (CRU) process, some implying that it allowed significant electoral manipulation, others wanting to improve what they regarded as a generally effective system.
- The adequacy of proof of identity requirements, the integrity of close of rolls arrangements, and the admission of provisional votes.
- Perceived bias in the enrolment process against some groups, in particular overseas voters, Aboriginal and Torres Strait Islanders, and homeless persons.

### The Continuous Roll Update process

The Committee examined the operation of the CRU process. It concludes that while there is no viable comprehensive alternative to the CRU process, there is room to improve outcomes in terms of electoral roll accuracy, integrity, validity and completeness.

The Committee found a limited number of demonstrated manipulations of the electoral roll but no persuasive evidence of any widespread malpractice. The Committee believes that it is not sufficient to rest on the absence of such evidence. Further efforts are needed to achieve and publicly demonstrate that the electoral roll is of the highest integrity and inclusiveness.

### Proof of identity

The Committee reviewed the contentious and protracted debate on proof of identity requirements. It believes that the time has come to achieve a consensual, constructive resolution of this matter. Confidence in the electoral system should not be undermined because the proof of identity required to vote to determine the government of Australia is less than that required, for example, to become a member of a video library.

The Committee agreed on a streamlined proof of identity requirement that:

- addresses proven cases of manipulation;
- sets standards that all people entitled to vote can reasonably meet;
- is consistent with proof of identity requirements in other areas of Australian life, and
- reassures the public that barriers against roll manipulation have been strengthened.

The Committee recommends that all applicants for enrolment, and re-enrolment provide documentary evidence verifying their name and address by providing photocopies of a driver's licence or other documents accepted by the AEC, and where such documents cannot be provided, by two people who are on the electoral roll supplying a confirmation of identity and address.

It is proposed that these identification requirements be introduced with a three year sunset clause.

### **Provisional voters**

A person whose name cannot be found on the electoral roll may still cast a vote on the grounds that they were removed from the roll because of 'official error'. Their 'provisional' vote may be admitted to the scrutiny subject to further checking of their entitlement by the AEC. In 2001, 107,396 provisional votes were admitted to the Senate count and 81,266 provisional votes were admitted to the House of Representatives count. Submissions raised a number of concerns about provisional voters and their entitlement to vote.

The AEC has submitted that many of those claiming a provisional vote 'are not living at the address they claim as their enrolled address and may not have lived there for some years'. There is a real possibility that a significant number of people claiming a provisional vote may not be living in the Division in which they are voting.

The Committee believes there is a need to define more precisely who is entitled to a provisional vote. The Committee recommends that a person whose name does not appear on the certified list of voters, and who claims to still be resident within the Division of their last enrolment, shall only be issued with a provisional vote where they can validate that claim by producing proof of name and address before the close of polls.

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## The close of rolls

From the time the election writs are issued, electors have seven days to enrol, re-enrol, or change their enrolment details. This period is known as the 'close of rolls' period. At the 2001 election, 373,732 voters enrolled or re-enrolled during the close of rolls period, 83,027 of whom were new enrollees.

Concerns about the close of rolls period derived from the perception that the AEC cannot properly check the validity of enrolments made during that time, and that inappropriate enrolments could influence outcomes in marginal seats. Close of rolls transactions occurred in every electorate, the average per electorate being 2,400. An examination of electorates with the highest close of rolls transactions indicates that there is no apparent pattern of high close of rolls enrolments in marginal seats. The Committee examined the AEC's process for checking enrolment transactions during the close of rolls period and found that it did not differ from the processes that applied at other times. Where the checking processes indicate anomalies in enrolment applications, such applications are not added to the roll.

The Committee examined proposals to shorten the close of rolls period but concludes that, particularly in light of the checking process in place and the recommendations to strengthen proof of identity requirements for enrolment and re-enrolment, the close of rolls period should remain at seven days.

## Overseas electors

The Committee received a large number of submissions raising concerns about the current provisions for enrolment by Australians overseas.

There are an estimated 720,000 Australian expatriates. During the 2001 federal election, 63,036 sets of ballot papers were issued by DFAT's overseas posts. The majority of these were issued to Australians overseas on short term travel. Of the 63,036 votes issued, only 5,882 were issued to expatriates with Eligible Overseas Elector (EOE) status.

Australians living overseas may enrol to vote by registering as an EOE three months prior to or up to two years after departure, if they intend to return to Australia within six years of departure, and are overseas for their career purposes, or those of their spouse. They are enrolled at their last Australian address, or the Division in which they were born or with which they have the 'closest connection'. If they do not vote, or apply for a postal vote, at an election their EOE status is terminated.

Submissions objected to all the criteria governing admission to EOE status on the grounds that they derogated from the right to vote to which every Australian is entitled. The Committee believes that Australians living overseas need to

demonstrate a continued interest in Australian political affairs if they are to retain their right to vote. Accordingly it does not support removing the 'intention to return to Australia' or the 'use it or lose it' provisions of the Electoral Act. Conversely, the Committee sees no justification for differentiation between Australians on the basis of their reasons for leaving. The Committee also considers that the time limit for enrolling while overseas should be extended.

A number of submissions asserted that Australians leaving for overseas did not have adequate information about EOE status. The AEC indicated that there is no reason to provide people with information if the Act disqualifies them from EOE status. The Committee considers that the AEC should provide information about overseas enrolment to all people who contact the Commission about moving overseas.

### **Homeless electors**

Submissions raised the franchise of homeless people, contending that provisions of the Electoral Act restrict the ability of homeless people to enrol to vote in federal elections.

The Australian Bureau of Statistics (ABS) provided a three-tiered definition of homelessness: primary homelessness refers to those persons 'without conventional accommodation'; secondary homelessness includes those who move frequently from one form of temporary shelter to another; and tertiary homelessness refers to those persons who live in boarding houses on a medium to long-term basis.

The ABS estimated that the Australian homeless population totalled 105,304 at the time of the 1996 census. Estimates of the proportion of homeless people eligible to vote, but not enrolled, vary considerably, with estimates of the number of homeless people who may have been eligible to vote in the 2001 federal election but did not do so ranging from 29,000 to 80,000.

It was submitted that each of the requirements applying to ordinary voters limits the ability of homeless people to enrol and vote. Proposals were made to amend the ordinary elector provisions so as to remove these impediments.

Individuals seeking to enrol for the purposes of voting in a federal election must provide a residential address, a postal address, and a signed declaration of eligibility witnessed by someone who is eligible to be on the roll. Individuals must enrol in a Division within 21 days of becoming eligible to enrol. Once enrolled they must exercise their right to vote or risk being issued a penalty notice.

The Committee, while appreciating the difficulties confronted by the homeless in enrolling and voting, is concerned about the implication of addressing these difficulties by way of amending provisions applicable to ordinary electors.

The Committee formed the view that the very real issues confronting the homeless in regard to enrolment and voting would be better addressed through more effective utilisation of the existing itinerant elector provisions.

To enrol as an itinerant elector, a person must be an Australian citizen, over the age of 17, with no real place of living. A 'real place of living' is defined as the 'place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place'. Itinerant voter status can be revoked if the itinerant does not attend a polling booth or apply for a postal vote, goes overseas for one month or longer, or establishes a permanent place of living and resides there for a period of one month. There is a hierarchy for determining the Division in which an itinerant voter may enrol.

The itinerant voter provisions may apply to homeless persons, although this is not explicit:

- they do not require that an elector have an 'address' or a fixed place of living;
- there are no financial penalties for failing to update one's enrolment details; and
- there is no financial penalty for itinerant electors who fail to vote, although their name will be removed from the roll if they fail to exercise that right.

The Committee recommends that the itinerant elector provisions be amended to make clear their applicability to homeless persons. The AEC should continue its efforts to simplify the itinerant elector application form and ensure that its applicability to homeless persons is made more apparent, and the AEC should target homeless persons in its next public awareness campaign, informing them about itinerant elector enrolment.

The AEC undertook to include homeless people as a target group in its public awareness campaign for the next federal election, acknowledging that there would be some challenges in reaching this group, and foreshadowed that it could use some of the welfare agencies as information imparters.

### **Aboriginal and Torres Strait Islander electors**

The ALP's submission recommended re-establishing the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) arguing that its abolition in 1996/97 had disenfranchised a significant proportion of indigenous Australians. It estimated that 54 per cent of the indigenous community is currently not enrolled to vote. The AEC and the Aboriginal and Torres Strait Islander Commission have

also previously raised concerns that indigenous community enrolments are 'significantly below overall enrolments'.

The Committee inquiring into the 1998 federal election recommended that the AEC report to the Committee on options for an effective integrated educational and enrolment service for Aboriginal and Torres Straight Islanders before the next federal election. As this is still not complete the Committee will be making a separate report on this specific matter.

### **Enrolment of certain groups and electoral roll completeness**

The submissions to the inquiry concerning the enrolment of overseas, homeless and indigenous persons raise the general question of the electoral roll's completeness. Approximately 550,000 eligible Australians (or four per cent) are not on the electoral roll. The Committee reiterates its concern about this and recommends that the AEC further investigate what the ANAO recently termed 'high-risk factors for non-enrolment' with a view to ensuring that all those eligible to be enrolled are enrolled.

## **Chapter three – Election Preparation**

The period between the calling of an election and polling day is one of intense activity by the AEC and by political parties and candidates. The number of submissions, and the range of issues raised, indicate the details that need to be dealt with in this period.

### **Notification of election and election writs**

#### **Notification of an election**

The AEC submitted that it would like to receive formal advice of a forthcoming election. In 2001, the AEC was notified of the election by a faxed press release from the Prime Minister's Office. Prior to 2001, the AEC received the advice by informal telephone calls from the Department of Prime Minister and Cabinet (PM&C) to the Electoral Commissioner. As suggested by the Committee, the AEC and PM&C are now dealing with the AEC's concerns about procedures administratively.

#### **Preparation of election writs**

The AEC prepares the election writs for the House of Representatives and Territory Senators. These are the legal documents that 'command' an electoral officer to hold an election and specify key dates for the election, including polling day. The AEC suggested that the Office of Legislative Drafting might be a 'more



appropriate organisation' than the AEC to prepare the House of Representatives and Territory Senator writs. The Committee can see no reason why the AEC is not the appropriate body to prepare writs.

### **Format of writs**

The AEC also raised the physical form of returned writs. Following the election, the names of the candidates elected are required to be endorsed on the reverse side of the relevant writ. The AEC was concerned about the risk of damaging or destroying the original writs in the process of printing or photocopying the names onto the writs. Although this has never been known to happen, the Committee supports the AEC's recommendation to allow the name of each elected candidate to be included in an attachment to the writ.

### **Return of writs**

The High Court sitting as the Court of Disputed Returns is the body that determines any disputes as to the validity of an election or a return. Presently, a petition to the Court of Disputed Returns must be filed within 40 days after the writ to which the petition relates is actually returned. This results in varying closing dates for petitions as the different writs are returned. The AEC and the Office of General Counsel have considered amendments to address this. The Committee considers that the operation of the Court of Disputed Returns generally, is worthy of further examination in the future.

## **Nominations and registrations**

### **Nominations**

Nominations of candidates are an important formality in the preparation for an election. A notable circumstance in the 2001 election was a candidate simultaneously having nominations for both the Senate and the ACT Legislative Assembly, but this was ultimately unproblematic.

### **Deposits**

A suggestion was made that the deposit paid by candidates upon nominating for election (which is currently \$350 for House of Representatives candidates and \$700 for Senate candidates) should be raised to \$10,000, to discourage candidates and minimise the size of ballot papers. The Committee considers that this would unduly inhibit participation in the democratic process.

## Signatures

Candidates may be nominated for election by either a registered political party, or by 50 or more electors who are entitled to vote in the relevant election. It was submitted that incumbent Independent members should not need to provide 50 signatures at each election after their first, but be able to be nominated by just one other person enrolled in the Division in question. The Committee generally supports this, but not for members elected on behalf of a registered political party who leave that political party to sit as Independents.

### 'Inappropriate' candidate names

Candidates must nominate using the name under which they are enrolled (or entitled to enrol) to vote. In certain circumstances, the AEC may refuse to enrol a person, including where the person's name is 'fictitious' or 'frivolous'. In the 2001 election, Nigel Freemarijuana (who in 1996 had changed his name by deed poll from David Nigel Quinlan) nominated as a candidate for the 2001 election. The AEC replaced the name Nigel Freemarijuana on the roll with the elector's given name. Mr Freemarijuana had his legal name reinstated to the roll after a successful appeal to the Administrative Appeals Tribunal (AAT), which referred to the 'strong public interest in the applicant being enrolled in his legal name – the name he is generally known by.' The Committee considers that where a person is generally known by a legally registered name for a period of at least 12 months, enrolment and nomination as a candidate should not be refused by the AEC on the 'fictitious' and 'frivolous' grounds.

### Registration of political parties and party names

A party may not register a name that resembles another party's name to such an extent that it is likely to be confused with or mistaken for the other party's name, abbreviation or acronym. It was asserted that, notwithstanding this prohibition and a pre-registration process, some parties have been allowed to register despite having a similar name to an existing party. The ALP cited the 'Curtin Labor Alliance' as an example, and recommended that the AEC report on options for reform in this area.

At the Committee's request, the AEC suggested options for dealing with this issue. Essentially these are either: amending the Act to restrict the use of words such as 'liberal' or 'labor' in some way; or maintaining the status quo, allowing the AEC to continue to use its discretion to determine when a new party name might be likely to be confused with, or mistaken for, another party's name. The Committee considers that banning names in the abstract may have a number of unintended consequences, and that to assist in the understanding of the application of the relevant provisions, the AEC should be required to provide, and publish, detailed reasons for its reviewable decisions.

## Public awareness campaign

A substantial element of the AEC's election preparation is a public awareness campaign, which seeks to inform the voting public about how, when and where to enrol and vote, and about the AEC's role. For the 2001 federal election, the AEC spent a total of more than \$17 million on national and local advertising; public relations activities; a national call centre; internet sites including the Virtual Tally Room (VTR); responses to email enquiries; and the distribution of various publications.

### AEC advertising

One element of the AEC's public awareness campaign is educating electors about how to correctly complete a ballot paper. One MP expressed concern that AEC advertising distributed in his electorate may have increased informal voting involving not numbering all the boxes on a House of Representatives ballot paper. The Committee appreciates this concern, and recommends that the AEC conduct market research on the impact of the relevant advertising and make appropriate improvements to its advertising in light of the results of the research.

### National call centre

In 2001, the AEC's national telephone enquiry service answered a total of 513,347 calls. There has been a history of a high level of unanswered calls to the enquiry service, and on the day the rolls closed for the 2001 federal election, 50 per cent of calls made were not answered. The Committee is concerned about this, particularly given that arrangements put in place for the 2001 federal election were intended to overcome difficulties encountered in the 1998 federal election. The AEC acknowledged that the number of calls missed was an issue of concern. It has in-principle agreement for the transfer of the national call centre service to Centrelink, and expects that this will improve the situation.

## Other means of improving election awareness

### Civics education

Some submissions stressed the importance of community electoral education generally. There are a wide range of ongoing programs and activities in this area, including: the Commonwealth Government's multi-million dollar *Discovering Democracy* program for civics education in primary and high schools; the Australian Parliament's Parliamentary Education Office, which aims to encourage participation in and awareness of Australian parliamentary democracy; AEC Electoral Education Centres in Canberra, Melbourne and Adelaide; and parliamentarians' contributions such as participating in local civics education, meetings with constituents, and meeting groups visiting Parliament House.

### **Distribution of information on candidates and policies**

Information on parties, candidates and their policies is an important aspect of electoral public awareness, which to a large extent is the responsibility of the candidates and parties themselves. Submissions recommended improvements to information provided about candidates (in particular individual Senate candidates), and expressed concern about poor or inadequate coverage of parties and electoral information.

The Committee supports the widest possible facilitation of political debate.

### **Regulation of political campaigning**

Political parties and candidates compete for public attention to promote their electoral platforms through mail-outs, television and radio broadcasts, and print advertising. By virtue of their political nature, these campaigns can be contentious.

#### **Definition of electoral advertisements**

It was noted that a provision of the Electoral Act that requires electoral advertisements in certain printed material to have a heading of 'advertisement', now implies that all political commentary in any journal must be labelled as an advertisement. Following a recommendation out of the inquiry into the 1998 federal election, amendments have been introduced to the parliament to make clear that this provision is meant to apply only to advertisements. These amendments have not yet been debated or passed. In the meantime, the application of section 331 caused some uncertainty at the 2001 election, and also led to concern about the timeliness of the AEC's responses to issues in the time-critical context of a election campaign.

#### **Push polling**

One submission was concerned about 'push polling' - used in this context to refer to representations made in the guise of independent market research with a view to influencing electors' voting intentions. The Committee notes the difficulty in regulating polling undertaken by political parties. However, given the competitive nature of the Australian party political system, any problematic polling practices tend to be made public quickly, with the potential for political embarrassment to the offending party and the risk of defamation proceedings against that party.

#### **Regulation of factual content of political advertising**

The Committee considered attempts to regulate the factual content of political advertising. The Committee notes evidence that South Australian legislation on truth in political advertising created opportunities to disrupt the electoral process, and had not had any appreciable effect on the nature of political advertising. The

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Committee considers that regulation of truth in political debate would be unwise and unworkable, particularly if the AEC was appointed to undertake such regulation.

#### **How-to-vote cards**

Concerns about cost, environmental waste, harassment of voters and difficulties faced by smaller parties and independents, motivated calls for the abolition or restriction of how-to-vote cards. Alternatives to this practice would have their own problems and the importance of the practice of distribution of how-to-vote cards on election day – in mobilising democratic participation and keeping political parties in touch with their members – should not be underestimated.

The order of preferences on how-to-vote cards was also an issue, in particular where preferences on candidates' how-to-vote cards are different to the relevant party's authorised preferences. The Committee considers that such internal disputes between candidates and their parties should be resolved internally. Requiring advance registration of how-to-vote cards would impose an undue administrative burden on parties, candidates and the AEC, and such a scheme would be likely to be undermined by political parties lodging multiple how-to-cards to keep their options open.

#### **Entitlements of incumbent candidates**

Concern was expressed about the entitlements of incumbent candidates and their use as well as parliamentarians' uncertainty about material they could produce and distribute during the campaign, and the difficulty in obtaining adequate guidance on this. It is difficult to define exhaustively 'parliamentary business', 'electorate business' and 'party business' – terms that are fundamental to determining eligibility for entitlements. The Committee considers that the guidelines governing the use of parliamentary entitlements by incumbent candidates and their staff during election campaigns should be clarified, and that the Department of Finance and Administration establish a telephone hotline from the day of the issue of the writs to provide advice on the guidelines to incumbent candidates.

#### **Government advertising**

Governments advertise for a variety of purposes including, for example, social security entitlements and defence force recruitment. Some advertising may be perceived to be political. While there is agreement that political advertising by governments is inappropriate, there are significant difficulties both in defining what constitutes government advertising for political purposes, and in determining appropriate regulation and enforcement mechanisms. Moreover, the issue of political matter in government advertising goes well beyond the election

context. However, within this immediate context, both ALP and Liberal Party/National Party governments have been committed to observing the caretaker convention that government advertising should be terminated on the calling of an election.

## **Chapter four – Voting**

This chapter examines the voting methods available to Australians on polling day: ordinary voting, declaration voting, mobile polling and assisted voting. Informal voting and multiple voting are also considered.

### **Declaration voting**

At the 2001 federal election, 15.92 per cent of all votes were cast as 'declaration votes'. Declaration votes include postal, pre-poll and absent votes, as well as 'provisional' votes as discussed in chapter two.

At the 2001 federal election, 451,900 electors (3.74 per cent of the total) cast postal votes. Electors wishing to cast a postal vote may request a Postal Vote Application (PVA) form from the AEC, or download it from the AEC website. Alternatively they may receive a PVA sent by political parties or candidates. Once PVAs are returned to the AEC, postal ballot papers are dispatched to the elector.

The AEC expressed concern about candidates and parties receiving completed PVAs from electors and allegedly not then forwarding those PVAs expeditiously to the AEC. The AEC raised the scenario of political parties returning PVAs to the AEC either after the cut-off for receipt, or so close to the deadline that the AEC had insufficient time to process them and provide ballot papers to the applicants.

The Committee is of the view that distribution of PVAs by parties and candidates provides an important service to electors. The Committee notes that, when requested to do so, the AEC conceded that it could provide no evidence of instances where PVAs delivered to the AEC by political parties were received too late to be processed.

The Electoral Act stipulates that where a postal vote certificate envelope has been postmarked after polling day, the enclosed vote shall not be counted. Where there is no legible postmark, and the signature of the witness bears a date on or before polling day, the envelope may be admitted for further scrutiny.

The AEC argued that if a postal ballot paper is postmarked after polling day, but is signed and witnessed before polling day, it should be admitted rather than discarded as an invalid vote. However, the Committee believes it is a fundamental

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feature of Australia's electoral system that all votes are known to be cast before polls close. The AEC's proposal would weaken this aspect of the electoral system, and the Committee therefore does not support it.

The AEC also raised concerns about the timeframe for receipt of postal votes. The Electoral Act allows a period of 13 days after the close of polling for late receipt of postal votes by the Divisional Returning Officer (DRO) for the elector's 'home' Division. If the postal vote is sent to another AEC officer, it must be received by that officer before the close of the poll. The Committee agrees with the AEC that this is illogical and recommends that all valid postal votes cast on or before polling day be included in the scrutiny if they are received by the home DRO within 13 days after the close of the poll.

Electors may apply to be registered as General Postal Voters (GPVs) if they are not able to attend a polling booth in person. This may be because they do not live within 20 kilometres of a polling place, are physically unable to travel, are unable to attend because of religious beliefs, are in custody, or have a 'silent' enrolment for personal safety reasons. The key service provided by the AEC to GPVs is that ballot papers are sent to them as soon as practicable following the declaration of nominations for a federal election. GPVs are not required to fill out a Postal Vote Application form.

The AEC submitted that residents of 'special hospitals' (such as nursing homes) should be able to register as GPVs as an alternative to mobile polling, and that all remote workers, even those living within 20 kilometres of a mobile polling booth, should also be able to register as GPVs. The Committee does not consider the AEC's arguments compelling.

A number of submissions commented on perceived inefficiency in the operation of the postal voting process used by Australians overseas. The AEC suggested that overseas postal voting could be expedited by removing the requirement that PVAs be signed by a witness as well as the elector. However, the Electoral Act allows overseas voters who cannot find a suitable witness to complete a signed statement setting out the reasons why they were unable to meet the witnessing requirement. The Committee does not consider that current anecdotal evidence of difficulties encountered in voting by post from overseas is sufficient to warrant the removal of any key steps in the process.

Electors who cannot attend a polling place on polling day can cast a pre-poll vote in the lead up to polling day or on polling day if they are voting outside the State or Territory in which they are enrolled. Just under five per cent (585,616) of all votes cast in the 2001 federal election were pre-poll votes.

Since 1993, the AEC has recommended to successive election inquiries that the Electoral Act be amended to allow a pre-poll vote which is cast in an elector's

home Division to be considered as an ordinary vote, rather than a declaration vote. The AEC cites administrative efficiencies as the reason for this proposed change. The Committee believes that in general, an ordinary vote should only be available to an elector when voting in their home Division on election day.

Under the Electoral Act's current provisions, candidates' scrutineers, who play an important role in ensuring the integrity of the voting and scrutiny processes, are not explicitly allowed access to pre-poll centres. The Committee recommends that this oversight be rectified. Implementation of this recommendation may address some of the concerns about pre-poll voting which were expressed in evidence to the inquiry.

### **Mobile polling**

Certain electors unable to access a normal polling booth may be visited by a mobile polling booth. Mobile polling takes place in hospitals and nursing homes, remote areas and prisons.

The AEC recommended that the Electoral Act be amended so that mobile polling at 'special hospitals' (such as nursing homes) is available to all residents and patients, not just patients under 'continuous nursing care'. The Liberal Party of Australia also highlighted confusion surrounding mobile polling in special hospitals.

Current regulations and arrangements for mobile polling sit uncomfortably with the ever-changing landscape of retirement, nursing home, and hospital accommodation. The Committee recommends that the AEC report to it in detail on how mobile polling currently operates, and what changes may be required.

### **Assisted voting**

The Electoral Act permits some voters to have assistance (from a person of their choosing or a polling official) to mark, fold, and deposit their ballot paper. A voter may have assistance if their sight is so impaired, or they are so physically incapacitated or illiterate, that they are unable to vote without assistance.

Concern was expressed about high levels of assisted voting in some communities in one electorate. The Committee awaits the report which the AEC is currently drafting on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders. This report and any action that follows from it may impact on the issue of assisted voting by Aboriginal people.



## **Informal voting**

'Informal' ballots are those not filled out correctly and consequently not counted towards any candidate. At the 2001 federal election there were 580,590 informal votes (4.82 per cent) in the House of Representatives ballot. The Committee examined a number of potential reasons behind informal voting, and possible solutions.

## **Multiple voting**

The term 'multiple voting' is often used to describe the deliberate act of fraudulently casting two or more ballots at the same election. The number of apparent fraudulent multiple votes in the 2001 federal election was low, and the Committee accepts the AEC's assertion that these cases do not illustrate a pattern of concentrated multiple voting in particular Divisions.

In February 2002, the Australian Federal Police (AFP) and the AEC signed a service agreement so as to formalise the process of referring potential multiple voters to the AFP. The Committee welcomes this more systematic approach, and expects that the levels of apparent dual and multiple voting at federal elections will continue to be closely scrutinised.

## **Chapter five – Election Day and the Scrutiny**

This chapter is concerned with the issues surrounding the operation of polling booths on election day, the process by which votes are counted and the transmission of results.

### **Polling booth administration**

Proposals to streamline checking of electors' enrolment details at polling booths were noted by the Committee. The Committee recommends that at the next federal election, the AEC conduct a pilot scheme using computers at the ten polling booths which had the largest number of absent votes at the 2001 federal election, in order to provide electronic access to the certified list of voters for the purpose of verifying the enrolment details of those voters seeking to make an absent vote.

The Committee notes submissions from polling place officials relating to their remuneration, training and working conditions. The Committee recommends that the AEC review the evidence to this inquiry regarding polling booth administration, and take account of it in its future planning for election day administration and staff training.

The Committee recommends that the AEC do more in its planning stages to improve access to polling places, and that more effort be made with respect to determining the number and location of entrances at each polling place.

The Electoral Act stipulates that polling may be adjourned to another day if it is interrupted by 'riot or open violence' or 'storm, tempest, flood or an occurrence of like kind'. The Committee agrees with the AEC that this provision is too narrow, and recommends that the Act be amended to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical and safety reasons.

Several concerns about electioneering at polling places are examined. The Liberal Party expressed concern about political parties using loudspeakers for electioneering near polling places. The AEC advised that such broadcasts were unlikely to be a breach of the Act unless the source of the broadcast was within six metres of the polling place (the Act bans 'canvassing for votes' within this limit). The Committee recommends that the Electoral Act be amended so as to prohibit the broadcast of political material which is audible within the six metres surrounding a polling place on election day.

Disputes about a variety of issues, such as polling booth dressing, how-to-vote cards, and noise, are commonplace on election day. The Committee examines the powers of polling booth presiding officers to resolve disputes which arise on polling day, and recommends:

- that the AEC ensure that decisions by DROs and higher authorities are communicated as quickly as possible to polling booth presiding officers; and
- that presiding officers be empowered to advise all relevant parties of AEC's decisions regarding disputed materials, and to advise that any continued distribution of materials considered by the AEC to be in breach of the Electoral Act may be restrained via Federal Court injunction.

### **Conduct of the scrutiny and re-counts**

The count of ballot papers is known as the 'scrutiny'. The Committee notes the potential for further use of electronic vote counting, accepts the need for continued electronic counting of the complex Senate vote, and encourages the AEC to continue its development of accredited and accountable computerised counting programs. The Committee intends to continue to encourage independent expert review of this area by organisations other than the AEC.

Any candidate for election may request a re-count of the votes before the declaration of the relevant result. A DRO or Australian Electoral Officer (AEO)

may also initiate a re-count. For the 2001 federal election, re-counts were undertaken in the seats of Hinkler and Solomon.

The AEC submitted that the Electoral Act should be amended so that faxed or electronic versions of ballot papers could be used for re-counts. The Committee believes that it is important to maintain the integrity of the re-count process and that for this reason, re-counts should continue to be made on the basis of the original ballot papers only.

### **Transmission of results**

The Committee does not support proposals that there be a 'blackout' of the broadcast of early results from the Eastern States until polling has concluded in Western Australia. There is no evidence to support concerns that the broadcast of early results from the Eastern States influences voters' decisions in Western Australia.

As in previous elections, the National Tally Room provided progressive voting information for the 2001 federal election. Electoral results were also published on the Virtual Tally Room on the AEC's website. While noting concerns raised in one submission about the use of the Virtual Tally Room, the Committee does not see a need for a review of the Virtual Tally Room.

## **Chapter six – Other Issues**

This chapter covers a range of issues, including: proposed amendments to the Electoral Act; the AEC's administration and responsibilities; privacy and access issues relating to the provision and use of the electoral roll; and election funding and financial disclosure. Litigation arising out of the election, and redistribution of electoral boundaries, are also briefly examined.

### **Proposed amendments to the Electoral Act**

The AEC submitted that ongoing amendments to the Electoral Act have resulted in an Act 'that is becoming unnecessarily cumbersome and a barrier to effective electoral administration'. The AEC nominated 'large-scale systematic issues' in the Act which it believed warranted legislative change. However, the Committee has a number of concerns about the AEC's proposal to rewrite the Electoral Act, and awaits a detailed submission from the AEC on this matter.

The AEC also recommended a number of technical amendments to the Electoral Act and the Referendum (Machinery Provisions) Act. The Committee supports the implementation of these technical amendments, with one exception related to the

conduct of State referenda on polling day. The AEC also made a series of substantive recommendations concerning the operation of referenda. However, many of these proposed changes were not supported by adequate justification. The Committee does not support these amendments.

### **AEC administration and responsibilities**

The resources, operation and structure of the AEC were raised in a number of submissions to the inquiry. The AEC sought the Committee's support for a substantial funding increase. The Committee considers that the AEC has not provided sufficient information to warrant such support at this stage. The Committee intends to seek from the Special Minister of State a further reference regarding the administration and funding of the AEC. The AEC's call for increased funding would be examined in detail in the context of that review.

The AEC has created some co-located Divisional Offices and proposes further co-location. While co-location of offices might deliver administrative efficiencies, the Committee is not satisfied that the AEC has addressed longstanding concerns about:

- a potential loss of local electoral knowledge, with possible effects on the accuracy of the rolls;
- a reduced service to electors, MPs and candidates;
- a diminished capacity to conduct electoral education and other such functions; and
- a reduced number of permanent staff conducting elections.

The Committee recommends that co-location not proceed further, and that the AEC maintain a minimum of three full-time staff in each House of Representatives Division.

Some submissions raised concerns about adequacy of communications with the AEC during the election period. The Committee considers that where appropriate, new procedures for communicating with parliamentarians instigated by the AEO for South Australia should be applied nationally.

### **Privacy and access**

Privacy and access to information on the electoral roll are important issues for many Australians. The Committee has reviewed current privacy and access arrangements, as well as recent AEC proposals for change. The Committee recommends that an internet enquiry facility be provided to allow electors to verify their own enrolment details, and confirm as much of any other elector's

details as they are able to provide. However, this facility should not replace access to the full electoral roll in AEC offices. In light of modern technology which allows information on a purchased copy of the electoral roll to be extracted for commercial purposes, the Committee recommends that the electoral roll no longer be available for sale in any format.

The AEC recommended that the Electoral Act be amended to remove all stipulations as to the form of medium by which access to the roll is provided. The Committee does not support the open-ended discretion sought by the AEC. Instead, as and when appropriate, the AEC should seek specific amendments to the Act to stipulate new media through which the electoral roll may be provided.

Regrettably, three separate government agencies have recently created the wrong impression that there are no end-use restrictions on the use of electoral roll information by political parties and Members of Parliament. In fact, the Electoral Act sets out the uses to which such information may be put, specifically prohibits political parties and Members of Parliament from using this information for commercial purposes, and attaches substantial penalties to unauthorised use. The Committee supports continued access to the electoral roll by registered political parties and MPs, because of their obligation to communicate with their constituencies.

A report by this Committee's predecessor recommended that gender and date of birth details be included on the certified list, as a means of limiting the possibility of a person attempting to vote in the place of another person of a different gender or an obviously different age. For privacy reasons, the Committee recommends that the certified lists provided to candidates during an election not contain the gender and date of birth details that will appear on the certified lists used by polling officials.

The Committee recommends that end-use restrictions and related penalties for wrongful disclosure or commercial use apply to all information relating to electors which is contained in the electoral roll, regardless of the medium of supply.

The AEC recommended an expansion of its powers to demand information from State Government authorities in order to facilitate the CRU process described in chapter two, subject to consultation with the Privacy Commissioner. The Committee believes that the AEC should, as a matter of priority, consult with the Privacy Commissioner about its recommendations. The Committee will consider the recommendations that emerge from this consultation.

## **Funding and disclosure**

Part XX of the Electoral Act provides for public funding of election campaigns and disclosure of amounts received by, and paid to, political parties and candidates.

The ALP submitted that political parties (and their associated entities) should be compelled to have their disclosure returns certified by a registered auditor 'to guarantee they are free from errors and omissions at the time they are made public', and that persons and organisations that donate above \$25,000 should be subject to compliance audits by the AEC. In response to the first suggestion, the Committee notes that the penalties specified in the Electoral Act for providing false information in a return, and the attendant risk of negative publicity for the party, already provide an adequate incentive for parties to ensure that their returns are accurate. In relation to compliance audits of persons and organisations that have disclosed contributions of \$25,000 or more, this is now provided for in the Electoral Act.

Submissions from the ALP and the B'nai B'rith Anti-Defamation Commission also expressed concern about disclosure of donations to the Citizens Electoral Council (CEC), stating that the CEC had received a high proportion of its donations from undisclosed sources. The Committee stresses that the comments by the ALP and the Anti-Defamation Commission do not amount to evidence that the CEC is failing to meet its obligations under the disclosure provisions of the Electoral Act. The Committee further notes that the AEC has the power to conduct random audits, and that the Electoral Act already requires any person making donations to a political party totalling \$1,500 or more in a financial year to furnish a return to the AEC.

The Committee believes that the current penalty for accepting anonymous donations above limits prescribed in the Electoral Act (namely, forfeiting an amount equivalent to the amount received) is limited in its deterrent effect. The Committee recommends that the Act be amended so that the penalty for accepting an anonymous donation shall be an amount double the sum received through that donation.

The ALP submitted that donations to political parties from overseas, while relatively rare, may be a mechanism for hiding the source of donations. The Committee recommends that the AEC monitor and report back to the Committee on instances of overseas donations.

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## Chapter seven – Proposed Changes to the Electoral System

Submissions raised a number of broader issues than those pertaining specifically to the conduct of the 2001 federal election. These included compulsory voting, changes to the preferential voting system, the length of the parliamentary term, electronic voting, and public participation in the democratic process.

### Compulsory voting

One of the distinguishing features of Australian democracy is what is often described as compulsory voting for federal elections. It is important to note that under the Electoral Act, the duty of the elector is to: attend a polling station; have their name marked off the certified list; receive a ballot paper and take it to an individual voting compartment; and fold the ballot paper and either place it in the ballot box, or return it to the presiding officer if making a declaration vote.

Some submissions commenting on compulsory voting recommended that voting in Australian federal elections be made voluntary. The main thrust of these submissions was that citizens should be allowed to exercise ‘the democratic right to choose not to vote.’ The Committee notes that in public polling 74 per cent of respondents supported compulsory voting at federal elections, and that there are a number of arguments in favour of compulsory voting that counter the arguments against it.

After the 1998 federal election, this Committee’s predecessor concluded that while there were strong views on compulsory voting, it had no plans to pursue the issue of voluntary voting. The Committee concurs with this view.

### Changes to the voting system

Submissions raised a number of proposals for change to the current voting systems for the House of Representatives and the Senate. The changes proposed included:

- optional preferential voting for House of Representatives and Senate elections;
- various amendments to Senate ‘above the line’ voting;
- various ‘weighting’ methods for preference distributions; and
- proportional representation for the House of Representatives.

The Committee notes the views of those advocating changes to the current electoral system, but does not support the broad changes suggested. The

Committee is of the view that the single-member constituencies of the House of Representatives elected through full preferential voting, combined with the Senate's system of proportional representation, provide a good balance in the Australian political system.

### **The parliamentary term**

The Committee received a number of submissions arguing that the parliamentary term should be changed to a four-year term. Predecessors of this Committee have endorsed four-year terms for the House of Representatives. This Committee also endorses this reform, and expresses the hope that the Government will progress it.

### **Electronic voting**

A number of submissions called for the introduction of electronic voting. The Committee examined the advantages and disadvantages of electronic voting, noting trials of electronic voting in the Australian Capital Territory and the United States.

The AEC submitted that electronic voting for federal elections should be offered as an alternative or addition to postal voting. The AEC recommended that the Electoral Act and the Referendum Act be amended to allow pilot trials of electronic voting to take place.

The Committee believes that while electronic voting may offer some potential benefits, there are also many risks involved. It does not support the AEC's recommendation to proceed with unspecified pilot trials of electronic voting, which have as-yet unexplored implications for the operation of the Electoral Act. Prior to any approval for pilot trials, the AEC should first provide to the Parliament, via this Committee, a detailed implementation plan.

### **Public participation**

A number of submissions made recommendations concerning public participation in the democratic process. These included:

- calls for the introduction of citizen-initiated referenda;
- placement of 'voting computers' in public places, to enable citizens to learn the background of proposed Bills and indicate their views; and
- convening of a Constitutional Convention or similar independent commission to discuss all matters related to the operation of the Federal Government, Parliament and the electoral system.



The Committee notes the contribution of these submissions to the inquiry, and believes that these important issues should be subject to broad public debate.

