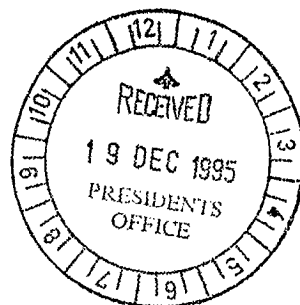

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

DEPARTMENT OF THE SENATE
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30 APR 1996
Mary Evans

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

ELECTORAL REDISTRIBUTIONS



REPORT ON THE
EFFECTIVENESS AND APPROPRIATENESS OF THE
REDISTRIBUTION PROVISIONS OF PARTS III AND IV
OF THE *COMMONWEALTH ELECTORAL ACT 1918*

DECEMBER 1995

CANBERRA

FOREWORD

This report responds to a reference from the Minister for Administrative Services to inquire into and report on "the effectiveness and appropriateness of the redistribution provisions of Parts III and IV of the *Commonwealth Electoral Act 1918*".

The experience of the 1994 redistributions of Victoria, Queensland and the Australian Capital Territory inevitably guided much of the evidence to the Inquiry. However, the Committee has not set out to judge the boundaries determined at those redistributions. Nor has the Committee sought to add to the algebra-driven specialist literature on electoral districting. Rather, given that some eleven years have passed since the current redistribution process was instituted, the Committee has re-examined the operation of the process to determine how effectively it meets the underlying - and occasionally competing - policy objectives.

The main elements of the process were recommended in the 1983 *First Report* of this Committee's predecessor, the Joint Select Committee on Electoral Reform. The Inquiry demonstrated that the Joint Select Committee's work has stood the test of time remarkably well. Redistributions have largely ceased to be a matter for partisan debate, being conducted in accordance with well-defined principles by expert, independent bodies.

This report endorses the fundamentals of the system while finetuning some aspects, for example the degree to which "community of interest" factors are taken into account. The Committee has also recommended a series of adjustments to the public suggestions, comments and objections stages of a redistribution.

As Chair, I thank Deputy Chair Mr David Connolly MP and our fellow Committee members for working through the issues in a bipartisan manner. I also thank the Committee Secretary Mr Kieran Schneemann, the Senior Research Officer Mr Russell Chafer, the Administrative Officer Mrs Helen Fyfe and the Australian Electoral Commission's Ms Anthea Wilson, who assisted the Committee during the course of the Inquiry.

The Committee is grateful to those individuals and organisations who made submissions to the Inquiry and appeared as witnesses at public hearings. We particularly thank the Australian Electoral Commissioner Mr Bill Gray and his staff for the high quality of their advice to this Inquiry, and for their support during the life of this Parliament.

LAURIE FERGUSON MP
Chair

December 1995

TERMS OF REFERENCE

That the Joint Standing Committee on Electoral Matters inquire into and report on the effectiveness and appropriateness of the redistribution provisions of Parts III and IV of the *Commonwealth Electoral Act 1918*.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

37TH PARLIAMENT

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¹ Replaced Mr Stephen Smith MP 19 September 1995; Chair from 21 September 1995

² Replaced Senator John Tierney 28 March 1995

³ Replaced Senator Dominic Foreman 1 September 1995 (Senator Foreman Chair to 1 September)

⁴ Chair from 4 to 21 September 1995

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ABBREVIATIONS:

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
ALP	Australian Labor Party
CCD	Census Collection District
CEA	Commonwealth Electoral Act
DRO	Divisional Returning Officer
ITA	Interactive Territory Assignment
MP	Member of Parliament
NSW	New South Wales
NT	Northern Territory
PSMA	Public Sector Mapping Agency
QLD	Queensland
SA	South Australia
SLA	Statistical Local Area
TAS	Tasmania
VIC	Victoria
WA	Western Australia

FOOTNOTES

References in some of the footnotes to "transcripts" (of evidence taken at public hearings) are based on **proof** transcripts only. In some instances page numbering might change slightly in the final transcripts.

CHAPTER SUMMARY AND LIST OF RECOMMENDATIONS

ONE: BACKGROUND TO THE INQUIRY

This Chapter gives information on the background to and conduct of the Inquiry.

TWO: THE REDISTRIBUTION PROCESS

This Chapter sets out the current redistribution process, summarises the 1994 redistributions of Victoria, Queensland and the Australian Capital Territory, and examines possible timings for redistributions in other States.

THREE: THE DETERMINATION OF STATE ENTITLEMENTS

In the tenth month after the first meeting of a House of Representatives, the Electoral Commissioner determines the entitlement of the various State and Territories to representation in the House. The Committee recommends that the determination be moved to the thirteenth month to allow more up-to-date population figures to be used. However, the Committee rejects a proposal that the determination be based on population statistics projected to the anticipated date of the next election, rather than the latest current estimates.

The Committee also considers anomalies caused by the use of figures for *population* rather than enrolment to make the determination, but concludes that as this is a Constitutional requirement no practical solution is available.

Recommendation 1: that subsection 46(1) of the Electoral Act be amended so that the determination of State and Territory representation entitlements shall fall due in the thirteenth month after the first meeting of a House of Representatives. (p22)

Recommendation 2: that the determination of State representation entitlements continue to be based on the latest current estimates of population, rather than statistics projected to the anticipated date of the next election. (p23)

FOUR: FUTURE EQUALITY OF ENROLMENTS

Electoral boundaries are required to be drawn so that three-and-a-half years after a redistribution, no division (electorate) deviates by more than two percent from the average divisional enrolment for the relevant State. The Committee examines a range of issues

associated with the future enrolment requirements, including:

- how they affect the qualitative criteria, such as "community of interest", that redistribution bodies are also required to take into account (on this matter the Committee recommends that the two percent tolerance be relaxed to 3.5 percent);
- how the requirements affect large area electorates;
- the appropriateness of three-and-a-half years as the projection period, and consequently the appropriateness of the maximum period of seven years allowed between redistributions of a State;
- the manner in which enrolment projections are compiled (the Committee recommends a greater role for the Australian Bureau of Statistics); and
- the impact of past and current High Court cases on attempts to relax the future enrolment requirements.

Recommendation 3: that subsections 66(3)(a) and 73(4)(a) of the Electoral Act be amended, so as to extend the variation from average divisional enrolment allowed three-and-a-half years after a redistribution from two to 3.5 percent. (p31)

Recommendation 4: that the Minister for Administrative Services meet with the Members for the six largest House of Representatives electorates to discuss means - short of introducing a weighting in favour of rural electorates - of improving the Members' capacity to represent their constituents. (p34)

Recommendation 5: that subsections 66(3)(b) and 73(4)(b) of the Electoral Act be amended to make "existing boundaries" subordinate to the other qualitative criteria, namely community of interests, means of communication and travel, and the physical features and area of the proposed division. (p35)

Recommendation 6: that subject to consultation with the Australian Bureau of Statistics (ABS) on relative population trends in the States and the Territories, subsections 66(3)(a) and 73(4)(a) of the Electoral Act be amended to provide a shorter projection period for approximate equality of enrolments. (p36)

Recommendation 7: that the period of seven years between redistributions of a State provided for in subsection 59(2) of the Electoral Act remain unchanged. (p37)

Recommendation 8: that the AEC and the ABS form a working party to determine the most effective methodology for enrolment projections. (p41)

Recommendation 9: subject to Recommendation 8, that after the AEC has agreed on its enrolment projections (including the input from the DROs) the projections be forwarded to the ABS for an opinion to be published in the volumes of AEC enrolment projections. (p41)

Recommendation 10: that as early as possible in a redistribution, interested parties be advised in detail on the process to be used by the AEC for determining enrolment projections. (p41)

Recommendation 11: that when the High Court's decision in *McGinty v Western Australia* is known, the AEC advise this Committee of the implications for the redistribution provisions of the Electoral Act. (p44)

FIVE: ELECTORAL BOUNDARIES AND POLITICAL OUTCOMES

The Committee rejects suggestions that the Electoral Act ought to expressly guarantee that a majority of votes translates into a majority of seats, given certain practical problems and the absence of a demonstrated need for such a provision.

The Committee rejects allegations by two Members of Parliament concerning the conduct of the 1994 redistributions of Queensland and Victoria.

SIX: SUGGESTIONS, COMMENTS AND OBJECTIONS

Public input into redistributions occurs through a statutory process of suggestions, comments and objections. The Committee examines a range of issues, including: whether a redistribution should commence with the publication of a Redistribution Committee's proposal (rather than public suggestions and comments), the timing of the determination of the "quota", or average enrolment for a State; advertising for public suggestions and comments; public scrutiny of comments and objections; the right to lodge objections to a redistribution proposal; whether or not individual objections should be responded to; the role of the Australian Electoral Commission's (AEC's) Divisional Returning Officers in the process; and access by the public to the computer software used by redistribution bodies.

Recommendation 12: that subsection 65(2) of the Electoral Act be amended to provide that the quote is struck as soon as practicable after a redistribution has been directed. (p59)

Recommendation 13: that subsection 64(1) of the Electoral Act be amended to provide that the advertisement calling for suggestions and comments is placed by the Electoral Commission, rather than the Redistribution Committee, so as to allow interested parties to prepare suggestions while the appointment of the Redistribution Committee is being arranged. (p60)

Recommendation 14: that section 64 of the Electoral Act be amended to provide that the *Gazette* notice calling for suggestions and comments is published on a Wednesday, making the closing date for suggestions a Friday. The cut-of time for receipt of suggestions should be 6.00pm, with the suggestions required to be available for perusal on the following Monday. A cut-off time of 6.00pm should also apply for the lodging of comments. (pp60-1)

Recommendation 15: that the Electoral Act be amended as necessary to provide that comments and objections are made available for public scrutiny in a manner similar to suggestions (including provision of a 14 day period for lodging comments on initial objections). (p62)

Recommendation 16: that section 72 of the Electoral Act be amended, so as to remove the requirement that persons or organisations must object to a Redistribution Committee's proposal (or make suggestions or comments) to be able to lodge an objection to an augmented Electoral Commission's proposed redistribution. (p63)

Recommendation 17: that in their reports augmented Electoral Commissions respond to as many objections as is practicable, by way of collective response to groupings of similar objections. (p65)

Recommendation 18: that in future, transcripts of the proceedings before augmented Electoral Commissions be produced as a matter of course. (p66)

Recommendation 19: that at the next two redistributions a system be trialed whereby the public is able, at set times during each of the "public input" stages of the redistributions, to book time on a stand-alone version of the computing software used by the redistribution bodies. Reports on the trials should be prepared and made available in the final reports on the redistributions. (p68)

Recommendation 20: that the AEC continue to provide its enrolment projections to interested parties in hard copy and electronically. (p69)

SEVEN: THE REDISTRIBUTION COMMITTEE AND AUGMENTED ELECTORAL COMMISSION

In this Chapter, the Committee examines the composition of the bodies responsible for redistributions. The Inquiry failed to reveal superior alternative memberships for the redistribution bodies in the States.

With the Australian Capital Territory having attained self-government, the Committee recommends that the membership of a Redistribution Committee for the ACT be brought into line with the equivalent body for a State.

Recommendation 21: that the composition of a Redistribution Committee and an augmented Electoral Commission for a State, and the voting rights of the three members of the Australian Electoral Commission on the augmented Commission, remain as currently provided for in the Electoral Act. (p79)

Recommendation 22: that subject to the agreement of the ACT Government, section 61 of the Electoral Act be amended to bring the membership of a Redistribution Committee for the ACT (and consequently an augmented Electoral Commission for the ACT) into line with the equivalent body for a State. (p81)

EIGHT: OTHER MATTERS

The "other matters" examined in this Chapter are the standard of maps produced at redistributions, and the conventions for naming divisions. The Committee recommends that the naming conventions be better publicised and amended slightly, to avoid a repeat of the confusion surrounding the reallocation in Queensland of the names "Forde" and "Rankin".

Recommendation 23: that at future redistributions, the AEC or the Redistribution Committee publicise the naming conventions when public suggestions and comments are called for. (p88)

Recommendation 24: that the naming convention which applies when two or more divisions are combined (*that as far as possible the name of the new division should be that of the old division which has the greatest number of electors within the new boundaries*) be amended, to provide that where the socio-demographic nature of the division in question has significantly changed, this should override the numerical formula. (p89)

ONE: BACKGROUND TO THE INQUIRY

1.1 On 16 November 1994, this Committee reported on its Inquiry into the conduct of the 1993 federal election and matters related thereto. The Australian Labor Party (ALP) had submitted to the Inquiry that frequent redistributions of House of Representatives electoral boundaries are disruptive to the electoral process. The ALP requested that the Committee investigate whether a more stable and less disruptive process might be established, "consistent with the necessary democratic principles".¹

1.2 The Committee subsequently concluded that as some eleven years had passed since the process for electoral redistributions had been put into place, a review would be timely once the redistributions then underway in Queensland, Victoria and the Australian Capital Territory had been finalised. Subsequently the Minister for Administrative Services, the Hon Frank Walker QC MP, wrote to the Committee on 1 May 1995 asking it to "inquire into and report on the effectiveness and appropriateness of the redistribution provisions of Parts III and IV of the *Commonwealth Electoral Act 1918*".

1.3 On 9 May 1995 the then Chair wrote to all Members and Senators inviting them to make submissions. Members of the public were invited to make submissions in an advertisement placed in the major daily newspaper in each State and Territory on 13 May 1995. In addition, letters were sent to individuals and organisations with a particular interest in the process.

¹ *The 1993 Federal Election* p152

1.4 As at 18 December 1995 the Committee had received 23 submissions from Members of Parliament, political parties, the Australian Electoral Commission (AEC), past and serving electoral officers, academic commentators, and government agencies with an interest in the process. A further six sets of documents had been accepted as exhibits. A list of the submissions and exhibits is at Appendix 2. The Committee also held three public hearings - one in Brisbane and two in Canberra - through September and October 1995. A list of the public hearings and the witnesses heard is at Appendix 3.

1.5 The submissions and transcripts of evidence have been incorporated into separate volumes. Copies of these documents are available for inspection at the Committee Secretariat, the Commonwealth Parliamentary Library, the National Library of Australia and various State and university libraries.

1.6 In reviewing the principles governing the conduct of redistributions this Committee continues a tradition set by its predecessors², in particular the Joint Select Committee on Electoral Reform with its September 1983 *First Report*. That report led to the enactment, in the *Commonwealth Electoral Legislation Amendment Act 1983*, of the central features of the system which this Committee is now reviewing, including: a non-discretionary formula for the timing of redistributions, a clear limit on the time that can elapse between redistributions, the removal of the Parliament's power of veto over redistributions, a reduction in the Government's discretionary power over the composition of bodies responsible for

² Joint Select Committee on Electoral Reform, *First Report* (September 1983), *Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament* (November 1985), *The Operation During the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation* (December 1986); Joint Standing Committee on Electoral Matters, *One Vote, One Value* (April 1988).

redistributions, and a requirement that Redistribution Committees aim for equal numbers of electors in each of a State's divisions (electorates) three-and-a-half years after a redistribution.

1.7 The net effect of these reforms has been to markedly depoliticise the redistribution process, and to limit the extent to which malapportionment can arise.³ The Committee readily endorses these outcomes, and also the AEC's observation that

all the efforts to introduce neutrality, objectivity and openness into the earlier stages of the redistribution process would be of no significance if the dominant political actors retained the ultimate say on whether or not particular boundaries would come into effect.⁴

1.8 Chapter Two explains, in summary, the redistribution process and the 1994 redistributions of Queensland, Victoria and the ACT. The other Chapters provide a more detailed and critical examination of the redistribution provisions of the *Commonwealth Electoral Act 1918* (the Act).

³ Submissions pp078-9, p095 (AEC) & p281 (B.Cox); transcript pEM21 (AEC). For a brief history of the apportionment of Members among the States from 1901 to 1984, see submissions pp099-101 (AEC).

⁴ Submissions p095

TWO: THE REDISTRIBUTION PROCESS

2.1 A redistribution is a redrawing of electoral boundaries to ensure that, as nearly as practicable, each State and Territory gains representation in the House of Representatives in proportion to the State or Territory's population, and that there are the same number of electors in each division for a given State or Territory.⁵

The Quota

2.2 The entitlement of the States to representation in the House of Representatives is determined by a formula contained in section 24 of the Constitution. Section 24 provides that the overall size of the House of Representatives shall be as nearly as practicable twice the size of the Senate, and that the number of Members chosen in the States shall be in proportion to the respective numbers of their people.

2.3 The number of Members of the House of Representatives to be chosen in each State is determined through use of a quota. The quota is calculated by dividing the total population of the six States by twice the total number of State Senators (that is, excluding the Senators for the ACT and the Northern Territory). The number of Members to be chosen in a State is then calculated by dividing the total population of the State by the quota, and rounding the result to the nearest whole number. Section 24 provides that at least five Members shall be chosen in each of the original States.

⁵ AEC, *Electoral Newsfile* no.38, January 1994

When a Redistribution is Held

2.4 Following the 1983 reforms there are only three situations - specified in section 59 of the Electoral Act - in which a redistribution of a State or Territory can be initiated.⁶ They are:

- **relative populations of the States** - a redistribution must be held if the number of Members of the House of Representatives to which a State or Territory is entitled has changed. During the tenth month after the first meeting of a newly elected House of Representatives, the Electoral Commissioner ascertains the population of the Commonwealth and of the States and Territories according to the latest statistics provided by the Australian Statistician. The quota is then calculated and used to determine the number of Members to be chosen in each State and Territory;
- **equality of divisions within a State** - a redistribution must be held if the number of electors in more than one third of the divisions in a State deviates from the average divisional enrolment in that State by over ten percent for three consecutive months. However such a redistribution shall not be directed if there is less than one year before the date of expiry of the House of Representatives by effluxion of time;
- **the passage of time** - a redistribution must occur in each State at least once every seven years. However a redistribution shall not be directed on this basis if there is less than one year before the date of expiry of the House of Representatives by effluxion of time,

⁶ Submissions pp072-95 & pp318-9 (AEC); transcript ppEM22-3 (AEC)

in which case the redistribution shall be directed within 30 days of the first meeting of the newly elected House of Representatives. However, the redistribution may be further delayed by the Electoral Commission until after the determination of State and Territory representation entitlements due in the tenth month of the Parliament, if the Commission is of the opinion that the determination may result in a change in entitlement.

2.5 The references above to "States" also apply to the ACT. With regard to the Northern Territory, until such time as the Territory is entitled by virtue of its population to a second Member of the House of Representatives there is obviously no requirement for a redistribution prompted by either of the other two criteria. In 1990 the principles governing the representation of the Territories and new States in the House of Representatives were brought into line with those for the original States, following recommendations to that effect by the Joint Select Committee on Electoral Reform.⁷

2.6 There has yet to be a redistribution in any State or Territory prompted by malapportionment of divisions (paragraph 2.4 point number two).⁸ Of the ten redistributions conducted after 1984⁹, two were prompted by the passage of seven years since the previous redistribution, and eight by a change in representation entitlements. There is little the Parliament can do, even if it so desires, about the frequency of redistributions caused by this last criterion. This outcome has been produced by the ruling of the High Court in the 1975

⁷ *Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament* (November 1985). The amendments in question have their basis in the Electoral Act only; sections 121 and 122 of the Constitution still provide that the Commonwealth Parliament may determine the representation entitlements of new States and Territories as the Parliament "thinks fit".

⁸ Submissions p077 (AEC)

⁹ No less than seven redistributions were conducted in 1984, owing to the increase in the size of the House of Representatives from 125 Members to the present 147/8. The 1984 redistributions were conducted in accordance with the revised processes provided for in the *Commonwealth Electoral Legislation Amendment Act 1983*.

*McKinlay's Case*¹⁰ rather than the Electoral Act.¹¹ The impact of the High Court's deliberations is discussed further in Chapter Four.

The Conduct of a Redistribution

2.7 A redistribution is undertaken by a committee. Under section 60 of the Electoral Act a Redistribution Committee in each State consists of:

- the Australian Electoral Commissioner;
- the Australian Electoral Officer (AEO) for the State (the senior AEC officer in the State);
- the Surveyor-General for the State or equivalent officer or, if he or she is unavailable, the Deputy Surveyor-General or equivalent officer; and
- the Auditor-General for the State or, if he or she is unavailable, the Deputy Auditor-General.

The composition of a Redistribution Committee for the ACT is set out in section 61 of the Act and differs slightly from that of a State Redistribution Committee (Chapter Seven refers).

¹⁰ *Attorney-General for Australia (ex rel McKinlay) v. Commonwealth* (1975) 7 ALR 593

¹¹ Submissions p075 (AEC)

2.8 In developing its proposal, a Redistribution Committee:

- must, under subsection 66(3) of the Act, give due consideration to:
 - i) community of interests within the proposed division, including economic, social and regional interests,
 - ii) means of communication and travel within the division,
 - iii) the physical features and area of the division, and
 - iv) existing boundaries;
- must consider public suggestions and comments (section 64 of the Act);
- may allow a margin of allowance in enrolment whenever necessary, but not more (at the time of redistribution) than ten percent above or below the quota; and
- must, as far as is practicable, endeavour to ensure that three years and six months after the redistribution, no division will deviate by over two percent from the average *divisional enrolment for the State or Territory*.

2.9 Once the Redistribution Committee develops its proposal, a statutory process of initial and further objections take place (discussed further in Chapter Six). Objections are considered by an augmented Electoral Commission, which consists of the members of the Redistribution Committee plus the two members of the three-member Australian Electoral Commission who did not serve on the Redistribution Committee. The member of the Electoral Commission who serves on a Redistribution Committee is the Australian Electoral Commissioner; the other two members of the Electoral Commission are its Chairperson (presently Justice Trevor Morling) and the so-called "non-judicial appointee" (presently the former Australian Statistician Mr Ian Castles).

2.10 The augmented Electoral Commission's final determination - which, following the 1983 amendments, the Parliament has no power to reject or amend - is made by way of a notice published in the Commonwealth *Gazette*. The notice states the names and boundaries of the electoral divisions into which the State is to be distributed.

"Mini-Redistributions"

2.11 By-elections are conducted on the boundaries in force at the last general election, irrespective of subsequent redistributions. However if a *general* election is called before a change in representation entitlements is accounted for by a completed redistribution, section 76 of the Act provides for a "mini-redistribution" to take place.¹² Where a State's

¹² Submissions p075 (AEC)

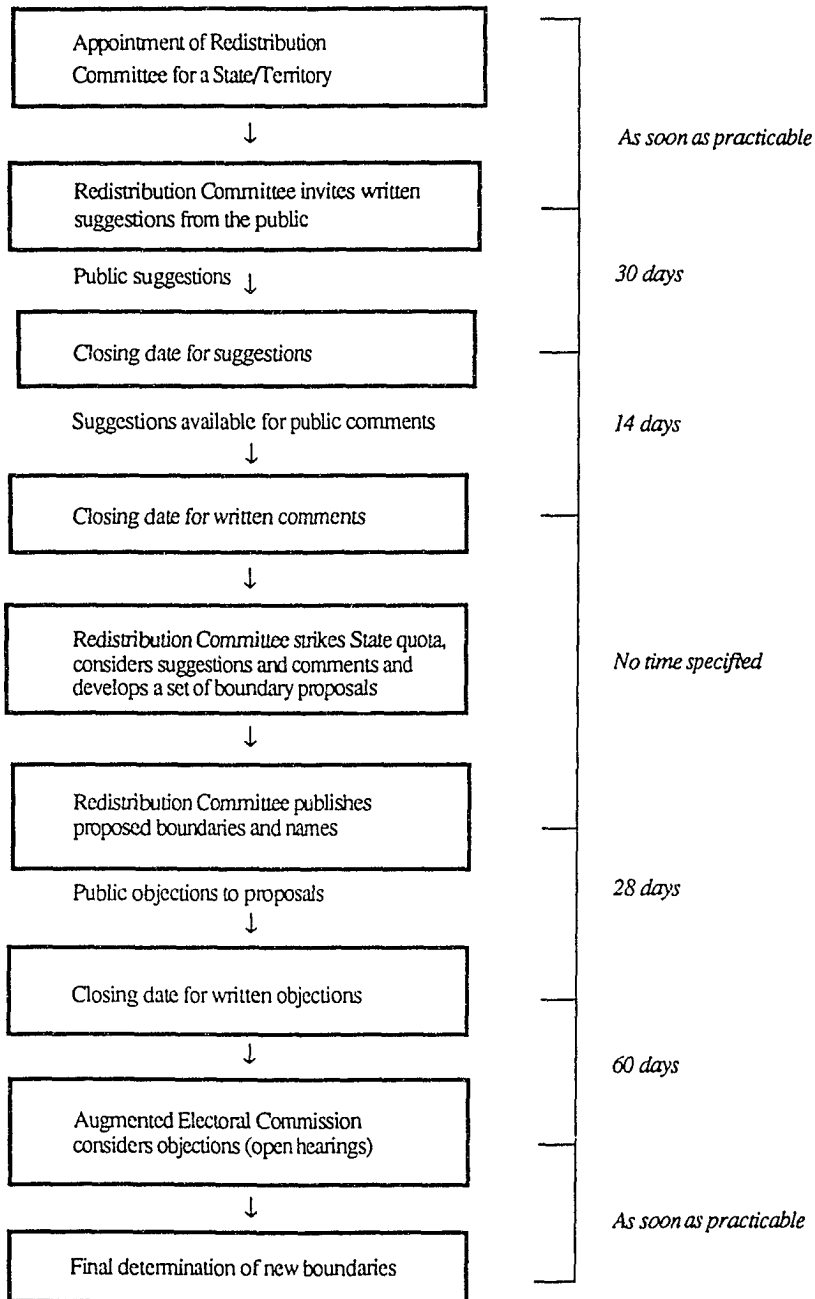
representation has increased, the pair of contiguous divisions (divisions touching in at least one place) in the State with the highest combined enrolment is divided into three divisions. Where a State's representation has decreased, the pair of contiguous divisions with the lowest combined enrolment is formed into a single division.

Timetable

2.12 The chart on the page overleaf sets out the timetable for a redistribution.¹³

¹³ Chart from AEC, *Electoral Newsfile* no.38

The Redistribution Timetable



The 1994 Redistributions

2.13 Since the 1983/84 amendments to the Act the following redistributions have occurred¹⁴:

NSW	-	1984, 1992
VIC	-	1984, 1989, 1994
QLD	-	1984, 1992, 1994
SA	-	1984, 1992
WA	-	1984, 1989
TAS	-	1984, 1992
ACT	-	1984, 1992, 1994
NT	-	nil

Note: the year shown is the year the result of the completed redistribution was determined, and not necessarily the year when most of the activity took place eg. submissions, publication of reports and maps, occurrence of hearings etc.

2.14 Of the ten redistributions conducted since the 1984 increase in the size of the Parliament, only the 1992 redistributions of Tasmania and the ACT were triggered by the statutory period of seven years elapsing after the preceding redistribution. The other eight redistributions, including those in 1994, were all triggered by a change in the relevant State or Territory's representation entitlements.

¹⁴ Submissions p284 (B.Cox)

2.15 As the 37th Parliament first sat on 4 May 1993, the Electoral Commissioner was required to determine, between 5 February and 4 March 1994, the number of Members of the House of Representatives to be chosen in the States and Territories at the next general election. The determination was made in accordance with the formula set out in section 24 of the Constitution, as per the chart on the page opposite¹⁵.

¹⁵ Chart from AEC, *Electoral Newsfile* no.40, March 1994

The determination of representation entitlements, 4 March 1994

The Population

<i>State</i>	<i>Number of People</i>
New South Wales	6 024 467
Victoria	4 463 723
Queensland	3 134 224
Western Australia	1 683 587
South Australia	1 463 877
Tasmania	472 207
 The Commonwealth (<i>excluding the Territories</i>) ¹	 17 242 085
 Australian Capital Territory ²	 299 843
Northern Territory ²	171 029

The Quota

The population of the Commonwealth divided by twice the number of Senators for the States.

$$\frac{17\,242\,085}{72 \times 2} = 119\,736.70$$

The Entitlement

The number of members to be chosen in each State for the House of Representatives, determined by dividing the number of people of each State by the quota, rounding to the nearest whole number. The populations of the Territories are also divided by the quota.

<i>State/Territory</i>	<i>Quota</i>	<i>Number of Members of the House of Representatives to be chosen.</i>	<i>Change</i>
New South Wales	50.314	50	0
Victoria	37.279	37	-1
Queensland	26.176	26	+1
Western Australia	14.061	14	0
South Australia	12.226	12	0
Tasmania ³	3.944	5	0
ACT	2.504	3	+1
Northern Territory	1.428	1	0
Total		148	+1

1. Under section 38A of the CEA 1918, the Territory of Norfolk Island is not taken to be a Territory for this determination, but certain Norfolk Island residents are included in the State and ACT population figures.

2. The population figure for the Australian Capital Territory includes Jervis Bay (section 4 of the CEA 1918), and that for the Northern Territory includes Cocos (Keeling) Islands and Christmas Island (section 48 (2C) of the CEA 1918).

3. Tasmania is guaranteed a minimum of five Members under section 24 of the Constitution.

2.16 As can be seen, the determination indicated that Victoria was to lose one division while Queensland and the ACT were to each gain a division.

2.17 Notice of the redistributions was published in the Commonwealth *Gazette* on 4 March 1994, and Redistribution Committees were appointed to begin the task of drawing new boundaries and assigning names to the divisions thus created.¹⁶ The members of the Redistribution Committees were:

Victoria

Brian Cox (Electoral Commissioner)

David Muffet (Australian Electoral Officer for Victoria)

John Parker (State Surveyor-General)

Ches Baragwanath (State Auditor-General)

Queensland

Brian Cox

Bob Longland (Australian Electoral Officer for Queensland)

Dave Forrest (Queensland Land Boundaries Program Director)

Barrie Rollason (Queensland State Auditor-General)

¹⁶ AEC *Annual Report 1994-1995* pp18-19

Australian Capital Territory

Brian Cox

Michael Clancy (Senior Divisional Returning Officer for the ACT)

Doug White (Acting Commonwealth Surveyor-General)

Moirra Scollay (Governor-General's Nominee; First Assistant Commissioner for the
Child Support Agency with the Australian Taxation Office)

2.18 Following the statutory suggestions, comments and objections stages, the augmented Electoral Commissions' final determinations took the form of notices published in the Commonwealth *Gazette*. The ACT determination was made on 30 September 1994, the Queensland determination on 1 December 1994, and the Victorian determination on 20 December 1994.

2.19 In Victoria the ALP-held electorate of Corinella was abolished, with its electors being absorbed into surrounding divisions. There were changes to the boundaries of all divisions other than Melbourne and Melbourne Ports¹⁷, with the major changes being designed to accommodate high population growth in Melbourne's south-east.

¹⁷ Andrew Kopras (Parliamentary Research Service), *Research Note* no.5, January 1995

2.20 The redistribution in Queensland increased the number of seats in that State by one to 26, with resultant changes to the boundaries of all divisions other than Groom, Leichhardt and Maranoa.¹⁸ The new seat is located to the north and west of Brisbane with Caboolture as its major population centre, and is named "Longman" after the first woman elected to the State's Parliament.

2.21 The redistribution in the ACT created three seats covering northern, central and southern ACT respectively. The names "Fraser" and "Canberra" are retained for the northern and central seats; the division covering south Canberra has been given the new name "Namadgi", a locality name of Aboriginal origin. The division of Canberra includes those Norfolk Island residents entitled to enrol in the ACT. The division of Fraser includes the Jervis Bay Territory.

2.22 Reports on each redistribution were prepared by the AEC and tabled in Parliament on 30 March 1995. The reports are available from the AEC and detail the processes involved in each of the redistributions, including the proposed boundaries, details of suggestions, comments and objections lodged, and the enrolment projections on which the boundaries are based.

¹⁸ Ibid

Redistributions in Other States?

2.23 In response to questions put at a public hearing, the AEC provided information about the timing of the next redistributions in New South Wales, South Australia and Tasmania if the 38th Parliament holds its first meeting on 21 May 1996.¹⁹

2.24 For the purposes of this discussion it is assumed that the 38th Parliament will hold its first meeting on 21 May 1996 and will not be dissolved before its expiration on 21 May 1999, and that in none of the States in question will a redistribution be directed between now and 21 May 1999 on the grounds of malapportionment or a change in the State's representation entitlement.

2.25 As discussed at paragraph 2.4, section 59 of the Act provides that if a period of seven years expires after the date on which the State was last redistributed, a direction initiating a redistribution must be made within 30 days. However a direction on this ground cannot be made within one year before the date of expiry of a House of Representatives by effluxion of time. Under these circumstances the redistribution must be directed within 30 days of the first meeting of the new House of Representatives - unless the Electoral Commission is of the opinion that the determination of State and Territory representation entitlements due in the tenth month of the new Parliament may result in an alteration of the number of Members of the House of Representatives to which the State or Territory is entitled.

¹⁹ Submissions pp318-9 (AEC); transcript ppEM22-3 (AEC) & pEM94 (G. Smith)

2.26 South Australia was last redistributed on 17 January 1992, and New South Wales on 31 January 1992. The seven-year periods in those States will respectively fall due on 17 and 31 January 1999. However based on the assumptions in paragraph 2.24 the redistributions could not be directed, as the Parliament would have entered its last year on 21 May 1998. The redistributions would therefore be deferred until some time during the 30-day period following the first meeting of the 39th Parliament, with the possibility of a further deferral until after the next determination of State representation entitlements.

2.27 Tasmania was last redistributed on 1 April 1992. As the seven-year period will fall due on 1 April 1999, on the assumptions in paragraph 2.24 that State would also have its redistribution deferred until some time during the 30-day period following the first meeting of the 39th Parliament. In the case of Tasmania there would be virtually no possibility of a further deferral until after the determination of State representation entitlements, as the State's population would probably not warrant more than the five Members Tasmania presently returns by sole virtue of the Constitutional guarantee of five Members for each original State.

THREE: THE DETERMINATION OF STATE ENTITLEMENTS

3.1 Section 46 of the Electoral Act provides that during the tenth month after the first meeting of a House of Representatives, the Electoral Commissioner must ascertain the number of the people of the Commonwealth "in accordance with the latest statistics of the Commonwealth". The Electoral Commissioner then determines the representation entitlements of the States in accordance with the formula set out in section 24 of the Constitution, and those of the Territories in accordance with a similar formula.²⁰ As mentioned previously, a change in a State or Territory's representation entitlement has triggered eight redistributions since 1985.

Timing of the Determination

3.2 There was some discussion during the Inquiry as to whether the tenth month after the first meeting of a House of Representatives is the most appropriate time for the determination.²¹ As former Electoral Commissioner Mr Brian Cox explained,

the population estimates upon which the Commissioner must rely are at a date which is a long way in advance of the next elections: the most recent quarterly population estimates by the Australian Statistician are used but these are inevitably subject to lags. The March 1994 determination was made on the basis of 30 September 1993 population estimates.²²

²⁰ Submissions p075 (AEC)

²¹ Submissions p096 (AEC) & pp292-4 (B.Cox); transcript pEM21, ppEM41-2 (AEC), ppEM49-50 (Liberal Party), pEM62 (ABS) & ppEM179-80 (AEC)

²² Submissions pp293-4

3.3 The AEC submitted that if the determination was made in the thirteenth month rather than the tenth, the population figures provided by the Australian Statistician would typically be one calendar quarter closer to those applying at election time than is currently the case.

3.4 The risk of the proposed amendment is that delaying the determination by three months will in turn delay the subsequent redistributions. This will mean a slightly greater risk of a redistribution not being complete in the event of an early election, a situation which would necessitate a mini-redistribution.

3.5 However, such a situation did not arise before 1987 when the determination was made in the twelfth month of a Parliament.²³ The AEC has advised that moving the determination to the thirteenth month should not unduly affect the redistribution timetable or the subsequent political timetables.²⁴

Recommendation 1: that subsection 46(1) of the Electoral Act be amended so that the determination of State and Territory representation entitlements shall fall due in the thirteenth month after the first meeting of a House of Representatives.

²³ Submissions p096 (AEC); transcript pEM42 (AEC)

²⁴ Transcript pEM41

Use of Population Projections

3.6 Another way of bringing the population figures used for the determination closer to those applying at the election would be for the Australian Bureau of Statistics (ABS) to give the AEC population statistics projected to the next election, rather than the latest current estimates.²⁵ The AEC has discussed such a scheme with the ABS, and there appear to be no constitutional impediments.

3.7 However there are difficulties with the proposal. The ABS has cautioned that there would inevitably be differences between current population estimates and projections made at an earlier date.²⁶ Also, as Australia does not have fixed elections it would not be possible to predict with confidence the date to which the forward projections should be made. This would be a serious weakness of any system based on the use of population projections, as the volatility of population movements means that different determinations of seat entitlements could well be made depending on the date to which the population is projected.²⁷

Recommendation 2: that the determination of State representation entitlements continue to be based on the latest current estimates of population, rather than statistics projected to the anticipated date of the next election.

²⁵ Submissions pp047-8 (ABS) & pp075-6 (AEC); transcript pEM41 (AEC) & pEM62 (ABS)

²⁶ Submissions p048

²⁷ Submissions p076 (AEC)

Use of Population Rather Than Enrolment

3.8 Section 24 of the Constitution, paragraph two provides that "the number of members chosen in the several States shall be in proportion to **the respective numbers of their people...**" (emphasis added). The Liberal Party submitted that the use of population, rather than enrolment, to determine each State's entitlement means that average divisional enrolment can vary from State to State²⁸ as follows:

New South Wales	77 526
Victoria	80 464
Queensland	77 282
South Australia	83 633
Tasmania	63 102 (guaranteed a minimum of five members under section 24)
Western Australia	75 951
Northern Territory	93 943
Australian Capital Territory	66 181

3.9 The AEC suggested that the readjustment of State and Territory representation entitlements tends to ameliorate this problem²⁹, and also that the principle underlying section 24 is that Members of the House of Representatives represent the *people* of their electorates, not just the voters.³⁰

²⁸ Submissions pp077-8 (AEC), pp189-90 (Liberal Party) & p283 (B.Cox); transcript ppEM32-3 (AEC), ppEM53-5 (G.Williams) & pEM137 (A.Becker)

²⁹ Submissions p078

³⁰ Transcript pEM33

3.10 Nonetheless the Committee's view is that the Liberal Party has highlighted a genuine problem. Subsequent stages of the redistribution process are predicated on electoral fairness being achieved through the principle of "one vote, one value", yet the effect of section 24 is to vary an individual's voting power depending on which State he or she is enrolled in.

3.11 Unfortunately a simple solution does not present itself. In the absence of clear guidance from the High Court on just how the reference to "the people" in paragraph two of section 24 can be interpreted³¹, the anomaly would appear to require a referendum to rectify. History suggests that there is no guarantee of a bipartisan approach towards, or unanimous State support for, such a referendum question. Also, the basis of such a referendum proposal would be Australia's system of compulsory enrolment, which at present is not provided for in the Constitution.³²

3.12 In summary the variation in the States' average enrolment levels is regrettable, however the Committee does not believe that a practical solution is available.

³¹ Transcript ppEM54-5 (G.Williams). However, in his judgement in *McKinlay's Case*, Gibbs J stated [44] that "It would appear that 'people' in the second paragraph of s24 does mean all the people, and not merely the electors..." *McKinlay's Case* is discussed further in Chapter Four.

³² Transcript pEM33 (AEC)

FOUR: FUTURE EQUALITY OF ENROLMENTS

4.1 Before 1974 the Electoral Act allowed proposed divisions to deviate by up to 20 percent from the average divisional enrolment (the "quota") for a State. In March 1973 the Whitlam Government introduced the *Commonwealth Electoral Bill (no.2) 1973*, which sought to reduce the maximum permissible deviation to ten percent. The Bill became one of the six Bills which justified the 1974 double dissolution, and was eventually passed at a joint sitting of the Parliament on 6 August 1974. Since then the ten percent maximum deviation has ceased to be a matter of controversy.³³

4.2 The next major reform of the equality requirements was the "three-and-a-half year rule", which was a recommendation of the Joint Select Committee on Electoral Reform in its *First Report*.³⁴ The committee noted that Redistribution Commissions had sometimes failed to make use of the full ten percent available to them. The committee's view was that equality of enrolments would be better achieved by requiring a redistribution to start areas of population growth below the quota, and areas of population decrease above the quota, so that they would converge as time went by. The provisions inserted in the Electoral Act stipulated that boundaries were to be drawn so as to achieve exact equality of enrolments three-and-a-half years after a redistribution. This projection period was chosen because it represented half of the maximum seven years permitted between redistributions of a State's electoral boundaries.

³³ Submissions p087 (AEC)

³⁴ *First Report* p86; submissions pp087-8 (AEC)

4.3 At the 1984 redistributions it was observed that the three-and-a-half year rule had in some areas forced the adoption, on purely numerical grounds, of boundaries which took little account of perceived community of interest. The tolerance allowed after three-and-a-half years was therefore relaxed to plus or minus two percent from average enrolment.³⁵

4.4 That amendment was the Government's most recent attempt to alter the guidelines on enrolment equality, leaving aside the rejected "one vote one value" referendum proposal of September 1988. As such, the hierarchy of criteria now taken into account by Redistribution Committees is:

- first, a Redistribution Committee may not propose a division that departs from the quota for the relevant State or Territory by more than ten percent;
- second, the Redistribution Committee shall, as far as is practicable, endeavour to ensure that three-and-a-half years after the redistribution no division shall deviate from the quota by more than two percent; and
- third, subservient to the above numerical constraints a Redistribution Committee must, for each proposed division, give "due consideration" to: community of interests within the division, including economic, social and regional interests; means of communication and travel; the physical features and area of the division; and existing boundaries.

³⁵ *The Operation During the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation* p10

4.5 These criteria are to be found at subsection 66(3) of the Electoral Act, and are repeated at subsection 73(4) concerning augmented Electoral Commissions.

"Community of Interest" and the Three-and-a-Half Year Rule

4.6 The most contentious issue at the Inquiry was whether the mid-point tolerance of two percent does, in fact, provide Redistribution Committees with the flexibility to give "due consideration" to community of interest and the other qualitative criteria.³⁶

4.7 Former Electoral Commissioner Mr Brian Cox was the Presiding Member of the 1994 Redistribution Committees. He advised the Inquiry that due to the numerical criteria

*some boundaries of necessity follow fairly insignificant features - eg. minor streets, which means that either side of such streets can be in different divisions - which may result in boundaries that are somewhat at odds with the non-numerical criteria. The problem can be exacerbated at times of and in areas of very rapid population and voter growth.*³⁷

4.8 This last remark particularly applies to Queensland, which was redistributed after the 1990 and 1993 elections and is likely to be redistributed again in the next Parliament.

Mr Graham Smith, the Returning Officer for the Queensland division of Forde, informed the

³⁶ Submissions pp018-9 (D.Charnock), pp042-4 (R.Atkinson MP), pp089-91, p095 (AEC), p160, pp162-4 (G.Smith), pp178-82 (W.Truss MP), pp187-8 (Liberal Party), p194, p200 (P.Cleeland MP), pp295-6 (B.Cox), pp321-321C (AEC), p329 (B.Cox) & pp337-8 (B.Katter MP); transcript ppEM3-19 (R.Atkinson MP), ppEM25-30 (AEC), ppEM48-9 (Liberal Party), ppEM71-80 (W.Truss MP), ppEM82-3, pEM94 (G.Smith), ppEM96-7, ppEM107-9 (C.Hughes), pEM112, pEM120, ppEM127-8 (B.Katter MP), pEM155, pEM157 (P.Cleeland MP), ppEM165-6 (G.Gibson MP) & ppEM181-3 (AEC)

³⁷ Submissions p296

Inquiry that

I did attempt to provide a submission at the objection stage, and I found it very difficult to do that manually. The two percent provides hardly any flexibility in relation to the other qualitative criteria...The way it is at the moment - the number crunching, if you like - is that the quantitative side of the process is pre-eminent and everything else is subsumed by it...if the numbers do not work, you cannot include [a] whole area or locality - even though there might be a very distinct community of interest - because the numbers do not allow that flexibility.³⁸

4.9 A revised mid-point tolerance was nominated by: Mr Smith, who suggested four percent; Mr Cox, who suggested 3.3 percent but not more than five percent; and Mr Warren Truss MP, who on behalf of the Federal Parliamentary National Party suggested five percent (see also the discussion of "large area electorates" at page 31).

4.10 The Committee accepts that the numerical constraints should remain paramount, and that within those constraints Redistribution Committees and augmented Commissions do attempt to take account of the qualitative criteria.³⁹ The Committee also accepts the AEC's caution that community of interest is an elusive criterion⁴⁰, and that inherent in having any numerical constraint is that there will always be qualitative decisions just frustrated by the chosen figure.⁴¹ Finally the Committee notes the advice of Curtin University's Dr David Charnock, who pointed out that the relationship between electors and their Members of the House of Representatives is already greatly disrupted by residential mobility.⁴²

³⁸ Transcript pEM82

³⁹ Submissions p329 (B.Cox); transcript pEM27, pEM29 & pEM182 (AEC)

⁴⁰ Submissions p090; also transcript ppEM182-3

⁴¹ Transcript pEM27 (AEC), ppEM96-7 & pEM108 (C.Hughes)

⁴² Submissions pp018-9

4.11 However, based on the evidence received the numerical criteria do not allow "due consideration", in the words of the Act, to be given to the qualitative factors.⁴³ Rather, the political parties and others attempting to frame electoral boundaries essentially find themselves engaged in a mathematical modelling exercise. In order to relax the enrolment requirements to that extent necessary to allow a realistic degree of flexibility, the Committee recommends as follows:

Recommendation 3: that subsections 66(3)(a) and 73(4)(a) of the Electoral Act be amended, so as to extend the variation from average divisional enrolment allowed three-and-a-half years after a redistribution from two to 3.5 percent.

Large Area Electorates

4.12 The redistribution process has not had any special regard for the physical size of electorates since 1983, when the "5000 square kilometre rule" was repealed. That rule specified that each division with an area of 5000 square kilometres or more was, at the time of a redistribution, to have an enrolment smaller than any division with less than that area.⁴⁴

⁴³ The Committee considered whether the requirement that Redistribution Committees "*as far as is practicable, endeavour to ensure*" that the two percent tolerance is met provides some flexibility. However legal advice suggests that the Act does not permit a Redistribution Committee to propose boundaries that, on the basis of projections adopted by it, fail to comply with the three-and-a-half year rule. See submissions p296 (B.Cox) & pp321-321C (AEC); transcript ppEM15-6 (R.Atkinson MP), ppEM26-7 (AEC), pEM49 (Liberal Party), pEM77 (W.Truss MP) & pEM83 (G.Smith). See also Report of the Redistribution Committee for Queensland (1994) p3

⁴⁴ Submissions pp029-30 (C.Hughes); transcript pEM104 & pEM108 (C.Hughes)

4.13 The Committee took evidence from Mr Warren Truss MP on behalf of the Federal Parliamentary National Party, and Mr Bob Katter MP in his own right, on the effect of the future enrolment requirements on large area electorates.⁴⁵ The National Party argues that the current system is unfair to rural voters, in that the largest electorates in area also have amongst the largest enrolments (due to enrolment levels being set above-quota because of slow or negative population growth). Also, new determinations of State entitlements frequently interrupt the redistribution cycle before the three-and-a-half year point for approximate equality has been reached, resulting in electorates remaining permanently over-quota.

4.14 According to the National Party, the following table demonstrates the situation applying at the 1993 federal election⁴⁶:

<i>State</i>	<i>Electorates</i>	<i>Enrolment</i>
	<i>(above 200 000 sq. km)</i>	
NSW	Parkes	3rd highest in the States
QLD	Kennedy	7th highest
QLD	Maranoa	1st highest
WA	Kalgoorlie	8th highest
WA	O'Connor	4th highest
SA	Grey	2nd highest

the Northern Territory electorate (1 346 200 sq km) had a larger enrolment than any electorate in any State. Following the 1994 redistribution, Kennedy and Maranoa will rank 3 and 2 respectively in Qld.

⁴⁵ Submissions pp178-82 (W.Truss MP) & pp335-43 (B.Katter MP); transcript pEM49 (Liberal Party), ppEM71-80 (W.Truss MP), ppEM104-9 (C.Hughes) & ppEM111-29 (B.Katter MP)

⁴⁶ Submissions p179 (W.Truss MP)

4.15 As can be seen, at the 1993 election the seven largest electorates physically (including the Northern Territory) had the first, second, third, fourth, fifth, eighth and ninth highest enrolments out of the 147 electorates being contested.

4.16 As well as submitting that the mid-point tolerance should be relaxed from two to five percent, Mr Truss submitted that in the case of large area electorates the redistribution criteria "should encourage the Commission to utilise the full 10% below quota" at the start of the process.⁴⁷ The Inquiry also took evidence on Queensland's redistribution system, which provides for notional or "phantom" electors to be built into the calculations for electorates larger than 100 000 square kilometres.⁴⁸

4.17 The Committee agrees that the mid-point tolerance needs to be relaxed, and has recommended accordingly (see page 31). The Committee is also concerned about divisions being permanently over or under-quota as a result of the three-and-a-half year projection period, and considers this issue further at page 35.

4.18 However, the Committee cannot endorse the National Party's proposal that the full ten percent below quota be utilised in favour of large area electorates. Aside from anything else, this proposal disregards the Party's suggested mid-point tolerance of five percent. More generally, while the Committee has sympathy for the problems faced by rural MPs and their constituents, it does not see a return to malapportionment as the right way to respond.

⁴⁷ Submissions p182

⁴⁸ Transcript pEM79 (W.Truss MP), ppEM104-8 (C.Hughes), pEM112 & ppEM127-8 (B.Katter MP)

4.19 Short of a gross disregard for the principle of "one vote, one value", the disparity in the geographic size of electorates will remain a fact of life in Australia. There are options, including expanded entitlements for rural MPs and perhaps a system of electoral agents⁴⁹, that could be examined before resorting to weighting of certain electors' votes.

Recommendation 4: that the Minister for Administrative Services meet with the Members for the six largest House of Representatives electorates to discuss means - short of introducing a weighting in favour of rural electorates - of improving the Members' capacity to represent their constituents.

4.20 Mr Truss also submitted that the requirement to take account of existing boundaries often works against community of interest, particularly in large area electorates:

I can understand the logic of that, but the effect of that can also be to damage community of interest. They shave off a little corner of an electorate, with the desire to make as little change as possible, and stick it in the neighbouring electorate; therefore they sever the community of interest that that town had with the rest of the other electorate. Sometimes, it is better to make a large change to retain community of interest than to just break up a community to make the minimum change possible.⁵⁰

⁴⁹ Transcript pEM126

⁵⁰ Transcript ppEM73-4

4.21 The Committee believes that Redistribution Committees and augmented Electoral Commissions should continue to have regard to existing boundaries, but that this requirement should be subordinate to the other qualitative criteria set out in the Act.

Recommendation 5: that subsections 66(3)(b) and 73(4)(b) of the Electoral Act be amended to make "existing boundaries" subordinate to the other qualitative criteria, namely community of interests, means of communication and travel, and the physical features and area of the proposed division.

The Projection Period and the "Seven Year Rule"

4.22 Three-and-a-half years after a redistribution is the point at which approximate equality of enrolments should be reached. This period was chosen because it is the halfway point of the maximum seven year cycle allowed for a redistribution. However, where the cycle is terminated by a change in State representation entitlements - as has happened eight times since 1985 - a question arises as to whether three-and-a-half years is the most appropriate point at which to aim for equality of enrolments.⁵¹

4.23 Dr David Charnock submitted that under the three-and-a-half year rule, high-growth divisions which start redistributions under-quota have been left under-enrolled at the time of elections, possibly to the slight partisan benefit of the ALP.⁵² Conversely, Mr Warren Truss

⁵¹ Submissions p018 (D.Charnock), pp023-8 (C.Hughes), p089 (AEC), p180 (W.Truss MP) & p320 (AEC); transcript ppEM24-5, pEM32 (AEC), ppEM48-9 (Liberal Party), pEM56 (G.Williams), pEM59 (ABS), ppEM76-7 (W.Truss MP), ppEM93-4 (G.Smith), ppEM97-8 & pEM109 (C.Hughes)

⁵² Submissions p018

MP submitted that the system is unfair to rural voters. As discussed at page 32, the largest electorates in area also have amongst the largest enrolments, and thus are prone to remaining over-quota in the event of the redistribution cycle being prematurely terminated.

4.24 The Committee does not believe that the three-and-a-half year rule is producing a discernible partisan effect. As advised by Professor Colin Hughes⁵³, Dr Charnock's figures of mean under-enrolment in ALP seats equate in the worst case (the 1987 election) to just 250 electors on an average enrolment of 80 000. At the 1993 election, the equivalent figure was just 88 electors. As the AEC notes, the debate is in its early stages and one can have legitimate doubts about methodologies used to identify partisan effects.⁵⁴

4.25 However should it be established that three-and-a-half years is not the most appropriate projection period, then the figure should of course be revised. A shorter projection period should also improve the accuracy of the enrolment projections used for redistributions (see discussion at page 38), in that Redistribution Committees would not be obliged to look so far into the future when considering approximate equality of enrolments.

Recommendation 6: that subject to consultation with the Australian Bureau of Statistics (ABS) on relative population trends in the States and the Territories, subsections 66(3)(a) and 73(4)(a) of the Electoral Act be amended to provide a shorter projection period for approximate equality of enrolments.

⁵³ Submissions pp027-8

⁵⁴ Submissions p089; transcript pEM32

4.26 The AEC has advised that there is no need to modify the maximum seven-year period allowed between redistributions if the three-and-a-half year period is adjusted⁵⁵, notwithstanding the original reasoning behind the choice of the three-and-a-half year period.

4.27 The Surveyor General of New South Wales Mr Don Grant submitted that as a consequence of interstate population shifts, the seven-year period is too long. He suggested that the redistribution cycle be tied to the five-yearly census conducted by the ABS.⁵⁶ However, in the Committee's opinion the determination of State entitlements required in every Parliament provides an adequate safeguard against population movements. Also, due to the High Court's ruling in *McKinlay's Case* (see page 42) the Committee is not in a position to recommend that redistribution dates be tied to events such as the census.⁵⁷ Such a process would not satisfy the Constitutional requirement that a determination be made "whenever necessary".

4.28 The Committee believes that the seven-year period should not be changed. There is little benefit in increasing the frequency of redistributions in those States where there will be no change in representation entitlements, and where, if past experience is any guide, there will be little deterioration in the quality of apportionment between electoral divisions.⁵⁸

Recommendation 7: that the period of seven years between redistributions of a State provided for in subsection 59(2) of the Electoral Act remain unchanged.

⁵⁵ Transcript pEM24-5 (AEC), pEM77 (W.Truss MP) & pEM93 (G.Smith)

⁵⁶ Submissions p033 (D.Grant); transcript pEM58 (ABS)

⁵⁷ Transcript pEM21 (AEC) & ppEM58-9 (ABS)

⁵⁸ Submissions p078 (AEC); transcript ppEM24-5 (AEC)

Enrolment Projections

4.29 The very tight tolerances imposed by the three-and-a-half year rule obviously place great importance on projections of future enrolment. In the mid-1980s, the AEC undertook a major project to code into the electoral rolls the ABS Census Collection District (CCD) in which each elector was resident. The CCDs, which typically contain several hundred electors, are now used as the fundamental "building blocks" from which electoral divisions are created.

4.30 The process for developing enrolment projections takes place in two stages.⁵⁹ At the first stage, a mathematical extrapolation from observed growth rates is undertaken in Statistical Local Areas (SLAs, comprised of a number of CCDs) and then interpolated down to CCD level. These projections are developed in accordance with a methodology based on advice and data from the ABS.

4.31 At the second stage, the projections are forwarded to the AEC's Divisional Returning Officers (DROs). The DROs examine the computer projections for their areas and substitute their own projections where appropriate, relying on detailed local knowledge and information supplied by relevant planning and statistical authorities.

4.32 As an aid to the Redistribution Committees and those interested in making suggestions on possible boundaries, current enrolment numbers and the AEC projections are made available in published volumes. The Redistribution Committees and augmented Electoral

⁵⁹ Submissions p088, pp107-11 (AEC) & pp295-6 (B.Cox); transcript ppEM30-1 (AEC) & ppEM86-8 (G.Smith)

Commissions can amend or reject the AEC projections on the basis of further evidence, including input received through the suggestions, comments and objections stages of a redistribution (discussed at Chapter Six).

4.33 Forecasting enrolment levels to the degree of accuracy required under the three-and-a-half year rule is a difficult requirement. Inevitably there will be criticisms, such as those made by Mr Garrie Gibson MP and Mr Peter Cleeland MP in evidence to this Inquiry⁶⁰, of selected forecasts. Nonetheless, their evidence did not alter the Committee's view that the forecasts have for the most part been properly managed, when judged dispassionately against the enrolment figures published each month⁶¹ under section 58 of the Act.

4.34 The Inquiry did receive suggestions that an increased role for the ABS might improve the accuracy of the forecasts. The Surveyor General of New South Wales Mr Don Grant submitted that

due to significant differences between elector enrolment numbers and the equivalent ABS enumeration, the ABS values, being a more accurate representation of the population, should be used in the process.⁶²

⁶⁰ Submissions p006-7, p011, pp013-4 (G.Gibson MP), p205, p208, pp216-7, p226, p230, pp235-49, p272 (P.Cleeland MP), pp286-90, p305, pp308-10 & pp329-30 (B.Cox); transcript ppEM15-7 (R.Atkinson MP), pEM30 (AEC), ppEM160-1 & pEM170 (G.Gibson MP)

⁶¹ See examples at submissions pp103-6 (AEC)

⁶² Submissions p033

4.35 The ABS itself submitted⁶³ that

past growth rates are often a poor indicator of future growth rates, particularly in SLAs which are in rapid growth or decline, and [the ABS] has offered advice on how to improve the projection methodology. Given the important use of these projections, it could be argued that consultation with ABS on, if not agreement by ABS to, the projection methodology should be mandatory.⁶⁴

4.36 The ABS advised that the AEC last asked it for advice on the projection methodology in 1990 (although the post of "non-judicial appointee" on the three-member Electoral Commission has historically been filled by the Australian Statistician, who thus serves on the augmented Electoral Commissions).

4.37 The AEC responded that it is well aware of the dangers of simply relying on past growth rates, hence the process of forwarding the initial projections to the DROs for local input and the ability of the redistribution bodies to accept further evidence. The AEC also advised that the assumptions involved in determining *enrolment* are not always susceptible to judgement by looking at statistics based only on population.

4.38 At present the Electoral Act does not prescribe the methodology to be used in making enrolment forecasts. According to the AEC the advantages of this are first, that people are free to advocate by way of suggestion, comment or objection a different enrolment

⁶³ Submissions p048 (ABS); transcript ppEM30-1 (AEC), ppEM59-62 (ABS), pEM100 (C.Hughes) & pEM183 (AEC)

⁶⁴ Submissions p048

methodology, and second, that improved statistical and demographic techniques are able to be implemented without legislative amendment.⁶⁵

4.39 However given the emphasis elsewhere in the redistribution process on achieving transparency and objectivity based on clearly defined criteria⁶⁶, the Committee believes interested parties should be advised, in detail and as early as possible, on the process to be used by the AEC for determining enrolment projections. The Committee also believes that the AEC and the ABS should discuss the projection methodology further.

Recommendation 8: that the AEC and the ABS form a working party to determine the most effective methodology for enrolment projections.

Recommendation 9: subject to Recommendation 8, that after the AEC has agreed on its enrolment projections (including the input from the DROs) the projections be forwarded to the ABS for an opinion to be published in the volumes of AEC enrolment projections.

Recommendation 10: that as early as possible in a redistribution, interested parties be advised in detail on the process to be used by the AEC for determining enrolment projections.

⁶⁵ Submissions p089

⁶⁶ Submissions p330 (B.Cox); transcript ppEM160-1 & ppEM170-1 (G.Gibson MP)

The High Court

4.40 There was some discussion at the Inquiry of the influence of High Court decisions on the redistribution process⁶⁷, notably the 1975 *McKinlay's Case*.⁶⁸ In that case, the Court held that the phrase "directly chosen by the people of the Commonwealth" in section 24 of the Constitution does not require equal numbers of electors or persons in each House of Representatives electorate. This finding has obvious implications when considering amendments to the three-and-a-half year rule.

4.41 The High Court also ruled in *McKinlay's Case* that section 24 requires that the populations of the States and the Commonwealth be ascertained, and representation entitlements determined, during the life of each ordinary House of Representatives in time to permit elections based on the determination.⁶⁹ The High Court did not consider this requirement to be satisfied by provisions of the *Representation Act* which tied redistributions to the census (page 37 also refers). The legislative outcome of *McKinlay's Case* is sections 46 and 48 of the Electoral Act, which provide for a determination of State representation entitlements in the tenth month of a House of Representatives.

⁶⁷ Submissions pp051-68 (G.Williams), p074, p094 & pp100-1 (AEC); transcript pEM21, ppEM33-4 (AEC), ppEM51-7 (G.Williams), pEM78 (W.Truss MP), pEM97 & pEM106 (C.Hughes)

⁶⁸ *Attorney-General (Cth); ex rel McKinlay v Commonwealth* (1975) 135 CLR 1. Another significant decision was *Attorney-General for New South Wales (ex rel Mackellar) v. Commonwealth* (1977) 12 ALR 129, in which the High Court struck down amendments made in 1965 to the formula for determining State representation entitlements. The amended formula did not satisfy the Constitutional requirement that Members of the House of Representatives be apportioned among the States in proportion to their populations, and that the number of Members be "as nearly as practicable" twice the number of Senators.

⁶⁹ Submissions p074 & pp100-1 (AEC); transcript pEM21 (AEC)

4.42 According to the Australian National University's Mr George Williams⁷⁰, the High Court's decision in *McKinlay's Case* leaves open the possibility that section 24 requires "relative equality" between electorates, whereby electoral boundaries should be drawn to achieve numerical equality except to the extent that other legitimate interests justify a departure from that goal.

4.43 A similar argument is now before the High Court in *McGinty v Western Australia*. That case is seeking to strike down the current State redistribution in Western Australia, on the basis of among other things the implied guarantee of "representative democracy" in the Constitution.⁷¹ In 1992 the High Court held that the Constitution provides for a system of representative democracy, which in turn cannot be maintained without freedom of political discussion.⁷² An argument being put in *McGinty v Western Australia* is that a system of representative democracy requires that every citizen's vote be of approximately equal value in determining the government.

4.44 Mr Williams suggested that specific provisions of the Electoral Act could be found to be invalid, with the High Court requiring stricter guarantees of equality. He particularly nominated the "mini-redistribution" procedures, the seven year rule and the requirement that a redistribution be held if more than one-third of a State's divisions remain outside a ten percent tolerance. Mr Williams submitted that it would be prudent for the Committee to recommend changes to the mini-redistribution provisions, and to await the High Court's decision before recommending any relaxation of the numerical constraints.

⁷⁰ Submissions p057-64 (G.Williams). The submission quotes from Peter Creighton, "Apportioning Electoral Districts in a Representative Democracy" (1994) 24 *Western Australian Law Review* 78

⁷¹ Submissions p094 (AEC); transcript pEM32-3 (AEC) & ppEM51-7 (G.Williams)

⁷² *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106; *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1

4.45 A High Court decision that there is, in fact, a Constitutional requirement of equality of enrolments might well lead to more frequent redistributions, and might also frustrate the Committee's desire to amend the three-and-a-half year rule so as to give greater emphasis to the non-numerical criteria.

Recommendation 11: that when the High Court's decision in *McGinty v Western Australia* is known, the AEC advise this Committee of the implications for the redistribution provisions of the Electoral Act.

4.46 In practical terms there will be a gap of only a few months - if any - between legislative amendments arising from this report and the McGinty decision. As such, there will not be any serious ramifications in terms of redistributions being declared invalid. Nor does the Committee expect its deliberations to influence the attitude of the High Court.

4.47 The Committee therefore intends to pursue its recommendations on the three-and-a-half year rule, in the knowledge that they would maintain substantial restrictions on malapportionment, would allow other legitimate policy objectives to be more effectively met, and would be in accordance with the current leading case from the High Court on the requirement for equality of enrolments - namely *McKinlay's Case*. In short, the Committee will wait until the McGinty decision is actually available before attempting to deal with its implications.

FIVE: ELECTORAL BOUNDARIES AND POLITICAL OUTCOMES

Electoral "Fairness"

5.1 The Electoral Act requires Redistribution Committees and augmented Electoral Commissions to take account of current and future enrolment levels, and a series of qualitative criteria. The Act conspicuously does not require Redistribution Committees and augmented Electoral Commissions to take account of the political outcomes of their proposed boundaries. There was some discussion at the Inquiry as to whether the Act ought to provide that a majority of votes translates into a majority of seats, and if so how this might best be achieved.⁷³

5.2 An important development in this area was an amendment in 1991 to the Constitution of South Australia. At the 1989 State election the Liberal Party failed to secure government with 52 percent of the two-party preferred vote. A Joint Select Committee of the Parliament of South Australia resolved that redistributions should be held after each election, with a fairness test imposed on those redistributions.⁷⁴

⁷³ Submissions p001 (W.Tuckey MP), p003 (M.Mackerras), p019 (D.Charnock), pp023-9 (C.Hughes), pp092-4, pp112-52 (AEC) & p282 (B.Cox); transcript pEM21, ppEM45-7 (AEC), ppEM65-7 (M.Mackerras), ppEM77-8 (W.Truss MP), ppEM100-4 (C.Hughes) & ppEM132-43 (A.Becker)

⁷⁴ Transcript pEM132 (A.Becker). See also the 1991 *Report of the Electoral Districts Boundaries Commission*.

5.3 The appropriate amendments were supported at a referendum held on 9 February 1991. Section 83 of the State Constitution now provides that:

(1) *In making an electoral redistribution the Commission must ensure, as far as practicable, that the electoral redistribution is fair to prospective candidates and groups of candidates so that, if candidates of a particular group attract more than 50 per cent of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent), they will be elected in sufficient numbers to enable a government to be formed.*

.....

(3) *For the purposes of this section a reference to a group of candidates includes not only candidates endorsed by the same political party but also candidates whose political stance is such that there is reason to believe that they would, if elected in sufficient numbers, be prepared to act in concert to form or support a government.*

5.4 The fairness test is perhaps a viable option for some State jurisdictions, and seems to be working effectively in South Australia. However, there would be serious practical difficulties in imposing such a test on Commonwealth redistributions. First, such a test would necessitate a redistribution in every State after each federal election. Second, under the Constitution⁷⁵ there is no such thing as a "national" redistribution; rather, Commonwealth

⁷⁵ In particular sections 24 and 29. Section 29 provides among other things that electoral divisions "shall not be formed out of parts of different States".

redistributions are conducted as discrete exercises in each State and Territory. As the AEC explained,

It would not suffice merely for each augmented Electoral Commission to attempt to apply a "fairness" criterion of the South Australian type in relation to the divisions within a State or Territory, since even if it were possible for the augmented Electoral Commission for each State and Territory to draw boundaries so as to guarantee that a party which gained 50%+1 of the vote in the State or Territory would gain a majority of seats therein, that would not by itself guarantee that the party which gained over 50% of the vote nationally would gain over 50% of the seats nationally.⁷⁶

5.5 The first Australian Electoral Commissioner, Professor Colin Hughes, implied that a South Australian-style fairness test would inevitably lead to a downgrading of the criteria presently taken into account when boundaries are drawn:

consider Tasmania at either of the recent times when all five seats were won by one party, and ask what boundaries could have been drawn to try to ensure that the then losing party secured two seats. The boundaries would begin to resemble those grotesques drawn after the 1990 census in the United States in States like North Carolina or Louisiana - which the courts have since been striking down.⁷⁷

5.6 Professor Hughes made the point that in South Australia a specific problem - namely a perception that large numbers of votes were locked up in safe seats - could be addressed by adjusting two electoral districts. As the AEC noted, different elements are at work when one

⁷⁶ Submissions p094

⁷⁷ Submissions p029

party does particularly well in marginal seats:

That is a much more random factor....under the current boundaries we have at the federal level, in the order of 40 percent of the total ALP vote is in safe and fairly safe Labor seats; whereas only 33 percent of the Liberal-National party vote is in the Coalition's safe and fairly safe seats. It looks as though at the federal level we have a different factor operating than that which is operating in South Australia. The prospect of doing anything about those provisions at the federal level is correspondingly very much less.⁷⁸

5.7 Also, since the 1983/84 amendments the Commonwealth redistribution process has produced the "wrong" answer just once - in 1990, when the two-party preferred vote was very evenly balanced at 49.9 percent to 50.1 percent. Even if augmented Electoral Commissions were directed to take political outcomes into account, there is no guarantee that such a close outcome could be precisely reflected in the break-up of seats between the parties.

5.8 In the absence of a clearly demonstrated need, the Committee does not recommend that Commonwealth redistributions be complicated by the addition of a "fairness" test.

5.9 In addition to the South Australian model, there was discussion at the Inquiry of a "top-up" system. Under such a system, additional Members would be appointed to the House of Representatives so as to ensure that the party which secured a majority of the two-party preferred vote also secured the majority of seats.⁷⁹

⁷⁸ Transcript pEM47

⁷⁹ Submissions p019 (D.Charnock) & pp028-9 (C.Hughes); transcript pEM78 (W.Truss MP), ppEM100-2 (C.Hughes), pEM132, ppEM137-8 & ppEM142-3 (A.Becker)

5.10 Such a system would require an amendment to the "nexus" provided for in section 24 of the Constitution (that is, the requirement that the number of Members of the House of Representatives be "as nearly as practicable, twice the number of the senators"). A proposal to remove the nexus has been rejected previously, at a referendum held in May 1967.

5.11 Again, in the absence of a demonstrated need the Committee does not recommend that a referendum be held on the question of a "top up" system.

Allegations Regarding the 1994 Redistributions

5.12 While political outcomes are not a factor the redistribution bodies can take into consideration, MPs Mr Peter Cleeland and Mr Garrie Gibson submitted that such considerations did, in fact, improperly influence the outcome of the redistributions in Queensland and Victoria.⁸⁰

5.13 Mr Cleeland submitted among other things that the Redistribution Committee and augmented Electoral Commission for Victoria attempted to balance the number of seats between the parties and had a bias towards the creation of marginal divisions, and that to this end the augmented Electoral Commission had sought two-party preferred voting figures for all polling booths in each proposed redistributed division (Mr Cleeland subsequently withdrew and apologised for this last allegation).

⁸⁰ Submissions pp005-15 (G.Gibson MP), p083, pp085-6 (AEC), p178 (W.Truss MP), p189 (Liberal Party), pp192-279 (P.Cleeland MP), p282, pp284-92, pp298-9, p305, pp307-14, pp323-33 (B.Cox), submission no.21 (AEC), submission no.22 (P.Cleeland MP) & submission no.23 (AEC); transcript pEM44 (AEC), pEM67 (M.Mackerras), ppEM144-158 (P.Cleeland MP), ppEM159-72 (G.Gibson MP), ppEM176-7 & ppEM180-1 (AEC). See also submissions p001 (W.Tuckey MP)

5.14 Mr Gibson's submission followed a speech he made in the Grievance Debate of 27 March 1995, concerning the role of the Australian Electoral Officer (AEO) for Queensland Mr Bob Longland in the 1994 redistributions. Mr Gibson argued first, that Mr Longland had ordered DROs to alter growth projections so as to permit the politically-motivated creation of marginal electorates, and second, that the other members of the Redistribution Committee and augmented Electoral Commission in Queensland acted as a "rubber stamp" for Mr Longland's proposed boundaries.

5.15 To the extent that Mr Cleeland and Mr Gibson make recommendations for changes to the process, these are examined as appropriate elsewhere in the report. However, in the Committee's opinion they have failed to substantiate their claims that considerations of marginality or political outcomes improperly influenced the 1994 redistributions. In particular, the Committee was thoroughly persuaded of the validity of Mr Brian Cox's substantial response to Mr Gibson's allegations.⁸¹ As such, the Committee rejects Mr Gibson's attack on the competence and propriety of the AEO for Queensland.

Marginality

5.16 To the extent that the Inquiry examined the supposedly high number of marginal divisions being created⁸², reasons put forward included the 1984 increase in the size of the Parliament, and the breakdown of white collar/blue collar distinctions in Australian cities. The AEO for Victoria, Dr Muffet, also suggested that the requirement to take account of existing

⁸¹ Submissions p282, pp284-92, pp298-9, p305, pp307-14 & pp328-33 (B.Cox); transcript pEM160, ppEM167-8 & pEM171 (G.Gibson MP)

⁸² Submissions p196 & p279 (P.Cleeland MP); transcript ppEM44-5 (AEC), ppEM102-3 (C.Hughes), ppEM148-9 & pEM151 (P.Cleeland MP)

boundaries is a major factor:

Certainly when parties put in their submissions they go for retaining the seats that are theirs in the main. If a process is followed which uses that as a steady line around which you operate, it is almost a necessary outcome that seats become marginalised.⁸³

5.17 However, the AEC did not concede that redistributions are leading to an ever-increasing number of marginal seats. The following figures were provided⁸⁴:

Percentage of divisions classified as marginal (ie within six percent):

<i>Year</i>	<i>%</i>
1983	40.8
1984	39.2
1987	38.5
1990	37.8
1993	43.5
present	41.9

5.18 The 1994 redistribution in Queensland produced an increase of one marginal seat (following a decrease at the 1992 redistribution), and in Victoria the number declined by one.⁸⁵ These changes effectively reflect the change in the States' entitlements.

⁸³ Transcript pEM44 (AEC)

⁸⁴ figures from AEC chart accepted as Exhibit no.6

⁸⁵ Submissions pp310-1, pp323-4 & p326 (B.Cox); transcript ppEM148-9, pEM151 (P.Clelland MP) &

pEM169 (G. Gibson MP)

SIX: SUGGESTIONS, COMMENTS AND OBJECTIONS

6.1 Public input into redistributions occurs through a statutory process of suggestions, comments and objections. The different stages of the process are set out below⁸⁶ (the chart at page 12 also refers).

Public Suggestions

6.2 Section 64 of the Electoral Act requires a Redistribution Committee, as soon as practicable after its appointment, to invite by notice in the *Gazette* and two newspapers circulating throughout the State or Territory suggestions relating to the redistribution. The suggestions are required to be lodged in writing within 30 days of the *Gazette* notice.

Comments on the Suggestions

6.3 The suggestions are made available for public inspection. There is a statutory 14-day period for lodging written comments on the suggestions.

⁸⁶ Submissions pp84-5 (AEC); 1993 election Inquiry submissions ppS1590-1 (AEC)

The First Redistribution Proposal

6.4 Having considered the suggestions and comments, the Redistribution Committee makes a proposed redistribution. Maps showing the proposed boundaries and names of divisions are published and exhibited at AEC offices.

Objections to the Proposed Redistribution

6.5 Under section 69 of the Act, following the publication of the proposed redistribution there is a period of 28 days within which initial objections to the proposal may be lodged by members of the public or organisations.

Objections Considered by the Augmented Electoral Commission

6.6 Under section 72 of the Act, objections are considered by the augmented Electoral Commission for the State - that is, the members of the Redistribution Committee plus the Chairperson of the Electoral Commission and the non-judicial Commissioner. The augmented Commission must hold a public inquiry into any objection, unless in the opinion of the augmented Commission the matters raised in the objection were raised (or are "substantially the same" as matters raised) in the public suggestions or comments on the suggestions, or if the objection is vexatious or frivolous. In conducting the inquiry the augmented Commission is not bound by the legal rules of evidence, and may regulate the conduct of proceedings as it thinks fit.

6.7 Inquiries are typically held in the capital city of the State, although augmented Electoral Commissions have held inquiries in provincial cities where such an approach has facilitated the examination of controversial proposed boundaries.

The Second Redistribution Proposal

6.8 After it has considered all the initial objections, the augmented Electoral Commission makes its own proposed redistribution.

Further Objections

6.9 If the augmented Electoral Commission's proposed redistribution is "significantly different" from the Redistribution Committee's proposal, the augmented Commission invites further objections from those persons or organisations who submitted suggestions, comments or initial objections. The further objections are considered by way of public inquiry, on the same basis as the initial objections.

Final Determination

6.10 Having considered the initial and any further objections, under section 73 of the Act the augmented Electoral Commission makes a final determination of divisional boundaries and names. An augmented Commission is allowed 60 days after the closing date for receipt of initial objections to consider those objections, make its own redistribution proposal and

consider any further objections; the final determination must be made "as soon as practicable" after all objections have been considered.

6.11 Under section 74 of the Act the augmented Electoral Commission is required to state in writing its reasons for the determination made by it. Any member of the augmented Commission who disagrees with the determination may state in writing the reasons for his or her disagreement.

6.12 The Redistribution Committee and augmented Electoral Commission are discussed further in the next Chapter.

An Initial Proposal as the First Step?

6.13 The Australian practice of initiating a redistribution with a call for suggestions and comments is not the only approach which could be adopted. In England, for example, a review of Parliamentary constituencies commences with the publication by the Boundary Commission of a provisional recommendation. There was discussion at the Inquiry as to whether the Australian process should similarly commence with a Redistribution Committee producing its proposal.⁸⁷

⁸⁷ Submissions pp096-7, p320 & submission no.23 (AEC); transcript ppEM42-4 (AEC), ppEM49-50 (Liberal Party), ppEM74-5 (W.Truss MP), ppEM94-5 (G.Smith), pEM98 (C.Hughes), ppEM157-8 (P.Clelland MP) & ppEM178-9 (AEC)

6.14 According to the AEC, one reason for adopting such a scheme might be a perception that a suggestion from a major political party would not be adopted in full, no matter how sound the suggestion was, because the Redistribution Committee would fear the accusations of partisanship which might follow. While firmly stating that such a perception would be misconceived, the AEC nonetheless suggested that the parties might be making suggestions which strategically disguise their preferred boundaries.⁸⁸ During public hearings, it was confirmed that such considerations at least enter the thoughts of party representatives when formulating proposals.⁸⁹

6.15 In endorsing the present system, Professor Colin Hughes suggested that the parties' concerns are misguided:

The fear is often expressed - what if a political party were to put up a submission that was so brilliant that nothing could be done but to adopt it and it would not just taint the whole process? I think, with respect, there are processes inherent in the parties' compilation that [make it] most unlikely. By the time various stalwarts and wounded members of the flock are looked after, that is never going to be the perfect solution...to that extent the parties' input is well worth having, but I think it ought to be up-front and seen as a public document coming in.⁹⁰

⁸⁸ Submissions p096

⁸⁹ Transcript ppEM43-4 (AEC) & pEM74 (W.Truss MP)

⁹⁰ Transcript pEM98

6.16 However while the AEC did not express an opinion on whether the amended scheme should be adopted, individual Australian Electoral Officers (AEOs) were enthusiastic. The AEO for Victoria explained that

*We get faced with two or three sets of maps from the two or three major parties. They have, obviously, different points of view which are designed to suit their own interests; their interests are different. We do our own thing, but clearly some of that is going to coincide with, let us say, the Labor or the Liberal side of things. We are going to be accused of bias - as we are now accused of bias - by whoever's side we did not choose for whatever reason...From my point of view, I would see it as reasonable for the [Redistribution] Committee to put out a series of maps and provide for a more extended process of working around that.*⁹¹

6.17 Also, there are obvious attractions in being able to respond to a draft set of maps, not least of which is that interested parties would be aware of the thinking of the Redistribution Committee when preparing their input. This point was reflected in the evidence of Mr Peter Cleeland MP. In endorsing the proposal, Mr Cleeland advised the Committee of his anger in putting an enormous amount of time into his submission to the Redistribution Committee - "only to find that it is just irrelevant".⁹²

6.18 The Committee sees merit in the proposal, but believes that further submissions are needed from the political parties and other relevant organisations before a final decision can be made. The Committee will seek to obtain the parties' evidence before the next round of redistributions.

⁹¹ Transcript ppEM42-3 (AEC)

⁹² Transcript pEM158

Determination of the Quota

6.19 The "quota" for a redistribution is the average enrolment per division for the relevant State. Importantly, the quota is therefore the figure upon which the maximum permissible deviation from average enrolment of ten percent (reducing to two percent three-and-a-half years after the redistribution) is centred.

6.20 Under section 65 of the Act the quota is only determined by the Electoral Commissioner at the *close* of the period allowed for public suggestions and comments. While the intention may have been to ensure that Redistribution Committees work on the basis of the most up-to-date figures available, the provision means that those making suggestions and comments must work in ignorance of the strict numerical constraint which will govern the redistribution.⁹³

Recommendation 12: that subsection 65(2) of the Electoral Act be amended to provide that the quota is struck as soon as practicable after a redistribution has been directed.

Advertising for Suggestions and Comments

6.21 The Electoral Act requires the advertisement calling for suggestions and comments to be placed by the Redistribution Committee. Once a committee is appointed, it typically meets once to approve a standard advertisement and then is limited in what more it can do until

⁹³ Submissions p098; transcript pEM21 & pEM179

suggestions have been received. This Committee agrees with the AEC that it would be more appropriate for the advertisement to be placed by the Electoral Commission, thereby allowing interested parties to prepare suggestions while arrangements for the appointment of the Redistribution Committee are being made.⁹⁴

Recommendation 13: that subsection 64(1) of the Electoral Act be amended to provide that the advertisement calling for suggestions and comments is placed by the Electoral Commission, rather than the Redistribution Committee, so as to allow interested parties to prepare suggestions while the appointment of the Redistribution Committee is being arranged.

6.22 At present the deadline for the lodging of suggestions is midnight on the closing day of the suggestions period. The Committee accepts the AEC's advice that this places an unreasonable strain on the Redistribution Secretariat staff, who are required to be on duty until midnight to receive suggestions, and then have to spend some hours afterwards preparing material for public inspection when the office opens at 8.30am the next morning.⁹⁵

Recommendation 14: that section 64 of the Electoral Act be amended to provide that the *Gazette* notice calling for suggestions and comments is published on a Wednesday, making the closing date for suggestions a Friday. The cut-off time for receipt of suggestions should be 6.00pm, with the suggestions required to be available for perusal on the following

⁹⁴ Submissions p097

⁹⁵ Submissions pp097-8

Monday. A cut-off time of 6.00pm should also apply for the lodging of comments.

6.23 Finally, the AEC advised that the requirement that advertisements relating to redistributions be placed in two newspapers circulating throughout a State or Territory causes practical difficulties, in that not all States and Territories have two newspapers in wide circulation.⁹⁶ The AEC recommended that the requirement be amended to provide for advertising in least one newspaper.

6.24 However, since the AEC made its submission a similar proposed amendment to the Electoral Act (following a recommendation of this Committee in an earlier report⁹⁷) has failed to pass the Senate. The Committee sees no point in pursuing the matter further.

Public Scrutiny of Comments and Objections

6.25 In their submissions the AEC and Mr Graham Smith noted inconsistencies in the public scrutiny of comments and objections, when compared to suggestions.⁹⁸ At present comments and objections are not required to be placed on the public record, and no comments are invited

⁹⁶ Submissions p098

⁹⁷ *The 1993 Federal Election* p118

⁹⁸ Submissions p098 (AEC), p160 & pp164-6 (G.Smith)

on objections.

Recommendation 15: that the Electoral Act be amended as necessary to provide that comments and objections are made available for public scrutiny in a manner similar to suggestions (including provision of a 14 day period for lodging comments on initial objections).

The Right to Lodge Objections

6.26 The AEC submitted that the objections process has made redistributions far more open and accountable than was previously the case:

those who have made suggestions, comments or objections have been better placed than before to appreciate why their own preferred positions may not have been accepted. Participants at inquiries into objections have typically been given extensive opportunities to expand on their submissions, so that the augmented Electoral Commission gains the maximum benefit from their views, and so that the participants can be satisfied that they have received a proper hearing.⁹⁹

6.27 However, Mr Brian Cox and Mr Warren Truss MP noted that the right to lodge objections to an augmented Electoral Commission's proposal is restricted to those who lodged suggestions, comments, or objections to the Redistribution Committee's proposal.¹⁰⁰ This

⁹⁹ Submissions p085

¹⁰⁰ Submissions p178, pp182-3 (W.Truss MP) & pp296-7 (B.Cox); transcript pEM17, pEM19 (R.Atkinson MP), ppEM21-2, ppEM34-6 (AEC), pEM72 & pEM75 (W.Truss MP)

restriction has an unfortunate impact on some people adversely affected by the augmented Commission's proposal. As Mr Truss pointed out,

These people may not have chosen to lodge an objection to the original proposal because they were satisfied with its contents and they have no way of knowing that the augmented Commission may be about to consider changes to the original proposal that adversely affect their interests.¹⁰¹

6.28 The Committee believes that the relevant provision simply encourages the lodging of frivolous objections to a Redistribution Committee's proposal, in order to retain the option of a later objection.¹⁰² An alternative route around the restriction led to some debate at the 1994 hearings in Victoria, as to whether new material appended to an ALP objection ought to have been admitted.¹⁰³ As such, the right to lodge objections should be extended.

Recommendation 16: that section 72 of the Electoral Act be amended, so as to remove the requirement that persons or organisations must object to a Redistribution Committee's proposal (or make suggestions or comments) to be able to lodge an objection to an augmented Electoral Commission's proposed redistribution.

¹⁰¹ Submissions p182

¹⁰² Submissions p297 (B.Cox); transcript pEM35 (AEC)

¹⁰³ Submissions p187 (Liberal Party); transcript pEM17 (R. Atkinson MP) & ppEM34-6 (AEC)

6.29 Similarly, there have been occasions where an augmented Electoral Commission's final determination has included completely new proposals, with affected parties being denied the opportunity to respond.¹⁰⁴ Mr Truss submitted that there should be an opportunity to so respond.

6.30 Similar concerns led a predecessor of this Committee to recommend the opportunity to lodge objections to an augmented Electoral Commission's proposed redistribution.¹⁰⁵ The difficulty with a further recommendation of this type is that at some stage, public input into a redistribution has to cease to enable a final determination to be made. In the absence of a clear alternative proposal as to when the already lengthy objections stages should be closed off, the Committee does not recommend the change proposed by Mr Truss.

Should Each Objection be Responded To?

6.31 In separate evidence, Mr Peter Cleeland MP and Mr Garrie Gibson MP stated that Redistribution Committees and augmented Electoral Commissions had failed to consider all suggestions, comments and objections lodged with them (as required by the Electoral Act) and had failed to provide reasons for their determinations.¹⁰⁶

¹⁰⁴ Submissions p001 (W.Tuckey MP) & p183 (W.Truss MP); transcript ppEM35-6 (AEC) & pEM72 (W.Truss MP)

¹⁰⁵ *The Operation During the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation* p13

¹⁰⁶ Submissions pp194-279 (P.Cleeland MP), pp324-5 (B.Cox) & submission no.23 (AEC); transcript ppEM144-8, pEM153, pEM155, pEM158 (P.Cleeland MP), ppEM161-2, ppEM165-7 (G.Gibson MP) & ppEM176-8 (AEC)

6.32 Mr Cleeland and Mr Gibson submitted that the Act ought to require that objections are responded to, even where the augmented Electoral Commission does not make changes to the earlier proposals. However the Committee does not accept that Mr Cleeland and Mr Gibson's objections were "ignored"; statements in the redistribution reports would suggest that their submissions were at least considered.¹⁰⁷

6.33 While those making objections should be aware of why an augmented Electoral Commission arrived at its final determination, for reasons of practicality, timeliness, and clarity of the final reports the Committee does not recommend that the Act be amended to require more detail to be given on objections not accepted. However where objections can be grouped together and responded to collectively, augmented Electoral Commissions should do so in their reports. The Committee notes that this practice has been adopted in the past, and that to date redistribution reports have contained reasonably comprehensive explanations of chosen boundaries.

Recommendation 17: that in their reports augmented Electoral Commissions respond to as many objections as is practicable, by way of collective response to groupings of similar objections.

¹⁰⁷ Submissions p325 (B.Cox); transcript pEM177 (AEC)

Transcripts of Proceedings

6.34 The Liberal Party noted that there is no current record available for the 1994 redistributions, as no transcripts of proceedings were produced.¹⁰⁸ On previous occasions there have been microfiche of these proceedings provided with the report.

6.35 The Committee agrees that transcripts can be a valuable aid in reviewing a redistribution and preparing for future redistributions.

Recommendation 18: that in future, transcripts of the proceedings before augmented Electoral Commissions be produced as a matter of course.

The Role of Divisional Returning Officers

6.36 At present, the only formal role in the redistribution process for the AEC's Divisional Returning Officers (DROs) is to review the forecasts of enrolment three-and-a-half years after the anticipated date of the redistribution (as discussed at page 38). A DRO's further involvement is at the discretion of the Redistribution Committee and the augmented Electoral Commission.

¹⁰⁸ Submissions p186

6.37 In practice the DROs seem to be consulted extensively by the AEOs before a proposed redistribution, and afterwards are only involved on an "as needed" basis.¹⁰⁹ Mr Graham Smith submitted that DROs, given their local knowledge, should be formally able to participate in the redistribution process at any stage.¹¹⁰

6.38 The Committee understands the reasoning behind Mr Smith's recommendation, but believes that the role of individual DROs is best left to the judgement of the Redistribution Committee and the augmented Electoral Commission. Individual DROs do have a vested interest in the final shape of the boundaries, and the Committee sees no benefit in formalising and exposing disputes within the AEC. Also, other interested parties would be entitled to be concerned if the AEC's staff were seen to receive preferential treatment.

6.39 Of course, the DROs remain at liberty to make suggestions, comments and objections as members of the public with a particular interest and expertise.

Use by the Public of Redistribution Software

6.40 Mr Smith also submitted that most members of the public would find it difficult to make suggestions and comments on redistributions, given the stringent future enrolment requirements. According to Mr Smith, the current situation

effectively makes "informed" participation by those people, other than the major players, who wish to contribute, at best, extremely difficult and to the casual observer virtually makes the

¹⁰⁹ Transcript ppEM36-7 & ppEM184-6 (AEC)

¹¹⁰ Submissions p161 & pp172-3 (G.Smith); transcript ppEM36-7 (AEC), ppEM81-2, ppEM85-90 (G.Smith), ppEM98-9 (C.Hughes), pEM160 (G.Gibson MP) & ppEM184-6 (AEC)

"current" process appear elitist. Those with access to the computer software have a better opportunity to submit a well reasoned case than those that do not have the luxury of such access.¹¹¹

6.41 Mr Smith suggested that consideration be given to making the software used by the redistribution bodies available for public use during the different stages of the process.¹¹² In response, AEC senior management pointed out that their enrolment projections are made available in electronic form. They also expressed some scepticism about the benefits to the public of making the redistribution software available.¹¹³

6.42 However the Committee believes that Mr Smith's proposal is at least worth trialing, and recommends accordingly.

Recommendation 19: that at the next two redistributions a system be trialed whereby the public is able, at set times during each of the "public input" stages of the redistributions, to book time on a stand-alone version of the computing software used by the redistribution bodies. Reports on the trials should be prepared and made available in the final reports on the redistributions.

¹¹¹ Submissions p174

¹¹² Submissions p161 & pp173-4 (G.Smith); transcript pEM85 (G.Smith), pEM99 (C.Hughes), pEM161 (G.Gibson MP) & ppEM183-4 (AEC)

¹¹³ Transcript ppEM183-4

6.43 Regardless of whether or not this recommendation is adopted, the Committee agrees with the Liberal Party that the provision of enrolment data in electronic form is useful and should continue as a matter of course.¹¹⁴

Recommendation 20: that the AEC continue to provide its enrolment projections to interested parties in hard copy and electronically.

6.44 On the subject of the software used by Redistribution Committees, the Committee notes that the ITA ["Interactive Territory Assignment"] redistribution computing system is no longer cost effective to maintain, and is becoming unable to meet the functional demands of redistribution committees. Accordingly, the AEC decided to re-develop the system over 1994/95:

the new system was developed using a commercial package [MapInfo], and like its predecessor uses Census Collection Districts as the building blocks for electoral divisions. The new system has additional functions to overlay cultural features, such as roads, rivers, towns and railway lines, assisting the redistribution in the creation of boundaries. It runs autonomously on personal computers and contains demographic data from the Australian Bureau of Statistics and enrolment data from the AEC's Roll Management System.¹¹⁵

6.45 Redistribution software is discussed further in Chapter Eight (Other Matters).

¹¹⁴ Submissions p186

¹¹⁵ AEC Annual Report 1994-1995 pp45-6

SEVEN: THE REDISTRIBUTION COMMITTEE AND AUGMENTED ELECTORAL COMMISSION

7.1 As discussed in Chapter Six, a Redistribution Committee considers public suggestions and comments and produces the first set of proposed boundaries. The augmented Electoral Commission considers initial objections, produces its own proposed redistribution, considers further objections and makes the final determination.

Membership

7.2 Under section 60 of the Electoral Act a Redistribution Committee for a State consists of:

- the Australian Electoral Commissioner;
- the Australian Electoral Officer (AEO) for the State (the senior AEC officer in the State);
- the Surveyor-General for the State or equivalent officer or, if he or she is unavailable, the Deputy Surveyor-General or equivalent officer; and
- the Auditor-General for the State or, if he or she is unavailable, the Deputy Auditor-General.

7.3 If one of the State officers (or his or her deputy) is unavailable, a senior officer of the Australian Public Service may be appointed by the Governor-General on the advice of the Government of the day. Since the 1984 redistributions this provision has rarely if ever been employed.¹¹⁶

7.4 An augmented Electoral Commission consists of the members of the Redistribution Committee plus the two members of the three-member Australian Electoral Commission who did not serve on the Redistribution Committee. The member of the Electoral Commission who serves on a Redistribution Committee is the Australian Electoral Commissioner; the other two members of the Commission are its Chairperson (presently Justice Trevor Morling) and the "non-judicial appointee" (presently the former Australian Statistician Mr Ian Castles).¹¹⁷ The Australian Electoral Commission and the bodies responsible for redistributions are legally separate, notwithstanding the common membership.¹¹⁸

7.5 The composition of the Redistribution Committees and augmented Electoral Commissions dates to the September 1983 *First Report* of the Joint Select Committee on Electoral Reform¹¹⁹ and the subsequent *Commonwealth Electoral Legislation Amendment Act 1983*. Before the 1983/84 amendments, "Distribution Commissions" were appointed by the Governor-General on the advice of the Government of the day.¹²⁰ They had three members, one of whom was to be the Chief Electoral Officer or an officer having similar qualifications, while one, if his or her services were obtainable, was to be the State Surveyor-General or an

¹¹⁶ Submissions pp081-2 (AEC); transcript ppEM175-6 (AEC)

¹¹⁷ For background on the membership of the Australian Electoral Commission, see submissions pp080-1 (AEC)

¹¹⁸ Transcript pEM20 (AEC)

¹¹⁹ *First Report* p84

¹²⁰ Submissions pp080-3 (AEC)

officer having similar qualifications. The choice of the third Commissioner was entirely at the discretion of the Government.

7.6 While the Act allowed the Chief Electoral Officer to be appointed as a Distribution Commissioner, he rarely if ever was. Instead, the AEO for the State tended to be appointed, with no overlap in membership of the Commissions between States. Furthermore, the Distribution Commissioners saw it as their legal obligation to work independently of the electoral administration.

7.7 As a result of the 1983/84 reforms, there is now a significant commonality in the membership of redistribution bodies across the different States, allowing for a uniform approach to redistributions. Also, four of the six members of an augmented Electoral Commission are Commonwealth statutory officers who serve *ex officio*, while two are State officials who similarly serve *ex officio*. Only if a State government refuses to make its officials available does any Commonwealth government discretion in the choice of members come into play.

7.8 The inclusion of State Surveyors-General on the Redistribution Committees and augmented Electoral Commissions represents a continuation of a practice which has applied since 1918, and has as its basis the need for access to appropriate cartographic skills¹²¹, and to the detailed local information to which Surveyors-General have typically had ready access.

¹²¹ see also submissions p035 (D.Grant)

7.9 The inclusion of State Auditors-General commenced in 1984. The Joint Select Committee on Electoral Reform made this recommendation on the basis that the office of Auditor-General was common to all State administrations, was a senior position of considerable prestige and was associated with the notion of independence from direction by the Government of the day.¹²²

7.10 Complaint to this Inquiry about the roles and memberships of the two bodies was very limited and, as the AEC pointed out, tended to follow contradictory lines of argument:

while at least one of the witnesses at the Public Hearings argued for the removal of State officers from the Redistribution Committee, and a reduction in the number of State-based members of the Redistribution Committee from three to one, other discussion before the Committee suggested that the composition of the augmented Electoral Commissions should be changed to enhance the extent to which "local knowledge" was represented. These two broad lines of argument would appear to be working in opposition to each other.¹²³

7.11 The Inquiry did not reveal alternative memberships to match the expertise found in the current memberships. Also, the continuity (since 1984) of the present memberships has resulted in electoral boundaries being determined as a matter of course by bodies completely free from political direction.

7.12 The composition of the redistribution bodies, to the extent that it was discussed at the Inquiry¹²⁴, is examined below.

¹²² *The Operation During the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation* p8; transcript ppEM174-5 (AEC)

¹²³ Submission no.23 (AEC)

¹²⁴ Submissions p012 (G.Gibson MP), p035 (D.Grant), p046 (ABS), p073, pp079-83 (AEC), pp194-7, pp276-7

Alternatives

7.13 Mr Garrie Gibson MP was the only person to submit an alternative membership for the Redistribution Committees. Mr Gibson stated that senior Commonwealth public servants outside of the Australian Electoral Commission should constitute the majority of a Redistribution Committee, and that the position held by the AEO for a State should be given to an individual outside of the Commonwealth and State governments and their agencies. The AEO would remain an adviser to the Redistribution Committee.¹²⁵

7.14 Mr Gibson recommended that a Redistribution Committee be constituted of:

- the Australian Electoral Commissioner;
- a senior officer of the Australian Public Service in the relevant State, nominated for the purposes by the Governor-General;
- the Commonwealth Surveyor-General; and
- the President of the Law Council of Australia, or in his or her absence the Deputy President.

¹²⁵ Submissions p012 (G.Gibson MP). pp290-1, pp311-2 (B.Cox) & submission no.23 (AEC); transcript ppEM159-60, ppEM162-5 (G.Gibson MP) & ppEM174-5 (AEC)

7.15 In that Mr Gibson's submission was motivated by a view of the role of one AEO that the Committee has rejected (page 50 refers), the Committee does not support the removal from the redistribution bodies of the Australian Electoral Officers. Nor would the independence of the process be safeguarded by removing the State officials and replacing them with Commonwealth employees, especially given the discretion allowed to the Government of the day in the choice of Mr Gibson's person number two. Similarly, the office of President of the Law Council is not necessarily a politically neutral position; Sir Garfield Barwick was the President of the Law Council at one stage, as was the current Member for Tangney, Liberal Party MP Mr Daryl Williams QC.¹²⁶

7.16 The members of Mr Gibson's proposed committee would be unlikely to have the expertise and local knowledge of the AEO for a State, the State's Surveyor-General and the State's Auditor-General. In defending the place of State Auditor-Generals on Redistribution Committees, the AEO for New South Wales Mr Brian Nugent noted that

one of the problems that you face these days with [Commonwealth] public servants in the States is that frequently they are there on term appointments. They are there for a couple of years and they are off again whereas your Auditor-General knows the State as well as any Commonwealth public servant would. In fact, if you were to look at Mr Gibson's point, three of those four whom he names - the Electoral Commissioner, the Commonwealth Surveyor-General and the President of the Law Council - would be on all the redistributions if you had a number of redistributions occurring simultaneously and you would have no local knowledge at all.¹²⁷

¹²⁶ Transcript pEM163

¹²⁷ Transcript pEM175 (AEC)

7.17 The Committee therefore does not support Mr Gibson's proposed alternative membership of Redistribution Committees.

7.18 Mr Peter Cleeland MP submitted that the augmented Electoral Commissions as they are presently constituted are incapable of acting as administrative review tribunals.¹²⁸ Mr Cleeland asked the rhetorical question during public hearings:

How can you ask a body set up to review a decision to review it when three [sic] of the people who made the original decision are on the body that are asked to review it? It is an impossibility and it is an unfair task to ask them to do that. In my view there should be a total separation between the review process and the original determinative process.¹²⁹

7.19 The difficulty the Committee has is first, Mr Cleeland did not nominate an alternative membership for the augmented Commission, and second, Mr Cleeland's arguments are largely based on views which the Committee has rejected (pages 50 and 65 refer) concerning the conduct of the 1994 redistribution of Victoria.

7.20 Also, augmented Electoral Commissions have in the past recommended substantial changes to Redistribution Committee proposals. Examples include the 1984 redistribution of NSW (where the changes were sufficiently great to prompt the addition of the further objections stage), the 1992 redistributions of Queensland and NSW, and the last redistribution in Victoria.¹³⁰

¹²⁸ Submissions pp194-7, pp276-7 (P.Cleeland MP), pp324-5 (B.Cox) & submission no.23 (AEC); transcript pEM144 & ppEM156-7 (P.Cleeland MP)

¹²⁹ Transcript ppEM156-7

¹³⁰ Submissions p291 & p329 (B.Cox); transcript pEM178 (AEC)

7.21 The Committee does not recommend an alternative membership for the augmented Electoral Commissions on the basis of Mr Cleeland's submission.

Voting Rights on the Augmented Electoral Commission

7.22 A redistribution may be made where an augmented Electoral Commission is not unanimous in its view; four votes out of six are sufficient. However, section 71 of the Act provides that those four votes must include at least two from the members of the Australian Electoral Commission.¹³¹ Therefore, any two of the three members of the Australian Electoral Commission can veto a proposed redistribution.

7.23 In theory the three members of the Commission are likely to have the least local knowledge of the six members of the augmented Electoral Commission. Given that augmented Commissions do on occasion substantially change Redistribution Committee proposals, the Committee questioned the AEC as to whether the veto power of the members of the Australian Electoral Commission is warranted.¹³²

7.24 The AEC responded that a) the support of a majority of an augmented Commission is still required for the adoption of any proposal, b) the right of any member of an augmented Electoral Commission to put in a dissenting report has rarely needed to be exercised, and c) the process provides sufficient local knowledge for all members of the redistribution bodies to

¹³¹ Submissions p082 (AEC); transcript ppEM40-1 (AEC)

¹³² Transcript ppEM37-41

properly fulfil their responsibilities. According to the AEO for New South Wales,

You are living with the process over a period of some months. You are living with submissions. You have comments; you have objections; you have people appearing before you at objection hearings; and you have further objections. I can assure that, if you did not know the geography of the State very well at the start, you would certainly know it pretty well by the end of the process.¹³³

7.25 Removing the veto would of course leave the four members of the Redistribution Committee with a straightforward voting majority on the augmented Electoral Commission, which would tend to reinforce the concern put by Mr Cleeland as to the capacity of the augmented Commission to act as a review body.

7.26 Given that the Inquiry did not reveal a superior alternative membership for either the Redistribution Committee or the augmented Electoral Commission, it follows that in the interests of leaving the augmented Commission as an effective body of review, the voting rights of the Australian Electoral Commission representatives on that body should not be changed.

Recommendation 21: that the composition of a Redistribution Committee and an augmented Electoral Commission for a State, and the voting rights of the three members of the Australian Electoral Commission on the augmented Commission, remain as currently provided for in the Electoral Act.

¹³³ Transcript pEM39 (AEC)

Redistribution Committee for the Australian Capital Territory

7.27 Under section 61 of the Act, a Redistribution Committee for the ACT consists of:

- the Electoral Commissioner;
- the senior Divisional Returning Officer (DRO) for the territory;
- the Commonwealth Surveyor-General; and
- a senior officer of the Australian Public Service nominated by the Governor-General on the advice of the Government of the day.¹³⁴

7.28 Like the augmented Electoral Commissions for the States, an augmented Commission for the ACT consists of the members of the Redistribution Committee plus the other two members of the Australian Electoral Commission.

7.29 Mr Brian Cox submitted that with the ACT having attained self-government, the membership of a Redistribution Committee and an augmented Electoral Commission for the ACT should now be brought into line with the membership of the equivalent bodies in the States.

¹³⁴ Submissions pp079-80 (AEC) & pp294-5 (B.Cox); transcript pEM162 (G.Gibson MP)

7.30 The proposal would see the ACT Auditor-General replace the Governor-General's nominee, and the ACT's equivalent of a Surveyor-General replace the Commonwealth Surveyor-General. In between general elections the ACT does not have a dedicated AEO; the senior DRO for the ACT would therefore need to remain a member of the Redistribution Committee.

Recommendation 22: that subject to the agreement of the ACT Government, section 61 of the Electoral Act be amended to bring the membership of a Redistribution Committee for the ACT (and consequently an augmented Electoral Commission for the ACT) into line with the equivalent body for a State.

EIGHT: OTHER MATTERS

Standard of Maps Produced

8.1 The Electoral Act formerly required that "detailed descriptions" of the boundaries of each proposed division be provided by Redistribution Committees. In 1986 the Joint Select Committee on Electoral Reform noted that the product was expensive to prepare and "incomprehensible to almost all electors".¹³⁵ The committee recommended that a more readily comprehensible format, such as maps, be produced instead.

8.2 According to the Liberal Party, the maps provided at the completion of the 1994^{*} redistributions

were not of satisfactory standard. It was difficult to obtain a clear and easy understanding of the outcomes or the boundaries and features of the new and modified electorates.¹³⁶

8.3 The Surveyor General of New South Wales, Mr Don Grant, noted that the standard of mapping is not specified in the Electoral Act and that the lack of such a standard has led to anxiety in the past.¹³⁷ Mr Grant advised that a new computer-based mapping system produced by the Public Sector Mapping Agency (PSMA) is available for use in redistributions via the appropriate mapping organisation in each State and Territory.

¹³⁵ *The Operation During the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation* p14

¹³⁶ Submissions p187

¹³⁷ Submissions pp034-9

8.4 As the mapping data-set was produced as a management tool for the Australian Bureau of Statistics (ABS) in its forthcoming census of population and housing, the Committee assumes that the system is similar in application to the MapInfo-based system recently adopted for use by Redistribution Committees (page 69 refers). In any case, the Committee would hope that the new systems will be able to produce satisfactory maps of future electoral boundaries.

8.5 As State Surveyors-General are eligible to serve on Redistribution Committees and augmented Electoral Commissions, and have a particular knowledge of the work of the PSMA and how it might assist in particular redistributions, the Committee notes the work of the PSMA and draws to the AEC's attention the comments in Mr Grant's submission.

The Conventions for Naming Divisions

8.6 Guidelines on the naming of divisions have been considered by two Parliamentary committees: by the House of Representatives Select Committee on the Naming of Electoral Divisions (the Fox Committee) in 1969, and by the Joint Select Committee on Electoral Reform in 1986.

8.7 The Fox Committee proposed guidelines which were never formally responded to by the government of the day¹³⁸, these guidelines being considered further by the Joint Select Committee on Electoral Reform in its report of December 1986.¹³⁹ In its response to the

¹³⁸ 1993 election Inquiry submissions pS1593 & ppS1610-2 (AEC)

¹³⁹ *The Operation During the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation* pp16-8

report, the Government did not express a view on the committee's recommendation on the naming of divisions. However Redistribution Committees and augmented Electoral Commissions have since followed the guidelines as a matter of practice, while retaining an open discretion in the naming of divisions.

8.8 The naming conventions as amended by the Joint Select Committee on Electoral Reform are as follows:

Naming After Persons

- (a) That in the main, divisions be named after former citizens who have rendered outstanding service to their country and that every effort be made to retain the names of original Federation divisions.
- (b) That when new divisions are created, the names of former Prime Ministers be considered (the Joint Select Committee noted that former Prime Minister Watson had not continued to be honoured by having a division named after him, a situation rectified at the 1992 redistribution of NSW. The committee did not accept the Fox Committee's requirement that a division not be named after a person until that person had been 10 years dead).

Geographical Names

- (c) That locality or place names should generally be avoided, although the committee was aware that in certain areas the use of geographical features may be appropriate (for example Eden-Monaro, Riverina).

Aboriginal Names

- (d) That Aboriginal names should be used where appropriate, and, as far as possible, the names of those existing divisions with Aboriginal names should be retained.

Other Criteria

- (e) That the names of Commonwealth divisions should not duplicate existing State divisions and discussions between the Commonwealth and State Electoral Officers should take place on this question.
- (f) That qualifying names (for example North Sydney, Melbourne Ports, Port Adelaide) should be used where appropriate (the Fox Committee was opposed to the use of qualified naming).
- (g) That names of divisions should not be changed or transferred to new areas without very strong reasons.

(h) That two Fox Committee guidelines (avoiding similarity in pronunciation, such as Lawson and Dawson, and that the names of divisions abolished at a redistribution should not be reallocated) be deleted.

(i) That when two or more divisions are partially combined at a redistribution, as far as possible the name of the new division should be that of the old division which has the greatest number of electors within the new boundaries.

8.9 The naming of electoral divisions was the subject of some discussion at the Inquiry.¹⁴⁰ In particular, some confusion was caused during the 1994 redistribution of Queensland by the use of convention (i) above to reallocate the existing names "Forde" and "Rankin". As explained by the DRO for Forde, Mr Graham Smith,

Forde was an outer-metropolitan seat pre-redistribution...held by Mary Crawford, who is the Labor member, and Rankin was a rural seat held by David Beddall, a Labor member. There has been a switch in the demographics of the seats such that Rankin is now an outer-metropolitan seat and Forde is a rural seat. All the rural areas that previously were in Rankin are now in Forde. The socio-demographic make-up of the division has changed so significantly - after 10 years being outer-metropolitan, it is, all of a sudden, a rural seat, and Rankin is vice versa.¹⁴¹

¹⁴⁰ Submissions p161, pp166-71 (G.Smith) & pp319-20 (AEC); transcript ppEM3-4, pEM18 (R.Atkinson MP), ppEM63-5 (M.Mackerras), ppEM83-4, ppEM90-3 (G.Smith) & pEM97 (C.Hughes)

¹⁴¹ Transcript pEM91

8.10 Mr Smith recommended first, that convention (i) should have legislative backing, and second, that where there is a significant change to the socio-demographic nature of a division (reflecting the qualitative factors, such as "community of interest", already in the Electoral Act), this should override the purely numerical formula in convention (i).

8.11 The Committee does not support inserting just one of the several naming conventions into the Act. The AEC advised that the use of guidelines, rather than binding legal provisions, allows enough flexibility for unanticipated circumstances while providing redistribution bodies with ample assistance in performing their task.¹⁴² However given the apparent lack of awareness of the naming conventions, more effort could be made to publicise the conventions when suggestions and comments are called for.

Recommendation 23: that at future redistributions, the AEC or the Redistribution Committee publicise the naming conventions when public suggestions and comments are called for.

8.12 Redistribution Committees and augmented Electoral Commissions are already free to disregard convention (i) where the convention would be inappropriate (the 1994 redistribution of the ACT being an example). Nonetheless, the Committee agrees that the second part of

¹⁴² Submissions pp319-20

Mr Smith's recommendation should be adopted - that is, where appropriate socio-demographic factors should override the purely numerical factors presently recognised in convention (i).

Recommendation 24: that the naming convention which applies when two or more divisions are combined (that as far as possible the name of the new division should be that of the old division which has the greatest number of electors within the new boundaries) be amended, to provide that where the socio-demographic nature of the division in question has significantly changed, this should override the numerical formula.

LAURIE FERGUSON MP

Chair

December 1995

A handwritten signature in black ink, appearing to be 'L. Ferguson', written over a large, stylized capital 'F'.

APPENDIX 1

RESOLUTION OF APPOINTMENT

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
RESOLUTION OF APPOINTMENT (AS AMENDED 28 OCTOBER 1993)**

**Electoral Matters Committee
Appointment**

- (1) That a Joint Standing Committee on Electoral Matters be appointed to inquire into and report on such matters relating to electoral laws and practices and their administration as may be referred to it by either House of the Parliament or a Minister.
- (2) That the committee consist of 12 members, 4 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 2 Senators to be nominated by any minority group or groups or independent Senator or independent Senators.
- (3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.
- (4) That the members of the committee hold office as a joint standing committee until the House of Representatives is dissolved or expires by effluxion of time.
- (5) That the committee elect a Government member as its chairman.
- (6) That the committee elect a deputy chairman who shall act as chairman of the committee at any time when the chairman is not present at a meeting of the committee and at any time when the chairman and deputy chairman are not present at a meeting of the committee the members present shall elect another member to act as chairman at that meeting.
- (7) In the event of an equality of voting, the chairman, or the deputy chairman when acting as chairman, shall have a casting vote.
- (8) That 4 members of the committee constitute a quorum of the committee.
- (9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.
- (10) That the committee appoint the chairman of each subcommittee who shall have a casting vote only and at any time when the chairman of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chairman at that meeting.
- (11) That the quorum of a subcommittee be a majority of the members of that subcommittee.
- (12) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.
- (13) That the committee or any subcommittee have power to send for persons, papers and records.
- (14) That the committee or any subcommittee have power to move from place to place.
- (15) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

- (16) That the committee have leave to report from time to time.
- (17) That the committee or any subcommittee have power to consider and make use of:
 - (a) submissions lodged with the Clerk of the Senate in response to public advertisements placed in accordance with the resolution of the Senate of 26 November 1981 relating to a proposed Joint Select Committee on the Electoral System, and
 - (b) the evidence and records of the Joint Committees on Electoral Reform and Electoral Matters appointed during previous Parliaments.
- (18) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.
- (19) That a message be sent to the Senate acquainting it of this resolution and requesting that it concur and take action accordingly.

APPENDIX 2

SUBMISSIONS AND EXHIBITS

Sub No.	From
1	Mr Wilson Tuckey MP MEMBER FOR O'CONNOR, WA
2	Mr Malcolm Mackerras CANBERRA, ACT
3	Mr Garrie Gibson MP MEMBER FOR MORETON, QLD
4	Dr David Charnock PERTH, WA
5	Professor Colin Hughes BRISBANE, QLD
6	Mr Don Grant Surveyor General of New South Wales BATHURST, NSW
7	Mr Rod Atkinson MP MEMBER FOR ISAACS, VIC
8	Australian Bureau of Statistics CANBERRA, ACT
9	Mr George Williams CANBERRA, ACT
10	Australian Electoral Commission CANBERRA, ACT
11	Mr Graham Smith BRISBANE, QLD
12	Mr Warren Truss MP Federal Parliamentary National Party MEMBER FOR WIDE BAY, QLD
13	Liberal Party of Australia CANBERRA, ACT

- 14 Mr Peter Cleeland MP
MEMBER FOR McEWEN, VIC
- 15 Mr Brian Cox
BUNGENDORE, NSW
- 16 Mr Brian Cox
BUNGENDORE, NSW
- 17 Australian Electoral Commission
CANBERRA, ACT
- 18 Mr Brian Cox
BUNGENDORE, NSW
- 19 Mr Brian Cox
BUNGENDORE, NSW
- 20 Mr Bob Katter MP
MEMBER FOR KENNEDY, QLD
- 21 Australian Electoral Commission
CANBERRA, ACT
- 22 Mr Peter Cleeland MP
MEMBER FOR McEWEN, VIC
- 23 Australian Electoral Commission
CANBERRA, ACT

Exhibit No. Description

- 1 Dr David Charnock, "Electoral Bias in Australia 1980-1993: The Impact of the 1983 Electoral Amendments", and "Internal Migration and Electoral Turnover in Australia", *Australian Journal of Political Science* (1994) vol.29.

The above papers were presented as attachments to Submission no.4.
- 2 Document tabled by AEC, 5 September public hearing: "Breakdown of two-party preferred votes by category of Division, 1995".
- 3 1991 *Report of the Electoral Districts Boundaries Commission* (South Australia).
- 4 M.G. Kendall and A. Stuart, "The Law of the Cubic Proportion in Election Results", *Brit J.Social* (1950) 1.

- 5 R.G. Stanton, A.N. Arnason and I.P. Goulden, "The Macmahon Cube Law", *Math.Scientist* (1981) 6.
- 6 Document provided by AEC: "Classification of divisions immediately prior to elections from 1980 to the present"; "Percentage of divisions classified as marginal (ie swing required to lose greater than 6%), 1980 to the present".

APPENDIX 3

PUBLIC HEARINGS AND WITNESSES

CANBERRA, 5 September 1995

Mr Rod Atkinson MP

Australian Electoral Commission

Mr Bill Gray (Electoral Commissioner)

Mr Bob Longland

Mr Michael Maley

Dr David Muffet

Mr Brian Nugent

Liberal Party of Australia

Mr Lynton Crosby

Mr George Williams

Australian Bureau of Statistics

Dr Richard Madden

Mr Geoff Sims

Mr Malcolm Mackerras

BRISBANE, 12 September 1995

Federal Parliamentary National Party

Mr Warren Truss MP

Mr Graham Smith

Professor Colin Hughes

Mr Bob Katter MP

CANBERRA, 4 October 1995

Mr Andrew Becker

Mr Peter Cleeland MP

Mr Garrie Gibson MP

Australian Electoral Commission

Mr Bill Gray (Electoral Commissioner)

Mr Bob Longland

Mr Michael Maley

Dr David Muffet

Mr Brian Nugent