

***Extract from AEC submission No 88 of 12 March 1999, "Electoral Legislation"***

2 ELECTORAL LEGISLATION

2.1 Introduction

2.1.1 The AEC entered the 1998 federal election period with amending legislation only just passed by the Parliament in July 1998, and, in retrospect, with little more than a month before the announcement of the election to redesign policies and procedures, to provide necessary staff training and new public information, and to prepare relevant manuals and publications, in order to accommodate the amended laws. As most of the amendments were "technical" in nature, and were originally recommended by the AEC to the previous JSCEM, the problems of implementation were not insurmountable and the law was applied consistently and appropriately and to the satisfaction of stakeholders.

2.1.2 The previous JSCEM, at page 114 of its June 1997 Report, unanimously supported a proposal to amend the Constitution to provide for four year parliamentary terms, but stopped short of endorsing a fixed polling day. In the absence of a fixed polling day for federal elections (as operates in some States and Territories, and in many other countries), risks are minimised in the conduct of federal elections where amendments to electoral legislation are passed relatively early in the legislative program. This is always conditional of course, on the speed at which the JSCEM is able to report on the conduct of the previous election, and to make its recommendations for legislative change, and the speed at which the Government responds and introduces its proposed legislation.

2.1.3 Within this context of an indeterminate polling day, a pattern has emerged over the years in the process of making legislative amendments to the Electoral Act. After each federal election, each new JSCEM makes a number of recommendations for changes to the law, some unanimously supported by members of the JSCEM, and some recommended only by the majority government members, with dissent recorded by the minority opposition members.

2.1.4 The unanimous recommendations made by each JSCEM for changes to the Electoral Act tend to form a 'technical' Bill introduced early in the parliamentary cycle, which is usually passed relatively speedily into law. This is then followed by a 'reform' Bill introduced later in the parliamentary cycle, which contains those matters of interest and concern to the majority government members of the JSCEM, but which may have raised dissent among minority opposition members. The prospects of complete and unamended passage for the second reform Bill in each parliamentary cycle are generally not high.

2.1.5 For example, the first, technical, Bill of the 37<sup>th</sup> Parliament became law in December 1995, about one year after the November 1994 JSCEM Report on the 1993 federal election, and about one month before the announcement of the 1996 federal election. The second, reform, Bill of the 37<sup>th</sup> Parliament lapsed with the announcement of the 1996 federal election. This second Bill in fact contained many non-contentious elements, which had been held over from the first Bill, such as the computerisation of the Senate scrutiny, but the Bill failed to gain support because of the addition of various contentious amendments by the opposition parties in the Senate, such as 'truth in advertising', and removal of the franchise from prisoners.

2.1.6 The first, technical, Bill of the 38<sup>th</sup> Parliament became law in July 1998, about one year after the June 1997 JSCEM Report on the 1996 federal election, and about one month before the announcement of the 1998 federal election. The second, reform, Bill lapsed at the 1998 federal election. This Bill was reintroduced after the 1998 federal election, and is currently before Parliament, with the opposition parties registering their disagreement with many of its provisions.

2.1.7 From the purely operational perspective of the organisation that must implement the amended legislation, it would be of great concern to the AEC if reform Bills, where they propose radical reforms rather than machinery changes to the federal electoral system, were to gain parliamentary passage into law just prior to a federal election. The technical Bills contain many measures recommended and/or supported by the AEC itself, so that the problems of their implementation in the short period usually available before the next federal election are not insurmountable. However, should a reform Bill be passed by the Parliament, with only a month to spare before an election, the problems of implementation could be profoundly disruptive.

2.1.8 The AEC notes the words of Mr Petro Georgiou MP of the Liberal Party, during the second reading debate on 2 December 1998 on the Electoral and Referendum Amendment Bill 1998, currently before the Parliament:

Separating the contentious from the non-contentious in the area of electoral reform...has enabled us to progressively and continuously improve Australia's electoral machinery. An electoral system has emerged which, in terms of its inclusiveness, integrity and fairness, is ... the best that responsible parliamentarians can devise (*House of Representatives Hansard, p 923*).

2.1.9 The AEC also notes the comments of Senator Robert Ray of the ALP during the second reading debate on 15 February 1999 on the Electoral and Referendum Amendment Bill 1998, currently before the Parliament:

This government has had two electoral bills so far. The first one really fits the description of a bipartisan bill. We all virtually agreed with what they put in it. I think it was sensible for the government to divide that bill from its more contentious bill because the other one was able to go through in time to operate at the last federal election. I must commend the Electoral Commission – and I hope this will be passed on – for getting the Senate results by computerisation this time. It was a revelation. They were much quicker and easier to follow. I think they did a terrific job in getting those results out...(*Senate Hansard, p 1808*)

2.1.10 And later, Senator Ray said the following:

...I want to finish on one other note that is not in this bill. When people reflect on our Electoral Act and our electoral system, I want them to think back on the reforms brought about in the 1980s as to the distribution of electoral boundaries, because it is in this area when you look around the globe you see that Australia, at a national level, leads the world. I would say that we have the fairest redistribution system – or redistricting, as they call it in the US – anywhere around the globe. It was basically a combined effort between the Labor Party, the Liberal Party and the Democrats at the time to bring in a whole series of reforms – and it was independent people doing this – that, in the end, has given us this particular system.

When you look at the problems that exist even today in the United Kingdom, with malapportionment, to gerrymandering in the US, to arguments right around the globe about the drawing up of boundaries, you will see that those reforms put in place in the 1980s still stand the test of time today. They are still the best anywhere around the globe. This shows that this parliament, when it applies itself in a bipartisan way, can produce legislation that is envied by others (*Senate Hansard, p 1809*).

2.1.11 It would appear to be generally agreed that continuous reform of the federal electoral system is a fundamental and necessary aspect of our democracy, a process which demands a high degree of unanimity of purpose from all sides of the political spectrum.

***List of AEC submissions on electoral fraud from 1996-1997***

***(these AEC submissions can be accessed on the AEC website at [www.aec.gov.au](http://www.aec.gov.au) under "parliamentary submissions", or through the JSCEM Secretariat)***

Part 10 of submission No 30 of 29 July 1996  
Parts 2.15\* to 2.20 of submission No 84 of 16 September 1996  
Parts 2.29\* and 3.16 of submission No 90 of 20 September 1996  
Submission No 128 of 24 January 1997  
Part 2.7 of submission No 135 of 7 May 1997  
Submission No 97 of 23 October 1996\*  
Submission No 98 of 23 October 1996  
Submission No 129 of 7 February 1997

*\* AEC submissions responding to submissions by Dr Amy McGrath of the H S Chapman Society.*

***List of AEC submissions on electoral fraud from 1998-1999***

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Part 10 of submission No 88 of 12 March 1998\*

Parts 9, 14, 23, 25, 26, 36, and 40\* of submission No 176 of 4 May 1999

Parts 3\*, 4, 8, 21, 45, and 46\* of submission No 210 of 23 July 1999

Submission No 239 of 15 October 1999

*\* AEC submissions in response to submissions by Dr Amy McGrath of the H S Chapman Society.*

***Two examples of unsubstantiated electoral fraud allegations***

**Example 1: The Webster v Deahm petition and the 1993 election for Macquarie**

The 1993 federal election in the Division of Macquarie was challenged in the Court of Disputed Returns by Mr Alasdair Webster, the unsuccessful Liberal Party candidate. The Webster petition was not finalised until 20 June 1996, when the costs decision was finally handed down by Justice Gaudron.

The AEC did not provide a submission to the JSCEM on the *Webster v Deahm* case because the matter was *sub judice* during the inquiry into the 1993 federal election, and had not been resolved before the tabling of the November 1994 JSCEM Report.

The *Webster v Deahm* case has been raised repeatedly by critics of the federal electoral system as evidence of widespread and organised electoral fraud, despite the fact that Mr Webster's petition was dismissed by the Court and costs were awarded against him. The following is a brief account of the Court proceedings.

On 7 June 1993, Alasdair Paine Webster, an unsuccessful candidate for the 1993 House of Representatives election for the Division of Macquarie, and the former Liberal Party sitting Member, filed a petition in the Sydney Registry of the High Court of Australia challenging the election of Maggie Deahm as the Australian Labor Party Member for Macquarie. Ms Deahm was named as first respondent, and the Electoral Commissioner was named as the second respondent.

The petitioner, Mr Webster, challenged the entirety of the 1993 House of Representatives general election, together with the specific election of Ms Deahm for the Division of Macquarie, and cited numerous grounds in support of these challenges, as follows.

(a) that the rolls used in the election were not marked in accordance with the provisions of the Commonwealth Electoral Act 1918 (the Act) (petition page 2, paragraph 3);

(b) that the first respondent was guilty of undue influence, illegal practices, and the making of false and/or untrue statements during the conduct of the election; and caused the publication and distribution within the electorate of printed material likely to mislead or deceive an elector in relation to the casting of a vote (petition page 2, paragraph (b); page 3, paragraph (c); page 7, paragraph (b));

(c) that the provisions of section 224 and 338 of the Act relating to the taking of votes from hospital patients were not complied with in the election (petition page 6, paragraph (vii));

(d) that contrary to section 388 of the Act, persons unlawfully marked ballot papers to which they were not entitled (petition page 7, paragraph (c));

(e) that the first respondent was party to a document handed out at polling places on polling day, knowing that that document was likely to mislead or deceive some voters (petition page 9, paragraph (c));

(f) that sections 102(1) and 106 of the Act were breached in that the Electoral Commissioner, his officers, agents or staff did not ensure that persons enrolled for the electoral division of Macquarie were entitled to be so enrolled (petition page 10, paragraphs (c) and (d));

(g) that persons voted in the electorate of Macquarie who were not entitled to vote (petition page 10/11, paragraphs (a) to (e));

(h) that sections 30 and 41 of the Constitution were not complied with in the election of the electorate of Macquarie (petition page 11, paragraph (e));

(i) that sections 99(5) and 106 of the Act are invalid (petition page 11, paragraph (b));

(j) that persons voted in the election who were not entitled to vote, by reason of their having resided in the electorate for a period of less than one month prior to the date of enrolment (petition page 12, paragraph (b) (first appearing));

(k) that the Act condones illegal activities (petition page 13, paragraph (b));

(l) that section 361(1) of the Act is constitutionally invalid (petition page 13, paragraph (b));

(m) that provisional votes for the election in the electorate of Macquarie were unlawfully excluded from being counted (petition page 13, paragraph (c));

(n) that there was hindrance or interference with the free exercise or performance of a political right or duty that is relevant to the election, in contravention of section 327(1) of the (petition page 14, paragraph (b));

(o) that the requirements of the ballot paper were confusing (petition page 15, paragraph (c));

(p) that the first respondent published false and defamatory statements in relation to the personal character or conduct of the petitioner (petition page 15, paragraph (b));

(q) that section 229(1) of the Act was not complied with in the electorate of Macquarie (petition page 16, paragraph (b));

(r) that the result of the election for the seat of Macquarie and the result of the election Australia wide was invalid in that there was an Australia wide discrepancy between the recorded votes for the Senate and the House of Representatives (petition page 16, paragraph (c));

(s) that the right of political freedom as guaranteed by the Constitution was contravened during the election (petition page 17, paragraph (b)).

The petitioner, in various paragraphs of "particulars" contained in the petition, expanded on the grounds summarised above. Various prayers for relief were also set out in the petition.

On 26 July 1993, at the second directions hearing in the proceedings, the petitioner withdrew those parts of the petition that purported to challenge the entirety of the general election. The Court accordingly ordered that there be no further proceedings with respect to prayers for relief numbered 4, 6, 8 and 10 of the petition and with respect to the allegation on page 16, paragraph (c) of the petition (see paragraph (r) above) insofar as it concerned the entirety of the general election.

On 26 and 30 July 1993, the Court heard Notices of Motion filed on behalf of the first respondent, Ms Deahm, and the second respondent, the Electoral Commissioner, seeking to strike out the petition in its entirety.

On 6 August 1993, the matter was relisted before the Court. At this hearing, the Court directed the petitioner to file and serve a Notice of Motion seeking leave to provide further and better particulars with respect to the allegations on page 7, paragraph (c) (paragraph d above), page 12 paragraph (b) (first appearing) (paragraph (j) above), page 12 paragraph (c) and page 16 paragraph (a) (paragraph (r) above). The petitioner filed this Notice of Motion on 11 August 1993.

At the hearing of the petitioner's Notice of Motion on 19 August 1993, the petitioner's counsel informed the Court that the ground at page 12 paragraph (b) (first appearing) (paragraph (j) above) of the petition would not be pressed.

On 3 September 1993, the High Court delivered judgement on the Notices of Motion of the first and second respondents and of the petitioner (*Webster v Deahm (1993) 67 ALJR 781*). The Court struck out all allegations in the petition, save for the following.

(a) the allegation at page 12 paragraph (b) (first appearing) (paragraph (j) above) and page 13 paragraph (b) (paragraph (l) above) of the petition. In relation to these allegations, the Notices of Motion of the first and second respondents were stood over for the hearing of further argument.

(b) the allegation at page 7 paragraph (c) (paragraph (d) above) of the petition. In relation to this allegation, the petitioner was relieved from compliance with section 355 (aa) of the Act, on terms that within 21 days of 3 September 1993 he provide particulars of the ballot papers involved in the allegation. This allegation is hereafter referred to as the "multiple voting allegation".

(c) that part of the allegation at page 10 paragraph (a) of the petition that "persons who were not entitled to vote" and the particulars thereof at pages 10-11 paragraphs (b) to (e) (paragraph (g) above). Regarding this portion of that allegation, the Court granted the petitioner liberty to apply within seven days of 3 September 1993 for relief under section 358(2) of the Act. This allegation is hereafter referred to as the "personation allegation".

On 3 September 1993 the petitioner filed a Notice of Motion seeking, pursuant to section 358(2) of the Act, to be relieved from compliance with paragraph 355(aa) of the Act in respect of the personation allegation.

On 1 October 1993 the proceedings were listed before the Court and the petitioner's counsel stated that no further submissions would be made on the allegations at page 12 paragraph (b) (first appearing) (paragraph (r) above) and page 13 paragraph (b) (paragraph (l) above) of the petition. The Court accordingly ordered that there be no further proceedings on those allegations.



For greater clarity, the following paragraphs describe in turn the course of the proceedings with to the multiple voting allegation and the personation allegation, rather than giving a strictly chronological account of the proceedings.

It should be noted that the margin in the election for the Division of Macquarie between the first respondent and the petitioner was 164 votes. The particulars of the multiple voting allegation stated that there were "between 100 and 370 instances where the roll was marked more than once for particular voters".

On 14 September 1993 the petitioner's solicitor requested from the Electoral Commissioner access to documents "identifying the number of multiple votes." On 17 September, following lodging of consent orders signed on behalf of the parties, the Court made orders permitting the petitioner and the first respondent and their legal representatives access to the Apparent Multiple Voting and Personation Report for the Division of Macquarie. This report was made available for inspection by the other parties to the proceedings on and from 20 September and was inspected by the petitioner and his legal representatives on several occasions between 20 September and 21 October.

On 23 September the petitioner provided particulars of the multiple voting allegation in accordance with the Court's direction of 3 September, in summary stating that each of the 149 names of voters marked more than once on the certified lists used in the election represented an instance of multiple voting. At the directions hearing of 1 October 1993 the petitioner informed the Court that 149 instances were involved in the multiple voting allegation.

On 9 November 1993 the petitioner advised that he would not file any evidence in support of his case on multiple voting. Instead he advised that he would subpoena the records of the Commission, and the Commissioner himself to give evidence.

The Commissioner filed and served several affidavits of Robyn Adelberg, the Divisional Returning Officer for the Division of Macquarie, dealing with the multiple voting allegation. These affidavits were dated 30 September 1993, 5 November 1993, and 2 December 1993. The affidavits revealed that the Commission had identified only one definite case of multiple voting in the Division, and stated that the Divisional Returning Officer was satisfied that all but 25 cases of apparent multiple voting in the Division had been explained, and did not represent instances of multiple voting.

No particulars of the numbers of votes or the identity of voters involved in the personation allegation were provided by the petitioner in his petition. As stated above, on 9 September 1993, the petitioner filed a Notice of Motion seeking leave to provide further and better particulars of the personation allegation.

The petitioner's Notice of Motion of 9 September was heard on 1 October 1993. Immediately prior to Court on that date, the petitioner provided particulars of the personation allegation, and in Court on that date, the petitioner stated that the total number of persons involved in the personation allegation was 273 (on one list) plus a further 9 (on a second list).

On 1 November 1993 the petitioner filed and served affidavits in support of his case on the personation allegation. The petitioner thereafter provided several sets of particulars of the names alleged to be involved in the personation allegation, ultimately, on 8 November 1993, providing a list containing 170 names. Following

receipt of this list, the Electoral Commission conducted an investigation of the names on the list, interviewing 152 of the 170 listed electors.

The Commissioner filed and served two affidavits of Brian Nugent on 22 November 1993 and 1 December 1993, describing in detail the investigation carried out by the Commission into the personation allegation, and the results of that investigation. The Commission concluded that, of the 170 persons on the petitioner's list, all but 28 could be explained by the Commission and did not represent cases of impersonation. In respect of the remaining 28 names on the petitioner's list, the results were inconclusive.

On 31 January 1994 the petitioner's solicitor wrote to the Electoral Commissioner's solicitor and to the Court advising that the petition would not be pressed further. On 28 March 1994 the Court heard a Notice of Motion from the petitioner of 25 February 1994 seeking the dismissal of the petition and seeking various costs orders. The Court also heard Notices of Motion of the first and second respondents seeking various costs orders.

At the conclusion of the hearing of 28 March 1994 the Court made an order dismissing the petition and reserved its judgement on costs.

On 20 June 1996 Justice Gaudron handed down her decision on costs. Justice Gaudron noted that Mr Webster was not able to establish any personation, and as to the multiple marks on the certified lists, they were thoroughly investigated by the Commission and were accepted by Mr Webster as entirely explicable as scanning errors. In the end, it was noted, Mr Webster withdrew his petition.

Justice Gaudron concluded that errors were made by the Commission in the marking of the certified lists in a close election, and the Commission was required to investigate and answer for these errors. As a consequence should bear its own costs.

In relation to the power of the court to order that the Commonwealth pay the costs of such proceedings under section 360(4) of the Act, Justice Gaudron decided that there was nothing to suggest that the errors in marking the certified lists exceeded normal limits or were different in nature or degree from those ordinarily to be expected in an election. Nor was there anything to suggest that such inaccuracies in addresses on the roll were other than what might be expected as a result of ordinary population movement. There was no justification for an order for costs against the Commonwealth.

The petitioner, Mr Alasdair Webster, was ordered to pay the cost of the first respondent, Ms Maggie Deahm. There was no order as to the costs of the second respondent, the Electoral Commissioner, or the third respondent, the Commonwealth.

***Extract from AEC submission No 210 of 23 July 1999***

46.5 In her written and oral submissions Dr McGrath once again presents previously discredited “evidence” in support of her claims that electoral fraud is endemic in the federal electoral system. In particular, on page EM90 of the transcript, Dr McGrath raises the 1993 elections in the Divisions of Macquarie and Dickson, and an unnamed Western Australian Division, in support of her allegations that the votes of religious objectors have been defrauded. However, it is notable that Dr McGrath has not offered to provide the correspondence, which she claims supports her allegations, to either to the AEC or the JSCEM for further investigation....

46.7 The electoral fraud allegations made by the unsuccessful Liberal Party candidate, Mr Alastair Webster, and resultant High Court proceedings, in relation to the 1993 election in the Division of Macquarie, are also recycled by Dr McGrath, despite the unanimous conclusions reached in the November 1994 JSCEM Report at page 67:

4.7.4 Dr Sue Flanagan, on behalf of a group including the petitioner in the Macquarie case, Mr Alasdair Webster, submitted that procedures for the Court of Disputed Returns are restrictive and actively discourage any challenge. Their concerns included the Court’s preliminary hearing procedures, rules relating to the viewing of electoral material, the fact that one petition cannot challenge the whole of a general election result, and the requirement that no amendment be made to the facts relied on to invalidate an election result forty days or more after the return of the writ.

4.7.5 However, the Committee was not persuaded that Court procedures have operated in the past, or would operate in the future, to prevent a thorough review of a contested election. Therefore the Committee does not see a need for a full review of procedures for bringing a petition before the Court of Disputed Returns.

46.8 In this context, on page EM85 of the transcript, Dr McGrath complains that Mr Webster was required to provide proof to the High Court that, “...the people who he said were ghost voters with false names did not exist”.

46.9 Mr Webster was indeed expected to provide sustainable evidence in support of his allegations, but failed to do so. Instead, the AEC took the material provided by Mr Webster in his petition and affidavits, which named hundreds of innocent electors in the Division of Macquarie as suspected multiple voters or impersonators, and, where possible, contacted and interviewed every elector named (including those electors overseas or interstate).

46.10 The AEC then provided sworn evidence to the Court that, except in a few cases where the evidence was inconclusive (and not sufficient to have affected the result), the alleged multiple voters did not vote more than once, and there was no evidence to support the allegations of impersonated votes. As a consequence, Mr Webster decided not to press his petition any further, and it was duly dismissed by the Court. Mr Webster was ordered to pay the costs Ms Deahm incurred in defending her election (see also paragraphs 10.2.1 and 10.2.2 of submission No 88).

## **Example 2: The Enterprise Council and the 1993 election for Dickson**

*This account reproduces AEC submission No 140 of 14 January 1994, followed by the relevant extract from the November 1994 JSCEM Report on the 1993 Federal Election, and an extract from AEC submission No 210 of 23 July 1999.*

### **AEC submission No 140 of 14 January 1994**

#### **RESPONSE TO CLAIMS BY THE ENTERPRISE COUNCIL**

##### **Summary**

1. The purpose of this Submission is to respond to certain allegations made in the December 1993 "Submission to the Joint Standing Committee on Electoral Matters in relation to the Electoral Result for the Federal Division of Dickson" lodged by the Enterprise Council.

2. The AEC rejects the Submission of the Enterprise Council. It is a document replete with inaccurate or untrue statements put forward as facts, illogical arguments, acceptance as facts of unproved assumptions, and misunderstandings of electoral matters. It makes some critical, and indeed scurrilous, allegations about the AEC which are without foundation.

3. At page 38 of its Submission, in a section titled "The Manufactured Election Result" the Enterprise Council attempts to summarise the arguments it has placed before the Committee. It makes eight assertions, which are discussed below.

- *Assertion (1)* - "investigations indicate that 3.13% of electors on the certified roll did not reside at their nominated addresses".

*AEC Response* - This matter is dealt with in detail at paragraphs 11 to 23 below; the Submission provides no evidence that any of the persons referred to were not entitled to vote at the election.

- *Assertion (2)* - "1.3% of electors enrolled at Caravan Parks DID NOT EXIST".

*AEC Response* - This issue is discussed at paragraphs 24 to 28 below. The "evidence" put forward in the Submission does not address the proposition that electors "did not exist" and can only be accepted in relation to electors' residential status if it is assumed that proprietors of caravan parks in all cases know with complete accuracy the names of all people resident at the park. From the AEC's experience in other investigations, the validity of such an assumption is highly questionable.

- *Assertion (3)* - "1.1% of electors enrolled at Caravan Parks have been identified AS DECEASED PERSONS".

*AEC Response* - The documents provided by the Enterprise Council only refer to three deceased residents of caravan parks. One died after the supplementary election. The other two died before the supplementary election, and no votes at that election were recorded in their names. Full details are at paragraph 29 below.

- *Assertion (4)* - "9.8% of non voters on election day EXCEEDS the Queensland average of 7.25% non voters for the 13 March 1993".

*AEC Response* - As is pointed out at paragraph 8 below, the turnout pattern for the supplementary election reflected a long-standing pattern of a lower turnout at by-elections than at general elections.

- *Assertion (5)* - "7. 3% of Enrolled religious Non-Voters either VOTED OR WERE VOTED FOR".

*AEC Response* - As is pointed out at paragraphs 45 to 47 below, the Submission provides no evidence to support this assertion.

- *Assertion (6)* - "*MULTIPLE ENROLMENTS* at habitation households cast doubt over the validity of the rolls with regard to 5.4% of enrolled voters."

*AEC Response* - As is pointed out at paragraphs 34 to 39 below, the "evidence" of the Submission is fundamentally flawed, and cannot suffice to support the assertion put forward.

- *Assertion (7)* - "0.15 of 1.0% votes cast ARE MULTIPLE VOTES CAST based on AEC records".

*AEC Response* - The figures put forward in the Submission are not based on AEC records, but are a crude estimate made by the Enterprise Council. The actual records, as discussed in paragraphs 30 to 33 below, disclose that the number of actual multiple votes cast in the election was probably less than 11.

- *Assertion (8)* - "1.15% of primary votes cast are in favour of the elected representative on a two party preferred vote basis following distribution of primary votes - 347 majority divided by two party preference value of the distorted value."

*AEC Response* - The AEC is unable to determine what the assertion means.

4. The figures quoted in the assertions are then summarised in a table which purports to demonstrate the illegitimacy of the election result in the Division of Dickson. As is clearly shown in the following paper, the figures advanced by the Enterprise Council do not stand up under examination. Its assertion regarding the legitimacy of Dickson result must therefore be rejected.

## Introduction

5. The main subheadings in the AEC's response reflect those in the Submission of the Enterprise Council.

6. Much of the argument of the Submission seems to rest on the expectation that the electoral roll will at all times be a 100% accurate record of the people, eligible to enrol, who live at every address in Australia. In fact it is clear for the following reasons that this objective does not underlie the legislative scheme for enrolment set out in the *Commonwealth Electoral Act 1918*.

- Enrolment can only be effected pursuant to a claim lodged by a person eligible to be an elector (see *Commonwealth Electoral Act 1918 (CEA) section 98*), and the legislation places the onus on potential electors to effect their enrolments and keep them up to date (see *CEA subsection 101(1)*).
- Electors are not entitled to claim enrolment until they have resided in a Subdivision for a period of one month (see *CEA subsections 99(1), (2)*).
- In virtually all cases electors can, once enrolled, only be removed from the roll by objection action. An objection on the ground of non-residence must assert that the challenged elector does not live in the Subdivision of his or her enrolment, and has been absent from that Subdivision for at least one month (see *CEA subsection 115(3)*). In general, an elector will not be able to be removed from the roll pursuant to an objection on the ground of non-residence until the expiration of the 20 day period during which he or she may respond to the objection (see *CEA subsection 118(1)*).

7. For all of these reasons, and having regard to the high mobility of electors already discussed in detail with the Joint Standing Committee on Electoral Matters, it is inevitable that, at any particular time, the electoral rolls will contain entries relating to people who have changed address. This has always been the case and there is no way of avoiding it.

## “Statistical Analysis”

8. At page 8 of its Submission, the Enterprise Council sets out various aggregate statistics relating to the election in Dickson, and provides comments thereon. Neither the statistics quoted nor the comments amount to even the slightest evidence of any impropriety. Moreover, both the table on page 8 and the comments on it contain errors. The AEC's response to the various comments is as follows.

- *Comment 1* - “More voters attended the Polling Booths within the Division of Dickson to cast an ordinary vote for the House of Representatives Election held in April than the Senate Election held in conjunction with the national poll one month earlier.”

*AEC Response* - This statement is false. Comparisons of voters attending polling booths to cast an ordinary vote, to be accurate, must be based not on the formal vote at the various elections but the total of ordinary votes (formal plus informal) cast. The total ordinary vote for the Senate election in Dickson was 64,579, while the total ordinary vote for the House of Representatives supplementary election in Dickson was 62,956.

Moreover the figure quoted in the table for the number of formal ordinary Senate votes cast in Dickson - 60,666 - is also incorrect. The correct figure, as set out in the official Election Statistics, was 63,639. Relevant extracts from official Election Statistics are attached at "A".

- *Comment 2* - "For Dickson, the combined pre-polling and postal votes cast for the House of Representatives election totalled 6,120 votes as compared to the Senate election of 12,243 votes. (N.B. THE HOUSE OF REPRESENTATIVES VOTE IS HALF THAT RECORDED FOR THE SENATE)".

*AEC Response* - The remark included in parentheses at the end of the Comment is almost the exact opposite of the facts. The figure quoted by the Enterprise Council relating to the House of Representatives election in Dickson is actually the total of formal pre-poll, postal and provisional votes. The Senate figure quoted, 12,243, has been calculated by subtracting from the correct number of total formal Senate votes - 72,909 - the incorrect figure of 60,666 given in the table for total formal ordinary Senate votes; the figure is therefore wrong by a large margin. In fact, the total of formal Senate pre-poll, postal and provisional votes was 3,929.

However, as was pointed out above, formal votes figures do not give an accurate indication of total votes cast: in the case of declaration votes, the appropriate statistic must include not only formal and informal votes, but also votes rejected at preliminary scrutiny and declaration vote certificate envelopes from which the relevant ballot paper was later found to have been omitted. On these figures, the total of pre-poll and postal Senate votes for Dickson was 3908, while the total of pre-poll and postal House of Representatives votes cast was 6352.

- *Comment 3* - "Results of the two elections as recorded in official documentation released by the AEC identifies an increase in voter enrolments of 165 persons over the number of electors on the certified electoral roll as at the closing date of 15 February, 1993."

*AEC Response* - As is pointed out in the introduction to the official Election Statistics, the enrolment figures quoted therein "comprise enrolment as at the close of rolls on 15 February with subsequent amendments such as in the case of the death of an elector, a provisionally enrolled elector turning 18 by polling day, or the reinstatement of an eligible elector previously removed from the roll". The enrolment figures quoted in the Election Statistics can therefore be expected to differ from the actual number of people on the certified list.

- *Comment 4* - "The informal vote for the House of Representatives election was 1.91% of votes cast as compared to the Senate of 1.39%."

*AEC Response* - In fact the informal vote for the House of Representatives was 1.97%. The pattern of the informal vote for the House of Representatives exceeding that for the Senate is one that has applied in many Divisions at elections since the introduction of group ticket voting in 1984.

- *Comment 5* - "Absentee voters were not allowed to cast a vote for the By-Election as no other polling booths in the country were open for voting."

*AEC Response* - The circumstances described were in total accord with both the *Commonwealth Electoral Act 1918* and established by-election practice. Many of the persons who would otherwise have had an absent vote would have been entitled to cast a pre-poll or postal vote; others intending leaving the Division of Dickson during polling day could have ensured that they first cast an ordinary vote at a polling place within the division.

- *Comment 6* - "Variations in the numbers and percentage representation of non-voters recorded for the Senate election and the House of Representatives By-Election have not been adequately addressed and cast a major shadow over the validity of the two polls."

*AEC Response* - The turnout for the Senate election in Dickson was 96.50%. The turnout for the House of Representatives supplementary election was 90.21%. The turnout pattern for the supplementary election reflected a long-standing general pattern of a lower turnout at by-elections than at general elections, as is shown by the following figures for each of the seven federal by- elections conducted in the period 1987-1993.

<b>Division</b>	<b>By-election Date</b>	<b>By-election Turnout (%)</b>	<b>Preceding General Election Turnout (%)</b>
Adelaide	06.02.1988	85.03	92.57
Port Adelaide	26.03.1988	91.06	93.69
Groom	09.04.1988	88.00	93.41
Oxley	08.10.1988	88.52	92.02
Gwydir	15.04.1989	83.80	94.76
Menzies	11.05.1991	86.07	96.64
Wills	11.04.1992	89.41	94.30

9. Pages 9 to 11 of the Submission consist of a table headed "Comparison of Formal and Informal votes cast at each polling booth for the Senate election and the House of Representatives by-election". For all but Rosewood and Everton Hills polling places the formal Senate vote figures quoted are incorrect (relevant figures from the official Election Statistics are attached at "B"). It follows that for all polling places but the two just mentioned, the "variance" figures set out in the table are also incorrect. In addition, informal votes recorded for the Senate have been omitted. Leaving aside the question of the accuracy of the figures quoted however, it is entirely unclear what the table is supposed to demonstrate: the "variance" figures do not relate to turnout, and in showing different total formal votes for the House of Representatives and the Senate, they provide no evidence of any impropriety.

10. Page 12 of the Submission contains a table headed "Swing of Party Support - Sample Polling Booth Analysis - Ordinary votes cast". Again, many of the figures quoted are incorrect. Again, it is unclear precisely what the table is supposed to demonstrate. If the point of the table is merely to show that in certain polling booths, the number of ordinary votes cast increased at the supplementary election in the face of a general decrease in turnout, all that need be said is that such a pattern is by no means unexpected, particularly when the alternative method of absent voting was not available. Nor can any conclusions be drawn as to impropriety from the variations in relative support for different parties at polling places where the turnout was higher at the supplementary election.



### **“Unclaimed letters returned to sender”**

11. The Submission discusses at length the return of certain letters sent to enrolled voters by the Liberal candidate at the supplementary election for Dickson, Dr Bruce Flegg. The Enterprise Council claims to have collected 3,193 returned letters from Dr Flegg’s office, which, it alleges constituted “a representative sample of the 5000+ envelopes received back from Australia Post”. It should be stated at the outset that Dr Flegg has informed the AEC that:

“The Enterprise Council obtained some returned mail from my campaign office in the heat of the final week of the Dickson Supplementary Election. They concealed their intent to use the mail as a bases for a challenge to the result and the first knowledge I had of this was through the press. Had their intention been known to me, my staff or the Liberal Party, they would certainly not have had access to anything at all from my campaign.”

Dr Flegg had earlier told the AEC that:

“My solicitors have formerly instructed the Enterprise Council that they in no way speak for me and I in no way support their misguided campaign”.

12. The Enterprise Council asserts that various procedures which it pursued led it to the conclusion that 1,532 of the voters to whom the letters it examined had been sent did not reside at their enrolled address at the time the letters had been sent.

13. The first point that needs to be made in response to this is that even if it is accepted for the purposes of argument that the figures asserted by the Enterprise Council are correct, they do not of themselves demonstrate any impropriety, nor do they provide a basis for questioning the legitimacy of the election result in Dickson. The Submission provides no evidence to suggest that the persons in question were not still resident in Dickson, and no evidence to suggest that the persons in question were not entitled to vote at the election: the mere fact of non-residence at an enrolled address does not establish either non-residence in the Division, or absence of entitlement to vote. For this reason alone, it is clear that the Enterprise Council’s argument, at page 38 of its Submission, that “Non-Resident Electors” contributed 2,400 “possible votes” to a “manufactured gain” of primary votes is spurious.

14. The general point should be made that the population of Australia is in a state of constant movement, and this does not stop just because an election has been called. Because a certified list constitutes a “snapshot” of the roll at a particular time, it will be out of date even by the time it is printed, not only because of population movements since the snapshot was taken, but also because the roll itself can never be 100% accurate at the time of the snapshot. This has always been the case, and is inherent in any voting procedure involving the use of printed certified lists.

15. Viewed against this background, and the background of earlier evidence by the AEC to the Committee, there is nothing very surprising about the figure of 1,532 returned letters quoted by the Enterprise Council. The rolls for the election closed on 15 February 1993. Because section 99 of the *Commonwealth Electoral Act 1918* requires a person to reside in a Subdivision for a month prior to claiming enrolment for that Subdivision, persons who had moved out of the Division of Dickson to another Division after 15 January 1993 would not have been eligible at the time of the roll close to enrol for the Division in which they were newly resident, and would have retained their enrolments and entitlement to vote for Dickson. Similarly, persons

who changed address in Dickson after the roll close would have been shown on the certified list as being enrolled for their previous addresses.

16. In the period from 23 February 1992 to 15 February 1993, a total of 7,960 electors transferred from Dickson to another Division, or were deleted from the roll because of death, or a successful objection on the ground of non-residence: on average some 156 electors per week. The posting date on the sample "return to sender" envelope provided by the Enterprise Council at Appendix 2 to the Submission is 8 March 1993. For a posting date of 8 March 1993 around 1100 returns of letters could be expected as a result of normal population movement out of the Division during the period 15 January 1993 to 8 March 1993.

17. Similarly, from 23 February 1992 to 15 February 1993, a total of 5,797 electors changed address within the Division. This would indicate that, on a pro rata basis, for a posting date of 8 March 1993 around 350 additional returns of letters could have been expected to flow from normal population movement within the Division in the period 15 February 1993 to 8 March 1993.

18. A mailout on the date suggested by the sample envelope provided at Appendix 2 to the Submission could therefore expect to result in between 1,400 and 1,500 letters returned. It should also be noted that the actual number of population changes in a particular month may well differ from the long term monthly average, but the relevant seasonal patterns cannot be determined from the AEC's enrolment statistics, since on a monthly basis those statistics tend to be influenced not only by population movements in the month in question, but also by enrolment stimulation activities such as electoral roll reviews.

19. The Committee is aware of the AEC's recent investigation of returned mail in the Division of Gilmore which found that some enrolled voters will deliberately mark candidates' mail for return to sender. There are also others in the community who adopt such a practice in relation to any unsolicited mail. These actions are possibly taken in an attempt to prevent the receipt of further such mail.

20. The Enterprise Council seeks to counter such arguments by including as Appendix 2 to its Submission "a sample returned to sender envelope, which clearly illustrates that the contents would be unknown to any person, until the envelope was opened". It illustrates nothing of the sort: it is stated at page 13 of the Submission that of the 3,193 letters examined by the Enterprise Council, 1,052 were duplicates. It is entirely possible that some of the 1,532 people who are identified by the Enterprise Council as "challenged" received duplicate letters (in either one or several mailings) and were thereby able readily to identify further letters as being from the same source. Finally on this point, it should be stated that the AEC could not have carried out any useful investigation of this matter without access to the actual "return to sender" envelopes. The AEC requested the Enterprise Council over 8 months ago to provide the envelopes in question (see Attachments D and G). The Enterprise Council did not comply with that request.

21. There are various allegations in the Submission to the effect that certain of the electors investigated by the Enterprise Council were known to Australia Post to have been absent from their enrolled addresses for some time. Again, there is nothing surprising about this. If the enrolled voters in question had changed address at some time after September 1992, the time at which the previous electoral roll review concluded in Queensland, and had not lodged an electoral enrolment form in the meantime, they would continue to be enrolled for the addresses in Dickson at which they had previously lived. The Submission does not identify the specific electors said

to have been the subject of such comment from Australia Post, so further investigation of the issue has not been possible.

22. The Enterprise Council argues at page 13 of its Submission that “it is reasonable to expect that had the total number of envelopes, exceeding 5000 been studied, the number of challenges would have exceeded 2400 electors”. In fact, in the absence of any information as to how the envelopes in question were sorted and stored in Dr Flegg’s office, and as to how the sample of 3,193 was drawn, and given the dubious manner in which the envelopes were obtained from Dr Flegg (see paragraph 11 above), it cannot be assumed that the sample constituted a random or representative sample of the type which would enable inferences to be drawn about the totality of letters returned.

23. In the light of the points set out in this paper the AEC has not judged it a worthwhile use of public money to investigate in detail the list of names set out in Appendix 1 to the Enterprise Council’s Submission.

#### **“Enrolled electors at caravan parks”**

24. At pages 15 to 17 of the Submission, there is a lengthy discussion of certain enrolments for addresses at caravan parks. The Submission states that:

“Each Caravan Park was either visited or contacted, to establish whether the nominated electors resided at the respective Caravan Park, on or before 17 April, 1993 and had commenced living there no later than 15 January, 1993”.

and goes on to allege that:

“This investigation revealed that 86 electors - 18.8% of electors enrolled - did not reside at the respective caravan park during the specified period”.

25. The only evidence to support this proposition is a series of so-called “Sworn Affidavits” set out in Appendix 7 to the Submission. In fact, on the evidence of the copies provided to the Committee, three of the four statements set out in Appendix 7 are unsigned, undated and unsworn, and therefore do not have the legal status of an affidavit; and it is for that reason questionable whether three of the four caravan park proprietors named in the documents in fact have provided information supporting the assertions of the Enterprise Council.

26. Furthermore, the statements themselves, in addressing the question of dates on which particular persons were resident at the caravan parks, are worded as follows:

“As a result of my searches I can say that as at the thirteenth day of March 1993 and the seventeenth day of April 1993 the following persons who appear on list marked “B” were not residents and/or occupants in the said caravan park.”

It should be noted that this assertion is not equivalent to the proposition of the Enterprise Council set out in paragraph 24 above. Even if the persons in question were not resident at the caravan parks in question on 13 March 1993 and 17 April 1993, that does not (except for those electors said to be dead) indicate that they were not resident either at the address claimed or elsewhere in the Division of Dickson at the time relevant to close of rolls for the election, and does not indicate that they were not entitled to vote in the Division of Dickson.

27. At page 38 of the Submission a further six persons are stated to be “Non Existent Electors - Caravan Parks”. This presumably refers to six electors listed in Appendix 5 who have been variously annotated in that Appendix as “never lived here”, “not known”, “don’t exist” or “never been anyone living at this site”. On this, the AEC would simply point out that the claim that the persons in question did not exist is not supported by any evidence other than the opinion of the caravan park proprietor. Apart from the fact that purported non-residence at a particular address says nothing about an elector’s “existence”, evidence obtained by the AEC in other enrolment investigations has shown that it is not unknown for persons to be resident at a caravan park without the knowledge of the proprietor. Since such a situation is likely to amount to a breach of the rules of the caravan park, it is unlikely that those who had knowledge of such a situation would be prepared to admit to complicity in it. On the general point of residency, the AEC would wish to draw the Joint Standing Committee’s attention to the discussion on the difficulties of proving residence in relation to individual electors which appears at paragraphs 51 to 57 of the AEC’s Submission to the Committee on *The Practical Implications of Various Measures relating to the Integrity of the Electoral Process*.

28. Finally, it might be added that the AEC’s recent experience in preparing material for the Court of Disputed Returns supports the proposition that one should treat with scepticism uncorroborated claims that field investigations have shown that particular persons (or indeed, habitations) do not exist.

29. It is striking that at page 38 of the Submission, the Enterprise Council seeks to count five “Deceased Persons - Caravan Parks” in its calculated “Manufactured Gain of Primary Votes”. In all of the documentation provided by the Enterprise Council in relation to caravan parks, only three electors are identified as having died. One - George Edward Dixon - is said to have died in June 1993: that is, well after the election. The other two, Eileen Amelia Buckley, and Bryon Earnest Clark, are said to have died in December 1992 and January 1993 respectively. A check of records has indicated that no vote was cast in the name of either Eileen Amelia Buckley or Bryon Earnest Clark at the supplementary election for Dickson. The inclusion of the figure of 5 in the table on page 38 is therefore clearly wrong: and the information on deceased persons in the Submission contains no evidence of any irregularities.

#### **“Multiple voting cases”**

30. The Enterprise Council provides at some length an estimate that 101 multiple votes were cast in the Division of Dickson.

31. In fact, there were only 64 cases at the Dickson supplementary election in which a voter’s name appeared to have been marked on more than one certified list. Of these, 4 represented scanning errors or demonstrably incorrect markings on a special list, 2 represented deaths marked on special certified list 350 (both were cases where the elector’s postal vote certificate and ballot papers were returned uncompleted), and 47 were cases where a clear match was able to be made with an apparent non-voter. In the remaining 11 cases, a letter seeking an explanation was sent to the voter in question. One letter was unanswered, one was returned undelivered, one elicited an admission of multiple voting, and the remaining 8 provided inconclusive evidence.

32. The Enterprise Council seeks to dispute the validity of the culling process by which entries are matched with apparent non-voters. The process is one which has been described in detail to the Joint Standing Committee in the course of previous inquiries, and there has been no suggestion in any report of the Committee that it

ought not be pursued. There is no evidence to suggest that it enables any actual multiple voting to go undetected.

33. It follows from this that the figure of 101 set out against the item “Multiple Voter Cases” in the table on page 38 of the Submission calculating “manufactured gain” is incorrect. In reality, the figure would in all probability be less than 11.

#### **“Multiple surnames enrolled at single households”**

34. This part of the Submission deals with the fact that at some addresses in the Division of Dickson, a number of people with different surnames are enrolled.

35. As in a number of other parts of the Submission, the evidence provided does not support the conclusions drawn. Appendix 11 to the Submission, for example, is said to contain data relating to several streets extracted “from the AEC computer disc” illustrating “families have sold their home and moved elsewhere, but still remain on the roll whilst the purchasers of the home are also enrolled on the roll”. First it should be stated that the Enterprise Council has not been supplied with any computer disk by the AEC, so the status of the data it cites is unclear. More important however is the fact that the Submission contains no evidence at all to support the assertion that the particular electors listed in Appendix 11 were at some particular time no longer resident at particular addresses (let alone any evidence that “families have sold their home”). While the Enterprise Council clearly regards as suspect households comprising people with a range of surnames, such domestic arrangements are by no means unusual in Australia, and may reflect *de facto* relationships, lodgers being resident in a house, group housing arrangements, or sharing of a house by two couples (eg parents, a daughter and her husband).

36. Appendix 12 to the Submission also provides data relating to addresses at which people with a range of surnames are enrolled. The briefest scrutiny of Appendix 12, however, indicates that its compilation is misconceived. A large number of the address entries in Appendix 12 are simply street or road names: for example at page 67, 9 people are shown as enrolled for Old Gympie Road, Dakabin. That does not imply that all 9 people live in the same house, but merely that all 9 listed their address as Old Gympie Road. This could be expected as, in common with many rural roads, no street numbers have been allocated on this particular road. Many of the other addresses are rural lot numbers: it is a common practice that the same lot number be attached to different parcels of land along a given road. It is also possible that more than one dwelling may be found at the one lot number. In the absence of a national rural road numbering scheme, there is currently no consistency to the approach to identification of rural addresses taken by authorities in different parts of the country. For some years the AEC has been actively encouraging local authorities to adopt a nationally consistent rural road numbering scheme.

37. At page 24 of its Submission, the Enterprise Council presents what purports to be a frequency distribution of numbers of surnames at the particular addresses shown in Appendix 12. The Enterprise Council’s misinterpretation of the data contained in Appendix 12, as spelt out in the previous paragraph, renders worthless the “statistics” based on it contained in the Submission. It should be noted that the table on page 24 forms the basis for the inclusion of 4125 “Multiple Household Enrolments” in the calculated “Manufactured Gain of Primary Votes” on page 38. It follows from what has been already said that the figure of 4125 has no sound basis in fact or logic, and can be discounted. Finally, it is striking that in cases where a household has, for example, four people enrolled, two with one surname, and two with another, the

Enterprise Council seeks to characterise all four enrolments as dubious. No justification for such an outlook is offered, and none is apparent.

38. The Submission (at page 21) discusses at some length an example from “a random selection of addresses”. The address quoted is “16 Hillside Street, Strathpine”, and the enrolled electors are alleged to be “John Shears”, “Katrina Shears”, “Mark McKenna”, “Tracy Stewart McKenna” and “Mark & Shelley Brookfield”. In fact, there is no Hillside Street in Strathpine. There is however a Hillsdale Street. Reference to page 41 of Appendix 12 to the Submission shows that the electors in question were not enrolled for number 16 Hillsdale Street, but for number 37. The surname of the “Brookfield” family is actually “Brockfield”, “Mark” should read “Michael” Brockfield, and Ms McKenna’s surname is hyphenated: “Stewart-McKenna”. Such factual error is so typical of the content of the Submission that it is difficult to take statements made in the Submission seriously.

39. The only contact with the electors in question has, according to the Enterprise Council, revealed no more than that the Brockfields had been tenants at their address since prior to enrolling. This does not deny either the validity of the other enrolments for the address in question, or the entitlement of these electors to vote in the Division of Dickson. Finally, the Enterprise Council states that the example of “16 Hillside Street, Strathpine” is “indicative of all addresses checked”. The AEC has no difficulty in accepting that statement, albeit for reasons which the Enterprise Council might not appreciate.

40. One more point should be made in relation to the case of 37 Hillsdale Street. The Council remarks (at page 21) that “Despite the conduct of a [sic] electoral roll update on the 8 January 1993 the AEC has allowed the records for this address to remain inaccurate”. The reference to an “electoral roll update” is meaningless in this context: for several years, the rolls have not been updated on a batch basis, but are continually updated as transactions are entered. The date of 8 January 1993 (which appears frequently throughout the Submission and its Appendices) would appear rather to be the date on which an extract of the rolls was prepared for supply to political parties. That date, contrary to the apparent belief of the Enterprise Council, has no special significance as far as the day-to-day flow of enrolment transactions is concerned.

41. The Submission goes on to allege that the rise in the formal vote for the House of Representatives since 1984 is somehow suspect. In fact, as is well known to anyone with even the most elementary knowledge of Australian elections, the 1984 election saw the highest informal vote for the House of Representatives in living memory, because of confusion induced by the use for the first time of group ticket voting for the Senate. Concerted efforts by the AEC at voter education since 1984 have taken the rate of informal voting back towards the historical trend line. It is of course completely inaccurate to characterise this as a “phantom increase” in the voting community.

42. The Enterprise Council discusses at some length the case of a housing development known as “Strathpine Gardens”. It is not by any means clear what complaint is being made in relation to Strathpine Gardens, beyond the allegation that certain persons apparently living there are not enrolled. The content of the submission provides no evidence to suggest that the persons in question are entitled to enrol, or were entitled to enrol at the time the “investigation” was conducted by the Enterprise Council. There is certainly no evidence presented of any impropriety.

43. Following from its discussion of the case of Strathpine Gardens, the Submission asserts that “it takes an unacceptably long period of time for the AEC to record an electors [sic] change of address or transfer from another electorate”. In fact, the normal practice within the AEC is to have enrolment forms checked and input to the roll management system on the day of receipt (at times of peak load during election roll close there may be a delay of up to two days). Processing delays would generally only occur where enrolment information provided by an elector is subject to further query. It could well be that the Enterprise Council is unaware of the statutory requirement that a person changing Subdivisions must live in the new Subdivision for at least a month before claiming enrolment for it.

#### **“The decline of the non-voter”**

44. Much of the discussion under this heading is highly obscure, and the AEC is unable to identify any coherent argument to which it can respond. It is however clear that this part of the Submission contains at least one significant misconception. On page 25 there is a table setting out “growth of voters” for a number of Divisions in Queensland, and the degree of growth in Dickson is said to be “questionable”. This ignores the fact that the augmented Electoral Commission which draws the boundaries of Divisions is required by subsection 73(4) of the *Commonwealth Electoral Act 1918* to take account of likely enrolment growth in a Division by setting growing Divisions at a low initial enrolment, and shrinking Divisions at a high initial enrolment, so as to achieve a long-term equality of enrolment. At the time of the 1991/92 redistribution in Queensland, the Divisions of Dickson and Fisher were set respectively 8.26% and 7.11% below the quota (State average), while of the remaining four Divisions listed on page 25 of the Submission, three were set substantially above the quota, and one was set only a fraction below. The relative growth factors shown in the table on page 25 are therefore only to be expected.

#### **“The disenfranchised religious non-voter”**

45. At pages 28 to 30 of the Submission, it is argued that certain persons with a conscientious religious objection to the act of voting may have been the subject of impersonation at the election. The Submission cites a congregation of Jehovah’s Witnesses in Jimboomba (located in the Division of Rankin - though no information is provided on the Division of enrolment of the electors in question): the data cited does not refer to the Division of Dickson. While the figures quoted in the Submission and in Appendix 18 thereto are not entirely clear, the Submission can be read as stating that investigations conducted by the Elders of the congregation revealed that of 68 members of the congregation who were enrolled as voters, none voted, 63 received a non-voter’s notice and 5 did not (of whom 2 were “aware of their names being placed on a list which would preclude them from receiving any further inquiries from the AEC as a result of non-voting”). The Submission goes on to assert that:

“It must be assumed that those members of the congregation who did not receive a “please explain” letter from the AEC have had a vote recorded against their name in the election concerned.”

46. In response to this, it need only be pointed out that (i) the Submission does not supply one shred of evidence of impersonation of any individual; and (ii) there is a plausible alternative explanation of the data quoted.

- Subsection 245(4) of the *Commonwealth Electoral Act 1918* provides *inter alia* that a Divisional Returning Officer, if satisfied that an apparent non-voter was absent from Australia on polling day, was ineligible to vote at the election, or had a

valid and sufficient reason for failing to vote, is not obliged to send a penalty notice to the apparent non-voter. The statement made in the Submission that “The AEC is responsible to Parliament to demand an explanation from all non voters in the format of a letter or an infringement notice” is therefore simply wrong.

- Furthermore, subsection 245(14) of the Act provides *inter alia* that “the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote”.
- The Submission itself makes it clear that 2 of the 68 electors it discusses were conscious of being on a list maintained by the AEC of people who would not be sent non-voter’s notices. It can be assumed that in accordance with subsection 245(4) those persons would not have been sent a non-voter’s notice; 2 of the 5 cases cited of persons who did not receive a non-voter’s notice are therefore immediately explicable.
- Appendix 18 to the Submission also states that 69 members of the congregation had “previously responded to a letter demanding an explanation from the AEC that they did not vote because of religious reasons”.
- As the Submission does not provide the names of the voters to which it refers, it has been impossible to confirm that the remaining 3 cases out of the 5 were also persons to whom the relevant Divisional Returning Officer was not required to send a non-voter’s notice by reason of a circumstance covered by subsection 245(4) of the *Commonwealth Electoral Act 1918*. However there is every possibility that that was the case.

17. Finally, it should be noted that although the Submission states that since the Jimboomba congregation is located in the Division of Rankin, the data quoted in relation to that congregation “are not included in our summary of Manufactured Electoral Gain”, at page 38 it is asserted in relation to the Division of Dickson that “7.3% of Enrolled religious Non Voters either VOTED OR WERE VOTED FOR ...”. The table at the bottom of page 38 also asserts that “Religious Non Voters voted for” in Dickson totalled 179. No explanation, justification, or evidence in support of these figures is provided anywhere in the Submission, and in the absence of such support they can therefore only be regarded as worthless.

#### **“The AEC’s refusal to challenge the election result”**

18. Under this heading the Submission in essence levels three charges against the AEC:

- that the AEC unreasonably refused to lodge a petition disputing the result of the election in the Division of Dickson;
- that the AEC by its actions hindered the Enterprise Council in arranging the lodging of a petition disputing the election in the Division of Dickson; and
- that there was “either political interference in the operation of the AEC or improper collusion between the Federal Government and the AEC”.

The AEC unequivocally rejects all three charges, for the reasons set out below.



### The AEC's refusal to lodge a Petition

49. This matter can be dealt with briefly. The writ for the election in the Division of Dickson was returned on 29 April 1993. Pursuant to paragraph 355(e) of the *Commonwealth Electoral Act 1918*, the deadline date for the lodging of petitions disputing the election was therefore 8 June 1993. Mr Moss wrote to the Electoral Commissioner on behalf of the Enterprise Council on 16 April 1993 "to formally advise the Commission of our intent to challenge and dispute the Election result for the Division of DICKSON". A copy of that letter is attached, "C". The Electoral Commissioner responded on 20 April 1993 (copy attached, "D"), pointing out that it would be up to Mr Moss to take his own legal advice on the matter, and also stating:

"You say that you have over 3000 unclaimed letters to voters that were returned to the sender. If you would make these available to the Commission we will inquire into the enrolment status of the addressees."

50. The AEC received nothing further from Mr Moss until 7 June 1993, the day before the deadline for the lodging of petitions. On that day, at 1.10 pm, a faxed letter was received from Mr Moss (copy attached, "E"), foreshadowing the lodging with the AEC of a list of names of persons to whom the letters in question had allegedly been sent (as distinct from the letters themselves); posing certain questions in relation to the listed persons; and "advising" that the AEC:

"if ... not satisfied with the answers to these questions ... should invoke the covenant or condition of the legislation governing elections by submitting the Commissioners [sic] preferred objection to the count [sic] of disputed returns in relation to the Division of Dickson result ..".

Mr Moss added that:

"In the event that time prohibits the Commissioner from lodging the necessary documentation to challenge the result with the Court of Disputed Returns we would expect the Commission to apply to the courts for an injunction seeking an extension of time ...".

51. As at about 3.30 pm on 7 June 1993, the list of names and addresses the delivery of which was foreshadowed by Mr Moss had not been received by the AEC. The Electoral Commissioner accordingly wrote to Mr Moss on that day (copy attached, "F"), indicating that the AEC would not be lodging a petition challenging the election in Dickson.

52. The foreshadowed list of names and addresses was lodged at the AEC's Melbourne Head Office on the afternoon of 8 June 1993, less than two hours before the deadline for the lodging of petitions.

53. The above account demonstrates clearly that the AEC's actions in relation to the matter were at all times proper. The Enterprise Council had itself foreshadowed a challenge to the election. The first suggestion that the Enterprise Council was looking to the AEC to take any legal action on the matter was made to the AEC the day before the deadline for lodging petitions: this was so close to the deadline to make the requested legal action impossible in practice, even if any basis had existed for such an action. The Enterprise Council had not (and for that matter, still has not) complied with the AEC's request of 20 April 1993 that the letters to which it had referred be made available for investigation, and, as at the deadline for the lodging of petitions, had provided no information or evidence to the AEC which could possibly

have been put before the Court of Disputed Returns, in terms of paragraph 355(a) of the *Commonwealth Electoral Act 1918*, as 'facts relied on to invalidate the election or return'. Finally, the proposal that the AEC should "apply ... for an injunction seeking an extension of time" was clearly misguided given that there was no evidence provided by the Enterprise Council, or otherwise known to the AEC, that was capable of supporting such an application.

#### The Enterprise Council's failure to arrange the lodging of a petition

54. The Enterprise Council seeks to blame the AEC for the fact that the Council was unable to arrange a petition to the Court of Disputed Returns by a candidate or voter. The submission states that:

"Had the Secretariat been advised of the AEC intention to avoid the issue, then The Council would have arranged for a candidate to apply to the Courts for an injunction to protect the electors' rights as outlined in the Australian constitution and appropriate Electoral legislation".

55. The fact of the matter is that none of the actions taken by the AEC in any way affected the Enterprise Council's capacity to arrange a petition to the Court of Disputed Returns, as foreshadowed by the Enterprise Council on 16 April 1993. The AEC was given no reason to believe that the Enterprise Council had abandoned its previously proclaimed intention to arrange the lodging of a petition, or that a final decision on that matter was in any way contingent on the decision made by the AEC in response to the Enterprise Council's fax of 7 June 1993. Nevertheless the AEC dealt with the Enterprise Council's correspondence of 7 June 1993 immediately, with respect to those issues relating to a petition to the Court of Disputed Returns being lodged by the EC (see Attachment F).

6. Given that it was the apparent belief of the Enterprise Council, not the Commission, that the election should be disputed, it is clear that the Enterprise Council itself must make full and exclusive responsibility for its failure to arrange a petition to challenge the result in the Division of Dickson.

#### Political interference and/or improper collusion

57. The allegations in the Submission are made on the basis of various public statements made by the Attorney-General and Member for Dickson, Mr Lavarch. The Submission poses (at page 36) three questions:

“(1) Did the Attorney-General influence the AEC in its findings?

(2) Why did the Attorney-General pre-empt by press release 'that there was no chance of Dickson voters being forced to go to the polls again'?

(3) How did the Attorney-General have knowledge on the 1st of July of the AEC's findings of its 5th July report before it was completed?"

58. By way of background, it should be pointed out that the Electoral Commissioner, in his letter to Mr Moss of 7 June 1993, had stated in relation to the questions raised by Mr Moss that "We will examine your list of questions but at this stage I cannot say what action, if any, will be appropriate". The "findings" referred to in the questions quoted above can only be presumed to refer to the outcome of the examination referred to in that letter.

59. It is also clear that the allegations of impropriety made in the Submission depend for any validity which they might have on an assumption that the “findings” of the AEC would have some practical effect in relation to the election in Dickson, and could have affected the rights of participants in the electoral process. On this point, it would appear that as of 1 July 1993, Mr Moss still believed there was some possibility of a challenge to the election result in Dickson. In a radio interview on 4QR Brisbane at 5.11 pm on that date, Mr Moss clearly stated that he believed there would be a by-election. This belief of Mr Moss’s may explain the exception taken in the Submission to the fact that Mr Lavarch was quoted in the press on 2 July 1993 as saying that there could be no effective challenge to the Dickson election result.

60. In fact, however, Mr Moss’s belief as at 1 July 1993 in the continuing possibility of a challenge to the Dickson result was misconceived, and from (at the latest) 25 June 1993, the Dickson result had been beyond challenge. By the 8 June 1993 deadline for the lodging of petitions, no petition had been lodged relating solely to the election in Dickson. Four petitions had been lodged by persons who were electors for other Divisions (one of whom was an unsuccessful Senate candidate from Victoria), seeking to dispute the House of Representatives election in each and every Division. On 25 June 1993, however, Acting Chief Justice Brennan dismissed the first such petition to be considered, stating (in *Muldowney v AEC (1993)* 114 ALR 513 at page 519) that:

“The framework of the Act as well as the language of section 355(c) indicates that the jurisdiction of the Court of Disputed Returns does not extend to the making of a declaration that the entirety of a general election is void. The jurisdiction to declare an election void on the petition of a person 'who was qualified to vote thereat' is limited to those elections in which the petitioner was an elector entitled to vote”.

On the basis of this judgement it was clear on 25 June 1993 that the remaining three petitions, to the extent that they sought to overturn the result in the Division of Dickson, would be held to be legally defective, as indeed they subsequently were.

61. The answer to the second question raised in the Submission is therefore clear. The statement made by Mr Lavarch and quoted in the press on 2 July 1993 pre-empted nothing, because by the time it was made, there was as a matter of law, and of facts on the public record, no longer any possibility of a challenge to the election result in Dickson.

62. It also clearly flows from the facts set out above that the so-called “findings” of the AEC, which were set out in a letter to Mr Moss dated 5 July 1993 (copy attached, “G”) did not affect in any way, adverse or otherwise, the rights of Mr Moss, the Enterprise Council, Mr Lavarch or any other individual.

63. In relation to the first question, it should be clearly stated that Mr Lavarch neither influenced in any way, nor sought to influence in any way, the contents of the AEC’s letter of 5 July 1993 to Mr Moss. Since the “findings” in question had no potential to affect his position in the Parliament, he would in any case have had no significant motive to do so.

64. In relation to the third question, the AEC is unaware of the basis for Mr Moss’s claim that Mr Lavarch had knowledge of the findings of the AEC report of 5 July before it was completed. On 1 July 1993, following reporting of the Enterprise Council’s claims in the press, a staff member from Mr Lavarch’s electorate office contacted the Acting Electoral Commissioner and was informed that the AEC would

provide a comment on this matter within the next few days. Mr Lavarch himself, in an interview on radio station 4QR on 1 July indicated (contrary to Mr Moss's assertion) that he was unaware of the likely findings or release date of the AEC investigations into this matter. Statements made at this time by Mr Lavarch contained obvious arguments that did not depend on any knowledge of the Commission's investigations. On 5 July, due to the interest shown in Mr Moss's allegations by sections of the media, and following despatch of a faxed copy of the Commission's response to Mr Moss, copies of this response were then also released to Mr Lavarch and some interested media representatives.

#### Summary

65. On the basis of the points made above, the AEC rejects in their entirety the allegations of the Enterprise Council at page 36 of the Submission that the AEC's independence and integrity have in any way been compromised by its handling of the issues raised with it by the Enterprise Council.

Attachment C

*The Enterprise Movement - Dedicated to regaining and strengthening the economic and political freedom of Australia through the power of Private Enterprise, in particular Small Business.*

Mr B Cox  
Electoral Commissioner  
West Block  
Queen Victoria Terrace  
PARKES ACT 2600  
FACSIMILE NO 06 271 4558

Dear Sir            RE: FEDERAL ELECTION - 17 APRIL 1993  
                         DIVISION OF DICKSON QUEENSLAND

We wish to formally advise the Commission of our intent to challenge and dispute the Election result for the Division of DICKSON.

The Australian Electoral Commission is responsible to conduct the Commonwealth Parliamentary election within the legislation known "Commonwealth Electoral Act 1918".

The Enterprise Council act as a community watchdog representing significant sectors of the community and its objective is to ensure elections are conducted in a free, fair and democratic manner.

The Electoral Roll for the Division of DICKSON is inaccurate as we are in possession of 3000+ letters mailed to voters that have been returned to the sender unclaimed over the recent 2 months.

This abnormal discrepancy of the Electoral Roll can only provide a corrupted result for the election to be held on 17 April 1993 under your jurisdiction.

In the interest of a fair democratic election we hereby give notice that all Polling Booths including the Register maintained by the Commission for the purpose of counting Postal, Special enrolment and absentee voters be stored on the understanding they will not be removed, distorted or destroyed before the expiration of 40 days after the return of the writ.

This notice has been forwarded to the Electoral Officer of Queensland under separate seal.

Yours faithfully

GEOFF MOSS  
SECRETARY

THE ENTERPRISE MOVEMENT  
117 Queen St, Brisbane Q 4000, Phone 07 210 0250 Fax 07 221 9213

Mr Geoff Moss  
Secretary  
The Enterprise Movement  
Level 2  
117 Queen St  
BRISBANE QLD 4000

Dear Mr Moss

I refer to your letter of 16 April 1993 in which you advise that you intend to challenge and dispute the result of the supplementary election for the Division of Dickson. The basis of your challenge is to be your claim that the Electoral Roll for the Division of Dickson was inaccurate.

It is, of course, for you to take your own legal advice in the matter, but in relation to your proposed challenge, I draw your attention to sections 181(1) and 361(1) of the Commonwealth Electoral Act (copy attached).

In relation to your giving notice that all electoral material be stored in anticipation of your petition, section 393A(1) of the Act (copy attached) provides that all electoral documents must be preserved for at least 6 months after the declaration of the poll.

The Australian Electoral Commission is concerned to have the Electoral Roll as up to date and accurate at all times as is possible. You say that you have over 3000 unclaimed letters that were returned to the sender. If you would make these available to the Commission we will inquire into the enrolment status of the addresses.

Yours sincerely

B Cox  
Electoral Commissioner

20 April 1993

*The Enterprise Movement - Dedicated to regaining and strengthening the economic and political freedom of Australia through the power of Private Enterprise, in particular Small Business.*

7 June 1993

Mr B Cox  
Electoral Commissioner  
Australian Electoral Commission  
West Block  
Queen Victoria Terrace  
PARKES ACT 2600

FACSIMILE NO: (06) 271 4558

Dear Sir           RE: FEDERAL ELECTION - 17 APRIL 1993  
                          DIVISION OF DICKSON QUEENSLAND

We refer to our letter 16 April, 1993 formally advising the Commissioner of the Enterprise Council's intent to challenge the election result for the Division of Dickson, Queensland.

The Council now makes available a list of names and addresses of unclaimed letters to voters, that were resumed to the sender before the election date, for the Commissioner to investigate the enrolment status of the addressees.

The Council's volunteer supporters have cross checked the unclaimed envelopes to the reference voters names on the certified roll for the Federal election of 13 March, 1993. We further understand the election for the Division of Dickson was postponed to the 17 April 1993 and the roll struck for the 13 March remains the certified roll for the election held on the 17 April, 1993.

We request the Commissioner to advise us as soon as the Commission has completed the enrolment status of the addresses on our list, the answers to the following questions:-

1. which persons on our list was not enrolled with the Commission for the division of Dickson as at the 13 March, 1993?

2. Did any of these persons vote at the 17 April 1993 by-election?

3. If YES to Question 2, please advise their names and addresses and the method they voted, ie at the Polling Booth, Postal Vote or overseas voter through an Embassy etc?

4 (a) If NO to Question 2 please advise their names and addresses and whether the Commissioner has written to the voter requesting the reason why that particular voter did not vote?

(b) If the Commissioner has written to these non-voters, how many of these letters, if processed, were returned to the sender?

(c) Has the Commission staff investigated the residential status of these voters? If so, what is the outcome of these investigations?

5. Did any of these voters contact the Commission between the close of Rolls and Election Day requesting enrolment in another division or, secondly, advising the Commission of their changed address within the Division? (In both questions please supply their names and addresses and the outcome of their enquiry).

6. Did any of these voters on our list vote more than once at the 17 April election and if so how many times?

7. Did any voter register a postal or absentee vote with the Commission, that was included in the count for the 17 April result prior to the postponement of the election day of the Division.

8(a) Please advise the date of the last advice from the Registrar of Births and Deaths before establishing the certified list, in particular the death of a voter on this list?

(b) Did the final certified roll account for name changes by marriage, deed-poll etc and are any of these name changes included in our list?

9. Please advise whether there was a supplementary roll distributed to the candidates prior to the election.

If you are not satisfied with the answers to these questions yourself we advise you should invoke the covenant or condition of the legislation governing elections by submitting the Commissioners preferred objection on to the court of disputed returns in relation to the Division of Dickson result (refer Commonwealth Electoral Act 1918 S357(1)(2)).

The member for Dickson was elected to Parliament after gaining 34,033 votes, as compared on a two party preferred basis to his opponent who received 33,686 votes.

Our challenged list of electors totalling 1,532 voters is equivalent to 4.42 times the overall majority of 347 votes.

According to Australian Post Investigation Unit, these voters, on our list, do not exist at the addresses nominated on the Certified Roll before the 13 March, 1993 and the by-election held on the 17 April, 1993.

The return of writs delivered to the Governor General on the 29 April, 1993 leaves the Electoral Commissioner with the opportunity of challenging this result by 4.00pm today.

The Enterprise Council would expect the Commissioner to challenge this result and lodge the necessary documents with the Court of Disputed Returns (being within 40 days of the return of the writs) as required by legislation of the Commonwealth Electoral Act 1918.

I formally advise that I will be lodging the list of unclaimed letters whom we believe are recorded as voters on the certified electoral roll for the Division of Dickson,



together with this letter at the Australian Electoral Commission, Melbourne Office, 9th Floor, 399 Lonsdale Street, Melbourne today.

In the event that time prohibits the Commissioner from lodging the necessary documentation to challenge the result with the Court of Disputed Returns we would expect the Commissioner to apply to the courts for an injunction seeking an extension of time to enable the Commissioner to check the authenticity of our list and answer questions 1. to 9.

I am presently interstate and available on (018) 777123 for any further Inquiries. I will be forwarding a copy of this letter to the Parliamentary Leaders of the major parties.

Yours faithfully  
GEOFF MOSS  
Secretary

THE ENTERPRISE MOVEMENT  
117 Queen St, Brisbane Q 4000, Phone 07 210 0250 Fax 07 221 9213

Mr Geoff Moss  
Secretary  
The Enterprise Movement  
117 Queen Street  
BRISBANE QLD 4000  
By Facsimile: 2219213

Dear Mr Moss

I refer to your letter dated 7 June, which was faxed to this office at 1.10 pm today and received by me a little later.

You have asked that the Electoral Commission petition the Court of Disputed Returns to challenge the result of the recent election in the Division of Dickson or, failing that, to "apply to the courts" for an injunction seeking an extension of time. You also raised a series of questions and stated that your letter and a list of 1532 names and addresses will be lodged with the Commission's Melbourne office today.

As at approximately 3.30 pm today the letter and the list of names you refer to have not been received at the Commission's Melbourne office, which is now located in the Commonwealth Centre, Castleton Place, Melbourne.

This letter is to let you know that the Commission will not be taking the action you have requested in your letter received here today.

We have no present grounds upon which to petition the court, nor do we have grounds to seek an injunction even were that possible. Errors in the roll, if any, are excluded from consideration by section 361(1) of the Commonwealth Electoral Act and we already know that "multiple votes", if any, are well below the winning margin in the election.

Even had the list of names and addresses you refer to been provided to this office this afternoon, there would not have been time to examine the list and take the action you proposed by 4 pm tomorrow. I endeavoured to convey this information to you by telephone and also to Mr Mead of your Brisbane office, who had attempted to ring me whilst I was not in my office during the afternoon.

We will examine your list of questions but at this stage I cannot say what action, if any, will be appropriate.

Of course, none of the above prevents you from petitioning the court as foreshadowed almost two months ago in your letter of 16 April.

Yours sincerely  
B Cox  
Electoral Commissioner  
7 June 1993

Mr Geoff Moss  
Secretary  
The Enterprise Movement  
117 Queens Street  
BRISBANE QLD 4000

Dear Mr Moss

In your letter of 16 April 1993 you advised that you intended to challenge the election result for the Division of Dickson on the basis of alleged inaccuracies in the electoral roll. The Commissioner's reply of 20 April 1993 noted the existence of sections 181(1) and 361(1) of the Electoral Act which, together, provide that a supplementary election (consequential upon the death of a candidate) shall be held upon the roll for the failed election and that the Court of Disputed Returns shall not inquire into the correctness of any roll - although it may inquire into the identity of voters and whether their votes were properly admitted or rejected. You said that you had over 3000 letters mailed to voters which had been returned to the sender unclaimed over the recent 2 months. The Commissioner indicated that if you would make the returned mail available to the Commission we would inquire into the enrolment status of the addressees.

We received nothing further until your letter of 7 June 1993. You said you were sending with that letter a list of names and addresses of unclaimed letters to voters returned to the sender before the election date. You said these had been cross-checked against the relevant names on the certified roll for the Federal election of 13 March 1993. You asked a series of nine questions covering who was enrolled; whether, where and how those persons voted; what contact the Commission may have had with those voters; and related matters. You said your challenged list of electors (1532 voters - only about half the number of names which you claimed in your first correspondence) was equivalent to 4.42 times the overall majority of 347 votes. You said that the "Australian Post Investigation Unit" (sic) alleged such voters did not exist at the nominated addresses before the relevant elections, but you gave no details of the basis for this claim.

The Commissioner indicated in his reply of 7 June 1993 that the list had not yet been delivered to the Commission, that the requested action would not be taken, and that there were no grounds upon which to petition the Court of Disputed Returns, but that matters you had raised would be examined. This has now been done.

The first thing to be understood is that there was no possibility of us making any investigation of the list of names before the deadline for lodging a petition with the Court of Disputed Returns, which ended at 4pm on Tuesday, 8 June 1993, as your list was only delivered (to our Melbourne Head Office) at 2.45 pm that day.

As mentioned, you had indicated your own intention to challenge the election for the Division of Dickson in your letter of 16 April 1993 and you therefore had almost 2 months in which to do so or to make the unclaimed letters available to the Commission as suggested in the Commissioner's letter of 20 April 1993.

The second point you must understand is that the volume of returned mail is not exceptional. Australia-wide, about 20% of the voting population change address in a year. For the division of Dickson with 76,453 enrolled voters this means that about 15,300 move every year or about 300 per week. The rolls closed on 15 February 1993 and Section 99 of the Commonwealth Electoral Act provides that a person must

live at a given address for one month before enrolling or changing enrolment details. So the roll as closed on 15 February 1993 would not have address changes after 15 January 1993. Once the rolls had closed there was no question of them advising us of that change.

You did not say when the relevant mail was posted out but if it was assumed that the mailing was at the beginning of March (roughly half way between the close of rolls and the Federal election on 13 March) then, on average, approximately 1800 electors would have changed address in the 6 week period. (Had you provided the envelopes we might have had a better idea as to when particular mail had been sent and why it was returned.) Bearing also in mind that there can be substantial seasonal and regional variations in voter mobility, the volume of returned mail which you have identified is in no sense surprising and provides no evidence of electoral fraud or of any attempt to affect the outcome through manipulation of enrolments.

I should add that we have nevertheless taken a preliminary look at a small sample of the names and addresses you provided. Out of these we have identified a number of incorrect spelling of names or addresses which may in themselves have sufficed to have caused letters to be returned.

We are also uncertain as to the origin of your list as it is not in the same form as the certified lists. For example, you have apparently paired husbands and wives and added the titles Mr and Mrs but, since the rolls do not show information as to who a person's spouse is, we do not know on what basis that match was made. (Shared address is an obvious possibility, but is not always reliable. The certified list also does not know information as to the gender of a voter and, again, first names are not always a reliable guide.)

If, as suggested in some reports, the mail out was by the Liberal candidate, Dr Flegg, then you should be aware that he has told the Commission that he does not support a challenge and has not seen any evidence at all of "roll rigging" or of anything that would influence the Dickson result.

For all the above reasons I can see no justification for devoting substantial resources to a detailed investigation of the status of the persons whose names and addresses you have provided. However, I note that they appear to have been prepared on a word processor. If you are able to provide them to us in ASCII format on a floppy disk we will see whether it is practicable to match them by computer to the consolidated list of voters and whether any useful conclusions can be drawn from that exercise. I would not, however, because of the provisions of the Privacy Act 1988, be legally able to provide you with information regarding any particular persons.

The answer to your question 9: "Please advise whether there was a supplementary roll distributed to candidates prior to the election?" is that all candidates received a roll corresponding to the certified lists for the federal election.

In view of inquiries I have received regarding your apparent statements to the media concerning these matters, I am making copies of this letter available today to relevant media.

Yours sincerely,  
R Bell  
Acting Electoral Commissioner  
5 July 1993

## ***Extract from November 1994 JSCEM Report on the 1993 Federal Election***

### 4.6 Dickson

4.6.1 Following the death of a candidate after the close of nominations, the House of Representatives election for Dickson in Queensland was deemed to have failed in accordance with section 180 of the Electoral Act. A supplementary election was held on 17 April 1993 and won by the Attorney General, the Hon. Michael Lavarch MP.

4.6.2 A Queensland-based organisation called the Enterprise Council submitted that the result in Dickson was “manufactured”, owing to:

- electors not residing at their enrolled addresses;
- non-existent or deceased electors at caravan parks;
- electors voting in the name of religious non-voters;
- multiple surnames enrolled at individual households;
- a high level of return-to-sender MP mail; and
- a high level of non-voting when compared with the State average.

4.6.3 The Enterprise Council charged that the AEC had acted improperly in seeking to not challenge the Dickson result in the Court of Disputed Returns.

4.6.4 The AEC responded to each allegation as follows:

- the only basis for alleging that electors were not at their enrolled addresses is a list of return-to-sender MP mail, and the Enterprise Council provides no evidence that any of the electors it refers to were not entitled to vote in Dickson;
- evidence put forward by the Enterprise Council does not address its proposition that electors at caravan parks “did not exist”;
- of the three deceased electors referred to by the Enterprise Council, one died after the supplementary election, and no votes were recorded in the names of the other two;
- the Enterprise Council provides no evidence that any religious non-voters had votes cast in their names;
- the evidence put forward by the Enterprise Council relating to multiple surnames enrolled at households is severely flawed, by failure to explain why different surnames in a household should be regarded as indicating fraudulent enrolment, by factual errors, and by basic misunderstandings such as asserting that nine people were enrolled for one house. In fact, all nine had merely listed their enrolled address as Old Gympie Road, Dakabin (in common with many rural areas, there are no street numbers on this road);
- the accusation of a high level of return-to-sender MP mail is based solely on envelopes obtained in a dubious fashion from the office of the Liberal candidate. The envelopes have not been forwarded by the Enterprise Council to the AEC for investigation, despite such a request being made by the AEC nearly a year ago; and
- the lower voter turnout in Dickson compared with the State average reflects a long-standing pattern of a lower turnout for by-elections than for general elections.

4.6.6 Having examined both submissions, the Committee is satisfied that the evidence put forward by the Enterprise Council fails to substantiate its allegations.

This view would appear to be shared by the Liberal candidate in Dickson, Dr Bruce Flegg, who has advised the AEC that

the Enterprise Council...in no way speak for me and I in no way support their misguided campaign.

4.6.6 The AEC did not act unreasonably in declining to challenge the Dickson result in the Court of Disputed Returns. The Committee therefore finds the Enterprise Council's accusation of political interference or improper collusion between the Commonwealth Government and the AEC to be unfounded.

***Extract from AEC submission No 210 of 23 July 1999***

46.5 In her written and oral submissions Dr McGrath once again presents previously discredited "evidence" in support of her claims that electoral fraud is endemic in the federal electoral system. In particular, on page EM90 of the transcript, Dr McGrath raises the 1993 elections in the Divisions of Macquarie and Dickson, and an unnamed Western Australian Division, in support of her allegations that the votes of religious objectors have been defrauded. However, it is notable that Dr McGrath has not offered to provide the correspondence, which she claims supports her allegations, to either to the AEC or the JSCEM for further investigation.

46.6 The electoral fraud allegations made by the "Enterprise Council" in relation to the 1993 supplementary election in the Division of Dickson, and in particular the allegations concerning religious objectors, are recycled by Dr McGrath, despite the unanimous conclusions reached in the November 1994 JSCEM Report at pages 64-65 (see also Attachment 10):

4.6.5 ....the Committee is satisfied that the evidence put forward by the Enterprise Council fails to substantiate its allegations. This view would appear to be shared by the Liberal candidate in Dickson, Dr Bruce Flegg, who has advised the AEC that

the Enterprise Council ...in no way speaks for me and I in no way support their misguided campaign.

4.6.6 The AEC did not act unreasonably in declining to challenge the Dickson result in the Court of Disputed Returns. The Committee therefore finds the Enterprise Council's accusation of political interference or improper collusion between the Commonwealth Government and the AEC to be unfounded.

## Report on incidents of possible enrolment fraud over the past decade

Case No	Division	Year	AFP	Category	Result
NSW1	Prospect	no record	No	Enrolment in frivolous name	Enrolment rejected
NSW2	Paterson	1988	No	enrolment address of elector altered by others for Medicare fraud purposes	Investigated by Medicare Fraud Officers and enrolment corrected.
NSW3	Throsby	1990	Yes	Two enrolment applications by under-age persons	AFP unable to locate offender
NSW4	Robertson	1990	No	Enrolment application by under-age person	Warning letter issued
NSW5	Macquarie	1990	Yes	Frivolous application for pet cat	Enrolment cancelled
NSW6	Bennelong	1991	Yes	Four false enrolments submitted, including one for council candidate	Prosecution period expired – DPP issued warning letter to council candidate
NSW7	Banks	1991	Yes	elector received AEC AC card but had not lodged an enrolment application	AFP interviewed suspect. Insufficient evidence for prosecution
NSW8	Philip	1991	Yes	Incomplete enrolment form with fraudulent witness submitted by another person	AFP unable to locate offender
NSW9	Riverina-Darling	1991	Yes	Under-age application for pub entry purposes	Cautioned by Court
NSW10	Dobell	1991	Yes	Dual enrolment for same person with slightly different names	Not deliberate fraud - second enrolment cancelled.
NSW 11	Dundas	1991	Yes	Attempt to establish a fraudulent enrolment address	AFP unable to identify offender.
NSW12	Kingsford Smith	1992	Yes	Enrolment for under-age person overseas	AFP unable to identify offender

<b>NSW13</b>	Parkes	1992	Yes	Multiple enrolments submitted for one person	AFP unable to identify offender
<b>NSW14</b>	Cunningham	1992	Yes	Dual enrolments with different signatures and place of birth	Court imposed \$800 fine and \$46 costs on offender (not the elector)
<b>NSW15</b>	Berowra Wentworth	1992	Yes	Several fake identities submitted to AEC	AEC objections to identities
<b>NSW16</b>	Watson	1992	Yes	Application for fake enrolment lodged with AEC as a 'test' case	Although AFP knew identity of suspected offenders, unable to progress matter due to inadequacy of evidence
<b>NSW17</b>	unknown	1993	Yes	Records incomplete	Records incomplete
<b>NSW18</b>	Bennelong	1993	Yes	Application received for under-age person	Offender charged – no record of result
<b>NSW19</b>	Sydney	1993	Yes	Single identity fraud for criminal intent	False enrolment removed by objection
<b>NSW20</b>	Grayndler Sydney Wentworth	1993	No	Multiple identity fraud (Social Security)	Convicted of Social Security fraud. False names removed from roll by objection
<b>NSW21</b>	Richmond	1993	Yes	Multiple identity fraud (Social Security)	Fictitious enrolments removed by objection
<b>NSW22</b>	Macquarie	1993	No	Webster Petition alleging hundreds of cases of multiple voting and personation	Petition dismissed by CDR with costs against petitioner – no allegations proved (see Attachment 19)
<b>NSW23</b>	Mitchell	1994	Yes	Application received by AEC from person unknown by real person	AFP unable to locate offender
<b>NSW24</b>	Throsby	1994	Yes	AEC AC card received by under-age person	AFP unable to locate offender
<b>NSW25</b>	Bradfield	1995	Yes	Application from ineligible non-citizen	AFP advised not deliberate fraud



<b>NSW26</b>	Richmond	1995	Yes	Elector and witness denied making application received by AEC	No further action, on grounds of insufficient AFP resources
<b>NSW27</b>	Reid	1995	Yes	Two electors received AEC AC cards for unknown reason	AFP unable to locate offender
<b>NSW28</b>	Fowler	1995	No	State preselection candidate submitted 15 cards most witnessed by candidate and 12 for wrong address	After investigating AEC decided to take no further action
<b>NSW29</b>	Lyne	1995	Yes	Application received for elector from another person	NSW police unable to locate offender
<b>NSW30</b>	Cowper Page	1996	Yes	State candidate enrolled for wrong address	DPP advised insufficient evidence for prosecution
<b>NSW31</b>	Prospect	1997	No	Local govt candidate enrolled but not citizen	Referred to DPP – no record of outcome
<b>NSW32</b>	Lindsay	1999	Yes	Council candidates allegedly made false enrolment declarations	Insufficient evidence for prosecution
<b>NSW33</b>	Cook	1999	No	Enrolment for another elector's address	Applicant elector removed by objection on grounds of non-residence
<b>NSW34</b>	Cowper	1999	No	Elector enrolled twice for same address with different signatures and DOBs	Father completed first enrolment – dual enrolment deleted
<b>NSW35</b>	Werriwa	1999	Yes	Council candidate transferred address twice for no apparent reason	DPP advised insufficient evidence for prosecution.
<b>NSW36</b>	North Sydney	1999	-	Dual enrolment	Incomplete file record
<b>NSW37</b>	North Sydney	1999	-	Attempted enrolment at non residential	Unable to locate complete file record

<b>NSW38</b>	Charlton	2000	-	ALP preselection candidate attempted to enrol for vacant block	Action still pending
<b>NSW39</b>	Chifley	2000	Yes	Elector received AEC AC card for unknown person	Action still pending
<b>NSW40</b>	Parramatta	2000	No	Elector received MP mail for another person	Action still pending
<b>NSW41</b>	Throsby	2000	No	Multiple enrolments for different names at same DOB and address	Action still pending
<b>NSW42</b>	Warringah	2000	Yes	Two enrolment cards from same address with inconsistent details	Action still pending
<b>NSW43</b>	Wentworth	2000	Yes	Two nursing home applications with inconsistent signatures	AFP declined to investigate – no real evidence of fraud on AGS advice
<b>NSW44</b>	Mackellar	2000	No	MP applicant possibly not eligible - insufficient residence period	Enrolled - statutory declaration to NSW EC attesting to eligibility
<b>NSW45</b>	Reid	2000	Yes	Multiple applications allegedly falsified by one person	AFP twice declined to investigate on grounds of limited resources
<b>VIC1</b>	Melbourne	1995	Yes	Multiple identity fraud (Social Security)	Enrolments removed by objection action
<b>VIC2</b>	Bendigo	1996	No	Elector advised another elector enrolled at same address	Enrolment removed by objection
<b>VIC3</b>	Melbourne Ports	1997	Yes	Elector advised another enrolment in his name	AFP declined to investigate on limited resources. Enrolment corrected
<b>VIC4</b>	Wills	1997	No	Identity fraud – (Immigration)	Enrolment corrected
<b>NT1</b>	NT	1990	Yes	Two applications same address with same signatures	Court decided guilty of false signature offence - no conviction recorded - \$250 bond

<b>NT2</b>	NT	1994	Yes	Application not made by person living at address with false signature	Insufficient evidence for prosecution
<b>NT3</b>	NT	1994	Yes	Dual enrolments with possible different signatures	No further action – input error by AEC – AFP investigation discontinued
<b>QLD1</b>	Herbert	1991	No	State candidate allegedly fraudulently changed enrolment	Insufficient evidence
<b>QLD2</b>	Petrie	1993	No	Enrolment form received for a fictitious street	Enrolment not entered
<b>QLD3</b>	Dickson	1993	No	Enterprise Council allegations of hundreds of cases of enrolment fraud	JSCEM dismissed the allegations as without foundation following AEC analysis (see Attachment 19)
<b>QLD4</b>	Herbert	1994	No	Multiple identity fraud (Social Security)	Already prosecuted for Social Security fraud. No further prosecution action
<b>QLD5</b>	Herbert	1994	No	Multiple identity fraud (Social Security)	Already prosecuted for Social Security fraud. No further prosecution action
<b>QLD6</b>	Herbert	1996	Yes	Multiple enrolment fraud for preselection	Prosecuted and convicted for forging and uttering
<b>QLD7</b>	Groom	1996	No	Letter received by AEC attempting to change details of elector - not sent by elector	Prosecuted by State police as part of a case of harassment of elector
<b>QLD8</b>	Griffith	1996	Yes	Multiple enrolments at two different addresses	DPP concluded not enough evidence for prosecution
<b>QLD9</b>	Hinkler	1996	No	Federal MP believed an elector falsely used his father's details	Member advised that evidence was inconclusive, and administrative action was taken to correct matter
<b>QLD10</b>	Herbert	1997	Yes	Enrolment fraud for ALP preselection purposes.	Prosecuted and convicted of 47 counts of forging and uttering

<b>QLD11</b>	Herbert	1997	Yes	Enrolment fraud for ALP preselection purposes.	Plead guilty to forging and uttering
<b>QLD12</b>	Wide Bay	1997	No	Enrolment form for address that did not exist	Genuine error by elector, dealt with administratively - error corrected
<b>QLD13</b>	Fadden	1997	No	Telephone complaint of several fraudulent enrolments	Details checked no evidence could be found of enrolment impropriety
<b>QLD14</b>	Moreton	1998	Yes	See QLD7 above	Part of ongoing harrassment campaign.
<b>QLD15</b>	Ryan	2000	Yes	Fraudulent enrolments using the names of parents	Under investigation
<b>QLD16</b>	Moncrieff	2000	Yes	Duplicate enrolment forms submitted	Under investigation
<b>QLD17</b>	Bowman	2000	Yes	Enrolment form using dead person's details submitted during doorknock	Under investigation
<b>WA1</b>	O'Connor	1998	Yes	Two people submitted original enrolments with incorrect spelling. Submitted correct enrolments, resulting in dual enrolments.	AFP did not consider there was any intent to defraud the electoral system.
<b>SA1</b>	Bonython		Yes	Forgery of family member application	Warning issued by AFP