

Management of ballot papers

- 2.1 The loss of 1 370 Senate ballot papers in Western Australia (WA) during the 2013 Senate recount had wide-reaching effects; for the country's confidence in the electoral system, the expense to taxpayers, and the erosion of electoral integrity.
- 2.2 The ultimate effect was the Court of Disputed Returns voiding the result of the recount, requiring a re-run of the WA Senate election. This was an abysmal outcome for Western Australia, the Senate, the Australian Electoral Commission (AEC) and Australian democracy.
- 2.3 The fact that ballot papers could be lost points not simply to an isolated error, but rather to widespread systemic management and ballot accounting failures within the AEC that require comprehensive reform.
- 2.4 This Chapter outlines the events in WA, investigations undertaken and actions to date by the AEC. The identified serious endemic staff accountability and capability problems that contributed to these events are considered in Chapter 3.

Outline of events in Western Australia

- 2.5 On 2 October 2013 the result of the 2013 WA Senate election was established through the distribution of preferences, following the 7 September national ballot.¹ On the same day, due to the closeness of the result, the AEC deferred the formal declaration of the poll following a formal request² for a recount by the Australian Sports Party candidate

1 Australian Electoral Commission (AEC), Media Release, 'Western Australia Senators have been decided', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e10-02b.htm>.

2 A formal request for recount can be made under sections 278 and 279 of the *Commonwealth Electoral Act 1918*.

- (Wayne Dropulich) and the Australian Greens candidate (Senator Scott Ludlam).³ Other candidates, such as the Member for Perth, took it upon themselves to publicly call for a recount to ensure the integrity of the result.
- 2.6 On 3 October 2013 Mr Peter Kramer, the then Australian Electoral Officer for WA (the WA State Manager) declined the recount, on the basis that the 'requests for a recount did not identify any specific issues which would have warranted the conduct of a recount'.⁴
- 2.7 Mr Dropulich and Senator Ludlam appealed this decision to the then Australian Electoral Commissioner, Mr Ed Killesteyn PSM, on 4 October 2013 and the formal declaration was again deferred pending the outcome of this appeal.
- 2.8 On 10 October 2013, the Electoral Commissioner announced a recount of the WA Senate ballots, where above-the-line votes had been marked or ballot papers had been ruled informal, due to the closeness of the count.⁵
- 2.9 On 31 October 2013 the Electoral Commissioner announced that during the recount, it was discovered that 1 375 verified ballots were missing, 1 255 of which were formal above-the-line votes.
- 2.10 Former Commissioner of the Australian Federal Police – Mr Mick Keelty AO – was tasked with conducting an examination of the circumstances of the missing ballots.⁶
- 2.11 On 2 November 2013 the AEC announced the result of the recount in the WA Senate election and the poll was formally declared on 4 November 2013 despite the fact the missing ballots could not be included in the count.⁷
- 2.12 On 8 November 2013 the AEC released information on the missing ballots, stating that 1 370 votes were missing, 1 250 of which were formal votes. The earlier reported total of 1 375 ballots was incorrect and was reduced by a total of 5 formal votes, previously incorrectly reported against the Bunbury East polling place.
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3 AEC media release, 'Declaration of Western Australia Senators deferred', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e10-02c.htm>.

4 AEC media release, 'WA Senate recount requests denied', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e10-03>.

5 AEC media release, 'Senate recount in Western Australia', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e10-10>.

6 AEC media release, 'WA Senate recount', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e10-31>.

7 AEC media release, 'Western Australia Senators decided from recount', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e11-02>.

- 2.13 The AEC stated that the 1 370 votes had come largely from one polling place in the Division of Forrest (Bunbury East) and three polling places in the Division of Pearce (Henley Brook, Mt Helena and Wundowie).⁸
- 2.14 On 15 November 2013, the AEC lodged a petition with the Court of Disputed Returns to have the result of the 2013 WA Senate election declared void due to the inability to include the 1 370 missing votes in the recount.⁹
- 2.15 Findings made by the Court of Disputed Returns on 18 February 2014 resulted in a new election for the six Senate vacancies in Western Australia.¹⁰
- 2.16 The Electoral Commissioner, Mr Ed Killesteyn, and the WA State Manager, Mr Peter Kramer, resigned on 21 February 2014.
- 2.17 The re-run WA Senate election was held on 5 April 2014 at a cost of over \$21.7 million,¹¹ officially declared on 1 May 2014, and the successful candidates took their seats on 1 July 2014.

Investigations into events surrounding the lost ballots

Actions by the AEC

- 2.18 After the decision was made to conduct a recount, it was decided that all ballot papers would be moved to a 'recount centre' in Northbridge, Perth. Equipping the centre began on 14 October 2013 and the recount commenced at midday on 17 October 2013. The Division of Forrest ballot papers were delivered on 18 October and the Division of Pearce ballot papers were delivered on 22 October.¹²
- 2.19 On 22 October 2013 it became apparent that 1 139 ballot papers were missing from the Division of Pearce and on 25 October it became apparent that 231 ballot papers were missing from the Division of Forrest. The then WA State Manager, Mr Kramer told the Committee:

8 AEC media release, 'AEC releases voting preference information recorded for WA missing votes', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/e11-08>.

9 AEC media release, 'Petition lodged with Court of Disputed Returns', accessed 3 December 2013, <aec.gov.au/media/media-releases/2013/11-15>.

10 High Court of Australia, *Australian Electoral Commission v Johnston*, accessed 25 March 2014, <austlii.edu.au/au/cases/cth/HCA/2014/5.html>.

11 AEC, 'Costs of elections and referendums', accessed 13 April 2015, <aec.gov.au/Elections/australian_electoral_history/Cost_of_Election_1901_Present.htm>.

12 Peter Kramer, WA State Manager, AEC, *Transcript of Evidence*, 6 February 2014, Canberra, pp. 17-18.

On 22 October we began unpacking the boxes of ballot papers for Pearce. The process we went through when we unpacked them was basically to check them against our fresh scrutiny result sheets. Each batch of votes has a card with it that says what is there, and we were checking that against the fresh scrutiny result sheets from the previous count. In doing that, we realised that some of the parcels of votes were not on the table for us, if you like. We then basically started a process of looking more broadly and, over the next day or so, we went through all of the other material from Pearce. From then we broadened out our search.

...

On the 23rd, as I said, we continued to go through the Pearce material and we started to get more concerned about that. On the 24th, we broadened our search. On the 25th, which I think was the Saturday,¹³ we were going through the same process with the Forrest material – unwrapping it and comparing it against cards. In the case of the Forest material it had been quite well packed, but there was clearly one box missing, which was box one of seven for a particular polling place, Bunbury East, but it was also a sequence of boxes out of a total sequence of boxes for that division.

...

The packing in the case of Pearce was not as well organised as the packing was for Forrest, which is why we probably took a little longer to be confident that we had to broaden our search. But, once we had unpacked all of the ballot papers for Pearce, we then suspected we had a bigger issue.¹⁴

2.20 The following sequence of events took place:

- on 23 October 2013 Mr Kramer first informed the Electoral Commissioner, Mr Killesteyn of the issue;
- on 27 October 2013 Mr Killesteyn directed the then Deputy Electoral Commissioner, Mr Tom Rogers, to travel to Perth to investigate the matter.¹⁵

2.21 Mr Rogers told the Committee:

I went straight to the recount centre on the morning of the 28th. I spoke to Mr Kramer, and during the next few days I spoke to his

13 25 October 2013 was a Friday.

14 Peter Kramer, WA State Manager, AEC, *Transcript of Evidence*, 6 February 2014, Canberra, pp. 16-17.

15 Tom Rogers, a/g Electoral Commissioner, and Peter Kramer, WA State Manager, AEC, *Transcript of Evidence*, 6 February 2014, Canberra, pp. 15-16.

staff. I did my own assessment. I looked at the practices and procedures that had been put in place in the recount centre. I made some decisions that week about reserving materials that had been used, boxes that had been opened, and other issues, which I did not want thrown out, because they may have been important in a subsequent investigation. I also supported Mr Kramer as he continued the search for the ballot papers. It became increasingly clear that we were not going to find those papers. In fact, formally, that was always going to be the case, essentially, when the last box from the last pallet had been through the recount centre. That would mean that there was no other place where these votes were to be found. I advised the commissioner of that, and on that day we informed scrutineers and candidates that at that stage 1,375 votes could not be located. We also advised the media, and I think it was on that day that Mr Keelty agreed to conduct the inquiry.¹⁶

2.22 The management of the count centre was so poor that Mr Rogers stated:

I thought that what I saw was stark and concerning, right from the outset. I took the photos to which you referred on my mobile phone. I took many of those photos within the first six minutes, on the first morning. It was clear to me that we had some issues. The staff there, with the best will in the world, had adopted a process which they thought was going to deliver a result. When someone external looked at that process there were a number of questions that were asked. ... There is the photo of the rubbish that is stacked up against a pallet of live boxes. [See Figure 2.1.] That was pretty much one of the first photos I took. It jumped out at me as indicating that there were some issues with the process behind the recount – logistic issues.¹⁷

2.23 Mr Rogers noted that Mr Kramer, was ‘deeply worried’ and that ‘Mr Kramer and his executive team were concerned and were aware of the implications.’¹⁸ Nonetheless, that senior management team had, through poor management and oversight, allowed this situation to develop and it was not until Mr Rogers himself arrived in Perth that the extent of the poor operations in Perth was documented.

16 Tom Rogers, a/g Electoral Commissioner, *Transcript of Evidence*, 6 February 2014, Canberra, p. 17.

17 Tom Rogers, a/g Electoral Commissioner, *Transcript of Evidence*, 12 March 2014, Canberra, p. 2.

18 Tom Rogers, a/g Electoral Commissioner, *Transcript of Evidence*, 12 March 2014, Canberra, p. 3.

Figure 2.1 Rubbish stacked next to a pile of live ballots, Perth Recount Centre



Source *M Keelty AO, Inquiry into the 2013 WA Senate Election, December 2013, p. 55.*

2.24 During the recount process, the AEC conducted its own investigations to try to establish the whereabouts of the missing 1 370 ballots. These ballots could not be located and Mr Keelty was subsequently appointed to conduct an investigation into the matter.

Keelty investigation

2.25 On 6 November 2013, the AEC announced that it had appointed Mr Keelty to investigate the circumstances surrounding the lost ballots. Mr Keelty provided his final report (the Keelty Report) into the circumstances surrounding the loss of the WA Senate ballots to the AEC on 2 December 2013. The AEC released it publicly on 6 December 2013.¹⁹

2.26 The Keelty Report made 32 recommendations aimed at improving:

- logistics and material management;
- contract management;
- ballot paper security;
- process, procedures and compliance;
- institutional culture; and

19 AEC media releases, 'Mr Mick Keelty AO APM commences inquiry', accessed 25 March 2014, <aec.gov.au/media/media-releases/2013/e11-06.htm> and 'Keelty report released', <aec.gov.au/media/media-releases/2013/12-06a.htm>.

- other issues including staff training.
- 2.27 Upon the report's release on 6 December 2013, the AEC reported that the Electoral Commission had accepted all of Mr Keelty's recommendations and that work had commenced on implementing changes.²⁰

What is known about the fate of the ballots

- 2.28 The Keelty Report found that it was impossible to determine the fate of the missing ballots. The report identified four potential outcomes that could have occurred:

It is impossible to determine whether the missing ballots were:

- Physically removed during the many transport and storage processes;
 - Lost during transport or transfer;
 - Misplaced through repacking into incorrect boxes; or
 - Accidentally mixed with recycling material and disposed of as refuse.²¹
- 2.29 The Keelty Report outlined many stages where procedures were departed from and could have contributed to the loss including transporting ballot papers in open trucks,²² no records of rubbish or recycling disposal,²³ or where a roller door was left open to allow for fresh air.²⁴
- 2.30 Any of these lax practices could have resulted in ballots literally falling off the back of a truck, being thrown out, or being taken.
- 2.31 Mr Keelty later stated:
- That was the thing that really was hard about this: you could not see where it went missing. So, if it was foul play, you could not work out where it was. I would like to come here and say, 'I conducted a thorough inquiry, and my conclusion is that the ballot papers were accidentally thrown out with the rubbish.' I cannot honestly say that, because the systems simply were not good enough to enable me to establish that.²⁵
- 2.32 This level of uncertainty regarding the stage at which the ballot papers may have gone missing is of particular concern. The inability to identify

20 AEC media release, 'Keelty report released', accessed 9 December 2014, <aec.gov.au/media/media-releases/2013/12-06a.htm>.

21 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 9.

22 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 83.

23 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 84.

24 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 7.

25 Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, p. 5.

the point at which the process broke down puts the entire ballot paper handling process into question.

- 2.33 The Committee notes that Mr Keelty stated in his report that the Divisional Returning Officer from the Division of Forrest, from which 231 ballots were lost, was known for his 'care and professionalism.' He further stated that the 'packing and marking of boxes containing ballots from the Division of Pearce was well below standard.'²⁶

Systemic issues leading to the lost ballots

- 2.34 Mr Keelty was able to identify the major causal factors in the loss of the votes as being:

- inadequate adherence to AEC mandated national guidelines on the handling of ballot papers including inadequate segregation of used ballots, unused ballots, non-election material and rubbish;
- inconsistent application of labelling procedures and transport guidelines resulting in inadequate accountability and tracking of materials (including no cross checking of components after movement);
- inconsistent and inadequate security of boxes both for movement and to provide assurance against tampering; and
- a culture of complacency in the WA office that led to inadequate training, poor planning, failure to follow procedures and poor contract management.

- 2.35 Furthermore, Mr Keelty noted:

During this inquiry, it was also discovered that the attitude towards Senate ballots is different to those of the House of Representatives. There is less concern for the security and integrity of Senate ballots because it is considered that they have less of an impact on the election outcome and in any event are warehoused for six years. This is a cultural problem within the AEC and it needs to be addressed.²⁷

- 2.36 While there is no evidence that there was any deliberate mishandling of the papers, Mr Keelty made the following observation in relation to whether he considered the possibility of criminal action:

I did, right from the outset. That is why I encouraged the commissioner Ed Killesteyn to call in the AFP for the briefing I received. If at any stage in the process we had any inkling of

26 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 8.

27 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 9.

something criminal having happened then the AFP could be called in having had a pre-briefing ...

Certainly boxes and items identified as refuse have been recycled.

There is no way to recover what would be critical evidence ...

there was no suggestion of criminality. I am not ruling it out

because the system was so bad that I cannot.²⁸

- 2.37 This concern, and the inability to rule out any intended criminal or malicious action, highlights the current and future need for active management and oversight of electoral practice and ballot paper management, both at the level of AEC logistical management as well as the legislated requirements that the Parliament can put in place to ensure compliance and appropriate levels of confidence.
- 2.38 At the time of these events, there were national guidelines and procedures in place on most elements of managing ballot papers; however, the WA State Office of the AEC did not appear to follow them, nor enforce their compliance amongst staff.²⁹ Nor did Mr Keelty find evidence of, or acceptance of, the value and importance of the ballot papers.
- 2.39 Similarly, there was a national directive to manage and report on contracts that were required for election delivery. One of the major contributing factors to the situation in WA, and an indicator of the failings of the WA state office of the AEC in logistics management, was the fact that a critical transport contract required for the election had expired and had not been renewed before the 7 September election date.³⁰
- 2.40 The security and integrity of the ballot papers and an organisational culture that understands the sanctity of the ballot paper and puts in place the mechanisms to uphold this is paramount. Mr Keelty observed the complacent culture within the WA AEC office that led to these failings:
- Having had the experience I have had in a national organisation with a presence in WA – and I need to take care here; this is not being derogatory of our colleagues in Western Australia or Far North Queensland – there is a significant difference in the culture of the office and what drives the people that I saw here in the Canberra office and what drove the people over there. I have got to say that I was relieved to see that the state manager stood down, because, in my view – and this is not about individuals; it is not about having a go at individuals – there was a lack of understanding about the import of this, about the significance of

28 Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, pp. 8-9.

29 Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, pp. 2-3.

30 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 5.

it. Whilst the High Court has only just recently made its decision, to me, as a fresh set of eyes, this is a multimillion-dollar expense but also the practical issues of opening the polling booths when there is no national general election – the polling booths just for the people to vote for the Senate of Western Australia, who may not be in that state at the time. It was just simple things like that, logistical things, that nobody seemed to have the understanding of the import of. That really worried me. I think there was poor leadership.³¹

- 2.41 Overall, as outlined throughout the Keelty Report and Mr Keelty's evidence to this Committee, the failings that led to the loss of the ballot papers in WA were exacerbated by this culture and its acceptance of the non-adherence to policy and procedure.
- 2.42 This is perhaps most clearly demonstrated by the differing actions of the Deputy Electoral Commissioner and the WA State Manager at the time of the events. Immediately on arriving at the count centre in Perth in October 2013 as these events were unfolding, the then Deputy Commissioner, Mr Tom Rogers, took the photographs that subsequently appeared in the Keelty report as evidence of the mismanagement of this centre.
- 2.43 It is to Mr Rogers's great credit that, while his initial emotional response was shock, his instinctive professional response was to expose rather than to conceal.
- 2.44 In contrast, the then WA State Manager appeared to do nothing to capture evidence of events as they were occurring, despite the disappearance of ballot papers from two separate divisions, which would indicate an issue of concern at the recount centre. This demonstrates the level of dysfunction in areas of the WA state office at the highest levels. Issues relating to state manager accountability are discussed further in Chapter 3.

Previous related audit scrutiny

- 2.45 The issue of ballot paper security and storage has previously arisen in audits of AEC practice.
- 2.46 Resulting from a recommendation made by a previous Electoral Matters Committee, the Australian National Audit Office (ANAO) conducted an audit into the 2007 federal general election.
- 2.47 In the subsequent 2010 audit report (Audit Report No. 28 2009–10) the Auditor-General found that, in relation to movement of ballot papers between polling places and Divisional Offices:

31 Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, p. 2.

- an external review prior to both the 2004 and 2007 elections recommended actions to lessen the movements of ballot papers and for greater supervision when ballot papers were moved. Despite this the then Electoral Commissioner determined not to change standing arrangements;
 - no contingency planning was in place in audited divisions for dealing with accidental loss or damage of ballot papers; and
 - further work needed to be undertaken to improve physical security, storage and transport of ballot papers.³²
- 2.48 The ANAO recommended that the AEC 'identify and assess options for the storage and transport of completed ballot papers that provide greater physical security of ballot papers.'³³
- 2.49 The AEC agreed with this recommendation. In its submission to the Electoral Matters Committee's inquiry into the 2010 federal election, the AEC noted that this recommendation was 'in progress' and that reinforced procedures for the storage and transport of ballot materials for the election were included in training materials and staff advice.³⁴
- 2.50 While the ANAO's recommendation related mainly to the transportation and security of ballot papers between a polling place and the Divisional Office at the end of election night, the general commentary and direction of the audit recommendations would suggest that the issue had been highlighted previously, but not managed effectively by the AEC across all states.

Actions of the ANAO in response to the WA events

- 2.51 Following evidence received from the ANAO regarding Audit Report No. 28 2009-10 on the 2007 election and other audits of the AEC, the Committee wrote to the Auditor-General to seek that he undertake further investigations into the AEC's failure to implement his 2010 recommendations adequately.³⁵
- 2.52 Consequently, the Auditor-General resolved to conduct three audits to:

32 Australian National Audit Office (ANAO), *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, Audit Report No. 28 2009-10, 20 April 2010, p. 173, pp. 30-31.

33 ANAO, *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, Audit Report No. 28 2009-10, 20 April 2010, p. 174.

34 AEC, Submission 87 to the Joint Standing Committee on Electoral Matters of the 43rd Parliament, inquiry into the conduct of the 2010 federal election, 21 February 2011, p. 218.

35 ANAO, *Transcript of Evidence*, 6 February 2014, Canberra, pp. 1-13.

- assess the adequacy and effectiveness of the AEC's implementation of the recommendation made in the ANAO Audit Report No. 28 2009–10 on the 2007 election relating to the transport and storage of completed ballot papers;
- assess the adequacy and effectiveness of the AEC's implementation of the recommendations made in the ANAO Audit Report No. 28 2009–10 on the 2007 election relating to:
 - ⇒ a more strategic approach to election workforce planning with a particular focus on the selection, recruitment, training and performance evaluation of polling staff (recommendation nos. 5 and 6);
 - ⇒ the suitability and accessibility of polling booths and fresh scrutiny premises (recommendation no. 7); and
 - ⇒ the transport and storage of completed ballot papers (recommendation no. 8(b)), in respect to matters not fully addressed in the report of the first audit.
- assess the adequacy and effectiveness of the AEC's implementation of the remaining recommendations made in the ANAO Audit Report No. 28 2009–10.³⁶

ANAO findings

- 2.53 The Auditor-General issued his first report on the storage and transport of completed ballot papers in May 2014 (Audit Report No. 31 2013–14). This report recommended that the AEC:
- conduct analysis on returns completed by Officers in Charge and set measures and reports against performance standards for differences between first and scrutiny counts;
 - investigate, at a national level, the use of contractors or AEC staff for the transport of ballot papers and an improvement in contracting practices; and
 - include minimum security standards in training manuals, resource divisional offices appropriately to apply minimum security standards, and ensure that the prescribed minimum standards are adhered to.³⁷
- 2.54 The AEC has agreed to these recommendations, with a qualification regarding the need to secure additional funding for the implementation of some security arrangements.

³⁶ Auditor-General, Correspondence to the Committee, dated 26 February 2014.

³⁷ ANAO, *The Australian Electoral Commission's storage and transport of completed ballot papers at the September 2013 Federal general election*, Audit Report No. 31 2013–14, May 2014, pp. 27–30.

- 2.55 The Auditor-General released his second report in November 2014 (Audit Report No. 4 2014–15).³⁸ This report focussed on staff training and will be discussed in Chapter 3.
- 2.56 Audit activity for the third audit, relating to electoral roll management and other issues, commenced in March 2015.

The AEC response

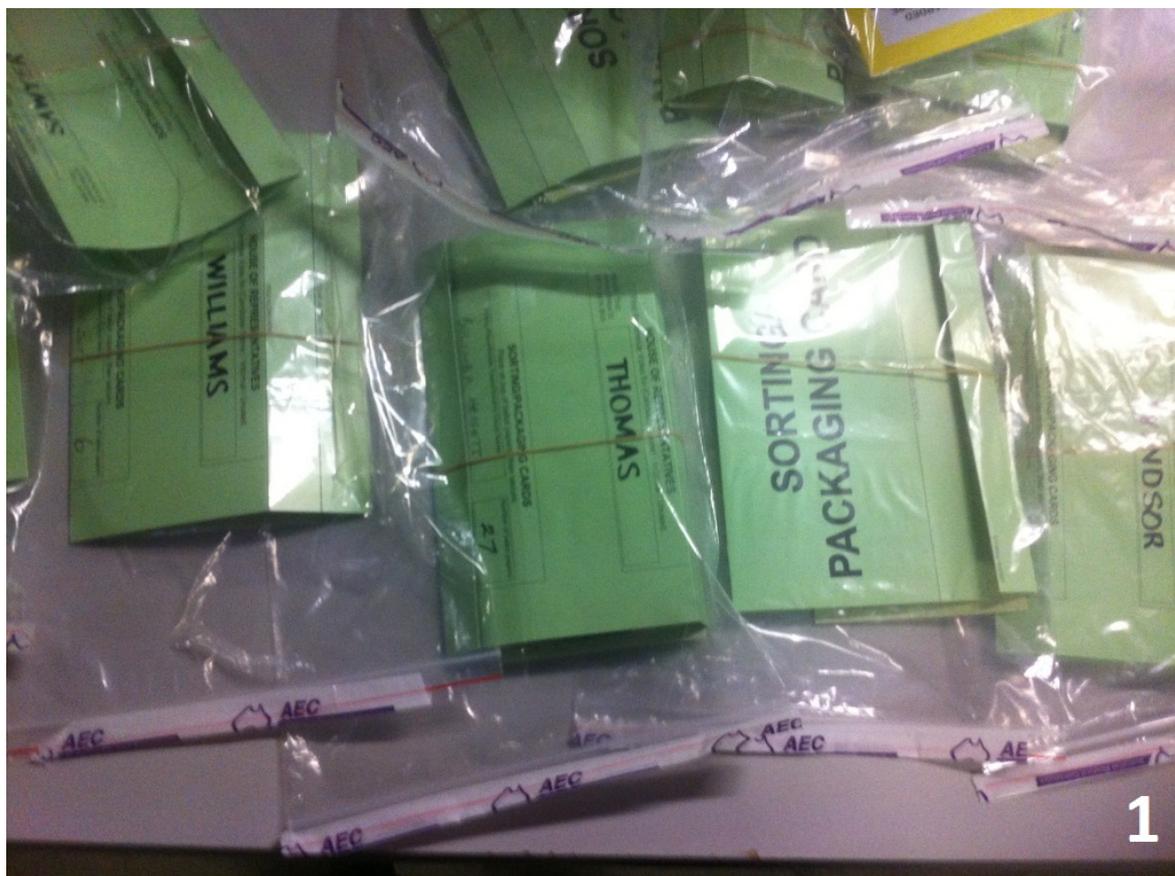
- 2.57 On 21 February 2014 the Australian Electoral Commissioner, Mr Ed Killesteyn, and the Australian Electoral Officer for WA (the WA State Manager), Mr Peter Kramer, resigned.³⁹
- 2.58 As noted above, the AEC accepted all the recommendations of the Keelty Report. The AEC established the 'Keelty Implementation Team', in place immediately after the release of the Keelty Report and for the Griffith by-election and the WA Senate election re-run, to oversee and coordinate the agency's response to the report's recommendations.
- 2.59 The AEC has therefore had the opportunity to develop, implement and test the efficacy of, its responses to the recommendations during a House of Representatives by-election in the Division of Griffith in February 2014 along with the April 2014 WA Senate election re-run.
- 2.60 The AEC took the Griffith by-election as an opportunity to test an initial development phase of responses to the recommendations, focussing on improved ballot paper security and management (see Figure 2.2).⁴⁰

38 ANAO, *Second follow-up audit into the Australian Electoral Commission's preparation for and conduct of federal elections*, Audit Report No. 4 2014–15, November 2014.

39 Special Minister of State, media releases, *Resignation of the Electoral Commissioner, Mr Ed Killesteyn PSM*, accessed 2 October 2014, <smos.gov.au/media/2014/0221-resignation-commissioner> and *Resignation of the Australian Electoral Officer for Western Australia, Mr Peter Kramer*, <smos.gov.au/media/2014/0222-resignation-WA-commissioner>.

40 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of Evidence*, Canberra, 12 March 2014, p. 4.

Figure 2.2 Parcelled ballot papers at Griffith by-election demonstrating improved processes



Source AEC, *Submission 20.10, Attachment A*, p. 1.

2.61 One practical example of how the recommendations were addressed for the Griffith by-election was in response to recommendation 9 of the Keelty Report which recommended that:

The AEC institutes a culture of security in ballot handling through developing a concept of ballots being 'live' until they are destroyed in line with statutory obligations.⁴¹

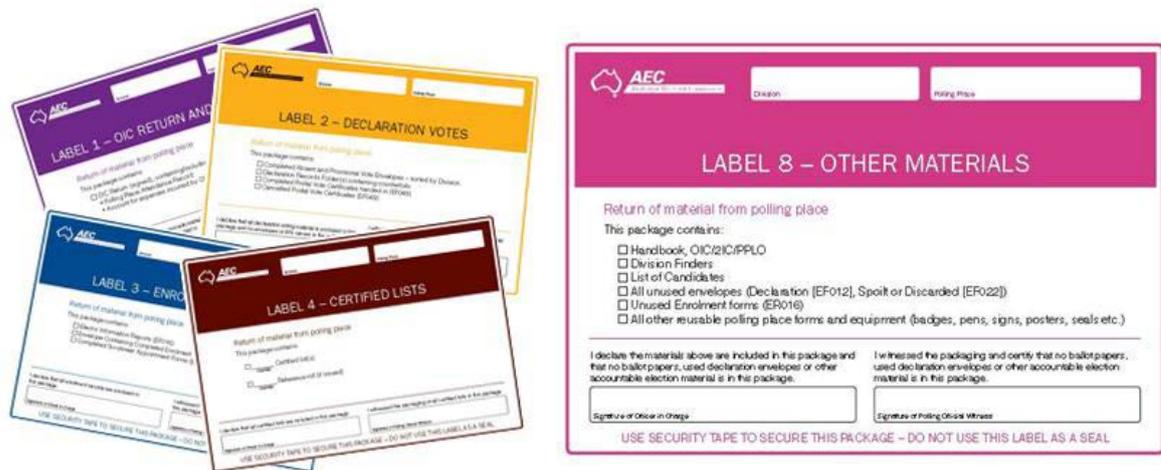
2.62 In response to this recommendation, the AEC restricted access to 'images' of ballot papers for the Griffith by-election to a select group of AEC staff, in order for them to be printed for pre-polling across the country. Previously, the AEC would place images of ballot papers on internal systems, which most staff could access, print and/or save. This new restriction ensures that only authorised staff have access to the files, and therefore only those staff can create 'live' ballot papers from them.

41 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 29.

2.63 This and other measures were evaluated, expanded and implemented during the WA re-run election. These included:

- new ballot papers principles, secure zones, improved labelling, and tracking and accountability measures (see Figures 2.3–2.4 below);
- security registers and declarations for visitors and polling officials;
- materials manager positions created along with new rubbish and recycling procedures and policies; and
- revised staffing profiles and identification for polling officials and staff during election activities.⁴²

Figure 2.3 Improved polling place labels developed by the AEC for the WA Senate election re-run



Source AEC, Submission 20.6, Attachment C, p.20.

42 AEC, Submission 20.6, Attachment C, p. 5.

Figure 2.4 Improved labels in use at the WA Senate election re-run



Source AEC, Submission 20.10, Attachment A, p. 6.

- 2.64 The AEC submitted to the Committee a detailed evaluation analysis of both the Griffith by-election and the 2014 WA Senate election re-run (available as submissions on the Committee's website), outlining the success or otherwise of measures undertaken in response to the Keely Report and further developments undertaken.⁴³ The AEC has also provided updates to the Committee at regular intervals regarding its ongoing Electoral Reform Programme Implementation Plan, which includes both responses to the Keely Report and audit recommendations.
- 2.65 Many of the measures tested at the Griffith by-election and the 2014 WA Senate election re-run, and those related to the reform plan, are a welcome sign that the AEC is not only developing and implementing responses to the Keely Report recommendations, but is also proactively seeking better ways to conduct elections and rebuild confidence in the electoral system.
- 2.66 Such additional improvements include:
- improvements to despatch of certified lists;
 - improved and expanded tools for preliminary scrutiny of votes;

43 See AEC, Submission 20.2 & 20.6.

- improved despatch and management of associated election materials (not ballot papers); and
 - better attendance and management of scrutineers.⁴⁴
- 2.67 Despite these measures, events such as those at RAAF Merriwa during the 2014 WA Senate election re-run demonstrate that further measures, and adherence to these measures, are still necessary to address failings.
- 2.68 The issue at RAAF Merriwa arose due to a mobile polling team improperly constructing a mobile polling ballot-box. Instead of delaying the casting of the votes to ensure the ballot-box was properly constructed, the polling went ahead with an improperly constructed box, therefore invalidating the votes cast within it.⁴⁵
- 2.69 In November 2014 the then acting Electoral Commissioner told the Committee that the 'Keelty Implementation Team' has been embedded into the agency's structure and has had its remit broadened:

The ANAO has indicated that previous implementation of recommendations has not been in line with its expectations. In recognition of this, the AEC has engaged with the ANAO outside of the usual framework in an effort to ensure that future implementation reflects the intent of recommendations. We are grateful to the ANAO for their ongoing involvement; indeed, I see their reports and their continued engagement with us as a key input to the reform process. That reform is broader than just the implementation of the Keelty and ANAO reports; it encompasses all aspects of our programs and services. This includes the fact that I have also directed the commencement of three separate projects with external specialist organisations in the area of secure transport of ballots, secure storage of materials and the planning processes and performance reporting of large-scale operational events.

... the [Keelty] task force has now been formalised into the agency's structure and embedded as the reform team within our elections branch, and has been tasked with implementing the recommendations from this year's ANAO reports as well as the Keelty report and other inputs, such as the three key projects I just referred to. I continuously assess the adequacy of the team's

44 AEC, *Submission 20.6, Attachment C*, p. 71.

45 ABC News, *WA Senate election: Dozens to recast vote due to ballot box problem*, 3 April 2014, accessed 8 October 2014, <abc.net.au/news/2014-04-03/wa-senate-election-votes-to-be-recast/5364284>.

resources to ensure that they have what is required to ensure effective implementation of those reports.⁴⁶

- 2.70 In March 2015 the AEC provided the Committee with a further update on progress made, while highlighting the challenges of the long road of reform required going forward:

Without in any way resiling from the long journey ahead of us, I should also point out that this, the most ambitious reform program ever attempted by the AEC, is also being carried out in parallel with our normal business-as-usual activities. This includes updating the roll and providing roll products for the state and local government elections, implementing electoral integrity measures, delivery of industrial elections and starting the planning for conducting the redistribution processes for four states and territories this year, and then physically moving the AEC's national office in April of this year for the first time in many, many years.⁴⁷

- 2.71 Additionally, the AEC identified that they have altered their future management of ballot paper printing and transport – amending their future contracts so ballot paper printing companies are no longer responsible for transport of the printed papers. This will be managed by a nationally engaged and consistent contractor with the requisite security requirements.⁴⁸

- 2.72 This recognition of the still-developing nature of the AEC's responses is indicative that the organisation is continuing to prioritise its reform and focus on the change needed in election delivery.

- 2.73 This was further emphasised in correspondence from the Electoral Commissioner in the final stages of the inquiry which informed the Committee of a structural realignment within the AEC to prioritise election operations and reform (with a dedicated Division in the AEC), and a renewed governance focus on AEC business through the creation of a National Election Manager and renewed Committee and Board structures to review election readiness.⁴⁹

- 2.74 The Committee commends this approach and recognises that measures will continue to be developed as the delivery and scalability of responses are continually assessed. The Committee recognises that all of the
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46 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of Evidence*, 13 November 2014, Canberra, p. 1.

47 Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 1.

48 AEC, *Submission 20.10*, p. 2.

49 Correspondence to the Committee from the AEC dated 30 March 2015.

measures developed for the Griffith by-election are not going to be scalable for delivery in a 150 division federal election. These lessons have already been adapted for the WA Senate election and further adaptation and scalability will presumably be applied in preparation for a general election.

Actions of this Committee

- 2.75 Throughout this inquiry, the Committee has been mindful of the importance of its oversight and scrutiny role in relation to the events that occurred in the 2013 election. The Committee called the AEC to appear before it to answer questions directly relating to this matter on 6 February, 12 March and 13 November 2014 in Canberra.
- 2.76 Several Committee members, Senators Ruston, Tillem and Edwards, observed the conduct of election day and the count on 5 April 2014 in Perth. Private meetings were conducted with the Committee on 9 to 10 April 2014 in Perth to observe the count and the processing and management of ballot papers for the Senate re-run election.
- 2.77 In addition, the Committee visited a number of divisional offices across the country to talk to Divisional Returning Officers (DROs) and other AEC staff about ballot handling processing, training and communication processes. The Committee also held hearings with all AEC state managers (including the acting WA State Manager for the 2014 Senate election re-run) about the conduct of the election within their state/territory. Many issues arising from these meetings are discussed in the next chapter.
- 2.78 In observing the count on election night in WA on 5 April 2014, and being mindful of the AEC's stated implementation of the Keely recommendations, members of the Committee made the following observations:
- the general layout of the central scrutiny centre operation did not appear to have been designed to facilitate the efficient or safe flow of ballots. Ballot-boxes crossed each other as they were taken to the counting stations, and it appeared that it would have been easy to get the boxes mixed up.
 - on ballot-box delivery, reconciliations were being signed and not cross-checked against items delivered.
 - there were no visible systems in place to facilitate the logical sorting, counting and collating of the votes. For example, there were no signs on the counting tables to indicate which party was being counted at that station, so the sorters had to check the papers already on that table to

determine they had the correct table. It was not until part way through the night that someone thought to put 'post-it' notes on the tables to make this task easier.

- with the sorting of the declaration votes, the votes were not isolated using containers. The result was that the votes were in piles that often spread across the counting table and it would have been easy for the envelopes to 'bleed' into adjacent piles.
- the pre-poll and declaration sorting also had no operational set-up. As with the ordinary ballot sorting there were no signs pre-made to indicate the electorates into which the envelopes needed to be sorted. This necessitated the sorter checking the name of the electorate on the envelopes on the piles for every vote. As the electorate name is handwritten and not easy to locate on the front of the envelope, this must have significantly slowed the sorting.

- 2.79 It was also noted that the management of polling booths varied, with some staff strictly enforcing the rules and others being more flexible. Despite the understanding at the national office level of the need to implement the Keelty Report recommendations, this understanding had not been made clear at the operational levels.
- 2.80 It was clear from the discussions with DROs that the level of autonomy at the Divisional level has led to the disparity in the implementation of certain national directives, and an unacceptable level of autonomy at the DRO level for decisions that should be made at a national level as standard operating procedure.
- 2.81 At a private briefing with the DRO for the Division of Brand in WA, the DRO told the Committee that he had implemented a system of coloured bags for managing the count for multiple divisions in a central returning count centre. He had also implemented a 'two officer' rule for the transport of all ballot papers.
- 2.82 These are sound measures that are supported by the recommendations of the Keelty report. However, the scope for DROs to set standard operational procedure that may not be as sound as this example is concerning, and clearly led to failings in the Division of Pearce where the lack of adherence to procedure was noted in the Keelty Report.
- 2.83 The Committee notes with interest that the AEC still appeared to be grappling with the complexities of its ballot paper handling policy in March 2015, some 17 months after the Keelty Report was handed down.⁵⁰ This would suggest that past practices may be proving difficult to
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50 Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 4.

standardise and enforce, with such high focus on security, custody and consistency.

Other ballot paper issues relating to the 2013 election

2.84 The AEC reported other ballot paper issues that occurred during the 2013 election.⁵¹ A number of these losses were outside the control of the AEC, such as the loss of 59 ballots in transit from the overseas exchange site in Sydney and the Division of Durack, and the destruction of an Australia Post van by fire. It must be accepted that these events will occur on occasion and the AEC made every effort to work with Australia Post to either locate or quantify these missing ballots.⁵²

2.85 However, more concerning are adverse ballot paper events resulting from administrative errors. During the course of this inquiry it was revealed that 50 ballot papers had been lost in the Division of Grey, and 23 formal ballot papers could not be located for the distribution of preferences in the Division of New England.⁵³

2.86 When initially asked in the morning at a hearing in June 2014 to explain the missing ballot papers from the Division of Grey, the AEC State Manager for South Australia stated:

The votes were taken at the polling place. They were counted on Saturday night. They were parcelled up and sent through to the divisional returning officer, who is based in Port Augusta. They were sent by plane. Upon receipt in the divisional returning officer's office they were counted, and there appeared to be 50 missing. This was on the Sunday following polling day. Immediately the divisional returning officer set about investigating why 50 were missing. Polling officials in Port Lincoln were contacted and asked to go and check the polling place, and check everywhere possible that these ballot papers could be. This matter was also reported to the operations manager ... A formal investigation was done by the DRO – she remained based in Port Augusta, but she used staff on the ground, and getting reports from people on the ground. Also the aeroplane service was checked, and the ballot papers were not found. We can confirm that the House of Representatives ballot papers were for the incumbent member and the successful candidate. The

51 AEC, *Submission 20.3*, pp. 80-81.

52 AEC, *Submission 20.3*, p. 81.

53 AEC, *Submission 20.3*, p. 81.

investigation and search was conducted but the ballot papers were not found, and they did not impact the outcome of the election. Nevertheless, it is regrettable.⁵⁴

2.87 Of further concern was that in the afternoon of that same hearing, the Acting Deputy Electoral Commissioner had to correct evidence given by the state manager, establishing that the ballots were moved by road instead of aircraft and that the investigation into the missing ballots commenced fifteen days later than originally stated.⁵⁵

2.88 The Committee requested the report of the internal investigation of the missing ballot papers. This was not provided, but the AEC subsequently advised that the 50 ballot papers had not in fact been lost, but that the investigation into their whereabouts had not been conducted thoroughly:

Following the JSCEM Hearing in Adelaide on 11 June 2014, the acting Electoral Commissioner directed the State Manager for South Australia to conduct a further, comprehensive review into the circumstances surrounding the missing 50 House of Representatives ballot papers from the Port Lincoln static polling place in the Division of Grey.

That review has established that all issued ballot papers (formal and informal) and all unissued ballot papers for the Division of Grey have been accounted for. The review, undertaken by the AEC's most senior officers in South Australia, involved the opening of parcels of ballot papers from the Port Lincoln static polling place and re-checking ballot papers against first preference results recorded in the AEC's primary election information management systems (ELMS) and the Officer in Charge (OIC) return.

It is now evident that, on polling night, a bundle of 50 first preference ballot papers marked for Mr Browne (ALP) were incorrectly placed with the first preference ballot papers marked for Mr Ramsey (LP), and were reported with the original results as votes for Mr Ramsey.

In the following days at the scrutiny centre, staff identified the incorrectly sorted bundle of ballot papers and returned them to Mr Browne's package of first preference ballot papers. The number of ballot papers for Mr Ramsey was adjusted downwards by 50 votes

54 Claire Witham, SA State Manager, AEC, *Transcript of Evidence*, 11 June 2014, Adelaide, p. 6.

55 Kevin Kitson, a/g Deputy Electoral Commissioner, AEC, *Transcript of Evidence*, 11 June 2014, Adelaide, p. 39.

but a corresponding upwards adjustment was not made to the total number of ballot papers for Mr Browne.

When the discrepancy between the number of ballot papers counted for Mr Ramsey on polling night and the number of ballot papers counted for Mr Ramsey at fresh scrutiny became apparent, AEC staff conducting the scrutiny were asked to check the ballot papers for this polling place and confirmed that the ballot papers for Mr Ramsey were 50 less than reported on polling night.

The error would have been detected at the time had the AEC staff conducting the scrutiny rechecked all ballot papers for the Port Lincoln static polling place. The most recent review has found that only the first preference ballot papers for Mr Ramsey were checked.

The original investigation into the 50 missing ballot papers undertaken in September 2013 was flawed because – while scrutiny staff reported that boxes containing used ballot papers had been rechecked – they did not recheck all used ballot papers, and instead only rechecked the first preference ballot papers marked for Mr Ramsey. This failure to undertake the expected full recheck of all ballot papers for the Port Lincoln static polling place resulted in the Divisional Returning Officer (DRO) erroneously concluding that 50 ballot papers were missing.⁵⁶

- 2.89 Whilst missing votes are of serious concern, it is just as, if not more, concerning that the investigation undertaken at the time of the election was executed so poorly that it took a further nine months, and only after questioning by a parliamentary committee, to identify a simple packaging error – and to reveal that the ballot papers were not actually missing.
- 2.90 This event demonstrates, at best, a worrying level of incompetence, and at worst a serious disregard for the implementation of proper procedure and in any event a complete lack of regard for the sanctity and integrity of the ballot paper.

Reporting of ballot paper issues

- 2.91 The AEC self-reports incidents that occur during polling to the Electoral Matters Committee through its submission to the Committee's standard inquiries reviewing federal elections. In its submission to this inquiry, the AEC stated that this reporting occurs in the interests of transparency.⁵⁷

56 AEC, *Submission 20.6*, pp. 1-2.

57 AEC, *Submission 20.3*, p. 80.

- 2.92 However, it is concerning, in respect of the 2013 election, that there was a considerable interval between the election and the AEC's reporting of ballot paper issues – the AEC made its submission to the Committee seven months after the 2013 election took place. The Committee feels that, given the loss of votes in WA, the information should have been volunteered as soon as it occurred.
- 2.93 It is also concerning that when these issues are reported, they seem to be dismissed by the AEC in its submission due to the lack of impact on the final result. For example:
- Errors in administrative reconciliations in the Division of Hughes resulted in a number of declaration envelopes not being returned to the home DRO in time for inclusion in the preliminary scrutiny. The highest number of envelopes for any division was 15 for the Division of Fraser (ACT); the TCP margin for the Division of Fraser was 31 693. There was no material impact on any result.⁵⁸
- 2.94 In the interest of public scrutiny of the election, these issues should be reported as they occur or once confirmed, not many months after the event.
- 2.95 In the interests of transparency, a delay in reporting errors relating to ballot papers of the length evidenced following the 2013 election is unacceptable. There is no reason why these issues should not be reported as they occur.

Recommendation 1

The Committee recommends that for future elections, the Australian Electoral Commission publish information on its website about ballot paper counting and handling issues on a regular and transparent basis during the count process.

Reforms to ballot paper handling

Systems in place for ballot handling for the 2013 election

- 2.96 For the 2013 election the AEC national office established extensive systems for the management of ballot papers. The procedures to be followed are clearly outlined in the Elections Procedure Manual, updated and maintained by the Elections Branch within the AEC national office.

58 AEC, *Submission 20.3*, p. 81.

- 2.97 This information is further distilled in the relevant *Election Procedures Handbook* issued to all polling place liaison officers (PPLO), officers-in-charge (OICs), and second-in-charge officers (2ICs), as well as relevant team leaders for mobile polling and other staff. This handbook clearly outlines the procedures to be followed by those officers at polling places when packing and sealing ballot papers.
- 2.98 The instructions in this manual are clear and it includes pictures of procedures to be followed. It places the responsibility on polling place officials for packaging materials appropriately; however, it is concerning that there is a written presumption that the DRO had the authority to amend these procedures:
- Unless otherwise advised by the DRO, your material is to be packaged using the labels and plastic bags, cardboard boxes or other parcelling materials supplied.
- Each label describes in detail the items to be included in each parcel.
- You must comply with these instructions. Failure to do so may result in you re-packaging material at the designated delivery point.⁵⁹
- 2.99 Additionally, the AEC issues a comprehensive record-keeping document called an OIC Return to each OIC of a polling place. The Return is designed to further emphasise the main points of ballot paper handling, while outlining and requiring the reporting and signing off requirements of stages of counting, packaging and return of materials (including ballot papers) to the relevant location or divisional office.
- 2.100 These OIC returns are managed by the individual DRO for the Division, so visibility of compliance with the requirements of the stated ballot handling procedures, as recorded by the OIC, can be shrouded somewhat by localised management practice.

Reforms

- 2.101 The AEC has provided ongoing reports to the Committee on the evolving nature of its response to ballot paper handling criticism and related recommendations in the Keelty Report.
- 2.102 As discussed above, the AEC has developed, implemented and evaluated certain responses to these recommendations, used at the Griffith by-election and 2014 WA Senate election re-run. These measures have been reported to the Committee in submissions and ongoing updates to the

59 AEC, *Election Procedures Handbook 007, 001-006, 008*, July 2013, p. 56.

AEC's Electoral Reform Programme Implementation Plan (named as such from November 2014).

2.103 In summary, the reforms include:

- ballot paper tracking;
- reformed packaging and labelling for ballot papers during the count, transportation and for storage;
- creation of Ballot Paper Principles;⁶⁰
- updated training for polling officials, including updated handbooks;
- creation of ballot paper secure zones in relevant locations;
- improved contract arrangements for transportation and storage providers;
- revised waste management;
- creation of dedicated materials managers; and
- revised policies and procedures (more generally).

2.104 The AEC submitted that these measures, paired with the ongoing development of reform measures, should provide good assurance that the issues of ballot paper handling raised in the Keelty Report will be addressed.

2.105 The AEC also provided evidence that it is engaging industry logistics, transport, printing and storage experts to ensure these processes are best practice when ballot papers are involved.⁶¹

Committee comment

2.106 The new Electoral Commissioner, Mr Tom Rogers, has demonstrated to the Committee a clear acceptance and understanding of the extent of work needing to be undertaken by the AEC. However, a challenge facing the AEC is extending this understanding throughout the organisation.

2.107 The Committee is concerned that some views expressed by AEC officers in hearings showed a lack of understanding of the need to ensure all officers involved in election delivery understand the import of adherence to nationally consistent guidelines upholding the central tenet of the sanctity of the ballot paper.

2.108 The Committee is firmly of the opinion that reforming and modernising election delivery is not inconsistent with the delivery of an election entrusted to a well-trained, fit for purpose, capable and casual workforce.

60 See AEC, *Submission 20.7*.

61 Tom Rogers and Pablo Carpay, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, pp. 6-8.

The Committee does not accept the inference that procedural inconsistencies in delivering elections are acceptable due to having a casual workforce. Indeed, the Committee agrees with Mr Keelty, who stated:

It is very Australian to have a ute pull up in a place in the middle of the night and throw boxes from one ute into another ute. There is probably no other way to do it. The Electoral Commissioner was describing to me how in the UK general elections they were observing cars pulling up to the counting point. Of course, when you have thousands of cars coming from hundreds of polling booths, the cars could not make it to the central point. So, everyone just parks their car, opens the boot, pulls the boxes out of the boot and a human chain delivers the boxes in. I don't want to break this process – it works; it works well; it works on trust, but it needs to be lifted into 2014. It is a century-old system for 2014.⁶²

2.109 These issues will be addressed in depth in Chapter 3.

Accountability

- 2.110 Ultimately, responsibility for the events that occurred in WA during the 2013 federal election rests with the then WA State Manager and the then Electoral Commissioner. As noted, both of these officers resigned on 21 February 2014.
- 2.111 Aside from the resignation of the WA State Manager, the AEC has not publicly indicated any other administrative action concerning staff in relation to these events.
- 2.112 The Committee believes that the lack of accountability within the organisation is one of the causes of the failures that occurred during the 2013 federal election.
- 2.113 While it is clear that there are areas of reform necessary for improved ballot paper handling, it is also clear that, at the time of the 2013 election, there were adequate directions in place that, if adhered to, may have avoided the events that occurred in WA. This points to fundamental failings in the structure of the AEC and the level at which decision-making responsibility is divested.
- 2.114 While there needs to be some flexibility in national guidelines to allow DROs and state offices to respond to unique operational needs, standard operating procedures should be set at the national level and adhered to by DROs. The level of autonomy given to DROs for the conduct of elections,

62 Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, p. 6.

and the lack of performance measurement, is of serious concern. Performance measurement is discussed further, and recommendations made, in Chapter 3.

Further oversight

- 2.115 The implementation of the Keelty Report and ANAO recommendations, as well as other AEC reform measures, is an ongoing process. The Committee has taken a particular interest in the progress of this work as part of its inquiry, but recognises that the implementation will continue beyond the life of the inquiry, and even the life of this Parliament.
- 2.116 The AEC has been responsive to all of the Committee's requests for information regarding this implementation process. However, the Committee is of the opinion that there is a need to formalise the process to ensure that the Parliament is kept informed on the progress of these reforms.
- 2.117 The Committee therefore recommends that the AEC report every six months to the Joint Standing Committee on Electoral Matters on the implementation of recommendations from the Keelty Report and ANAO audit reports.
- 2.118 Commencing in the 2015 Parliamentary Spring sittings, this Committee will also conduct a hearing, independent of a specific inquiry, with the AEC every six months specifically on the progress of these issues.

Recommendation 2

The Committee recommends that the Australian Electoral Commission report to the Joint Standing Committee on Electoral Matters every six months on the implementation of recommendations made by the Keelty Report and by the Australian National Audit Office reports in response to the events of the 2013 federal election.