

Election day and the count

- 5.1 This Chapter analyses issues raised with, or observed by, the Committee regarding election day and the count of votes from the 2013 federal election that are not related to the events that occurred in Western Australia (WA) (covered in Chapter 2).
- 5.2 A number of issues were raised by submitters, including the use of pencils to mark ballot papers, the suitability of polling places for people with a disability and Indigenous peoples and the lack of voter identification.
- 5.3 Recounts in the Division of Fairfax and Western Australia highlighted inconsistencies in the Electoral Act and concerns regarding the appointment and conduct of scrutineers.
- 5.4 This Chapter addresses these issues as well as considering the need for improved count facilities.

Election day issues

The use of pencils to mark ballot papers

- 5.5 The provision of pencils at polling booths was an issue raised in some evidence to the inquiry and by a range of correspondents who expressed concerns that pencil marks on ballots could be altered in order to deliberately tamper with votes:
- Pencils are so archaic for marking ballots. There is potential for alterations on a wholesale scale by an unethical group.¹
- 5.6 The Member for Fairfax criticised the use of pencils for voting:

¹ J Sternhill, *Submission 74*, p. [7]. See also M Rigoni, *Submission 152*, D Massam, *Submission 66*, M Gillon, *Submission 136*, C Palmer MP, *Submission 92*, G Patterson, *Submission 65*.

A mark made with a pen can't be rubbed out but a pencil can. And when you looked at some of the votes that were counted later in my election, there are a number of votes that didn't have a '1' that had been rubbed out, or erased, or the person just forgot to put them there. In Fairfax there were five different colours and five different types of ballot papers.²

5.7 It was also submitted that pencils can be difficult to use:

To make writing easier for the infirm I urge you to supply pens not pencils at all polling booths. I always take my own pen as I find it much easier to clearly indicate the numbers I am entering into the boxes.³

5.8 Voters can currently mark their ballot paper with a pen if they so choose; however the Australian Electoral Commission (AEC) is required under section 206 of the *Commonwealth Electoral Act 1918* (the Electoral Act) and section 20 of the *Referendum (Machinery Provisions) Act 1984* to furnish voting compartments with pencils.

5.9 In evidence to the Committee the then AEC state manager for Queensland noted that some pens make it difficult to interpret the vote and that, in some northern areas, pencils are more reliable because pens dry out.⁴

Committee comment

5.10 The Committee is not of the view that pencils are provided for any reason other than to allow voters to mark ballot papers. The Committee is not aware of any confirmed instances of pencil marks being tampered with during the 2013 election.

5.11 This aside, the Committee sees no reason why the exclusive use of pencils should continue to be a requirement under the legislation.

5.12 Pencils may be better in a small number of exceptional circumstances, but in the Committee's view, the operational norm should be for pens to be provided. Therefore, the Committee recommends the provision of pens should be the default option under the Electoral Act. If pencils are required to be provided, then the Electoral Commissioner can approve such use by exception.

2 C Palmer MP, *Submission 92, Attachment A*, p. [3].

3 R Pascoe, *Submission 81*.

4 Annie Bright, Qld state manager, AEC, *Transcript of Evidence*, 8 May 2014, Brisbane, p. 8.

Recommendation 14

The Committee recommends that section 206 of the *Commonwealth Electoral Act 1918* and section 20 of the *Referendum (Machinery Provisions) Act 1984* be amended so as to allow the Australian Electoral Commission to provide a suitable pen for use by electors.

Expatriate voting

- 5.13 Currently, section 94 of the Electoral Act specifies that those residing outside of Australia for longer than six years are not entitled to vote and are removed from the electoral roll. Those who intend to return to Australia within six years are eligible to register as an overseas elector. Children of overseas electors are eligible to enrol if they intend to return to Australia within six years of their 18th birthday.
- 5.14 Overseas electors are able to vote in person at selected Australian diplomatic missions or consulates, or by postal vote.⁵
- 5.15 A range of submissions called for voting rights to be extended to Australians residing outside of Australia for longer than six years, arguing that the inability to vote for such electors was a disenfranchisement and that residency outside of Australia does not diminish an interest in Australian democracy. This extended from arguments relating to keeping touch with news in Australia and travelling back to Australia on occasion,⁶ through to a desire to maintain democratic 'contact' with Australia as a country of short-term past immigration.⁷
- 5.16 The provision of information on voting rights was also raised, with some submitters outlining a lack of information or communication from the AEC. The constitutionality of excluding non-residents from voting was also questioned following the High Court decisions in *Roach v Electoral Commissioner* (2007) 233 CLR 162 (regarding prisoner voting) and *Rowe v Electoral Commissioner* [2010] HCA Trans 207 (regarding early closure of the roll).⁸

5 AEC, *Submission 20.6*, p. 59.

6 A Lloyd-Harris, *Submission 37*, p. [1].

7 M Martinez-Castro, *Submission 63*, p. [2].

8 See for example, A Niklaus, *Submission 36*; A Lemaire, *Submission 29*; M Martinez-Castro, *Submission 63*; B Bayley, *Submission 25*; A Lloyd-Harris, *Submission 37*. For detailed discussion regarding the Roach and Rowe findings, see: Joint Standing Committee on Electoral Matters 43rd Parliament, *The 2010 Federal Election, Report on the conduct of the election and related matters*, June 2011, Canberra, pp. 77-82.

- 5.17 Others submitted that their connection to Australian business, both in working for Australian companies and through facilitating Australians' (government and non-government representatives) access to business opportunities and contacts, constituted a significant connection to and interest in Australia, thereby warranting the right to representation.⁹ It was also recognised, however, that connections to specific electorates or issues may be lessened:

There are believed to be approximately 1,000,000 Australians working overseas many of whom have lived outside of Australia for long periods. While this does not necessarily diminish their connection to Australia and does not, in our view, diminish their entitlement to have representation in the Australian Parliament, it is recognized that the connection to a specific electorate within Australia may be of less relevance than to a citizen resident within that electorate. Similarly the concerns of Australians living overseas may be different from those in Australia by virtue of both the fact of living outside of Australia and specifically where they are resident overseas.¹⁰

- 5.18 Some concerns were also raised about the ease of postal vote applications and difficulties obtaining an Australian citizen to witness postal vote declarations.¹¹ One submission noted that:

On November 28th, 2013 ... the Returning Officer for Perth, notified me by mail that my postal vote had not been accepted on the grounds that it had not been witnessed.

Living in Bozeman, Montana, with a population of 30,000 people, I could not find a fellow Australian to 'witness' my vote. Instead, I collectively submitted my ballot papers along with my reasons for not having a witness, as well as signed copy of my passport identification page.¹²

- 5.19 The AEC noted that the online postal vote service introduced for the 2013 election:

was extensively used by overseas voters with 22 306 online applications lodged from outside Australia. This provided a more convenient means for overseas electors to apply for a postal vote

9 P Arkell, *Submission 33*, p. [1].

10 AustCham Singapore, *Submission 126*, p. [2].

11 ALP Abroad, *Submission 108*; G Field, *Submission 160*; T Lillywhite, *Submission 14*.

12 T Lillywhite, *Submission 14*.

and significantly lowered the postal vote processing workload of staff at overseas voting centres.¹³

5.20 The AEC further noted that:

The primary source of information for overseas voters was the AEC website. Each individual post also had information specific to their posts such as opening times and locations. Smart travel advices were also posted on the australia.gov website. There was some targeted advertising limited to expat newspapers and English language newspapers generally read by Australians overseas. Some posts also utilised Facebook; however funding was not provided for this purpose.¹⁴

Committee comment

5.21 The Committee notes the concerns of expatriate voters regarding their perception that they are disenfranchised by being unable to vote if they do not intend to reside in Australia in the long-term, despite a continued interest in Australian affairs.

5.22 However, the Committee does not consider that there is a justification to amend the Electoral Act so as to extend the franchise to Australian citizens who have resided overseas for longer than six years. The Committee does not agree with the view expressed in some submissions that the High Court findings in *Roach* and *Rowe* are necessarily in conflict with sections 94 and 94A of the Electoral Act – although this may be tested in the High Court at some point in the future.

5.23 The Committee notes that the Electoral Matters Committee of the 42nd Parliament addressed the matter of expatriate voting in detail in its report on the 2007 election and found that the provisions for expatriate voters were appropriate.¹⁵

5.24 The Committee further notes that there are certain rights and obligations throughout Commonwealth legislation that are granted due to citizenship, but are constrained by Australian residency. The overseas portability of social security pensions is one such restriction, as well as the payment of taxation and receipt of healthcare.¹⁶ In the Committee's view, the restriction in the Electoral Act is actually quite generous in its current

13 AEC, *Submission 20.3*, p. 59.

14 AEC, *Submission 20.3*, p. 60.

15 Joint Standing Committee on Electoral Matters (42nd Parliament), June 2009, *Report on the conduct of the 2006 federal election and matters related thereto*, Canberra, pp. 295-306.

16 See the Portability Table of Social Security Payments at the Department of Social Services website, accessed 16 December 2014, <guides.dss.gov.au/guide-social-security-law/7/1/2/20>

scope, as a person can reside in another country for six years (or around two full electoral cycles) and still vote.

- 5.25 While noting concerns put to it about access to information, the Committee also notes that all voters have an obligation to fully inform themselves about their rights and considers that the AEC's current approach is adequate.
- 5.26 However, the Committee is concerned by the instance, outlined above, of a postal vote being rejected by a Divisional Returning Officer (DRO) on the grounds that it was not witnessed. The Electoral Act is clear that, should a suitable witness not be available, a postal vote may be taken to have met that requirement with suitable explanation and a certified copy of the electors' passport.¹⁷ These criteria are not clearly set out on the AEC's website for overseas electors and this should be rectified.¹⁸

Recommendation 15

The Committee recommends that the Australian Electoral Commission clearly set out on its website the requirements for satisfying subsection 194(1A) of the *Commonwealth Electoral Act 1918* and subsection 65(1A) of the *Referendum (Machinery Provisions) Act 1984* by overseas electors who are unable to satisfy the 'authorised witness' requirements of those sections.

Suitability of polling places

Accessibility

- 5.27 Commonwealth agencies are required by the *Disability Discrimination Act 1992* to ensure that information and services are accessible by people with disabilities. Accordingly the AEC is required to provide polling places that are accessible for people with a disability. The AEC reported that:
- The AEC's policy position is to hire premises with full access for disabled electors, where available, in preference to premises without disabled access.¹⁹
- 5.28 At the 2013 election only 12 per cent of polling places were rated as 'fully accessible'. A further 18 per cent of polling places were rated 'not

17 The Act, s194 (1A).

18 AEC website, 'How to vote while overseas' accessed 16 December 2014, <aec.gov.au/Voting/Ways_to_vote/overseas.htm>.

19 AEC, *Submission 20.6*, p. 18.

accessible', while 70 per cent of polling places were rated 'accessible with assistance.'²⁰

5.29 The AEC also reported that:

Disability groups have requested that additional information be available about the reasons for a premises being rated as accessible with assistance, to enable disabled electors to make a more informed decision about how and where to cast their vote. Modifications are underway within our election systems that will enable this information to be included on the AEC website at the next general election.²¹

5.30 The AEC further reported that, as part of its polling place inspection programme to take place in 2015:

AEC staff have been asked to approach premises owners in cases where small modifications to a premises would allow a premises to be rated as fully accessible. For example, by opening up a staff car park for disabled electors where this is closer to the polling place entrance than the general parking facilities, a premises that may have been rated as not accessible in 2013 could be rated as accessible at the next election.²²

5.31 The AEC has a *Disability Inclusion Strategy 2012–2020*, aligned with the Commonwealth's National Disability Strategy, and as part of this strategy the AEC meets annually with peak disability representative bodies and other members of the Electoral Council of Australia and New Zealand, in the guise of the AEC Disability Advisory Committee.²³ Accessibility of polling places is a topic covered in this forum.

5.32 In its second interim report on electronic voting options, the Committee recommended that the current telephone assisted voting system be expanded to include people with assessed mobility or access issues for the next federal election. An expansion of telephone voting options was supported by a number of inquiry participants including Blind Citizens Australia:

Additionally, it is important that these options be extended to all people with disabilities and not be isolated to people who are blind or vision impaired. Especially for people who are confined to a wheelchair, it can be a difficult task to find a wheelchair accessible polling centre within close proximity. It has also been

20 AEC, *Submission 20.6*, p. 18.

21 AEC, *Submission 20.6*, p. 18.

22 AEC, *Submission 20.6*, p. 19.

23 AEC, *Annual Report 2013-14*, p. 111.

shown that, on some occasions, locations that are cited as being wheelchair accessible on the AEC's website have, in fact presented some difficulties for electors with disabilities.²⁴

- 5.33 Any expansion of telephone voting options would not, however, negate the need for accessible polling places to be provided – all people with disabilities should have access to available accessible voting options, where appropriate and possible.

Suitability of polling places for Indigenous peoples

- 5.34 During its inquiry the Committee held private roundtable discussions with a number of Indigenous groups in Mount Isa, Queensland, in order to gain an understanding of some of the issues remotely-located Indigenous peoples face while voting.
- 5.35 It was clear from these discussions that there are a number of barriers facing Indigenous peoples when accessing polling booths, including the use of schools or police-run youth centres as polling places. These choices of polling places can influence some people not to vote if they have had negative experiences at school or with the police.
- 5.36 Some roundtable participants also noted the issues that can arise in small towns where polling booths are staffed by reasonably prominent community members such as teachers. It was noted that if Indigenous people had experienced racism by those staffing polling booths, this was an immediate deterrent to voting.
- 5.37 Associated concerns were voiced that the cultural capability and awareness of other polling officials could influence the Indigenous community's willingness to vote. If polling officials were brought in from 'out of town' and had no awareness of local issues, it could deter community members from voting.
- 5.38 It was put to the Committee that it would be more appropriate to:
- use the premises of Indigenous-run organisations as polling places;
 - increase the number of Indigenous polling workers; and
 - to more obviously brand polling booths with Indigenous artwork to make it a more inclusive environment.
- 5.39 In other evidence, the AEC was commended on improving access to information for Indigenous voters:

We understand that the AEC has taken steps to improve communication with Aboriginal voters with the development of a

24 Blind Citizens Australia, *Submission 97*, pp. 6-7. See also AEC, *Submission 20.3*, p. 62; Family Voice, *Submission 21*; Vision Australia, *Submission 141*.

‘how to vote’ video in a number of Aboriginal languages. We strongly commend this action. The use of the video has reduced the need for interpreters but the video alone cannot answer the many questions regarding the voting process which remains confusing to many. Certainly the video is a step forward in assisting people to understand the process but it should always be accompanied by a qualified interpreter able to answer questions.²⁵

- 5.40 The AEC noted that its Indigenous Electoral Participation Program (IEPP) had both improved and widened communication strategies and, paired with measures under the AEC’s 2012–14 Reconciliation Action Plan, had almost doubled the Indigenous casual workforce for 2013 from 2010 levels.²⁶
- 5.41 Additionally, the AEC’s employment and use of Indigenous officials as part of the Voter Information Officer (VIO) initiative at the 2013 election in the Northern Territory is a welcome sign of commitment to making voting more accessible to Indigenous communities.²⁷

Committee comment

- 5.42 In relation to accessibility, the Committee is concerned that only 12 per cent of polling places were rated as ‘fully accessible’ for the 2013 election. Acknowledging the efforts of the AEC in relation to its 2015 polling place inspection programme, the Committee hopes that there is a significant improvement in the number of ‘fully accessible’ polling places for the next federal election. The Committee notes that accessible polling places are not only beneficial for persons with disabilities, but can benefit the general community more broadly including the elderly and parents with prams.
- 5.43 In relation to suitability of polling places for Indigenous peoples, while the Committee is pleased to see improvements in Indigenous employment as a result of the IEPP and the VIO initiative, it also notes the concerns raised regarding the suitability of polling places and the choice of polling officials.
- 5.44 The Committee agrees with the proposal of using the premises of Indigenous-run organisations as polling places. One way of implementing this would be to utilise various premises in proportion to levels of Indigenous population. The Committee also sees merit in the proposal to increase Indigenous employment in the casual election workforce, above

25 Concerned Australians, *Submission 89*, p. [2].

26 AEC, *Submission 20.3*, p. 124.

27 AEC, *Submission 20.3*, p. 63.

and beyond the current levels achieved by the AEC, as a means of encouraging Indigenous voting.

- 5.45 In areas of significant Indigenous population, the AEC should consult with local Indigenous groups regarding the suitability of polling places and set targets for the employment of Indigenous polling officials.
- 5.46 The Committee further notes that, as many urban areas also have significant Indigenous populations, the issues raised above are not confined to remote areas.

Recommendation 16

The Committee recommends that, in areas with a significant Indigenous population, the Australian Electoral Commission consult with local Indigenous groups to ensure the suitability of polling places and set targets for the employment of Indigenous polling officials.

Voter identification

- 5.47 There is currently no requirement for voters to produce identification for voting in federal elections. With this lack of identification verification, the voting system is vulnerable to manipulation – either from one person voting in their own name multiple times, or voting multiple times in other names.
- 5.48 At the 2013 federal election, three separate voters in NSW were recorded by the AEC as having their names marked off 15, 12 and 9 times.²⁸ Any system that allows this, whether discovered or not, is flawed. Vulnerability of the system to such manipulation is the greatest threat to a central tenet of Australia’s electoral system – one person, one vote.
- 5.49 The introduction of a voter identification requirement has the potential to provide a solution to these voting and identity issues, as well as some of the other issues identified as resulting in multiple voting, namely staff error and unintentional voter error.
- 5.50 As noted in the Committee’s November 2014 second interim report on electronic voting options, during the 2013 federal election 18 770 multiple marks (persons marked off the electoral roll more than once) were identified, with 10 671 of these being attributable to polling official error, 2 013 being instances of electors admitting to multiple voting, and 6 000 instances remaining unresolved.²⁹

28 AEC, *Submission 20.9, Attachment A*, p. 8.

29 Joint Standing Committee on Electoral Matters, *Second interim report on the inquiry into the conduct of the 2013 election: An assessment of electronic voting options*, November 2014, p. 10.

The Queensland experience

- 5.51 The only Australian jurisdiction to have required identification to vote is Queensland. Introduced just before the July 2014 state by-election in the district of Stafford, under the voter identification requirements Queensland voters presenting at a polling booth may only be issued an ordinary vote if they can provide one of the following pieces of identification:
- a current drivers licence;
 - a current Australian passport;
 - a voter information letter issued by the commission;
 - a recent document evidencing electoral enrolment;
 - an identification card issued by the Commonwealth or State evidencing the person's entitlement to a financial benefit, for example, a Commonwealth seniors health card, health care card, Medicare card, pensioner concession card or repatriation health card;
 - an adult proof of age card issued by the State;
 - a recent account or notice issued by a local government or a public utility provider; for example, a council rates notice, electricity account statement, gas account statement or water bill;
 - a recent account statement, current account card or current credit card issued by a financial institution;
 - a recent account statement issued by a carriage service provider as defined under the Commonwealth *Telecommunications Act 1997*, for example a telephone bill or internet bill; and
 - a recent notice of assessment issued under the Commonwealth *Income Tax Assessment Act 1997*.³⁰
- 5.52 This first test of voter identification requirements was keenly observed, as commentators were eager to see how the identification requirements would impact on voter populations that did not have access to the requisite identification. However, the Stafford by-election resulted in only 0.9 per cent of the voters being marked as of 'uncertain identity' and being issued with declaration votes.³¹
- 5.53 This may not have been overly representative of the general population; in respect of an inner-metropolitan electorate such as Stafford, most voters

30 Electoral Commission Queensland, *2014 Stafford by-election*, accessed 10 October 2014, <ecq.qld.gov.au/2014stateByElections.aspx?id=11545>.

31 ABC News, Antony Green's Election Blog, *Voter ID laws pass their first hurdle in Stafford*, 23 July 2014, accessed 10 October 2014, <blogs.abc.net.au/antonygreen/2014/07/voter-id-laws-pass-their-first-hurdle-in-stafford.html>.

might be expected to have easy access to the types of identification required. Itinerant or Indigenous voters, however, were raised as populations of concern in this context, and could potentially be disadvantaged by identification requirements.

- 5.54 For the 2015 state election, being the first general election where identification was required, the Electoral Commission Queensland also sent every enrolled elector a Voter Information Letter soon after the close of rolls, which informed each elector of the voting requirements, with the addition that the letter itself could be used as acceptable identification for voting purposes.³²
- 5.55 The Electoral Commission Queensland reported that a total of 16 189 uncertain identity votes were issued at the election, comprising 15 759 formal and 430 informal votes. This totalled 0.60 per cent of the 2 679 874 total votes.³³
- 5.56 This very small proportion of votes cast as uncertain identity declaration votes indicates that the system introduced impacted on a very small number of voters. Indeed, the Electoral Commissioner commented at Senate Estimates in February 2015 that observations made by AEC staff suggested 'the process ran very smoothly'.³⁴ These observations have been subsequently confirmed by the Queensland Electoral Commissioner in feedback provided to the AEC.³⁵
- 5.57 The benefits of the Queensland scheme lie in the range of identification able to be used and the ability for electors to cast a declaration vote should they not have identification, thereby not excluding any voter from voting.
- 5.58 However, the admissibility of those declaration votes issued to 'uncertain identity' electors in Queensland is not further defined in the Queensland *Electoral Act 1992*, other than confirming that the voter's claimed enrolled address matches the electoral roll. If further identity confirmation requirements were to be introduced (or envisaged at a federal level), it should be understood that this would add further workload and therefore require additional resources and administration in place for the potential inclusion or exclusion of these votes from the count.

32 Electoral Commission Queensland, Information for Electors website, accessed 28 January 2015, <ecq.qld.gov.au/2015QLD.aspx?id=11888>.

33 Electoral Commission Queensland, 2015 State General Election – Election Summary website, accessed 25 February 2015, <results.ecq.qld.gov.au/elections/state/State2015/results/summary.html>.

34 Tom Rogers, Electoral Commissioner, *Transcript of Evidence*, Finance and Public Administration Committee – Additional Estimates, 24 February 2015, Canberra, p. 122.

35 AEC, *Submission 20.10*, p. 6.

Evidence received

5.59 Evidence was received over the course of the inquiry in relation to voter identification. The Liberal Party of Australia submitted:

Whilst some of these [multiple voting] occurrences could be explained as accidents or clerical errors, it is clear from the Commission's own evidence that many thousands of people voted multiple times in the 2013 election without providing adequate explanation. The Liberal Party is deeply concerned by this and by the lack of proper requirements to confirm voter identification at polling booths. The introduction of a requirement for voters to present some form of photo identification at the polling booth before voting would help to reduce the occurrence of multiple voting and would also reduce the potential for fraud.³⁶

5.60 The Nationals for Regional Victoria submitted that a 'thorough assessment of the current system for voter identification be reviewed against other leading international systems to identify the best systems that can be implemented to reduce the risk of voters casting multiple votes'.³⁷

5.61 A requirement to present some form of identification was supported in a number of other submissions to the inquiry as a potential solution to address multiple voting.³⁸

5.62 Importantly, the AEC noted that the impact of multiple voting is ultimately on the electoral system itself:

As noted above, multiple voting has been a longstanding issue and point of discussion for the JSCEM. It is also the subject of discussion and debate for electoral management bodies across the world. The concern with multiple voting is a response to community concerns with electoral integrity, as the electoral system rests on an assurance that each person has the same opportunity, but only the same opportunity, to vote.

The AEC has satisfied itself that the apparent multiple marks for electors on the lists of voters did not affect the outcome of the 2013 federal election. However, this analysis in some ways misses the

36 Liberal Party of Australia, *Submission 188*, pp. 6-7.

37 The Nationals for Regional Victoria, *Submission 137*, p. 4.

38 See G Paterson, *Submission 65*; Family Voice Australia, *Submission 21*; J Waddell, *Submission 74*; Australian Christians, *Submission 179*; C Palmer MP, *Submission 92*; D Massam, *Submission 66*; A Stewart, *Submission 170*; M Rigoni, *Submission 152*; P Murphy, *Submission 78*; D Chigley, *Submission 105*; R and H Clarke, *Submission 15*.

point that multiple voting by some electors contravenes the universally accepted standard of 'one person - one vote'.³⁹

5.63 Australia Post submitted that its established electronic identity checking services could offer opportunities for partnership for election delivery through:

- Electronic verification of a citizen's identity prior to voting and through real time data interchange;
- Temporary voting kiosks that could be deployed in Australia Post retail outlets;
- Online processes for electronic verification at polling locations when citizens present without enrolment; and
- The use of Australia Post Proof of Identity cards for citizens who belong to demographic groups where identity has previously been difficult to prove - for example, people who do not possess a driver's license.⁴⁰

5.64 The Committee also received evidence arguing against the introduction of voter identification. Professor Brian Costar submitted that, while voter identification would address personation, it would not provide a solution for those engaging in multiple voting in their own name:

The problem of course is that voter ID is not going to stop multiple voting because most of what I will call fraudulent multiple voting, which is, I would argue, a minority of cases but it has happened. There was a gentleman in Sydney some years back who voted 17 times and he used to do it all the time. He died before the AEC could prosecute him so we never got that into the courts. The problem with that of course is most of these people are doing it themselves. They are going from one polling place to another and multiple voting but they are doing it in their own name so voter ID is not going to catch that. It will catch personation.⁴¹

5.65 Concerns were also raised that a requirement for voter identification could conceivably discourage some from voting and present difficulties for the homeless, women escaping domestic violence and some groups that have difficulty obtaining positive identification.⁴²

5.66 The Committee notes a 2014 report commissioned by the NSW Electoral Commission which found that, in relation to the 2007 federal election, 'the

39 AEC, *Submission 20.9, Attachment A*, p. 11.

40 Australia Post, *Submission 174*, pp. 5-6.

41 Brian Costar, Convenor, Democratic Audit of Australia, *Transcript of Evidence*, 15 April 2014, Melbourne, p. 40. See also Graeme Orr, *Transcript of Evidence*, 8 May 2014, Brisbane, pp. 18-19.

42 See NSW Council for Civil Liberties, *Submission 166*; J Wight, *Submission 168*; Homelessness NSW, *Submission 40*; P Dawkins, *Submission 86*; GetUp, *Submission 205*.

number of multiple votes cast in the same name was very small compared with the overall vote', and that 'multiple voting was too small to determine the winner in any seat'.⁴³ In relation to NSW, the report also found that a large proportion of apparent multiple votes at the 2011 NSW election were caused by mark-off error, and that the number of multiple voters in NSW is 'very low', with most multiple voting appearing to be accidental.⁴⁴

- 5.67 The report also found that voter identification measures could result in voters in particular socio-economic groups (Indigenous voters, homeless voters, those escaping domestic violence, those with disabilities, and members of non-English speaking groups) being placed at particular risk of disenfranchisement.⁴⁵

International experience

- 5.68 Australia is in a minority of countries that have compulsory voting systems for national elections. Of the 27 recognised countries that require compulsory voting, Australia is the only country that does not require some form of identity to be presented to vote in national elections.⁴⁶
- 5.69 Of all of these countries only three have voter identification requirements where that requirement is not the production of that country's national identity card – Nauru, Thailand and Turkey.⁴⁷
- 5.70 The issuing to citizens of national identification cards and their presentation at the time of voting is central to most countries that require identification. The most common alternative is the production of a dedicated voter identification card for use at elections by eligible voters.
- 5.71 The international experience suggests that voter identification requirements are well entrenched in many countries, with the NSW Electoral Commission's research paper identifying:
- the vast majority of voters across the world present some identification before they are able to vote.⁴⁸
- 5.72 The AEC further submitted in relation the United Kingdom and Canada:
- In January 2014, the United Kingdom's Electoral Commission published a report entitled Electoral Fraud in the UK. This report

43 NSW Electoral Commission, *Multiple voting and voter identification*, February 2014, p. 33.

44 NSW Electoral Commission, *Multiple voting and voter identification*, February 2014, pp. 34, 70.

45 NSW Electoral Commission, *Multiple voting and voter identification*, February 2014, pp. 72-73.

46 Institute for Democracy and Electoral Assistance, *Compulsory Voting*, accessed 14 January 2015, <idea.int/vt/compulsory_voting.cfm>.

47 NSW Electoral Commission, *Multiple voting and voter identification*, February 2014, pp. 86-106.

48 NSW Electoral Commission, *Multiple voting and voter identification*, February 2014, p. 48.

noted that while electoral fraud (including multiple voting) was not widespread across the country, it was of concern to a significant proportion of the community and undermined confidence in the electoral system. The report recommended the introduction of voter identification to address impersonation, multiple voting and its impact on the community's perceptions of electoral integrity.

Voter identification has been required in Canada since 2007 to address concerns relating to the integrity of elections, including public confidence in the electoral system. The Canadian authorities have sought to find the right balance between electoral robustness and accessibility to voting; these lessons could prove valuable for other jurisdictions.⁴⁹

Committee comment

- 5.73 Voter identification is a longstanding topic of discussion, with arguments on both sides regarding its introduction. For the Committee, the central issues at stake are the vulnerability of the electoral system to multiple voting and the sanctity of the ballot.
- 5.74 This vulnerability can currently allow for a person to intentionally manipulate the voting system and deliberately vote multiple times. This can be done by either voting multiple times in another person's name (or multiple peoples' names), or by voting in their own name at multiple polling places. Regardless of how often this activity might occur, in the absence of voter identification, this vulnerability remains, and with it a threat to ballot sanctity. With voter identification, it is obviously much harder to vote in someone else's name. For those who would seek to vote multiple times in their own name at different locations, voter identification is a major disincentive and an additional hurdle for voters to seek to vote more than once. The identification is provided, and the traditional defence that a second or subsequent vote must have been cast by another person is diluted.
- 5.75 The three main arguments traditionally prosecuted against the use of voter identification are:
- voter turnout will be affected;
 - voters will be disenfranchised; and
 - increased administrative burden.
- 5.76 In the Australian context, these arguments are easily refuted:
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49 AEC, *Submission 20.9, Attachment A*, p. 11.

- compulsory voting ensures a high voter turnout;
 - declaration votes are provided for voters who fail to present identification; and
 - administrative burden will potentially be lessened by reduced issuing officer error and fewer occasions of multiple vote checks to be actioned.
- 5.77 Indeed a significant burden will be on those attempting to vote in another person's name as they will be subject to the more time consuming declaration vote process. In addition, if multiple voting occurs within a system that has voter identification, and also has, as recommended by the Committee in its November 2014 interim report, commenced wider implementation of electronic certified lists (ECLs), then there will be reduced opportunity for accidental multiple voting and evidence of intentional multiple voting if it occurs.
- 5.78 ECLs allow for real-time look-up of a person's enrolment on an electronic database and electronic mark-off of their name, with the mark-off being synced to all other networked ECLs when connected by mobile internet.
- 5.79 Most importantly, if a person tries to vote multiple times in the one name with identification, or multiple times without identification, then the use of an ECL or the identification requirements, will ensure they are required to make a declaration vote, with the result that their ballot papers do not automatically enter the count without verification or investigation.
- 5.80 The January 2015 Queensland general election was the first general election in Australia in which voter identification was a universal requirement. Indications are that the voter identification requirement at that election was not burdensome, and the figures quoted above would suggest that the number of voters that presented without adequate identification was very small.
- 5.81 The Committee is of the view that introduction of a similar system of voter identification is warranted at the federal level. Not only will it bring confidence to the system in respect of the identity of the person voting, but it will deliver a robust basis for strengthening the democratic process and the sanctity of the ballot by seeking to best ensure that Australian citizens are exercising their franchise accurately and in the way intended, only once.
- 5.82 The Committee believes that the forms of suitable identification used in the 2015 Queensland election worked well and should be adopted (or their closest federal equivalent) – at least for the next federal election – and assessed for its use and suitability for subsequent elections. If the

- Queensland identification requirement is repealed,⁵⁰ then the forms of identity can be modified (if required) in future for continuing federal use.
- 5.83 Additionally, the equivalent federal declaration vote issuing process should be adopted, with the requirement to check the voter's claimed enrolled address against the electoral roll as part of the preliminary scrutiny process.
- 5.84 As an added advantage, the Committee believes that the introduction of voter identification requirements, paired with the expanded use of ECLs (as recommended in the Committee's November 2014 interim report) will reduce the incidence of polling official error when marking off certified lists.

Recommendation 17

The Committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to introduce the requirement that:

- **voters must present a form of acceptable identification to be issued with an ordinary pre-poll or election day vote. Acceptable identification should be defined as those acceptable at the 2015 Queensland state election (or the closest federal equivalent);**
- **where voters cannot provide acceptable identification they must be issued with a declaration vote; and**
- **these declaration votes will be checked at preliminary scrutiny to ensure that the claimed enrolled address matches the electoral roll. If not, then the vote should be rejected.**

The Committee also recommends that the Australian Electoral Commission be appropriately resourced to enable this change to be made prior to the next federal election and for a suitable education campaign to be undertaken to inform voters of the new requirements.

Further measures to address apparent multiple voting

- 5.85 The Committee considered the issue of multiple voting and investigation of multiple marks in its November 2014 second interim report on electronic voting options. The recommended further expansion of the use

50 Courier Mail, *Palaszczuk commits to reverse controversial political donations law created by Newman government*, 10 March 2015, accessed 30 March 2015, <couriermail.com.au/news/queensland/palaszczuk-commits-to-reverse-controversial-political-donations-law-created-by-newman-government/story-fnihsrf2-1227255441662>.

- of ECLs would have an impact on the accuracy of certified list mark off and confirmation of a voter's correct roll entry.
- 5.86 The introduction of voter identification (as per above) would also significantly curtail the ability for people to vote multiple times in another person's name, as well as reducing potential polling official error.
- 5.87 However, the main challenge related to apparent multiple voting is the ability of the AEC to gather relevant evidence related to such activity, as well as the Australian Federal Police (AFP) and Commonwealth Director of Public Prosecution's (CDPP) ability to prosecute any referred instances.
- 5.88 The AEC provided the Committee with a detailed submission in February 2015 related to the finalised investigations into apparent multiple voting at the 2013 election.⁵¹
- 5.89 In summary, this submission stated that:
- there are currently two levels of offence under the Electoral Act:
 - ⇒ the lesser offence of voting more than once (punishable by a fine); and
 - ⇒ the more serious offence of intentionally voting more than once (punishable by a higher fine, imprisonment, or both).⁵²
 - the current interplay between the Electoral Act, the *Criminal Code Act 1995* (Criminal Code), and the *Crimes Act 1914* (Crimes Act) does not provide for adequate time to prosecute the majority of offences of multiple voting;
 - regardless of whether multiple voting influences election outcomes, any incidence of multiple voting can undermine confidence in the electoral system;
 - the standard of proof to achieve a successful prosecution is not supported by the evidence created under the current electoral legislation, identification requirements or polling place surveillance; and
 - generally the current system requires referral of inadequate evidence from the AEC to the AFP and CDPP who cannot prove guilt or culpability in a court of criminal jurisdiction.⁵³
- 5.90 The ultimate result of investigations by the AEC resulted in 7 743 cases of alleged multiple voting being referred to the AFP – of which 65 were

51 See AEC, *Submission 20.9 Attachment A*.

52 AEC, *Submission 20.9 Attachment A*, pp. 2-3.

53 AEC, *Submission 20.9 Attachment A*, pp. 2-5.

investigated directly, with none being referred to the CDDP for potential prosecution, due to the reasons stated above.⁵⁴

- 5.91 The lack of direct investigation and referral is not an indication of effort or focus on the part of the AFP, more that the system created by the current legislation and resourcing does not allow for the required level of evidence or prosecution to proceed.⁵⁵

Committee comment

- 5.92 Confidence in the system is undermined if the relevant authorities are unable to prosecute offences under the Act due to conflicts between the relevant legislative provisions. The time taken to investigate alleged multiple voting instances is also concerning.
- 5.93 However, the implementation of the integrity measures as recommended by this Committee, such as the wider use of ECLs and voter identification, should reduce the number of apparent multiple votes and the administrative burden associated with verifying those for reference for prosecution.
- 5.94 Following the next federal election, with these integrity measures in place, the AEC and the AFP will be able to better assess the actual instances of multiple voting and will be in a better position to produce more robust evidentiary referrals for prosecution and thus potentially achieve the prosecutorial outcomes envisioned by the existing legislation.

The count

- 5.95 The act of counting the vote at a federal election is a complex task. In general, because the community's exposure to the count consists of viewing the television coverage on election night to see the predicted outcome, it can appear to be a straightforward, easy task. Often the only point at which the count becomes prominent is when a seat is close, or something goes awry and is reported in the media.
- 5.96 In reality, however, the counting process for both House of Representatives and Senate votes is prescribed in great detail in the Electoral Act and consists of a number of stages:
- election night count – first preferences and two-candidate preferred count for House candidates, as well as first preference counts for Senate groups and candidates;

54 AEC, *Submission 20.9 Attachment A*, pp. 8-9.

55 AEC, *Submission 20.9 Attachment A*, p. 12.

- fresh scrutiny – a detailed check, sort and count of all ballot papers, including a recheck of formality and correct allocation of preferences (it is normally after this scrutiny is completed that a candidate can be declared elected); and
 - distribution of preferences – a full distribution of preferences is undertaken, even where a candidate is clearly elected, in order to record a full and complete result in each Division and state and territory.
- 5.97 In addition to these normal count/scrutiny processes, declaration votes (including postal votes) are required to go through a preliminary scrutiny process that establishes whether the ballot papers from a voter can be admitted to the count. Declaration votes can be received up until the thirteenth day after election day.
- 5.98 Also, Senate ballot papers marked below-the-line go through a detailed central computerised scrutiny process to allow for a full distribution of preferences to occur.⁵⁶
- 5.99 During these count processes many people are involved at multiple points, including AEC staff, polling officials and party or candidate-appointed scrutineers.

Age-appropriate polling officials

- 5.100 The Committee received evidence from Ms Marcelle Anderson, an experienced Labor Party scrutineer, suggesting that some vote-handling at a particular polling place had been undertaken by minors.
- 5.101 Ms Anderson stated:

I should say that in the last election there were two people counting votes who I was told were the children of the presiding officer. They were both minors. I do not believe they should have been there. They were asking the scrutineers whether the ballots were formal. They did not understand what formal meant. They did not understand that there is a process you go through to determine whether the vote is formal and then who they have voted for. They were looking at the ballot papers and just putting it in a pile for the vote. They were not necessarily determining

56 A detailed description of the Senate count and scrutiny process can be found in Chapter 2 of this Committee's *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*, available at aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report

formality. If somebody questioned them, they would say, 'Why was that informal?'⁵⁷

5.102 In response to this, the then acting Electoral Commissioner Mr Tom Rogers commented:

As I am aware, the OIC of the particular polling place did have some mobility issues. They had been declared before the event. That OIC did tell our staff that they were going to use one of their children, who, I am led to believe, was 15 at the time of that event, but only as – if I use the explanation that has been given to me – her 'legs' for the day, to help move things around. That individual was at the polling place, not employed by us and not paid by us in any sense, during that day. We have on record some comments by other staff who were employed at that polling place, two of whom say, to the best of my knowledge, that that young person did not touch ballot papers at any stage during the day – to the best of their knowledge. A third person says they did touch ballot papers during that day, so it may have happened in that process.⁵⁸

5.103 It was highlighted to the Committee that subsection 203(4) of the Electoral Act prohibits persons under the age of 18 years being appointed as presiding officers, deputy presiding officers or assistant presiding officers. This effectively means that any person responsible for vote handling during polling hours cannot be under the age of 18.

5.104 However, after polling ends and counting is underway, people under the age of 18 may be employed by the AEC, in accordance with state employment law.

Committee comment

5.105 It is incumbent on the AEC to make sure that all polling officials are adequately trained in the requirements of the Electoral Act, especially in relation to clear prohibitions prescribed by the Act. However, the Committee is conscious that the AEC relies on many thousands of people to conduct elections and that there can be no realistic control of every action of every person in a polling place.

5.106 The Committee's recommendations on training in Chapter 3 of this report are aimed at increasing the veracity and confidence in the AEC's training and competence of polling officials. As part of this reform, the AEC should be conscious of ensuring that presiding officers and other polling officials

57 Marcelle Anderson, Private Capacity, *Transcript of Evidence*, 30 July 2014, Canberra, p. 35.

58 Tom Rogers, A/g Electoral Commissioner, AEC, *Transcript of Evidence*, 31 July 2014, Canberra, p. 5.

are made fully aware of the legal requirements for age of polling officials and the roles they undertake.

Issues highlighted in the Division of Fairfax

- 5.107 The Queensland Division of Fairfax was the only House of Representatives Division to require a recount at the 2013 election, automatically triggered by the final vote margin being less than 100 votes following the distribution of preferences. This automatic trigger is AEC policy and is not prescribed by the Electoral Act.
- 5.108 The conduct of the two candidate preferred (TCP) count and the role of party and candidate scrutineers were factors in the early stages of the election for the Division of Fairfax, bringing the TCP count process and the role of scrutineers into focus.

Evidence from the Member for Fairfax

- 5.109 The Member for Fairfax, Mr Clive Palmer MP, made a submission to the inquiry outlining multiple issues and concerns.⁵⁹
- 5.110 Mr Palmer requested an appearance before the Committee in correspondence of 28 April 2014.⁶⁰
- 5.111 An invitation was extended to Mr Palmer to appear before the Committee in Canberra at a hearing convened on a parliamentary non-sitting day on 30 July 2014. This invitation was accepted on 15 July 2014.
- 5.112 The Member for Fairfax did not appear at the hearing. His Chief-of-Staff appeared in his stead without prior notice at the 30 July 2014 public hearing.⁶¹ The reason provided for Mr Palmer's non-attendance was that Mr Palmer could not make the trip to Canberra as another matter had arisen at short notice.⁶²
- 5.113 Mr Palmer was offered a further opportunity to appear by teleconference later in the day or at a subsequent hearing, but both invitations were declined.

59 See C Palmer MP, *Submission 92*. A transcript of the Member's National Press Club address of 12 February 2014 was attached to the submission (*Submission 92 Attachment A*).

60 C Palmer MP, *Submission 92.1*.

61 See *Transcript of Evidence*, 30 July 2014, Canberra, pp. 1-20.

62 Phil Collins, Office of Clive Palmer MP, *Transcript of Evidence*, 30 July 2014, Canberra, p. 1.

The two candidate preferred count

- 5.114 In his submission the current Member for Fairfax was critical of the process of TCP counts in elections.⁶³
- 5.115 The logic behind an artificially-constructed count between two candidates may seem confusing to some. However, the process has a clear legislative basis and is undertaken by the AEC to satisfy the requirement for indicative results on election night.
- 5.116 The requirement to undertake a TCP count was introduced into section 274 of the Electoral Act in 1992 upon the recommendation of a previous Electoral Matters Committee.⁶⁴ The intent was to allow for a quicker indication of the party that was likely to form government, to enable decisions to be made and for work to progress more quickly.
- 5.117 The process to select the two candidates is based on past voting patterns within that Division, as well as the result of the previous election. The AEC explains this process on its website.⁶⁵
- 5.118 If the prediction is incorrect, the AEC resets the candidates according to whoever is leading in the Division and restarts the count process. This is what occurred in Fairfax, as the AEC had predicted the Liberal National Party and Australian Labor Party candidates would be the forerunners. Mr Palmer's vote tally, however, required the AEC to revisit its prediction.

Committee comment

- 5.119 The Committee notes the criticism of the TCP counts following the events in Fairfax, but considers that the TCP count mechanism is adequately communicated to candidates. The Committee notes that there are references and explanations on the AEC website, and both the candidates and scrutineers handbooks briefly outline the TCP count process on election night.⁶⁶

63 C Palmer MP, *Submission 92*, p. 7.

64 Joint Standing Committee on Electoral Matters (36th Parliament), *1990 Federal Election: Report from the Joint Standing Committee on Electoral Matters*, December 1990, p. 35.

65 AEC website, *Counting the votes on election night and in the post-election period*, accessed 19 June 2014, <aec.gov.au/About_AEC/Publications/Fact_Sheets/counting-the-votes.htm>.

66 AEC website, *Information for candidates and scrutineers*, accessed 19 June 2014, <aec.gov.au/Elections/candidates/index.htm>.

Recount provisions in the Electoral Act

- 5.120 With the conduct of the Fairfax and WA Senate recounts occurring at similar times, the AEC became aware of a number of small difference and anomalies that occur between the conduct of the two types of recounts.⁶⁷
- 5.121 The Electoral Act has separate scrutiny provisions for Senate and House of Representatives elections in sections 273 and 274 respectively.
- 5.122 Sections 278, 279, 279A and 279B of the Electoral Act provide the parameters for a recount of a House of Representatives or Senate election; however, as the AEC noted in its submission, there are inconsistencies in the roles that DROs and Australian Electoral Officers (AEOs) play in the different recounts. The AEC identifies in its submission:
- Currently, many of the same provisions in the Electoral Act apply to the conduct of a re-count in the House of Representatives and Senate. It is apparent from the re-count in WA that, while similar in many ways, a Senate re-count involves complexities that do not arise in a House of Representatives re-count. For example, Section 278 of the Electoral Act provides that a Senate re-count may be conducted by the Australian Electoral Officer (AEO). However, ss.279A and 279B appear to contemplate, and refer to, the re-count being conducted by 'the DRO'.⁶⁸
- 5.123 Due to elections for House of Representatives candidates being conducted at a divisional level and Senate elections being at a state level (facilitated by division-level voting), there are separations in the roles identified in the Electoral Act. However, as outlined above, sections 279A and 279B prescribe a central role for DROs, when for a Senate recount that role would be more appropriately filled by the AEO.
- 5.124 In addition, given the differences in the count processes between a House of Representatives and Senate election, a clear separation of and prescription for the separate recounts within the Electoral Act would seem appropriate. This would also correspond to any changes to AEO roles as recommended in Chapter 3.

67 AEC, *Submission 20.3*, pp. 18-20.

68 AEC, *Submission 20.3*, p. 18.

Recommendation 18

The Committee recommends that the conduct of recount provisions at section 279B and elsewhere within Part XVIII of the *Commonwealth Electoral Act 1918* be reviewed, amended and separated in order to provide clearly separated recount provisions and processes for both House of Representatives and Senate recounts.

Additionally, any other relevant references to recounts within the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* should be amended to ensure consistency.

The role of scrutineers

- 5.125 The role that scrutineers play during elections is crucial. Their oversight and analysis of polling and count processes enables a level of accountability and scrutiny regarding adherence to requirements that would otherwise be undertaken solely by the AEC and polling officials.
- 5.126 The role that scrutineers play, and the rights that they have to oversee and challenge polling and count processes, are defined in the relevant Parts of the Electoral Act. However, as the events in Fairfax helped to highlight, there are elements of these rights that are not consistent or defined.
- 5.127 In its submission, the AEC outlined the level of scrutineer activity and challenges experienced in Fairfax.⁶⁹ In summary, the main points of concern were:
- scrutineers for the successful candidate challenged a large number of ballot papers during the recount on authenticity, with a smaller proportion challenged on formality grounds; and
 - during the recount an unprecedented number of ballot papers were challenged, requiring the DRO to rule on 50 099 ballot papers (56.2 per cent of total ballot papers), with a further 43 942 ballot papers (49.3 per cent of total ballot papers) being referred further to the AEO for final determination.
- 5.128 In relation to the basis for the challenges regarding the authenticity of the ballot papers, the then AEC state manager for Queensland stated that:
- The scrutineers for the Palmer United Party, who was the other leading candidate as well as the LNP candidate, took a decision to challenge what appeared to be all formal ballot papers that had a

⁶⁹ AEC, *Submission 20.3*, pp. 14-20..

first preference to the LNP candidate and not the Palmer United Party candidate.⁷⁰

- 5.129 This apparently deliberate targeting of all ballot papers that were cast for another candidate was unprecedented, and suggests that the grounds upon which a scrutineer can challenge a ballot paper should be revisited.
- 5.130 In his submission the Member for Fairfax indicated that this high level of challenging of ballot papers by scrutineers may have been related to an interpretation of the Electoral Act that only ballot papers challenged to the AEO can be considered by the Court of Disputed Returns.⁷¹

Committee comment

- 5.131 In its submission the AEC recommended that ‘the Electoral Act be amended to harmonise the rules governing the role of scrutineers during both the scrutiny and the re-count of ballot papers during an election’ and that the Act ‘be amended to provide that the scrutineers for a candidate may only object to a ballot paper once during the original scrutiny, once during fresh scrutiny and once during a re-count’.⁷²
- 5.132 This concern arose due to instances of the same ballot paper being challenged by scrutineers multiple times to the same person – normally the DRO. In effect, an amendment to the Electoral Act along these lines would mean that the one ballot paper could be challenged to the same person (the Assistant Returning Officer, the DRO, or the Australian Electoral Officer) only once per ballot paper.
- 5.133 The Committee supports these recommendations, but is also of the opinion that further steps should be taken to tighten and clarify the role of scrutineers and to ensure the vital role of scrutineers is maintained throughout all relevant processes. These include:
- clear identification and nomination of scrutineers ahead of the end of polling (where possible); and
 - clear codification of the role of scrutineers in the investigation of prematurely opened ballot-boxes.
- 5.134 The Committee acknowledges that the clear identification and nomination of scrutineers ahead of the end of polling is a matter for candidates and political parties. The Committee would encourage candidates and parties to interact with the AEC to facilitate such identification and nomination in a timely fashion prior to election day.

70 Annie Bright, State Manager, Queensland, AEC, *Transcript of Evidence*, 8 May 2014, Brisbane, p. 2.

71 C Palmer MP, *Submission 92*, p. 9.

72 AEC, *Submission 20.3*, p. 20.

- 5.135 Additionally, the Liberal Party of Australia submitted that its party scrutineers, appointed for a House of Representatives candidate, had been prevented from scrutinising the count for the Senate, as the appointment forms had been signed by a House of Representatives candidate only.⁷³
- 5.136 It would seem logical, given that scrutineers are appointed by party officials or candidates, that the appointment of scrutineers should allow them to oversee both counts on behalf of their political party.

Recommendation 19

The Committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to ensure that:

- **the rules governing the role of scrutineers during both the scrutiny and the re-count of ballot papers during an election or referendum are harmonised;**
- **all scrutineers for a candidate, party or other appointee may only object to a ballot paper once during the original scrutiny, once during fresh scrutiny, and once during a re-count;**
- **the role of scrutineers in the investigation of prematurely opened ballot-boxes is clearly codified in section 238B; and**
- **political party officials or candidates are able to appoint scrutineers on behalf of all their party candidates in order to allow for the oversight of both House of Representatives and Senate counts or recounts with the one appointment.**

- 5.137 The Committee notes the issue raised by the Member for Fairfax that one interpretation of section 281 the Electoral Act is that the Court of Disputed Returns can only consider ballot papers that have been challenged to the AEO, if an election's validity is disputed.
- 5.138 Given that the Act does not offer clear guidance on this matter, and that this point is untested in the Courts, the Committee requests that the AEC analyse this issue further and report to the Committee at a future hearing.

Potential delay of Senate counting

- 5.139 Throughout the inquiry the Committee heard evidence about the increasing pressure on the AEC and its workforce to deliver accurate outcomes in a timely fashion.

⁷³ Liberal Party of Australia, *Submission 188*, p. 9.

5.140 The Keelty Report into the lost ballot papers in WA made a pertinent finding:

The AEC has historically set high standards for itself, and most organisations would wish to be able to deliver a similar level of accuracy in a high pressure environment. However, delivery to this high standard is becoming increasingly difficult due [to] a number of factors, including the increasing volume of work, demographic changes, a history, culture and expectation of immediate results on Election Night, and the electorate's increasing thirst for immediate access to information.⁷⁴

5.141 The requirements of initial counting of both House of Representatives and Senate votes in polling places, with the added significant increase in pre-poll voting (now ordinary votes), means that the AEC is now counting a lot more votes on election night than in the past. In fact, at the 2013 election, the AEC identified a separate election night workforce was required to count 1.98 million ordinary pre-poll votes, outside of the normal polling place workforce.⁷⁵

5.142 The desire to know results as soon as possible after the end of polling is understandable for candidates, political parties and the voting public. The implications of indicative results in the House of Representatives can affect the events of the days and weeks after election day, including formation of ministries and initial meetings of government.

5.143 Conversely, the impacts of Senate results from a normal half-Senate election are not as profound on government or the immediate future of policy and politics, as Senators elected at such an election do not take their place in the Senate until the July of the year following the election.

5.144 This delay in effect of a normal half-Senate election, along with pressure on the AEC, are reasons why the timing of Senate counting is an issue for consideration. Section 265 of the Electoral Act only requires scrutiny to commence 'as soon as practicable after the closing of the poll'.

5.145 When asked about the potential impacts that a delay in certain aspects of the count would have, the Electoral Commissioner responded:

We do have a workload issue on the night in the polling place, with the rise in pre-poll voting, the expansion in the size of the Senate paper and a range of other issues...doing work around saving the Senate ballot paper until a later date I think would save a significant amount of work for our staff on the night and probably aid accuracy. I know that a couple of the states that have

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

75 AEC, *Submission 20.3*, p. 3.

upper houses are looking at the same issue and essentially have the same problem.⁷⁶

5.146 The AEC state manager for NSW also commented:

The introduction of ordinary pre-poll voting in 2010 has been very successful from the point of view of streamlining voting for the elector and vote management and counting. At the time of its introduction, the AEC committed to counting as many ordinary pre-poll votes as possible on polling night, both House of Representatives and Senate. Despite ramping up logistics and staffing, although all available House of Representatives pre-poll votes were counted, we were only able to achieve about 40 per cent of the Senate votes on polling night. To attempt this extra counting, we hired nearly 1,000 staff in New South Wales. I believe this is an area we need to rework to determine the most effective processes and time frames to meet this commitment.⁷⁷

5.147 While acknowledging this logistical issue, the commentary in the Keelty Report on the past cultural attitude of the AEC regarding Senate ballot papers is also relevant here:

Over time a general perception appears to have emerged that Senate ballot papers are less important than House of Representatives ballot papers: this electorally dangerous attitude became more pronounced after the fresh scrutiny.⁷⁸

Committee comment

5.148 Acknowledging that both the House of Representatives and Senate elections are of equal weight, import and value in the democratic process in Australia, the Committee considers that there is value in considering a potential delay to counting of Senate ballot papers on election night in order to ease pressure on the AEC and its workforce. Effectively halving the amount of ballot papers required to be counted on the night after a ten hour voting period would have a significant effect on the pressures faced.

5.149 The Committee in no way seeks to suggest that Senate ballot papers, or the outcome of half-Senate elections, are of lesser import than House of Representatives ballot papers and elections. Rather, a delay, and the associated easing of pressure on the AEC, could potentially lead to a better outcome on election night for both the workforce and, in relation to

76 Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 13.

77 Doug Orr, NSW State Manager, AEC, *Transcript of Evidence*, 12 November 2014, Canberra, pp. 18-19.

78 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 17.

accuracy, the interested parties/candidates. A delay could also allow for a renewed focus on the initial count of Senate ballot papers on the Sunday or Monday after election day. Additionally, fresh and further scrutiny could be potentially delayed until the week after election day in order to allow for the finalisation of the House of Representatives scrutiny.

- 5.150 The initial count of first preferences and above-the-line votes on a day following election day would still deliver the equivalent data to media to fulfil predictive modelling, only not on election night.
- 5.151 One exception to delaying for a week would be the computerised scrutiny of below-the-line Senate ballot papers, which should logically continue to be commenced as soon as possible in order to allow for accurate and timely entry of results.
- 5.152 The Committee encourages the AEC to investigate the potential policy, procedural and timetable changes required to delay the Senate count in order to achieve the outcomes outlined above. Related reconciliation, ballot paper security and transport issues will also require AEC consideration.
- 5.153 Clearly, there will be associated impacts on media coverage of Senate elections; but, in line with the sentiments of the Keelty Report, the Committee is of the view that media and community expectation may have to change, as increased demand for instant information can only be satisfied to a finite degree.

AEC premises and facilities

- 5.154 During site inspections undertaken and observations made by the Committee during the 2014 WA Senate election and throughout the conduct of this inquiry, the varying nature of premises and facilities that the AEC has to use for elections came into clear focus.
- 5.155 The permanent premises of the AEC differ in themselves from small rural Divisional offices to large metropolitan co-located offices. When temporary polling places, warehouses for use as scrutiny centres, and storage facilities to store ballot papers and other material are added to the mix, the range and quality of AEC premises and facilities is wide and varied.

Premises for scrutiny

- 5.156 The large scrutiny centre at Belmont that the Committee visited during the WA Senate election count had been segregated into secure zones, waste management zones and scrutiny zones. While this segregation was as a result of the response to the Keelty Report, there were elements to the site that concerned the Committee:
- areas were cordoned off with barriers, but had movable whiteboards wheeled across the entrances that could have been moved away by anyone, rendering the ‘security’ ineffective;
 - the premises had had a time-lapse camera installed for election night to record the movements and activity for awareness and training purposes; however, there were no closed-circuit television cameras to provide a greater level of security; and
 - polling officials were working around collapsible tables, with little or no signage to indicate which Division was being counted or what part of the scrutiny was being conducted.
- 5.157 At another location, the Central Senate Scrutiny site in Perth (located in a modern office facility), the secure areas for the storage of ballot papers were constructed from temporary materials with a fabricated locking door attached.
- 5.158 These facilities are procured by the AEC on a temporary basis, for the conduct of elections. More permanent facilities are used for the longer-term storage of ballot papers and other permanent election materials.

Premises for storage

- 5.159 The AEC has procured permanent premises in the past for storage of ballot papers and materials that do not appear to easily lend themselves to accommodating scrutiny processes or ongoing other election activity. This leads to the need to obtain suitable premises at short notice once an election is called which can be difficult and result in premises being used that require significant modification to meet AEC requirements, more so now that storage and security is an ongoing stronger focus.
- 5.160 The Committee notes that, at its March 2015 hearing with the AEC, the AEC confirmed that it will no longer be undertaking the longer-term storage of ballot papers into the future and will be outsourcing storage to appropriate industry experts in the future.⁷⁹

⁷⁹ Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 3.

Committee comment

- 5.161 In the Committee's view, a balance must be struck between the need for suitable premises and the longer-term management of AEC facilities.
- 5.162 Chapter 2 of this report details the Committee's considerations regarding the management of ballot papers in relation to the events of the WA Senate election and subsequent audit activity.
- 5.163 As an extension of these considerations, the Committee believes that the AEC should investigate the targeted early procurement of appropriate premises in each state and territory to serve as a central scrutiny centre for Senate counting (both manual and electronic). Each location would require dedicated storage, security and scrutiny facilities to enable standardised processes to take place during an election.
- 5.164 The Committee acknowledges that the AEC has many logistical considerations related to premises to be used during an election. However, the early consideration and procurement of central scrutiny premises (at some additional cost) will outweigh any costs of inappropriate security or errors occurring out of a lack of suitable infrastructure.

Recommendation 20

The Committee recommends that the Australian Electoral Commission investigate the early procurement of appropriate premises in each state and territory for central ballot paper scrutiny and election activity with a high level of security and appropriate facilities and infrastructure.

- 5.165 The Committee further notes that the AEC has outlined that the majority of its longer-term storage issues related to ballot papers are due to the current practice of retaining Senate ballot papers for the life of the relevant Senate term.
- 5.166 At its March 2015 hearing the Committee discussed the issue of the retention of these Senate ballot papers with the AEC.⁸⁰ The retention of these ballot papers is not a legislative requirement, but is rather based on previous experience of Court requirements to analyse ballot papers. As this occurred in the past before the computerised count of Senate votes, the Committee was interested in whether the continued retention of these ballot papers beyond the last possible appeal date – at significant cost – is warranted.

80 See *Transcript of Evidence*, 4 March 2015, Canberra, pp. 8-10.

- 5.167 The AEC undertook to investigate further and correspond with the Committee on this issue in the future. The Committee encourages the AEC to report further on this issue at its next public hearing.