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The Parliament of the Commonwealth of Australia

# The 2013 Federal Election

**Report on the conduct of the 2013 election and matters related thereto**

Joint Standing Committee on Electoral Matters

April 2015  
Canberra

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## Foreword

The 2013 federal election will long be remembered for the loss of 1 370 Senate votes in Western Australia.

It was the greatest failure in the history of the Australian Electoral Commission, leading to the resignation of both the then Electoral Commissioner, Mr Ed Killesteyn PSM, and the state manager for Western Australia.

It was caused by multiple failures at multiple levels within the Australian Electoral Commission (AEC) at both a state level in Western Australia as well as nationally.

The consequences included the necessity for a re-run of the Senate election in Western Australia at a cost of over \$21 million and unprecedented damage to the reputation of, and confidence in, the AEC.

This Report outlines the failings that contributed to the loss of votes.

It assesses in detail the reforms that have already been, or are in the process of being implemented within the AEC to rectify the failings; and, critically, it makes a number of unanimous recommendations for further reforms aimed at delivering a more competent, accountable AEC in which Australians can have a high degree of confidence.

That 1 370 votes could be lost is concerning enough; that the possibilities of how and where they were lost are so numerous highlights the multiplicity of logistical, procedural, cultural and competency failings that were a disastrous feature of the AEC in 2013.

The AEC stipulates that votes cannot be transported in an open truck – yet some were during the transport to the WA Senate recount centre. Further, at the centre some votes were stored next to rubbish (shown in an image in this report), and on occasion the centre was not secure. The possibility that votes (literally) fell off the back of a truck, or were disposed of with rubbish, or removed from the recount centre simply cannot be ruled out.

As former AFP Commissioner Mick Keelty, who conducted the investigation into the lost votes, told the Committee, 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.

The Committee has closely monitored and analysed the actions of the AEC in response to the Keelty report. This, together with an important body of audit work undertaken by the Australian National Audit Office, and a range of issues raised in submissions, at public hearings, site visits and private briefings, has been the Committee's focus since it commenced its inquiry in December 2013.

The Committee acknowledges the work already undertaken by the AEC in respect of its reform agenda.

Nevertheless, we have identified a number of areas where we believe further changes are necessary, including the accountability of state manager positions, the development of full key performance indicators for senior service delivery staff, and the commencement of a corporate culture, leadership and performance measurement reform programme by the AEC.

The recommendations for these important additional reforms are unanimous.

If these recommendations, together with the other critical reforms that comprise new Electoral Commissioner Mr Tom Rogers' plan are fully implemented, and the AEC as an organisation comprehends and supports, rather than resists, the necessary changes, there is a high probability that in the years ahead the disastrous events of 2013 will be seen as a turning point.

This must be the AEC's positive ambition – to embrace reform, and to undertake it in order to create the best electoral administration possible and regain the confidence of the Australian people. If this is achieved, in the future the 2013 Federal election will be seen as the catalyst that shattered carelessness and complacency and put professionalism and accountability front and centre within the AEC.

Mr Rogers has never contested the points made by Mr Keelty during what has been a period of intense scrutiny and criticism.

As Deputy Electoral Commissioner, it was Mr Rogers who was tasked with travelling to Western Australia following notification that ballots were missing. It was Mr Rogers who took the photographs in the Keelty Report graphically showing the incompetence in the recount centre.

As Acting Electoral Commissioner, following Mr Killesteyn's resignation, and as Electoral Commissioner since his appointment, Mr Rogers has consistently and

candidly acknowledged the failures (and the reasons for them) in his numerous appearances before the Committee.

He has commenced a major renovation of practices and procedures within the AEC. These include implementing all of the Keelty Recommendations, as well as a number of other reforms.

Many, but not all, of these have been tested at the Griffith by-election and the West Australian Senate re-run election.

Mr Rogers has also publicly acknowledged that the AEC has a major cultural deficiency that must change.

The Committee has found Mr Rogers to be open, committed to major reform and determined to lead the required transformation within the AEC.

All of this is to Mr Rogers' credit.

The Government Majority strongly believes that further measures are necessary to ensure the integrity of and public confidence in our electoral system.

Australian voters deserve to know that the electoral roll is as accurate as it can be, and that those entitled to vote, only vote once.

At present, there is, in the view of Government Members, an unacceptable vulnerability in the system of automatic electoral roll updates conducted by the AEC. There is also an unacceptable vulnerability in the electoral system that enables some voters to vote multiple times within an electoral division.

At present, the AEC corresponds with individuals at the point when it is going to enrol eligible voters not on the roll, or update their enrolment details if not current. Based on data it has obtained about the individual's eligibility and residential address, its correspondence advises that it has enrolled the voter at a particular address, and requests the new enrollee to advise if the AEC is in error.

That is why the Majority recommends that the automatic enrolment provisions be amended to require confirmation by the individual that the information is accurate before they can be added to the roll, or their details updated.

The Majority also recommends that voter identification requirements be introduced for the next election to help reduce multiple voting.

At present our system of voting is essentially a trust-based system.

When we attend a polling place, before we are provided with ballot papers, we are asked our full name and address, and to confirm that we have not voted before in the election.

If a voter is prepared to be dishonest, there is nothing to stop them voting at other polling locations within an electoral division on the day, either in their own name, or in another elector's name.

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.

Over the course of 2014, the Committee also released two interim reports on prominent and important issues in relation to the conduct of the 2013 federal election: Senate voting practices and electronic voting.

The first report, released in May 2014, focused on the important issues of Senate voting systems and made six strong recommendations aimed at reforming the manipulation and distortion of the Senate voting system. If implemented, these recommendations will hand control of Senate preferences back to the people, and ensure that federal parliament was reflective of the Australian public's vote.

The second report, released in November 2014, examined electronic voting options and electronic support for voting. The Committee analysed the benefits and risks associated with electronic electoral processes both in Australia and internationally. We concluded that to introduce large-scale electronic voting in the near future would dangerously compromise federal electoral integrity. Subsequent events at the 2015 New South Wales state election with the iVote system suggest that the Committee's cautious approach was warranted. At the same time, recognising the benefits of technological advancement, the Committee made targeted recommendations to safely make better use of technology in the electoral process.

The Committee has been careful to consult as widely as possible during its inquiry. We received 216 submissions and held 21 public hearings in Canberra, Sydney, Melbourne, Hobart, Adelaide, Brisbane, and Mount Isa, as well as site inspections in most states. The Committee met for many days to consider the issues raised during the inquiry.

I want to place on record my thanks to those who have been permanent members of the Committee over the course of the inquiry – Senator Matthew Canavan, Senator the Hon John Faulkner, Ian Goodenough MP, the Hon Gary Gray MP, Alex Hawke MP, Senator Chris Ketter, Senator Helen Kroger, Senator James McGrath, Tony Pasin MP, Senator Lee Rhiannon, Senator Anne Ruston, and Senator Mehmet Tillem.

I particularly want to thank the Deputy Chair, the Hon Alan Griffin MP, for his cooperation and hard work on a range of difficult and complex issues.

I would also like to thank the staff of the Secretariat for their valuable work over the course of the Committee's inquiry. Committee Secretaries Nicholas Horne and Glenn Worthington, together with Siobhán Leyne, Rebecca Gordon, Jeff Norris, James Bunce, Sacha Edema, Katrina Gillogly, Morana Kavgic and Jessica Ristevska

have all provided a high level of support to the Committee, and their work is greatly appreciated.

Hon Tony Smith MP  
Chair



## Membership of the Committee

Chair Hon Tony Smith MP

Deputy Chair Hon Alan Griffin MP

Members Ian Goodenough MP

Hon Gary Gray AO MP

Alex Hawke MP (to 14 July 2014)

Tony Pasin MP (from 14 July 2014)

Senator Matthew Canavan  
(from 1 July 2014)

Senator the Hon John Faulkner  
(to 6 February 2015)

Senator Chris Ketter (from 1 July 2014)

Senator Helen Kroger (to 30 June 2014)

Senator James McGrath  
(from 1 July 2014)

Senator Lee Rhiannon

Senator Anne Ruston (to 30 June 2014)

Senator Mehmet Tillem (to 30 June 2014)

### Participating members for the purposes of the inquiry into the 2013 federal election

Senator Chris Back

Senator Cory Bernardi

Senator Catryna Bilyk

Senator Carol Brown

Senator Joe Bullock

Senator David Bushby

Senator the Hon Doug Cameron

Senator the Hon Kim Carr

Senator the Hon Jacinta Collins  
Senator the Hon Stephen Conroy  
Senator Sam Dastyari  
Senator Sean Edwards  
Senator David Fawcett  
Senator Alex Gallacher  
Senator Katy Gallagher  
Senator the Hon Bill Heffernan  
Senator David Leyonhjelm  
Senator Sue Lines  
Senator the Hon Joe Ludwig  
Senator the Hon Kate Lundy  
Senator the Hon Ian Macdonald  
Senator John Madigan  
Senator Gavin Marshall  
Senator Anne McEwen  
Senator Bridget McKenzie  
Senator the Hon Jan McLucas  
Senator Claire Moore  
Senator Ricky Muir  
Senator Deborah O'Neill  
Senator Barry O'Sullivan  
Senator Nova Peris  
Senator Helen Polley  
Senator Linda Reynolds  
Senator Anne Ruston  
Senator Zed Seselja  
Senator Lisa Singh  
Senator Dean Smith  
Senator Glenn Sterle  
Senator Anne Urquhart  
Senator John Williams  
Senator the Hon Penny Wong  
Senator Nick Xenophon

## Committee Secretariat

Secretary	Dr Nicholas Horne (from 7 August 2014) Dr Glenn Worthington (to 3 July 2014)
Inquiry Secretary	Rebecca Gordon (from 2 March 2015) Siobhán Leyne (to 6 February 2015)
Research Officer	James Bunce
Technical advisor	Jeff Norris
Graduate	Sacha Edema
Administrative Officers	Katrina Gillogly Jessica Ristevska Morana Kavagic



## Terms of reference

On 5 December 2013, the Special Minister of State, Senator the Hon Michael Ronaldson, requested the Committee to conduct an inquiry with the following terms of reference:

That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2013 federal election and matters related thereto.



## List of abbreviations

ZIC	Second-in-Charge
AANA	Australian Association of National Advertisers
ACMA	Australian Communications and Media Authority
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFP	Australian Federal Police
ANAO	Australian National Audit Office
APS	Australian Public Service
APSC	Australian Public Service Commission
BSA	<i>Broadcasting Services Act 1992</i>
CDPP	Commonwealth Director of Public Prosecutions
CPI	Consumer Price Index
DOM	Divisional Office Manager
DRO	Divisional Returning Officer
ECANZ	Electoral Council of Australia and New Zealand
ECL	Electronic Certified List
EPM	Election Procedures Manual

FDEU	Federal Direct Enrolment and Update
FEC	Federal Electoral Commission
ICAC	Independent Commission Against Corruption
IEPP	Indigenous Electoral Participation Program
JSCEM	Joint Standing Committee on Electoral Matters
KPI	Key Performance Indicator
LWU	Larger Work Unit
OIC	Officer-in-Charge
PAC	Political Action Committee
PPLO	Polling Place Liaison Officer
PPVC	Pre-Poll Voting Centre
RAAF	Royal Australian Air Force
SES	Senior Executive Service
TCP	Two Candidate Preferred
VIO	Voter Information Officer



# List of recommendations

## 2 Management of ballot papers

### Recommendation 1 (paragraph 2.95)

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.

### Recommendation 2 (paragraph 2.118)

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.

## 3 Workforce management, accountability and corporate structure

### Recommendation 3 (paragraph 3.54)

The Committee recommends that the Australian Government consider and assess the formal separation of the roles of state manager and Australian Electoral Officer involving:

- the appointment of Australian Electoral Officers independent of the Australian Electoral Commission; and
- the assigning of any non-election duties of Australian Electoral Officers to the Electoral Commissioner or other appropriate officer.

### Recommendation 4 (paragraph 3.64)

The Committee recommends that the Australian Electoral Commission formalise all state manager positions to report on all election and roll management programme deliverables directly to the First Assistant

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Commissioners responsible for election and roll management programme business in order to ensure consistency and accountability.

The Committee also recommends that all existing state managers be assessed for continued suitability in their positions, with new contracts to be drawn up with clear performance expectations and disciplinary and termination triggers stipulated as terms of employment.

**Recommendation 5 (paragraph 3.140)**

The Committee recommends that the Australian Electoral Commission develop a set of formal qualifications/certification for polling officials.

**Recommendation 6 (paragraph 3.142)**

The Committee recommends that the Australian Electoral Commission prioritise development of appropriate changes to existing systems, or new systems, to allow for the compulsory recording and capture of data related to Division-level face-to-face training for polling officials.

**Recommendation 7 (paragraph 3.144)**

The Committee recommends that the Australian Electoral Commission ensure that Officers-in-Charge of polling places be given a list of training completion for all staff reporting to them.

**Recommendation 8 (paragraph 3.160)**

The Committee recommends that the Australian Electoral Commission develop a full set of relevant key performance indicators for all senior service delivery staff, to be measured and reported to the Parliament as part of federal election inquiry reporting.

**Recommendation 9 (paragraph 3.194)**

The Committee recommends that the Australian Electoral Commission commence a corporate culture, leadership and performance measurement reform programme.

This programme should be formulated in consultation with the Australian Public Service Commission and a suitably qualified organisational culture and management consultant, gained through an open market tender.

This programme should then be overseen by a committee comprising:

- the Electoral Commissioner;
- the Auditor-General;
- the Australian Public Service Commissioner; and
- an appropriately qualified private industry or academic subject matter expert on organisational culture and performance management.

## 4 Election preparation and the pre-poll period

### Recommendation 10 (paragraph 4.28)

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to require a confirmation to be sought and received from a person prior to their enrolment being added or updated on the electoral roll due to any Federal Direct Enrolment or Update activity.

### Recommendation 11 (paragraph 4.72)

The Committee recommends that at the next meeting of the Electoral Council of Australia and New Zealand, the Electoral Commissioner continue to engage with the state electoral commissions regarding normalisation and harmonisation of electoral roll use and purpose.

### Recommendation 12 (paragraph 4.120)

The Committee recommends that section 200BA of the *Commonwealth Electoral Act 1918* and section 73AA of the *Referendum (Machinery Provisions) Act 1984* be amended to provide that notification of pre-poll locations, or potential locations, be made directly to candidates if publication is to be later than two days before the first pre-poll voting day.

### Recommendation 13 (paragraph 4.145)

The Committee recommends that the Australian Government examine the future viability of the broadcast media blackout.

## 5 Election day and the count

### Recommendation 14 (paragraph 5.12)

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.

### Recommendation 15 (paragraph 5.26)

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.

**Recommendation 16 (paragraph 5.46)**

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.

**Recommendation 17 (paragraph 5.84)**

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.

**Recommendation 18 (paragraph 5.124)**

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.

**Recommendation 19 (paragraph 5.136)**

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.

#### Recommendation 20 (paragraph 5.164)

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.

## 6 Electoral cycle issues

#### Recommendation 21 (paragraph 6.66)

The Committee recommends that section 290 of the *Commonwealth Electoral Act 1918* be amended to allow for the deadline for the nomination of candidate agents to be one week after the close of candidate nominations.

#### Recommendation 22 (paragraph 6.86)

The Committee recommends that the Australian Electoral Commission hold regular by-invitation forums, at appropriate points in each electoral cycle, with the federal directors and registered officers of political parties in order to achieve improved engagement on relevant legislative, policy and procedural matters.

#### Recommendation 23 (paragraph 6.116)

The Committee recommends that the Australian Electoral Commission consider undertaking, in consultation with the Joint Standing Committee on Electoral Matters, a wholesale review of the internal consistency and operational adequacy of the *Commonwealth Electoral Act 1918* in order to ensure that this Act is a cohesive, effective and contemporary piece of legislation that facilitates best practice election delivery.

Such a review would also need to proceed in tandem with progressing the consolidation and harmonisation of the *Referendum (Machinery Provisions) Act 1984* with the *Commonwealth Electoral Act 1918* so as to create one consolidated Act responsible for federal elections and referenda.

**Recommendation 24 (paragraph 6.118)**

The Committee recommends that adequate resourcing be allocated and prioritised to fund and support the implementation of the recommendations contained in this report.



## Introduction

- 1.1 The Electoral Matters Committee undertakes an inquiry into the previous federal election in every Parliament in order to review the conduct of the election and consider any improvements that may be made to this fundamentally important event in which all eligible Australian adult citizens participate.
- 1.2 The 2013 federal election was held on Saturday, 7 September 2013 at a total cost of just under \$191 million. It saw 1 188 candidates nominate for election to the House of Representatives, 529 candidates nominate for election to the Senate, and over 13 million Australians cast their vote.<sup>1</sup>
- 1.3 The most concerning aspect of the conduct of the 2013 federal election was the loss of 1 370 Senate ballot papers in Western Australia (WA). This resulted in the WA Senate election being declared void by the Court of Disputed Returns and this election being re-run at a cost of over \$21.7 million.
- 1.4 These events shook public confidence in an agency that had hitherto enjoyed the faith of the community and shed light on unacceptable management practices within the Australian Electoral Commission (AEC).
- 1.5 The events that occurred in WA are a matter of great concern – as is the fact that such events could have occurred at all. The fact that ballots were lost from two Divisions in Perth during a recount indicated that there are systemic failures in the management of the transport and storage of ballot papers.
- 1.6 Indeed, investigations into the failure, undertaken by Mr Mick Keelty AO and the Australian National Audit Office (ANAO), revealed a series of systemic failures that left the public and the Parliament with serious doubts about the AEC's competence.

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1 Australian Electoral Commission (AEC), *Submission 20.3*, pp. 133, 155, 5.

- 1.7 As part of the conduct of this inquiry, the Committee considered in detail all of the issues raised by Mr Keelty and the ANAO with witnesses, including the AEC national office and divisional offices across the country.
- 1.8 Despite a high degree of institutional knowledge and experience throughout the AEC, there are demonstrable areas of weakness in the organisation. Not only must the AEC improve its management of ballot papers and training of temporary staff, it must also introduce performance measurements and accountability standards at all levels from staff through to delivered activities.
- 1.9 The AEC must respond to the events of the 2013 federal election as an opportunity to embrace organisational renewal. This report makes concrete recommendations to achieve that end.
- 1.10 A range of other issues related to the conduct of the 2013 federal election, or issues relevant to associated electoral activity, were raised during the course of the inquiry and, where appropriate, these are addressed in this report. The Committee has chosen to adopt a targeted approach in this report, only examining issues that, in the Committee's view, demanded attention.
- 1.11 The Committee has conducted a comprehensive, open and transparent inquiry process and all evidence received, on all issues raised with the Committee, is available on its website with the exception of confidential submissions. The submissions from the AEC contain a range of statistics covering most aspects of the election.<sup>2</sup>

## Interim reports

- 1.12 In addition to the events that occurred in WA, the other issue of widespread community concern was the election of Senators in some states on a very low percentage of primary votes. The voting system that was responsible for this result was addressed early in the inquiry in an interim report on Senate voting issues.
- 1.13 This interim report was released on 9 May 2014. The interim report recommended that:
- the Senate voting system be changed to allow for optional preferential voting above the line and partial optional preferential voting below the line;
  - group voting tickets be abolished;
  - the AEC be adequately resourced to undertake a voter education campaign on these changes;

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2 The Committee's website is <[aph.gov.au/em](http://aph.gov.au/em)>.

- stronger requirements for party registration be put in place;
  - all new and existing political parties be subject to the new registration requirements; and
  - a mechanism to require state residency for Senate candidates be investigated.
- 1.14 In the wake of ballot paper security issues during the 2013 election, a number of inquiry participants and media commentators called for electronic voting to be introduced in a widespread manner federally.
- 1.15 The Committee sought to address these community calls for electronic voting through its second interim report on electronic voting options, released on 20 November 2014. The second interim report recommended that:
- electronic certified lists be progressively implemented with a view to eventual replacement of paper lists at all polling places;
  - electronic counting of ballots be implemented; and
  - the current telephone-assisted voting for blind and low-vision voters be extended to all people with a disability.
- 1.16 The Committee did not recommend the introduction of electronic voting at this point in time, as the threats to ballot secrecy, security and transparency of electoral processes far outweigh any benefit of a hastily developed and unsecure electronic voting process.
- 1.17 The recommendations from the Committee's two interim reports are set out at Appendix D.

## Conduct of the inquiry

- 1.18 On 5 December 2013, the Special Minister of State, Senator the Hon Michael Ronaldson, referred the inquiry into the 2013 federal election and matters related thereto. The Minister also asked the Committee to specifically address:
- Senate voting reform;
  - voter ID;
  - integrity of the electoral roll and public access to the roll;
  - the circumstances surrounding the lost WA Senate votes; and the
  - feasibility of, and options for electronic voting.<sup>3</sup>

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3 Correspondence from the Special Minister of State, received 2 December 2013.

- 1.19 The Committee received 216 submissions and 24 supplementary submissions. A list of submissions is at Appendix A and all public submissions are available on the Committee's website.
- 1.20 The Committee also received 14 exhibits which are listed at Appendix A.
- 1.21 The Committee held 21 public hearings across the country and conducted site inspections in most states, meeting with local election officials or relevant third parties to gain a full appreciation of the scope of issues that arise while conducting a federal election in a country as geographically diverse as Australia. Witnesses at public hearings and site inspections are listed at Appendix B.

### Structure of the report

- 1.22 The Committee has devoted significant attention in this final report to the events that occurred during the 2013 federal election, and the path forward for the AEC. Apart from this, as noted above the Committee has adopted a targeted approach, reporting on matters of significance that warranted consideration. For other information and statistics regarding the 2013 election, the Committee refers readers to the comprehensive submissions made to the Committee's inquiry by the AEC.<sup>4</sup>
- 1.23 Chapter 2 discusses ballot paper handling and storage in light of the events that occurred in WA in 2013 and the responses put in place for the 2014 Griffith by-election and WA Senate re-run election.
- 1.24 Election staffing capability is considered at length in Chapter 3. This Chapter considers the AEC's organisational structure and workforce planning and the role this played in the events that occurred in WA during the 2013 election. The current AEC organisational chart is included at Appendix C.
- 1.25 Chapters 4 and 5 consider other matters that arose during the 2013 federal election. Chapter 4 discusses the election preparation and pre-poll period, and Chapter 5 considers issues that arose on election day and during the vote count.
- 1.26 Chapter 6 considers broader electoral cycle issues, including election funding and disclosure, redistributions and other broader electoral matters.

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4 The AEC submission is No. 20 and includes 10 supplementary submissions, available at: [aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Submissions](http://aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Submissions).

## 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.<sup>1</sup> On the same day, due to the closeness of the result, the AEC deferred the formal declaration of the poll following a formal request<sup>2</sup> for a recount by the Australian Sports Party candidate

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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](http://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).<sup>3</sup> 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'.<sup>4</sup>
- 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.<sup>5</sup>
- 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.<sup>6</sup>
- 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.<sup>7</sup>
- 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](http://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](http://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](http://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](http://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](http://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).<sup>8</sup>
- 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.<sup>9</sup>
- 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.<sup>10</sup>
- 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,<sup>11</sup> 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.<sup>12</sup>
- 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:

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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](http://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](http://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](http://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](http://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,<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

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

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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.<sup>16</sup>

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.<sup>17</sup>

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.’<sup>18</sup> 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.

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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.<sup>19</sup>

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

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<sup>19</sup> AEC media releases, 'Mr Mick Keelty AO APM commences inquiry', accessed 25 March 2014, <[aec.gov.au/media/media-releases/2013/e11-06.htm](http://aec.gov.au/media/media-releases/2013/e11-06.htm)> and 'Keelty report released', <[aec.gov.au/media/media-releases/2013/12-06a.htm](http://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.<sup>20</sup>

### 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.<sup>21</sup>
- 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,<sup>22</sup> no records of rubbish or recycling disposal,<sup>23</sup> or where a roller door was left open to allow for fresh air.<sup>24</sup>
- 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.<sup>25</sup>
- 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

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20 AEC media release, 'Keelty report released', accessed 9 December 2014, <[aec.gov.au/media/media-releases/2013/12-06a.htm](http://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.'<sup>26</sup>

### 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.<sup>27</sup>

- 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

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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.<sup>28</sup>

- 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.<sup>29</sup> 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.<sup>30</sup>
- 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

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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.<sup>31</sup>

- 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:

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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.<sup>32</sup>
- 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.'<sup>33</sup>
- 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.<sup>34</sup>
- 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.<sup>35</sup>
- 2.52 Consequently, the Auditor-General resolved to conduct three audits to:

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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 43<sup>rd</sup> 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.<sup>36</sup>

## 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.<sup>37</sup>
- 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.

<sup>36</sup> Auditor-General, Correspondence to the Committee, dated 26 February 2014.

<sup>37</sup> 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).<sup>38</sup> 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.<sup>39</sup>
- 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).<sup>40</sup>

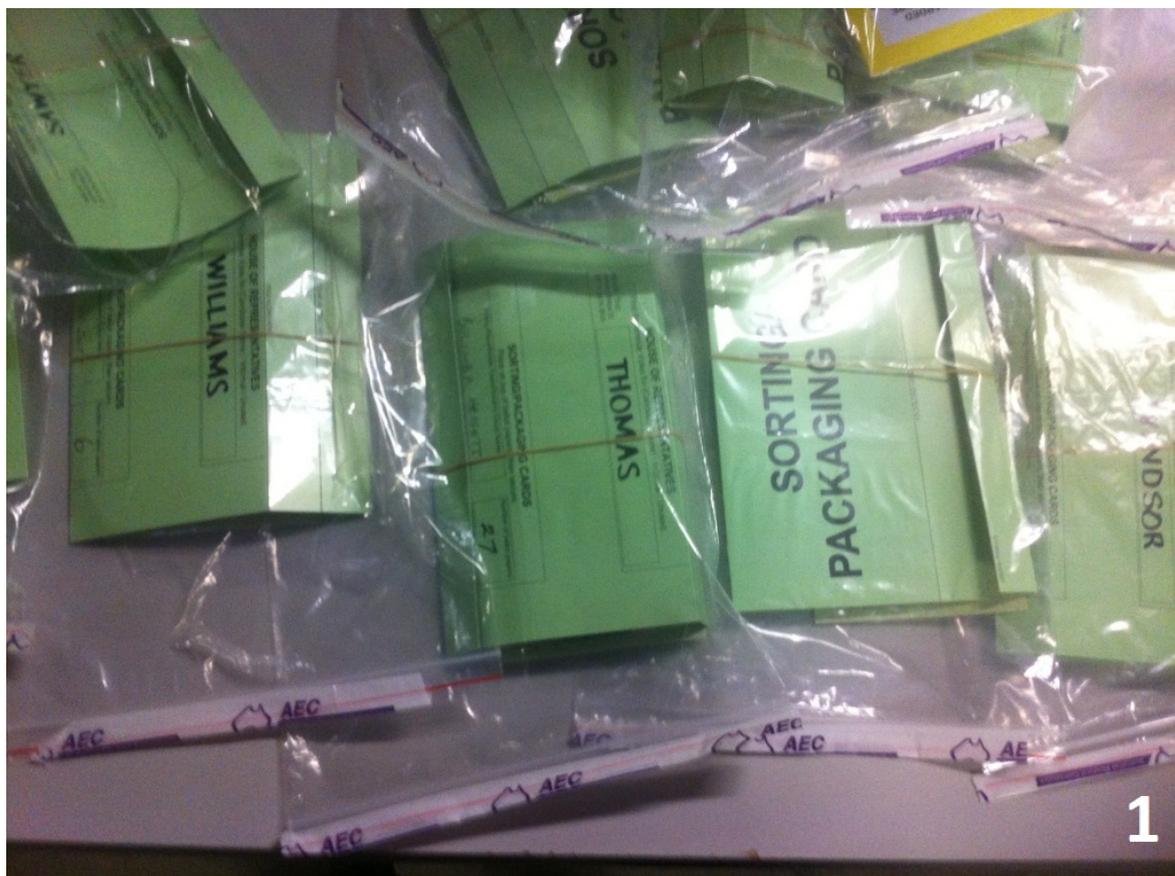
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38 ANAO, *Second follow-up audit into the Australian Electoral Commission's preparation for and conduct of federal elections*, Audit Report No. 4 2014–15, November 2014.

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](http://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](http://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.<sup>41</sup>

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.

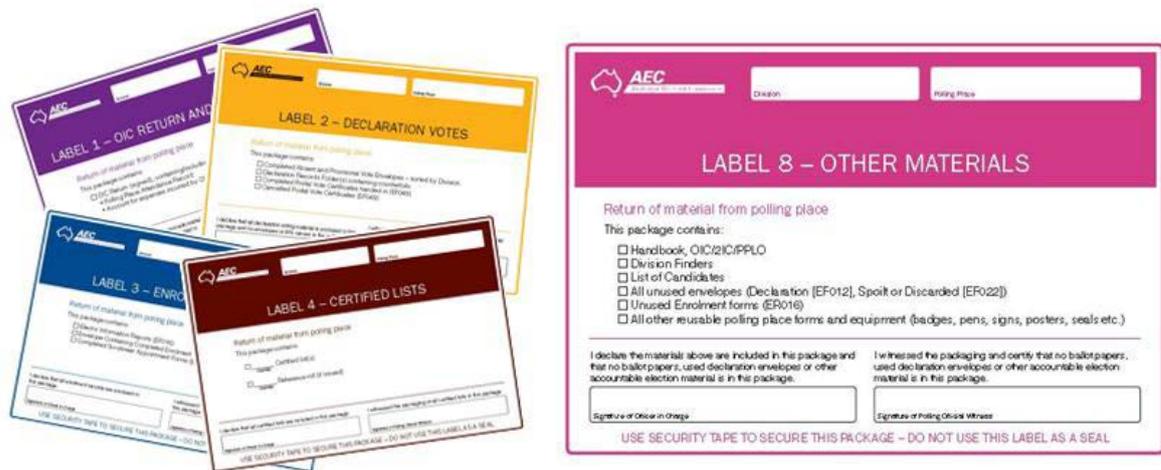
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41 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 29.

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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>
- 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.<sup>45</sup>
- 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

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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](http://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.<sup>46</sup>

- 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.<sup>47</sup>

- 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.<sup>48</sup>
- 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.<sup>49</sup>
- 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup>

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

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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.<sup>54</sup>

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.<sup>55</sup>

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

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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.<sup>56</sup>

- 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.<sup>57</sup>

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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.<sup>58</sup>
- 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.

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### **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.

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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.<sup>59</sup>
- 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

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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;<sup>60</sup>
- 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.<sup>61</sup>

### 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.

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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.<sup>62</sup>

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,

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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.**

## Workforce management, accountability and corporate structure

- 3.1 Election delivery relies on many thousands of people – over 70 000 at the 2013 election. A key element in being able to deliver a lawful and successful election is the capability, knowledge, training and successful recruitment and retention of staff, both permanent and temporary.
- 3.2 The Australian Electoral Commission (AEC) has acknowledged that in many cases the things that went wrong during the 2013 election were caused directly or indirectly by variations or anomalies in staff capability, understanding or management.
- 3.3 While it needs to be recognised that human error will occur with an undertaking as large and complex as a federal election, systems should be in place to rapidly identify and rectify errors. It also needs to be made clear to staff that full accountability is required when the sanctity of Australia’s democratic process is at stake.
- 3.4 The 2013 election showed that these systems were not in place in some AEC operations, leading to major failures. The 2013 election also demonstrated that where systems were in place, on some occasions they were either not used, not enforced or were deviated from, as is evidenced by the ballot paper handling errors that occurred in a number of states.
- 3.5 The AEC is now in the middle of a necessary and crucial reform agenda. Arguably, without the failings of the 2013 election, the AEC would not be facing this necessary reform.
- 3.6 Prior to the 2013 election, the AEC workforce stood at under 1 000 permanent staff. For the 2013 election, the workforce increased by a reported total of 73 507 temporary staff.<sup>1</sup> Such a rapid increase is always going to put a strain on the organisation and its capacity to manage such a

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1 Australian Electoral Commission (AEC), *Submission 20.3*, p. 118.

- large workforce. The AEC is fortunate, however, in that it has a very loyal, long-term workforce, both in its permanent staff and returning election day staff.
- 3.7 While this means that the AEC has a strong reserve of experience, it can also lead to a situation where some staff are reluctant to observe changes in national policies because they feel they 'know how the job is done'. This attitude can also affect the AEC's overall corporate identity and the quality of its work.
- 3.8 It is essential that, to make the transition to this large workforce as seamless as possible, nationally consistent policies and procedures, in line with the *Commonwealth Electoral Act 1918* (the Electoral Act), are not only in place but are adhered to.
- 3.9 These policies and procedures need to be based on the requirements of the law, and deliver consistent outcomes, with little deviation unless where absolutely necessary.
- 3.10 In order to deliver these consistent outcomes, some elements of individual state-level election planning and control need to be revised, with more national oversight and approval to ensure consistency and to ensure that any local deviation is strictly necessary. This will be best achieved by analysing and correcting structural and corporate culture and identity issues within the AEC.
- 3.11 A fundamental area for reform in the organisation is the role and independence of the state managers and the confusion this generates within the national electoral authority.
- 3.12 This Chapter focusses on the elements of change needed within AEC staffing and structure, accountability and training – both for election delivery and for the longer-term viability of the AEC as a capable, independent and stand-alone agency – as well as on the need for management of performance, culture and corporate identity.

## **Organisational structure and staffing**

- 3.13 The AEC organisational structure is a relatively flat and top-heavy organisation. It has been observed in the past that the AEC, and its traditional divisional office structure, lends itself to a somewhat stagnant workforce, with little career progression and difficulty in establishing clear lines of accountability. As far back as 1974, the 'Scott Report' review of the

AEC's structure identified issues with the structure and nature of the AEC.<sup>2</sup>

- 3.14 Indeed, many of the challenges identified in the Scott Report as restricting the development and/or effectiveness of the Australian Electoral Office (the AEC's predecessor) are still a feature of the operational landscape for the AEC:
- resourcing constraints and the pressures of election delivery in a compressed timeframe;
  - short and long-term planning needed to enable effective delivery of service and flexibility in responding to change in the ways elections are delivered;
  - adherence to standardised policies, procedures, training and aids for staff;
  - embracing technology for ongoing roll-maintenance activity (though the AEC has achieved this to some degree);
  - logistics around supply and delivery of election materials; and
  - civics education to foster an aware and engaged voting public.<sup>3</sup>
- 3.15 These issues are evident even today; and while some, such as short timeframes, will always be a feature of elections, the fact that others – such as adherence to national policies and logistics management – are still issues 40 years after the Scott Report was published is of serious concern, and contributory to the events of the 2013 federal election.

## Permanent staff

- 3.16 The AEC had 847 ongoing staff as at 30 June 2013 (reflective of approximate staff for the 2013 election).<sup>4</sup> Of these staff, 563 (or some 66 per cent) were not located in national office in the ACT, and so could be considered to be mostly front-line service delivery staff, either in state offices, larger work units (where multiple divisional offices are co-located), or individual divisional offices.
- 3.17 The makeup of total staff, according to their substantive Australian Public Service (APS) classification, indicates that the 'flat' structure identified historically still exists. Half of all national office staff are within the 'middle management' bracket (see Table 3.1).

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2 WD Scott & Co Pty Ltd, *Review of the Structure, Systems & Facilities, of the Australian Electoral Office*, 1974, p. 3-5.

3 WD Scott & Co Pty Ltd, *Review of the Structure, Systems & Facilities, of the Australian Electoral Office*, 1974, pp. 2-1 - 2-2.

4 AEC, *Annual Report 2012-13*, pp. 103-106.

**Table 3.1 Permanent middle-management staff of the Australian Electoral Commission**

<b>AEC Ongoing Staff</b>	<b>Executive Level 1</b>	<b>APS 6</b>	<b>Total Ongoing Staff (all levels)</b>	<b>Percentage of total (EL1 &amp; APS6)</b>
<i>National Office</i>	83	60	284	50.3%
State Offices and Divisional Offices	31	151	563	26.8%
<b>Total</b>	<b>114</b>	<b>211</b>	<b>847</b>	<b>N/A</b>

Source *Australian Electoral Commission, Annual Report 2012-13, pp. 103-106.*

- 3.18 The risks associated with having so many middle-management staff can play out in the overall capability of an agency. The Boston Consulting Group has noted that:
- Despite the pivotal and difficult role middle managers play, they often get lost in the shuffle and receive insufficient development, support, and attention from senior leadership.<sup>5</sup>
- 3.19 The majority of staff in divisional offices are employed at the APS 6 level or below and are responsible for the frontline processing of enrolment and roll management functions and preparing for, delivering and evaluating, elections within their Division and/or state.<sup>6</sup>
- 3.20 The AEC has traditionally had a long-serving, stable and dedicated workforce, with many regional officers and specialists within its national, state and divisional offices spending a majority of their careers with the organisation.
- 3.21 While this enables some staff to build extensive knowledge and experience in electoral processes within Australia, it also creates a situation where organisational capability and knowledge is invested in these individuals and can lead to their being relied upon for the delivery of elections or the development of tools, such as election IT systems.
- 3.22 Having specialised, long-serving staff can also mean that senior staff have often been with the agency for a long period of time and have become comfortable in their role. Such staff may not necessarily look for innovation or desirable change in work practices.
- 3.23 The potential for over-reliance on long-serving specialised staff is highlighted by the AEC's use of 'alumni' staff at election events. While the usage of retired employees to aid in delivery of elections does allow for the effective transfer of experience and skill, it also highlights a lack of

5 Boston Consulting Group, *High-Performance Organizations: The Secrets of Their Success*, September 2011, accessed 10 November 2014, <bcg.com/documents/file84953.pdf>, p. 6.

6 A more detailed breakdown of all AEC staff from the 2012-13 financial year can be found at pp. 103-09 of the Australian Electoral Commission, *Annual Report 2012-13*.

capability and capacity-building in existing staff or a lack of willingness to train existing staff in between elections to perform these tasks.<sup>7</sup>

- 3.24 Discussions with state managers as part of this inquiry, during both public hearings and site visits,<sup>8</sup> also provided evidence of a disparity in practices amongst the states and territories, with some state managers demonstrating very good initiatives, but others demonstrating a certain laxity in how they performed their core election-delivery role (including staff management) and the nature of their individual accountability for election outcomes.
- 3.25 This differentiation, both in capability and practice, at the most senior levels in the state offices of the AEC suggests that reform within those levels (and below) is overdue.
- 3.26 Staff capability, and the development of staff, are aspects of permanent AEC staff management that also concern the Committee, and these are discussed later in this chapter. However, of particular concern is the capability, management and accountability invested in senior state management and statutorily appointed roles and the resultant cultural issues identified by the Keelty Report.

### Australian Electoral Officers

- 3.27 Australian Electoral Officers (AEOs) are appointed under section 20 of the Electoral Act to undertake the following activities:
- membership and conduct of the Redistribution Committee and redistribution notices and objections – Part IV;
  - issuing of certificates of incorrect enrolment to the Electoral Commissioner – section 106;
  - delegated decisions on enrolment and objection – Part VIII and IX;
  - receiving Senate election writs – section 153;
  - nomination of candidates duties, such as receipt of deposits, declaration of nominations, receipt of group voting tickets and ballot draws – Part XIV;
  - investigation of prematurely opened ballot-boxes – section 238B;
  - duties relevant to Antarctic voting – Part XVII;
  - determining by lot where a split ballot paper decision between multiple group voting tickets must be allocated to – section 272;

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<sup>7</sup> AEC, *Submission 20.6*, p. 22.

<sup>8</sup> See Transcripts of Evidence of hearings from 12 March 2014, 15 April 2014, 16 April 2014, 8 May 2014, 11 June 2014 & 12 November 2014.

- scrutiny determinations for Senate elections, including casting the deciding vote if needed and receiving, parcelling and retaining ballot papers – section 273;<sup>9</sup>
  - the AEO has the ultimate responsibility for computerised scrutiny of Senate votes – section 273A;
  - other vote and declaration decisions – Part XVIII;
  - decide to grant a Senate recount – section 278;
  - final determination on contested ballot papers – section 279B;
  - return of Senate writs – section 283;
  - custody of ballot papers – section 393A; and
  - other minor approval, receipt, communication and declaration activities.
- 3.28 Currently, each AEC state manager is appointed as the AEO for their state.<sup>10</sup> This statutory appointment, coupled with the public service position of AEC state managers, constitutes an awkward conflation of roles.
- 3.29 AEO appointments are currently made by the Governor-General, typically for a period of five years, and this reflects an appropriate layer of separation for what should be an arms-length independent role within the electoral process. However, this also means that the Governor-General is required to terminate AEO appointments – further complicating the capacity of the Electoral Commissioner to hold accountable, or ultimately terminate, underperforming state managers.
- 3.30 As it stands, state managers are in one role public servants, responsible to the Electoral Commissioner, but are also appointed to a statutory role in a process that is theoretically external to the AEC's corporate structure and therefore not answerable to the Commissioner. This is a challenging conflict of roles for a single officer to hold and, in the Committee's view, arguably leads to an organisational culture which is detrimental to the delivery of elections.
- 3.31 This dual role structure could also be said to present issues with accountability within AEC business, especially where there is a failure of election delivery and questions arise over who is ultimately accountable – the state manager, the AEO, or the Electoral Commissioner.

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9 Subsection 273(17) of the Electoral Act prescribes that an AEO shall not vote at a Senate election, other than to potentially cast the deciding vote if the final vacancy is tied between two remaining candidates.

10 Including the Northern Territory. The New South Wales State Manager acts as the AEO for the Australian Capital Territory.

- 3.32 Unlike a state manager, the AEO should not be answerable to the Electoral Commissioner, especially given the clear intention of an AEO's appointment under the Act as an equivalent 'electoral officer'. The statutory nature of the AEO role is very important, as that person has ultimate decision making power on admissibility of votes, conducts random lot draws during Senate counts, and can ultimately cast the deciding vote in a Senate election (as outlined above).

### State managers

- 3.33 Each state and territory has an appointed state manager who manages the delivery of federal elections within their state. State managers are Senior Executive Service (SES) Level 1 or 2, who previously reported directly to the Electoral Commissioner, but who now, as of early 2015, report to the Deputy Electoral Commissioner and, as discussed above, also hold statutory positions as AEOs.
- 3.34 A copy of the current AEC organisational structure reflecting this has been included at Appendix C.
- 3.35 The state manager is a critical position within the AEC, responsible for frontline service delivery – the delivery of electoral activities in their respective jurisdictions. State managers are responsible for developing election delivery plans, managing state-level contracts and undertaking any other state-specific election or roll management activity. Essentially, they are a chief operating officer for election delivery in their state or territory.
- 3.36 The development of the AEC as an organisation, and the roles of state managers, has evolved in such a way that there is a high degree of independence and autonomy in state offices. This is evidenced by the organisation's reporting structure. The national programme managers at equivalent SES levels report either to a First Assistant Commissioner or the Deputy Electoral Commissioner, ensuring a consistent oversight and line of reporting for programme areas. The state managers, however, now report directly to the Deputy Electoral Commissioner, independent of the reporting structure through relevant First Assistant Commissioners. See Appendix C.
- 3.37 The fact that electoral Divisions are calculated according to and contained within existing state and territory populations and borders adds to this separation; but the geographically-focussed nature of AEC service delivery does not mean that there should be autonomous control of service delivery within those boundaries. Nor should state managers develop a satellite corporate identity beyond the main corporate structure.

- 3.38 The fact that the reporting line for state managers (as AEOs) sits outside the senior executives responsible for national policy and programme development increases the potential for unorthodox operations due to a lack of oversight, and can make it difficult for programme managers to implement nationally consistent procedures.
- 3.39 As evidenced by the 2013 federal election, the level of autonomy in state offices has led to a disparity in practices that places unnecessary risk on the process of election delivery. This is concerning, as there should be accountable oversight via the relevant national programme manager and First Assistant Commissioner through to the Electoral Commissioner.
- 3.40 Another agency similar to the AEC, in that it has service delivery obligations under tightly-defined legislative requirements, the Australian Customs and Border Protection Service, has a reporting structure that ensures that the senior executives with oversight responsibility for programme development are also responsible for programme delivery and state staff have a clear reporting line through these national managers.<sup>11</sup>
- 3.41 The divergence from programme direction that caused the events that occurred in WA during the 2013 election led the Keely Report to recommend:
- The AEC consider bringing to the attention of the Joint Standing Committee on Electoral Matters the impact of the statutory appointments of AEC State Managers on the ability of the AEC Commissioner to achieve national uniformity of approach and consistency of approach in the conduct of Federal Elections.<sup>12</sup>
- 3.42 There are centralised policies and procedures established by the AEC, and there is little need, outside of exceptional operational need, for variation in delivery of AEC business. Yet, where there is a disconnect between stated programme directives and how circumstances should be responded to, or a silence in these directives on the assumption that the state office will respond accordingly under the autonomy of the state managers, this essential accountability and approval process cannot be relied upon.
- 3.43 The problematic level of autonomy possessed by state managers suggests a need for AEC state manager positions to undergo revision in regard to classification and organisational structure. Having some state managers at a higher SES level (level 2) than the national programme managers (SES

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11 Australian Customs and Border Protection Service, *About Us*, accessed 21 October 2014, <[customs.gov.au/site/page4222.asp](http://customs.gov.au/site/page4222.asp)>.

12 AEC, *Australian Electoral Commission Inquiry into the 2013 WA Senate Election*, Commonwealth of Australia, 2013, p. 30.

level 1), whose directions the state managers should be following or seeking approval from for variations, makes for a structure that may allow some state managers to view their position as senior to those who should be setting the work practices and standards they should be following.

- 3.44 During site visits and hearings conducted during the inquiry, the Committee became aware of a disparity in 'best' practices in the states and territories, with some state managers demonstrating or outlining very good initiatives, but others demonstrating a certain laxity in how they performed their core election-delivery role, including staff management and ultimate accountability for election outcomes. This evidence of differentiation, both in capability and practice, at the most senior levels in the state offices of the AEC further suggests that reform within those levels, and below, is overdue.
- 3.45 Overall, the situation of having senior staff in state offices having a high level of management autonomy, while also holding statutory positions, further challenges and undermines the ability for discipline and adherence to necessary standards to be upheld, and for accountability to flow properly to the AEC national office, national programme managers and, ultimately, the Electoral Commissioner.

## Committee comment

### Separation of roles

- 3.46 As outlined above, the Keelty Report identified that the current statutory appointment of AEOs can confuse the efficient and consistent delivery of federal elections. The Committee agrees, but feels that further change should be considered beyond the nature of the AEO appointment.
- 3.47 In the Committee's view there is a strong argument that the statutory role of the AEO should not rest with an AEC employee due to the confusion and conflict of roles this presents along with the associated accountability issues noted above.
- 3.48 The dual role of state manager/AEO unnecessarily complicates the picture of where responsibility and accountability lies and the statutory nature of the AEO appointment could also be said to reinforce the autonomy currently enjoyed by state managers and further legitimise any state-based departure from AEC policy and procedure. In order to create a clear separation in activity and accountability, the need to separate the roles of AEO and state manager/AEC employee appears clear.
- 3.49 In evidence to this inquiry, Mr Mick Keelty noted:

I was surprised at the level of autonomy of a state manager. This is not about the person. I spent a lot of time with the state manager trying to get him to understand the import of what had happened. Where are we? We are in March. It was only mid-February that he stood down. I was surprised that he did not stand down much earlier, because in managerial accountability terms he had to take responsibility for this. There is a difference between responsibility and accountability. He was responsible for having all those regulations and all those plans in place. I think what it left the government, the committee or the parliament with is: what do you do with a non-performing state manager?<sup>13</sup>

- 3.50 The Committee envisages that the role of the AEO during an election, as set out in the Electoral Act, could be fulfilled by an adequately prepared, independently-appointed third party who would undertake the current election-time AEO duties and responsibilities.
- 3.51 Separation of the AEO/state manager positions would allow for the AEC state managers to hold wholly separate public service roles, and would clarify accountability within the applicable and appropriate APS rules and law.
- 3.52 This separation would also allow for the AEC national office to have more oversight and control over election preparation, planning and delivery, while keeping the essential statutory role of the AEO intact. This would complement the recent organisational changes the AEC have undertaken.
- 3.53 However, the Committee recognises that separation of the AEO/state manager roles would constitute a quantum shift, with significant implications for election delivery. Additionally, the Committee considers that the separation could not be feasibly implemented before the next federal election, as there would have to be a development period for the mechanisms required, identifying suitable candidates and any required legislative changes.
- 3.54 Accordingly, the Committee recommends that the Australian Government assess the suitability of, and analyse the requirements to accommodate, separation of the state manager and AEO roles.

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13 Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, p. 11.

### Recommendation 3

**The Committee recommends that the Australian Government consider and assess the formal separation of the roles of state manager and Australian Electoral Officer involving:**

- **the appointment of Australian Electoral Officers independent of the Australian Electoral Commission; and**
- **the assigning of any non-election duties of Australian Electoral Officers to the Electoral Commissioner or other appropriate officer.**

#### State managers

- 3.55 The current practice of allowing state managers to plan and deliver an election within their state or territory is a reasonable election preparation measure on the part of the AEC. However, for that planning and delivery to apparently not have complete oversight and approval from the relevant programme managers, First Assistant Commissioner, and the Electoral Commissioner within AEC national office creates an unnecessary risk of deviation that the Committee believes is unacceptable. Plans should be based in the majority upon the clearly stated programme directions, policies and procedures created by the AEC national office.
- 3.56 In this same context, the Committee acknowledges that there are bound to be state and even Division-specific logistical differences in election delivery.<sup>14</sup> But variations resulting from an arbitrary departure from national programme direction without a solid logistical reason are not acceptable. Again, the current power invested in AEC state managers to plan, conduct and evaluate election delivery with apparent minimal central oversight and control is an unacceptable latitude in relation to the delivery of a nationwide event underpinning the Australian democratic process.
- 3.57 In April 2015 the AEC implemented organisational reforms (advised in correspondence of late March 2015).<sup>15</sup> These reforms include the welcome move of refocusing the role of the Deputy Electoral Commissioner into a more strategic operational manager (akin to a Chief Operating Officer). Another element, as reflected in the current organisational chart, is the direct reporting of state managers to the Deputy Electoral Commissioner, which, in conjunction with the refocusing of the Deputy Electoral

14 Sandra Riordan, Tasmania State Manager, AEC, *Transcript of evidence*, 16 April 2014, Hobart, p. 3.

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

Commissioner's role, will allow the Deputy Electoral Commissioner to manage the core of AEC service delivery business while leaving the Electoral Commissioner free to focus on greater oversight on programme deliverables and AEC business as a whole.

- 3.58 In addition, the new AEC organisational structure now has the 'core' election and roll management policy responsibilities channelling through two different First Assistant Commissioners. Until early 2015 one First Assistant Commissioner was responsible for both of these areas.
- 3.59 To take this reform further, the Committee is of the opinion that the senior executive status of the state managers needs to be wound back within the organisational structure of the AEC, with state managers not only reporting directly to the Deputy Electoral Commissioner for their position management, but with additional formalised reporting on programme management and approvals through the First Assistant Commissioners responsible for the elections and roll management programmes that the state managers deliver in their states and territories. It would also make sense that state managers sit at the same executive level as the other programme managers.
- 3.60 This would allow for full oversight, approval and accountability reporting mechanisms to be in place over what should essentially be a state coordinator of centrally-dictated AEC business within those defined programmes.
- 3.61 Having state managers at equal level (or possibly lower in smaller states/territories/organisational structures) would also normalise the management playing field and remove any distortion in regard to high-level authority over a programme directive.
- 3.62 In tandem with these reforms, the Committee believes that clear performance expectations should be set for state managers, with appropriate triggers for disciplinary and termination actions.
- 3.63 The delayed resignation of Mr Kramer after the WA Senate election problems, as well as the poor practice and awareness shown by the South Australian State Manager (as outlined in Chapter 2) raises concerns that these expectations and triggers do not currently exist, or are not adequately embedded or enforced in the AEC management structure.
- 3.64 These matters need to be rectified as a priority. The Committee strongly urges the government to consider implementing Recommendation 4 before the next federal election.

## Recommendation 4

**The Committee recommends that the Australian Electoral Commission formalise all state manager positions to report on all election and roll management programme deliverables directly to the First Assistant Commissioners responsible for election and roll management programme business in order to ensure consistency and accountability.**

**The Committee also recommends that all existing state managers be assessed for continued suitability in their positions, with new contracts to be drawn up with clear performance expectations and disciplinary and termination triggers stipulated as terms of employment.**

### Divisional Returning Officers

3.65 Divisional Returning Officers (DROs) are appointed under section 32 of the Act:

There shall be a Divisional Returning Officer for each Division, who shall be charged with the duty of giving effect to this Act within or for the Division subject to the directions of the Electoral Commissioner and the Australian Electoral Officer for the State.

3.66 DROs have significant responsibility for the conduct of elections. The legislated responsibilities of a DRO include:

- management of a divisional office or the like representing every division;
- receiving nominations for House of Representatives candidates;
- declaring nominations;
- issuing and receiving postal votes (if not done centrally);
- issuing and managing pre-polling in their Division;
- managing any prematurely opened ballot-boxes;
- managing non-voter and multiple-voter investigations in their Division;
- undertaking scrutiny of votes in their Division;
- conducting recounts if required;
- declaring the poll; and
- maintaining safe custody of electoral documents (including ballot papers) after an election is conducted.

3.67 On a practical level, the DRO is responsible for conducting all levels of AEC business within their Division, ranging from roll management and elections through to electoral education.

- 3.68 Under the Electoral Act, there is to be one DRO for each electoral Division (currently 150). This situation had a clear historical basis where the DRO was responsible for continuous update and maintenance of electoral rolls (that were essentially bound to the Division) free from manipulation by either political parties or distortion due to maintenance of other electoral rolls.<sup>16</sup>
- 3.69 This individual role, maintained in most individual Divisions, would seem to be something of an anachronism in the modern context. The original argument that the DRO could maintain knowledge of the Division and its constituents is impossible with the current average size of a Division being over 90 000 people, and some Divisions being geographically vast – the Division of Durack, for example, is 1 587 758 square kilometres in size.<sup>17</sup>
- 3.70 The role of the DRO is also somewhat confused in the context of current AEC practice, whereby an employee is identified as a Divisional Office Manager, but undertakes the activities specified for a DRO outside of an election period before being appointed to the DRO position once an election is called. While this may facilitate the purely legislative role of the DRO, the shifting roles occupied by the individual concerned can make ongoing accountability and performance management difficult.
- 3.71 The AEC has also co-located a number of divisional offices into Larger Work Units (LWUs) over the previous two decades, where there are shared responsibilities among staff for those Divisions but also a requirement for a discrete DRO for each Division during election time. The Committee visited an LWU in Perth and Hobart and noted the professional benefits of co-locating DROs.
- 3.72 DROs have a very high level of responsibility for the on-the-ground delivery of elections. They are front-line decision-makers with a high degree of regional autonomy, responsible for employing, training and overseeing a large group of temporary employees to ensure the effective conduct of elections.
- 3.73 While historically this may have been practical for election delivery, it is evident from the events of the 2013 election that this regional autonomy has led to unacceptable regional anomalies, raising questions about the level of autonomy given to DROs.

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16 P Brent, *Too many Kings: What's wrong with the AEC*, 2008, accessed 30 June 2014, <[polsis.uq.edu.au/apsa2008/Refereed-papers/Brent.pdf](http://polsis.uq.edu.au/apsa2008/Refereed-papers/Brent.pdf)>.

17 AEC website, *Profile of the electoral division of Durack (WA)*, accessed 7 October 2014, <[aec.gov.au/profiles/wa/durack.htm](http://aec.gov.au/profiles/wa/durack.htm)>.

3.74 There also appears to be a lack of performance measurement and accountability for the conduct of DROs. Chapter 2 notes ballot paper handling issues and poor decisions made at the DRO level. In revealing these to the Committee, the AEC was not able to determine what, if any, performance sanctions were taken against DROs, or indeed what performance measures DROs were required to meet where the issue was clearly a failure to follow standard operating procedures. Performance measurement is discussed further below.

## Polling period staff

### Election period and election day staff

3.75 The increase in temporary staff for an election is a requirement that the AEC must manage at every election. The roles that are undertaken by these temporary staff are varied, but can be broken down into clear categories with clear lines of responsibility:

- Officer in Charge (OIC) or Second in Charge (2IC) – responsible for overseeing the conduct of polling at a polling place;
- Declaration Vote Issuing Officer – responsible for issuing declaration votes;
- Polling Assistant and/or Scrutiny Assistant – polling assistants generally issue ordinary votes, act as ballot-box guards or undertake other tasks during polling. Most act as scrutiny assistants on election night, enabling the election night count, but some locations employ scrutiny assistants solely for counting purposes (as well as after election day for fresh and further scrutines);
- Polling Place Liaison Officer (PPLO) – responsible for travelling between polling places in Divisions ensuring compliance with policies and procedures. PPLOs are normally the first point of contact for OICs if there are issues or questions;
- Mobile Team Leaders and members – responsible for undertaking mobile polling (including remote); and
- other temporary assistants, Voter Information Officers, Inquiry Officers and Visitors – these staff undertake assorted roles during polling and scrutiny.<sup>18</sup>

### Recruitment of temporary staff

3.76 For the 2013 election the AEC employed 73 507 temporary staff, which was an increase of 9.9 per cent over 2010 election staffing levels.<sup>19</sup> The

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<sup>18</sup> See AEC, *Submission 20.3*, p. 121.

AEC noted that it had improved recruitment processes to better engage returning polling officials:

Enhancements to the AEC's recruitment systems following the 2010 election enabled the AEC to maintain online contact with polling officials between electoral events. Previously the AEC, wrote to every applicant that provided a registration of interest form (ROIs) and only entered the ROIs for applicants who replied. The online system was primarily introduced to improve a process that was labour intensive, expensive and difficult to track.

From November 2011 the AEC commenced the first 'soft contact' mail-out where registered applicants were encouraged to update their ROI. A second mail-out was undertaken between February and April 2013. Applicants who were already registered were emailed and provided with information about how to log on to AEC Employment via the AEC's website. Applicants who were not registered for online access were contacted by mail or telephone and asked if they would like to be given online access to maintain their own details. If they wished they were still provided with the opportunity to update their information in hard copy.

Key details updated through this process were contact details and periods when applicants would be unavailable.<sup>20</sup>

- 3.77 In its November 2014 follow-up audit report (Audit Report No. 4 2014-15) on the implementation of audit recommendations made in 2010 regarding the 2007 election, the Australian National Audit Office (ANAO) found that AEC recruitment for the 2013 election 'was significantly more timely than had occurred in relation to the 2007 election.' However, of the roles filled, '34 per cent were filled by people for whom there was no record in AEC Employment of them having been assessed for suitability.' Assessment for suitability fell markedly for employment offers made after the issue of the writ with only 20 per cent of the 14 546 positions filled after this point having being assessed.<sup>21</sup>
- 3.78 The majority of employment offers were made well before election day, with less than one per cent being made on or after election day. The

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19 AEC, *Submission 20.3*, p. 118.

20 AEC, *Submission 20.3*, p. 119.

21 Australian National Audit Office (ANAO), *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, pp. 72, 69.

majority of these late offers were for the polling assistant role; however 40 offers were for OIC or 2IC roles.<sup>22</sup>

## Workforce planning

- 3.79 The short timeframes associated with election delivery and the need to confirm or recruit a workforce within these timeframes will always be an operational challenge for the AEC. However, the 2010 ANAO report on the conduct of the 2007 election (Audit Report No. 28 2009-10) recommended that the AEC improve its workforce planning 'including by critically examining its election workforce needs and workforce composition, and setting goals for the training and retention of election officials.'<sup>23</sup>
- 3.80 The ANAO's November 2014 follow-up audit report found that the AEC had retained a focus on current operational matters rather than the development of a strategic workforce plan. The audit report acknowledged the challenge faced by the AEC in recruiting at short notice, but recommended that a strategic workforce plan be developed that would:
- cover a period of three to five years and be aligned to the election cycle;
  - focus on the composition of the existing workforce and examine high-level trends that may affect future workforce availability;
  - describe emerging workforce issues and strategies for managing these; and
  - outline a suite of workforce strategies designed to support the recruitment, retention and training of a diverse election ready workforce for future elections.<sup>24</sup>
- 3.81 The ANAO report noted that in the absence of such a plan, the AEC was not able to address risks to the delivery of future elections, such as the age of the workforce.
- 3.82 The AEC has identified challenges with future workforce planning in its substantive submission to the Committee, especially related to the ageing nature of its core temporary election workforce.<sup>25</sup>
- 3.83 The ANAO made recommendations regarding workforce planning in its 2010 report into the conduct of the 2007 federal election, with

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22 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, p. 71.

23 ANAO, *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, Audit Report No. 28 2009-10, Recommendation 5(a), p. 109.

24 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, p. 62.

25 AEC, *Submission 20.3*, pp. 126-127.

recommendation 5 focusing on planning for recruitment, training and evaluation.<sup>26</sup> This was followed up by expansion of this recommendation in the 2014 follow-up audit, recommending that the AEC develop an actual workforce plan that can be analysed, updated and monitored.<sup>27</sup>

3.84 These ANAO audit findings are aimed at improving strategic workforce planning, thereby improving the workforce capability of the AEC. The establishment of a plan would allow for accurate recording of goals and expectations, while also allowing the appropriate scrutiny of the planning undertaken.

3.85 Despite these clear and sensible recommendations, the AEC appears to have failed to have recognised the need for such planning to take place for the 2013 election. The AEC noted in its submission to this inquiry:

Uncertainty relating to the election dates renders attempts at advance recruitment ineffective.<sup>28</sup>

3.86 This statement appears to be contradicted by ANAO data that found that 53 397 people were recruited prior to the issue of the writs.<sup>29</sup> Additionally, the workforce profile for the 2013 election was broadly similar in numbers of officials and types of positions to the 2010 election,<sup>30</sup> suggesting that more strategic planning could have been undertaken.

3.87 While the 2013 election had a very early indicated potential date, this appears to reinforce the ANAO's observations that the AEC has a focus on current workforce pressures, without the strategic forward-thinking required to anticipate changes in workforce composition, recruitment or retention.

3.88 In March 2015 the AEC acknowledged that the ANAO 'rightly criticised' the AEC for its lack of a proper workforce plan. The AEC identified that work had been undertaken on mapping capabilities for polling officials.<sup>31</sup>

### Committee comment

3.89 The Committee acknowledges that the rapid employment of a very large temporary workforce is a significant challenge for any organisation, and

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26 ANAO, *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, Audit Report No. 28 2009-10, pp. 109-110.

27 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, p. 63.

28 AEC, *Submission 20.3*, p. 123.

29 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, p. 69.

30 AEC, *Submission 20.3*, p. 121.

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

that there will always be circumstances where positions are filled late due to unforeseen circumstances.

- 3.90 Although the number of OIC and 2IC employment offers that were made on or after election day in 2013 is of concern, the Committee acknowledges that the AEC made improvements on the number of late offers compared to the 2010 election.
- 3.91 Nonetheless, it is core business for the AEC to provide the workforce to adequately deliver the election. There appears to be a troubling lack of understanding on the part of the AEC regarding measures that can be put in place to improve recruitment of a temporary workforce, for example in regard to suitability assessment.
- 3.92 More importantly, the fact that the workforce profile was broadly unchanged between the 2010 and 2013 elections, notwithstanding uncertainty in relation to election dates, indicates that the AEC is not focussing due attention on strategic planning. The Committee is particularly concerned that improved workforce planning was recommended by the ANAO as far back as 2010 – yet the AEC has appeared to fail to understand its need or import.
- 3.93 The Committee notes that the AEC is now engaged in an ongoing dialogue with the ANAO to ensure that the ANAO’s recommendations are fully implemented.<sup>32</sup> The Committee welcomes this ongoing dialogue.
- 3.94 The Committee also notes that innovative ideas were identified during the inquiry about retention and the provision of ongoing training such as the development of a professional association for polling workers.<sup>33</sup> The Committee urges the AEC to open a discussion with polling workers around the issues of recruitment and retention.
- 3.95 The Committee further notes the AEC’s response to the ANAO’s recommendation in its November 2014 follow-up audit report:

The AEC acknowledges that enhancing many elements of election workforce planning that it already undertakes is likely to complement the current work underway to modernise its capacity to engage a temporary workforce at each election (noting the difficulties inherent in planning for a temporary workforce of more than 70 000 employees engaged only once every three years on an unknown date). The AEC will consolidate its approach in this important area and develop an election workforce plan in advance of the expected timing of the next federal election, noting

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32 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript Evidence*, 12 November 2014, Canberra, p. 21.

33 G Field, *Submission 160*, p. [3].

there will be elements that will be implemented in a staged approach over several electoral cycles.<sup>34</sup>

- 3.96 This is a welcome undertaking and the Committee urges the AEC to employ adequate resources to address issues raised by the ANAO and progress appropriate workforce planning. This will also enable future scrutiny of such planning by this Committee and the ANAO.

## **Training/learning and development**

- 3.97 Crucial to achieving consistency and accuracy in service delivery and election operations is a robust and deliverable training, learning and development framework, for both permanent and temporary staff and for election officials.
- 3.98 The training of the 70 000-strong temporary workforce responsible for delivering the election is primarily undertaken by DROs, and the OICs trained by those DROs. There is considerable variety within these roles, so adequate training and awareness are key to enabling temporary staff to play their part in a lawful election. Given the fundamental importance of delivering elections lawfully, awareness of the implications for non-compliance should not be understated.
- 3.99 The issues that have been identified throughout this inquiry would suggest that the existing framework prior to the 2013 election either was not robust enough, or that the adherence of trained staff and officials to the requirements communicated by the training was not adequately enforced or stressed in some situations.
- 3.100 Polling officials are trained for each election, either face-to-face for more senior officials (OICs and 2ICs), or through the provision of training materials for more junior roles (issuing officers). Most polling officials do not receive practical training, rather relying on experience or brief training on the day, either before polling begins or on-the-job.
- 3.101 Some polling officials will have undertaken polling activity before, either at a state or federal level, with the AEC indicating a range from a high of 95.7 per cent of polling place liaison officers having had previous experience to a low of 10.12 per cent of scrutiny assistants having had previous experience.<sup>35</sup>
- 3.102 In its evidence to the Committee the AEC stated that:
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34 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, p. 63.

35 AEC, *Submission 20.2*, pp. 2-3..

The AEC requires senior polling officials to undertake training prior to polling day and the commencement of their duties. This training is designed to provide polling officials with the skills and knowledge to competently perform their role. Junior polling officials such as polling assistants, ballot box guards and queue controllers are provided with other tools and training materials to ensure they are aware of their duties. This is complemented by further on-site training on election day morning and they can refer to guides during election day as needed.

In preparation for the 2013 election the AEC implemented the recommendations from the Gray Report by increasing the training to be provided to pre-poll officers and ensuring that all pre-poll staff received training.

...

Within 24 hours of confirmation of offers of employment the employee is enrolled in the curriculum and invited to commence their training. For the 2013 election senior polling officials were required to complete a two stage training program:

- initial home-based training, and
- further face-to-face learning.<sup>36</sup>

3.103 Training materials for polling officials provided by the AEC include a procedures handbook, a DVD and online training:

- The Election Procedures Handbook, containing all required information relevant to each staff member's role to conduct polling and undertake counting, [is] sent to each polling official. It also incorporates administrative, emergency and workplace health and safety guidance. Copies are also available in each polling place.
- The DVD sent to each polling official. This was developed in 2012 to provide information about what a polling place looks like, how it operates, team work and procedures. A shortened version was also available on YouTube.
- Role badges and quick reference guide on polling official lanyards.
- Place cards with quick reference guide for all issuing officers and officers in charge in static and pre-poll polling places.<sup>37</sup>

3.104 The home based-training is complemented by face-to-face training to be completed to the satisfaction of the DRO, and senior polling place officials receive a payment for the completion of this training. The AEC stated:

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36 AEC, *Submission 20.3*, p. 126.

37 AEC, *Submission 20.3*, p. 125.

for some individuals in remote and rural areas, their face-to-face training is over the phone; that will count as attendance for face-to-face training even though it is not. That is why we put in the policy that it is to the satisfaction of the DRO. Our expectation is the vast majority of that is face-to-face training, except where it can't be done for those circumstances – over the phone. I would presume that it would not even be for emergency training on the morning; it would be for face to face or where face to face cannot be delivered and so over the phone or some sort of exigent circumstance like that, but to the satisfaction to the DRO.<sup>38</sup>

- 3.105 In its submission, the AEC indicated that just over 19 per cent of senior polling officials completed manual workbook training under divisional staff monitoring.<sup>39</sup> However, when reviewed by the ANAO, AEC data indicated that the training status of this group of senior officials was in fact 'in progress' rather than completed. As the ANAO noted, this 'ran the risk of misleading' this Committee.<sup>40</sup>
- 3.106 Broader ANAO analysis of training completions also found that, for the 2013 election, 20 per cent of people filling election roles requiring home-based training did not fully complete this training. Further, the ANAO found that, for 15 per cent of officials, there was either no record of completion or no record of having been assigned training (see Table 3.2).

Table 3.2 Completion of home-based training by election officials

Role	Completed	Partial completion	No record of completion	No record of being assigned to training	Total
Declaration Vote Issuing Officer	11 824	653	2 014	397	14 888
Mobile Team Leader	335	25	76	21	457
Mobile Team Member	421	28	112	31	592
OIC/2IC/PPLO	10 612	510	1 196	313	12 631
Pre-poll Issuing Officer	2 460	301	479	141	3 381
Pre-poll OIC	608	119	99	20	846
Remote mobile Team Leader	30	2	11		43

38 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of evidence*, 13 November 2014, Canberra, p. 7.

39 AEC, *Submission 20.3*, p. 129.

40 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, p. 79.

Remote Mobile Team Member	7	2	5	3	17
Total	26 297	1640	3992	926	32 855
Per cent	80.0	5.0	12.2	2.8	100.00

Source ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections, Performance Audit Report No. 4 2014-15, November 2014, p. 80.*

3.107 For the critical OIC role, training completion rates were slightly better; however 3.3 per cent of officers did not fully complete home-based training, and there was no record of completion or no record of having been assigned training for 11.6 per cent of officials (see Table 3.3).

3.108 Further, the ANAO found that for the 2014 WA Senate election re-run, nine per cent of election officials (273 officials) did not complete all of the required training. Furthermore, 49 officials did not complete either the face-to-face or the home-based training. This group included three officials in senior roles, and only one was issued a Notice of Training Exemption.<sup>41</sup>

Table 3.3 Completion of home-based training by role—static polling place officers-in-charge

Role	Completed	Partial completion	No record of completion	No record of being assigned to training	Total
OIC 1-3 issuing points	2 278	88	278	110	2 754
OIC 4-6 issuing points	2 075	82	205	54	2 416
OIC 7-10 issuing points	1 734	62	168	18	1 982
OIC 11+ issuing points	341	13	34	3	391
Total	6 428	245	685	185	7 543
Per cent	85.2	3.3	9.1	2.5	100.0

Source ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections, Performance Audit Report No. 4 2014-15, November 2014, p. 80.*

3.109 In response to the audit findings, the then acting Electoral Commissioner, Mr Tom Rogers, noted that there are some circumstances that do not allow for staff to complete training because of the late nature of their employment, and acknowledged the need to provide training on multiple platforms in order to cover these circumstances.<sup>42</sup>

41 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections, Performance Audit Report No. 4 2014-15, November 2014, p. 84.*

42 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of evidence*, 13 November 2014, Canberra, p. 9.

- 3.110 The ANAO has noted that, prior to the February 2014 Griffith by-election, face-to-face training attendance records were only kept by the Divisions.<sup>43</sup> This meant that the AEC national office had no way of assessing the completion of training through this method or the effectiveness of this approach.
- 3.111 Indeed, during hearings with the AEC, the Committee was unable to gain consistent evidence on training completion, satisfaction or assessment. Mr Rogers acknowledged problems both with training and training data:
- It is quite clear, as you have said, that there is an issue around the training and we are addressing that – it is clearly not right. The second issue, as you correctly pointed out and the ANAO have pointed out, is the way in which our data is being compiled; it is impossible to know to 100 per cent satisfaction. This is a real problem for us. It is not just the data that we have, but the processes around how we have entered that data previously have not been good enough. That may well have led to issues in the polling place. As you quite rightly point out, we do not know.<sup>44</sup>
- 3.112 The lack of data is a systems problem, but was further acknowledged as being a cultural issue as well:
- There is also a cultural issue. Some of the points that we are making here today about recording training completion is a cultural issue for our staff. We are also working to fix that element. That is because we could have the best systems in the world but if they are not used properly we will be back at this committee with a similar issue next time, and we cannot have that.<sup>45</sup>
- 3.113 Also concerning are findings of experienced senior polling officials' lack of adherence to training and directives. ANAO investigation indicated that the AEC's reported compliance rate for OICs providing required briefings to election officials was higher than the actual level of compliance. The ANAO noted, for example, that:
- 'only 26 of the 203 polling place inspection checklists included comments on both aspects of this question, being that the briefing was completed and staff were receptive; and

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43 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, p. 83.

44 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of Evidence*, 13 November 2014, Canberra, p. 8.

45 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of Evidence*, 13 November 2014, Canberra, p. 10.

only 25 of the 203 polling place inspection records (12 per cent) supported a conclusion that the briefing checklist provided to OICs had been used.

...

Where comments were recorded by the KITE [Keelty Implementation Team Extended] teams, the comments included that the OIC had completed the briefing, but that had done so 'off the cuff' or 'knew it off by heart', 'did it in own words', or that the 'OIC assured us that they had completed the briefing'.<sup>46</sup>

3.114 Mr Rogers noted that the AEC is aware of this issue:

experience is good, but I point out that occasionally that experience is not good because when we go through changes in training some of the people who have been doing it for a while think, 'I understand that, I have already done it.'<sup>47</sup>

3.115 OICs are key positions and this attitude is concerning, particularly as OICs are not aware of what level of training polling officers have completed.<sup>48</sup>

3.116 The revelation of multiple errors, resulting in incorrect handling of ballot papers and lost parcels of ballot papers, suggests that the AEC does not place enough emphasis on the importance of adherence to relevant training, or on the competence or accountability of polling officials that is commensurate with the level of impact that their actions have on the democratic process, and ultimately the outcomes of elections held in Australia.

3.117 The varied responses by polling officials to the incorrect treatment and handling of declaration votes in multiple locations in South Australia, where 331 Senate ballot papers from declaration votes were placed in ordinary ballot boxes,<sup>49</sup> indicates a concerning lack of training or an even more concerning disregard for training:

It was three polling places in South Australia, with 224 at the Walkerville polling place, in the division of Adelaide; 15 at the Birdwood polling place, in the Adelaide Hills in the division of Mayo; and 92 at the Gawler polling place, in the division of Wakefield. I would like to state that at both the Walkerville and

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46 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, p. 106.

47 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of evidence*, 12 March 2014, Canberra, p. 16.

48 Doug Orr, NSW State Manager, AEC, *Proof transcript of evidence*, 12 November 2014, Canberra, p. 23.

49 AEC, *Submission 20.3*, p. 82.

the Gawler polling places it was every single absent vote that was taken throughout the day. The Birdwood polling place was picked up during the day. Presumably, the officer in charge has identified that an error in practice had been going on, and it has been corrected at some point.<sup>50</sup>

- 3.118 The fact that at some point during the day a staff member at the Birdwood polling place detected a failing, but it was left to occur for the entirety of election day in the other two locations, suggests a failure in the training, awareness and capability of both the declaration vote issuing officers and the officers in charge in relation to issuing and receiving these votes correctly.
- 3.119 This example of inconsistency highlights the failings in the AEC's framework of training, competency and trust in relation to temporary employees and their duty to accurately and lawfully deliver an election.
- 3.120 In addition, the findings by the ANAO that significant proportions of polling officials did not fully complete their home-based training, and that, further, there was either no record of completion or no record of having been assigned training for significant proportions of officials, are indicative of the failure of the training systems in place.<sup>51</sup>
- 3.121 In relation to face-to-face training, the ANAO noted an 82 per cent satisfaction rating, but:
- In comparison to the AEC's other training, respondents did not feel that the face-to-face training as clearly explained AEC election procedures and requirements, or that the training gave them a good understanding of their role and responsibilities.<sup>52</sup>
- 3.122 This finding is supported by evidence to this inquiry:
- As an OIC/PPLO I feel that the training provided requires considerable improvement. Training for the 2013 Federal Election comprised 90 minutes for Declaration Officers and 180 for OICs 2ICs and PPLOs in-addition.<sup>53</sup>

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50 Kevin Kitson, a/g Deputy Electoral Commissioner, AEC, *Transcript of evidence*, 11 June 2014, Adelaide, p. 4.

51 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, pp. 78-82.

52 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-15, November 2014, p. 82.

53 G Field, *Submission 160*, p. [2].

- 3.123 DROs are required to deliver this training alongside their other responsibilities preparing for an election. The evidence would suggest that there is a difficulty for some in acquitting this responsibility adequately.

### Current AEC focus

- 3.124 The AEC informed the Committee that, following the 2013 election, it has commenced new work focussing on revising and renewing the learning and development capacity within the organisation based on:
- a focus on performance coaching – to create a culture of performance through learning, performing and feedback;
  - development of certification processes and competency-based assessment – to assess ability against key capabilities in order to be assigned to various roles;
  - the adoption of key principles and shared frameworks for learning design – to create learning programmes that are performance focussed and outcome driven and that use authentic contexts in which learners make realistic decisions and gain a sense of real world consequences; and
  - a redefined role for the Learning and Development Team to create a centralised national training model.<sup>54</sup>
- 3.125 This is to be supplemented by new training IT systems, practical training programmes for staff and focussed training for temporary officials.<sup>55</sup>
- 3.126 In March 2015 the AEC informed the Committee that the newly-developed Learning Management System has been implemented.<sup>56</sup>

### Committee comment

- 3.127 The AEC's renewed focus on learning and development is welcomed by the Committee and is absolutely necessary in addressing the issues identified with training and capability building. The focus on learning programmes which acknowledge the importance of possible real world consequences is especially salient given the evidence received during this inquiry. These real-world consequences can be twofold:
- the consequences for potential election outcomes – poor practice can lead to lost or discounted ballot papers (prematurely opened ballot-boxes, poor labelling or transport); and

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

55 AEC, *Submission 20.6*, pp. 20-21.

56 Tom Rogers, Electoral Commissioner, AEC, *Transcript of evidence*, 4 March 2015, Canberra, p. 2.

- the consequences that should flow from poor practice – sanctions, penalties and individual ramifications for staff or polling officials that do not complete their activities according to training or legislation.
- 3.128 Evidence received by the Committee, and the November 2014 ANAO audit report (Audit Report No. 4 2014–15), would suggest that the AEC is focussing on the first set of consequences, but not necessarily the second.
- 3.129 Anecdotal evidence was provided in a number of submissions outlining possible dereliction of duty and incorrect practices on the part of polling officials.<sup>57</sup> In addition, direct evidence was received from the AEC about incorrect practice by senior polling officials and the differing approach by DROs, where officials were either immediately removed from duty or no action was taken.<sup>58</sup>
- 3.130 It is of concern to the Committee that there appeared to be little or no follow-up action with these officials, let alone application of the appropriate penalties required by the Electoral Act.
- 3.131 The Committee acknowledges that while some responsibilities for polling staff are relatively simple to acquit (the issuing of ballot papers), they are all responsible for administering the conduct of the election as prescribed by the Electoral Act.
- 3.132 The Committee notes that there are serious consequences for breaches of the Electoral Act. For example, section 324 of the Act provides for a fine of up to \$1 000 for an officer (including a polling official) who contravenes the Electoral Act or a direction given to them.
- 3.133 The Electoral Act contains such penalties because the management of ballot papers is a critical component of the electoral system and ensuring its integrity. All employees, temporary or otherwise should be made to understand the import of their positions and this goes to the adequacy of the AEC's training of staff.
- 3.134 A lack of appropriate responses to incorrect practices or other non-acquittal of duties undermines the importance of the impact of peoples' actions, and highlights the emphasis that should be placed on full and adequate training, in accordance with the law.
- 3.135 The Committee notes with interest the initial steps the AEC has taken towards building clear capabilities for polling officials and looks forward to seeing the impact of this, and extension of similar capabilities to permanent staff in future elections.
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57 I Brightwell, *Submission 42*, p. 8; M McKellar, *Submission 26*; C Palmer MP, *Submission 92*; B Kirkpatrick, *Submission 183*, pp. 3-4.

58 David Molnar, AEC, *Transcript of Evidence*, 16 April 2014, Hobart, p. 6; Kathy Mitchell, a/g WA State Manager, AEC, *Transcript of Evidence*, 11 June 2014, Adelaide, p. 43.

- 3.136 However, the Committee is of the view that there is a need for further focus on ongoing certification for polling officials including access to dedicated training, outside of election periods, for interested parties.
- 3.137 It was put to the Committee that some formal skills recognition would be desirable for recruitment and staffing purposes:
- As a result of my casual electoral work I have obtained numerous skills and knowledge unique to polling yet I have no formal recognition. The skills and knowledge required for the various positions should be part of the recruitment process.
- Various industries can issue a Cert 2 or 3 for short term training – e.g. White Card, RSA, Cleaning, and Traffic Control. Once issued with a certificate this could be used for staffing purposes.<sup>59</sup>
- 3.138 In addition, while the AEC’s training materials are of high quality, further work needs to be undertaken to determine whether there is a need for an improved delivery method for face-to-face training and to make training materials available on alternative platforms, such as searchable phone or tablet apps, to better support staff on the day in polling places.
- 3.139 The Committee notes that the AEC has recently issued a tender for the redesign of its training materials and the Committee will monitor the progress of this work with interest.
- 3.140 The Committee believes that there would be real value in the development of a formal qualification that qualifies individuals to serve as a polling official, in particular for the senior roles. The Committee considers that providing formal recognition and certification for skills and training would improve retention and provide an additional incentive for individuals to serve as polling officials by raising the status of the role.

### **Recommendation 5**

**The Committee recommends that the Australian Electoral Commission develop a set of formal qualifications/certification for polling officials.**

- 3.141 The Committee is also concerned about evidence that the AEC does not have adequate systems in place to track, at a national level, training rate completions.

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<sup>59</sup> G Field, *Submission 160*, p. [3].

- 3.142 To be unable to report on the numbers of allocated face-to-face training sessions and their related completions at a Divisional level, due to a lack of data in the relevant systems, is unacceptable. Accordingly, the AEC must prioritise development of adequate systems to enable the capture of this data.

### **Recommendation 6**

**The Committee recommends that the Australian Electoral Commission prioritise development of appropriate changes to existing systems, or new systems, to allow for the compulsory recording and capture of data related to Division-level face-to-face training for polling officials.**

- 3.143 The Committee is further concerned about evidence that OICs are not made aware of the level of training that each staff member reporting to them has completed. This makes their role more challenging when supervising staff and assigning responsibility on election day. The Committee acknowledges that some roles undertaken on election day are relatively simple and do not require a high degree of training, and that the AEC provides supportive material in polling places for these roles.<sup>60</sup>
- 3.144 Nonetheless, as supervisors, OICs and 2ICs should be fully aware of which of their staff are fully trained and who may need additional support.

### **Recommendation 7**

**The Committee recommends that the Australian Electoral Commission ensure that Officers-in-Charge of polling places be given a list of training completion for all staff reporting to them.**

## **Performance measurement**

- 3.145 The 2010 ANAO report on the conduct of the 2007 election (Audit Report No. 28 2009–10) recommended that comprehensive performance standards be developed for the conduct of elections (recommendation 9).<sup>61</sup> While the AEC has a performance rating process for staff, there isn't a

60 For example, role responsibilities are printed on the back of all relevant name plates and badges.

61 ANAO, *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, Audit Report No. 28 2009–10, p. 176.

direct assessment system for the conduct of elections as a discrete part of staff employment.

- 3.146 The AEC agreed to this recommendation, and, during the Committee's inquiry, responded further when questioned about its follow-up activity to the ANAO recommendations.<sup>62</sup> These responses included:
- internal staff work level standards for performance agreements;
  - development of a Performance Management Program for managing underperformance and misconduct;
  - local development of standards applied separately at a state level, in some instances; and
  - project planning templates for election delivery in Divisions.<sup>63</sup>
- 3.147 However, the measures outlined above and implemented by the AEC and its reporting to the Parliament (outside of the Committee's process) have not been fully realised in line with the Auditor-General's comments or the expectations of the Committee.
- 3.148 Of particular interest is the lack of clearly developed national Key Performance Indicators (KPIs) and standards that would allow the AEC and the Parliament to measure performance against national programme directions for conduct of elections, as well as against legislative, policy and procedural requirements. The AEC has acknowledged this lack, but development has not progressed further.<sup>64</sup>
- 3.149 The November 2014 ANAO follow-up audit report (Audit Report No. 4 2014–15) considers the AEC's completion of performance assessments of polling officials employed for the 2013 election.<sup>65</sup> In summary, there were distinct failings, with the ANAO finding that a 'significant proportion' of officials were not aware of relevant performance standards and that performance ratings for election roles have not been recorded consistently.<sup>66</sup> The ANAO noted that:

Failure by the AEC to undertake performance assessments and record performance ratings against election roles, especially senior roles such as OICs, has significantly reduced the business benefits expected to be derived from the performance appraisal process. In

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62 AEC, *Submission 20.4*.

63 AEC, *Submission 20.4*, pp. 34-36.

64 AEC, *Submission 20.6*, p. 23.

65 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, pp. 86-97.

66 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, p. 96.

particular, the available data suggests that previous election performance is a useful indicator of how people who are re-employed will perform at a subsequent election.<sup>67</sup>

3.150 A crucial mechanism that would facilitate consistency in delivering election-related tasks and rebuilding confidence is proper setting and communication of performance measures and indicators, and reporting assessments against these standards to the Parliament above and beyond what the AEC currently does. In its November 2014 report the ANAO recommended that:

Recognising the benefits that accrue to the AEC in re-employing election officials that have previously performed at or above the required standard, ANAO recommends that the AEC:

- (a) more clearly and consistently outline to temporary election employees the performance standards of the role to which they have been assigned and will be assessed against; and
- (b) implement controls that ensure the timely completion of performance assessments, including the recording of ratings in the relevant system and each temporary election official being advised of their rating.<sup>68</sup>

3.151 While the AEC has agreed to this, its response to the ANAO's recommendation in Audit Report No. 28 concerning the development of comprehensive performance measures for the conduct of elections is insufficient. The AEC's response has been to develop internal tools, reviewed internally. These do not create the comprehensive, overarching performance standard framework that would allow for adequate visibility of and reporting on election conduct.<sup>69</sup>

3.152 The Committee notes that the recent development of some polling official capabilities and job profiles may assist with this process, but will only constitute an element of developing robust performance measurement frameworks.

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67 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, pp. 23–24.

68 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, p. 97.

69 AEC, *Submission 20.4*, pp. 34–35.

## Staff performance measurement

- 3.153 The Committee supports the ANAO's 2010 recommendation and follow-up recommendations in the November 2014 audit report. But there is also a need for more robust individual performance measures to increase AEC staff accountability. These performance measures, in the form of clearly stated outputs or KPIs, need to be introduced at all levels, for both permanent and temporary staff and officials. The revelations of state and senior management conduct in WA and South Australia (outlined in Chapter 2) highlight that this is relevant to the upper reaches of AEC management as well.
- 3.154 In addition, there has been evidence of instances where polling officials and some permanent staff have deviated from the stated legislation, policy or procedures for conducting an election. These may have been relatively minor, such as voters not being marked correctly off a certified list, up to major errors from permanent employees, such as the poor management, labelling and despatch of Senate ballot papers in the Division of Pearce in the 2013 WA Senate election. This latter issue was identified as one of the possible causes for the lost ballot papers that eventually led to the requirement to re-run the Senate election, at great expense to the Australian taxpayer.<sup>70</sup>
- 3.155 The Keelty Report on the events of the 2013 election in WA acknowledges that the AEC has some clear and concise policies and procedures.<sup>71</sup> However, the lack of guidance on certain issues (such as waste management), adherence to these requirements, and the sometimes serious consequences of non-compliance are yet another reason to develop clearer and wider-ranging policies and procedures – with, importantly, associated performance measures against these rules.
- 3.156 The rules can then be enforced with related sanctions for non-compliance – sanctions that are applicable regardless of the level of the employee or their employment status (temporary or permanent).
- 3.157 The AEC has already undertaken, and is still undertaking, work in developing these sorts of policies and procedures in response to the Keelty Report and subsequent developments, but strict adherence to policies and procedures needs to be enforced and recorded.

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70 AEC, *Submission 20.3*, p. 82; AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 8.

71 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 12.

## Committee comment

- 3.158 The Committee is concerned about the apparent inadequacy of performance measurement mechanisms within the AEC. The Committee endorses the ANAO's recommendations in relation to performance assessment of temporary staff. The Committee is also of the view that permanent staff should have clear KPI expectations set, especially in relation to core election delivery activities.
- 3.159 The ANAO recommendation, in its 2010 report,<sup>72</sup> to establish clear performance standards for the conduct of elections is a crucial element of this work which the AEC has indicated is underway and will be in place for the next federal election.<sup>73</sup> However, as noted, there is a need for the AEC to develop a more comprehensive performance standard framework because of the disparate performance outcomes demonstrated by staff throughout the organisation.
- 3.160 KPIs for all senior service delivery staff should be established, from the DRO up to the state manager. These KPIs can then provide relevant development and performance measurement metrics to improve staff roles and accountability.

### Recommendation 8

**The Committee recommends that the Australian Electoral Commission develop a full set of relevant key performance indicators for all senior service delivery staff, to be measured and reported to the Parliament as part of federal election inquiry reporting.**

## Corporate identity and culture

- 3.161 Throughout the conduct of this inquiry the Committee has received regular briefings, evidence and submissions from the AEC on the 2013 election and subsequent electoral events and developments related to the Keelty Report.
- 3.162 As discussed throughout this report, there are a number of cultural issues within the AEC ranging from the treatment of ballot papers to the attitude towards Senate ballot papers.

<sup>72</sup> ANAO, *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, Audit Report No. 28 2009-10, p. 176.

<sup>73</sup> AEC, *Submission 20.6*, pp. 22-23.

- 3.163 While the AEC has been apologetic and candid in its evidence, outlining many of the processes it has started to remedy many of the criticisms laid upon it after the 2013 election (including those outlined above), the Committee believes that the nature of these responses is marred by one clear flaw: the nature of the AEC's organisational self-awareness and its ability to adapt its culture.
- 3.164 As noted in Chapter 2, problematic aspects of AEC organisational culture were identified by Mr Keelty during his investigation into the WA Senate election issues, where he identified a culture of complacency and non-compliance in the WA state office. This was expanded on in Mr Keelty's evidence to the Committee as to the cause of this culture and how to address it:
- changing the culture will be through leadership and through rotating staff. A lot of staff have been there for a very long time and have not had much movement, so they are used to doing things the way that they have been doing them.<sup>74</sup>

## Corporate identity and corporate culture

- 3.165 The AEC has traditionally been held in high regard throughout the national and international electoral community. This regard was seriously eroded by the events of the 2013 election.
- 3.166 Australia ranks fourteenth on the international Perceptions of Electoral Integrity Index maintained by the Electoral Integrity Project.<sup>75</sup> This high integrity and international regard is reflected in the AEC's assistance in electoral processes in countries ranging from Fiji to Montenegro.<sup>76</sup> Assistance in international electoral conduct and accountability is an essential measure and one in which the AEC has performed admirably over recent decades.
- 3.167 Throughout the evidence presented by the AEC to the Committee and in many of its statements to the media and wider public, there has been an acknowledgement of the failings of the events during the 2013 election and the processes in place to address them.

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74 AEC, 2013, *Inquiry into the 2013 WA Senate Election*, Canberra, p. 6; Michael Keelty, *Transcript of Evidence*, 5 March 2014, Canberra, p. 5.

75 The Electoral Integrity Project, *The Year in Elections 2013, The World's Flawed and Failed Contests*, p. 9, accessed 14 November 2014, <[bishop.hul.harvard.edu/bitstream/handle/1/11744445/Norris-TheYearInElections.pdf?sequence=1](http://bishop.hul.harvard.edu/bitstream/handle/1/11744445/Norris-TheYearInElections.pdf?sequence=1)>.

76 AEC, *International Electoral Services*, accessed 14 November 2014, <[aec.gov.au/About\\_AEC/AEC\\_Services/International\\_Services/index.htm](http://aec.gov.au/About_AEC/AEC_Services/International_Services/index.htm)>.

- 3.168 However, surrounding these statements and underpinning the failings themselves have been statements by the AEC to the effect that the work undertaken by the agency is difficult and that critics do not understand the complexities of the work involved. For example, in agreeing to the ANAO's recommendation regarding workforce planning in the November 2014 follow-up audit report, the AEC qualified its acceptance of the recommendation with the following justification:
- noting the difficulties inherent in planning for a temporary workforce of more than 70 000 employees engaged only once every three years on an unknown date.<sup>77</sup>
- 3.169 While such difficulty and complexity is undoubtedly a significant feature of AEC business, this indicator of an organisational identity coloured by operational difficulty and external misunderstanding of the business suggests a sense of corporate 'exclusivity'.
- 3.170 While the AEC's reactions have not been characterised entirely by this – there are indicators of external adaptation and engagement to analyse and improve the business – the reactions of the agency to audit criticism, as well as aspects of scrutiny by the Committee (especially by AEC state managers to questions of operations and improvement), have raised a level of doubt for the Committee about the AEC's ability to adequately react to the demands for change after the 2013 election.
- 3.171 The AEC does not project a strong public corporate identity outside of the necessary enrolment and election interactions that are required for roll maintenance and conduct of elections. As a result, apart from such mechanisms as periodic scrutiny by Electoral Matters Committees, Senate Estimates and the ANAO, there is little external access to or visibility of internal AEC process.
- 3.172 The increased attention on the AEC following the 2013 election, and the spotlight this has placed on AEC business, affects both internal and external opinions of culture and identity.<sup>78</sup> Increased attention or access means that observers can start to question the culture of an organisation, while people within the organisation can start to question their own business and motives as well. While individual performance management has been an important focus for the Committee's inquiry and for the ANAO, the *culture* of the organisation must also be performance-driven.

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77 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014–15, November 2014, p. 63.

78 See Hatch and Schultz, 'The dynamics of organizational identity', *Human Relations*, vol. 55, no. 8, August 2002, pp. 990-991.

- 3.173 Organisational culture can mean many things to many people, but more generally it can be defined as:
- Culture is the way things get done in an organization and reflects employees' behaviors and attitudes toward work. It is the 'secret sauce' of an organization, bringing a strategy to life or deadening it. Culture is not fixed.<sup>79</sup>
- 3.174 In the relevant literature, rotation of staff is recognised as being an important characteristic of high-performing organisations, including in the context of longer careers within single organisations:
- High-performance organizations invest in employee development through training *and* by rotating people through roles and responsibilities. These experiences are a powerful motivational and retention tool...They also encourage collaboration and reduce the likelihood of parochial leadership behaviour. By the time employees reach the top ranks, they have a broad view of the organization.<sup>80</sup>
- 3.175 The problematic aspects of structure and permanent staff makeup more broadly within the AEC are discussed earlier in this chapter, but the exposure of certain elements of AEC culture as outlined above strongly suggests that cultural change is also required within the organisation. The Committee's doubts about the ability of the AEC to effect change adequately leads to the conclusion that change may need to be catalysed and managed in conjunction with input from outside the AEC.

## Developing a performance-driven culture

- 3.176 In recent years, the Australian Public Service Commission (APSC) has focused on corporate leadership in the APS, mainly through its 'Strengthening the Performance Framework' project.<sup>81</sup>
- 3.177 The flat middle-management structure of the AEC national office lends itself to a workforce that should be capable of embracing change and translating strategy into action. As noted above, however, as is often the case with commercial entities and public service agencies, middle management staff are often the most neglected staff.

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79 The Boston Consulting Group, *High-Performance Organizations: The Secrets of Their Success*, September 2011, p. 10.

80 The Boston Consulting Group, *High-Performance Organizations: The Secrets of Their Success*, September 2011, p. 8.

81 Australian Public Service Commission, *Strengthening the Performance Framework Project*, accessed 18 November 2014, <[apsc.gov.au/projects/performance-framework](http://apsc.gov.au/projects/performance-framework)>.

- 3.178 In order to adequately engage with this staff cohort and effect change, organisations need to have a performance-driven culture on an agency-wide level.
- 3.179 A performance-driven culture guides staff in the expectations of the agency and the public service as a whole, ultimately creating a culture of achievement and change. The APSC has highlighted key actions that agencies can undertake to strengthen performance and performance management that can drive this cultural change including:
- discuss and define what high performance means at the agency, group and individual level within an agency;
  - ensure that agency goals are clearly understood and the importance of those goals is made relevant to each employee;
  - provide managers with guidance on how to set goals and provide feedback on performance: for example immediately prior to the commencement of the review cycle; [and]
  - ensure managers are held accountable for supporting, maintaining and improving the performance of their staff.<sup>82</sup>
- 3.180 These principles underpin the actions that an agency must undertake to manage its performance. In order for such measures to work, the interplay between organisational culture, management and performance measurement must be maintained and analysed. The Centre for Strategic Manufacturing has also noted that:
- management styles need to evolve as the maturity of the performance measurement system and the organisational culture evolve.<sup>83</sup>
- 3.181 The AEC has indicated that it has engaged outside consultants to analyse and critique its planning, governance and preparation ethos,<sup>84</sup> but, in the Committee's view more is required to facilitate the required change, especially if these cultural elements are to be integrated into the KPIs to be developed as a result of Recommendation 8.

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82 Blackman, D., Buick, F., O'Donnell, M., O'Flynn, J. and West, D. (2013), *Strengthening the Performance Framework: Towards a High Performing Australian Public Service*, Australian Public Service Commission, Canberra, p. 2.

83 Bitici, Mendibil, Nudurupati, Garengo and Turner, 'Dynamics of performance measurement and organisational culture', *International Journal of Operations & Production Management*, vol. 26, no. 12, 2006, p. 1344.

84 Tom Rogers, a/g Electoral Commissioner, AEC, *Transcript of Evidence*, 13 November 2014, Canberra, p. 20.

3.182 In March 2015 the Electoral Commissioner told the Committee that the AEC is informing its staff of 'the need for [staff] to put electoral integrity back into the heart of our processes',<sup>85</sup> and:

That is surrounded by a mantra that we are using at the moment called 'Every task matters,' because it is important all the way down. But putting that as a screen saver on a computer does not change culture. That is a long journey of continual messaging and working with our staff who, frankly, want to do the right thing and to be assisted to do that.<sup>86</sup>

3.183 Additionally, in correspondence to the Committee received in the final stages of this inquiry, the AEC outlined that it is developing and implementing a new values and behaviours framework, endorsing its Electoral Integrity Framework, as well as ongoing consultation with the ANAO and other measures.<sup>87</sup>

### Committee comment

3.184 The Committee is concerned that the corporate culture of the AEC is such that the AEC is unable to effect the level of organisational change necessary for the agency to reform its culture and business in order to allow it to be a high-performing, independent electoral authority into the future.

3.185 The challenge facing the AEC is that senior management may have difficulty driving the changes required that will effectively bring about performance-focussed organisational culture. The Electoral Commissioner's highlighting of a focus on electoral integrity is encouraging, but adoption of this throughout the entire organisation is always going to be a challenge.

3.186 Current AEC efforts to emphasise the importance of every task to staff are commendable, but more needs to occur for effective cultural change, in both the short and long term. Internally-driven measures can only achieve so much cultural change, when an organisation is trying to change itself.

3.187 From the Committee's perspective, the events of the 2013 federal election did not just highlight aspects of the core election delivery business that needed reforming, but cracked open the veneer of the AEC to public scrutiny, highlighting the flaws in its structure, operations and staffing.

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85 Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 6.

86 Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 6.

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

- 3.188 While the core mechanics of election delivery are the focus of much of the work underway by the AEC, the Committee feels that organisational renewal is also required to enable a modern, capable AEC to deliver elections and undertake meaningful change into the future.
- 3.189 The recommendations relating to the roles of AEOs and state managers and performance measurement set out earlier in this Chapter will go some way to achieving this, but the Committee believes that in order for effective change in relation to AEC culture to be achieved, and to foster the development of open and transparent processes, external guidance is required.
- 3.190 The AEC has already obtained consultancy guidance on how to manage logistics and planning for the delivery of elections, as well as gaining consultancy analysis and a 'health check' of their reform responses.<sup>88</sup>
- 3.191 However, there is an equivalent need for guidance on how to manage performance measurement reform, organisational renewal, knowledge and capability within the organisation as a whole. This guidance can come partly from the work that the APSC has done on outlining high-performance requirements for public service agencies – but there will always be gaps when the public service analyses itself and attempts to create change and innovation.
- 3.192 Accordingly, it would be desirable for the AEC to engage with the APSC and organisational culture management specialists to enable the level of reform and culture change required.
- 3.193 This engagement will require oversight of a collaborative nature, both within the public service and from subject matter experts. Accordingly, the Committee believes that an oversight committee should be established comprising:
- the Electoral Commissioner;
  - the Auditor-General;
  - the Australian Public Service Commissioner; and
  - an appropriately qualified private industry or academic subject matter expert on organisational culture and performance management.
- 3.194 This Committee can then review the reform process.

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88 Pablo Carpay, First Assistant Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, p. 4.

## **Recommendation 9**

**The Committee recommends that the Australian Electoral Commission commence a corporate culture, leadership and performance measurement reform programme.**

**This programme should be formulated in consultation with the Australian Public Service Commission and a suitably qualified organisational culture and management consultant, gained through an open market tender.**

**This programme should then be overseen by a committee comprising:**

- **the Electoral Commissioner;**
- **the Auditor-General;**
- **the Australian Public Service Commissioner; and**
- **an appropriately qualified private industry or academic subject matter expert on organisational culture and performance management.**



## Election preparation and the pre-poll period

- 4.1 The preparation for an election and the pre-poll period are key to a successful election. Within this, the maintenance of the electoral roll is a key activity, and during the preparation for the 2013 federal election maintenance of the roll was impacted by legislative changes made in the preceding years, most significantly the introduction of direct enrolment and update.
- 4.2 Australians are also taking greater advantage of pre-poll voting, and the 2013 election saw a marked increase in the number of voters choosing to cast their vote prior to election day. In respect of voting habits, this changes the focus from election day to more of a 'polling period' – a change considered in this chapter.

### **Electoral roll management**

- 4.3 An integral part of delivering an accurate and efficient election is having a complete and accurate electoral roll.
- 4.4 The Australian Electoral Commission (AEC) has a continuous programme of maintenance and update to the federal electoral roll, and strives to deliver the most accurate and up-to-date roll for use as certified lists after the rolls are closed once an election is called and writs are issued.
- 4.5 Despite this, certain elements of roll management have been brought to the Committee's attention as requiring further focus or remedy. The use of electronic certified lists and online enrolment was considered in the Committee's November 2014 interim report on electronic voting.<sup>1</sup>

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1 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, available at

## Deliberate manipulation of the electoral roll

- 4.6 The confidence required in the electoral roll, and election results being reflective of the will of the eligible voters within a Division, is challenged by the potential for people to deliberately manipulate and pervert the electoral roll.
- 4.7 As became evident after the 2013 election, people can enrol within a Division in which they do not reside, with the consequence, deliberate or accidental, that their vote counts towards a candidate not representing the Division in which they live.
- 4.8 After the 2013 election, allegations were made that there was a deliberate and concerted effort by certain people in Victoria to get people resident in Melbourne to deliberately and falsely enrol in the Division of Indi.<sup>2</sup>
- 4.9 The legitimacy of the outcome of an election should never be put into question by the actions of anyone aiming to mislead or subvert the electoral process. Severe penalties exist under the *Criminal Code Act 1995* and relevant state legislation for providing false and misleading information to the AEC or other electoral body on enrolment forms, and the Committee is firmly of the view that these penalties should be applied to anyone found guilty of such an offence.
- 4.10 The allegations raised in relation to Indi are deeply concerning to the Committee. The Committee notes with approval that, after a preliminary investigation, the AEC referred the matter to the Australian Federal Police.<sup>3</sup>

## Current roll management

- 4.11 Every eligible Australian citizen is entitled to enrol to vote from the age of 18 years of age. It is compulsory to vote and citizens may provisionally enrol from the age of 16, so that their names are added to the roll upon their eighteenth birthday.
- 4.12 *The Commonwealth Electoral Act 1918* (the Electoral Act) envisages that every eligible citizen will enrol and keep their enrolled details up to date.

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<[aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Second\\_Interim\\_Report](http://aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Second_Interim_Report)>.

2 The Australian, *Batch of 'false' votes tarts Cathy McGowan's Indi win*, accessed 13 October 2014, <[theaustralian.com.au/national-affairs/batch-of-false-votes-tars-cathy-mcgowans-indi-win/story-fn59niix-1227072146852](http://theaustralian.com.au/national-affairs/batch-of-false-votes-tars-cathy-mcgowans-indi-win/story-fn59niix-1227072146852)>.

3 Australian Electoral Commission (AEC) media release, *Statement from the Australian Electoral Commission: Division of Indi*, 2 October 2014, accessed 2 October 2014, <[aec.gov.au/media/media-releases/2014/10-02.htm](http://aec.gov.au/media/media-releases/2014/10-02.htm)>.

Once an election is called, there is even a seven day period in which there is active enrolment and update encouraged by the AEC and the government – the close of rolls period.

- 4.13 Prior to 2012 the AEC could only enrol or update a citizen with their direct involvement, but automatic enrolment legislation changed this landscape.
- 4.14 The methods of current roll management and associated issues are outlined below.

### Continuous roll update

- 4.15 The AEC has had an ongoing programme of electoral roll update to maintain the accuracy of the roll:

The AEC employs a number of strategies, based on a philosophy of continuous roll update, throughout the electoral cycle to ensure that the ever increasing numbers of Australians that are eligible to vote are correctly enrolled. These include:

- enabling self-starting electors to initiate their own enrolment via numerous channels,
- directly engaging with electors to commence enrolment action or to prompt electors to take action on their own behalf, and
- supporting these activities with complementary advertising and public relations campaigns.<sup>4</sup>

- 4.16 The AEC continues to support traditional enrolment methods by updating and supplying paper enrolment forms to various sources, such as Post Offices, government agencies, and electorate offices of members of Parliament; and through activities such as supporting citizenship ceremonies and providing education resources to schools and other education institutions.
- 4.17 In addition, the AEC has enhanced and supplemented online enrolment avenues, including the introduction of complete enrolment or update through an online service. This allows citizens to enrol for the first time, or update their enrolment through the AEC website.<sup>5</sup>

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4 AEC, *Submission 20.3*, p. 43.

5 AEC website, 'Enrol to vote', accessed 19 May 2014, <[aec.gov.au/enrol/](http://aec.gov.au/enrol/)>.

## Direct enrolment and update

- 4.18 Legislative changes introduced as a result of recommendations from a previous Electoral Matters Committee have enabled the AEC to directly enrol or update the details of people already on the electoral roll.<sup>6</sup>
- 4.19 This is effected by the matching of data provided from government agencies and other third parties in order to match a person's details or establish their eligibility to vote.<sup>7</sup> Additionally, the AEC has been actively working with the Australian Tax Office to encourage people to update their enrolment details if they register a change of details when using the e-tax application.<sup>8</sup>
- 4.20 If a person's details are to be added to or updated on the electoral roll, the AEC first writes to the individual concerned notifying them that it intends to take this action and the individual has 28 days to respond if the details are incorrect. No other action on behalf of the voter is necessary, and if no response is received the roll is automatically updated.<sup>9</sup>
- 4.21 A number of inquiry participants expressed support for the retention of direct enrolment and update in support of voter-initiated enrolment.<sup>10</sup> However, direct enrolment and update has caused some difficulties with regard to state jurisdictions:

Section 42(1) of the *Electoral Act 1907* of Western Australia stipulates that a claim for enrolment must be signed on a prescribed form. Accordingly new electors who have been placed on the Commonwealth Electoral Roll through [Federal Direct Enrolment and Update (FDEU)] are still required to submit a claim for enrolment for inclusion on the Western Australian Electoral Roll.

Since the introduction of FDEU in Western Australia in April 2013 the Western Australian Electoral Commission (WAEC) has made considerable efforts to encourage these new Commonwealth electors to enrol for Western Australian elections, but many of these have not responded. As of 30 June 2014 it is estimated that at

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6 Joint Standing Committee on Electoral Matters (43<sup>rd</sup> Parliament), *The 2010 federal election: Report on the conduct of the election and related matters*, June 2011, p. 36.

7 A complete list of agencies that the AEC obtain data from is at Appendix B of the *Direct Enrolment and Update – Privacy Impact Assessment*, accessed 19 May 2014, <[aec.gov.au/About\\_AEC/Publications/Fact\\_Sheets/files/direct-pis.pdf](http://aec.gov.au/About_AEC/Publications/Fact_Sheets/files/direct-pis.pdf)>.

8 AEC, *Submission 20.3*, p. 43.

9 AEC, Fact sheet: *Direct enrolment and update*, 10 February 2014, accessed 30 October 2014, <[aec.gov.au/About\\_AEC/Publications/Fact\\_Sheets/direct.htm](http://aec.gov.au/About_AEC/Publications/Fact_Sheets/direct.htm)>.

10 Australia Post, *Submission 174*, p. 8, B Costar, *Submission 116*, p. 1; GetUp!, *Submission 205*, p. 9, Prof. Clive Bean, *Transcript of Evidence*, Brisbane, 8 May 2014, p. 33.

least 25,000 eligible Western Australians were enrolled for the Commonwealth but not the State electoral roll, and this discrepancy can only increase under FDEU.

...

While we support the desirability of joint Commonwealth and State electoral enrolment we maintain the principle that all adult citizens should themselves exercise their responsibility to enrol as electors, and that FDEU can perpetuate apathy among first-time electors.<sup>11</sup>

- 4.22 In the period between 27 July 2010 and the announcement of the 2013 election on 4 August 2013, 39 909 persons were newly enrolled through direct enrolment; 50 029 were re-enrolled; and 699 804 individuals' details were changed.<sup>12</sup>

### Committee comment

- 4.23 While direct enrolment and update has seen a significant number of individuals added to or updated on the electoral roll, it is of concern that individuals are not required to take any action at all to confirm their enrolment.
- 4.24 As the Western Australian (WA) Minister for Electoral Affairs notes, WA maintains the principle that all adult voters must be responsible for exercising their obligations as electors. The AEC states that they believe that the FDEU process is 'simply a mechanism to make it easier to comply with this obligation.'<sup>13</sup>
- 4.25 However, it is of concern that individuals can be enrolled with no active confirmation acknowledging their new obligations as a voter. Additionally, there is no confirmation from the voter that the details for the enrolment are indeed correct.
- 4.26 It is noteworthy that, in 2013, the AEC made efforts to contact new voters enrolled through the direct enrolment programme to remind them of their obligation to vote.<sup>14</sup> However, there is still no mechanism for the voter to confirm their new or updated enrolment at the time it is undertaken.
- 4.27 The AEC also identified one possible mechanism for confirming details in the direct enrolment process:

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11 Correspondence from Hon. Peter Collier MLC, Minister for Electoral Affairs (Western Australia), dated 1 September 2014.

12 AEC, *Submission 20.3*, p. 145.

13 AEC, *Submission 20.9 Attachment B*, p. 8.

14 AEC, *Submission 20.3*, p. 84.

I think there are other measures that we could put in place to strengthen the integrity around – using your term – the automated process, where we get something from the elector that says that they are the individual. There is a range of different ways of doing that, even, frankly, an SMS message, potentially, but something simple to know that a live person got that at the other end of the process.<sup>15</sup>

- 4.28 Therefore the Committee recommends that the FDEU provisions of the Electoral Act be amended to require a confirmation to be received from newly FDEU enrolled or updated voters to finalise their enrolled status.

### Recommendation 10

**The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to require a confirmation to be sought and received from a person prior to their enrolment being added or updated on the electoral roll due to any Federal Direct Enrolment or Update activity.**

### Difficulties for homeless people

- 4.29 Enrolment and the associated identity requirements can have marked impacts on certain aspects of the community. Homeless or transient people or other vulnerable populations are often either not enrolled or have difficulty maintaining correct enrolment.
- 4.30 In its submission to the inquiry Homelessness NSW pointed out that, often, such populations may have the most reason to vote based on their perception of issues related to their status, as well as voting providing a sense of self-worth and a feeling of influence on their community.<sup>16</sup>
- 4.31 The Electoral Act currently allows for a homeless person to enrol as an itinerant elector under section 96; however, the requirement to have valid identification, or have a currently enrolled person attest to the person's identity (as per section 98AA of the Act) can cause difficulties for many homeless people who do not have the requisite identity documents or are not able to have a person attest to their identity.
- 4.32 Added to this is a concern that electorates in which itinerant electors are enrolled can be either:
- the last electorate for which there was an entitlement to be enrolled;
  - the electorate of any next of kin (if the first entitlement never existed);

15 Tom Rogers, Electoral Commissioner, AEC, *Transcript of Evidence*, 4 March 2015, Canberra, pp. 11-12.

16 Homelessness NSW, *Submission 40*, p. 3.

- the electorate in which they were born; or
  - the electorate with which the applicant has the closest connection.
- 4.33 This raises the prospect of itinerant electors being enrolled in electorates to which they have no physical or residency connection in the recent past or present. However, Homelessness NSW informed the Committee that the current enrolment, engagement and voting mechanisms employed by the AEC for homeless voters are, on the whole, working well.<sup>17</sup>

## Electoral Roll divergence

- 4.34 Electoral rolls are maintained federally as well as in each state and territory and each jurisdiction has separate legislation governing enrolment and the use and publication of the electoral roll. As a result, electors may have their enrolment treated differently for federal and state/territory enrolment, which causes difficulties for both the elector and electoral authorities, as outlined above.
- 4.35 In their submissions both the AEC and the Liberal Party of Australia highlighted concerns about electoral roll divergence among the jurisdictions. The AEC noted that:

Roll divergence, or differences for individual electors between their federal, and state and territory enrolments, is an issue for both the AEC, and state and territory election bodies.

Roll divergence occurs because of differences between Commonwealth, and state and territory electoral legislation and enrolment requirements. It causes confusion among electors, who are often unaware of these differences, despite communication efforts by the AEC and state and territory election bodies.<sup>18</sup>

- 4.36 The Liberal Party submitted:

The problem of divergence between the federal electoral roll and state based rolls is becoming more pronounced. The Liberal Party does not believe that it should be the case that a person is enrolled to vote at a state level but not federally. Similarly, a person should not be registered to vote at one address for state elections but at a different address for federal elections. The Liberal Party is particularly concerned at the growth of automatic enrolment in some state rolls, based on unreliable data.<sup>19</sup>

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17 Digby Hughes, *Transcript of Evidence*, 13 March 2014, Sydney, p. 22.

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

19 Liberal Party of Australia, *Submission 188*, pp. 7-8.

- 4.37 The AEC highlighted that the level of divergence is high, particularly in some states:
- as at 11 November 2014 there were 525 839 divergent enrolments on the federal electoral roll;
    - ⇒ 221 604 enrolments differed between the NSW roll and the federal roll;
    - ⇒ 201 518 enrolments differed between the Victorian roll and the federal roll;
    - ⇒ 99 722 enrolments differed between the WA roll and the federal roll; and
    - ⇒ other states and territories were negligible.<sup>20</sup>
- 4.38 The divergence in NSW and Victoria were an excess of enrolments on state rolls compared to federal, while WA had fewer enrolments. This was due to a mix of either data sources that were used at state levels that are not acceptable at the federal level (NSW and Victoria), FDEU enrolment not being accepted by the state electoral authority (WA), or other enrolment eligibilities that meant people could be enrolled at a state level, but not federally (due to citizenship, imprisonment etc).<sup>21</sup>
- 4.39 Concerns were also raised during the course of the inquiry over the divergent treatment of silent elector information among the jurisdictions. The Committee has worked with the Special Minister of State to address this issue at the Federal level.<sup>22</sup>

### Committee comment

- 4.40 There are a number of challenges in addressing electoral roll divergence across Australia. The most significant challenge is that every state and territory is responsible for the regulation and administration of roll maintenance.
- 4.41 The AEC correctly identifies that different eligibilities and enrolled statuses lead to voter confusion and potential disenfranchisement.<sup>23</sup> This is understandably not a desirable situation, but cannot be addressed by this Committee.
- 4.42 The Committee acknowledges that its recommendation above concerning confirmation from potentially enrolled or updated voters before their

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20 AEC, *Submission 20.9 Attachment B*, pp. 4-5.

21 AEC, *Submission 20.9 Attachment B*, pp. 8-10.

22 In the interest of security of silent electors, the Committee has chosen not to detail this issue in this report.

23 AEC, *Submission 20.9 Attachment B*, p. 13.

details are changed through FDEU could potentially lead to further divergence between the federal roll and state rolls. However, the Committee is of the view that the integrity of the electoral roll is paramount in this context, and that roll convergence should not be at the price of the accuracy and integrity of the federal roll.

- 4.43 Ultimately, roll harmonisation is an issue for the federal and state electoral authorities and jurisdictions; the Committee commends the AEC on its willingness to engage the relevant state electoral commissions and work towards minimising divergence as much as possible. This work should be continued and expanded with the aim of ensuring that further roll integrity measures at the federal level are considered at the state level. The Committee recommends action on this later in the Chapter.

## Public roll access

- 4.44 The restriction of access to publicly available electoral rolls, as the result of a tightening of roll access policy by the AEC over the last two years, was a key area of concern raised during the inquiry, primarily by groups involved in connecting families impacted by forced adoption.

- 4.45 Section 90A of the Electoral Act requires that a copy of the roll is available for public inspection at divisional and state offices. Legislatively, very little other guidance is provided by the Electoral Act regarding the purposes for which access should be granted.

- 4.46 The AEC provided a useful summary of the intention behind public roll access and some of the surrounding issues:

The right to access the Commonwealth electoral Roll is absolutely integral and critical to the conduct of free and fair federal elections, as it ensures a degree of public transparency and accountability in terms of accuracy of enrolment, and is a measure to mitigate electoral fraud. A lack of access to the electoral Roll has the potential to undermine the public confidence in the integrity of electoral process... There is an absolute need to provide members of the public with access to the electoral Roll to be viewed for electoral purposes; a need for the Roll to be accessible for socially worthwhile purposes; and a need to balance the protection of citizens' personal data.<sup>24</sup>

- 4.47 In order to achieve this balance, in April 2014 the AEC outlined its then approach to managing public access under section 90A:

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24 AEC, *Submission 20.6*, p. 3.

Section 90A of the Electoral Act provides no specific guidance as to appropriate use of the publicly accessible roll. The AEC has therefore based its approach to public access on:

- the principle of facilitating transparency of the electoral process,
- allowing private individuals wishing to object to the presence of an elector on the roll on the basis they believe the elector has not lived at their enrolled address for at least one month to check the accuracy of their information against that on the roll prior to lodging the objection with the AEC,
- the permitted purposes for specified groups to access roll information, as contained in s.91A, being for any purpose in connection with an election or referendum or for monitoring the accuracy of the information on the roll; and
- sentiments expressed by JSCEM in the report on their inquiry into the 2001 election.<sup>25</sup>

4.48 Historically, public access to the electoral roll has shifted considerably, including the fact that electoral rolls were available for sale up until 2004.<sup>26</sup>

4.49 However, since that time, access to the roll has become more of an issue due to the identified increased stringency of privacy and identity requirements, independent of the access provisions of the Electoral Act. The AEC noted:

Recommendation 1(a) of the ANAO's 2007 federal election performance audit recommended that the AEC engage with the Office of the Privacy Commissioner to develop improved governance arrangements for the collection, processing, data-matching, distribution and management of the person[al] information of electors and potential electors. Importantly, recommendation 1(b) of that report also recommended that the AEC assess the extent to which broad use of electoral-roll information by non-government entities may be adversely impacting on the willingness of Australians to enrol to vote.<sup>27</sup>

4.50 Accordingly, the AEC:

has adopted a stricter approach to members of the public accessing the publicly available electoral roll, informing all users that the roll is provided for public viewing for the purpose of checking an elector's own details or to enable an elector to confirm information when intending to object to the enrolment of another elector. The AEC has also increased the supervision of members of the public

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25 AEC, *Submission 20.3*, p. 51.

26 AEC, *Submission 20.6*, p. 3.

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

using the terminals which host the publicly accessible roll. AEC staff now approach all users and, if it is clear the terminal is being used for purposes which are not appropriate, request that usage stop.<sup>28</sup>

4.51 This restriction highlighted the tensions between the enshrined right of public access to the electoral roll as provided by section 90A of the Act, the rapidly increasing requirement for privacy of citizens' details, the desire to provide the services sought by citizens, and the clear intention of the electoral roll for the conduct of complete and accurate elections and referendums.

4.52 In the past, it is possible that some entities may have used the roll for purposes other than the conduct of elections and referendums, but not in contravention of the access provided by section 90A. The AEC acknowledged that past practice allowed for a wide range of searches:

In the past, members of the public have viewed the electoral roll for many purposes, often entirely unrelated to the roll's purpose as an instrument of democracy. These are known to have included:

- adoption agencies assisting adoptees to track down their birth parents,
- law courts requiring that addresses be checked on the electoral roll,
- genealogists, both amateur and professional, who are constructing family histories,
- debt collecting agencies seeking to track down individuals,
- persons organising school reunions,
- persons seeking to return lost war medals, and
- persons finding estranged family members.<sup>29</sup>

4.53 The AEC indicated its belief that the more restrictive approach to public access to the roll was justified:

In effect, until the current more stringent approach was adopted, it is clear that some members of the public, organisations and government bodies were treating the electoral roll as a government directory or a tool to locate people, rather than an element of integrity, and were using the electoral roll to perform functions for which it was not envisaged or suited.<sup>30</sup>

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

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

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

- 4.54 At the same time, the AEC acknowledged that ‘there is a balance to be struck between privacy and accessibility of the electoral roll’.<sup>31</sup> As is noted below, however, due to recent advice, the AEC has changed its stricter public roll access policy.

#### Evidence received on AEC stricter roll access

- 4.55 In evidence received by the Committee, the NSW Committee on Adoption and Permanent Care Inc identified the important role that the electoral roll played in the past in assisting individuals or agencies attempting to reconnect family members affected by forced adoptions or who wished to reconnect with family members after voluntary adoption.<sup>32</sup>

- 4.56 The NSW Committee on Adoption and Permanent Care Inc highlighted the importance of electoral roll searches in the adoption process:

Consultation with parents throughout the various stages of adoption is absolutely critical to ensure that adoption does occur in the most ethical and open and honest manner. Unfortunately, the circumstances of many parents who are within the out-of-home care system mean they often have become disengaged with service providers along the way. It is necessary that we be able to search for them and to make contact with them to enable that consultation process. Often for these families we do not have an address or a telephone number; we may simply have a name. Up until recently we have used the electoral roll to find an address to locate these family members.<sup>33</sup>

- 4.57 International Social Service (ISS) Australia expressed concern at the impact of the more restrictive approach to roll access and contended that it is not reflective of international practice:

ISS Australia believes that such restrictions to accessing the electoral roll are not in keeping with international practice. Our experience in searching for family members separated by adoption overseas shows that the public or services can access full name and address details on many overseas electoral rolls.<sup>34</sup>

- 4.58 Adoption Jigsaw also noted international practice:

It is ironic that we find it easier to search in the UK than we do in Australia. In the UK we can access a combination of the Electoral

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

32 NSW Committee on Adoption and Permanent Care Inc, *Submission 35*.

33 Lisa Vihtonen, NSW Committee on Adoption and Permanent Care, *Transcript of evidence*, 13 March 2014, Sydney, p. 14.

34 ISS Australia, *Submission 49*, p. [1].

Roll/telephone book online and we can apply for any birth, death or marriage certificate.<sup>35</sup>

4.59 Apart from adoption organisations, a number of other inquiry participants also raised concerns on this matter:

- Solicitor Paul Cummins noted that he utilised the roll to find beneficiaries of deceased estates, missing defaulting debtors and missing witnesses. Mr Cummins noted that the change to access had added a significant additional cost on businesses that, without access to the electoral roll, would have to pay for access to other methods of tracing individuals.<sup>36</sup>
- Mr Geoffrey Howell submitted that he had used the roll to find alumni when organising a university college reunion.<sup>37</sup>
- The company 'Data Zoo' submitted that it would like access to the roll for business-related ID verification purposes.<sup>38</sup>

4.60 In his submission the then Minister for Social Services, Hon Kevin Andrews MP, further noted the difficulty that restrictions on access to the electoral roll had caused organisations providing tracing services for families affected by past institutional care and forced adoption practices, particularly given the Government's commitment to assist people affected by these policies and practices with family reunification following the 2013 National Apology. Mr Andrews proposed that:

Access to the roll be restored for organisations assisting people affected by past care or forced adoption. To balance privacy concerns, access to the Roll could be limited by, for example, only permitting organisations that receive government funding to access the roll for these purposes.<sup>39</sup>

4.61 The Committee sought further input from the AEC on the potential for access to the electoral roll by defined or specific organisations. The AEC noted in response that:

amongst other options the Committee may consider, one way forward might be to provide more clarity around the purpose of the Electoral Roll. This could be then supported through the development of a legislative definition of socially worthwhile activities (in the context of Roll access), which would enable the

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35 Adoption Jigsaw, *Submission 18*, p. [3].

36 P Cummins, *Submission 38*.

37 G Howell, *Submission 170*.

38 Data Zoo, *Submission 173*.

39 Hon. Kevin Andrews MP, Minister for Social Services, *Submission 189*, p. [2].

AEC to make more targeted determinations at the operational level.<sup>40</sup>

### Reversal of AEC roll access policy

- 4.62 In correspondence received very late in the inquiry, the AEC informed the Committee that the Commonwealth Ombudsman had advised the AEC that, in his view, the AEC's stricter public roll access policy was inconsistent with the law.<sup>41</sup>
- 4.63 The Ombudsman also advised that, in line with Australian Privacy Principles, section 90A of the Electoral Act authorises the disclosure of personal information, and that the access provided by section 90A cannot be limited to certain purposes.
- 4.64 Accordingly, the AEC has informed the Committee that its stricter public roll access policy will be reversed. This will mean that, under section 90A, public access to the electoral roll should be unfettered.

### Committee comment

- 4.65 In the Committee's opinion, the primary purpose of the electoral roll is to facilitate the electoral process. It is not a government directory or business service for the purposes of locating or tracking people. The Committee understands the approach that the AEC has taken in balancing privacy concerns with appropriate public access.
- 4.66 Nonetheless, the more restrictive approach to public access to the roll has had an unintended consequence of restricting the capacity for delivery of some government services, or related activities, for which the electoral roll can play a valuable part. Specifically, the implementation of programmes following the 2013 National Apology to people affected by forced adoption has been affected.
- 4.67 The advice received by the AEC noted above, and the AEC's consequential decision to reverse its stricter public roll access policy, mean that many of the concerns raised with the Committee in this area are no longer in issue.
- 4.68 The AEC's reversal of policy should rectify the information access concerns that legitimate adoption reunion and other socially worthwhile organisations raised in evidence to the Committee. It does not address the Committee's continued concern that other private individuals and businesses may access the roll for commercial gain or for other purposes that are not the intention of the electoral roll.
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40 AEC, *Submission 20.6*, p. 7.

41 Correspondence to the Committee from the AEC dated 23 March 2015.

- 4.69 Given the unknown downstream effects that the reversal of the AEC access policy may have (including potential misuse of roll information), the Committee encourages the AEC to monitor the outcome over the remainder of this electoral cycle with a view to reporting in the next Parliament.
- 4.70 The Parliament can then consider this information with a view to determining whether any further changes are required to section 90A of the Electoral Act.
- 4.71 Overall, the Committee believes that there is a need for a normalised approach in regard to the suite of electoral roll harmonisation issues – roll access, viewable elector information, roll harmonisation, and the minimisation of divergence between the federal roll and the state rolls. These issues are rooted in the varying electoral legislation across Australia and in the independence of the various electoral commissions.
- 4.72 The Committee recognises the continued efforts of the AEC to address harmonisation issues with their state counterparts, and recommends that this work continue. The Committee encourages active further engagement to cover all aspects of electoral roll usage and access. In the first instance, a useful means of facilitating this would be a discussion held by the Electoral Council of Australia and New Zealand (ECANZ).

### **Recommendation 11**

**The Committee recommends that at the next meeting of the Electoral Council of Australia and New Zealand, the Electoral Commissioner continue to engage with the state electoral commissions regarding normalisation and harmonisation of electoral roll use and purpose.**

## **Ballot papers**

- 4.73 Ballot papers are the vehicle through which voters exercise their franchise and express their preference for an individual or a party to represent them in federal Parliament.
- 4.74 An individual voter's ability to understand and accurately fill out a ballot paper will affect whether their vote is deemed formal and admitted to the count, giving full effect to their franchise and influence on the Australian democratic process.
- 4.75 Nationally, at the 2013 federal election, informality rates were:
- Senate – 409 142 informal votes, or 2.96 per cent of votes cast; and

- House of Representatives—811 143, or 5.91 per cent of votes cast.<sup>42</sup>
- 4.76 These results broadly reflect the general informality trends of previous elections, albeit with the lower informality rate in the Senate being attributable to the fact that voters had a simpler method of casting a formal vote.
- 4.77 The recommendations made in the Committee's interim report on Senate voting practices should, if adopted, have a significant impact on the formality rates in Senate voting. A potentially smaller ballot paper would result in lower informality.

### Party position

- 4.78 Some evidence to the inquiry suggested that parties or groups that secured a larger proportion of the first-preference votes in the previous election should receive preferential treatment by being assigned to the first columns of a Senate ballot paper, or potentially the top boxes of a House of Representatives ballot paper.<sup>43</sup>
- 4.79 Such a mechanism would remove the randomised ballot draws that currently assign ballot paper positions, replacing them with a ballot paper position related to the level of primary vote a party, group, or candidate received at a previous election.
- 4.80 In theory, this could mean that on a Senate ballot paper, the group or individual that polled the most first-preferences at the previous election would be assigned to the first column (column A), followed by the next highest-polling group or individual, and so on. Similarly on a House of Representatives ballot paper, the previous election's highest-polling candidate (or party if they are not running again) would have the top ballot paper position, with the same progression below.
- 4.81 One effect of such a system would be that any potential 'donkey' votes (where a voter places their preferences in order of the boxes) would benefit the party, group, or candidate in that first position. The current system is designed to remove any advantage of the 'donkey' vote from those who may have been listed first due to alphabetic order or otherwise.
- 4.82 This suggested system could reflect the choice of the electorate at the previous election, with positions shifting between elections as the electorate's preferences shift. However, the Committee considers that conferring an advantage on candidates, parties or groups via the ballot paper is difficult to justify when it is recognised that electoral mechanisms
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42 AEC, results 2013 federal election, accessed 23 May 2014, <[results.aec.gov.au/17496/Website/Default.htm](http://results.aec.gov.au/17496/Website/Default.htm)>.

43 K Bonham, *Submission 140*, p. [10].

should not be calibrated to assist the electoral prospects of particular candidates and parties. Moreover, in the case of 'safe' Divisions, such a system could see preferential positioning repeatedly being assigned over time to the party or candidate holding the Division, thus potentially serving to entrench advantage.

## Rotation

- 4.83 In contrast to party positioning, other evidence to the inquiry proposed introducing a rotational system into ballot paper production for federal elections.<sup>44</sup>
- 4.84 Introduction of a rotation system, akin to that dubbed the 'Robson Rotation', would ensure that no overall advantage of having the first ballot position would be gained from every ballot paper.<sup>45</sup>
- 4.85 The ACT currently uses the Robson Rotation for its Legislative Assembly election, resulting in 60 different variations of ballot paper columns for five-member electorates and 420 different variations for seven-member electorates.<sup>46</sup> This is achieved by limiting the number of candidates in each column to the number of vacancies, then creating the relevant number of batches of ballot papers with the candidate order shuffled according to formulas outlined in the ACT *Electoral Act 1992*. Voters are then issued with random ballot papers from each batch to ensure that as even as possible a mix of candidate order ballot papers are distributed.
- 4.86 Applying a similar system to both House of Representatives and Senate ballot papers would remove the overall advantage gained from ballot position, but would also result in massive ballot paper printing variation requirements, quality control and logistics. Similarly, the impact on political parties' ability to communicate How-to-Vote material would be significantly impacted.
- 4.87 Some inquiry participants recommended Robson Rotation implementation for Senate ballot papers, in part to address concerns over candidate numbers and nominations of parties wishing to gain a random advantage from ballot position.<sup>47</sup> The Committee believes that the reforms suggested in its interim report on Senate voting will address many of these concerns;

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44 For example – M Maley, *Submission 19*; G Williams, *Submission 23*; K Bonham, *Submission 140*; A Green, *Submission 180*.

45 The Robson Rotation system is named after Neil Robson, a former Tasmanian Liberal parliamentarian who supported its introduction for elections in the late 1970s.

46 Elections ACT, *Ballot Papers for the Legislative Assembly*, accessed 12 August 2014, <[elections.act.gov.au/elections\\_and\\_voting/ballot\\_papers\\_for\\_the\\_legislative\\_assembly](http://elections.act.gov.au/elections_and_voting/ballot_papers_for_the_legislative_assembly)>.

47 For example YWCA, *Submission 76*; Electoral Reform Australia, *Submission 87*; Proportional Representation Society of Australia, *Submission 142*.

introducing a further ballot order rotation system on top of these reforms is unnecessary.

## Party branding/logos

- 4.88 Some submissions suggested that political party logos could be added to ballot papers to avoid voter confusion regarding potentially misleading party names. The Liberal Party of Australia, for example, suggested that logos or symbols would ease confusion; this position was also supported by the Pirate Party Australia.<sup>48</sup>
- 4.89 This mechanism is used in many overseas jurisdictions, some of which are designed to counter voter illiteracy and others in which it is recognised that voters have a brand recognition in respect of political parties (such as in the United Kingdom).
- 4.90 Not all political parties in Australia have a trademark or logo, but the ability to replicate any logo on a ballot paper would arguably aid voters in the process of voting for any party they want to align their vote with.
- 4.91 It was also submitted that the use of symbols or images on ballot papers can be of considerable assistance for those with literacy difficulties or for whom English is not their first language, including Indigenous Australians:
- It should always be kept in mind that Australia is a multicultural society and in remote communities the English language is often a second, third or fourth language and that very many people are unable to read. The use of acronyms therefore creates one further layer of difficulty in participating in what we are attempting to achieve democratic process.
- ...
- Many third-world countries with multi languages have overcome these difficulties. As far back as the 1960s Malawi was using simple symbols for the different parties e.g. a lion, an elephant and so forth. In many countries photographs are used to assist those of other language groups and especially to assist those who do not read. This method of assisting with identification has occasionally been used in Australia.<sup>49</sup>
- 4.92 Sections 209 and 210A of the Electoral Act, in conjunction with Schedule 1, currently outline the form that a ballot paper for either a House of Representatives or Senate election must take and the form of party name

48 Liberal Party of Australia, *Submission 188*, pp. 10-11; Pirate Party Australia, *Submission 177*, p. 5.

49 Concerned Australians, *Submission 89*, p. [1].

that can be displayed on a ballot paper, including approved and registered abbreviations.

### Committee comment

- 4.93 The Committee is conscious of the merits of the proposal to permit the inclusion of party logos on ballot papers. The potential to limit confusion amongst voters, especially with complex ballot papers, is an argument for the adoption of logos.
- 4.94 Additionally, in Australia's multicultural society, such an initiative would assist voters facing language or literacy issues. Permitting the inclusion of logos would also allow parties to utilise their branding more effectively, but without conferring any advantage at the polling booth.
- 4.95 However, the Committee is also conscious of the fact that any move to register party logos and include them on ballot papers has the potential to raise the ownership and copyright issues that can emerge with regard to logos generally. In addition, the potential for similar (or misleadingly alike) logos to appear could confuse matters further. If similar registered party names can cause confusion, so too could party logos closely resembling each other.
- 4.96 The Committee is also aware that the ability to replicate and print colour party logos on House of Representatives and Senate ballot papers could present logistical and technical challenges, particularly given that House of Representatives ballot papers are required, under the Electoral Act, to be printed on a green background. As with many ostensibly straightforward solutions, the printing of logos on ballot papers is technically not as simple as it may first appear.
- 4.97 The Committee is of the view that the AEC should investigate the potential to replicate and reproduce official colour party logos on current ballot paper formats, and report to the Committee on the outcome prior to the next federal election.

## Pre-poll or early voting

- 4.98 At the 2013 election the total number of pre-poll votes (ordinary and declaration votes) received was 2 507 373, up from just over 1.5 million pre-poll votes received at the 2010 election.<sup>50</sup>
- 4.99 Within this overall total, the number of people casting a pre-poll vote in their own enrolled Division rose significantly since the 2010 election, as the AEC noted:
- Pre-poll votes cast as ordinary votes in Senate elections totalled 1 982 859, nearly double the number of ordinary votes cast at PPVCs [pre-poll voting centres] in 2010. This represents 14.3 per cent of all votes counted, up from 997 205 (7.5 per cent) in 2010.<sup>51</sup>
- 4.100 In 2004 the AEC operated 309 pre-poll voting centres (PPVCs); by the 2013 election this had increased to 645 centres.<sup>52</sup> This increase reflects the increased number of people desiring to vote before election day. Overall enrolment, however, has only increased by 12.4 per cent between the 2004 and 2013 elections (13 098 461 to 14 723 385).
- 4.101 The AEC's state manager for Victoria outlined an increasing focus on convenience in pre-poll patterns and attitudes in that state:
- We are finding that it is steadily increasing across the whole period. There is always still a surge towards the end, but there has been an increase across the period.
- ...
- I think equally the anecdotal feedback that I am getting is that people are living a lifestyle of convenience. They take their voting very seriously, but they want to do that at a time or in a manner that is more convenient to them. So they are looking to exercise those options, I think, more so than they may have done in the past.<sup>53</sup>
- 4.102 Schedule 2 of the Electoral Act sets out the acceptable grounds for applying for both a postal or pre-poll vote.

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50 AEC, *Submission 20.3*, p. 55; AEC, Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 2010 Federal Election and matters related thereto, *Submission 87*, p. 77.

51 AEC, *Submission 20.3*, p. 55.

52 AEC, *Submission 20.3*, p. 10.

53 Jeff Pope APM, Vic State Manager, AEC, *Transcript of Evidence*, 15 April 2014, Melbourne, pp. 1, 3.

## Pre-poll time period and polling locations

- 4.103 Pre-poll voting was established in 1984 as an oral application for a postal vote that then enabled a person to vote in a divisional office or a gazetted location. These votes could be cast on specifically nominated days where a postal voting officer could take the votes cast in a certain location.
- 4.104 In 1990 the Electoral Act was amended to specifically stipulate the concept of a pre-poll vote, with the period commencing three days after the declaration of nominations (changed to four days for the 2013 election).
- 4.105 Submissions to the inquiry did not offer much in the way of commentary on pre-poll periods, though some questioned the timeframe. The Nationals for Regional Victoria and the Australian Christians both questioned the need for the pre-poll period to be for the three weeks before election day.<sup>54</sup>
- 4.106 Concerns were also raised that the early voting period in remote areas is inequitable. It was noted that remote voting in the Northern Territory commenced eleven days after the close of candidate nominations (on 26 August 2013), with the result that ‘those Australian communities that are most distant and without ready communication services are provided with the least amount of time in which to organise for an election’.<sup>55</sup>
- 4.107 The Australian National Audit Office (ANAO) considered the issue of adequate servicing of the electorate during the pre-poll period in its November 2014 follow-up audit report on the implementation of audit recommendations made in 2010 regarding the 2007 election. The ANAO noted the significant increase in pre-poll voting between the 2010 and 2013 elections, yet also noted that the AEC reduced the number of PPVCs from 682 at the 2010 election to 645 for the 2013 election.<sup>56</sup> This reduction did not properly cater for the increased pre-poll vote received at the 2013 election.
- 4.108 In response to this, the Electoral Commissioner outlined:
- we have developed a methodology for forecasting a rise in pre-poll voting, and we are applying that to our polling place matrix at the moment in an effort to rationalise that. I am conscious that that statement is not just a statistical statement. It is not just a numbers issue of closing down polling places, because that also impacts on the community. But we have to take account of the rise in pre-poll

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54 The Nationals for Regional Victoria, *Submission 137*, p. 3 and The Australian Christians, *submission 179*, pp. [1-2].

55 Concerned Australians, *Submission 89*, p. [3].

56 ANAO, *Second Follow-up Audit into the Australian Electoral Commission's Preparation for the Conduct of Federal Elections*, Performance Audit Report No. 4 2014-2015, November 2014, p. 37.

voting – early voting – and what that means for us on the day, because we also need to make cost savings if we are to introduce some of these reforms, and that is one way of us doing it. So we have done quite a lot of work in that area.<sup>57</sup>

- 4.109 The Committee is also aware that the opening dates of some PPVC premises were not communicated in a timely fashion to some candidates or party officials in order to allow adequate timing for arranging party workers or other support services.
- 4.110 Currently, the Electoral Act only requires the publication of locations on the AEC website (no direct notification to candidates) once the Electoral Commissioner issues a declaration establishing the locations, unless that publication is on the first day of pre-polling. It would be desirable for DROs to be in contact with potential candidates as soon as practicable in order to inform them of planned and actual locations of PPVCs.

### Committee comment

- 4.111 The Committee acknowledges changes in voting patterns over recent election cycles. In the Committee's view, there is a balance to be preserved when providing pre-poll options to voters. On the one hand, there is a need to provide voters who cannot access a polling place on election day with a mechanism to vote. On the other hand, there are logistical considerations relating to providing pre-poll voting arrangements.
- 4.112 As intimated above, an administrative factor of relevance here is that increases in early voting can also affect the ability of the AEC to predict voting trends and adequately service the electorate with appropriate numbers of PPVCs and static polling booths. The Committee is pleased to see that the AEC is undertaking work in this area. The Committee notes those views submitted on the period available for pre-poll voting, but believes that the benefit of delivering flexible voting options to voters, and the resultant effect on overall turnout, warrant the retention of the current pre-poll voting period.
- 4.113 The Committee also notes concerns raised over inequities in the commencement of the early voting period in remote areas, but is conscious that there must be a balance between the provision of universal voting and the resources required to deliver these services.
- 4.114 While the Committee does not propose to recommend any changes to the current pre-poll period for the next election, it would be desirable for future Electoral Matters Committee inquiries into the conduct of federal

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

elections to monitor the trend of increasing pre-poll voting and address any issues that may arise.

- 4.115 The Committee also acknowledges that the securing of adequate pre-poll premises is sometimes a challenge for the AEC, and that currently section 200BA of the Electoral Act only requires publication of the declared locations of PPVCs on the AEC website up to the day before pre-polling commences (with the requirement to only inform candidates directly if the declaration occurs on the first day of pre-polling, or so close to that day that the location cannot be published in time).
- 4.116 Whilst it would seem that candidates should have resources ready to attend any PPVC at short notice, reality dictates that in order for adequate party resources to be allocated to PPVCs in time, more timely communication is required.
- 4.117 As the AEC must go through procurement processes for the securing of these premises (if pre-existing locations are not to be used), there is logically a period in which the relevant DRO (or other AEC employee) can inform the relevant candidates of the possibility, or the securing, of a PPVC location, to enable the candidate and/or their party to provide party workers or resources if desired.
- 4.118 DROs should be encouraged to communicate with candidates at the earliest possible point (even before this two day period), but the legislative requirement for this direct communication should be enshrined in the Electoral Act.
- 4.119 To this end, the Committee recommends the Electoral Act be amended to require direct informing of candidates if the declaration and publication of PPVC locations is going to be undertaken any later than two days before the commencement of pre-polling.
- 4.120 By way of example, under the Committee's proposal, if a PPVC were to open on the first day of pre-poll (currently the Tuesday after the declaration of nominations), the DRO would be able to inform the candidates of its location by the Sunday beforehand.

## Recommendation 12

**The Committee recommends that section 200BA of the *Commonwealth Electoral Act 1918* and section 73AA of the *Referendum (Machinery Provisions) Act 1984* be amended to provide that notification of pre-poll locations, or potential locations, be made directly to candidates if publication is to be later than two days before the first pre-poll voting day.**

## Postal voting

4.121 The rise in pre-poll voting numbers has been matched by a large increase in postal votes in recent elections. The AEC noted that:

The number of postal voters at the 2013 election increased from 2010. The total number of active Postal Vote Applications (PVAs) increased by 38 per cent to 1 329 215 from 966 360. Registered General Postal Voters (GPVs) increased to 230 926 from the 2010 total of 209 426.<sup>58</sup>

4.122 While not as marked an increase as for pre-poll voting, it is interesting to note that only 613 871 postal votes were counted for the 2004 federal election, meaning that postal votes have effectively increased by 100 per cent in less than a decade.<sup>59</sup> This appears to be part of the increasing trend of people choosing to vote early.

4.123 Postal voting is a long-standing and important mechanism for ensuring people have access to a voting mechanism within the system of federal compulsory voting. In order to support a compulsory voting system, remote, isolated and eligible overseas voters must be given a mechanism that can deliver their ballot papers within a timeframe that allows for an informed and lawful vote.

4.124 Some evidence to the inquiry raised concerns over the privacy of having a voter's details visible on the back of the postal vote envelope.<sup>60</sup>

4.125 This inclusion of voter details is required by the Electoral Act (as postal votes are technically another form of declaration vote/envelope), but privacy concerns are currently accommodated by the AEC's instructions

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58 AEC, *Submission 20.3*, p. 55.

59 AEC, results 2004 federal election, accessed 15 July 2014, <[results.aec.gov.au/12246/results/SenateVotesCountedByState-12246.htm](http://results.aec.gov.au/12246/results/SenateVotesCountedByState-12246.htm)>.

60 S Anderson, *Submission 164*; T Liddle, *Submission 22*.

to enclose the postal vote envelope in a further outer envelope where voters are concerned about privacy.

- 4.126 The AEC acknowledges that this is not an ideal or acceptable mechanism for some parties and has indicated that work is being undertaken with postal voting suppliers to try and address these concerns.<sup>61</sup>
- 4.127 The Committee believes that the postal voting system does not need to be changed at the current time. It would be desirable, however, for future Electoral Matters Committee inquiries into the conduct of federal elections to monitor the increase in postal voting and address any anomalies or issues that may arise.
- 4.128 In addition, with the potentially changing nature of the future provision of postal services by Australia Post, the AEC should continue to work closely with Australia Post to ensure that any changes to postal service priorities, costs or delivery timeframes do not threaten the efficacy of the postal vote system.

## The advertising blackout

- 4.129 In Australia a media ‘blackout’ has been imposed on traditional broadcast media, banning the broadcast of political or election advertising for the two days before election day. This prohibition is designed to reduce any last minute flooding of broadcast advertising and create a clear time period before election day.
- 4.130 Internationally, a number of countries also prohibit electoral advertising or the publication of pre-election opinion polls (also called ‘electoral silence’) for a period on or before election day. For example, Canada prohibits election advertising on polling day itself,<sup>62</sup> as does New Zealand.<sup>63</sup>
- 4.131 Schedule 2 of the *Broadcasting Services Act 1992* (BSA) governs the mechanisms and times that election advertisements can be broadcast and the relevant times that the ‘blackout’ period applies. The relevant period is defined as:

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61 AEC, *Submission 20.3*, pp. 58-59 and *Submission 20.6*, p. 17.

62 OMAC Canada, *Canada Federal Election Advertising Guidelines*, November 2011, accessed 6 March 2015, <[omaccanada.ca/Sites/omac/multimedias/Ad%20Guidelines/2011/Elections/CANADA%20Election%20Advertising%20Guidelines-EN-Nov2011.pdf](http://omaccanada.ca/Sites/omac/multimedias/Ad%20Guidelines/2011/Elections/CANADA%20Election%20Advertising%20Guidelines-EN-Nov2011.pdf)>.

63 Election NZ Website, *Party Secretary Handbook: Appendix D*, accessed 6 March 2015, <[elections.org.nz/party-secretary-handbook/appendix-d-summary-election-advertising-rules-parties](http://elections.org.nz/party-secretary-handbook/appendix-d-summary-election-advertising-rules-parties)>.

*relevant period*, in relation to an election, means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day.

- 4.132 The media blackout has traditionally functioned as a ‘cooling off’ period that allows voters to consider the campaigns of candidates before election day.
- 4.133 Some evidence to the inquiry raised concerns that the current blackout does not extend to non-traditional broadcast media, such as the internet and social media.<sup>64</sup> The Liberal Party of Australia submitted that:
- The long term future of the blackout period will also require examination in coming years with the rise of social media making the blackout increasingly redundant.<sup>65</sup>
- 4.134 This is an increasingly relevant concern, given the rise of social media and the modern reliance on the internet and mobile communication.
- 4.135 Continued advertising and campaigning in this non-traditional media can undermine the intention of the blackout and allows candidates to campaign right up to, and including, election day.
- 4.136 The Australian Communications and Media Authority (ACMA) advised the Committee that it received 12 complaints relating to non-traditional broadcast media during the 2013 federal election, Griffith by-election and WA Senate election.<sup>66</sup>
- 4.137 The AEC provided the Committee with a breakdown of the complaints it received during the 2013 federal election and WA Senate election. Thirty complaints were received in relation to:
- text messages from political parties;
  - advertisements on social media (Facebook and Twitter);
  - advertisements on media websites;
  - banner advertisements on non-media websites (YouTube, eBay etc);
  - mobile phone applications; and
  - unspecified ‘internet advertising’.<sup>67</sup>
- 4.138 In its evidence to the inquiry the Liberal Party of Australia submitted that some commercial entities (including businesses owned by candidates)

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64 P and A Bennie, *Submission 2*, p. [1]; Liberal Party of Australia, *Submission 188*, p. 10.

65 Liberal Party of Australia, *Submission 188*, p. 10.

66 Correspondence from the Australian Communications and Media Authority (ACMA), dated 23 October 2014.

67 Correspondence from the AEC, dated 27 October 2014.

were advertising during the blackout period, featuring candidates, effectively avoiding the definition of an electoral advertisement:

The 2013 election saw businesses promoting candidates in their advertising throughout the election campaign, including during the commercial television and radio advertising blackout period. Whilst political parties cannot advertise during the blackout in the last few days of the campaign, an associated business of a candidate may still feature a candidate under the umbrella of business advertising. This clearly distorts the intent of the blackout.<sup>68</sup>

- 4.139 Part XXI of the Electoral Act contains provisions governing electoral advertisements. These provisions do not relate to restrictions on the broadcasting of advertising, but rather are chiefly concerned with electoral offences and elements of advertising that a person or entity should not undertake. More specifically, the relevant Part XXI provisions relate to:
- authorisation of and requirements of headings for electoral advertisements (sections 328 and 331);
  - publication of electoral advertisements on the internet (section 328A);
  - prohibition of misleading or deceptive publications (section 329); and
  - restriction of statements about candidates (section 351).
- 4.140 As noted above, restrictions on the broadcasting of advertising during an election are contained in the BSA. Under the BSA the ACMA has a range of regulatory responsibilities in relation to broadcasting services, internet content, designated content/hosting services, and datacasting services.<sup>69</sup>
- 4.141 In its correspondence to the Committee, ACMA indicated that there is currently no restriction or prohibition in the BSA on election advertisements via online or social media. ACMA also indicated that including such a restriction in the legislation could not be achieved easily due to factors such as the separation of broadcasting and online content regulations.<sup>70</sup>
- 4.142 There are associated requirements regarding electronic messages, telemarketing and 'cold calls' in the Electoral Act, but currently the realm of internet advertising has not been regulated outside of the requirements of section 328A.

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68 Liberal Party of Australia, *Submission 188*, p. 10.

69 ACMA publishes Election Guidelines on its website at: <[acma.gov.au/theACMA/About/The-ACMA-story/Regulating/political-matter-tv-content-regulation-i-acma](http://acma.gov.au/theACMA/About/The-ACMA-story/Regulating/political-matter-tv-content-regulation-i-acma)>

70 Correspondence from ACMA, dated 23 October 2014.

## Committee comment

- 4.143 With the evolution of advertising from traditional broadcasting and print to the online realm, together with reliance on the internet and the rise of social media, the traditional media blackout has clearly become less powerful and its original intent is being undermined. The increase in pre-poll voting has also potentially rendered the media blackout less relevant given that increasing numbers of votes are being cast before the blackout commences.
- 4.144 The reduced effectiveness of the traditional blackout due to the increase in online and social media advertising raises the question of its continuing viability into the future. This is an issue for broader public and parliamentary debate, and the Committee does not propose to recommend any substantive changes here. In the Committee's view, however, there would be virtue in a thorough examination of the continuing viability of the blackout.
- 4.145 The issue of ostensible business advertising possibly promoting candidates is also relevant here. On the surface it may seem attractive, as a preventive measure, to seek to apply the blackout to advertising by candidates who are also business proprietors. But this issue touches on a range of complex matters including the freedom of businesses to advertise and the difficulty of reliably determining where commercial advertising becomes electoral advertising. In the Committee's view, this issue should form part of an examination of the viability of the blackout.

### **Recommendation 13**

**The Committee recommends that the Australian Government examine the future viability of the broadcast media blackout.**

## 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.<sup>1</sup>
- 5.6 The Member for Fairfax criticised the use of pencils for voting:

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

### 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.

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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 18<sup>th</sup> birthday.
- 5.14 Overseas electors are able to vote in person at selected Australian diplomatic missions or consulates, or by postal vote.<sup>5</sup>
- 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,<sup>6</sup> through to a desire to maintain democratic 'contact' with Australia as a country of short-term past immigration.<sup>7</sup>
- 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).<sup>8</sup>

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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 43<sup>rd</sup> 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.<sup>9</sup> 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.<sup>10</sup>

- 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.<sup>11</sup> 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.<sup>12</sup>

- 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

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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.<sup>13</sup>

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.<sup>14</sup>

### 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 42<sup>nd</sup> 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.<sup>15</sup>

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.<sup>16</sup> In the Committee's view, the restriction in the Electoral Act is actually quite generous in its current

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

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

15 Joint Standing Committee on Electoral Matters (42<sup>nd</sup> 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](http://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.<sup>17</sup> These criteria are not clearly set out on the AEC's website for overseas electors and this should be rectified.<sup>18</sup>

### 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.<sup>19</sup>
- 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](http://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.'<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> 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

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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.<sup>24</sup>

- 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

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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.<sup>25</sup>

- 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.<sup>26</sup>
- 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.<sup>27</sup>

### 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

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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.<sup>28</sup> 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.<sup>29</sup>

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*.<sup>30</sup>
- 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.<sup>31</sup>
- 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

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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.<sup>32</sup>
- 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.<sup>33</sup>
- 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'.<sup>34</sup> These observations have been subsequently confirmed by the Queensland Electoral Commissioner in feedback provided to the AEC.<sup>35</sup>
- 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.

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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.<sup>36</sup>

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'.<sup>37</sup>

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.<sup>38</sup>

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

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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'.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

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.<sup>42</sup>

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'.<sup>43</sup> 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.<sup>44</sup>

- 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.<sup>45</sup>

### 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.<sup>46</sup>
- 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.<sup>47</sup>
- 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.<sup>48</sup>
- 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

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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](http://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.<sup>49</sup>

### 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,<sup>50</sup> 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

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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](http://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.<sup>51</sup>
- 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).<sup>52</sup>
  - 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.<sup>53</sup>
- 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

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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 CDPP for potential prosecution, due to the reasons stated above.<sup>54</sup>

- 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.<sup>55</sup>

### 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;

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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.<sup>56</sup>
- 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

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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](http://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?'<sup>57</sup>

- 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.<sup>58</sup>

- 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

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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.<sup>59</sup>
- 5.110 Mr Palmer requested an appearance before the Committee in correspondence of 28 April 2014.<sup>60</sup>
- 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.<sup>61</sup> 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.<sup>62</sup>
- 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.

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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.<sup>63</sup>
- 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.<sup>64</sup> 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.<sup>65</sup>
- 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.<sup>66</sup>

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

64 Joint Standing Committee on Electoral Matters (36<sup>th</sup> 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](http://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](http://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.<sup>67</sup>
- 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'.<sup>68</sup>
- 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.

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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.<sup>69</sup> 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

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<sup>69</sup> AEC, *Submission 20.3*, pp. 14-20..

first preference to the LNP candidate and not the Palmer United Party candidate.<sup>70</sup>

- 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.<sup>71</sup>

### 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’.<sup>72</sup>
- 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.

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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.<sup>73</sup>
- 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.

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<sup>73</sup> 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.<sup>74</sup>

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.<sup>75</sup>

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

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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.<sup>76</sup>

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.<sup>77</sup>

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.<sup>78</sup>

### 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

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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.<sup>79</sup>

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<sup>79</sup> 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.<sup>80</sup> 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.

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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.

## Electoral cycle issues

- 6.1 While election day and the surrounding period is naturally the focus for most people when considering the conduct of the election, a range of critical activities occur throughout the electoral cycle that have a direct impact on the operation of any electoral event.
- 6.2 These issues include election funding and disclosure, redistributions of electorates and the operation of the legislative framework in which elections are delivered. This Chapter considers these issues.

### **Election funding and disclosure**

- 6.3 Election funding – how individuals and parties fund their campaigns and party machinery through public and private financing – and the public disclosure of this funding is, and should be, a scrutinised feature of elections. This funding is to be distinguished from the funding received by the Australian Electoral Commission (AEC) for the purposes of conducting elections.
- 6.4 The Electoral Matters Committee of the 43<sup>rd</sup> Parliament undertook a wide-ranging inquiry into the funding of political parties and election campaigns. That Committee's report, the *Report on the funding of political parties and election campaigns*, was tabled in the Parliament in December 2011 and surveyed various issues relating to election funding and disclosure. The evidence canvassed in that report – and the dissenting reports it contains – demonstrate the varied perspectives on this element of the electoral landscape.<sup>1</sup>

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1 Joint Standing Committee on Electoral Matters (JSCEM) (43<sup>rd</sup> Parliament), *Report on the funding of political parties and election campaigns*, December 2011, pp. xxvii-xxxiii.

- 6.5 There have been few regulatory developments at the Commonwealth level concerning funding and disclosure since that report was tabled.
- 6.6 During the conduct of this inquiry, the following releases of funding disclosure returns by the AEC have occurred:
- 2012–13 annual disclosure returns – 3 February 2014;
  - 2013 federal election – 24 February 2014;
  - Griffith by-election – 28 July 2014;
  - 2014 WA Senate election – 22 September 2014; and
  - 2013–14 annual disclosure returns – 2 February 2015.<sup>2</sup>
- 6.7 Funding and disclosure is an issue of public and parliamentary focus, and will continue to be so during the life of this Parliament.
- 6.8 A summary of the history of the funding and disclosure system and its elements follows.

### Development of the Commonwealth system

- 6.9 Disclosure of donation amounts from all donors has had a varied history federally in Australia.
- 6.10 The requirement to disclose election campaign donations was introduced in 1983, with the introduction of annual political party returns in 1992 with an initial disclosure threshold for donations of \$1 500 or more.<sup>3</sup>
- 6.11 The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* made a number of changes to the financial disclosure scheme subsequent to the 2004 Federal Election.
- 6.12 The main change in that Act, after 14 years of no change, was an increase in the minimum financial disclosure thresholds for donations from \$200 (candidates), \$1 000 (groups) and \$1 500 (parties) to ‘more than \$10 000’, indexed annually to the Consumer Price Index (CPI). Currently the disclosure threshold is donations of more than \$12 800 (current until 30 June 2015).<sup>4</sup>
- 6.13 Additionally, Australia has had a long tradition of public funding of successfully elected candidates and Senate groups. Public funding was

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2 Information on past releases can be found on the Australian Electoral Commission (AEC) website at <[aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/index.htm](http://aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm)>.

3 AEC website, *Funding and Disclosure Report Election 1996*, accessed 3 March 2015, <[aec.gov.au/About\\_AEC/Publications/Reports\\_On\\_Federal\\_Electoral\\_Events/1996/part4.htm](http://aec.gov.au/About_AEC/Publications/Reports_On_Federal_Electoral_Events/1996/part4.htm)>.

4 AEC website, *Disclosure threshold*, accessed 3 March 2015, <[aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/threshold.htm](http://aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm)>.

officially introduced in 1983 and has grown since then.<sup>5</sup> From a humble beginning of 60 cents per vote in the House of Representatives and 30 cents per Senate vote, the rate stood at 248.8 cents per vote for the 2013 election.

## Public funding

- 6.14 The formalised public funding system that is in place puts the funding of successful candidates and parties squarely in the public domain, thus ensuring accountability and transparency.
- 6.15 Part XX of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides for government funding of eligible candidates and Senate groups that attract a certain number of formal first preference votes in an election.
- 6.16 If an individual candidate or Senate group receives at least four per cent of the formal first preference votes in their relative Division or Senate election, they are eligible for public funding after the election.
- 6.17 The amount of election funding received by an eligible candidate or group is calculated by multiplying the total formal first preference votes cast by the current election funding rate (at the time of the election). The rate of election funding is indexed every six months to increases in the CPI.
- 6.18 An initial payment is required by the Electoral Act as soon as possible after the 20<sup>th</sup> day following election day, comprising at least 95 per cent of the entitlement. This is followed up by any remaining balance payable as soon as possible afterwards.
- 6.19 A total of \$58 076 456 was paid in electoral funding for the 2013 election.<sup>6</sup>
- 6.20 This funding has been a stable element of electoral law in Australia and is well supported across most political parties. It was introduced in order to provide an equal access to funding for those that contest elections and receive adequate support from the voting public.
- 6.21 In evidence to the Committee some minor parties such as the Future Party, the Pirate Party and the #Sustainable Population Party submitted that they consider the four per cent threshold for electoral funding to be a barrier to entry into the political sphere for emerging or smaller parties or an inequity advantaging the major parties.<sup>7</sup> Most other parties and political

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5 B Holmes, Parliamentary Library, *Electoral and political financing: the Commonwealth regime and its reforms*, 30 March 2012, p. 7.

6 A full breakdown of payments made is available in the AEC substantive submission: AEC, *Submission 20.3*, p. 114.

7 Future Party, *Submission 169*; Pirate Party, *Submission 177*; #Sustainable Population Party, *Submission 182*.

commentator inquiry participants, however, either do not raise public funding as an issue or appear to be in support of the current threshold.<sup>8</sup>

## Private funding

- 6.22 The majority of commentary regarding electoral funding relates to the private funding of candidates, parties, or ‘associated entities’ (as defined in the Electoral Act). Private funding (that is, donations and funds provided to political parties or candidates by non-government third parties) has close ties to the disclosure requirements under the Electoral Act. Some submissions erroneously labelled private donations to political parties as ‘public funding’.
- 6.23 The traditional elements of private funding, and the mechanisms that individuals and other entities use to fund candidates or parties, are continually evolving.
- 6.24 The challenges in defining the ways that parties receive funding in the evolving financial landscape are diverse. The rise of crowd funding, for instance, is a current challenge for regulators in relation to following funding trends. Crowd funding is typically the raising of funds for a project or venture through numerous donations of differing sizes from interested people, often via the internet.
- 6.25 For example, the Australian Sex Party used crowd funding to finance its advertising response to the 2014 Federal Budget.<sup>9</sup> Crowd funding has also become a popular way of raising campaign funds in the United States.<sup>10</sup> In the Committee’s view, as methods of fundraising evolve, so should the regulatory system in order to ensure adequate accountability and certainty for donors and recipients. The AEC is best placed to monitor this issue.

## International comparisons

- 6.26 International systems of political financing are varied and generally do not compare easily with the Australian system due to the federated nature of parliaments and political party structures. However, some analogies can be drawn.
- 6.27 The US system of political funding is complex and for this reason the Federal Election Commission (FEC) was established in 1975, with the
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8 Electoral Reform Australia, *Submission 87*, p. [3].

9 R Powell, ‘Australian Sex Party crowdfunds its 2014 budget response video’, *Sydney Morning Herald*, 28 May 2014, accessed 10 December 2014, <[smh.com.au/federal-politics/political-news/australian-sex-party-crowdfunds-its-2014-budget-response-video-20140529-zrqqy.html](http://smh.com.au/federal-politics/political-news/australian-sex-party-crowdfunds-its-2014-budget-response-video-20140529-zrqqy.html)>.

10 G Silveira, ‘How politicians are learning to harness the crowd’, *Crowd Expert.com*, accessed 26 September 2014, <[crowdexpert.com/articles/crowdfunding-in-politics/](http://crowdexpert.com/articles/crowdfunding-in-politics/)>.

power to regulate the financing of US federal elections.<sup>11</sup> Much like the AEC, the FEC is responsible for receiving, monitoring and regulating compliance with reporting requirements.

- 6.28 Like Australia the US has a system of disclosure requirements for candidates, parties and entities (known as Political Action Committees (PACs)). However, unlike Australia, some PACs (known as Super PACs) take independent action and expend funds directly on political campaigns, advocating defeat of certain candidates or other advertising – action which is not subject to any regulation.<sup>12</sup>
- 6.29 The electoral system in Canada is somewhat similar to Australia, but its political financing and disclosure system is more restrictive in some ways. Canada has election spending caps for party election expenditure, donation limit caps of \$1 200 on donations to parties, and also prohibits donations from corporations and unions.<sup>13</sup>
- 6.30 In addition, expense limits for election expenditure are also imposed on parties dependent on how many electoral districts are contested, with stringent reporting requirements somewhat similar to those in Australia.<sup>14</sup>

### Australian developments

- 6.31 The political and judicial imperatives in relation to electoral funding have been varied (and have varied between federal and state levels). As noted above, there has been little regulatory change at the Commonwealth level. In 2008 the Government released a green paper on donations reform, followed by a second green paper in 2009 considering broader electoral issues. In 2008, 2009 and 2010 the Government introduced legislation seeking to make a range of changes to donations regulation; none of these bills were enacted.<sup>15</sup>
- 6.32 The High Court's dismissal in 2013 of the New South Wales (NSW) state government's attempts to ban political donations from unions and

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11 FEC website, *About the FEC*, accessed 3 March 2015, <[fec.gov/about.shtml](http://fec.gov/about.shtml)>.

12 Opensecrets website, *What is a PAC?*, accessed 3 March 2015, <[opensecrets.org/pacs/pacfaq.php](http://opensecrets.org/pacs/pacfaq.php)>.

13 Elections Canada website, *Political Financing*, accessed 3 March 2015, <[elections.ca/content.aspx?section=res&dir=ces&document=part6&lang=e](http://elections.ca/content.aspx?section=res&dir=ces&document=part6&lang=e)>.

14 Elections Canada website, *Political Financing*, accessed 3 March 2015, <[elections.ca/content.aspx?section=res&dir=ces&document=part6&lang=e](http://elections.ca/content.aspx?section=res&dir=ces&document=part6&lang=e)>.

15 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009, and the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

- corporations in 2012 is one clear indicator of the tensions that can exist in the private funding space.<sup>16</sup>
- 6.33 In its decision the Court unanimously upheld that the amendments to the *NSW Election Funding, Expenditure and Disclosures Act 1981* were ‘invalid because they impermissibly burden the implied freedom of communication on governmental and political matters, contrary to the Commonwealth Constitution.’<sup>17</sup>
- 6.34 The High Court’s decision did not touch on other changes introduced in NSW that restrict donation amounts to certain capped levels for state elections, as well as prohibiting donations from property developers or tobacco, liquor or gambling industry donors.<sup>18</sup> However, this is still a ‘live’ issue with a current challenge to property developer restrictions before the High Court.<sup>19</sup>
- 6.35 NSW also has caps on election expenditure and provides public funding for party administration costs.
- 6.36 The Committee also notes the NSW Government’s in-principle acceptance of the majority of recommendations from an expert panel established to analyse reforms to political donations in that state.<sup>20</sup>
- 6.37 The level and sources of private funding are contested. In its evidence the Labor Party argued for:
- reform of the funding and disclosure regime to increase public funding for elections and to remove the distorting influence of vested interests and big money politics.<sup>21</sup>
- 6.38 The Australian Greens called for:
- a ban on corporate donations, a cap on individual donations and public funding for political parties which includes party administration and broadcasting time in federal elections.<sup>22</sup>

16 *Unions NSW v New South Wales* [2013] HCA 58 (18 December 2013).

17 High Court Judgement Summary, *Unions NSW v New South Wales*, accessed 30 October 2014, <[court.gov.au/assets/publications/judgment-summaries/2013/hca58-2013-12-18.pdf](http://court.gov.au/assets/publications/judgment-summaries/2013/hca58-2013-12-18.pdf)>.

18 Division 4A of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) prohibits donations from these entities.

19 Sydney Morning Herald, *Former Newcastle mayor Jeff McCloy's High Court challenge to political donations laws could delay ICAC report*, 19 January 2015, accessed 4 March 2015, <[smh.com.au/nsw/former-newcastle-mayor-jeff-mccloy-high-court-challenge-to-political-donations-laws-could-delay-icac-report-20150119-12t9tt.html](http://smh.com.au/nsw/former-newcastle-mayor-jeff-mccloy-high-court-challenge-to-political-donations-laws-could-delay-icac-report-20150119-12t9tt.html)>.

20 NSW Government Premier and Cabinet website, *Panel of Experts – Political Donations*, accessed 16 March 2015, <[dpc.nsw.gov.au/announcements/panel\\_of\\_experts\\_-\\_political\\_donations](http://dpc.nsw.gov.au/announcements/panel_of_experts_-_political_donations)>.

21 Australian Labor Party, *Submission 187*, p. [5].

22 Australian Greens, *Submission 175*, p. [1].

6.39 The tax deductibility of business donations was also raised in evidence to the inquiry. In its submission Family Voice Australia noted that tax deductibility for businesses for donations to political parties was removed in February 2010 and called for that to be reversed:

All contributions and gifts [from businesses] to political parties and to independent candidates and independent members for amounts up to \$1 500 in each income year should be tax deductible... Tax deductibility for such donations by businesses should be restored.<sup>23</sup>

## Disclosure

6.40 The current disclosure regime across the jurisdictions in Australia is diverse. Federal disclosure requirements differ from those at state level, which can add complexity and confusion for political parties and donors administering and lodging disclosure returns<sup>24</sup> and, more broadly, for interested parties attempting to comprehend the various requirements.

6.41 Simple separations, such as the definition of a gift, donation, or what an associated entity entails, can lead to confusion and errors in the way parties, corporations or donors may undertake their disclosure requirements.

6.42 Without exception, the existence of a donation disclosure scheme is supported by political parties. Nonetheless, there are areas of contention and suggestions for reform. Two issues in particular attract differing views – the threshold for donation disclosure and the timing of disclosures.

### Threshold for donation disclosure

6.43 The setting of disclosure thresholds necessitates the striking of a balance between safeguarding the political process from undue influence and transparency regarding the source of political donations on the one hand, and, on the other, facilitating participation in the political process by not applying overly onerous disclosure requirements that may discourage financial donations to parties and candidates.

6.44 The Australian Greens submitted:

The current system, which has a very high disclosure threshold currently set at \$12 400, permits substantial areas of funding to

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23 Family Voice Australia, *Submission 21*, p. 4.

24 Liberal Party of Australia, *Submission 188*, pp.12-13.

avoid proper scrutiny through the disclosure requirements of the Electoral Act.<sup>25</sup>

- 6.45 As per their submission to the *Report on the funding of political parties and election campaigns* during the last Parliament, the Australian Labor Party continues to support a \$1 000 disclosure threshold. The Labor Party also supports the recommendation from that report of the Joint Standing Committee on Electoral Matters that CPI indexation of threshold limits should be removed.
- 6.46 In the same *Report on the funding of political parties and election campaigns*, the Coalition noted in its dissenting report that:
- The Coalition does not believe that the Labor, Greens and Independent members of the Committee have successfully argued their case for changes to the current donations system.
- ...
- The Coalition strongly disagrees with a number of the recommendations of this Committee, noting that they pose a significant threat to participatory democracy, where individuals have the right to have their say in a free and open system, free from intimidation.<sup>26</sup>
- 6.47 The Liberal Party submitted that it is 'is strongly committed to appropriate disclosure of significant donations to political parties'.<sup>27</sup>
- 6.48 The Committee recognises that views on the threshold vary. However, there is a need for the funding and disclosure regime to keep pace with innovation in fundraising methodology and, in the interests of transparency, ensure that these are fully captured by disclosure regulations.

### Timing of disclosure

- 6.49 The timing of the disclosure of donations is also a matter of contention. A number of considerations need to be balanced in this context:
- the principle of openness and transparency in the political system;
  - the right of individual donors to freely participate in the political system without fear of reprisal or undue pressure; and

25 Australian Greens, *Submission 175*, p. [1]. See also GetUp!, *Submission 205*, p. 15.

26 Joint Standing Committee on Electoral Matters (JSCEM) (43<sup>rd</sup> Parliament), *Report on the funding of political parties and election campaigns*, December 2011, p. 229.

27 Liberal Party, *Submission 188*, p. 12.

- reasonable reporting requirements and the administrative burden placed on political parties and donors – particularly for small parties that can be heavily reliant on volunteers.
- 6.50 Under the current system, ‘registered political parties and their state or territory branches and associated entities must lodge an annual return with the AEC.’<sup>28</sup>
- 6.51 Election returns in respect of individual elections are required from candidates, unendorsed Senate groups, Senate groups endorsed by more than one registered political party, and those donors making donations to candidates in excess of the disclosure threshold. These returns are due 15 weeks after polling day.<sup>29</sup>
- 6.52 In the past, some groups have argued for a contemporaneous reporting scheme such as those that exist in some overseas jurisdictions.<sup>30</sup> In evidence to this inquiry the Australian Greens, while not specifying a time limit, called for ‘a system for prompt, comprehensive public disclosure for political donations and funding on a public website.’<sup>31</sup>
- 6.53 Labor Party members of the Committee continue to support the recommendations regarding disclosure contained in the Joint Standing Committee on Electoral Matters *Report on the funding of political parties and election campaigns* during the last Parliament. Recommendations 6 and 7 sought to establish a 6-monthly disclosure timeframe and that donations in excess of \$100 000 be reported publicly in a timely manner.
- 6.54 Alternatively, a criticism of a system of contemporaneous disclosure would be that it could potentially conflict with the right for donors to participate in the political system without fear of reprisal or undue pressure, especially if there was awareness of differing levels of donation among donors and recipients. This could also have the potential to place an unreasonable administrative burden on political parties given the sheer volume of donations received during a busy and active campaign period.
- 6.55 The Committee notes that there is nothing to prevent a political party from establishing its own public donation disclosure website, and some parties have chosen to do this.<sup>32</sup>

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28 AEC, website, *Financial Disclosure overview*, accessed 20 January 2014, <[aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/Overview.htm](http://aec.gov.au/Parties_and_Representatives/financial_disclosure/Overview.htm)>.

29 *The Commonwealth Electoral Act (The Act)*, Part XX, Division 4.

30 JSCEM (43<sup>rd</sup> Parliament), *Report on the funding of political parties and election campaigns*, December 2011, p. 65.

31 Australian Greens, *Submission 175*, p. [2].

32 Australian Greens, website, *Donation disclosures*, accessed 20 January 2014, <[greens.org.au/disclosure](http://greens.org.au/disclosure)>.

- 6.56 The Committee recognises that the timing for donation disclosures will be an ongoing source of political debate, but notes that all parties submitting to this inquiry on this matter reaffirmed their commitment to a transparent disclosure scheme.

### Committee comment

- 6.57 The Committee is conscious of the varied attitudes towards funding and disclosure and is pragmatic about the approach that should be taken to an aspect of electoral law that is influenced by so many different stakeholders.
- 6.58 Calls for spending caps, bans on certain donors and reform of the federal system needs to be informed by what is happening at the state and international levels. In addition, the constitutionality of some suggested reforms such as restrictions on donations from classes of donor is still an uncertain element in Australia and should be carefully considered before any action is taken.
- 6.59 In addition, it seems a sensible proposition that private citizens should have the right to make small, private and tax-deductible donations to a political party of their choosing, without the need for onerous disclosure requirements. Similarly, political parties should not have to undertake multitudinous administrative procedures to maintain disclosure records for every small donation received.
- 6.60 The Committee believes better progress could be made by monitoring the developments in funding methodologies (such as crowd funding), as well as monitoring the conduct of party compliance with disclosure requirements and whether that could, potentially, be linked to eligibility for public funding.
- 6.61 As methods of community engagement rapidly evolve, so will methods of political and election fundraising. It is important for the AEC, as the agency responsible for maintaining the regulatory framework, to be innovative in its thinking so that the adequacy of that framework is assured.
- 6.62 The Committee also acknowledges that during the course of this inquiry the NSW Independent Commission Against Corruption (ICAC) has been inquiring into alleged corrupt conduct. Given the Committee's focus on the events of the 2013 federal election and related issues, and also given that ICAC is yet to conclude certain investigations, the Committee does not consider these matters in this report.
- 6.63 While the Committee received little evidence on disclosures in relation to the 2013 election, as with all issues, the Committee reserves the right to analyse the continuing evolution of political funding and disclosure

regimes during the life of the 44<sup>th</sup> Parliament. Accordingly, the Committee will continue to monitor this issue as developments come to light.

## Appointment of agents

- 6.64 One technical issue reported to the Committee by the AEC concerned unendorsed candidates and Senate groups appointing an agent to fulfil disclosure return obligations. The AEC noted that, as the deadline for the appointment of the agent is the same as for lodging a nomination, a number of candidates missed this deadline, as they may have not been fully aware of the mechanism or the timelines.<sup>33</sup>
- 6.65 The AEC proposed that the Electoral Act be amended to extend the deadline for agent nomination in order to allow it to better liaise with new candidates and advise them of this requirement.<sup>34</sup>
- 6.66 The Committee agrees. There is no reason why the deadline for appointment of an agent should be the same as that for lodging a nomination if this is a contributor to non-compliance for some candidates.

### Recommendation 21

**The Committee recommends that section 290 of the *Commonwealth Electoral Act 1918* be amended to allow for the deadline for the nomination of candidate agents to be one week after the close of candidate nominations.**

## Electorate redistribution

- 6.67 All states and territories are divided into House of Representatives electoral Divisions (electorates) based on population. This ensures that representation is based on an equal number of electors in each electorate. This also means that redistributions are required when the population changes; redistributions are also required under certain other circumstances. Redistributions occur when:
- the number of members in the House of Representatives to which a State or Territory is entitled has changed;
  - the number of electors in more than one third of the divisions in a State or one of the divisions in the ACT or Northern Territory deviates from the average divisional enrolment by over 10% for a period of more than two months

33 AEC, *Submission 20.3*, p. 115.

34 AEC, *Submission 20.3*, p. 115.

- a period of seven years has elapsed since the previous redistribution.<sup>35</sup>
- 6.68 Redistributions are undertaken by committees comprising the Electoral Commissioner, the relevant state's Australian Electoral Officer (AEO), surveyor-general (or equivalent) and the relevant auditor-general.<sup>36</sup> The process for redistribution is detailed in the Electoral Act.<sup>37</sup>
- 6.69 On 13 November 2014, redistributions were announced in Western Australia (WA), NSW and the Australian Capital Territory, with the determination that NSW will reduce by one division to 47 and WA will increase by one to 16.<sup>38</sup>
- 6.70 The Parliament has no power to reject or amend a proposed redistribution – an important measure to ensure that there can be no political influence or gerrymandering. The Electoral Act contains penalties for persons attempting to improperly influence a member of a redistributions committee.
- 6.71 Redistribution committees take into account the current and proposed enrolment based on population statistics and also give consideration to:
- community interests within the proposed division, including economic, social and regional interests;
  - means of communication and travel within the proposed division;
  - physical features and area of the proposed division; and
  - existing boundaries of divisions in the State or Territory.<sup>39</sup>
- 6.72 The timetable for making a determination on redistributions is clearly established by the Electoral Act. Firstly:
- Twelve months after the first meeting of the newly elected House of Representatives, the Electoral Commissioner ascertains the population of the Commonwealth (excluding the territories) using the latest official statistics published by the Australian Statistician. The Commissioner then makes a determination of the number of parliamentary representatives to which each state is entitled. A

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35 AEC website, accessed 22 October 2014, <[aec.gov.au/Electorates/Redistributions/Overview.htm](http://aec.gov.au/Electorates/Redistributions/Overview.htm)>.

36 The Act, s60(2).

37 The Act, sections 55-78.

38 AEC Media Release, *Determination of membership entitlement to the House of Representatives*, 13 November 2014, accessed 5 December 2014, <[aec.gov.au/media/media-releases/2014/11-13.htm](http://aec.gov.au/media/media-releases/2014/11-13.htm)>.

39 AEC website, accessed 23 October 2014, <[aec.gov.au/Electorates/Redistributions.htm](http://aec.gov.au/Electorates/Redistributions.htm)>.

similar exercise is used to calculate the entitlements of the territories.<sup>40</sup>

- 6.73 Public comment must then be sought on the proposed redistribution both during the committee's consideration process and once the proposal is published. Objections are then invited and a final determination must be made as soon as practicable after the closing date for written objections.
- 6.74 This public consultation is an important and influential process. In the case of the 30 July 2010 proposed redistribution in Victoria, the redistribution committee had proposed, amongst other things, the abolition of the Division of Murray. On the basis of public submissions made, solutions were found to a 'substantial number of objections' and the Division of Murray was reinstated.<sup>41</sup>
- 6.75 This demonstrates a robust process, and certainly this Committee has received no criticism of the process. Indeed, it was put to the Committee that Australia's low level of enrolment inequality can be attributed to 'Australia probably ha[ving] the best division redistribution rules to strive for division population equality.'<sup>42</sup>
- 6.76 The Committee received one submission identifying possible changes to the redistribution system:
- Under the current legislation, redistributions are required to be automatically triggered every 7 years, even if they are unnecessary due to stable population patterns. In order to provide more certainly for communities of interest, the Committee may wish to examine whether the automatic triggering of a redistribution instead take place every 10 years.<sup>43</sup>
- 6.77 The Committee does not propose to recommend any changes to the redistribution process at this point, but may revisit redistribution issues at a later stage.

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40 AEC website, accessed 22 October 2014, <[aec.gov.au/Electorates/Redistributions/Overview.htm](http://aec.gov.au/Electorates/Redistributions/Overview.htm)>.

41 AEC, *2010 Redistribution of Victoria into Electoral Divisions*, p. 3, accessed 23 October 2014, <[aec.gov.au/Electorates/Redistributions/2010/vic/files/vic-redistribution-report-24122010.pdf](http://aec.gov.au/Electorates/Redistributions/2010/vic/files/vic-redistribution-report-24122010.pdf)>.

42 M. Baalman, *Submission 181*, p. 13.

43 Liberal Party of Australia, *Submission 188*, p. 11.

## Political party engagement

- 6.78 The AEC has always upheld a proud history of apolitical, unbiased service to the Australian public and Parliament and, notwithstanding the events of the most recent election, has a good service reputation in Australia and the region.
- 6.79 In the context of interactions between the AEC and political parties, however, matters raised by some political parties in submissions to this inquiry indicated that there is a level of confusion over some of the basic processes relating to party requirements for registration and the election.<sup>44</sup>
- 6.80 The Committee notes that, currently, there is a lack of active engagement between the AEC and political parties on a regular, periodic, or formalised national and state basis outside of legislated requirements. Given the confusion that appears to exist over some processes, this is a gap of some concern.
- 6.81 Political parties, candidates and their representatives or agents are key stakeholders for the AEC. A lack of engagement can lead to a divergence of awareness across parties and candidates regarding changes to legislation and/or process. In the Committee's view, both political parties and the AEC would be well served by a greater level of appropriate engagement with each other.
- 6.82 The Committee acknowledges that the AEC does conduct candidate and scrutineer briefings at election time, as well as publishing handbooks for both of these stakeholder groups. However, these resources are more effective as a 'pull' mechanism given that the intended audiences only engage with them should they wish to.
- 6.83 In contrast, a 'push' mechanism involving the AEC engaging with political party and/or independent candidates, or their representatives or agents, would provide a formal mechanism for engagement and interaction. This would be similar to many other public service stakeholder forums that occur regularly in government business.
- 6.84 Formalised stakeholder engagement forums held at regular intervals (annually, or at appropriate points in each electoral cycle) could facilitate useful information exchange on relevant legislative, policy and procedural matters without compromising the independence and integrity of the AEC.
- 6.85 Such interactions could also assist the AEC in ensuring that the information resources it produces meet the needs of parties, as well as

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44 Future Party, *Submission 169*; C Palmer MP, *Submission 92*.

potentially increasing the quality of other stakeholder engagements – for example in relation to funding and disclosure compliance, scrutineer awareness, and candidate knowledge at election time.

- 6.86 The Committee is cognisant that such engagement may not be desirable for all political parties or candidates, but formalising the opportunity would aid in better shared awareness of issues that all stakeholders may have with electoral issues.

### **Recommendation 22**

**The Committee recommends that the Australian Electoral Commission hold regular by-invitation forums, at appropriate points in each electoral cycle, with the federal directors and registered officers of political parties in order to achieve improved engagement on relevant legislative, policy and procedural matters.**

## **Legislative changes between the 2010 and 2013 election**

- 6.87 A number of changes have been made to the Electoral Act and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) since the 2010 federal election. Many of these changes were of significance to the conduct of the 2013 federal election, comprising improvements to electoral procedure, electoral administration and machinery provisions. The most notable changes included:
- the introduction of direct enrolment and direct update of enrolment in 2012; and
  - changes to declaration vote scrutiny and postal voting.<sup>45</sup>
- 6.88 Direct enrolment and update together with postal voting are discussed in Chapters 4 and 5.
- 6.89 While recommendations from the previous Electoral Matters Committee's report on the conduct of the 2010 election<sup>46</sup> formed the basis for a majority of the legislative changes following the 2010 election, some changes stemmed from other parliamentary committee recommendations and High Court rulings.
- 6.90 These changes were made via seven pieces of legislation introduced during the 43<sup>rd</sup> Parliament; these are outlined below. Changes made prior

45 AEC, *Submission 20.3*, pp. 34-35.

46 JSCEM (43<sup>rd</sup> Parliament), June 2011, *The 2010 Federal Election: Report on the conduct of the election and related matters*, Canberra.

to the 2010 election but not implemented until subsequently are also identified.

### Legislative changes prior to 2010

- 6.91 A number of administrative measures were enacted during the 42<sup>nd</sup> Parliament that were not implemented in time for the 2010 election but were in place prior to the 2013 federal election.
- 6.92 The most significant of these changes included:
- the reduction of the provisional enrolment age from 17 to 16 years;
  - the enhancement of enrolment identification requirements for new or change of name applicants;
  - the enhancement of electronic voter support provisions for postal vote applicants;
  - the introduction of specific enrolment provisions for the homeless;
  - clarification of electoral roll access provisions including further access provisions being granted to parliamentarians;
  - specific and expanded authorisation requirements for how-to-vote cards designed to facilitate better understanding for voters and reduce the potential for voters to be misled; and
  - enhanced provisions to reduce the instance of misleading advertising.<sup>47</sup>

### Legislative changes in the 43<sup>rd</sup> Parliament

- 6.93 The *Electoral and Referendum Amendment (Provisional Voting) Act 2011* legislated, in most instances, for the removal of the requirement for proof of identity for people casting a provisional vote.
- 6.94 However, caveats were put in place as part of the scrutiny process to determine the identity of the voter and to ensure the validity of the ballot. These caveats relate particularly to the scrutiny of provisional vote envelopes, and include checking the voter's signature against records; contacting the voter to request proof of identity if the signature check is unable to be conducted; and excluding the vote from scrutiny if the identity of the voter is unable to be verified.
- 6.95 The *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011* followed two High Court decisions relating to the rules for the closure of the Roll and voting for incarcerated persons. The Electoral Act and Referendum Act were amended to:

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47 AEC, *Commonwealth electoral legislation - changes since the 2010 federal election*, accessed 3 December 2014, <[aec.gov.au/Elections/australian\\_electoral\\_system/legislation-changes.htm](http://aec.gov.au/Elections/australian_electoral_system/legislation-changes.htm)>.

- restore the close of Rolls period to 7 days after the date of the writ for a federal election; [and]
  - reinstate the previous disqualification, for prisoners serving a sentence of imprisonment of 3 years or longer, from voting at a federal election.<sup>48</sup>
- 6.96 As part of this package of reform, the Electoral Act was also amended to allow prisoners serving a sentence of three years or longer to remain on, or be added to, the electoral roll even though they would be disqualified from voting.
- 6.97 The *Electoral and Referendum (Maintaining Address) Act 2012* allowed for the Electoral Commissioner to update an elector's enrolled address, inform the elector of the update, and enable objections to the process. This Act also made consequential amendments among other provisions.
- 6.98 The *Electoral and Referendum (Maintaining Address) Act 2012* did not allow for the direct enrolment of new electors; this was facilitated separately by the *Electoral and Referendum (Protecting Elector Participation) Act 2012*. This Act provided the Electoral Commissioner with the authority to directly enrol new electors on specific grounds, and with full disclosure of intention. The provisions of the *Electoral and Referendum (Protecting Elector Participation) Act 2012*:
- allow the Electoral Commissioner to directly enrol a person if satisfied that the person is entitled to enrolment, has lived at an address for at least one month and the person is not enrolled;
  - require the Electoral Commissioner to inform the person that the Electoral Commissioner is proposing to enrol the person at a particular address;
  - require the Electoral Commissioner to inform the person that the Electoral Commissioner has enrolled the person at a particular address;
  - allow the Electoral Commissioner to admit certain declaration votes to the scrutiny; [and]
  - allow the Electoral Commissioner to enrol certain persons who have cast declaration votes and who had been removed from the roll.<sup>49</sup>
- 6.99 The *Electoral and Referendum Amendment (Improving Electoral Procedure) Act 2013* enacted the following changes partly with the aim of reducing the size of the Senate ballot paper:
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48 AEC, *Commonwealth electoral legislation - changes since the 2010 federal election*, accessed 3 December 2014, <[aec.gov.au/Elections/australian\\_electoral\\_system/legislation-changes.htm](http://aec.gov.au/Elections/australian_electoral_system/legislation-changes.htm)>.

49 AEC, *Commonwealth electoral legislation - changes since the 2010 federal election*, accessed 3 December 2014, <[aec.gov.au/Elections/australian\\_electoral\\_system/legislation-changes.htm](http://aec.gov.au/Elections/australian_electoral_system/legislation-changes.htm)>.

- [removing] the prescription relating to how postal votes are processed and allow for technological developments over time;
- [increasing] the sum to be deposited by or on behalf of a person nominated as a Senator from \$1000 to \$2000;
- [increasing] the sum to be deposited by or on behalf of a person nominated as a Member of the House of Representatives from \$500 to \$1000;
- [increasing] the number of nominators required by a candidate for the Senate or the House of Representatives who has not been nominated by a registered political party from 50 to 100 electors; [and]
- [requiring] unendorsed candidates for the Senate who have made a request to be grouped to each be nominated by 100 unique electors.<sup>50</sup>

6.100 Despite these changes, the number of nominations received for the 2013 election increased significantly on previous years, meaning that these legislative changes failed to reach the desired outcomes of reducing the size of Senate ballot paper. The AEC acknowledged this in its submission:

Legislative reforms introduced in 2013 that were, in part, designed to address the increasing size of Senate ballot papers (such as increasing nomination deposits and the numbers of nominators required for unendorsed candidates) appear to have been ineffective.<sup>51</sup>

- 6.101 The Committee's first interim report on Senate voting practices noted the issue of the cost of nominating a political party and deposits for nominating candidates.<sup>52</sup>
- 6.102 In its interim report the Committee recommended further measures that should be put in place to address this issue, including the introduction of optional preferential voting, the abolition of individual and group voting tickets, and enhanced party registration requirements.<sup>53</sup>
- 6.103 These measures, if adopted, should go some way towards addressing any concerns that arise out of increasing candidate numbers. Also, given that deposit amounts doubled prior to the 2013 election, the Committee feels

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50 AEC, *Commonwealth electoral legislation - changes since the 2010 federal election*, accessed 3 December 2014, <[aec.gov.au/Elections/australian\\_electoral\\_system/legislation-changes.htm](http://aec.gov.au/Elections/australian_electoral_system/legislation-changes.htm)>.

51 AEC, *Submission 20.3*, p. 29, for statistics see pp. 104-105.

52 JSCEM, May 2014, *Interim report on the inquiry into the conduct of the 2013 federal election senate voting practices*, Canberra, p. 61.

53 JSCEM, May 2014, *Interim report on the inquiry into the conduct of the 2013 federal election senate voting practices*, Canberra.

there is no need to make further recommendations on this issue at this stage.

6.104 Further administrative changes were enacted by the *Electoral and Referendum Amendment (Improving Electoral Administration) Act 2013* in response to events that occurred during the 2010 election. These changes:

- set out the procedures to be followed when a ballot-box is opened prematurely, that is, before the close of the poll, other than in accordance with the relevant provisions of the Electoral Act and Referendum Act;
- [introduced] into the Electoral Act and the Referendum Act a specific offence for an officer that unlawfully interferes with a ballot box;
- [removed] the requirement under the Electoral Act and Referendum Act for an applicant for a pre-poll ordinary vote to complete and sign a certificate;
- [provided] that pre-poll voting cannot commence earlier than 4 days after the date fixed for declaration of nominations for any type of election or by-election;
- commencing on 1 January 2014, [brought] forward the deadline for applications for postal votes by one day from the Thursday before polling day to the Wednesday before polling day;
- [provided] for further fixed periods of time to be provided to the augmented Electoral Commission (as defined in section 70 of the Electoral Act) to complete its inquiries into objections against proposed redistribution of electoral boundaries;
- [amended] the Taxation Administration Act to allow the Commissioner of Taxation and other taxation officers to provide some forms of taxpayer information to the Australian Electoral Commission for the purposes of administering the Electoral Act and Referendum Act; [and]
- [omitted] provisions from the Electoral Act requiring a minimum font size for the authorisation details on How-to-Vote Cards.<sup>54</sup>

6.105 Changes to the Referendum Act were introduced via the *Referendum (Machinery Provisions) Amendment Act 2013* as a direct outcome from the House of Representatives Standing Committee on Legal and Constitutional Affairs report into the machinery of referendums which was tabled in December 2009.<sup>55</sup>

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54 AEC, *Commonwealth electoral legislation - changes since the 2010 federal election*, accessed 3 December 2014, <[aec.gov.au/Elections/australian\\_electoral\\_system/legislation-changes.htm](http://aec.gov.au/Elections/australian_electoral_system/legislation-changes.htm)>.

55 Standing Committee on Legal and Constitutional Affairs, December 2009, *A Time for Change: Yes/No? Inquiry into the machinery of referendums*, Canberra.

- 6.106 These changes saw the implementation of a requirement that, in relation to referendums, Yes/No pamphlets be distributed to every household on the electoral roll as opposed to every elector, along with the temporary suspension of the operation of subsection 11(4) relating to limits applied to the capacity of Commonwealth spending for referendums.<sup>56</sup>

## Review of the Act/s

- 6.107 As the conduct of this inquiry progressed and submissions and evidence were received on the full range of issues, concerns and events surrounding the 2013 federal election and associated events, it became clear to the Committee that the legislative framework within which the AEC has to operate is flawed.
- 6.108 The legislative history behind the Electoral Act and the Referendum Act is extensive and rich. Successive reforms to electoral process are reflected in both Acts and facilitate the comprehensive electoral process that underpins democracy in Australia today.
- 6.109 However, the extensive list of technical and other amendments that the AEC identifies as necessary suggest that some of the foundational linkages between the roles, entities, activities and powers in the Electoral Act may have been undermined by decades of amendment.<sup>57</sup> It could be said that there is an unacceptable level of fragmentation within the legislation.
- 6.110 In its submission the AEC outlined some of the issues in this space together with the history of (largely piecemeal) reform efforts since 2001:

As part of the inquiry into the 2001 election, the AEC recommended to the JSCEM that a major review of the Electoral Act was overdue and necessary to rectify the complexities and inconsistencies built up over the previous 20 years. JSCEM had some concerns with the AEC's proposal (see page 210 of the Report). In May 2004, the AEC engaged the law firm Minter Ellison to scope a review of the Electoral Act. Minter Ellison undertook some work during 2004-05, which considered possible amendments to the Electoral Act to make the language more straightforward and accessible. The work undertaken by Minter Ellison did not eventuate into any comprehensive legislative proposal, although elements of the work were reflected in

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56 AEC, *Commonwealth electoral legislation - changes since the 2010 federal election*, accessed 3 December 2014, <[aec.gov.au/Elections/australian\\_electoral\\_system/legislation-changes.htm](http://aec.gov.au/Elections/australian_electoral_system/legislation-changes.htm)>.

57 AEC, *Submission 20.3*, pp. 162-164; *Submission 20.6*, pp. 25-27.

subsequent technical and minor amendments proposed by the AEC.

Other than the Referendum Act, the re-drafting proposed by Minter Ellison to the Electoral Act did not affect any other Commonwealth legislation. Since that time the AEC has actively sought to address inconsistencies and errors in the electoral legislation, and update provisions for matters such as changes in technology, by a series of technical and minor amendments to the Electoral Act and the Referendum Act. Since Minter Ellison's work, there has been no further analysis of a wholesale review of these Acts.

In September 2009, the then-Government issued the Electoral Reform Green Paper: Strengthening Australia's Democracy (the Green Paper). The Green Paper noted some issues with the Electoral Act but did not specifically address redrafting the Electoral Act and no comprehensive legislative proposal arose from the Paper.

Finally, in December 2009, the House of Representatives Standing Committee on Legal and Constitutional Affairs recommended that the Australian Government consolidate and harmonise the machinery of referendums provisions with the Electoral Act. At page 68 of the Committee's report attention was drawn to the pitfalls of having separate legislation for the conduct of elections and the conduct of referendums. The amalgamation of the referendum provisions with the provisions in the Electoral Act would necessarily result in substantial amendments to the Electoral Act. In October 2012, the Government responded to the Report and supported recommendation 17. Drafting instructions to implement this recommendation remain in draft form.<sup>58</sup>

- 6.111 Additionally, as the Committee has conducted its inquiry it has become aware of inconsistencies or outdated elements within the Electoral Act, such as:
- the requirement for a person lodging a private objection to another person's enrolment to pay a fee of \$2 (section 115). This requirement would far outweigh the administrative cost of accepting payment;
  - that strict security requirements for handling of ballot-boxes for pre-poll ordinary votes are prescribed in Subdivision C of Division 3 of Part XVA of the Electoral Act, yet there are no such requirements for pre-poll declaration ballot-boxes under Division 4;

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58 AEC, *Submission 20.6*, pp. 23-25.

- that a party (the Australian Democrats) that has not been represented federally since 2007 are explicitly catered for in principal agent appointments under Part XX of the Electoral Act; and
  - section 387 provides that electoral matters should be sent free by post, under regulations in force under the *Postal Services Act 1975*. Such regulations have not existed since 1989.
- 6.112 The Committee's own conclusions and recommendations involving legislative change across very diverse matters, both in this report and in its interim reports, themselves indicate some of the broader problems and complexities with the Electoral Act. The potential need for legislative separation of the statutory Australian Electoral Officer role from the senior AEC state manager role, together with the need for clarity and consistency in relation to recount provisions and provisions pertaining to the role of scrutineers, are of note in this context.
- 6.113 It is also necessary to acknowledge the difficulties that legislative inconsistency and fragmentation present for the AEC in discharging its remit.
- 6.114 In view of all of these factors, the Committee believes that a wholesale review of the internal consistency and operational adequacy of the Electoral Act is needed. The Electoral Act needs to be internally consistent; it needs to be cohesive; and it needs to facilitate best practice delivery of elections. This review should take into account past recommendations and reviews outlined by the AEC.
- 6.115 The Committee supports the recommendation of the then House of Representatives Standing Committee on Legal and Constitutional Affairs in its 2009 report on the machinery of referendums regarding consolidation and harmonisation of the referendum machinery provisions in the Referendum Act with the Electoral Act.<sup>59</sup>
- 6.116 The Committee notes that the Government of the day accepted this recommendation, and also notes the AEC's advice that associated drafting instructions have been taken forward to a limited extent. The AEC should consider progressing this work, along with a broad-ranging review of the consistency and adequacy of the Electoral Act in consultation with the

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59 Standing Committee on Legal and Constitutional Affairs, *A Time for Change: Yes/No? – Inquiry into the Machinery of Referendums*, 2009, pp. 68-69.

Committee. The Committee recognises that such an undertaking would be a long-term project.

### **Recommendation 23**

**The Committee recommends that the Australian Electoral Commission consider undertaking, in consultation with the Joint Standing Committee on Electoral Matters, a wholesale review of the internal consistency and operational adequacy of the *Commonwealth Electoral Act 1918* in order to ensure that this Act is a cohesive, effective and contemporary piece of legislation that facilitates best practice election delivery.**

**Such a review would also need to proceed in tandem with progressing the consolidation and harmonisation of the *Referendum (Machinery Provisions) Act 1984* with the *Commonwealth Electoral Act 1918* so as to create one consolidated Act responsible for federal elections and referenda.**

- 6.117 As a final point, the Committee feels that it is important to acknowledge that the recommendations and actions advanced in this report, along with the reform process already underway at the AEC, involve an additional cost. The further work recommended in this report will require additional resourcing, particularly the complex longer-term projects.
- 6.118 Accordingly, the Committee recommends that the Australian Government allocate and prioritise resources to ensure that the implementation of measures recommended by the Committee is adequately funded and supported.

### **Recommendation 24**

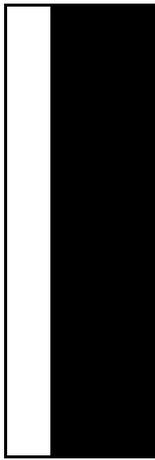
**The Committee recommends that adequate resourcing be allocated and prioritised to fund and support the implementation of the recommendations contained in this report.**

Hon Tony Smith MP

Chair

13 April 2015





Dissenting Report – The Hon. Alan Griffin MP, the  
Hon. Gary Gray MP, Senator Chris Ketter,  
Senator Lee Rhiannon

**Dissenting Report to the JSCEM Inquiry into All Aspects  
of the conduct of the 2013 Federal Election and matters  
related thereto**

**Direct Enrolment and Update—4.23 to 4.28 and Rec.10**

As was noted in the JSCEM report into the Bill that sought to introduce Federal Direct Enrolment and Update system (FDEU), “The Australian National Audit Office (ANAO), in its review of the AEC’s conduct of the 2007 federal election, noted that ‘the most significant long-term issue facing the AEC remains the state of the electoral roll’. In the last decade it is estimated that the Commonwealth electoral roll has decreased from 95 per cent complete to around 90 per cent complete. In practical terms, that means 1.5 million eligible electors are unable to vote unless they take action to enrol.”<sup>1</sup>

FDEU has helped to address the issues surrounding the decline in accuracy of the electoral roll and has been an important tool for the AEC to maximise the completeness of the roll.

The first enrolments under the new FDEU system took place at the end of 2012 with a small pilot run in Tasmania. The system was then only progressively rolled out in 2013 across the nation. It has therefore only been in operation for around two years.

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1 Joint Standing Committee on Electoral Matters, *Advisory Report on the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012*, March 2012, p.15.

In that time, there has been absolutely no evidence or indication of fraudulent behaviour brought to the attention of the AEC.

In fact, as outlined in the AEC submission to the Inquiry by the JSCEM into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, the available evidence into the existing direct enrolment system in NSW found that

- 25 per cent of those who had their enrolment details directly updated said they would probably not have updated their enrolment details themselves;
- Less than 2 per cent of individuals notified of the NSWEC proposal to place them on the roll disagreed; and
- Most of those who disagreed did so because of errors in data or changes in their circumstances;
- Less than 0.1 per cent of people objected to the NSWEC using data they had provided to other government agencies.<sup>2</sup>

Notwithstanding comments by the Electoral Commissioner at the recent public hearing of the JSCEM in March, given that the AEC are currently reviewing the operation of the FDEU it is premature for the Committee to make any recommendation to alter the existing enrolment process without at least considering the result of that review when it is completed.

Labor and Green Members of the Committee therefore reject Recommendation 10.

## **Voter Identification Issues—5.47 to 5.82 and Rec. 17**

While accepting most of the commentary included in this section, there are disagreements with aspects of the analysis and the recommendation that has been made.

The Queensland system for voter identification when voting, while appearing to not produce an onerous requirement on those seeking to vote, does have some apparent problems regarding voter engagement. At the 2015 Queensland election, voter turnout dropped to 89.89 per cent of those enrolled. This was the lowest turnout since 1980. The lowest turnout in twelve state elections.

Given the large swings that were indicative of the electoral volatility in the 2015 Queensland election, it is surprising that voter turnout was actually down from the previous election. If voter turnout was maintained at 91 per cent as it was at the 2012 election, over 32 000 more Queenslanders would have exercised their democratic right. That is the equivalent of more than one full Legislative

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2 Australian Electoral Commission(AEC), *Submission to the Inquiry by the Joint Standing Committee on Electoral Matters into the Electoral and Referendum Amendment Bill(Maintaining Address) Bill 2011*, p. 11.

Assembly seat. If such a drop in turnout were to result at the next Federal election, more than 165 000 Australians may be excluded from the electoral contest. This would not be a positive development in our democracy.

It would appear that there may well be more serious implications for voter engagement for many groups of disadvantaged voters, including itinerant and indigenous voters as well as those escaping domestic violence. It would be a pity to take actions that would impact on the involvement of these voters in order to address an issue where there is little evidence of any problem and where the proposed solution only addresses one aspect of the stated concern. That is, while there is some limited evidence of individuals voting multiple times in their own name, the Queensland system will not address this. It will address the concern of people impersonating others but there has been no evidence produced that would suggest this has occurred.

Labor and Greens Members of the Committee therefore reject Recommendation 17.

**The Hon. Alan Griffin MP**  
**Deputy Chair**

**The Hon. Gary Gray MP**

**Senator Chris Ketter**

**Senator Lee Rhiannon**





## Additional Comments – Senator Lee Rhiannon

### **AUSTRALIAN GREENS ADDITIONAL COMMENTS**

#### The Greens vision for electoral funding

The Australian Greens are working to change Australia's electoral funding laws to limit election expenditure, to bring in caps and bans on political donations and introduce speedy and transparent public disclosure of donations to allow voters to have access to full information about the source of funding of political parties.

#### Recommendation 1

- A ban on donations from for profit organisations.
- A cap on the amount of money that can be donated in a year to a political party or candidates.
- Caps on expenditure by political parties, candidates and third parties.
- Adequate public funding for political parties, including both funding for election campaigning and for other administrative work of the party.
- Continuous disclosure of all political donations above \$100, within two weeks of all donations being made.

## Short term measures

While the Australian Greens support comprehensive reforms to the electoral funding system there are a number of interim steps that should be implemented to increase transparency and public trust in the electoral funding system.

### Common funding rules for Commonwealth and State elections

Electoral funding rules vary enormously between the Commonwealth and the various states. This is a serious issue when it comes to the disclosure of donations and expenditure. Efforts at a state level to regulate money in politics have been undermined by the ability of donors to funnel money into party federal election accounts which are not under the jurisdiction of state election funding laws.

#### Recommendation 2

The federal government to initiate discussions between states and the Commonwealth in regard to political donation disclosure thresholds, time periods for disclosures, and the definitions of donations and other incomes that must be disclosed with a view to developing uniform laws.

### Detailed disclosure of electoral expenditure

Political parties are now required to provide an overall amount of expenditure by the party in their annual return to the Australian Electoral Commission, yet there is no requirement for details on how parties spend their campaign funds. More information will assist the assessment of appropriate levels of expenditure caps.

#### Recommendation 3

Political parties to be required to disclose how much was spent during the election period on each type of expenditure, such as wages, advertising and printing.

### Ban on donations from certain key industries

There is a pressing need to ban donations from certain industries with a record of engaging in lobbying to influence policy. In particular the property development, tobacco, alcohol and gambling industries are all dependent on government policy and have funnelled large amounts of money to both political parties. Also companies involved with government contracts that are expected to provide a financial gain should not be involved in making political donations.

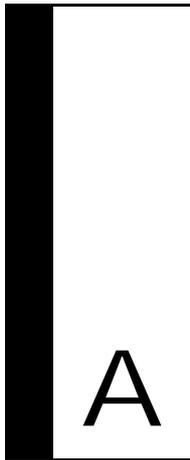
The Australian Greens and the Australian Labor Party do not take donations from the tobacco industry, but other parties continue to take these donations. These industries are now banned from giving donations for NSW state elections under NSW legislation.

**Recommendation 4**

Ban donations from the property development, tobacco, alcohol and gambling industries, and from companies that have entered a tender, public-private partnership or any other government contract or arrangement that confers a financial gain.

**Senator Lee Rhiannon**





## Appendix A – Submissions and Exhibits

### **Submissions**

- 1 Ms Maureen Fay
- 2 Ms Anne Bennie
- 3 Mrs E. Joyce Currie
- 4 Mr Graham Hawkes
- 5 Mr Neville de Mestre
- 6 Mr Frank Rayner
- 6.1 Mr Frank Rayner
- 7 Mr Malcolm Mackerras
- 8 Mr Ian Richardson
- 9 Mr Jim Callaghan
- 10 Mr Peter McMahon
- 11 Mr John Storey
- 12 Mr George Simpson
- 13 Mr Ken O'Dowd MP
- 14 Mr Tom Lillywhite
- 15 Mr Richard Clarke
- 16 Mr FDA Nathan
- 17 Mr Rowan Jakeman

18	Adoption Jigsaw
19	Mr Michael Maley
20	Australian Electoral Commission
20.1	Australian Electoral Commission
20.2	Australian Electoral Commission
20.3	Australian Electoral Commission
20.4	Australian Electoral Commission
20.5	Australian Electoral Commission
20.6	Australian Electoral Commission
20.7	Australian Electoral Commission
20.8	Australian Electoral Commission
20.9	Australian Electoral Commission
20.10	Australian Electoral Commission
21	Family Voice Australia
22	Ms Teresa Liddle
22.1	Ms Teresa Liddle
22.2	Ms Teresa Liddle
22.3	Ms Teresa Liddle
23	Professor George Williams AO, University of New South Wales
24	Mr Arnold Bates
25	OzCon - The Australian Connection
26	Mr Malcolm McKellar
27	Mr Frank Brown
28	Mr Jeff Waddle
29	Ms Alison Lemaire
30	Confidential
31	Mr Barry McDonald
32	Mr Mark Babidge

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33	Mr Peter Arkell
34	Mr Don Randall MP
35	NSW Committee on Adoption and Permanent Care Inc.
36	Mr Andrew Niklaus
37	Ms Amanda Lloyd-Harris
38	Mr Paul Cummins
39	Professor Benjamin Reilly
40	Homelessness NSW
41	The newDemocracy Foundation
42	Mr Ian Brightwell
42.1	Mr Ian Brightwell
42.2	Mr Ian Brightwell
43	Mr and Mrs Cliff and Carol Blain
44	The Liberal National Party of Queensland (Warwick Branch)
45	Mrs Lorraine Bates
46	Mr Milton Caine
47	Mr Malcolm Smith
48	Family First Party of Australia Ltd
49	International Social Service Australia
50	Mr Ross Fraser
51	Ms Caroline Heckathorn
52	Mr Victor Batten
53	Mr Alex Jaeger
54	Mr Peter Abetz MP
55	Mr Peter Withers
56	Ms Margaret Miller
57	Public Trustee for the Australian Capital Territory
58	Find & Connect (WA)

- 59 Mr Gilbert Linden
- 60 Help End Marijuana Prohibition (HEMP) Party
- 61 Mr David Mills
- 62 Mr Volker Hirsinger
- 63 Ms Martine Martinez-Castro
- 64 Mr Matthew Doherty
- 65 Mr Graham Paterson
- 66 Mr Dean Massam
- 67 Ms Val Wigzell
- 68 Mr Peter Newland
- 69 Mr Brian Woods
- 70 Ms Julia Jessop
- 71 Mr Rhys Morgan
- 72 Mrs Ann Clark
- 73 Council of State Retirees' Association Victoria Inc.
- 74 Mr Jim Sternhell
- 75 Mr Gareth Morgan
- 76 YWCA Australia
- 77 Dr Dallas Clarnette
- 78 Mr Phillip Murphy
- 79 Mr Ray Harvey
- 80 Mr Adam Browne
- 81 Mr Richard Pascoe
- 82 Mr Des Morris
- 83 Mr Spero Katos
- 84 Ms Susan Moisiadis
- 85 Mr John Anderson
- 86 Mr Paul Dawkins

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87	Electoral Reform Australia
88	Mr John Doust
89	'concerned Australians'
90	Ms Barbara Dundas
91	Mr John O'Reilly
92	Mr Clive Palmer MP
92.1	Mr Clive Palmer MP
93	Ms Lucy Clothier
94	Mr A G Thornton
95	CGI
96	Mr John Curran
97	Blind Citizens Australia
98	Ms Liana Ross
99	Mr Bernard Gaynor
100	Mr Anthony van der Craats
100.1	Mr Anthony van der Craats
100.2	Mr Anthony van der Craats
101	Mr Rowan Ramsey MP
102	Mr Matthew Robson
103	Women's Legal Service Victoria
103.1	Women's Legal Service Victoria
104	The Hon Don Harwin MLC
105	Mr David Chidgey
106	Mr Adrian Jackson
107	Mr Warren Grzic
108	ALP Abroad
109	Relationships Australia - NSW
110	Ms Jenny Pickles and Ms Dianne Nicholson

111	Mr Eric Jones
112	Forced Adoption Implementation Working Group
113	Mr Nick Casmirri
114	Professor Rajeev Goré and Dr Vanessa Teague
114.1	Professor Rajeev Goré
115	Mr Mathew Annear
116	Democratic Audit of Australia
117	Mr Jerry Bour
118	Department of Communications
119	Vanish Inc.
120	Ms Debra Mieth
121	Mr Frank Perrone
122	Mr Don Morris
123	Mr Colin Fairclough
124	Mr Graham Oslington
125	Mr Philip Lillingston
126	AustCham Singapore
127	Mr Col Burg
128	Ms Valda Rose
129	Mr Bryce Letcher
130	Ms Anita Bird
131	Mr Chris Curtis
131.1	Mr Chris Curtis
132	Mr Pat Coleman
133	Mr Alan Corbett
134	Mr Paul Higgins
135	Ms Nadine Hood
136	Ms Margaret Gillon

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137	The Nationals for Regional Victoria
138	Professor Greg Taylor
139	Mr Derek Garson
140	Dr Kevin Bonham
141	Vision Australia Ltd
142	Proportional Representation Society of Australia
143	Mr Mark Beacham
144	Mr Daryl van den Brink
145	Electoral Reform Society of SA
146	Mr Ron Daley
146.1	Mr Ron Daley
147	Mr John Glover
148	Confidential
149	Mr Greg Northover
150	Ms Helen Senior
151	CPSU
152	Ms Maria Rigoni
153	F1 Solutions
154	Jigsaw Queensland Inc.
155	Progressive Democratic Party
156	Dr Norm Kelly
157	Mr Mori Klisman
158	Mr John Polack
159	Mr Thomas Clement
160	Mr Geoffrey Field
161	Ms Nicola Bussell
162	Ms Noela Foxcroft
163	Mr Adrian Hunt

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164	Ms Sheila Anderson
165	Ms Ruth Amery
166	NSW Council for Civil Liberties
167	Ms Cathy McGowan AO MP
168	Mr James Wight
169	Future Party
170	Mr Alexander Stewart
171	Ms Bronwyn Reid
172	Mr Sebastian L H Tops
173	Confidential
174	Australia Post
175	Australian Greens
175.1	Australian Greens
176	Mr Sven Wiener
177	Pirate Party Australia
178	BigPulse
179	Australian Christians
180	Mr Antony Green
181	Name Withheld
182	#Sustainable Population Party
183	Mr Bruce Kirkpatrick
184	The Nationals
185	Mr John Gregan
186	Proportional Representation Society of Australia (Victoria and Tasmania)
187	Australian Labor Party
188	Liberal Party of Australia
189	The Hon Kevin Andrews MP
190	Mr Andrew Punch

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191	Mr Tony Brooker
192	Mr Greg Reid
193	Mr Brett Simpson
194	Mr Todd Beaton
195	Professor John H. Kelmar
196	Public Health Association of Australia
197	Australian Democrats
198	Mr John Spark
199	Security Institute of South Australia
200	K.E. Reece
201	Mr Geoffrey Howell
202	Mr Ivan Freys
203	Australian Institute of Professional Investigators
204	Mr Peter Brun
205	GetUp!
206	ACT Electoral Commission
207	Friends of the Earth Australia
208	Mr Andrew Reid
209	Australian National Audit Office
210	Name Withheld
211	Mr Kevin Nolan
212	Mr Graham Leadbeatter
213	Ms Juliet Corley
214	Mr David J O'Brien
215	Mr Charles Peel
216	Confidential

## Exhibits

1. Mr Malcolm Mackerras, *Sample Senate ballot papers for New South Wales and Northern Territory federal election 2013*
2. Democratic Audit of Australia, *'Optional Preferential Voting for the Australian Senate' - Paper*
3. Australian Electoral Commission, *'What has changed for WA as a result of the Keelty review?' – Summary of changes, recommendations and proposed outcomes*
4. Australian Electoral Commission, *Letter to Mr Damon Martin, Chairperson, NSW Committee on Adoptions and Permanent Care Inc.*
5. Dr Amy McGrath OAM, *'Crisis in the Australian Electoral Commission 2003' and 'Charter of responsibility in elections'*
6. Australian Electoral Commission, *AEC Governance Framework*
7. Australian Electoral Commission, *AEC Reform Team Governance Chronology*
8. Australian Electoral Commission, *Electoral Reform Programme Implementation Plan – progress as at 06 11 2014*
9. Australian Electoral Commission, *Training of Polling staff, Divisional Office Guidelines – Version 2.0 June 2013*
10. Australian Electoral Commission, *Election Dashboard – Status Report 6 September*
11. Australian Electoral Commission, *2013 Federal Election Training Overview*
12. Australian Electoral Commission, *Electoral Reform Programme Highlight Report*
13. Australian Electoral Commission, *Electoral Reform Programme Implementation Plan – Progress at as 23 February 2015*
14. Australian Electoral Commission, *Organisational Culture Reform Diagram*



## Appendix B – Public Hearings

### **Thursday 6 February 2014 – Canberra**

#### **Australian National Audit Office**

Mr Brian Boyd, Executive Director

Mr Ian McPhee, Auditor-General

Mr Patrick O’Neill, Director

#### **Australian Electoral Commission**

Mr Pablo Carpay, First Assistant Commissioner

Mr Kevin Kitson, Acting Deputy Electoral Commissioner

Mr Peter Kramer, State Manager and Australian Electoral Officer for  
Western Australia

Ms Marie Neilson, Assistant Commissioner Elections

Mr Paul Pirani, Chief Legal Officer

Mr Tom Rogers, Acting Electoral Commissioner

### **Friday 7 February 2014 – Canberra**

#### **Private Capacity**

Mr Antony Green

Mr Malcolm Mackerras

#### **New South Wales Council for Civil Liberties**

Mr Stephen Blanks, President

Dr Sacha Blumen, Deputy President

Dr Lesley Lynch, Secretary

**FamilyVoice Australia**

Dr David Phillips, National President

**Wednesday 5 March 2014 - Canberra****Private Capacity**

Mr Michael Keelty

**Wednesday 12 March 2014 - Canberra****Australian Electoral Commission**

Mr Pablo Carpay, First Assistant Commissioner

Ms Marie Neilson, Assistant Commissioner Elections

Mr Paul Pirani, Chief Legal Officer

Mr Tom Rogers, Acting Electoral Commissioner

**Thursday 13 March 2014 - Sydney****Private Capacity**

Professor George Williams

Mr Ian Brightwell

**New South Wales Committee on Adoption and Permanent Care Inc.**

Ms Lisa Maree Vihtonen, Chairperson

Ms Janet Henegan, Vice Chair

**Homelessness New South Wales**

Mr Digby Hughes, Policy and Research Officer

**CGI Information and Management Consultants**

Mr Peter Gurney, Director Federal Government

Mr Hans Stadtherr, Solutions Architect

**H.S. Chapman Society**

Dr Amy McGrath OAM, President

**Wednesday 26 March 2014 - Canberra****Private Capacity**

Professor Rajeev Goré

Dr Vanessa Teague

**Tuesday 15 April 2014 - Melbourne****Private Capacity**

Mr Anthony van der Craats

**Australian Electoral Commission**

Mr Jeff Pope, Australian Electoral Officer and State Manager, Victoria

**Council of State Retirees' Associations Victoria**

Mr Ian Thomas, Secretary

**Deakin University**

Ms Amanda George, Research Fellow, Centre for Rural Law and Policy,  
Faculty of Law

**Women's Legal Service Victoria**

Ms Pasanna Mutha, Policy Manager

**Proportional Representation Society of Australia (Victoria-Tasmania) Inc.**

Mr Geoffrey Goode, President

Dr Stephen Morey, National Secretary

**Democratic Audit of Australia**

Professor Brian Costar, Coordinator

**Vision Australia**

Mr Marcus Bleechmore, Government Relations Adviser

Mr Michael Simpson, General Manager, Accessible Information

**Blind Citizens Australia**

Mrs Rosemary Boyd, Executive Officer

Miss Lauren Henley, National Policy Officer

**Wednesday 16 April 2014 - Hobart****Private Capacity**

Dr Kevin Bonham

Dr Richard Eccleston

**Australian Electoral Commission**

Mr David Molnar, Director of Operations

Ms Sandra Riordan, Electoral Officer, Tasmania

Mr Julian Type, Electoral Commissioner, Tasmania

**Commonwealth Parliament**

Mr Andrew Wilkie MP, Member for Denison

**Monday 28 April 2014 - Canberra****National Party Policy Committee**

Mr Peter Langhorne, Chair

**National Party of Australia**

Mr Scott Mitchell, Federal Director

**Australian Labor Party**

Mr John Graham, Assistant General Secretary, New South Wales Branch

Mr George Wright, National Secretary

**Liberal Party of Australia**

Mr Brian Loughnane, Federal Director

**Australian Greens**

Ms Penny Allman-Payne, Co-convener

Dr Ben Spies-Butcher, Deputy Convener

**Liberal Democratic Party**

Mr David Leyonhjelm, Senator-elect, Registered Officer

**Thursday 1 May 2014 - Canberra****Private Capacity**

Mr Glenn Druery

**Help End Marijuana Prohibition Party**

Mr Graham Askey, Registered Officer

**Australian Sex Party**

Mr Robert Swan, Registered Officer

**Wednesday 7 May 2014 - Mount Isa****Mount Isa City Council**

The Hon. Tony McGrady, Mayor

**Commonwealth Parliament**

The Hon. Robert Katter MP, Member for Kennedy

**Thursday 8 May 2014 - Brisbane****Private Capacity**

Professor Graeme Orr

Mr Alan Corbett

**Australian Electoral Commission**

Ms Anne Bright, State Manager and Australian Electoral Officer,  
Queensland

Mr Stuart Fraser, Director Operations, Queensland

Mr Kevin Kitson, Acting Deputy Electoral Commissioner

**Queensland University of Technology**

Professor Clive Bean, Professor of Political Science, Creative Industries  
Faculty

**Wednesday 11 June 2014 - Adelaide****Private Capacity**

Professor Dean Jaensch

**Australian Electoral Commission**

Mr Paul Hawes, Director Operations, South Australia

Mr Kevin Kitson, Acting Deputy Electoral Commissioner

Mr Robert Pugsley, Formerly Australian Electoral Officer and State  
Manager, Northern Territory

Ms Claire Witham, Australian Electoral Officer and State Manager, South  
Australia

Ms Kathy Mitchell, Acting State Manager, Western Australia

**Electoral Reform Society of South Australia**

Mr Graham Pratt, President

**FamilyVoice Australia**

Mr Nathan Keen, National Policy Officer

Dr David Phillips, National President

**Tuesday 29 July 2014 - Canberra****Private Capacity**

Professor Sarah Birch

**ACT Electoral Commission**

Mr Phillip Green, Electoral Commissioner

**Department of Communications**

Mr David Jansen, Director, E-Government Policy

Mr Abul Rizvi, Deputy Secretary

**Wednesday 30 July 2014 - Canberra****Private Capacity**

Ms Marcelle Anderson

**Palmer United Party**

Mr Phillip Collins, Chief of Staff to Mr Clive Palmer MP

**Australian Greens**

Ms Penny Allman-Payne, National Co-Convenor

Mr Brett Constable, National Manager

**Liberal Party of Australia**

Mr Ben Morton, State Director, Western Australian Division

**The Greens Western Australia**

The Hon. Giz Watson, Co-Convenor

**Thursday 31 July 2014 - Canberra****Australian Electoral Commission**

Mr Pablo Carpay, First Assistant Commissioner

Mr Kevin Kitson, Acting Deputy Electoral Commissioner

Ms Marie Neilson, Assistant Commissioner, Elections

Mr Tom Rogers, Acting Electoral Commissioner

Mr Michael Ross, Acting Chief Legal Officer

**Wednesday 24 September 2014 - Canberra****GetUp! Australia**

Mr Joshua Genner, Campaigns Advisor

Mr Samuel McLean, National Director

**Wednesday 29 October 2014 - Canberra**

No witnesses in attendance

**Wednesday 12 November 2014 - Canberra****Australian National Audit Office**

Mr Brian Boyd, Executive Director  
Mrs Barbara Cass, Group Executive Director  
Mr Andrew Huey, Senior Director  
Mrs Michelle Mant, Director  
Mr Ian McPhee, Auditor-General  
Mr Patrick O'Neill, Director

**Australian Electoral Commission**

Mr Kevin Kitson, Acting Deputy Electoral Commissioner  
Mr Doug Orr, Australian Electoral Officer and State Manager for New South Wales

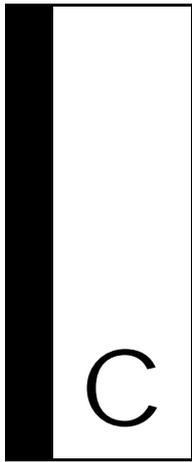
**Thursday 13 November 2014 - Canberra****Australian Electoral Commission**

Mr Pablo Carpay, First Assistant Commissioner  
Mr Andrew Gately, Assistant Commissioner, Roll Management  
Mr Kevin Kitson, Acting Deputy Electoral Commissioner  
Ms Kathy Mitchell, Assistant Commissioner  
Mr Paul Pirani, Chief Legal Officer  
Mr Tom Rogers, Acting Electoral Commissioner

**Wednesday 4 March 2015 - Canberra****Australian Electoral Commission**

Mr Pablo Carpay, First Assistant Commissioner  
Mr Andrew Gately, Assistant Commissioner, Roll Management  
Mr Paul Pirani, Chief Legal Officer  
Mr Tom Rogers, Electoral Commissioner





Appendix C – Australian Electoral  
Commission organisational chart

## AEC Organisation Chart April 2015

### Australian Electoral Commission

Chairperson

Non-judicial member

Electoral Commissioner

### Electoral Commissioner

### Deputy Electoral Commissioner

Australian  
Electoral Officer/  
State Manager

New South Wales  
and Australian  
Capital Territory

Victoria

Queensland

Western Australia

South Australia

Tasmania

Northern Territory

Legal and  
Procurement  
Branch

Chief Legal  
Officer

Legal Services

Commercial Law  
and Procurement

### First Assistant Commissioner Election Operations and Reform

Election Reform  
Programme  
Branch

Assistant  
Commissioner

Election Policy  
and Procedures

Reform Team

Election  
Planning,  
Systems and  
Services  
Branch

Assistant  
Commissioner

Election Systems  
and Delivery

Election Planning  
and Reporting

People  
Services  
Branch

Assistant  
Commissioner

Learning and  
Workforce Planning

Elections and  
HR Systems

Employee Relations  
and Services

Industrial and  
Fee-For-Service  
Elections

(national oversight)  
Program Manager

### First Assistant Commissioner Capability

Office of the  
Commissioner

Assurance

International  
Services

Election Policy  
and Parliamentary  
Services

Information  
Technology  
Branch

Assistant  
Commissioner

ICT Infrastructure  
Management

Enterprise and  
IT Governance

IT Solutions,  
Elections,  
Funding and  
Communications

IT Solutions and  
Roll Products

Finance and  
Business  
Services Branch

Chief Finance  
Officer

Financial  
Management

Property,  
Workplace  
Services and  
Security

Performance  
Planning and  
Reporting

Funding and  
Disclosure  
Branch

Assistant  
Commissioner

Registration and  
Disclosure

Compliance

Roll  
Management  
Branch

Assistant  
Commissioner

Electoral  
Integrity Unit

Enrolment  
Capability and  
Support

National Enrolment  
Services

Joint Roll  
Management

Strategic Research  
and Analysis

Redistribution  
Secretariat

Education and  
Communications  
Branch

Assistant  
Commissioner

Media and External  
Communication

Communication  
Services

Education and  
Community  
Engagement

Indigenous Electoral  
Participation  
Program



## Appendix D – List of recommendations from interim reports

### **Senate voting practices interim report—May 2014**

#### Recommendation 1

The Committee recommends that section 273 and other sections relevant to Senate voting of the Commonwealth Electoral Act 1918 be amended to allow for:

- optional preferential above the line voting; and
- ‘partial’ optional preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies:
  - ⇒ six for a half-Senate election;
  - ⇒ twelve for a double dissolution; or
  - ⇒ two for any territory Senate election.

The Committee further recommends that appropriate formality and savings provisions continue in order to support voter intent within the new system.

#### Recommendation 2

The Committee recommends that sections 211, 211A and 216 and any other relevant sections of Parts XVI and XVIII of the Commonwealth Electoral Act 1918 be repealed in order to effect the abolition of group and individual voting tickets.

### Recommendation 3

The Committee recommends that the Government adequately resource the Australian Electoral Commission to undertake a comprehensive voter education campaign should the above recommendations be agreed.

### Recommendation 4

The Committee recommends that sections 126, 132, 134 and any other relevant section of Part XI of the *Commonwealth Electoral Act 1918* be amended to provide for stronger requirements for party registration, including:

- an increase in party membership requirements to a minimum 1 500 unique members who are not relied upon for any other party in order for a federally registered party to field candidates nationally;
- the provision to register a federal party, that can only run in a nominated state or territory, with a suitable lower membership number residing in that state or territory, as provided on a proportionate population or electorate number basis;
- the provision of a compliant party constitution that sets out the party rules and membership process;
- a membership verification process;
- the conduct of compliance and membership audits each electoral cycle; and
- restriction to unique registered officers for a federally registered party.

The Committee further recommends that the Government adequately resource the Australian Electoral Commission to undertake the above activities.

### Recommendation 5

The Committee recommends that:

- all new parties be required to meet the new party registration criteria; and
- all currently registered parties be required to satisfy the new party registration criteria within twelve months of the legislation being enacted or the party shall be deregistered.

### Recommendation 6

The Committee recommends that the Government determine the best mechanism to seek to require candidates to be resident in the state or territory in which they are seeking election.

## **Electronic voting options interim report—November 2014**

### Recommendation 1

The Committee recommends that the Australian Government adequately resource the Australian Electoral Commission to deploy electronic certified lists where possible to all pre-poll voting centres and to all mobile voting teams at the next federal election.

### Recommendation 2

The Committee recommends that, after the next federal election, the Australian Electoral Commission undertake a full cost benefit analysis of utilising electronic certified lists at all polling locations based on a permanent investment in the relevant technology and/or the development of a platform that can be accessed from any networked computer, with a view to full implementation at future elections.

### Recommendation 3

The Committee recommends that the Special Minister of State propose to the states and territories that the further development of electronic electoral roll mark-off systems be undertaken in a collaborative approach to facilitate the sharing of resources.

### Recommendation 4

The Committee recommends that relevant sections of the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*, be amended to allow for the expansion of the use of electronic certified lists as a form of approved list for marking electors who have been issued a ballot paper.

### Recommendation 5

The Committee recommends the Australian Electoral Commission develop and trial the electronically-assisted counting of ballot papers at all pre-poll centres for the next federal election.

**Recommendation 6**

The Committee recommends that the Australian Government investigate the feasibility of digital storage of scanned ballot papers to replace storage of paper ballots.

**Recommendation 7**

The Committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow for expansion of the current assisted telephone voting system to include people with assessed mobility or access issues for the next federal election.