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The Hon Mr Tony Smith MP
Chair, Joint Standing Committee on Electoral Matters
PO Box 6021
PARLIAMENT HOUSE ACT 2600

Dear Mr Smith

Re: Joint Standing Committee on Electoral Matters Inquiry into the conduct of the 2013 Federal Election

This submission specifically addresses matters relating to the loss of 1,370 ballot papers for the Western Australia (WA) Senate election in the 2013 federal election.

The Electoral Commissioner, Mr Ed Killesteyn, has previously and unreservedly apologised on behalf of the AEC for the loss of the ballot papers. During the Senate estimates hearing on 19 November 2013, Mr Killesteyn observed:

“In the Western Australian Senate election, however, the AEC failed to meet the high standards that it has worked so hard to achieve over many decades and on which its high standing in the Australian and international community is based. One thousand three hundred and seventy ballots out of 1.35 million were unable to be located for the purposes of the recount of the Western Australian Senate election. I unreservedly apologise to those electors whose Senate franchise has been lost because of this failure by the AEC, and my apologies are also extended to the candidates who contested the election.”

Mr Killesteyn’s apology, which had been first transmitted in a general press release on 31 October 2013 and reiterated during a subsequent Radio National interview on 4 November, is a recognition of the significance of this matter, and a genuine expression of regret by the AEC for what occurred. The AEC is very conscious of the additional expense and inconvenience caused to the community, candidates and parties, and to the Parliament. As Mr Killesteyn further elaborated during the Senate Estimates hearing;

“This failure has damaged the reputation of the AEC, a vital ingredient of any democratic system that requires the community to have confidence in the electoral management body established to manage the election on its behalf.”

However, without losing sight of the understandable depth of feeling in the community about this serious matter, the AEC must now move to ensure that continued expressions of regret are also accompanied by effective measures to prepare for future electoral events; that is, measures which are robust, comprehensive, and deal with the issues that surrounded the loss of votes, and the subsequent recommendations of Mr Mick Keelty’s report of his ‘Inquiry into the 2013 WA Senate Election’.

On 5 November 2013, Mr Killesteyn commissioned Mr Mick Keelty AO to inquire into the circumstances of the missing ballots. Mr Keelty provided the Electoral Commissioner with the report of his inquiry on 2 December 2013. A copy of the report was sent to the Committee on 13 December 2013 and a copy is also attached to this submission. While Mr Keelty made a number of findings and recommendations in his report, he concluded that:

“it is impossible to determine whether the missing ballots were:

- a) physically removed during the many transport and storage processes*
- b) lost during transport or transfer*
- c) misplaced through repacking into incorrect boxes, or*
- d) accidentally mixed with recycling material and disposed of as refuse.”*

The report was examined by the full Electoral Commission in the days following its receipt with a view to determining next steps. The Electoral Commission accepted all 32 of the report’s recommendations and then established a taskforce, headed by myself, to lead the implementation of the recommendations. The report was also referred to the Australian Federal Police (AFP) which noted that the report did not identify evidence supporting the existence of any criminal acts, and that the AFP would not further pursue this matter.

The AEC is now moving swiftly to implement the Keelty report recommendations. Action has already started on many of the recommendations, including a review of warehouse arrangements in all states, and discussions with transport and logistics providers on introducing improved controls over movement of ballot papers and election materials. It should be noted that the AEC is treating the Keelty recommendations as a minimum standard: where appropriate, the AEC is either adopting, or considering adopting, measures which go beyond Mr Keelty’s recommendations. An example is the extension of election operations audits to monitor compliance with policies and procedures.

Given the impending by-election for the seat of Griffith on 8 February 2014, work has been underway to ascertain what elements from the Keelty inquiry could be safely implemented in time for that event, and which recommendations require further planning prior to implementation. Additional accountability measures in place for the by-election include:

- enhancing documentation and tracking of movements of ballot papers at all stages of the life cycle (and pressure points in that life cycle);
- reviewing documentation and developing role descriptions, to be provided to employees (permanent and temporary) performing key roles, including materials management and transport;
- issuing interim guidance, targeted at people who are not logistics professionals, regarding the packaging, packing and transport of parcels of ballot papers from polling places through to long term storage (including the use of fresh boxes and enhanced checking and labelling ahead of long term storage);
- developing and publishing underpinning 'ballot paper principles' which are to be displayed in all AEC offices and included in polling official training manuals in relation to the security and safety of ballot papers;
- communication and reinforcement through various mediums, including emails from the AEC leadership team, election bulletins, intranet news articles and columns, state bulletins and distribution of posters, emphasising the importance of ballot paper security and political neutrality to all permanent and temporary Griffith staff and to AEC staff in other locations, to be supplemented by in-person discussions with staff as opportunities present;
- formalising and improving rigour around the establishment and maintenance of 'ballot secure zones' in premises where ballot papers are being handled or stored;
- developing interim guidance on minimum standards for non-AEC premises that handle or store ballot papers;
- improving security measures around transport and storage of ballot papers and materials and trialling new ways to more securely store ballot papers overnight during the polling period;
- improving security measures around the access of contractors and visitors to AEC sites and restrictions on accessing ballot secure zones;
- introducing a binding ballot paper security declaration, directions and acknowledgement for all polling place staff undertaking face-to-face training, which includes all OICs taking custody of ballot papers;
- conducting a quality assurance check of all contracts relating to the delivery of the Griffith by-election, including political neutrality and security clauses;
- requiring selected contractors to sign a deed of confidentiality, including a political neutrality statement, that augments the political neutrality clauses in those contracts;

- restricting access to the ballot paper images that allow other divisional offices to print the ballot paper for voting outside of the division, and regular scanning of all internal computer drives for electronic versions of ballot papers;
- enhancing training for temporary and permanent staff, highlighting the importance of ballot paper security and implementation of the initiatives outlined in this submission;
- improving material handling processes and procedures including more comprehensive labelling, tamper-evident packaging, and formalising procedures regarding rubbish and recycling disposal; and
- initiating a check of storage and packaging of 'live' ballots currently in AEC possession (this is underway, but due to the volumes involved, is expected to take some months to complete).

A detailed evaluation will be carried out following the Griffith by-election to assess efficacy, practicability and whether these initiatives are appropriate for wider use. This will include a review of compliance with the new and revised policies and procedures.

A number of additional measures have been implemented, such as improvements to ensure the secure transportation of all certified lists, including tamper-evident materials and tracking. All polling and other AEC staff in polling areas will also be required to wear identification (including the use of distinctive AEC purple 'bibs') to identify that they are AEC officials.

Once an analysis of the measures implemented at the Griffith by-election is complete the AEC will prepare a detailed implementation plan covering all the recommendations. The plan will include estimated implementation timeframes, legislative issues and costs – which, for some recommendations, could be significant and may necessitate the AEC seeking supplementary funding. The AEC will provide this plan to the Government and the Committee once finalised and provide regular updates on implementation progress.

As a trial and an additional assurance measure, if a fresh WA Half-Senate election is ordered by the Court of Disputed Returns, I intend to ask one of our most experienced State Managers to travel to WA for the period of the election to provide assistance, support and guidance to the Australian Electoral Officer for WA and to assist in ensuring election readiness and operational compliance as appropriate. This trial would assist Mr Killesteyn and myself to determine what additional support roles/mechanisms could be implemented in the future, and is in line with Mr Keelty's recommendation to consider cross-posting senior staff across states.

Additionally, I am considering appropriate steps to address the 'cultural' issues highlighted in Mr Keelty's report. As well as ensuring that these issues are addressed in training, manuals, and procedures as appropriate, over the next few months I intend to personally address staff, focussing on cultural issues, with the aim of reinforcing and entrenching the importance of the basic principles that underpin our election delivery.

As the acting Electoral Commissioner I also wish to put on the record my unreserved apologies to the electors of WA, to the candidates in the WA Senate election and to the Parliament and the Committee for the loss of the 1,370 WA Senate ballot papers. However, I am confident that the measures that the AEC is implementing as a priority will provide a far greater level of assurance to stakeholders and significantly minimise the risk of a future recurrence.

Yours sincerely

Tom Rogers

Acting Electoral Commissioner

4 February 2014