



**Submission to Joint Standing Committee on Electoral Matters –**  
**Inquiry into the Conduct of the 2013 Federal Election**  
**by Clive Palmer MP**

## **Introduction**

The *Commonwealth Electoral Act 1918* (the **Electoral Act**) governs the conduct of federal elections in Australia. In addition to establishing the Australian Electoral Commission (AEC) to be an independent and impartial body to run free and democratic election throughout Australia, the Electoral Act regulates a number of areas connected with the voting process including voting enrolment, postal voting, vote counting and the scrutineering of the vote count.

I consider there were serious flaws in the conduct of the 2013 Federal Election and in our voting processes overall. This submission outlines some of those flaws – flaws which should be addressed by way of reform of the Electoral Act.

## **Enrolment**

Australian citizens 18 years of age and over can apply to be placed on Electoral Rolls for all Commonwealth, State and Local Government elections.

Applications can be made on-line or at an Electoral Office, Post Office, ATO shop front, Centrelink and Medicare offices.

Applicants must include name, date of birth, residential address, phone numbers, email address, citizenship status and evidence of identity. Ironically no evidence of identity is required to actually cast a vote (as discussed in detail later).

Once the AEC accepts the completed form, the person's name is added to the rolls and the AEC sends confirmation advice to the person.

## **Voting**

Voting is compulsory and after an election the AEC sends a letter to all apparent non-voters questioning that they either provide a valid reason for failing to vote or pay a \$20.00 penalty.

If within the time period specified on the AEC notice, the person fails to reply or cannot provide a valid reason or declines to pay the \$20.00 penalty then the matter may be referred to a Court. If the matter is dealt with in Court and the person is found guilty they may be fined up to \$170.00 plus Court cost and a criminal conviction may be recorded against them.

In this context the Palmer United Party wishes to know:

- How many letters has the AEC sent out to apparent non-voters for the 2010 and 2013 Federal Elections?
- How many \$20.00 fines were paid and how many non-voters were not fined?
- How many matters were dealt with in Court?
- How many AEC letters were challenged by recipients who stated that they voted?

I suspect that very few fines were issued, even fewer were paid, even fewer were dealt with in Court and many AEC letters were challenged by their recipients as being incorrect.

### **Early Voting - General**

A variety of economic and social drivers and the increasing number of Australians becoming frail or elderly, has triggered an increasing number of voters taking advantage of more convenient voting options such as early voting. In each Federal Election since 2004, the percentage of Australians casting their votes in this way has consistently been approximately 20%.

Under the act a voter can vote early in person or through the post if on the day of the Election the person is:

- Outside the Electorate where the person is enrolled to vote,
- More than 8 kls from a polling place,
- Travelling,
- Unable to leave a work place to vote,
- Seriously ill, infirm or due to give birth shortly (or caring for someone who is),
- A patient in hospital and can't vote at the hospital,
- Prevented from attending a polling place due to religious beliefs,
- In prison serving a sentence less than 3 years or otherwise detained,
- A 'silent elector' or
- In reasonable fear of their safety.

### **Early Voting - In person (Pre-polling)**

A voter can vote in person at an early voting centre or any AEC divisional office in the weeks leading to the election. This is normally called a pre-poll vote.

At the 2013 Federal Election pre-poll voters were not asked if any of the criteria above applied to them. The Palmer United Party wishes to know why AEC staff didn't ask all potential pre-poll voters if they fulfilled one of the criteria above.

The Palmer United Party believes that pre-poll voters should be required to sign a certificate which states that one or more of the above criterion applies to them, before they can be issued with ballot papers. This measure will reinforce the point that voting should take place on the designated day of the election and pre-polling is only for those who are genuinely unable to vote on the day.

For the same reason, the length of time during which early/pre-poll voting is available should also be reviewed. Currently it is from 19 days prior to the election, which means that in practice, voting can commence prior to party campaigns being formally launched and policies announced. Voting can certainly commence before the LNP and ALP have released costings for their policies – particularly when they are in Opposition and wish to hide details from voters for as long as possible.

The Palmer United Party also believes that all pre-poll votes should be counted by AEC officials in the presence of party scrutineers on the day the votes are cast. This would prevent possible tampering with ballot boxes prior to current counting procedures (the day after the election)

## **Early Voting – Postal**

After an Election is announced a person can apply for a postal vote on-line or complete a hard-copy postal vote application form.

The electoral act allows political parties or candidates to mail postal vote applications to voters along with candidate and political party election campaign material. Further, the postal vote application sent by a political party can be returned by the voter to the party or the candidate, rather than the AEC. (The party must forward the form to the AEC for processing). The AEC is then required to send the ballot papers to the address on the application form, which can be the address of the party rather than the voter. What happens to the ballot paper from there is anyone's guess. This process is open to all manner of manipulation.

In addition, postal vote applications can be completed on-line and either mailed, emailed or faxed to the AEC. Again, this process has its problems as some parties have created websites which resemble the AEC site and the same process as outlined above can be undertaken.

For the 2010 and 2013 elections, the Palmer United Party wishes to know, what percentage of postal vote applications received by the AEC came via political parties and what percentage came directly to the AEC via voters?

It is considered that the practice of political parties or candidates mailing, emailing or faxing postal vote applications directly to voters is not appropriate, as the voter could be confused into thinking the material has been sent by the AEC. Also, the chain of custody of the application and the ballot paper can be questioned. Consequently, the electoral law should be amended before the next election to prohibit this practice.

Postal votes must be received in the Divisional Electoral Office by 13 days after the election in order for them to be valid. The AEC examines the address on the postal vote to ensure the potential voter is enrolled in the relevant electorate before the envelope is opened in the presence of the party scrutineers.

However, this verification process was not well communicated to new parties at the last election and hence Palmer United Party scrutineers were not present when much of this verification was undertaken.

## **Voting on Election Day – Normal Vote**

Polling places open between 8.00am and 6.00pm. As voters enter the polling place the following questions are asked:

1. What is your full name?

This enables the polling official look up the voter's name on the certified list which is a copy of the Electoral roll for the relevant division. If voter's name is on the certified list they will be asked the following question:

2. Where do you live?

If the address given is the same as that shown on the certified list they will be asked the next question:

3. Have you voted before in this election?

If the voter says they have not voted before in this election they will be issued with ballot papers – one for the House of Representatives and one for the Senate – and a pencil mark will be placed against the voter's name on the certified list.

If the person says they have voted previously in the election they are not entitled to cast another vote and will not be issued ballot papers.

See Figure 1 – The Issuing of Ballot Papers

However, this process is drastically flawed in that no voter is required to provide identification of any description before being issued with voting papers. This enables a person to vote at multiple polling places within an electorate on polling day, despite AEC assurances that this practice is not wide spread. The provision of identification is required for a large number of minor commercial transactions in this country (including purchasing pharmaceuticals) but not, strangely enough, for the extremely important duty of voting for Australia's national parliament. This must be changed before the next election.

In this context at the 2010 and 2013 elections the Palmer United Party wishes to know:

- How many voters were identified as attempting to vote (or actually voting) multiple times within a division?
- How many voters were prosecuted for multiple voting?
- How many convictions were recorded?

Again, I suspect the answers are: very few, even fewer (if any) prosecuted, and even fewer if any convicted.

At the very least, all ballot boxes within each electorate must be linked by computer or the internet to ensure that once a voter's name is marked off at one polling station it is marked off for all other polling booths in the electorate.

In addition, there is currently no way of knowing where a ballot comes from so it is possible to move votes from one booth to another, add votes or even remove votes. To prevent such practices ballot papers need to be colour-coded for each booth and accounted for and reconciled to the number of ballots issued by each booth.

As the polling official hands the ballot papers to the voter he or she is required to initial both the ballots in the top right corner. However, there is no record kept of officials' initials against their names, or if such a record is kept, Palmer United Party scrutineer requests to sight and review such a record were dismissed by the AEC without explanation. In addition, Palmer United Party and Liberal National Party scrutineers observed hundreds of ballots, which were not initialled by AEC officials. Despite these clear omissions, challenges to the validity of these ballot papers by both the Palmer United Party and LNP scrutineers were dismissed.

Parliament needs to direct the AEC to review these procedures and ensure that party scrutineers can verify electoral staff initials against their names and all non-initialled ballot papers be deemed invalid.

## Voting on Election Day – Declaration Vote

If the voters name cannot be found on the certified list, the voter may be directed to cast a Declaration Vote.

There are a number of reason why a voters name may not be on the certified list for the division, namely:

- the name may have been removed as a result of an electoral review’,
- the voter may be enrolled for an address in another division,
- the voter’s application for enrolment was made after the rolls had closed, or
- there has been a redistribution and your address is now in a different electoral division.

A Declaration Vote can also be cast if the voter has “silent” enrolment, that is, the voter has applied not to have their address listed on the electoral roll, generally for privacy or security reasons.

The envelope used to seal the ballot papers is called a declaration vote envelope. The voter’s declaration vote ballot papers are inserted into the envelope and forwarded to the division in which the voter claims to be enrolled. The envelope has a counterfoil which is removed and filed in a 'declaration records' folder. This is a record that the person has voted at that particular polling place. The voter 'declares' that they are entitled to vote by signing the envelope.

There are two types of declaration votes issued at a polling place. An absent vote will be issued if the voter is not on the certified list because the enrolled address is outside the division. A provisional vote will be issued if the voter claims to be enrolled for an address within the division if:

- the name cannot be found on the certified list,
- the name on the certified list is already marked as having voted,
- the name is on the certified list but not the address (silent elector), or
- the voter’s identity cannot be confirmed after additional questions have been asked.

The voter is then asked to read the provisional voting statement before completing a declaration vote envelope.

Despite these procedures being in place, there is strong evidence, including testimony from a number of potential voters themselves and independent witnesses that many potential Palmer United Party voters in the seat of Fairfax were simply refused a vote and turned away from polling booths by AEC officials when their names were not on the electoral roll or their addresses did not match.

In view of these problems, the AEC needs to:

- ensure the rolls are accurate and up-to-date; and
- undertake much more comprehensive education and information programs to ensure that potential voters are not disenfranchised due to poorly maintained electoral rolls and/or incorrect advice from AEC officials.

In this context, the Palmer United Party believes that the names of dead people are not being removed from the rolls, thus allowing groups of people to vote multiple times using such names.

The AEC must actively monitor death notices and State Offices of Births, Deaths and Marriages to ensure that the names of dead people are removed from the roles between elections.

Another problem with the actual voting process is the use of pencils. While the provision of pencils in polling booths is a current requirement of the electoral act, pencil marks can be easily altered or tampered with after a vote has been cast and therefore should be banned from the electoral process.

Rather than using pencils or pens, the Australian voting process should be brought into line with 21st century technology and become electronic.

A modern electronic voting system would save the tax payer millions of dollars in AEC staff wages, rental of premises used for the counting and storage of ballot papers, general administration expenses, paper and printing costs, and transportation and associated storage costs. (The Keelty Report into the loss of Senate voting papers in Western Australia describes many of the logistical costs and challenges facing the AEC and the consequent impact on its budget and ultimately, the tax payer).

An electronic system would also almost completely eliminate informal votes and put an end to party scrutineers arguing with each other and AEC officials over the almost indecipherable pencil-marked numbers on thousands of ballot papers across Australia.

Generally available electronic voting has been introduced in approximately 20 countries. Most of these countries (for example, Brazil and India) have done so via **electronic voting machines** at polling places. By contrast, the legitimacy of **internet voting** is widely accepted in Estonia and Switzerland.

The international evidence<sup>1</sup> suggests a number of positive effects of electronic voting on democracy, including improvements to equality and voter turnout, equality of voter information, equality of recording voters' intentions, equality between Candidates, and improvements to the scrutiny of vote handling and counting. Last but not least, such a system delivers a timely determination of the Election Result.

Again, at the very least, legislation needs to be amended before the next election to remove the antiquated requirement of using pencils.

### **Vote Counting and Scrutineering**

Under our existing electoral protocol, vote counting is subject to a cumbersome, multi-stage procedure administered by the AEC. The counting of votes is known as the scrutiny, which commences on election night in each polling place after 6pm when the polling place has closed. Both ordinary ballot papers and pre-poll ballot papers completed by voters within their division are counted on election night. The scrutiny can be observed by representatives of the candidates (called scrutineers). As a general process, scrutineers should be permitted to see *every* part of the election process (excepting the casting of votes). This includes all processes involving the issuing or rejection of votes, scrutiny of all declaration votes, and all vote counting procedures.

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<sup>1</sup> *International Experiences of Electronic Voting and Their Implications for New South Wales - A report prepared for the New South Wales Electoral Commission, Associate Professor Rodney Smith, University of Sydney, July 2009*

Prior to polling day “the AEC determines the name of the two candidates expected to come first and second in the election”. On election night the ballot papers for each of the other candidates are then sorted to next available preference for either of the two candidate preferred figure (TCP) “which provides an indication of the likely indication of the election”.

This requirement is unnecessary and is actually an insult to all other parties in the election process. Quite simply, the AEC should not be involved in picking or predicting the “likely outcome” of the election and thus, this process should be dispensed with prior to the next election and the legislation amended accordingly.

A further disturbing factor about this process is that such information regarding Eastern State electorates is available in other States before voting closes thus potentially influencing voters’ decisions. Again, the AEC must cease this practice.

As the counting is conducted, the first preference results for House of Representatives ballot papers are tabulated and phoned through to the Divisional Returning Officer, along with the number of informal votes. The Divisional Returning Officer enters the results for each polling place into the AEC’s national computerised election management system. These results are electronically fed to the Virtual Tally Room on the AEC website and directly to some media. Both ordinary ballot papers and pre-poll ballot papers completed by voters within their division are counted on election night. The scrutiny can be observed by scrutineers nominated by the candidates.

Polling officials should then conduct an indicative distribution of preferences (a two-candidate-preferred count for the House of Representatives) between **the two actual leading candidates** (not the previously identified candidates) to give an indication of the likely outcome of the poll in that division.

The AEC is also required by the electoral act to conduct a full distribution of preferences in every division even where a candidate has won an absolute majority.

This is simply used to calculate the two party preferred statistics for divisions that have ALP and Coalition as the final two candidates. In divisions that do not have the ALP and Coalition as the final two candidates, a Scrutiny for Information is conducted to determine the two party preferred result. A scrutiny for information in such cases is a notional distribution of preferences to find the results of preference flows to the ALP and Coalition candidates. Again, the legislation should be amended before the next election to repeal this section and do away with this practice, as it simply represents a statistical analysis for the benefit of the two current major parties.

Declaration envelopes containing absent votes, pre-poll declaration votes (i.e. those pre-poll votes cast outside an elector’s division), postal votes and provisional votes are not included in the count until after polling day. These are sent to their home divisions, divisions in which the voter lives. During the first week after polling day, scrutiny (check of voter eligibility and counting of absent and pre poll, provisional and postal votes begins) is undertaken. Additionally the AEC is obliged under the electoral act to wait 13 days for postal votes mailed before polling day to arrive.

Following initial counting at polling booths, ballot papers are sealed in plastic bags, packed in marked containers and transported to a Divisional office or Divisional Counting Centre, under the control of the Divisional Returning Officer (DRO).

As in the case of the electorate of Fairfax, when a result cannot be determined on election night further counting must be undertaken by the DRO and other AEC staff as required.

In this context the Palmer United Party would like to know, how is the security of ballot papers during transportation and subsequent storage guaranteed by the AEC, given that party scrutineers cannot monitor these processes?

In the case of Fairfax, ballot papers from one polling booth were counted/allocated against another booth at the Divisional Counting Centre. This error was not identified by the AEC until it was alerted to it through a miss-match of House of Representative ballot totals and Senate ballot totals already posted to the AEC's official website. The Palmer United Party maintains that the circumstances surrounding these anomalies were never fully explained by the AEC. Indeed, it required orders from the Federal Court (sought by the Palmer United Party) to ensure that the AEC took the appropriate actions regarding the recording, labelling and counting of the relevant ballot papers, thus enabling the overall counting process to proceed.

This lack of a comprehensive explanation for these events also calls into question much of the initial counting undertaken at the Divisional Counting Centre on the Sunday morning immediately after the election and prior to the arrival of Palmer United Party scrutineers, who had not been informed of this Sunday counting – almost unheard of in Australian elections.

In the case of Western Australia, 1,370 Senate voting papers were lost with disastrous repercussions for the entire WA Senate election.

It is clear from both these examples that the AEC needs to completely review the security of ballot papers throughout the entire chain of custody. Certainly the use of plastic bags, cardboard boxes, private cars (to transport ballot papers) and flimsy seals needs to be improved. Why have previously used sturdy metal boxes been replaced by flimsy cardboard boxes which can be tampered with?

The report into the loss of ballot papers in WA, prepared by Mr Mick Keelty AO, found “there were significant failures in some of the processes and procedures for the handling, movement and storage of WA Senate ballot papers. These failures were likely to have increased the risk of ballot papers being mislaid, as well as making it more difficult to detect or accurately determine the fate of the ballots”.

Mr Keelty observed that “while there was no evidence of any deliberate action to destroy or remove ballot papers, the systems in place in WA made it difficult for him to reach a conclusive finding”.

The Inquiry recommendations included:

- the implementation of material management policies and systems for the management of all aspects of ballot paper movement and storage that are consistent with the long term sensitivity of ballots and that reflect industry best practice. Specific recommendations include introducing ‘tamper-evident’ materials for the transfer and storage of ballot papers, both to and from vote counting centres, as well as for long term storage in warehouses. The installation of CCTV and alarms at warehouses is recommended;
- the introduction of controls for disposal of recycling or other materials to ensure that no ballot material is inadvertently lost;

- that all relevant staff have skills in contract management and contract enforcement;
- that the AEC's approach for the training of electoral staff (permanent and casual) ensure adequacy, national consistency, effectiveness, and the rigour of assessment measures, and
- that measures are implemented to ameliorate the pressures on staff arising from the expectation that all results will be known on polling day, and the logistical issues arising from the size of the Senate ballot paper.

Clearly, Mr Keelty has identified similar issues of concern with the AEC as I have previously raised and in my view, his findings strengthen the case for an electronic voting system.

A further significant problem with the overall counting and scrutineering process is that, in accordance with the legislation, during a recount, only those ballot papers that are referred to the Australian Electoral Officer (AEO) can be considered by the Court of Disputed Returns in the event of any legal challenge to the declared result. The AEO is the senior AEC State representative and the Divisional Returning Officer's boss.

In the case of Fairfax, where the AEC directed a recount of all ballot papers to take place due to the closeness of the result, this requirement caused long delays to the declaration of the poll. It also led to the publication of a great deal of misinformation by the AEC, as well as unfair and ill-informed media speculation on the reasons for the delays.

These delays were exacerbated by the inflexibility of the AEC's senior management in their failure to positively respond to Palmer United Party written requests for common-sense compromises to speed up the count. AEC senior management failed to assist in expediting the process in any way.

In a complete lack of leadership, no senior AEC officer above the level of the DRO even bothered to visit the Divisional Counting Centre during the two month counting and re-counting process. Instead, AEC lawyers were sent to the centre for three days, but their visit produced no outcomes at all. Hard-working local AEC staff were badly let down by AEC 'leaders'. Regrettably, the delays were even further exacerbated by the AEO's decision to remain in her Brisbane office for the entire period of vote adjudication.

The AEO's refusal to attend the Divisional Counting Centre in Maroochydore for her adjudication meant that all referred ballot papers had to be photocopied and couriered to and from Brisbane following preliminary adjudication in Maroochydore by the Divisional Returning Officer. On occasions, ballot papers had to be sent back and forth to Brisbane a second time when an AEO signature was omitted.

It is clear that the legislation should be amended to allow political party scrutineers to refer any ballot papers which they consider to be invalid to the Court of Disputed Returns, as required.

The extended counting procedure to enable a winner in Fairfax to be declared also highlighted (understandable) human error in the AEC in that:

- the initial count, Two Candidate Preferred, had me winning by 36 votes,
- the Full Distribution of Preferences count by 7 votes, and
- the final recount by 56 votes.

I trust the last count was the most accurate.

## Conclusion

While I have made a number of recommendations to improve an existing, flawed, manual system, which is at the mercy of human error in every step of the process, the main objective for electoral reform must be **to establish a sophisticated electronic system to better serve the needs of modern Australia.**

As stated earlier, a modern electronic voting system would save the tax payer millions of dollars. It would revolutionise AEC processes and would also almost completely eliminate informal votes and put an end to party scrutineers arguing with each other and AEC officials over the pencil-marked numbers of hundreds of thousands of ballot papers across Australia – delaying declaration of results in closely contested electorates.

Australians, particularly younger Australians, are among the most technically literate people in the world, yet our electoral system relies on pencils and paper, and the manual counting of millions of votes by mainly inexperienced temporary employees.

A parliamentary cross-bench colleague of mine, Ms Cathy McGowan AO, Independent Member for Indi in Victoria, has recently echoed my call for electoral reform and an electronic voting system. In her recent speech to the Rural Press Club in Melbourne she told the press club that she believed the days of voting with pencil and paper in a box should become a thing of the past. She also stated that she will advocate for the introduction of electronic voting in future elections.

In 2014, none of us would not accept an Australian banking and financial system based on pencils and paper – why should we accept an election system such as this? We deserve better.

JFK challenged America to get to the moon – and they did.

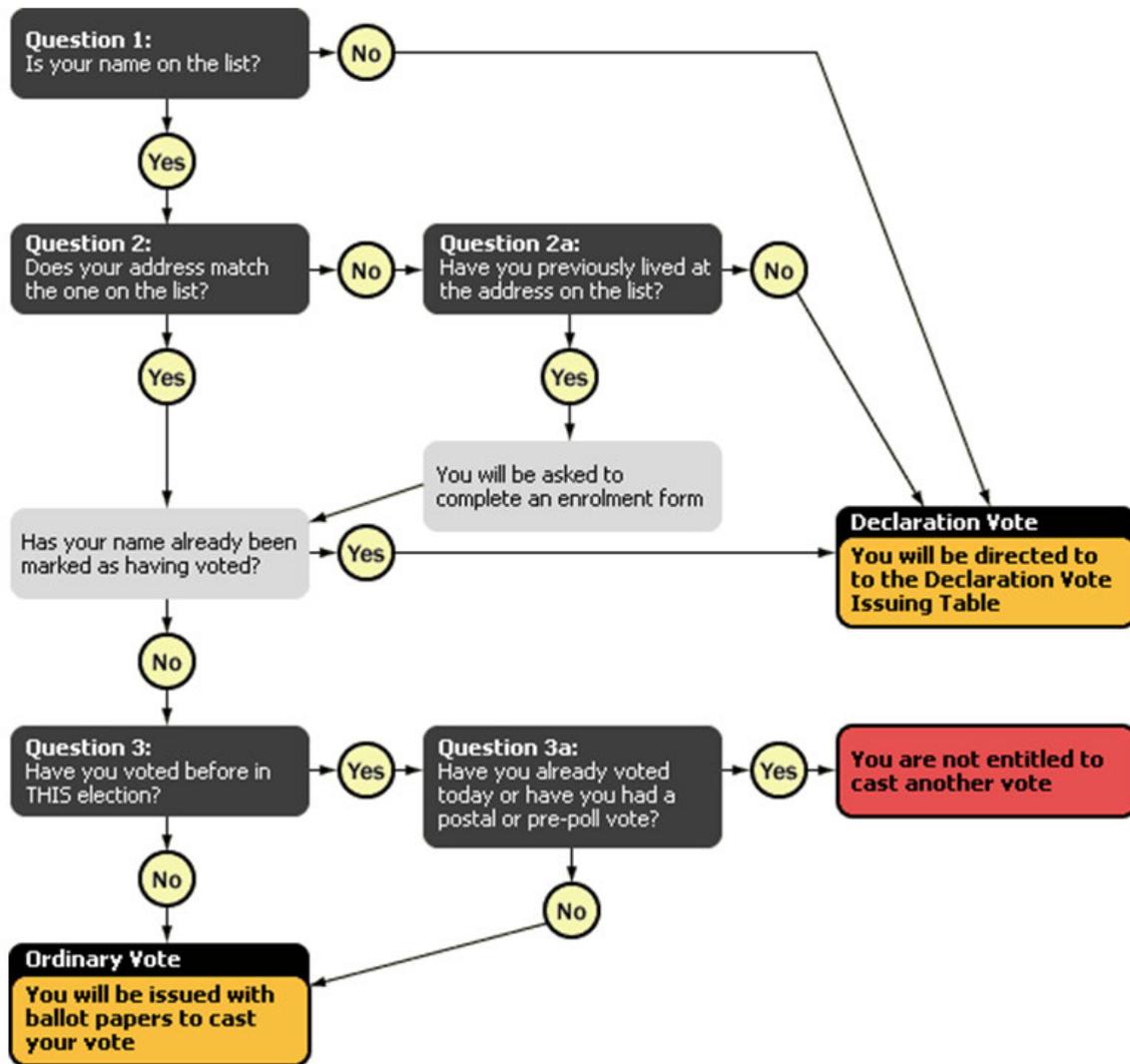
I challenge Australia to get an electronic voting system in place for the next Federal election!

And I challenge this Joint Standing Committee and Parliament, to take the lead!

Can we do it?

Clive Palmer MP  
Member for Fairfax  
Federal Leader of the Palmer United Party

**Figure 1: The issuing of ballot papers**



**Acknowledgement:**

In the interest of accuracy and completeness some of the material in this submission, including Figure 1 has been taken directly from the AEC website.