



Tony Smith MP

Chair JSCEM

Parliament House

Canberra ACT

7 March 2014

Dear Mr Smith,

Please find attached the Democratic Audit of Australia's submission to JSCEM's current inquiry into all aspects of the conduct of the 2013 Federal Election and matters related thereto.

While Swinburne University hosts the Democratic Audit, the views expressed in this submission are not to be taken as those of the University.

As always, the Audit wishes the Committee well in its deliberations.

Yours Sincerely,

Professor Brian Costar

Coordinator, Democratic Audit of Australia

## **Summary of Recommendations**

- 1. The Audit supports the retention of direct enrolment and update.**
- 2. The Audit supports the continued colocation of District Returning offices.**
- 3. The Audit does not support the adoption of electronic voting on polling day.**
- 4. The Audit does support the adoption of electronic voting at Pre-Poll Voting Centres.**
- 5. The Audit does not support the introduction of voter ID requirements at polling stations.**
- 6. The Audit supports tightening the requirements for party registration.**
- 7. The Audit supports the introduction of optional preferential voting for Senate elections**

## 1. Introduction

**1.1** If 2010 was the close election then surely 2013 was the dramatic election. For the first time a Senate result in a whole state was voided by the High Court because of lost ballot papers and a new polling date has been set for 5 April 2014.<sup>1</sup> There was a record number of House (1717) and Senate (529) candidates; in five states a Senate place was won by a party never before represented; South Australia's six Senate places were divided among five parties; New South Wales and Victoria had oversized Senate ballot papers in font so small as to require the provision of magnifying frames; and, controversially, a plethora of micro parties were registered in the months prior to the election, some of which won Senate places on very small parcels of 'primary' votes.<sup>2</sup>

**1.2** Over thirteen million electors voted in the 2013 election which represented a turnout of 92.23%, but this figure conceals some worrying trends. While their number has declined from 1.52 million in 2010, 1.22 million citizens were not enrolled; of those enrolled, 1 million did not vote; and 811 143 did not cast a valid vote for the House of Representatives. In other words just over 3 million qualified electors did not cast a ballot in 2013 that could be entered into the count, for a 'real' turnout of just under 80%, roughly the same as in 2010. Given we operate a system of mandatory enrolment and voting, this trend needs to be addressed. The gradual implementation of the *Electoral and Referendum Amendment (Maintaining Address) Act 2011* and the *Electoral and Referendum (Protecting Elector Participation) Act 2012* will solve the enrolment deficit problem, but turnout and informality present as bigger challenges.

## 2. Lost ballots in Western Australia

**2.1** The Inquiry into the 2013 WA Senate Election headed by M J Keelty AO concluded that the 'ultimate fate' of the 1 370 missing ballots from the Divisions of Forrest and Pearce 'is not likely to ever be fully explained'.

**2.2** Instead, the Inquiry made 32 recommendations aimed at improving aspects of the AEC's 'culture, planning, systems and practices' for future operations. According to Mr Keelty these operations should be carried out with the 'sanctity of the ballot' as the overriding concern of all involved in the electoral process.

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<sup>1</sup> HCA, *The Australian Electoral Commission v Johnston & Ors*, [2014] HCA 5, 18 February 2014.

<sup>2</sup> See Michael Maley, 'Optional Preferences and Senate Voting', *3rd Biennial Electoral Regulation Workshop*, Brisbane, 31 October-1 November 2013, p 1.

**2.3** The Keelty report was critical of the procedures relating to the handling, transporting and storage of ballot papers, as well as the 'lack of appropriate training' provided to the workforce which 'contributed to poor material management practices evident at critical points in the process.'

**2.4** The report also made reference to the recent changes in the United Kingdom with regard to codifying performance standards for Electoral Registration Officers and Returning Officers noting that the AEC may wish to investigate the role of District Returning Officers in Australia's electoral practices.

**2.5** The Democratic Audit believes it cannot helpfully add to the inquiries already conducted into the regrettable loss of the WA Senate ballot papers, but it would like to comment on a related matter.

**2.6** Mr Keelty and others have pointed to the security dangers inherent in the movement of ballot papers from place to place and to issues of culture and professionalism in the WA AEO.<sup>3</sup> Ever since the WD Scott report in 1974, there have been many calls made for the reform of the AEC's DRO structures (currently 137 across Australia) by way of colocation. Gathering existing DROs into clusters would facilitate the implementation of central policies and procedures and provide a more fruitful career structure for employees thereby raising morale and increasing efficiency and effectiveness.<sup>4</sup>

### **3. Multiple voting and personation – Voter ID as a cure-all solution**

**3.1** It has been demonstrated repeatedly that the vast majority of suspected instances of multiple voting in Australian elections can be attributed to clerical errors made during the marking of the roll at polling stations. After accounting for such clerical errors, the majority of the remaining cases of multiple voting are due to voter confusion or lack of comprehension of the process with age, illness and English language ability significant contributing factors.<sup>5</sup>

**3.2** On 25 February 2014, Acting Electoral Commissioner, Tom Rogers, informed the Senate's Finance and Public Administration Legislation Committee that of 1 979 people

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<sup>3</sup> MJ Keelty, *Inquiry into the 2013 WA Senate Election*, AEC , December 2013, pp 29-30

<sup>4</sup> For details see Peter Brent, *The Rise of the Returning Officer: How Colonial Australia Developed Advanced Institutions*, PhD Thesis, ANU, 2008, pp 219-24.

<sup>5</sup> See for example, *Caltabiano v Electoral Commission of Queensland & Anor. (No 4)* [2009], QSC, 17 September 2009.

who admitted to voting more than once at the 2013 federal election, 81 per cent fell into the categories as described above.

**3.3** The Democratic Audit draws attention to the findings of Professor Rodney Smith in a recent report on multiple voting and voter identification in New South Wales prepared for the NSW Electoral Commission. Smith concludes, as many other researchers into multiple voting in Australian elections have, that the 'very small proportion' of total votes cast 'is too small to determine the winner in any seat'. Smith also found that there is no strategic element to multiple voting and that it is therefore not a targeted activity carried out in marginal electorates.<sup>6</sup>

**3.4** Smith's final point above aligns with much research into electoral fraud worldwide which notes that the types of logistical and organisational capacities required to affect electoral outcomes are beyond the reach of individuals, particularly in jurisdictions with strong, independent electoral oversight bodies such as the AEC and the State and Territory Electoral Commissions.

**3.5** In electoral parlance, personation means to vote in the name of another. For large scale elections at least this is both an unsophisticated method of voter fraud and an impractical one. While it is almost a given that after an election in Australia an individual, or group of individuals, will claim to have voted fraudulently by multiple voting, claims of personation are rare.

**3.6** The Democratic Audit notes that calls for voter identification requirements are often made as a remedy for multiple voting and personation. It is true that in the case of personation fraud, voter ID requirements would make a significant difference. That is, at the polling station, it would be more difficult to produce identification in order to pose as someone else in order to vote in their place. Though, it should be remembered that not even photo ID is fool-proof as the incidence of identity theft shows.

**3.7** If an individual seeks to vote more than once in an electorate, however, voter identification requirements are no impediment at all. That is, the fraudulent voter would simply go from polling station to polling station and produce their identification and vote as themselves (as is the way multiple voting is carried out *without* identification).

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<sup>6</sup> Rodney Smith, *Multiple Voting and Voter Identification*, A research report prepared for the New South Wales Electoral Commission, February 2014, p 7.

**3.8** The Audit also draws attention to an important practical problem with the implementation of voter ID. This country does not have any form of national identity card and validating ID at issuing tables will cause significant delays for voters.

**3.9** The 2011 submission to JSCEM from the Australian Federal Police that the installation of CCTV cameras at all polling places would allow easier prosecution of multiple voters is financially irresponsible, impractical and a gross over-reaction to a problem that barely exists.<sup>7</sup>

**3.10** The Democratic Audit wishes to emphasise the point that voter identification requirements are an effective deterrent for a problem (personation) that evidence suggests does not exist. The Audit would also like to draw attention to the fact that research into voter identification requirements in liberal democracies suggests that the costs of voter identification requirements in terms of turning people away from the ballot, would far outweigh the benefit. That is, as Overton notes, tightening voting requirements in order to better reflect the will of the electorate would have the opposite effect and that 'the best existing data suggests that a photo-identification requirement would do more harm than good'.<sup>8</sup>

#### **4. Electronic Voting**

**4.1** Since the passage of the Commonwealth Electoral Act 1902 Australian electors have cast their parliamentary and referendum vote by pencil on paper ballots. The loss of 1 370 Senate ballot papers produced a spike in enthusiasm for the introduction of some form of E Voting. A typical example was an Age editorial of 2 November 2012:

The *Saturday Age* suggests the controversy surrounding the AEC provides an opportunity to improve Australia's democracy. We believe the Government should commission an expert inquiry with a view to introducing electronic voting, preferably in time for the next federal election. After all, digital technology has revolutionised so much, and people have become comfortable and confident banking, shopping and storing private information online. A secure system operating only within authorised facilities would be a relatively straightforward exercise.

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<sup>7</sup> AFP Submission No 105 to JSCEM, 27 June 2011, p 4

<sup>8</sup> Spencer Overton, 'Voter Identification', *Michigan Law Review*, 105, February 2007, p.635

**4.2** First, it must be established what is meant by 'E Voting'. Some are enthusiasts for 'online' or 'internet voting'.<sup>9</sup> Based on the following evidence from Scott Wolchock and colleagues, the Audit counsels extreme caution against the use of the internet for general elections:

*In 2010, Washington DC developed an Internet pilot project that was intended to allow overseas absentee voters to cast their ballots using a website. Prior to deploying the system in a general election, the District held a unique public trial: a mock election in which anyone was invited to test the system or compromise its security. This paper describes our experience in participating in this trial. Within 48 hours of the system going live, we had gained near-complete control of the election server. We successfully changed every vote and revealed almost every secret ballot. Election officials did not detect our intrusion for nearly two business days and might have remained unaware for far longer had we not deliberately left a prominent clue.*<sup>10</sup>

**4.3** University of Michigan students also hacked into the system and programmed it to play their 'Fight' song.<sup>11</sup> The trial was eventually abandoned as was the proposal to allow internet voting in general elections.

**4.4** The Audit concurs with Brenton Holmes that:

In mass activities such as gathering and counting votes it would be foolish to ignore the potential of technology to expedite routine and mechanical processes such as managing electoral rolls, facilitating the casting of ballots, counting votes, distributing preferences and calculating results. But there are some subtle aspects of 'doing democracy' for which the rapid-fire concatenations achievable in cyberspace may not be so congenial.<sup>12</sup>

**4.5** A second type of E Voting involves personal computers located in traditional polling places or Pre-Poll Voting Centres (PPVCs) such as currently operating in the Australian

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<sup>9</sup> Ralph McKay, 'Online superior to other election methods', *Australian Financial Review*, 18 November 2013.

<sup>10</sup> Scott Wolchock et al, 'Attacking the Washington DC Internet Voting System', *Proceedings 16<sup>th</sup> Conference on Financial Cryptography & Data Security*, Fe. 2012.

<sup>11</sup> *Washington Times*, 5 October 2010.

<sup>12</sup> Brenton Holmes, *e-voting: the promise and the practice*, Parliament of Australia Library, Background Note, 15 October 2012.

Capital Territory (ACT).<sup>13</sup> This type of E Voting is much more secure than on-line polling and, because votes are cast in private in secure locations, prevents improper influence by third parties. However, it does have serious practical problems including:

1. **Cost.** It is difficult to calculate the precise cost of such schemes because it depends on variables such as whether the PCs are purchased or hired/leased and what level of technical support might be required. Based on an updating of a 2001 estimate and assuming that each of the ca 8 000 polling places would require at least five computers (in reality this would be adequate for only the smallest booths), the minimum, additional cost per election would be in the order of \$150m.<sup>14</sup>
2. **Installation.** The AEC owns only a small fraction of the locations of the 8 000 polling stations operated on election- day--the remainder being schools and public and private halls. Currently the Commission gets access to many of these buildings only after 5 pm on election eve. How long might it take to install perhaps 20 or more computers at the larger polling places and fully test them in time for the 8 am opening of the polls? By whom and at what expense are these to be installed?
3. **Training.** The AEC employs some 70 000 casual staff across 150 electoral divisions on polling day. Will it be possible (noting that, unlike the ACT, the Commonwealth does not have fixed date elections) to train these staff in a computer-based system? What would be the cost?
4. **Weather events.** What might be the impact of a cyclone seriously disrupting power supplies to large areas of north Queensland or a large bushfire having the same impact in a part of Victoria from (say) 2pm on election day?
5. **Paper ballots.** Despite the ubiquity of PC usage, there are still minorities of the population not familiar with them. This will require the availability of paper ballots perhaps by way of declaration and this is likely to cause delays in the process of voting to the frustration of would-be voters.
6. **Corruption.** During the 2013 count some very ill-informed comments were made about 'tampering of the ballots'.<sup>15</sup> These ignore the fact that ballots are not counted in private but in full view of candidate-appointed scrutineers.

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<sup>13</sup> Elections ACT, *Electronic voting and counting*, 5 July 2012.

<sup>14</sup> Colin Barry et al, *Electronic Voting and Electronic Counting of Votes: A Status Report*, Sydney, 2001, p 11.

<sup>15</sup> *The Australian*, 18 September 2013, p 6.

7. **Paper trail.** Will the electronic system generate a paper trail for re-checking and re-counting? Will the political parties happily forego the current scrutineering process?<sup>16</sup>

**4.6** For these reasons the Democratic Audit strongly counsels against the adoption of E-Voting on polling day.

**4.7** At the same time, the Audit acknowledges the increase in the number of votes lodged at PPVCs and that this makes completing their counting on election night difficult.

**4.8** The Audit recommends the adoption of the ACT method of electronic voting at PPVCs because voting across days rather than hours avoids the more serious problems identified at 1-7 above.

## **5. Reforming the Senate Voting Procedures**

**5.1** We adopted, by way of the Commonwealth Electoral Act 1948, the current multi-member, quota preferential, single transferable vote, proportional representation (STV PR) and first employed it at the 1949 half Senate election.

**5.2** While not entirely free of partisan intent, the previous 'majority preferential' method had become indefensible. Over the 1943 and 1946 Senate elections the ALP with 56% of the vote won 92% of Senate places; whereas over the 1931 and 1934 polls the numbers were reversed in favour of the non-Labor parties.

**5.3** At the 2013 Senate election there were a multiplicity of hitherto unknown micro parties, two of whom won places with 0.23 and 0.50 per cent of the 'primary vote' when the quota for election was 14.3%.

**5.4** These results attracted criticism and calls for 'reform' of the Senate voting system.<sup>17</sup>

**5.5** First, a number of clarifying comments concerning the operation of STV PR are necessary.

1. While the system may have been gamed by way of groups entering into ideologically strange preference deals, it was not corrupted. The election of candidates with small parcels of initial votes can be a normal feature of STV PR

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<sup>16</sup> For a discussion of other shortcomings of E-Voting see: Jennifer Rayner, 'Time to kill paper ballots? First, let's look at the alternatives', *The Conversation*, 4 November 2013.

<sup>17</sup> Brian Loughane, *2013 Federal Election*, National Press Club, Canberra, 23 October 2013 p 6; *Australian Financial Review*, 9 & 10 November 2013; *The Australian*, 8 January 2014.

systems. It has occurred before: The Nuclear Disarmament Party (1.5% in NSW in 1987; Family First (1.9%) in Vic in 2004; and the Democratic Labour Party in Vic in 2010 (2.3%).

2. The notion of 'primary' and 'two party preferred' votes does not apply in STV PR systems. In Tasmania in 2013, where the Senate quota was 48 137 votes, the PUP candidate started with 21 794 votes and was elected on the 155<sup>th</sup> count with 55 571 votes. The 33 778 votes she harvested by way of preferences were of equal worth to the 21 794 she commenced with.
3. The current system is predicated on the principle that votes will continue to transfer across candidates until all Senate places are filled and any changes that impede those transfers will compromise that principle, with, perhaps, unintended consequences.

## **6. Party Registration.**

**6.1** One reform that will not affect the operations of the STV PR system is to tighten the regulations regarding political party registration. At present a party will be registered if it provides to the AEC the names of 500 persons who are eligible to be on the roll, provides a constitution (which later does not have to be abided by) and pays a fee of \$500. The Audit recommends that the requirement be 1 000 names of persons actually on the roll and the payment of a \$5 000 fee. While the latter may appear iniquitous, to ask those who endorse a party to contribute \$5 each for its registration is a very modest impost.

## **7. Optional Preferential Voting (OPV)**

**7.1** With some reluctance, the Audit recommends the adoption of OPV for future Senate elections along the lines currently operating in the ACT. Voters would have to number as many squares as there are places to be filled (six in a half Senate election and 12 at (rare) double dissolutions. They can, of course, proceed to rank additional candidates. The 'above the line' voting option would have to be removed to ensure that voters' preferences go where they intend them.

**7.2** 'Reluctant' because: a) while optional, voters must be made aware that a person who ranks (say) twenty candidates is likely to have a greater influence on the election outcome than one who numbers only six or 12. The earlier a vote exhausts the less salient it will be; b) while the last double dissolution election was in 1987, they will occur in the future and the requirement to number 12 squares will most likely increase informality—the reduction of which is why above the line voting was adopted in 1983; c)

a strong advertising campaign will be needed to avoid a repetition of the 1984 election when the House informality spiked because people just voted one; the 2013 Senate election may have been an aberration

## **8. Conclusion.**

The Audit notes that the AEC has accepted full responsibility for the debacle of the lost Senate votes in Western Australia and that the Electoral Commissioner and the Australian Electoral Officer for WA have resigned as a consequence. Of course, organisations such as the AEC and the National Audit Office are not immune from criticism, but it needs to be proportionate. The Audit has been disturbed at some of the vitriol directed at the AEC and its staff. Calling it 'corrupt' and accusing it of altering ballots and 'rigging' elections may get a sensational headline, but adds nothing to the serious debate about electoral management.<sup>18</sup> Deputy Prime Minister Warren Truss is correct in his observation that 'the commission was one of the world's most highly regarded electoral bodies.'<sup>19</sup> Well resourced, professional and independent electoral management bodies are essential to a proper functioning representative democracy and act as bulwarks against electoral fraud.

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<sup>18</sup> See *Australian Financial Review*, 13 February 2014.

<sup>19</sup> *Australian Financial Review*, 4 November 2013.