

The Senate

Finance and Public Administration
References Committee

Arrangements for the postal survey

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Participating Members

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Acronyms and abbreviations

ABS	Australian Bureau of Statistics
Advance	<i>Advance to the Finance Minister Determination (No. 1 of 2017–18)</i>
AEC	Australian Electoral Commission
AMLPS	Australian Marriage Law Postal Survey
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex and queer
NSWGLRL	NSW Gay and Lesbian Rights Lobby
Postal survey	Australian Marriage Law Postal Survey

List of Recommendations

Recommendation 1

5.7 The committee recommends that questions of human rights for minority groups should not be resolved by a public vote.

Recommendation 2

5.13 The committee recommends that the Australian Government consider how further funding and support could be offered to mental health and LGBTIQ organisations to help address the consequences of the postal survey.

Recommendation 3

5.17 The committee recommends that the Australian Electoral Commission actively engage with remote communities and Indigenous peak bodies to increase the number of enrolled people in remote electorates and to increase the participation of enrolled people in local, state and federal elections.

Chapter 1

Introduction

1.1 On 14 August 2017, the following matter was referred to the Senate Finance and Public Administration References Committee for inquiry and report by 13 February 2018:

Arrangements relating to the collection of statistical information on the views of all Australians on the electoral roll on whether or not the law should be changed to allow same-sex couples to marry, as announced by the Government (the postal survey) with particular reference to:

- (a) what information will be collected and how it will be collected, aggregated and reported;
- (b) what departments and agencies will be involved and what resources will be provided;
- (c) the legislative basis for the collection and how matters such as advertising, fraud, access to the roll and privacy will be regulated;
- (d) the integrity of the roll and the potential for disenfranchisement of voters;
- (e) protections against offensive, misleading or intimidating material or behaviour, especially towards affected communities;
- (f) how issues incurred during the collection will be addressed;
- (g) whether the information will be stored and what controls on future access will apply;
- (h) all aspects of the conduct of the collection and related matters; and
- (i) proposals for use of the information obtained, including to inform future legislation.¹

Conduct of the inquiry

1.2 The inquiry was advertised on the committee's website. The committee invited submissions from individuals and organisations by 31 January 2018. The committee received 41 submissions. Submissions received by the committee are listed at Appendix 1.

1.3 The committee held three public hearings in Canberra on 17 August 2017, 7 September 2017, and 15 September 2017. A list of the witnesses who gave evidence at the public hearings is available at Appendix 2.

1.4 Submissions, additional information and the Hansard transcript of evidence may be accessed through the committee website at: www.aph.gov.au/senate_fpa.

1 *Journals of the Senate*, No. 52—14 August 2017, p. 1690.

Focus of the committee

1.5 The committee wishes to stress that the focus of this inquiry, as per the terms of reference, is not the legalisation of same-sex marriage, but rather to scrutinise the process that the government chose to undertake in order to reach the point where the national parliament would consider legislation on this matter.

1.6 The committee has approached this inquiry as a watching brief. Soon after the announcement of the postal survey, the committee held a number of public hearings speaking with the Australian Bureau of Statistics, the Australian Electoral Commission and other agencies assisting to deliver the postal survey. The committee's overarching concern has been the treatment and wellbeing of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people throughout the postal survey.

Structure of the report

1.7 Chapter 1 is an introductory chapter which outlines the administrative details of the inquiry. The remainder of the report is structured as follows:

- Chapter 2 describes the process leading to the postal vote;
- Chapter 3 focuses on the conduct of the survey;
- Chapter 4 examines the offensive and denigrating material produced and disseminated during the period leading up to, and during, the postal survey; and
- Chapter 5 draws together the committee's conclusions and recommendations.

Chapter 2

Process leading to the postal vote

Introduction

2.1 This chapter will outline the process leading to the announcement of the Australian Marriage Law Postal Survey (postal survey).

2.2 A timeline of key events in relation to the same-sex marriage postal survey is outlined below in Table 2.1. Key points on this timeline are discussed in greater detail later in this chapter.

Table 2.1—Timeline of key events leading to the postal survey on same-sex marriage

11 August 2015	Special joint Coalition partyroom meeting discussed same-sex marriage. Then Prime Minister Abbott announced that a compulsory plebiscite would be held on the issue.
15 September 2015	Hon Malcolm Turnbull replaced Hon Tony Abbott MP as Prime Minister.
14 September 2016	<i>Plebiscite (Same-Sex Marriage) Bill 2016</i> introduced into the House of Representatives for plebiscite to be held on 11 February 2017.
7 November 2016	<i>Plebiscite (Same-Sex Marriage) Bill 2016</i> negated in the Senate.
8 August 2017	Prime Minister Turnbull indicated that the government will seek to re-introduce the <i>Plebiscite (Same-Sex Marriage) Bill 2016</i> to the Senate notice paper. Prime Minister Turnbull indicated the government's intention to hold a voluntary postal survey on the matter if the bill is unsuccessful.
9 August 2017	Motion to restore the <i>Plebiscite (Same-Sex Marriage) Bill 2016</i> to the Senate notice paper is negated.
9 August 2017	Treasurer Morrison directed the Australian Bureau of Statistics (ABS) to conduct a voluntary postal survey on whether same-sex marriage should be legalised with results to be published on 15 November 2017. ¹
9 August 2017	The Finance Minister issued an advance of \$122 million under the <i>Appropriation Act (No. 1) 2017–18</i> to enable the ABS to undertake the postal survey.
16 August 2017	The directive to the ABS is modified to specify the type of data to be collected and published including breakdown of result by national, state/territory, and federal electorate.
7 September 2017	The High Court found that the advance to the Finance Minister is valid.
12 September 2017	Mailing of forms and collection process began.

¹ Responsibility for the conduct of the postal survey was delegated to the Finance Minister.

13 September 2017	Legislation providing additional safeguards during the marriage law survey passed the Parliament. ²
7 November 2017	Postal survey closed.
15 November 2017	Results announced.
7 December 2017	Legislation legalising same-sex marriage passed the Parliament. ³

Amendments to the Marriage Act in 2004

2.3 On 16 August 2004, the Australian Parliament enacted the *Marriage Amendment Act 2004 (Cth)*. This Act inserted the following definition of marriage into subsection 5(1) of the *Marriage Act 1961 (Cth)* (Marriage Act):

'marriage' means the union of a man and woman to the exclusion of all others, voluntarily entered into for life.⁴

2.4 Section 88EA was also inserted to the Marriage Act to state that:

certain unions are not marriages. A union solemnised in a foreign country between:

A man and another man; or

A woman and another woman;

must not be recognised as marriage in Australia.⁵

2.5 These amendments meant that same-sex couples were unable to be legally married in Australia or have marriages performed overseas recognised in Australia.

2.6 Since this time, a number of private members bills seeking to repeal or modify the definition of marriage have been introduced into the parliament. None of these bills have passed the parliament.⁶

The origin of the plebiscite

2.7 Since these amendments were passed, the Liberal and National parties have had a policy to maintain this definition of marriage in the Marriage Act.

2.8 On 11 August 2015, the then Prime Minister, Hon Tony Abbott MP convened a special joint party room meeting of the Liberal and National parties to discuss the

2 *Journals of the Senate*, No. 62—13 September 2017, p. 1976. This legislation is the *Marriage Law Survey (Additional Safeguards) Act 2017*.

3 *Votes and Proceedings*, No. 91—7 December 2017, p. 1288. This legislation is the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

4 Marriage Act 1961, ss. 5(1).

5 Marriage Act 1961, s. 88EA.

6 Dierdre McKeown, 'Chronology of same-sex marriage bills introduced into the federal parliament: a quick guide', Australian Parliamentary Library, 1 December 2017, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/SSMarriageBills (accessed 16 January 2018).

Coalition's policy position on marriage, in particular, towards same-sex marriage. This meeting determined that the Coalition's official position on marriage had not changed, and that Coalition members would continue to be bound to support this view as policy.⁷

2.9 Late that night, the then Prime Minister announced that the Coalition would hold a plebiscite or referendum on whether same-sex marriage should be legislated or not.⁸

2.10 Little more than a month later, Mr Abbott was replaced as Prime Minister by the Hon Malcolm Turnbull MP.⁹ Shortly after the 2016 federal election, the Prime Minister signalled the government's intention to hold a plebiscite towards the end of 2016.¹⁰

Plebiscite to postal survey

2.11 Shortly after the 2016 federal election, the then Special Minister of State, Senator the Hon Scott Ryan announced, pursuant to the government's election commitment, that the government intended to hold a compulsory plebiscite on whether to legalise same-sex marriage on 11 February 2017.¹¹

2.12 The *Plebiscite (Same-Sex Marriage) Bill 2016* was introduced into the House of Representatives in September 2016 to 'establish the legislative framework for a compulsory in-person vote in a national plebiscite' and was passed through the House of Representatives in October 2016. On 7 November 2016, this legislation was introduced into the Senate and negatived at the second reading stage.¹²

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- 7 Judith Ireland, 'Same-sex marriage showdown: Tony Abbott calls special meeting of Coalition MPs to debate free vote', *The Sydney Morning Herald*, 11 August 2015, <http://www.smh.com.au/federal-politics/political-news/samesex-marriage-tony-abbott-calls-special-meeting-of-coalition-mps-to-debate-free-vote-20150811-giwhi5.html> (accessed 29 November 2017).
- 8 Judith Ireland, 'Tony Abbott flags plebiscite on same-sex marriage in bid to defuse anger', *The Sydney Morning Herald*, 12 August 2015, <http://www.smh.com.au/federal-politics/political-news/tony-abbott-flags-plebiscite-on-samesex-marriage-in-bid-to-defuse-anger-20150811-giwyg1.html> (accessed 29 November 2017).
- 9 Australian Parliament, 'Senators and Members: Hon Malcolm Turnbull MP', https://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=885 (accessed 29 November 2017).
- 10 Prime Minister Hon Malcolm Turnbull, 'Interview with Leigh Sales', *ABC 7.30 Program*, 18 July 2016, <https://www.pm.gov.au/media/interview-leigh-sales-abc-730-program> (accessed 15 January 2018).
- 11 Senator the Hon Scott Ryan, Special Minister of State, 'Plebiscite paves way for choice on same sex marriage', *Media Release*, 13 September 2016, <http://scottryan.com.au/media/media-release-plebiscite-paves-way-for-choice-on-same-sex-marriage> (accessed 29 November 2017).
- 12 Australian Parliament, 'Plebiscite (Same-Sex Marriage) Bill 2016', https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5728 (accessed 29 November 2017).

2.13 At the time, the Opposition and interest groups have argued that holding the plebiscite may have adverse consequences on lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) members of the community. The Opposition also argued that the estimated cost of \$170 million to hold the plebiscite was unnecessary and that a direct vote in Parliament was a more appropriate mechanism to amend the Marriage Act.¹³

2.14 On 8 August 2017, Prime Minister Turnbull indicated that the government would seek to reintroduce the *Plebiscite (Same-Sex Marriage) Bill 2016* to the Senate notice paper. In the event that this plebiscite was not supported by the Senate the government signalled it would hold a voluntary postal survey on the matter.¹⁴

2.15 The following day, the government's motion to restore the *Plebiscite (Same-Sex Marriage) Bill 2016* to the Senate notice paper was negated.¹⁵

Directive to conduct the Australian Marriage Law Postal Survey

2.16 Following the government's failure to establish a plebiscite, the Treasurer, Hon Scott Morrison MP issued the *Census and Statistics (Statistical Information) Direction 2017*—a directive to the Australian Bureau of Statistics (ABS) to collect statistical information from 'participating electors...about whether the law should be changed to allow same-sex couples to marry' and publish this information 'on or before 15 November 2017'.¹⁶ This process would be known as the 'Australian Marriage Law Postal Survey'.

2.17 Problems with the drafting of the directive lead to confusion regarding whether 16 and 17 year olds and prisoners would be permitted to participate.¹⁷ The directive was accordingly amended a week later by the Finance Minister, Senator the Hon Mathias Cormann (under authority from the Treasurer) to specify what information would be gathered and published on the matter.¹⁸ This specific

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- 13 Hon Bill Shorten MP, Leader of the Opposition, 'Now it's time for a free vote, Mr Turnbull', *Media Release*, 8 November 2016, http://www.billshorten.com.au/now_it_s_time_for_a_free_vote_mr_turnbull_tuesday_8_november_2016 (accessed 29 November 2017). See also: Senator Janet Rice, 'Expensive, unnecessary and now defeated plebiscite bill relegated to the graveyard of bad ideas', *Media Release*, 8 November 2016, <https://greensmps.org.au/articles/expensive-unnecessary-and-now-defeated-plebiscite-bill-relegated-graveyard-bad-ideas> (accessed 29 November 2017).
- 14 Hon Malcolm Turnbull MP, Prime Minister of Australia, 'Press conference with Senator the Hon. Mathias Cormann, Acting Special Minister of State', *Press Conference*, 8 August 2017, <https://www.pm.gov.au/media/press-conference-senator-hon-mathias-cormann-acting-special-minister-state> (accessed 29 November 2017).
- 15 *Journals of the Senate*, No. 50—9 August 2017, pp 1620–21.
- 16 *Census and Statistics (Statistical Information) Direction 2017*, ss 3(1) & ss 3(3). See also: Australian Bureau of Statistics, *Submission 1*, p. 2.
- 17 See Joe Kelly and Chris Merritt, 'Younger teenagers not invited to ballot party', *Weekend Australian*, 12 August 2017, p. 4; and Michael Koziol and Michaela Whitbourn, 'Survey risks excluding 113,000 voters', *Sydney Morning Herald*, 12 August 2017, p. 4.
- 18 Australian Bureau of Statistics, *Submission 1*, p. 2.

information included 'information about participating electors at the national level, at the level of each state and territory, and at the level of each electoral division'.¹⁹

2.18 In its submission, the ABS noted that it would receive support to deliver the postal survey from a number of 'other government departments and agencies' including 'Australia Post, Department of Human Services, Treasury, Finance, [and] Australian Government Solicitor'.²⁰

Funding the Australian Marriage Law Postal Survey

2.19 In announcing the survey, the Finance Minister stated that that the survey would cost \$122 million. This compared to the government's estimate of \$170 million for a full compulsory plebiscite.²¹

Advance to the Finance Minister

2.20 On 9 August 2017, the *Advance to the Finance Minister Determination (No. 1 of 2017–18)* (advance) was made by the Finance Minister. This advance provided an additional \$122 million to the departmental item for the ABS in the *Appropriation Act (No. 1) 2017–18* for the purposes of undertaking a voluntary postal survey.²²

2.21 The Department of Finance defines an advance to the Finance Minister as 'provisions in the annual Appropriation Acts which enable the [Finance Minister] to provide additional appropriation to agencies throughout the financial year'.²³ Furthermore:

An advance may only be issued by the Finance Minister / responsible Presiding Officer if satisfied that there is an urgent need for expenditure that is either not provided for or has been insufficiently provided for in the existing appropriations of the agency. The additional appropriation is provided by means of a determination.²⁴

2.22 The advance stated that the government decision to hold a postal survey was not made until after the *Appropriation Bill (No. 1) 2017–18* was 'introduced into the

19 Australian Bureau of Statistics, *Submission 1*, p. 2. See also: *Census and Statistics (Statistical Information) Direction 2017*, ss 3(1) & ss 3(3).

20 Australian Bureau of Statistics, *Submission 1*, p. 2.

21 Hon Malcolm Turnbull MP, Prime Minister of Australia, 'Press conference with Senator the Hon. Mathias Cormann, Acting Special Minister of State', *Press Conference*, 8 August 2017, <https://www.pm.gov.au/media/press-conference-senator-hon-mathias-cormann-acting-special-minister-state> (accessed 29 November 2017).

22 *Advance to the Finance Minister Determination (No. 1 of 2017–18)*.

23 Department of Finance, 'Advance to the Finance Minister', July 2017, https://www.finance.gov.au/publications/advance_to_the_finance_minister/ (accessed 4 December 2017).

24 Department of Finance, 'Advance to the Finance Minister', July 2017, https://www.finance.gov.au/publications/advance_to_the_finance_minister/ (accessed 4 December 2017). See also: *Appropriation Act (No. 1) 2017–18*, para. 10(1)(b).

House of Representatives on Tuesday 9 May 2017'.²⁵ As such, the advance also stated that the expenditure was 'urgent because it was unforeseen'.²⁶

High Court challenge to the advance

2.23 The validity of the Advance to the Finance Minister was challenged by a number of plaintiffs in the High Court of Australia.²⁷ On 7 September 2017, the High Court ruled that the Advance to the Finance Minister was valid.²⁸

25 *Advance to the Finance Minister Determination (No. 1 of 2017–18)*.

26 *Advance to the Finance Minister Determination (No. 1 of 2017–18)*.

27 *Wilkie v The Commonwealth & Australian Marriage Equality Ltd v Cormann* [2017] HCA 40, pp 16–17.

28 *Wilkie v The Commonwealth & Australian Marriage Equality Ltd v Cormann* [2017] HCA 40, p. 2.

Chapter 3

The conduct of the postal survey

Introduction

3.1 This chapter canvasses a number of issues raised during this inquiry including:

- Any precedents for surveys of this kind;
- Accessibility and participation in the survey;
- Scrutiny of the survey; and
- Collection and destruction of the forms.

Precedents for surveys of this kind

3.2 At the public hearing on 17 August 2017, Mr Jonathan Palmer, Deputy Australian Statistician at the Australian Bureau of Statistics (ABS) described the scope of the Australian Marriage Law Postal Survey (postal survey):

A single question will be asked: should the law be changed to allow same-sex couples to marry? We will ask all eligible Australians—and they are the people who, as at the end of 24 August, would be entitled to vote as per the electoral roll—to provide a yes or no answer on a strictly voluntary basis. The point I would like to emphasise here about the process is that it's been designed to provide both secrecy and integrity. The vast bulk of Australians who are eligible for this survey will receive and return their survey form by post. They'll be sent a letter with instructions, a survey form and a reply-paid envelope. The barcode on the survey form will be used for marking purposes only. We're calling it a single-use, anonymous marking code. No person who sees or has any access to the completed forms will know both the name of the eligible Australian and the related single-use code. The survey form will not have any name or address on it. Only one response can be made by each eligible Australian. When the form is scanned, the barcode will be recorded in a separate file for marking purposes and the survey response will be recorded in another file. There will never be an electronic file containing both the survey response and the bar code. The form's captured images will be destroyed within 60 days of our publishing the statistics on 15 November.¹

History of plebiscites and postal surveys in Australia

3.3 Plebiscites and postal surveys have rarely been used at a national level in Australia. In a 2011 research paper, the Parliamentary Library stated that there have been three national plebiscites:

- 1916: military service conscription (defeated)

1 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, pp 1–2.

- 1917: reinforcement of the Australian Imperial Force overseas (defeated)
- 1977: choice of Australia's national song ('Advance Australia Fair' preferred.)²

3.4 Postal surveys are almost unprecedented, with only one occurring nationally. In an answer to a question on notice, the Department of Finance described the 1997 Constitutional Convention Election as 'a national voluntary postal process to elect delegates to the Constitutional Convention to determine whether Australia should become a republic'.³

3.5 However submitters gave evidence that the postal survey was fundamentally different from other endeavours undertaken by the ABS. The committee was told in a submission by an ABS staff member, in their private capacity, that the directives to the ABS were so prescriptive as to 'violate the guidelines and principles of official statistics'.⁴

3.6 The committee were told that the ABS has collected data on social issues for over forty years:

The ABS has been conducting large social surveys since the 1970s, and it's familiar with undertaking voluntary statistical surveys that seek views and opinions of Australians about issues such as their self-perceived wellbeing, social experiences and society in general. I thought I would share just two examples for you of instances where we've sought opinions...So, from a personal safety survey, we asked: how safe or unsafe do you feel walking alone in your local area after dark? And we published statistics on that question. From a survey on disability, ageing and carers, we asked: do you feel you need more support or an improvement in your situation to aid your role as a carer? And the answer to that was a yes or no question.⁵

Timetable of the survey mail-out

3.7 A timeline of key events during the postal survey is outlined below in Table 3.1. The committee understands that the ABS and other government departments and agencies have met each of these milestone dates.

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- 2 Australian Parliamentary Library, 'A quick guide to plebiscites in Australia', 30 June 2011, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2011/June/A_quick_guide_to_plebiscites_in_Australia (accessed 10 January 2018).
 - 3 Department of Finance, answers to questions taken on notice from a public hearing in Canberra on 7 September 2017, received 18 September 2017.
 - 4 Name withheld, *Submission 16*, p. 2.
 - 5 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, p. 2. See also:

Table 3.1—Timeline of key events during the postal survey⁶

24 August 2017	Commonwealth Electoral Roll closed.
12 September 2017	Mailing of forms and collection process began.
13 September 2017	Legislation providing additional safeguards during the marriage law survey passed the Parliament. ⁷
25 September 2017	All survey packages should be delivered by this date.
20 October 2017	Final day to request or pick up replacement forms.
27 October 2017	Final day to post forms to ensure that they are included in the final survey results.
7 November 2017	Postal survey closed.
15 November 2017	Postal Survey results announced and published.

The Australian Bureau of Statistics' capability to deliver

3.8 When the ABS were announced as the lead agency to conduct the postal survey, many questions were raised about the ability of the ABS to manage this process in light of some of the difficulties associated with the 2016 Census.⁸ Mr Palmer acknowledged these concerns:

Another issue I would like to touch on is concerns that have been expressed about our [ABS's] capacity to deliver on undertaking this survey. In response to that, we say, 'Yes, we can.' We have been given an adequate appropriation—\$122 million—through an advance to the Finance Minister determination. The 2016 census online form outage did hurt the public reputation of the ABS. We acknowledge that. But we're seeing some rebuilding of that reputation following the release of a quality census dataset. I can assure you that we've reflected and learnt from the lessons of the 2016 census and we're applying those experiences and lessons to the conduct of this exercise. We've established a team of more than 40 skilled professionals, including staff seconded from the Australian Electoral

6 Australian Bureau of Statistics, '1800.0—Australian Marriage Law Postal Survey, key dates', <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1800.0~2017~Main%20Features~Key%20dates~6> (accessed 10 January 2018).

7 *Journals of the Senate*, No. 62—13 September 2017, p. 1976. This legislation is the *Marriage Law Survey (Additional Safeguards) Act 2017*.

8 Peter Martin, 'If it gets up, the same-sex marriage postal plebiscite could break the ABS', *The Sydney Morning Herald*, 8 August 2017, <http://www.smh.com.au/federal-politics/political-news/it-it-gets-up-the-samesex-marriage-postal-plebiscite-could-break-the-abs-20170808-gxrmml.html> (accessed 5 December 2017). See also: Senate Economics References Committee, *2016 Census: issues of trust*, November 2016, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/2016Census/Report (accessed 5 December 2017).

Commission and other agencies. We have systems, processes, technical expertise, and we will partner with high-calibre suppliers and vendors. Undertakings as large and as complex as the Australian Marriage Law Postal Survey entail risks. We will manage these risks and issues well. And I would like to place on record my appreciation for the work done by the task force so far. We've done an enormous amount.⁹

3.9 This came at a cost to the ABS's other operations. The committee was informed by the ABS that it diverted staff from other projects, including the 2021 Census in order to be able to deliver the postal survey.¹⁰

3.10 Earlier in the report, the committee discussed the source of the funding for the postal survey—an Advance to the Finance Minister of \$122 million. In announcing the result of the postal survey, the Australian Statistician, Mr David Kalisch noted that the postal survey was delivered under budget:

...while costs are still being tallied, the ABS is confident the final cost for the survey will be under \$100 million, many million dollars less than the available budget.¹¹

3.11 Throughout the inquiry, the committee has held government departments and agencies, the ABS in particular, to account to ensure that the postal survey was completed as intended. The committee has focused on a number of key areas which are described in more detail through the remainder of this chapter.

Accessibility and participation in the survey

3.12 The postal survey had a national participation rate of 79.5 per cent. Breaking down the results by state and territory, age and sex returned a participation rate range between 70 and 80 per cent. Notably, participation rates for males aged 20–24, 25–29 and 30–34 years all fell below 70 per cent.¹²

Challenges in remote areas

3.13 On 17 August 2017, Mr Palmer acknowledged that many people in remote parts of the NT did not have street addresses and that the postal survey would be a different process to the census in which ABS employees attend people's homes to collect information on census night in remote localities.¹³

9 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, p. 2. See also: Australian Bureau of Statistics, *Submission 2*, p. 13.

10 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 15 September 2017, p. 21.

11 Australian Bureau of Statistics, 'Australia supports changing the law to allow same-sex couples to marry', Media Release, 15 November 2017, http://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbyReleaseDate/273719D99046D11EC_A2581F00019EF73?OpenDocument (accessed 11 January 2018).

12 Australian Bureau of Statistics, 'Survey Results: National Results', <https://marriagesurvey.abs.gov.au/results/> (accessed 5 December 2017).

13 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, p. 17.

3.14 Mr Palmer reassured the committee that the ABS was finalising an inclusion strategy to ensure a high participation rate in the postal survey:

I'm not yet able to tell you what our inclusion strategy will be, but we're looking at all the options for reaching those people and giving them an opportunity.¹⁴

3.15 At its committee hearing on 7 September 2017, Mr Kalisch noted that the ABS had finalised and published a 'comprehensive list of inclusion strategies' on its website, and acknowledged that:

The ABS recognises that Aboriginal and Torres Strait Islander communities in remote areas may experience particular challenges in participating in the Australian Marriage Law Postal Survey.¹⁵

3.16 The strategy for remote and rural locations included early despatch of survey materials for remote locations,¹⁶ 'the use of pick-up locations, Department of Human Services' agents, access points and remote service centres'.¹⁷ Mr Palmer elaborated on the remote strategy at the 15 September 2017 public hearing:

If remote Aboriginal and Torres Strait Islander people don't receive a form, there are still a number of options available to them over the four weeks from 25 September to 20 October. We will be providing the opportunity for forms to be collected in 27 different regional locations—places like Karratha, Mount Isa, Coober Pedy, to name some—and 200 other remote locations. These locations will be advertised on the ABS website and communicated directly to remote communities and promoted through local radio and other media. In addition, people with access to phone or the internet can respond using our paperless response options. Material will be translated into a number of different Aboriginal and Torres Strait Islander languages for radio advertising and to support the field work.

To reach those communities we are also working with the Department of Human Services to provide additional opportunities. We are going to leverage over 600 DHS agents' access points and remote service centres across Australia. Most of these locations can provide self-service computer access or telephones to freely access the survey information line on the ABS website and, indeed, those online response options of the online form and the telephony response. These facilities allow a person to request new

14 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, p. 17.

15 Mr David Kalisch, Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 2.

16 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 19.

17 Mr David Kalisch, Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 2.

materials from the ABS and to participate in the survey online, if that's their requirement, from 25 September.¹⁸

3.17 Notwithstanding the strong participation rates nationally and the ABS inclusion strategies, the overall participation rate in the Northern Territory (NT) was 58.4 per cent—significantly lower than the national participation rate of 79.5 per cent. When the NT is broken down into its two federal electorates, the statistics become even starker. The more remote electorate of Lingiari had a participation rate of 50.1 per cent. That is, nearly half of the people in the Lingiari electorate did not respond.¹⁹ When broken down by age group, less than 40 per cent of eligible 20–24 year olds responded.²⁰ The Lingiari electorate is classified as rural with the majority of the enrolment being outside the major provincial cities²¹ with 41.7 per cent identifying as Aboriginal and Torres Strait Islander and 24.5 per cent of households speaking a non-English language (with the top five responses being Aboriginal languages).²²

3.18 The low participation rate for the electorate of Lingiari in the postal survey is consistent with the turnout history of the electorate at the 2016 federal election where Lingiari also recorded the lowest enrolled voter turnout of all federal elections.²³

3.19 The difficulty of delivering the postal survey to eligible remote citizens was raised in correspondence tabled at the committee's public hearing on 17 August 2017 from the NT Chief Minister, Hon Michael Gunner to the Prime Minister, Hon Malcolm Turnbull MP. In this correspondence, the Chief Minister raised his concerns about 'Territorians, particularly remote Indigenous Territorians, being disenfranchised from voting in the postal plebiscite'.²⁴ Mr Gunner elaborated:

Only 82% of Territorians are presently enrolled meaning that more than 25 000 eligible voters are not enrolled. There is also a high level of mobility amongst Indigenous electors.

18 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 15 September 2017, p. 2.

19 Australian Bureau of Statistics, 'Survey Results: Results for Northern Territory', <https://marriagesurvey.abs.gov.au/results/nt.html> (accessed 5 December 2017).

20 Australian Bureau of Statistics, 'Survey Results: Participation map', <https://marriagesurvey.abs.gov.au/results/participation-map.html> (accessed 5 December 2017).

21 Australian Electoral Commission, 'Profile of the electoral division of Lingiari (NT)', 27 February 2017, <http://www.aec.gov.au/profiles/nt/lingiari.htm> (accessed 5 December 2017).

22 Australian Bureau of Statistics, '2016 Census QuickStats: Lingiari', 12 January 2017, http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/CED701?opendocument (accessed 5 December 2017).

23 Australian Electoral Commission, 'Voter Turnout: 2016 House of Representatives and Senate elections', p. 25, http://www.aec.gov.au/About_AEC/research/files/voter-turnout-2016.pdf (accessed 11 January 2018). The seat of Lingiari has had the lowest voter turnout of any federal electorate since the 2001 federal election.

24 Correspondence from the Northern Territory Chief Minister, Hon Michael Gunner to the Prime Minister, Hon Malcolm Turnbull MP, dated 15 August 2017, tabled by Senator McCarthy at a public hearing on 17 August 2017.

Significantly, for a very large number of our remote communities there are poor or non-existent postal services. For many communities, the nearest post office is in the next regional town which could be hours away.

Furthermore, there is a high proportion of Indigenous electors who do not speak English as a first language and I am convinced that there has been very little information about in-language material being made available for electors in the plebiscite...

I find it very difficult to comprehend how the Australian Government and the Australian Bureau of Statistics is reaching out to local communities to encourage people to enrol, to update their enrolment details and provide adequate and in-language material to encourage people to cast and return their vote for this important societal issue.²⁵

3.20 In its submission, Tangentyere Council Aboriginal Corporation (Tangentyere) noted that 'Town Camp street addresses are not recognised as enrollable addresses by the [AEC]'.²⁶ This has a number of serious consequences for Town Camp residents:

Not having a street address means that with the exception of residents with a separate post office box no resident receives mail from the Australian/Northern Territory Electoral Commission. This in turn leads to reduced enrolments, obsolete enrolment details and poor rates of participation.²⁷

3.21 Tangentyere shared its observations of low participation in Town Camps in the Alice Springs area:

The evidence suggests that very few Town Camp residents received the 'Marriage Equality Postal Survey' without the intervention of Tangentyere and the flexibility of the Australian Bureau of Statistics. Tangentyere canvassed residents from Ilperle Tyathe, Aper-Alwerrkngge, Mount Nancy, Anthelk-Ewlpaye, Nyewente, Akngwertnarre, Ewyenper Atwatye, Yarrenyty Arltere (Larapinta Valley), Anthepe, Inarlenge, Ilyperenye, Ilparpa (New Ilparpa), Mpwetyerre, Karnte and Lhenpe Artuwe and was informed that other than those with [post office] boxes at Australia Post nobody received the postal survey.²⁸

3.22 Furthermore, Tangentyere noted that this situation 'would be systemic across remote Aboriginal communities, outstations and Town Camps throughout the Northern Territory'.²⁹

25 Correspondence from the Northern Territory Chief Minister, Hon Michael Gunner to the Prime Minister, Hon Malcolm Turnbull MP, dated 15 August 2017, tabled by Senator McCarthy at a public hearing on 17 August 2017. See also: *Official Hansard*, 17 August 2017, p. 17.

26 Tangentyere Council Aboriginal Corporation, *Submission 30*, p. 3.

27 Tangentyere Council Aboriginal Corporation, *Submission 30*, p. 3.

28 Tangentyere Council Aboriginal Corporation, *Submission 30*, p. 24.

29 Tangentyere Council Aboriginal Corporation, *Submission 30*, p. 24.

Updating of the electoral rolls

3.23 Mr Palmer acknowledged that the electoral roll presented risks to the postal survey process:

Another risk is that the electoral roll might not be an accurate reflection of all eligible Australians. We're mitigating that risk by undertaking a major communications campaign and working with the AEC [Australian Electoral Commission]—well, the AEC is undertaking an update of the electoral roll.³⁰

3.24 The committee heard that where a person has not notified the AEC of a new address before the closure of the electoral roll that a new form could only be provided to that person when they bring it to the attention of the AEC. Mr Palmer explained what would happen if a survey form was sent to the wrong address:

They might have realised that their postal address might not be current, in which case they can contact our information line and ask for us to send a form to another address. We'll issue them with a new code and they can use that code. The code that was on the survey form that was sent to the wrong address, if you like, becomes invalid and won't be processed.³¹

3.25 Mr Andrew Brooks raised his concerns about his postal survey being despatched to a previous address and questioned whether an updated version of the electoral roll was being used:

When the postal survey was first sent out between Tuesday 12th September and 25th September, I did not receive mine at my enrolled address. It was not until my mother who was visiting my grandparents at my old registered address notified me that my postal survey was there. I have been enrolled to vote in the Parkes electorate since 2010 and even ran and voted for myself with no problems and had no issues voting in subsequent Federal Elections. My electoral roll details have not been registered in Blaxland since before 2010. I contacted the ABS and same sex survey hotline who passed off my concerns by trying to claim that I had enrolled too late after the 24th August deadline despite knowing I was enrolled in Parkes.

I subsequently verified on the AEC website that I am enrolled in Parkes and to make sure checked my old address in Blaxland in case there was a double up on the system. There was none.³²

3.26 Despite these concerns, the committee heard that the AEC had processed 'nearly a million transactions in the lead-up to the close of the roll for this survey'.³³ To

30 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, p. 5.

31 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 17 August 2017, p. 13.

32 Mr Andrew Brooks, *Submission 24*, p. [1].

33 Mr David Kalisch, Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 13.

put this into perspective, 'this is approximately 250 000 more enrolment transactions than for the close of rolls period for the 2016 election'.³⁴

Lost and stolen forms

3.27 At its 7 September 2017 public hearing, the committee sought assurances from Australia Post that despatched and returned forms would not be lost or stolen from the mail system and that they would be delivered on-time. Ms Christine Corbett, then Interim Chief Executive Officer of Australia Post stated that:

Our service performance standard is over 98 per cent of letters are delivered on time or early. This is independently audited. We have very strong confidence in our ability to deliver the mail, as we have done for centuries. If anyone is concerned that they have not received a postal survey, the ABS has robust processes in place for a survey to be then sent out to any individual...

You are looking at 1.3 per cent that are not on time. When you then look at a delay of a further day or so on top of that, you are very close to 100 per cent.³⁵

3.28 About 10 days later, the committee became aware of the alleged theft of postal survey forms in Melbourne.³⁶

3.29 Fairfax Media reported that:

When prep teacher Kerry Ford returned to her Brunswick home from a holiday on Monday, what she found behind her carport made her angry and upset.

Seventeen addressed and unopened same-sex marriage postal vote envelopes had been dumped in front of her children's cubby house.

The letters were addressed to houses in the surrounding streets.

"I think it happened last week, some of them have been eaten by snails," she said. "Our postal votes have also been stolen."³⁷

3.30 Stolen forms were also reported in other locations including from Mona Vale on Sydney's northern beaches.³⁸

34 Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Official Hansard*, 7 September 2017, p. 3.

35 Ms Christine Corbett, Interim Chief Executive Officer of Australia Post, *Official Hansard*, 7 September 2017, p. 13.

36 Kate Manl, 'Brunswick mum upset by dumped postal vote envelopes discovery', *The Sydney Morning Herald*, 18 September 2017, <http://www.smh.com.au/national/brunswick-mum-upset-by-dumped-postal-vote-envelopes-discovery-20170918-gyju8m.html> (accessed 11 January 2018).

37 Kate Manl, 'Brunswick mum upset by dumped postal vote envelopes discovery', *The Sydney Morning Herald*, 18 September 2017, <http://www.smh.com.au/national/brunswick-mum-upset-by-dumped-postal-vote-envelopes-discovery-20170918-gyju8m.html> (accessed 11 January 2018).

3.31 The deficiencies in the complaints handling process are discussed in Chapter 4.

Overseas voters

3.32 The ABS also answered questions about the postal survey process for eligible overseas based voters. The committee were informed that overseas voters in the first instance would be provided with the option to complete their postal survey online. Mr Palmer explained:

...we have tried to make it even [easier] for those people by sending them a secure access code straight up rather than requiring them to contact us. So those people who had an overseas address on the roll will get a letter with a 16-digit secure access code and, from the 25th [of September 2017], they'll be able to access the online form or the telephone.³⁹

Scrutiny of the survey

3.33 The survey was not subject to the level of scrutiny usually applied to an electoral process.

3.34 Mr Palmer described to the committee how the ABS would ensure the high quality and integrity of the statistics gathered during the postal survey and what elements that this would focus on:

We will have an overarching assurance process...It will ensure that everyone who was on the electoral roll was given an opportunity to participate; that every valid form returned was processed and counted; that no person was able to participate more than once; that controls were in place to reduce, detect and remove fraudulent activity; that appropriate security arrangements were maintained around the data throughout the survey; that there was a separation of the response from personal information which was maintained throughout the survey; that all physical and electronic data was destroyed at the end of the survey; and, finally, that there were opportunities provided to external observers who were able to assure around the interpretation of marks made on survey forms. So we've got that, if you like, end-to-end coverage of steps in the process to ensure integrity. Those controls will be reviewed and reported on by independent auditors and assessors. Their report on these controls will be included in our quality statement when we publish the statistics on 15 November.⁴⁰

38 See, for example: Salml Jeong, 'Same sex marriage survey envelopes found in bin of Mona Vale apartment block', The Sydney Morning Herald, <http://www.smh.com.au/national/samesex-marriage-survey-envelopes-found-in-bin-of-mona-vale-apartment-block-20170922-gymxlw.html> (accessed 11 January 2018).

39 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 15 September 2017, p. 4.

40 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 18.

3.35 Notwithstanding these arrangements, Mr Kalisch made the point that the postal survey is different to an election in that 'there are not the traditional scrutineering processes you would be familiar with for an election'.⁴¹

3.36 In place of scrutineers, the ABS made allowance for observers. Observers had more limited access to survey materials than scrutineers would have in an election, and were subject to far stricter eligibility requirements:

The external observers are people who will be nominated by two parliamentary committees to participate in the survey process in a particular way. The role of an observer will be to witness the interpretation of survey responses in order to report on their observations of the integrity of this key aspect of the survey process. We're requiring that observers be over 18 years of age. They'll be required to undergo a police check and sign a deed of confidentiality.⁴²

3.37 Mr Ian Brightwell, a former Chief Information Officer and Director of Information Technology at the NSW Electoral Commission commented on the integrity and quality control processes at the ABS. Mr Brightwell noted that the ABS published online its procedures around the use of observers during the postal survey. Interestingly, Mr Brightwell contacted the ABS call centre to discuss these procedures in mid-August and was 'told by operators on both occasions that they did not believe there were any procedures available and did not know when they would be available'.⁴³

3.38 Furthermore, Mr Brightwell pointed out that 'observers would only be allowed to observe key steps in the survey process' rather than the entire process. He also noted that the independence of this scrutiny process would be undermined in that observers would report directly to the Australian Statistician rather than to an independent body such as a parliamentary committee.⁴⁴

3.39 On 15 November 2017, the ABS published a summary of results of the external observers' observation program. The ABS described this process:

External observers provided feedback on the coding decision [yes/no] made by the [ABS] on 606 991 survey returns.

3.40 Of the 311 318 automatically coded Yes or No survey forms that were examined by the external observers, there was only one instance where both observers

41 Mr David Kalisch, Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 18.

42 Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, *Official Hansard*, 7 September 2017, p. 18.

43 Mr Ian Brightwell, *Submission 2*, pp 2–3.

44 Mr Ian Brightwell, *Submission 2*, pp 3–4.

disagreed with the ABS coding decision equating to 0.0003 per cent of these forms.⁴⁵ Table 3.1 below summarises the results from the external observer program.

Table 3.1—Summary of results from postal survey observation program⁴⁶

Type of survey response	Total number of survey returns	Survey returns observed		Instances where both observers disagreed with ABS coding decision		Instances where one or both observers agreed with ABS coding decision	
		no.	%	no.	%	no.	%
Automatically coded Yes or No survey returns	12,090,959	311,318	2.6	1	0.0003	311,317	99.9997
Manually coded Yes or No survey returns	600,275	261,678	43.6	337	0.1	261,341	99.9
Blank survey returns	16,912	15,659	92.6	29	0.2	15,630	99.8
Response Not Clear survey returns	19,774	18,336	92.7	625	3.4	17,711	96.6

3.41 At the same time, the ABS also released a quality and integrity statement. Importantly, this statement noted that the 'Australian Marriage Law Postal Survey (AMLPS) statistics meet the requirements of the *Census and Statistics (Statistical Information) Direction 2017* issued by the Treasurer on 9 August 2017'.⁴⁷ The ABS noted that the 'collection and processing of survey responses was undertaken with rigour and the results accurately reflect the views of survey respondents'.⁴⁸ Furthermore:

An overall participation rate of 79.5%, with consistent distribution across age groups, gender and geography, is a strong indicator of quality. This high participation rate was achieved because of Australians' significant interest in this topic combined with the statistical collection design and process which promoted participation and ensured quality and integrity, in particular:

- A simple survey form containing a single question, supported with straightforward instructions that made it easy for participants to understand and respond.

45 Australian Bureau of Statistics, 'Marriage Survey: External observers', November 2017, <https://marriagesurvey.abs.gov.au/results/observers.html> (accessed 6 December 2017). More than 12 million forms altogether automatically coded.

46 Australian Bureau of Statistics, 'Marriage Survey: External observers', November 2017, <https://marriagesurvey.abs.gov.au/results/observers.html> (accessed 6 December 2017).

47 Australian Bureau of Statistics, 'Marriage Survey: Quality and integrity statement', November 2017, <https://marriagesurvey.abs.gov.au/results/quality.html> (accessed 6 December 2017).

48 Australian Bureau of Statistics, 'Marriage Survey: Quality and integrity statement', November 2017, <https://marriagesurvey.abs.gov.au/results/quality.html> (accessed 6 December 2017).

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- The very high proportion of participants complying with the form's instructions, enabling accurate coding of responses (with accuracy reviewed by external observers).
 - Rigorous survey methods that included quality controls and integrity checks which were subject to independent review and assurance.
 - Protections against fraud that included mechanisms to guarantee only one response was counted for each participant.⁴⁹

Collection and destruction of survey forms

3.42 The committee heard that all forms 'will be destroyed within 60 days of [the ABS] publishing the statistics on 15 November' and that 'there will never be an electronic file containing both the survey response and the barcode'. The committee understands that destruction of the forms occurred within 60 days.⁵⁰

49 Australian Bureau of Statistics, 'Marriage Survey: Quality and integrity statement', November 2017, <https://marriagesurvey.abs.gov.au/results/quality.html> (accessed 6 December 2017).

50 Australian Bureau of Statistics, 'Report on the conduct of the Australian Marriage Law Postal Survey', pp 39–40, [http://www.abs.gov.au/ausstats/abs@.nsf/95553f4ed9b60a374a2568030012e707/7cbde85f96095fa4ca25822400162fc2/\\$FILE/Report%20on%20the%20conduct%20of%20the%20Australian%20Marriage%20Law%20Postal%20Survey%202017.pdf](http://www.abs.gov.au/ausstats/abs@.nsf/95553f4ed9b60a374a2568030012e707/7cbde85f96095fa4ca25822400162fc2/$FILE/Report%20on%20the%20conduct%20of%20the%20Australian%20Marriage%20Law%20Postal%20Survey%202017.pdf) (accessed 30 January 2018).

Chapter 4

Offensive and misleading material

Introduction

4.1 One of the primary concerns raised by witnesses and submitters in this inquiry has been the harm to the psychological and emotional wellbeing of members of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community through the distribution of offensive and denigrating materials during the Australian Marriage Law Postal Survey (postal survey).

4.2 In its September 2015 report on an inquiry into the Government's then proposed plebiscite on marriage equality, the Legal and Constitutional Affairs References Committee found that 'the matter of marriage is not one which should be decided by popular vote'.¹ A number of submissions to the 2015 inquiry 'expressed concern about the impact of a public vote on the [LGBTIQ] community' with one submitter stating 'that a public vote is likely to present significant risks to the psychological health and wellbeing of those most affected'.²

Offensive material

4.3 Regrettably, many of the fears of offensive and misleading behaviour raised in the 2015 report became a feature of the recent postal survey. The committee has received a considerable number of submissions that have provided examples of offensive material being distributed on social media, on posters and in the mail. The committee has chosen to publish a small representative selection of this material on its website.³

4.4 In its interim submission to the committee in August 2017, the NSW Gay and Lesbian Rights Lobby (NSWGLRL) provided a catalogue of material which had already been disseminated prior to the survey being mailed out. NSWGLRL noted that this material:

has a significant impact on the mental health of so many LGBTIQ Australians. Young LGBTIQ people are at a six times greater risk of suicide, and this material which perpetuates hateful and offensive comments is not likely to improve this situation.

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- 1 Senate Legal and Constitutional Affairs References Committee, *Matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia*, September 2015, p. 31.
 - 2 Senate Legal and Constitutional Affairs References Committee, *Matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia*, September 2015, pp 15–16.
 - 3 See, for example: Sharni Benson, *Submission 21*; Ms Fiona McCandless, *Submission 11*; Mx George Foulkes-Taylor, *Submission 14*; Judi Nicholls, *Submission 15*; Public Interest Advocacy Centre and Community Legal Centres NSW, *Submission 34*; Mr Alex Greenwich MP, *Submission 33*; SHINE SA, *Submission 36*.

The rates of suicide among young trans and intersex people are even higher, with young trans people being 35% more likely to attempt suicide. In addition, young trans people are more likely than not to have self-harmed with nearly 80 percent having done so compared to just 11 percent of non-trans adolescents.⁴

4.5 NSWGLRL observed that, at that time, it had received a significantly increased number of offensive material since the announcement of the postal survey.⁵

4.6 Ms Sophie Cleary provided the committee with a copy of the offensive pamphlet that her family received in their mailbox and, in an accompanying letter, described the pamphlet as 'a disappointing and heartbreaking circulation of harmful material'.⁶ Ms Cleary elaborated:

I felt that leaflet was based in extremely loose facts (which are unfounded to my knowledge). I think it has the potential to be extremely offensive and harmful to the LGBTIQI community. I worry for the safety and sense of wellbeing of that community and their children and families at large. I think we have a duty of care to call out unnecessary and hateful behaviour directed at any marginalised community. I had assumed that the government would also maintain a responsibility to protect the vulnerable amongst us also.⁷

4.7 Ms Trinh De Leon described the effect that the offensive material is having on her family:

This whole notion of the postal survey hurts me and my family to the core of our being. To make matters worse and pour salt on our wounds, we see all of these negative/insulting "no" campaigns flashed around and distributed, not only to us, but to our friends/family and the community at large who are being misled and just perpetuates the injustice and discrimination we are facing.⁸

4.8 One submitter described the intimidating behaviour engaged in by some members of the community:

Our Dutton Park (inner city Brisbane) street corner has grown quite a collection of rainbow flags in support of the marriage equality plebiscite. This has generally received positive comments from passers-by and

4 Victorian Gay and Lesbian Rights Lobby and the NSW Gay and Lesbian Rights Lobby, *Submission 3*, p. 6.

5 Victorian Gay and Lesbian Rights Lobby and the NSW Gay and Lesbian Rights Lobby, *Submission 3*, p. 5.

6 Ms Sophie Cleary, *Submission 8*, p. [1].

7 Ms Sophie Cleary, *Submission 8*, p. [1].

8 Ms Trinh De Leon, *Submission 19*, p. [1].

neighbours. Last night someone spray painted black swastikas on our flags, our fences, a garage door and my business sign.⁹

4.9 A 42-year old transgender man from rural Queensland submitted his experiences of the postal survey to the committee:

After the Survey was announced, my world becomes hell. It was the hate and vitriol of the 1990s that I experienced, but this time our Prime Minister gave this hatred a name—respectful debate.¹⁰

4.10 Another submitter described the broader effect of the postal survey on LGBTIQ people:

The Postal survey to a gay and lesbian person was never just about SSM [same-sex marriage], it seemed like it was a survey on whether gay and lesbian people were good enough for the Australian people. Having the whole Country vote on this was a horrible feeling and having them judge you, brought up all sorts of emotions from my youth.¹¹

4.11 A study of nearly 10 000 LGBTIQ Australians, families and friends by the Australia Institute and the National LGBTI Health Alliance, found that more than 90 per cent of respondents 'reported the postal vote had a negative impact on them to some degree'.¹² Furthermore:

The most shocking finding of the study was that LGBTIQ respondents said that experiences of verbal and physical assaults more than doubled in the three months following the announcement of the postal survey compared with the prior six months.

They reported an increase of more than a third in depression, anxiety and stress during the same period.

Almost 80% of LGBTIQ people and almost 60% of allies said they found the marriage equality debate considerably or extremely stressful.¹³

9 Hon Tanya Plibersek MP, Member for Sydney, *Submission 26*, p. [4]. This submission quotes a correspondent to Ms Plibersek's office.

10 Name withheld, *Submission 23*, p. [1].

11 Hon Tanya Plibersek MP, *Submission 26*, p. [4]. This submission quotes a correspondent to Ms Plibersek's office.

12 Paul Karp, 'Marriage equality survey marred by doubling in assaults', *The Guardian*, 5 December 2017, <https://www.theguardian.com/australia-news/2017/dec/05/marriage-equality-survey-marred-by-doubling-in-reported-assaults> (accessed 5 December 2017). See also: S Ecker, E Bennett, 'Preliminary results of the Coping with marriage equality debate survey: Investigating the stress impacts associated with the Australian marriage equality debate during the lead up to the postal survey results announcement', The Australia Institute and National LGBTI Health Alliance, December 2017, http://www.tai.org.au/sites/default/files/P447%20Briefing%20note_LGBTIQ%2B%20coping%20survey%20preliminary%20results.pdf (accessed 12 December 2017).

13 Paul Karp, 'Marriage equality survey marred by doubling in assaults', *The Guardian*, 5 December 2017, <https://www.theguardian.com/australia-news/2017/dec/05/marriage-equality-survey-marred-by-doubling-in-reported-assaults> (accessed 5 December 2017).

4.12 In its submission to the committee, SHINE SA explained the results of a survey it undertook after the postal survey had concluded and the result had been announced. The SHINE SA survey found that 74 per cent of respondents to that survey had experienced negative impacts as a result of the postal survey. Of those experiencing a negative impact, 23 per cent indicated that the severity was severe.¹⁴

4.13 just.equal found similar results in its own survey of the LGBTIQ community:

Two-thirds of participants (66.3%) reported that their experience of the postal survey period was worse than they expected.

Over three-quarters (78.6%) reported that they were adversely impacted by the postal survey in a way that would not have otherwise occurred.

Over half (55.7%) felt that the process would not be worthwhile, even if the 'Yes' vote prevailed.¹⁵

4.14 Importantly, the committee has heard that the trauma experienced by members of the LGBTIQ community has continued, even after the conclusion of the postal survey and the passage of marriage equality legislation. Divisions exposed during the postal survey process have left some in the LGBTIQ community mistrustful and isolated within their own neighbourhoods and communities.¹⁶ In its submission, Rainbow Families NSW shared the experience of Kate and her family:

We received two personalised letters from our neighbours expressing their traditional views on marriage and their negative thoughts about our family and the wider LGBTIQ community. We received the first letter on a Friday, the next the following day. The letters spoke about "militant lesbians storming our churches and mosques demanding to get married", that we have equal rights as evidenced by "being able to adopt and raise a child" (our son is not adopted). That the local community "tolerates you" and that "the silent majority will succeed".

We cried for that whole weekend and were scared to check our letter box on the Sunday—we believed we were going to receive more hurtful letters from different neighbours. We started to think about moving out of the area? But unfortunately we can't afford to move. We stopped going to the local parks, we avoided going to the local supermarket. We became hermits and didn't want to be seen in the local community. My heart rate went up everytime I opened the front door and went out the front for fear of seeing the neighbours. We tried to shield our 2 year old son from our pain - but he could see it. One night he said "I'm scared of the neighbours". This was so upsetting to hear. Neighbours who we had been friendly with started being less friendly - or were we just being paranoid? My partner and I both took sick days off from work and we also left our home and area for safer more accepting areas to try and get away from it all. The result of the survey gave us no joy. We were relieved with the result but our relief quickly turned to

14 SHINE SA, *Submission 36*, pp 1–2.

15 just.equal, *Submission 32.4*, p. 1.

16 See, for example: SHINE SA, *Submission 36*; Rainbow Families NSW, *Submission 39*.

anger, fear and pain again when we soon found out we live in the highest "no" voting electorate. We went through all of the emotions again – making plans to move - as how can we bring up our son in this area?¹⁷

4.15 In a supplementary submission, the Victorian Gay and Lesbian Rights Lobby and the NSWGLRL noted the impact of this ongoing trauma on mental health services:

Mental health services have reported a 40% increase in people seeking support during and after the survey, forcing them to divert resources from other critical mental health services.¹⁸

Marriage Law Survey (Additional Safeguards) Act 2017

4.16 The government recognised that many of the protections that exist through current electoral laws would not apply to the postal survey 'given this process is conducted through the' Australian Bureau of Statistics (ABS).¹⁹ The government, supported by the opposition, passed the *Marriage Law Survey (Additional Safeguards) Act 2017* (Safeguards Act) in order to bolster existing electoral law and other protections to provide:

...provisions to ensure relevant authorisations on advertisements, reasonable opportunity to have opposing views broadcast, offences against bribery and threats and the prohibition of misleading and deceptive conduct in relation to the completion of survey forms...

This Bill will also propose a further safeguard against vilification, intimidation and threats to cause harm because of the views expressed or believed to be held in relation to the Survey, or because of the religious conviction, sexual orientation or gender identity or intersex status of a particular person or group.²⁰

4.17 These protections commenced on 14 September 2017 (36 days after the postal survey was announced) and concluded on 15 November 2017.²¹

17 Rainbow Families NSW, *Submission 39*, p. 4.

18 Victorian Gay and Lesbian Rights Lobby and NSW Gay and Lesbian Rights Lobby, *Supplementary Submission 3.1*, p. 11.

19 Senator the Hon Mathias Cormann, Minister for Finance, 'Additional Safeguards to facilitate Australian Marriage Law Postal Survey', Media Release, 12 September 2017, <http://www.financeminister.gov.au/media-release/2017/09/12/additional-safeguards-facilitate-australian-marriage-law-postal-survey> (accessed 5 December 2017).

20 Senator the Hon Mathias Cormann, Minister for Finance, 'Additional Safeguards to facilitate Australian Marriage Law Postal Survey', Media Release, 12 September 2017, <http://www.financeminister.gov.au/media-release/2017/09/12/additional-safeguards-facilitate-australian-marriage-law-postal-survey> (accessed 5 December 2017). See also: Explanatory Memorandum, p. 3.

21 Australian Bureau of Statistics, 'Safeguards', <https://marriagesurvey.abs.gov.au/safeguards> (accessed 5 December 2017).

Concerns about the Safeguards Act

4.18 NSWGLRL put forward its view that the government's delay in introducing additional safeguards around the postal survey until after the High Court's ruling on the validity of the Finance Minister's advance has resulted in the publication of misleading and intimidating material, for which there may be no recourse:

[NSW]GLRL is concerned about any continued delay before such regulations are considered by the government and relevant stakeholder groups. We continue to be made aware of a number of pieces of advertising which would be considered misleading and intimidating, for which there may currently be not appropriate or effective legal avenue to have these matters dealt with.²²

4.19 LGBTI Legal Service raised its concerns about the lack of definition around what constitutes a "notifying entity" under the Safeguards Act. As a legal services provider, it was unclear whether LGBTI Legal Service 'would be a valid notifying entity for the purpose of a civil penalty application'.²³ Furthermore:

The [LGBTI Legal] Service's prospective applications were delayed by the need to seek legal advice on the meaning of notifying entity. Further, the Service understand from conversations with other community stakeholders that groups and individuals who could not obtain legal advice were delayed or deterred in pursuing matters under the Safeguards Act because of this uncertainty.²⁴

4.20 LGBTI Legal Service also argued that the potential for exposure of individuals or small not-for-profit organisations to cost orders from unsuccessful actions proved a deterrent to legal action being launched under the Safeguards Act. The submission noted:

The Service recognise that adverse cost orders are an important mechanism for minimising vexatious claims. However, the requirement to obtain Attorney-General approval was clearly designed to allow vexatious claims to be dispensed with without calling on the Federal Court's resources. With this protection in place, the Government should have taken action to minimise the risks and burden associated with community-initiated litigation. The Government could have done this by:

- Subsiding the litigation costs of approved applicants;
- Making a commitment to prosecute cases on behalf of approved applicants; or
- Legislating to modify the usual rule that 'costs go with the case'.²⁵

22 Victorian Gay and Lesbian Rights Lobby and NSW Gay and Lesbian Rights Lobby, *Submission 3*, p. 3.

23 LGBTI Legal Service, *Submission 40*, p. 2.

24 LGBTI Legal Service, *Submission 40*, p. 2.

25 LGBTI Legal Service, *Submission 40*, p. 3.

4.21 The Public Interest Advocacy Centre (PIAC), in a submission also endorsed by the Community Legal Centres NSW, observed that the requirement to obtain the consent of the Attorney-General before action can be taken under the Safeguards Act as 'unnecessarily and inappropriately politicis[ing] the protection of rights under the Safeguard[s] Act'. Furthermore, PIAC commented on the three month time limit for making applications noting that 'this time limit is far too short'.²⁶ This was particularly so given that:

...most people invested in the public debate surrounding this issue were focused on the subsequent parliamentary debate until the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* on Thursday 7 December 2017, and the intervention of end-of-year/summer holidays, it is an unreasonably short timeframe for applications to be prepared and lodged.²⁷

4.22 Dr Kevin Bonham posited that section 15(1) of the Safeguards Act, which relates to vilification, is not clear on what constitutes a 'view on the marriage law survey question'. Dr Bonham explained:

The meaning of the terms "a view in relation to the marriage law survey question" and "his or her views about the marriage law survey question" is insufficiently clear, especially in a debate in which people are frequently making comments about same-sex parenting (or on the other side sometimes, religious institutional child abuse) that lack any clear connection to the survey question but that strongly appear to be aimed at influencing the vote.²⁸

4.23 Some submissions highlighted the effectiveness of the Tasmanian *Anti-Discrimination Act 1998* in reducing the incidence of vilification on the basis of sexual orientation, gender identity, intersex status, and relationship status.²⁹

Government responses to complaints

4.24 On 7 September 2017, Mr Paul Pirani, Chief Legal Officer at the Australian Electoral Commission (AEC) told the committee that if the *Marriage Law Survey (Additional Safeguards) Act 2017* simply extended the current provisions under the electoral act that this would not stop people from publishing or distributing offensive material, it would merely ensure that it was properly authorised. Mr Pirani explained:

If the provisions [of the *Marriage Law Survey (Additional Safeguards) Act 2017*] were to mirror what's in the Electoral Act, it still wouldn't deal with the actual content. All it would deal with is making sure people are aware of who has authorised it and who has caused it to be published, and if a person believes they have been defamed, or some other illegal action has

26 Public Interest Advocacy Centre and Community Legal Centres NSW, *Submission 34*, p. 9.

27 Public Interest Advocacy Centre and Community Legal Centres NSW, *Submission 34*, pp 9–10.

28 Dr Kevin Bonham, *Submission 12*, p. [2].

29 See, for example: Tasmanians United for Marriage Equality, *Submission 35*: just.equal, *Submission 32*.

occurred in relation to the advertisement, then they would be able to take their own legal action, including to state antidiscrimination boards that have jurisdiction in dealing with racial vilification and those type of matters, but it isn't a matter that falls within the jurisdiction of the AEC.³⁰

4.25 At the committee's public hearing on 15 September, Ms Samantha Palmer, General Manager, People, Culture and Communication Division at the ABS informed the committee that approximately 4 per cent of 87 000 telephone calls to the postal survey call centre were complaints, equating to 3 480 complaints.³¹ Mr Tom Rogers, Australian Electoral Commissioner, noted at a Supplementary Estimates hearing in October that 'as at 10 October, we'd received 615 complaints about the survey authorisation and other issues', of which most related to 'authorisation'.³² Mr Pirani explained that he was directly involved in dealing with 160 of these complaints:

We responded to the complainant in each of those [615 complaints]. There were a couple of matters that were escalated to me that I took action on in relation to making contact to the owner of websites, ensuring that the authorisation details required by section 6(5), were included on those websites. There was one matter that I escalated to Facebook, and the lawyers for Facebook went through a process that I understand last week resulted in that particular page being brought down and blocked for access in Australia.³³

4.26 Mr Pirani told the committee about the types of authorisation issues the AEC was dealing with described the issues around authorisation and the AEC's approach in dealing with them:

[Where there are no] authorisation details, and we had no way of identifying who the person behind that was. In relation to most of the websites, it is reasonably accessible to be able to ascertain who the contact persons are, and there are a number of internet search tools to enable you to locate them. I have been sending emails and I've had nearly 100 per cent success rate in having authorisation details added.³⁴

4.27 Mr Pirani also explained his role in establishing precedents that allowed the complaints team to action subsequent similar complaints:

Most complaints come into the AEC at our info@ address, and we have a filtering process where some of them might come to me first to create a

30 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Official Hansard*, 7 September 2017, p. 6.

31 Ms Samantha Palmer, General Manager, People, Culture and Communication Division, Australian Bureau of Statistics, *Official Hansard*, 15 September 2017, p. 18.

32 Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 176.

33 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 177.

34 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 177.

precedent. I'll give you an example: the first robocall that went out from Equality Australia led to a large number of complaints that didn't have the correct authorisation details. I dealt with the first one of those and, after that, the information team responded to the others. We had the skywriting incident. The first one of those came to me, I provided a form of words, and then the info team dealt with the rest of those.³⁵

4.28 Mr Rogers observed that this approach was consistent with the AEC's role during elections, however pointed out that there are a number of limitations that make the survey process different to a regular election:

...at election time, generally speaking, if we phone one of the political players and say there's an issue, it's invariably a mistake and they fall over themselves to fix it very quickly. In this particular case, it can be difficult, if you've got some parties that are brand-new to the process.³⁶

4.29 The safeguards failed to engage with the circumstances that distinguished the postal survey from a general election – namely the involvement of protagonists without any ongoing incentives for compliance with norms and laws that govern elections.

4.30 Mr Pirani explained:

The other issue is: they aren't cogent entities. Unlike dealing with a political party where I've got a registered office and contact details et cetera, to identify and locate some of the disparate groups out there campaigning is extremely difficult.³⁷

4.31 Mr Pirani informed the committee that he was only aware of four instances where a complainant was provided with the contact details for the Attorney-General's Department where a complaint related to an allegation of vilification or discrimination.³⁸

4.32 Section 19 of the *Marriage Law Survey (Additional Safeguards) Act 2017* provided that if a person wanted to take civil legal action against someone alleged to have engaged in vilifying, intimidating or threatening behaviour, they must first seek the consent of the Attorney-General.³⁹ At the Supplementary Estimates for the Legal and Constitutional Affairs Legislation Committee, the then Attorney-General,

35 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, pp 177–178.

36 Mr Tom Rogers, Australian Electoral Commissioner, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 180.

37 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 180.

38 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 180.

39 See: *Marriage Law Survey (Additional Safeguards) Act 2017*, s. 15 & 19.

Senator the Hon George Brandis told the committee that no requests for consent had been to him at that time.⁴⁰

4.33 There are doubts as to whether this represents a complete picture of the complaints the public would have wished to make about the process. The ABS has given evidence during Senate estimates hearings that it did not have a formal protocol for handling complaints until sometime after the postal survey. The division of responsibility for responding to complaints between multiple agencies (including the AEC, ABS, Attorney-General's department, and Australia Post) meant that there was no clear process for members of the public to report concerns.⁴¹ There was also no clear mandate provided to frontline staff to document, pursue and elevate complaints.

40 Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Official Hansard*, 24 October 2017, pp 176–177.

41 See Senate Economics Legislation Committee, *Estimates Official Hansard*, 25 October 2017, pp 125–131.

Chapter 5

Conclusions and Recommendations

5.1 The committee is pleased that legislation legalising same-sex marriage has now passed the parliament. The committee is deeply disappointed, however, in the process that led to this.

5.2 The government's approach suggested that it was more concerned in resolving its own internal political problems than it was in delivering a good policy result for any of the affected groups, or indeed for the Australian community as a whole.

5.3 Statistical surveys serve a fundamentally different purpose with fundamentally different processes from an election. A survey is not a substitute for an electoral process. The events leading up to the announcement of the postal survey suggest that the government was not genuinely interested in obtaining statistical information – it was trying to conduct a public vote by another means. This was reflected in the terms of the directions given to the ABS, and placed the ABS in the difficult position of having to deliver what was functionally a national vote without any of the experience, practices or institutions that would ordinarily be available.

5.4 Masking a vote as a survey devalues the ABS as an institution, and heightens the risks to the integrity of the process.

5.5 There was considerable public criticism of the proposal for a public vote on same-sex marriage since it was first proposed by the government. The criticism spanned a gamut of concerns – from constitutional conservatives worried about the erosion of parliamentary democracy, to advocates concerned about an intolerant campaign, and ordinary Australians who just wanted politicians to do their job. The government never properly addressed any of these concerns either in its initial proposal for a plebiscite, or its subsequent proposal for a postal survey.

5.6 These concerns were valid. A non-compulsory, non-binding postal survey has never been used previously to inform parliamentary processes on a matter of human rights for a minority group. It is the committee's view that it should not be used in this way in the future.

Recommendation 1

5.7 The committee recommends that questions of human rights for minority groups should not be resolved by a public vote.

5.8 The government was warned by mental health experts and same-sex marriage advocates that a public vote on same sex marriage could have deleterious effects on the LGBTIQ community. It is now clear that those warnings were well founded.

5.9 This committee has received evidence from a large number of submitters about offensive and misleading behaviour and material that has been deeply distressing to the LGBTIQ community and highly divisive within the community more broadly. It is the committee's view that this behaviour and material is a direct

result of the postal survey process and would not have occurred had the parliament simply debated and voted on legislation to legalise same-sex marriage.

5.10 The passage of the Marriage Law Survey (Additional Safeguards) Bill 2017 provided a mechanism for individuals to make complaints about material they perceived to be offensive, which contributed to a relatively civil debate within the traditional media landscape. However, ultimately this legislation proved insufficient to curb much of the offensive material distributed by mail and throughout social media.

5.11 The committee believes that much of this material was offensive not by accident but by design. It doubts that the authors intended to contribute constructively to the public debate, and instead aimed to cause offence and hurt to others. It is disappointing that the government gave them an excuse to do so by pursuing a public vote on the question of same sex marriage.

5.12 The committee recognises the hurt and distress experienced by much of the LGBTIQ community during the course of the postal survey.

Recommendation 2

5.13 The committee recommends that the Australian Government consider how further funding and support could be offered to mental health and LGBTIQ organisations to help address the consequences of the postal survey.

5.14 Having announced the postal survey on 9 August 2017, the committee considers it to be unreasonable of the government to require the Australian Bureau of Statistics (ABS) and other government departments and agencies to undertake the postal survey with deployment of postal forms little more than a month later. In the face of such a challenge, the committee commends the ABS and other government departments and agencies on their professional approach to undertaking and delivering the postal survey. The committee is satisfied that the high participation rate of 79.5 per cent validates the resounding yes vote of 61.6 per cent.

5.15 The committee were troubled to hear about alleged instances of postal survey form theft and of postal forms being despatched to incorrect addresses, however, the committee is satisfied that these appear to be isolated cases.

5.16 The committee were concerned to hear about the low participation rates amongst remote and predominantly Indigenous electorates such as Lingiari in the postal survey. Taking into account Lingiari's voter turnout at the last six federal elections suggests a trend of voter disengagement. The committee considers that there needs to be an increased participation of eligible unenrolled and enrolled people in remote locations to ensure they can participate in the democratic process more broadly.

Recommendation 3

5.17 The committee recommends that the Australian Electoral Commission actively engage with remote communities and Indigenous peak bodies to increase the number of enrolled people in remote electorates and to increase the participation of enrolled people in local, state and federal elections.

Senator Jenny McAllister
Chair

Dissenting report by Government Senators

Introduction

1.1 The Australian Marriage Law Postal Survey (Marriage Survey) was a fulfilment of the government's election commitment to hold a popular vote on the issue of same-sex marriage. Given that the Australian Parliament had previously tried a number of times to resolve the issue of same-sex marriage without a clear resolution, the Government decided that the best course of action was for the Australian people to have their say first to inform any future legislative decisions.

1.2 The Government has always been clear that if a public vote were to result in a Yes vote, then it would facilitate parliamentary consideration of a Private member's Bill. As the Prime Minister said, "the consequence of a 'yes' vote in the plebiscite will be that same-sex marriage will be legal in Australia".¹

1.3 Following the 15 November 2017 announcement of an emphatic Yes result, the Government honoured its commitment to provide a free vote on a Private Members Bill to its Members and Senators. This allowed parliamentarians in both houses to work across party-lines to resolve details of legislative reforms, informed by the public results of the survey.

1.4 The Government gave precedence for this bill to be introduced in the Senate and debated ahead of Government legislative business and parliamentary hours were extended to allow the passage of the bill before the end of sittings in 2017. On 7 December 2017, the Marriage Amendment (Definitions and Religious Freedoms) Bill 2017, was passed by the House of Representatives, legalising same-sex marriage in Australia.²

1.5 As the Prime Minister, the Hon Malcolm Turnbull MP, stated following the passage of the bill, although the Labor Opposition has recently led criticism of the Marriage Survey process, the previous Rudd/Gillard Labor government had six years to make this legislative change and did nothing about it.³

1.6 Passage of legislative reform is a success that belongs to the whole parliament. But commentators have rightly observed that the parliamentary majority that legislated same-sex marriage was greater than could have been achieved if

1 Prime Minister the Hon Malcolm Turnbull MP, *House of Representatives Hansard*, 21 October 2015, p. 12007.

2 House of Representatives Votes and Proceedings, *No. 91–7 December 2017*, pp 1288. The bill had previously passed the Senate on 29 November 2017, see: Journals of the Senate, *No. 74–29 November 2017*, p. 2367.

3 Interview on 7.30 with Leigh Sales, 7 December 2017, available at: <https://www.pm.gov.au/media/television-interview-leigh-sales-730-abc> (accessed 9 February 2018).

members and Senators had not known the weight of public opinion in their respective electorates and states.⁴

1.7 Some parliamentarians who had personally voted against same-sex marriage in the survey, subsequently pledged to vote for the Private Members Bill in parliament out of respect for the views of their constituents.

The legitimacy and legality of a Postal Survey approach

1.8 Government Senators strongly reject the contention in the majority report that it was inappropriate to use a voluntary postal survey as a means to provide the Australian public with its say on the issue of same-sex marriage. The postal survey did not of course actually change the law, but it provided an unquestionable public mandate for change that allowed for the passage of legislation after successive previous bills had failed.

1.9 Unlike other forms of polling that are susceptible to error, this survey collected the views of all Australians who wanted a say on the matter and definitively revealed the geographic dispersion of support, down to an individual electorate level.

1.10 The idea of asking the Australian public for their view is one that, at different times, has had attraction to parliamentarians on both sides of the chamber. In 2013 prior to the federal election that year, future Labor Leader Bill Shorten told the Australian Christian Lobby that:

Personally speaking, I'm completely relaxed about having some form of plebiscite...in terms of a plebiscite, I would rather that the people of Australia could make their view clear on this than leaving this issue to 150 people.⁵

1.11 During the 2017 Marriage Survey Labor Senator Patrick Dodson expressed the view on radio that:

We've just spent \$122 million surveying people on the question of Same-Sex Marriage. Now that's a good thing to do and it's a necessary thing to do.⁶

1.12 In 2017 Australia celebrated the 50th anniversary of the 1967 referendum that removed two discriminatory references to Indigenous Australians in the Constitution. That referendum saw the highest 'Yes' vote ever recorded in a Federal referendum,

4 For example Jennifer Hewett, 'Same-sex marriage becomes reality', *Sydney Morning Herald*, 7 December 2017 <http://www.afr.com/opinion/columnists/through-the-minefield-of-coalition-tensions-samesex-marriage-becomes-reality-20171207-h00nbu> (accessed 9 February 2018).

5 Dennis Shanahan 'Federal election 2016: Bill Shorten flips on gay marriage plebiscite', *The Australian*, 29 June 2016, available at: <https://www.theaustralian.com.au/federal-election-2016/federal-election-2016-bill-shorten-flips-on-gay-plebiscite/news-story/fd7f72809333817973db6448f554> (accessed on 13 February 2018).

6 ABC Radio National, AM interview with Sabra Lane, 'Rejection of Indigenous advisory a "kick in the guts": Patrick Dodson', available at: <http://www.abc.net.au/radio/programs/am/indigenous-advisory-rejection-a-kick-in-the-guts-dodson/9091474> (accessed on 13 February 2018).

with 90.77 per cent voting to give parliament the power to support better conditions for Indigenous Australians and to recognise Indigenous Australians in the census. This result was never taken for granted by those who supported the change. This resounding support for reform was the result of a very significant period of public discussion on the treatment of Indigenous Australians and active mobilisation of support in the community to build momentum towards a yes outcome.

1.13 Government Senators note that the government's preference was to have the issue of same-sex marriage decided by a compulsory attendance plebiscite. However, the Labor and Greens parties, rather than working with the Government, chose to be play politics and block the government's bills which would have provided for the conduct of a plebiscite under the auspices of the Australian Electoral Commission (AEC) and within the usual Electoral laws framework for plebiscites.

1.14 In the face of political obstruction, the Government opted for a voluntary postal survey, conducted by the Australian Bureau of Statistics (ABS) and funded through an Advance to the Finance Minister. It was Labor and the Greens' own actions which lead to the choice of a postal survey, and it is therefore difficult to take seriously their protestations about the appropriateness of the mechanism or their belated preference for the usual Electoral Laws framework. The majority report argues that a survey is not a substitute for an electoral process. Justice Edelman addressed this misconception during the High Court's hearing of two challenges to the legality of the survey process. He observed that:

It does not really matter, then, whether it is a vote or not because it may be possible that something could be characterised as both a vote and as being a collection of statistical information.⁷

1.15 The High Court unanimously agreed with the view that the postal survey had a dual character, concluding:

One strand of the [plaintiff's] argument sought to draw a dichotomy between a 'vote' or a 'plebiscite', on the one hand, and the collection of 'statistical information', on the other. The dichotomy is false.⁸

1.16 There is precedent for the ABS being tasked as the responsible agency by the executive arm of Government, to test public opinion on a policy question of national significance. In 1974 the Whitlam Government used the same constitutional powers and authority under relevant legislation to fund and conduct an ABS survey of 60,000 randomly selected Australians, to ask them about their opinion on whether Australia's National Anthem should be changed. This poll found that 51.4% of Australians surveyed expressed an opinion in favour of changing Australia's National Anthem to

7 *Wilkie & Ors v The Commonwealth of Australia & Ors; Australian Marriage Equality Ltd & Anor v Minister for Finance Mathias Cormann & Anor* [2017] HCATrans 174 (5 September 2017).

8 *Wilkie & Ors v The Commonwealth of Australia & Ors; Australian Marriage Equality Ltd & Anor v Minister for Finance Mathias Cormann & Anor*, [2017] HCA 40, paragraph 142, 28 September 2017, available at: <http://eresources.hcourt.gov.au/showCase/2017/HCA/40>.

"Advance Australia Fair" and the Whitlam Government then acted consistent with the public preference to change the National Anthem.⁹

1.17 The Marriage Survey used a more comprehensive data collection, to ensure reliable results at an electorate level. The head of the Marriage Survey Taskforce and Deputy Statistician Mr Jonathan Palmer explained that:

This is not really a sample survey. We're, effectively, conducting a census of people who are in that subpopulation of eligible voters. As I said, I had some discussions with our chief methodologist around the approach we're taking in this. If we tried to conduct it as a sample survey, in order to produce quality results at the individual electoral division level, we would need to have an extremely large sample in the millions. So, it's just not a viable approach.¹⁰

1.18 Contrary to suggestions in the majority report, the ABS was able to apply their relevant statistical methods and experience to the exercise:

The methodology used by the ABS for the survey was consistent with standard statistical processes for any collection. ... The statistical methodology that was applied was essentially the same as that used for the voluntary Religious Affiliation question asked in the Australian Census of Population and Housing. This question was not adjusted for non-response as the ABS was not confident that the characteristics of those who didn't respond were the same as those who did respond. For the same reason, the AMLPS was not adjusted for non-response. ... In total over 20,000 data fields were published by the ABS on 15 November 2017.¹¹

1.19 Government Senators also point out that the legal mechanisms providing for the conduct of the postal survey, namely the Treasurer's direction to the Australian Statistician, and appropriations allocated through the Advance to the Finance Minister, were upheld by the High Court as valid. The High Court challenge raised every theory that could be conceived, for arguing that the survey lacked legal legitimacy. But the High Court confirmed that the Government had both the constitutional power and appropriate statutory authority to commission the postal survey.¹²

9 Prime Minister Press Statement No 229, 18 April 1974, 'Australia's National Anthem', available at: <https://pmtranscripts.pmc.gov.au/sites/default/files/original/00003216.pdf> (accessed on 13 February 2018); Prime Minister, the Hon Gough Whitlam, Media release, 8 April 1974, 'Results of the National Anthem Poll', available at: <https://pmtranscripts.pmc.gov.au/sites/default/files/original/00003208.pdf> (accessed on 13 February 2018).

10 Senate Finance and Public Administration Committee public hearing, *Committee Hansard*, 17 August 2017, p. 11.

11 Australian Bureau of Statistics, *Report on the conduct of the Australian Marriage Law Postal Survey 2017*, 30 January 2018, p. 9, available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1800.0Main+Features382017?OpenDocument> (accessed 9 February 2018).

12 See *Wilkie v The Commonwealth*; *Australian Marriage Equality Ltd v Minister for Finance* [2017] HCA 40.

1.20 Up to \$295 million had been made available by the parliament to the Government through *Appropriation Act (No. 1) 2017-18*, from which the Finance Minister could make appropriate commitments of money, using a non-disallowable instrument. The Advance to the Finance Minister is able to be used when there are urgent expenditure requirements that were either omitted or understated, or unforeseen at the time that the Budget was delivered.

1.21 Under the former Labor government, \$891 million has been dispensed using the Advance to the Finance Minister, through 32 Advances over the years from 2008-09 to 2012-13. These advances were used for a range of initiatives, ranging from new budget decisions, through to fixes for erroneous omissions in Budget papers. By contrast the current Government had made only one other Advance to the Finance Minister in four years before the Marriage Survey, which was to implement Senate voting reform in 2015-16 (\$101.2m to the AEC to implement systems changes).¹³ No one at that time questioned the validity or appropriateness of that advance of funds.

1.22 The High Court has now upheld the validity of funding for the Marriage Law Survey, ruling against every aspect of two legal challenges.

1.23 Although the Marriage Law Postal Survey was an unusual exercise held in special circumstances, it was a most appropriate solution given the need to test the public mandate for a major social change.

Conduct of the survey

1.24 Government Senators note that the ABS provided extensive evidence to the committee about the risk register for the postal survey.¹⁴ Risk management was an ongoing focus for the ABS as it responded to developments throughout the Marriage Survey period.¹⁵ Government Senators are of the view that the ABS's proactive approach to risk management significantly contributed to the success of the postal survey. In this context, Government Senators also note the ABS's *Report on the conduct of the Australian Marriage Law Postal Survey 2017*, which sets out the quality assurance measures, including risk management and issues management framework for the postal survey.¹⁶ In the view of Government Senators, the risk strategies adopted by the ABS were well-managed and comprehensive.

13 Department of Finance website, *Advance to the Finance Minister*, available at: https://www.finance.gov.au/publications/advance_to_the_finance_minister/ (accessed on 13 February 2018).

14 See Australian Bureau of Statistics (ABS), *Submission 1*, p. 13; Mr Jonathan Palmer, Deputy Australian Statistician, Census and Enabling Services Group, ABS, *Committee Hansard*, 17 August 2017, pp 4–5; ABS, answers to questions on notice, 17 August 2017, pp 1–3 (received 31 August 2017).

15 See: Mr Jonathan Palmer, Deputy Australian Statistician, Census and Enabling Services Group, ABS, *Committee Hansard*, 7 September 2017, p. 4.

16 Australian Bureau of Statistics (ABS), *Report on the conduct of the Australian Marriage Law Postal Survey 2017*, 30 January 2018, pp 42-51, available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1800.0Main+Features382017?OpenDocument> (accessed 9 February 2018).

1.25 The majority report cites a small number of discrete examples from media articles of people alleging that Marriage Survey forms had been stolen. Government Senators agree with the conclusion of the majority that these examples appear to be isolated incidents and not indicative of any systemic issues.

1.26 The ABS had very effective arrangements in place to issue replacement forms and invalidate the barcodes for forms that had potentially been stolen or been sent to an incorrect address. Indeed the ABS immediately remedied the most significant incident cited in the majority report, after damaged envelopes were found at Mona Vale. The Survey Taskforce took all the damaged Mona Vale mail into their possession and sought contact with each affected voter, to issue new forms while invalidating old ones.¹⁷ Likewise abandoned mail found in Brunswick, referred to in the majority report, was also notified to the ABS, allowing for an effective intervention and remedy.¹⁸

1.27 The final ABS report on the survey observes that the number of perceived cases of mischief was effectively statistically insignificant:

Throughout the survey period, issues reported to the ABS accounted for fewer than 500 individual survey forms (less than 0.0032 per cent of over 16 million forms issued). These issues related to allegations of mail theft, attempts to offer survey forms for sale, persons attempting to influence the response of vulnerable people, and the intention to respond to the survey on another person's behalf without their authorisation to do so. **There are no known incidents of fraudulent responses being counted in the survey.**¹⁹ (Emphasis added)

1.28 The ABS went on to report that the subset of cases warranting referral for investigation was even smaller:

All allegations of fraud or criminal actions were investigated by the ABS and where appropriate referred to the relevant authorities for investigation. A total of 18 matters were referred to police for investigation.²⁰

1.29 These are very insubstantial numbers in the context of a survey open to 16 million eligible Australians.

17 Saimi Jeong, 'Same sex marriage survey envelopes found in bin of Mona Vale apartment block', *Sydney Morning Herald*, 22 September 2017, available at: <http://www.smh.com.au/national/samesex-marriage-survey-envelopes-found-in-bin-of-mona-vale-apartment-block-20170922-gymxlw.html> (accessed 12 February 2018).

18 'SSM: Same-Sex marriage surveys found 'dumped in Brunswick', security concerns raised', *ABC News Online*, 19 September 2017, available at: <http://www.abc.net.au/news/2017-09-19/ssm-surveys-dumped-in-brunswick-garden-raise-security-concerns/8961044> (accessed 9 February 2018)

19 ABS, *Report on the conduct of the Australian Marriage Law Postal Survey*, 30 January 2018, p. 45.

20 ABS, *Report on the conduct of the Australian Marriage Law Postal Survey*, 30 January 2018, p. 49.

Participation and enrolment

1.30 At the start of the survey process, some commentators cautiously suggested that there should be low expectations for the achievable turnout for the Marriage Survey. Psephologist Antony Green observed that Australia does have some experience of conducting voluntary elections by post and summarised the historic benchmarks. The 1997 Constitutional Convention election recorded a participation rate of 46.9%, while the most recent rounds of local government elections using voluntary postal voting had recorded average participation rates of 54.6% in Tasmania (2014), 32% in South Australia and 27.5% in Western Australia (2015).²¹

1.31 According to the Australian Bureau of Statistics (ABS), 12,727,920 people, or 79.52 per cent of the eligible population, participated in the Marriage Survey. As the Australian Statistician noted in announcing the results of the survey, this is an exceptionally high rate of participation for a voluntary survey:

This high response rate far exceeds expectations and compares extremely favourably with other voluntary exercises conducted around the world thanks to the strong interest and engagement of eligible Australians in this topic.²²

1.32 The high participation rate in the Marriage Survey attests to the vast majority of Australians wanting to have their say on this matter. Moreover, given that awareness of the survey was almost universal at 99 per cent in tracking research conducted for the ABS, it could be reasonably presumed that most of the non-participants had consciously chosen not to express a view.²³

1.33 The 79.52% participation by Australian voters is a resounding endorsement of the Government's decision to give them their say. This is almost 20% higher than the Irish referendum on same-sex marriage (60.5%) and over 7% above the participation in the Brexit referendum (72.2%).

1.34 It is more than 10% higher than the last general election votes in the UK (68.8% in June 2017) and Canada (68.3% in October 2015). It is almost level with the recent New Zealand general election (79.8%). It is higher than Presidential votes in the US (60.2% in November 2016) and France (74.6% in May 2017). This is a remarkable performance, given that this was a single issue question.

1.35 The ABS and its partner agencies made extensive efforts to achieve the highest participation possible:

21 Anthony Green, 'Participation rates at Australian Voluntary Postal Ballot Elections', 9 August 2017, *ABC News Online*, available at: <http://www.abc.net.au/news/2017-08-09/participation-rates-at-australian-voluntary-postal-ballot-electi/9388940> (accessed 9 February 2018).

22 See Australian Bureau of Statistics, *Australia supports changing the law to allow same-sex couples to marry*, Media Release, 15 November 2017, available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/C2DA40601247126DCA25822400106775?OpenDocument> (accessed 9 February 2018).

23 ABS, *Report on the conduct of the Australian Marriage Law Postal Survey*, 30 January 2018, p. 32.

- Australia Post has handled over 28.6 million mail articles, delivering the survey forms to the public ahead of schedule.
- DHS ran an Information Line that answered 208,894 phone calls with an average answer time of seven seconds, providing members of the public clarity and confidence on the process.²⁴
- Some 34,447 Australians expressed their views online using a secure access code including Australians living overseas and people with disabilities. While all eligible Australians who were travelling or living overseas had the opportunity to use this mechanism, a very high proportion of those who were overseas at some point during the two month survey period chose to respond by post before or after their overseas travel.²⁵

1.36 Of those who expressed a view on the survey question, 99.7% provided a clear response, demonstrating that the Government and the ABS had implemented a very sound process for people to express their views in unambiguous terms. This clear result gave the parliament a strong mandate to give effect to legislation to decisively resolve the protracted policy debate.

1.37 The majority report focuses much attention on participation in remote areas, and in particular, the electorate of Lingiari. Government Senators note the evidence, cited in the majority report, from the Deputy Australian Statistician about the measures for the despatch of survey forms to rural and remote areas.²⁶

1.38 This included assistance from the ABS for 244 Aboriginal and Torres Strait Islander Communities and visits to 191 remote communities to help support participation.

1.39 While Government Senators support the recommendation in the majority report that the AEC actively engage remote communities and Indigenous peak bodies to increase the enrolment of people in remote electorates, it is also important to acknowledge that the ABS's inclusiveness strategy was well received by the broader public.

1.40 Government Senators particularly refer to the submission of the Federation of Ethnic Communities' Councils of Australia (FECCA):

FECCA was impressed with the seriousness and importance that the ABS placed on the ability for all Australians to be able to participate fully in the postal survey regardless of their background. It was gratifying to see the

24 ABS, *Report on the conduct of the Australian Marriage Law Postal Survey*, 30 January 2018, p. 21.

25 ABS, *Report on the conduct of the Australian Marriage Law Postal Survey*, 30 January 2018, p. 36.

26 Mr Jonathan Palmer, Deputy Australian Statistician, Census and Enabling Services Group, ABS, *Committee Hansard*, 15 September 2017, p. 2.

ABS put into practice the solutions to access and equity challenges which face many Australians from migrant and refugee communities.

...

FECCA would like to commend the ABS for their role in ensuring that Australians from [culturally and linguistically diverse] backgrounds were able to fully participate meaningfully in what has been a historic process.²⁷

1.41 Further, Government Senators believe that the majority report has failed to acknowledge that the Marriage Survey has, in fact, had a very positive effect on electoral enrolment.

1.42 Over 3.3 million people visited the AEC website in the two weeks leading up to the close of rolls, compared to an average fortnight of around 90,000 visitors. The Electoral Roll closed 15 days after the Government announced the Marriage Survey, and for comparison purposes, for a federal election, the period before the close of rolls is 7 days from the issuing of the writs.

1.43 The Government spent over \$5 million in a first phase of advertising, primarily to inform the public about the importance of being on the Electoral Roll and the opportunity to get address details up-to-date on the Roll. The Department of Foreign Affairs and Trade also assisted by promoting enrolment information on their communication channels for Australians overseas.

1.44 Mr Jeff Pope, Deputy Electoral Commissioner, AEC, advised the committee that the electoral roll is "in the best shape it's ever been in since Federation" as a result of the postal survey.²⁸ The Electoral Roll increased by over 98,000 people between 8 August and the end of 24 August. We have seen largest electoral enrolment event in Australian history with a total of 933,592 electoral roll updates (including updates to addresses). This was a historic record and was 36% higher than the approximately 687,000 enrolment transactions during the close of rolls period for the 2016 federal election. At the Senate Finance and Public Administration Legislation Committee's Supplementary Estimates hearings in October 2017, Mr Tom Rogers, Australian Electoral Commissioner, informed the committee that the roll was 96.3 per cent complete.²⁹

27 Federation of Ethnic Communities' Councils of Australia, *Submission 25*, pp 1–2.

28 Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 September 2017, p. 10.

29 Mr Tom Rogers, Australian Electoral Commissioner, Australian Electoral Commission, *Senate Finance and Public Administration Legislation Committee Estimates Hansard*, 24 October 2017, p. 181.

1.45 Mr Rogers and Mr Pope explained that, at that time, the AEC was working with ABS on a protocol to determine whether postal survey envelopes marked 'Return to Sender' and sent to the ABS could be used to further 'cleanse the roll'.³⁰

Marriage Law Survey (Additional Safeguards) Act 2017

1.46 Australia's constitutional democracy means that people are entitled to their views on major social change, as long as they operate within our legal framework. The Government did not accept the proposition that Australians were unable to have a civil debate on same-sex marriage, or that it was impossible to add appropriate additional safeguards to complement existing legal protections.

1.47 Spreading material or information that undermines Australia's cohesive society, including ideologies that encourage violence or discrimination on the basis of sexuality, is unacceptable and a strong framework was already in place for the prevention incitement to violence, including under state and federal laws.

1.48 The Government consulted across party lines and with other interested parties on further temporary legislated protections that would be appropriate to ensure the process was fair and that Australians got the opportunity to hear differing views in an appropriate environment. The views of other parties helped determine what detail was included in a safeguards bill and when debate on that bill commenced in the parliament. Government Senators disagree with the majority report's characterisation that the *Marriage Law Survey (Additional Safeguards) Act 2017* (Safeguards Act) was "insufficient to curb much of the offensive material distributed by mail and throughout social media".³¹ This partisan comment does not accord with the constructive and bipartisan spirit of the safeguards legislation.

1.49 In announcing the introduction of the Australian Law Survey (Additional Safeguards) Bill 2017 to Parliament, the Minister for Finance, Senator the Hon Mathias Cormann noted the purpose of the legislation:

We have been exploring in good faith how we can complement existing legal protections under current laws further – principally by ensuring that all of the usual relevant safeguards under our Electoral Laws apply to this process as appropriate.

This includes provisions to ensure relevant authorisations on advertisements, reasonable opportunity to have opposing views broadcast, offences against bribery and threats and the prohibition of misleading and deceptive conduct in relation to the completion of survey forms....

30 Mr Tom Rogers, Australian Electoral Commissioner, Australian Electoral Commission, and Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission *Senate Finance and Public Administration Legislation Committee Estimates Hansard*, 24 October 2017, p. 181; and Australian Electoral Commission, answer to question on notice no. 48, Senate Finance and Public Administration Legislation Committee, Supplementary Budget Estimates hearings 2017–18.

31 See: Chapter 4 of the majority report.

This Bill will also propose a further safeguard against vilification, intimidation and threats to cause harm because of the views expressed or believed to be held in relation to the Survey, or because of the religious conviction, sexual orientation or gender identity or intersex status of a particular person or group.³²

1.50 The Safeguards Act was passed with cross-party support.

1.51 The Safeguards Act contained provisions for a person to apply for a civil penalty order with the consent of the Attorney-General, to ensure that claims of vilification are not brought frivolously or otherwise without substance.³³ Both the Yes and No campaigns designated legal organisations as a 'notifying person' under the Safeguards Act, to refer any vilification complaints to the Attorney-General for his consideration. However as the majority report notes, in October 2017, the then Attorney-General advised that no requests for consent had been received.³⁴ The apparent absence of such formal complaints suggests that those who doubted Australians could have a respectful debate about the issue of same-sex marriage without widespread vilification were ultimately mistaken.

1.52 The majority report favourably quotes a suggestion that the Safeguards Act should have allowed for legal action on a public-funded basis, to avoid potential costs to members of the community who cannot afford the risk of costs being awarded against them. The Safeguards Act was in fact designed to allow the Commonwealth to carry the substantial costs of pursuing a matter in the courts, where appropriate. Section 23 specifically allows the Attorney General to intervene in proceedings for an injunction and the Attorney-General may also institute an appeal.

1.53 The Safeguards Act contains meaningful penalties, including criminal sanctions, to deter those who might consider doing the wrong thing. Some of the more serious offences proscribed in the Safeguards Act attract a maximum penalty of 120 penalty units (\$25,200), consistent with Electoral law. The maximum penalty for other offences in the Act is 60 penalty units (\$12,600).

1.54 The majority report concludes that the survey provided an excuse for people to ventilate views that may be regarded as objectionable, or even be intended to cause offence. This claim ignores the historic fact that debate about same-sex marriage had been prominent and sustained over several years before the survey. The debate was indeed one of the dominant political issues through most of 2017, ahead of the Government's final decision on the approach for giving the Australian public a say on the matter.

32 Senator the Hon Mathias Cormann, Minister for Finance, 'Additional Safeguards to facilitate the Australian Marriage Law Postal Survey', *MC 56/17*, 12 September 2017, available at: <https://www.financeminister.gov.au/media-release/2017/09/12/additional-safeguards-facilitate-australian-marriage-law-postal-survey> (accessed 9 February 2018).

33 Sections 15 and 19, *Marriage Law Survey (Additional Safeguards) Act 2017*.

34 Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Official Hansard*, 24 October 2017, pp. 176-177.

1.55 By resolving an already heated debate through the Marriage Survey and by enacting the Safeguards Act, the Government was able to ensure that a debate that had effectively already been under way for some time could come to its conclusion in an appropriate environment of legal protections.

1.56 While Government Senators acknowledge that there were instances of people disseminating offensive material, it is our view that in overwhelming numbers, Australians who participated in the debate did so in a courteous and respectful manner.

1.57 Care should be taken in accepting assertions that there was widespread inappropriate conduct that went beyond the pale. A number of regulators had responsibility for considering and acting on reports of wrongdoing, so the complaints they received provide an objective evidence base for testing assertions about the tenor of overall debate or debate at the extremities. The Committee heard from the regulators that much of the public contact with them during the survey process involved inquiries about lower level matters, in particular complaints about the due form for authorisations. But the AEC found that a number of complaints on authorisations were without substance - for instance complaints that text messages or sky writing had not been compliant with the law. In relation to websites, the AEC had nearly a 100 per cent success rate in having authorisation details added after contacting webpage owners.³⁵

Conclusion

1.58 Government Senators believe that the majority report raises no substantive issues in relation to the conduct of the Marriage Survey. Importantly, the majority report recognises the excellent work of the ABS and Government Senators commend the leadership of the ABS and the Taskforce staff from all the government agencies involved who contributed to the success of the postal survey.

1.59 The ABS and its partner agencies have received insufficient acknowledgment for their accomplishment in delivering the survey substantially under the project budget, at a final cost of \$80.5 million, or two-thirds of what was estimated.³⁶ The Committee observed nothing short of dedication and professionalism from all the officials they interviewed.

1.60 Government Senators do not agree with the characterisation of the survey which is implicit in Recommendation 1 of the majority report. Public debate can be healthy, constructive and help the community come to terms with changes in social mores.

1.61 In relation to Recommendation 2 of the majority report, Government Senators support and recognise the importance of ongoing funding for mental health treatment

35 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Estimates Official Hansard*, 24 October 2017, p. 177-178.

36 2017-18 Mid-Year Economic and Fiscal Outlook, p. 185. http://www.budget.gov.au/2017-18/content/myefo/download/09_Appendix_A.pdf.

for all Australians. Government Senators note the funding that this government has provided significant funding to mental health treatment programs, including a boost to funding in the 2017 Federal Budget.³⁷ Commonwealth funding already includes support to the National LGBTI Health Alliance, for a number of programs specific to the ongoing mental health needs of lesbian, gay, bisexual, transgender and intersex people.

1.62 As noted above, Government Senators support, in principle Recommendation 3 of the majority report. We agree with that governments should always make the strongest endeavours to assist our most disadvantaged communities in having a say in electoral processes and we recognise the importance of making a targeted effort in Indigenous communities to overcome language barriers and other obstacles to civic participation.

1.63 The majority report correctly identifies that there is a long-standing participation challenge in the Division of Lingiari in particular, as evident in successive federal elections.

1.64 The AEC established the Indigenous Electoral Participation Program in 2010, to help close the gap in Indigenous electoral participation. The AEC works with communities to improve enrolment, turnout and formality in electoral events.³⁸ Government Senators consider this is an appropriate model to build upon, in driving any future efforts to enhance political participation in Indigenous communities, especially in remote areas.

1.65 During the Marriage Survey the Government advertised across Indigenous media in remote areas, to ensure awareness of the survey. The ABS produced materials translated into a number of Aboriginal and Torres Strait Islander languages which were distributed through existing networks and available at a large number of pick up locations. Although the ABS made a focussed effort to support Indigenous participation, assisted by a range of partner agencies at federal, state and local government level, the Marriage Survey experience demonstrates that the challenges remain very significant. There is no simple set of solutions and these challenges continue to demand our best efforts.

Senator James Paterson
Deputy Chair

Senator David Fawcett
Senator for South Australia

37 See National Mental Health Commission, *2017-18 Federal Budget: Mental health proves to be a priority*, 10 May 2017, available at: <http://www.mentalhealthcommission.gov.au/media-centre/news/2017-18-federal-budget-mental-health-proves-to-be-a-priority.aspx> (accessed 9 February 2018).

38 Australian Electoral Commission, *Indigenous Electoral Participation Program*, available at: <http://www.aec.gov.au/Indigenous/iepp.htm> (accessed 12 February 2018).

Appendix 1

Submissions and additional information received by the committee

Submissions

1. Australian Bureau of Statistics
 - 1.1 Supplementary submission
 - 1.2 Supplementary submission
2. Mr Ian Brightwell
 - 2.1 Supplementary submission
3. Victorian Gay and Lesbian Rights Lobby and NSW Gay and Lesbian Rights Lobby
 - 3.1 Supplementary submission
4. The Equality Campaign
 - 4.1 Supplementary submission
5. Australian Electoral Commission
6. Mr Tim Dufore
7. Paul Clifton
8. Ms Sophie Cleary
9. Ms Alison Carlsen
10. Samantha Glasheen
11. Fiona McCandless
12. Dr Kevin Bonham
13. Name Withheld
14. Mx George Foulkes-Taylor
15. Judi Nicholls
16. Name Withheld
17. Doreen Parsons
18. Christopher Moore
19. Trinh De Leon
20. Cameron Francis
21. Sharni Benson
22. Melville Miranda

23. Name Withheld
24. Mr Andrew Brooks
25. Federation of Ethnic Communities' Councils of Australia (FECCA)
26. The Hon. Tanya Plibersek MP
27. Department of Human Services
28. Department of Finance
29. Parents and Friends of Lesbians and Gays
30. Tangentyere Council Aboriginal Corporation
31. ACON
32. just.equal
33. Mr Alex Greenwich, Member for Sydney
34. Public Interest Advocacy Centre and Community Legal Centres NSW
35. Tasmanians United for Marriage Equality
- 35.1 Supplementary submission
36. SHINE SA
37. ReachOut Australia
38. Australian Catholics for Equality
39. Rainbow Families NSW
40. LGBTI Legal Service
41. Ms Sophie Scott

Tabled Documents

- Tabled by Australian Bureau of Statistics – Memorandum of Understanding between the Australian Bureau of Statistics and the Australian Electoral Commission, received at a public hearing on 17 August 2017
- Tabled by Australian Bureau of Statistics – Subsidiary arrangement for the provision of services between the Australian Bureau of Statistics and the Australian Electoral Commission, received at a public hearing on 17 August 2017
- Tabled by Senator McCarthy - Letter from Northern Territory Chief Minister to The Hon Malcolm Turnbull MP, received at a public hearing on 17 August 2017

Additional Information

- Correspondence received from Mr Jonathan Palmer, Deputy Australian Statistician, Australian Bureau of Statistics, following a public hearing in Canberra on 17 August 2017.

Answers to Questions taken on Notice

- Australian Bureau of Statistics, answers to questions taken on notice from a public hearing in Canberra on 17 August 2017, received on Thursday 31 August 2017.
- Australian Bureau of Statistics, answers to questions taken on notice from a public hearing in Canberra on 17 August 2017, received on Thursday 31 August 2017.
- Australian Bureau of Statistics, answers to questions taken on notice from a public hearing in Canberra on 15 September 2017, received 15 September 2017.
- Department of Finance, answers to questions taken on notice from a public hearing in Canberra on 7 September 2017, received 18 September 2017.
- Department of Human Services, answers to questions taken on notice from a public hearing in Canberra on 15 September 2017, received 21 September 2017.
- Australia Post, answers to questions taken on notice from a public hearing in Canberra on 7 September 2017, received on 2 October 2017.
- Australian Electoral Commission, answers to questions taken on notice from a public hearing on 7 September 2017, received on 6 October 2017.
- Australian Bureau of Statistics, answers to questions taken on notice from a public hearing on 7 September 2017, received on 6 October 2017.
- Australian Bureau of Statistics, answers to questions taken on notice from a public hearing on 15 September 2017, received on 6 October 2017.

Appendix 2

Public hearings

Thursday 17 August 2017
Committee Room 2S1
Parliament House, Canberra

Witnesses

Australian Bureau of Statistics

Mr Jonathan Palmer, Deputy Australian Statistician, Census and Enabling Services Group
Ms Samantha Palmer, General Manager of People, Culture and Communication Division

Thursday 7 September 2017
Committee Room 2S3
Parliament House, Canberra

Witnesses

Australian Bureau of Statistics

Mr David Kalisch, Australian Statistician
Mr Jonathan Palmer, Deputy Australian Statistician, Census and Enabling Services Group
Ms Samantha Palmer, General Manager of People, Culture and Communication Division

Australian Electoral Commission

Mr Jeff Pope, Deputy Electoral Commissioner
Mr Paul Pirani, Chief Legal Officer

Department of Finance

Dr Stein Helgeby, Deputy Secretary, Governance and APS Transformation

Department of Human Services

Mr Kim Terrell, Acting Deputy Secretary

Australia Post

Ms Christine Corbett, Interim Chief Executive Officer

Thursday 15 September 2017
Committee Room 2S1
Parliament House, Canberra

Witnesses

Australian Bureau of Statistics

Mr Jonathan Palmer, Deputy Australian Statistician, Census and Enabling Services Group
Ms Samantha Palmer, General Manager of People, Culture and Communication Division

Department of Finance

Dr Stein Helgeby, Deputy Secretary, Governance and APS Transformation

Australian Electoral Commission

Mr Tom Rogers, Electoral Commissioner