

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

# **Report on the conduct of the 2016 federal election and matters related thereto**

Joint Standing Committee on Electoral Matters

November 2018  
CANBERRA

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# Chair's Foreword

## *Elections Matter*

For candidates, political parties and the voting public, elections are a contest of ideas, of values and of the future we want to see in Australia. The role of the Electoral Matters Committee in assessing elections is part of assuring Parliament, and the public, that they may have faith in their conduct.

Above all else, fair and free democratic elections symbolise the liberties we enjoy as Australian citizens, and the freedom of all in determining this nation's Government.

## *Voter ID Matters*

It is therefore a regrettable omission that there is currently no requirement for voters to produce identification to vote in federal elections. Many democracies around the world, including India and Canada, require voters to show ID. Every surf, bowls or Services club in Australia requires a person to show ID to enter.

Yet in Australia we do not treat elections with the same gravity as a visit to a surf club or entering a Brisbane CBD pub after 10pm on a Friday night. Rectifying this considerable lapse in legislation is a key recommendation of the Committee's Government Members and one that should be implemented promptly.

This is especially important in light of the current mistrust of politicians and the democratic process by the voting public, both domestically and abroad. As such, the recommendations of this Committee have been made in a way that maintain, and where possible enhance, the integrity of the Commonwealth electoral system.

## *Political Parties Matter*

As trust in politicians and the democratic process sadly deteriorates, and political views fragment, it is vital that the importance of political parties in halting this decline not be understated.

There is no comparable avenue, open to all Australian citizens, which allows for direct participation in formulating policy, voting for or running as political candidates, and thereby having a direct influence on Australia's political system.

Disappointingly, a narrative has evolved where political parties and Australians who are involved in party politics are 'bad' whereas other political participants are 'good' due to their anti-party virtue signalling. That is both wrong and dangerous.

There is no higher cause within civil society than for citizens to be engaged in, to support and to join a party of the like-minded. Any party which contests elections in order to win and implement their beliefs in government should be commended and encouraged. It is sad that we have allowed such idealism to be tainted.

Over the course of this Inquiry the Committee has enhanced its oversight role in relation to the AEC not because of particular concerns about its performance—a number of this report's recommendations are about better resourcing the AEC to enhance its work—but because electoral management bodies are an essential part of our democracy. They ensure the system integrity that underpins our democracy.

This report concludes with an assessment of cyber interference in elections. While there is no suggestion that this occurred significantly during the 2016 election, an election is the right prism through which to view the issues that have arisen in both Britain and the United States in recent years.

The excellent submissions and evidence given by the many hundreds of witnesses that appeared before the Committee for this inquiry should be noted.

However, the Committee considers that GetUp provided misleading information to the Committee in the course of its inquiry and that the provision of false and misleading information substantially obstructed the Committee in the performance of its functions in relation to the inquiry. These are very serious matters that, because of the pattern of deliberate misleading and obstruction, substantially interfered with the Committee in undertaking and completing its work on the inquiry. The Committee authorised this matter to be raised in the House of Representatives as a potential contempt of the Parliament and requested that the matter to be referred to the Committee on Privileges and Members Interests.

A matter for future consideration by this Committee is the issue of political advertising blackouts during election periods. The current rules lack consistency,

and favour by default, rather than design, online media platforms over more traditional media formats.

Along a similar vein, the increasingly poor behaviour of certain non-party participants at some polling places may be an issue for a future Committee to consider.

I would like to acknowledge the years of work that the previous Committee Chair, Senator the Hon Linda Reynolds CSC, put in to making the Report into the conduct of the 2016 federal election the substantiative and authoritative document that it is today. I also thank the Deputy Chair, Mr Andrew Giles MP, Committee Members and participating members for their continued engagement and genuine commitment.

On behalf of the Committee, my sincere thanks to the Committee Secretariat; Lynley Ducker, Siobhán Leyne, Emma Vines and Kelly Burt. Their hard work, professionalism and engagement with both the Committee and the subject matter are shown in the quality of this report.

Finally, thank you to all those who voted, stood for election, volunteered and worked on campaigns, or cooked democracy sausages. Elections matter because of you.

**Senator the Hon James McGrath**  
**Chair**



# Members

## *Chair*

Senator the Hon James McGrath (from 12 September 2018)	LP, QLD
Senator the Hon Linda Reynolds (to 29 August 2018)	LP, WA

## *Deputy Chair*

Mr Andrew Giles MP	Scullin, VIC
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## *Members*

Senator Carol Brown	ALP, TAS
Hon Scott Buchholz MP (to 28 August 2018)	Wright, QLD
Mr Milton Dick MP	Oxley, QLD
Senator Chris Ketter	ALP, QLD
Mr Ben Morton MP	Tangney, WA
Senator Barry O'Sullivan	LNP, QLD
Hon Keith Pitt MP (from 10 September 2018)	Hinkler, QLD
Senator Lee Rhiannon (to 14 August 2018)	Australian Greens, NSW
Senator the Hon Lisa Singh (from 1 December 2016 to 8 February 2017)	ALP, TAS

Senator Jordon Steele-John

(from 16 August to 20 September 2018)

Australian Greens, WA

Senator Larissa Waters (from 20 September 2018) Australian Greens, NSW

Mrs Lucy Wicks MP

Robertson, NSW

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*Participating members for the inquiry<sup>1</sup>*

Senator the Hon Eric Abetz

Senator Chris Back

Senator Cory Bernardi

Senator Catryna Bilyk

Senator Slade Brockman

Senator David Bushby

Senator the Hon Doug Cameron

Senator the Hon Kim Carr

Senator Anthony Chisholm

Senator the Hon Richard Colbeck

Senator the Hon Jacinta Collins

Senator the Hon Stephen Conroy

Senator Sam Dastyari

Senator Richard Di Natale

Senator Pat Dodson

Senator Jonathon Duniam

Senator the Hon Don Farrell

Senator David Fawcett

Senator the Hon Concetta Fierravanti-Wells

Senator Alex Gallacher

Senator Katy Gallagher

Senator Lucy Gichuhi

Senator Sarah Hanson-Young

Senator Derryn Hinch

Senator Jane Hume

Senator David Leyonhjelm

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<sup>1</sup> Not all participating members participated in the full inquiry due to resignation from the Senate, discharge from the Senate due to s. 44 findings, entry to, or departure from, the Ministry.

Senator Sue Lines

Senator Scott Ludlam

Senator the Hon Ian Macdonald

Senator Gavin Marshall

Senator Jenny McAllister

Senator Malarndirri McCarthy

Senator the Hon Bridget McKenzie

Senator Nick McKim

Senator Jim Molan AO, DSC

Senator Claire Moore

Senator Deborah O'Neill

Senator James Paterson

Senator Helen Polley

Senator Louise Pratt

Senator Janet Rice

Senator Rachel Siewert

Senator the Hon Lisa Singh

Senator Dean Smith

Senator Glenn Sterle

Senator Amanda Stoker

Senator Anne Urquhart

Senator Murray Watt

Senator Larissa Waters

Senator Peter Whish-Wilson

Senator John Williams

Senator the Hon Penny Wong



*Secretariat*

Secretary	Lynley Ducker
Inquiry Secretary	Siobhán Leyne
Senior Research Officer	Andrew Gaczol
Research Officers	Danton Leary Emma Vines
Office Manager	Kelly Burt



# Terms of Reference

That the following matters be referred to the Joint Standing Committee on Electoral matters for inquiry and report:

1. All aspects of the 2016 Federal election and matters related thereto, and without limiting the scope of the committee's inquiry, with particular reference to:
  - a. The application of provisions requiring authorisation of electoral material to all forms of communication to voters;
  - b. The potential applicability of 'truth in advertising' provisions to communication to voters including third-party carriage services;
  - c. The options available to Parliament to ensure consistent application of disclosure rules to and the regulation of all entities undertaking campaign activities; and,
  - d. The potential application of new technology to voting, scrutiny and counting, with particular reference to its application to remote voting, ADF personnel on deployment and supporting vision-impaired voters.
2. The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.
3. The current donations, contributions, expenditure and disclosure regime, its application and timeliness and alternative approaches available to Parliament.

4. The extent to which fundraising and expenditure by third parties is conducted in concert with registered political parties and the applicability and utilisation of tax deductibility by entities involved in campaign activities.
5. Any matters related to the terms outlined above.

In considering these matters, the Committee is encouraged to consider previous inquiries and reports of past committees, regulatory developments implemented by States and Territories and recent determinations of the High Court with respect to these.

The Committee is requested to provide a report in respect of item 1a by 1 December 2016, and item 2 by 3 March 2017.

# Abbreviations

ABS	Australian Bureau of Statistics
ACF	Australian Conservation Foundation
ACNC	Australian Charities and Not-for-profits Commission
ADF	Australian Defence Force
AEC	Australian Electoral Commission
AIIA	Australian Information Industry Association
AI	Artificial Intelligence
ALP	Australian Labor Party
ANAO	Australian National Audit Office
ART	Accountability Round Table
ATL	Above the line
AVE	Australian Voter Experience
AWS	Amazon Web Services
BCA	Blind Citizens Australia
BLV	Blind and low vision
BTL	Below the Line
COAG	Council of Australian Governments
the Committee	Joint Standing Committee on Electoral Matters
CPSU	Community and Public Services Union
DIGI	Digital Industry Group Inc.

DRO	Divisional Returning Officer
ECANZ	Electoral Council of Australia and New Zealand
ECL	Electronic Certified List
EFDR Bill	Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017
EFED Act	Election Funding, Expenditure and Disclosure Act 1981 (NSW)
Electoral Act	Commonwealth Electoral Act 1918
EPIT	Electronic Premises Inspection Tool
FDEU	Federal Direct Enrolment and Update
FIFO	Fly-in, fly-out
HTV	How to Vote
HRO	House of Representatives
IEPP	Indigenous Electoral Participation Program
IRA	Internet Research Agency
IVR	Interactive Voice Response
JSCEM	Joint Standing Committee on Electoral Matters
LNP	Liberal National Party
MCA	Minerals Council of Australia
NEVDIS	National driver license database
NFP	Not-for-profit
NMRC	News and Media Research Centre
OES	Online Enrolment Service
OVC	Overseas Voting Centre
PAC	Political Action Committees
PACER	Parliament and Civics Education Rebate
PPVC	Pre-poll voting centres
VEC	Victorian Electoral Commission

# List of Recommendations

## Recommendation 1

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- 2.26 The Committee recommends that the Australian Government commission a technical report on the most appropriate count and surplus transfer methodology for Senate elections.
- 2.27 This technical report should consider the need for a progressively reducing quota.

## Recommendation 2

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- 2.51 The Committee recommends that Central Senate Scrutiny Centre data entry operators be considered ‘officers engaged in counting’ for the purposes of s. 264 of the *Commonwealth Electoral Act 1918*.

## Recommendation 3

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- 2.52 The Committee recommends that a non-partisan independent expert scrutineer be appointed to each Central Senate Scrutiny Centre in each state and territory and be responsible for:
- auditing the computer systems and processes used to capture and count votes;
  - undertaking randomised checks between captured data and physical ballot papers throughout the count at a level that provides surety as to the accuracy of the system; and
  - providing reports to candidate scrutineers about their findings on a regular basis during the count.

## **Recommendation 4**

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2.68 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to:

- increase party membership requirement to a minimum 1,000 unique members who are not relied upon for any other party in order for a federally registered party to field candidates in a federal election; and
- require that parliamentary parties not be exempt from party registration requirements by virtue of their Parliamentary representation.

## **Recommendation 5**

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2.69 The Committee recommends that all political parties be required to meet the new party registration criteria within three months of the legislation being enacted or the party shall be automatically deregistered.

## **Recommendation 6**

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3.29 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for online enrolment in all enrolment circumstances, provided that an appropriate digital identity verification process is in place.

## **Recommendation 7**

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3.47 The Committee recommends that the issue of electoral roll divergence between the Commonwealth, state and territory electoral rolls be raised as a matter of priority at the next Council of Australian Governments meeting to harmonise electoral rolls nationally.

## **Recommendation 8**

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3.65 The Committee recommends that the Australian Electoral Commission commission research into the causes of low voter turnout and develop initiatives aimed at improving voter turnout in divisions that have had consistently low turnout over recent elections.

## **Recommendation 9**

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3.85 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to permit, for House votes, a simple ordered sequence of



preferences to be considered formal to the extent that that sequence allocates preferences to candidates. This sequence must still allocate a first preference for the vote to be formal and meet the other existing formality rules in section 268 of the Act.

### **Recommendation 10**

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3.110 The Committee recommends that the Australian Government review the penalty for non-voting.

### **Recommendation 11**

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3.130 The Committee recommends that the Australian Government permanently maintain current requirements that schools visit the Parliament House, the Old Parliament House and the Australian War Memorial to be eligible for PACER funding.

### **Recommendation 12**

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3.141 The Committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to require that:

- voters must present a form of acceptable identification to be issued with an ordinary pre-poll or election day vote. Authorised identification must be suitably broad so as to not actively prevent electors from casting an ordinary ballot. Examples of acceptable identification would include:
  - photographic ID such as a drivers licence, passport, or proof of age card;
  - government-issued identification card, such as a Medicare card, senior's card of concession card;
  - proof of address, such as an account from a utilities provider, taxation notice of assessment or Australian Electoral Commission issued voter registration letter; or
  - alternatively, a 'voter ID' card be introduced and issued to all voters.
- where voters cannot provide acceptable identification they must be issued with a declaration vote.

- 3.142 The Committee further recommends that, in order to make this change as easy as possible, the national rollout of Electronic Certified Lists be fully funded (see Recommendation 25).

### **Recommendation 13**

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- 3.164 The Committee recommends that the Australian Government consult with Indigenous communities and stakeholders to devise culturally appropriate enrolment requirements for Indigenous voters with a view to increase Indigenous engagement with the electoral process.

### **Recommendation 14**

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- 4.28 The Committee recommends that the Australian Electoral Commission, when selecting polling places, consider the need to physically accommodate all political party booth workers, thereby ensuring there is no restriction on the ability of workers to distribute How to Vote material.

### **Recommendation 15**

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- 4.39 The Committee recommends that the Australian Electoral Commission consider revising information provided for voters to give greater clarity concerning the meaning of 'assisted access'/'partial access'.

### **Recommendation 16**

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- 4.44 The Committee recommends that the Australian Electoral Commission considers the feasibility of offering express-lane queuing options for disabled, pregnant and elderly voters, or, otherwise the provision of seating options for those needing to sit down while queued.

### **Recommendation 17**

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- 4.46 The Committee recommends that the Australian Electoral Commission consider providing election-related material in easy-to-read and easy-English formats.

### **Recommendation 18**

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- 4.68 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to restrict pre-poll voting to no more than two weeks prior to the date fixed by the writs for election day.

### **Recommendation 19**

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- 4.83 The Committee recommends that the Australian Electoral Commission consider revising its postal voter material to ensure greater clarity on who can act as an authorised witness and the role of an authorised witness.

### **Recommendation 20**

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- 4.86 The Committee recommends that the Australia Electoral Commission work with disability advocates to better inform eligible disabled electors of the General Postal Voter application process.

### **Recommendation 21**

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- 4.94 The Committee recommends that the Australian Electoral Commission continues to work closely with its external contractors to ensure the integrity of logistics processes for the transmission of votes back to Australia.

### **Recommendation 22**

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- 4.100 The Committee notes the importance of Australian Defence Force personnel being able to vote in a timely and efficient manner, and recommends that the Australian Electoral Commission ensures that postal votes for Australian Defence Force personnel are dispatched at the earliest possible time to allow the ADF time to forward those to its personnel for completion and return to Australia.

### **Recommendation 23**

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- 4.112 The Committee recommends that the Australian Electoral Commission strengthen and improve co-operation with the management of the facilities their mobile polling teams visit to ensure that all electors have the opportunity to vote.

### **Recommendation 24**

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- 4.126 The Committee recommends that the Australian Government investigate the feasibility of extending the NSW iVote system to blind- and low-vision voters only in federal elections.

## **Recommendation 25**

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- 5.56 The Committee recommends that a national rollout of Electronic Certified Lists and/or 'ECL Lite' be fully funded and implemented prior to the 2019 federal election.

## **Recommendation 26**

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- 6.20 The Committee recommends that the Australian Government refer the issue of tax deductibility thresholds for donations to political parties and the tax concessions available to political parties to the House of Representatives Standing Committee on Tax and Revenue for detailed consideration.

## **Recommendation 27**

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- 7.94 The Committee recommends to the Australian Government that all future inquiries into issues concerning 'fake news', instead use the term 'disinformation'.

## **Recommendation 28**

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- 7.97 The Committee recommends that the Australian Government establish a permanent taskforce to prevent and combat cyber manipulation in Australia's democratic process and to provide transparent, post-election findings regarding any pertinent incidents. The taskforce is to focus on systemic privacy breaches.

## **Recommendation 29**

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- 7.99 The Committee recommends that the Australian Government bring greater clarity to the legal framework surrounding social media services and their designation as 'platform' or 'publisher'.

## **Recommendation 30**

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- 7.102 The Committee recommends that the Australian Government consider ways in which media literacy can be enhanced through education programs that teach students not only how to create media, but also how to critically analyse it.

## **Recommendation 31**

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7.103 The Committee recommends that the Australian Electoral Commission examine ways in which media literacy can be incorporated into a modern, relevant civics education program.



# Executive Summary

Australia has never been afraid to challenge the operation of our electoral system and modernise it in response to community expectations.

In the past, Australia has been a world leader in electoral reform—both the United States and Britain adopted the ‘Australian ballot’ after a secret ballot was guaranteed as a right in the Australian states in the 1800s, led by South Australian in 1856.

The 2016 election continued the modernisation of our system; introducing fundamental reforms to the method of voting for the Senate. This reform, a double dissolution election, and the events that occurred in the 2013 election leading to a rerun of the Western Australian Senate election, put particular pressures on the delivery of the 2016 election.

This report is the Committee’s assessment of the conduct of the 2016 election. The Committee has issued three prior interim report on matters related to the election which the Committee considered required urgent attention:

- the authorisation of voter communications;
- the extent and use of foreign donations; and
- Australian Electoral Commission modernisation.

This report addresses the remainder of the issues from the 2016 election. It looks at the effects of the double dissolution election and the Senate voting reform. With the voting reform measures proving successful, the report considered the need for improvements to the count methodology for the Senate, based on advice by a number of electoral experts.

In this report the Committee also considers issues that occur in every election, such as voter enrolment and participation, access to polling places, pre-poll, remote and overseas voting, and voter turnout.

Two matters remain outstanding from this Committee's predecessor's report: electoral roll divergence and harmonisation, and the introduction of voter ID for federal elections. Addressing these serious issues of enfranchisement and surety of the electoral process are important to maintain a robust electoral system.

In total 31 recommendations are made to support better elections in the future. The use of technology is considered. Although there is a popular call for electronic voting, the Committee cannot support it without much greater confidence in the security of electronic voting options. Instead the Committee considers that other technological improvements to the electoral system will offer greater benefits, such as the national rollout of electronic certified lists and improvements in options provided to blind and low vision voters.

Finally, the report provides a lengthy discussion on political donations and areas for potential reform. Over the course of the 45<sup>th</sup> Parliament to date, the Committee has considered carefully the views put to it on reform to political donations. Many of the Committee's views are expressed in its interim report on foreign donations and its reports on the Electoral Funding and Disclosure Reform Bill put to the Parliament. This report extends that work.

Free, fair and transparent elections are the foundation of our democracy. Without confidence in our elections, we cannot be confident in our Parliament. The Committee is proud of its role in contributing to continuously enhancing and strengthening Australia's electoral system.



# 1. Introduction

- 1.1 The 2016 federal election (the 2016 election) was held on Saturday, 2 July 2016. The election was unusual in two ways – it changed the method of voting in the Senate and it was the first double dissolution election held since 1987.
- 1.2 Either one of these events would be significant, but combined they put particular focus on the Senate election.
- 1.3 It also was the first national electoral event after the mishandling of Western Australian Senate ballot papers during the 2013 federal election, resulting in the High Court declaring the election of Western Australian Senators void.
- 1.4 Investigations by Mick Keelty AO (the Keelty review), the Australian National Audit Office (ANAO) and this Committee’s predecessor led to recommendations for reform of the Australian Electoral Commission’s (AEC’s) election management and ballot handling processes.
- 1.5 The AEC had tested reform measures at several smaller electoral events, including House by-elections in the seats of Griffith (Qld) on 8 February 2013 and Canning (WA) on 19 September 2015. However, the 2016 election was the first opportunity for the AEC to test the implementation of the reforms at a national level.
- 1.6 Since the election, fifteen Senators and Members have been replaced or faced by-elections due to issues relating to section 44 of The Constitution. This has maintained an unusually high public focus on the 2016 election and the work of the AEC. The Committee undertook a detailed consideration of matters relating to section 44 in its May 2018 report: *Excluded: The impact of section 44 of Australian democracy*.
- 1.7 The Committee acknowledges the commitment to reform demonstrated by the AEC since the 2013 federal election, including its continued willingness

to work constructively with the Committee on its modernisation program to ensure public trust in Australia's electoral management and ballot paper handling.

## Conduct of the inquiry

- 1.8 It is usual practice for the Joint Standing Committee on Electoral Matters (JSCEM) to review the conduct of the most recent federal election in a broad-ranging inquiry. On 20 September 2016 the then Special Minister of State, Senator the Hon. Scott Ryan requested that the Committee undertake the inquiry, providing detailed terms of reference.
- 1.9 In setting these terms, the Minister requested interim reports on two issues that had been the subject of substantial media coverage and community debate during the election campaign:
- the authorisation of voter communications; and
  - the extent and use of foreign donations.
- 1.10 The Committee issued interim reports on each of these issues and a third interim report on AEC modernisation.
- 1.11 In total, the Committee received 228 submissions (Appendix A) and held nineteen public hearings (Appendix B) across the country, informing the inquiry.
- 1.12 As with the approach taken by JSCEM in its report on the 2013 election, this report only addresses issues that the Committee felt warranted further discussion. Full statistics on the election are available in submissions to the inquiry, specifically the submission from the AEC.<sup>1</sup>
- 1.13 This report addresses the longitudinal issues that have consistently arisen in election inquiries conducted by this Committee and its predecessors—issues that remain unaddressed. The Committee has already addressed the most pressing issues in its interim reports addressing the terms of reference as requested by the Minister.
- 1.14 This report acts as the Committee's 'watching brief' over long-term electoral issues and highlights issues that it feels its successor in the 46<sup>th</sup> Parliament should actively address.

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<sup>1</sup> Australian Electoral Commission (AEC), *Submission 66*.

- 1.15 As established by the Committee's interim report on political donations, the report considers all these issues in a framework of principles for a trusted electoral system. These principles are:
- **Transparency**—electoral processes are visible and easily scrutinised by all participants;
  - **Clarity**—all actors in the electoral system—voters, candidates, and the AEC—know what is required of them;
  - **Consistency**—regulations support a level playing field; and
  - **Compliance**—regulations are enforceable with minimal, practicable compliance burdens.
- 1.16 These principles establish a framework that the Committee uses to guide its consideration on how to enhance and strengthen Australia's democracy. It would be tempting to dismiss a federal election as an event that happens every three years; and that only electoral experts, the AEC, and the Electoral Matters Committee, are concerned about in the interim.
- 1.17 Free, fair and transparent elections are the foundation of our democracy. Without confidence that our Parliament has been properly elected, we cannot be confident in the decisions of the Parliament or the Executive. It is therefore essential that we continue to scrutinise and enhance all aspects of our electoral management and delivery.

## **Interim reports and Government responses**

- 1.18 The 2016 election was characterised by a new Senate voting system and a double dissolution election.
- 1.19 Additionally, a number of issues were the subject of substantial media coverage and community debate during the 2016 election. The Minister requested interim reports on these issues as a matter of priority, being:
- 1 the authorisation of voter communication; and
  - 2 the extent and possible regulation of donations and contributions from foreign sources (foreign donations).

### ***Authorisation of voter communication***

- 1.20 In December 2016, the Committee provided an interim report on authorisation of voter communication. Although authorisation of election material has always been a feature of Australian elections, the 2016 election highlighted deficiencies in the regulatory regime in relation to authorising

campaign materials via new media such as social media, email, SMS and robo-calling.

- 1.21 The Committee's report recommended that the *Commonwealth Electoral Act 1918* (Electoral Act or the Act) be amended to explicitly address the matter of authorisation of electoral materials.
- 1.22 The Government responded to the interim report by introducing the 'Electoral and Other Legislation Bill 2017' to the House on 30 March 2017. In introducing the Bill to the House, the Minister stated:

This bill responds to the committee's recommendations by requiring that three categories of communication include an authorisation:

- Firstly, all paid advertising, regardless of the medium used to communicate it, or the source of that communication. This extends a current requirement that applies to paid advertising on the internet.
- Secondly, certain communications (whether paid or unpaid) made by or on behalf of entities with disclosure obligations under the Electoral Act. These include registered political parties, candidates and third-party campaign groups whose expenditure on influencing elections exceeds the disclosure threshold, and donors whose donations exceed the disclosure threshold. In this category, a number of exceptions are made, including for personal and internal communications, news and editorial content, satire, research and opinion polls.
- Thirdly, longstanding provisions that require authorisations for certain forms of printed material will be retained – for example, leaflets, flyers, posters and how-to-vote cards.<sup>2</sup>

- 1.23 The Bill was passed by both houses on 11 September 2017, received assent on 14 September 2017 and commenced on 15 March 2018.<sup>3</sup>

- 1.24 Amendments to the *Criminal Code Act 1995* (Cth) passed the House on 6 February 2018 and the Senate on 18 June 2018. The amendments introduce new criminal offences and an injunction power to prevent people from impersonating a Commonwealth body.<sup>4</sup>

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<sup>2</sup> H.R. Deb., (30 March 2017) 3792.

<sup>3</sup> Electoral and Other Legislation Amendment Bill 2017 homepage, <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr5858%22>>, accessed 18 May 2018.

<sup>4</sup> Criminal Code Amendment (Impersonating a Commonwealth Body) Bill 2017 homepage, <<https://parlwork.aph.gov.au/Bills/r5973>>, accessed 22 November 2018.

## *Foreign donations*

- 1.25 In March 2017, the Committee provided an interim report on the options available to Parliament to regulate donations from foreign sources. The Committee's report recommended a prohibition on political donations from foreign entities.
- 1.26 The report also established the four principles that the Committee considers fundamental to a trusted system for political donations, as outlined above. These four principles have guided the Committee's consideration not only of foreign donations, but as a subset of political donations more generally.
- 1.27 The Government responded to the interim report by introducing the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 to the Senate on 7 December 2017. In introducing the Bill, the Minister stated:

Reform is necessary to support the integrity of Australia's electoral system, and Australia's sovereignty, by ensuring that only those with a meaningful connection to Australia are able to influence Australian politics and elections through political donations. It will also ensure that the Commonwealth's electoral funding and disclosure regime keeps pace with international and domestic developments and provides transparency for Australian voters.

The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 will improve the consistency of the regulatory treatment of all political actors. This includes political actors that have emerged in the Australian political landscape, who neither endorse candidates nor seek to form government, yet actively seek to influence the outcome of elections through their campaigning activities. While this is a positive indicator of the strength of Australian civil society and civic engagement, it is important that these actors are subject to the public accountability of more traditional actors, such as registered political parties or candidates.<sup>5</sup>

- 1.28 The Bill was then referred to this Committee for inquiry and report, which it did on 9 April 2018.<sup>6</sup> The Committee's report proposed a range of amendments to the Bill, based on the principles noted above.

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<sup>5</sup> Sen. Deb. (7 December 2017) 10098.

<sup>6</sup> Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, [aph.gov.au/Parliamentary Business/Committees/Joint/Electoral Matters/ELAEFDRBill2017/Advisory Report](http://aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/ELAEFDRBill2017/Advisory_Report), accessed 22 November 2018.

1.29 The Government responded to the Committee's report in October 2018 by referring proposed amendments for inquiry and report. The Committee reported its findings on 15 October 2018<sup>7</sup> and the Senate passed the legislation on 15 November 2018, and the House passed it on 27 November 2018.

### *AEC modernisation*

1.30 It was apparent to the Committee in the early stages of the inquiry that there were a range of issues that required early attention by the inquiry. These issues related to the capabilities of the AEC to deliver electoral services expected of it in the 21<sup>st</sup> century, due primarily to technological and procedural limitations.

1.31 As a result, the Committee issued its third interim on AEC modernisation specifically addressing:

- the introduction of new technologies for election delivery;
- complexity of electoral legislation; and
- management of the temporary election workforce.

1.32 The Committee recommended that the Parliament enact a range of technical amendments to the Electoral Act and the *Referendum (Machinery Provisions) Act 1984*, as recommended by the AEC to improve consistency, procedures and integrity of the electoral process.

1.33 The Committee also recommended additional funding be provided to the AEC for modernisation for future elections and recommended a range of operational and training actions for the AEC to undertake.

1.34 The Special Minister of State introduced the Electoral Legislation Amendment (Modernisation and Other Measures) Bill 2018 to the House on 29 November 2018 in response to the Committee's report.<sup>8</sup>

1.35 In addition, the Committee has been concurrently undertaking an inquiry to engage in further oversight of the AEC in relation to its modernisation

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<sup>7</sup> Second advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/propose\\_damendmentsbill/Second\\_advisory\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/propose_damendmentsbill/Second_advisory_report)>, accessed 22 November 2018

<sup>8</sup> Special Minister of State, 29 November 2018, Electoral Legislation Amendment (Modernisation and Other Measures) Bill 2018. <<https://parlwork.aph.gov.au/Bills/r6240>> accessed 29 November 2018.

activities. The AEC has also provided updates on its implementation of the Committee's recommendations.<sup>9</sup>

1.36 These matters will be further addressed in this report.

### *Political donations—discussion paper*

1.37 In September 2017, the Committee issued a discussion paper seeking views on political donations reforms. In that paper, the Committee flagged its intention to:

- identify flaws in the current electoral system;
- identify characteristics of a future electoral donation system; and
- develop reforms and recommendations to deliver this new system.

1.38 During the course of examining this issue in detail, the Committee was asked to inquire into the Government's Electoral Funding and Disclosure Reform (EFDR) Bill, as noted above. The Committee's report on that Bill answers a number of the issues raised in the discussion paper.

1.39 The Committee had originally intended issuing an interim report on political donations, however, it decided not to do so given a number of the matters that were addressed in its reports on the EFDR Bill.

1.40 The Committee's review of political donations is included at Chapter 6 of this report.

### **Cyber-manipulation of elections**

1.41 Over the course of the inquiry, the issue of cyber-manipulation of elections—the interference of social media bots and foreign interference in electoral events—became an issue of international concern. The Committee decided to consider whether it had had any impact on the 2016 election and so adopted new terms of reference addressing this issue.

1.42 This report presents background, discussion, evidence and initial recommendations. As the Committee's consideration of these issues progressed, it was invited to be part of an 'International Grand Committee' being convened in London by the United Kingdom House of Commons Digital, Culture, Media and Sport Committee. The International Grand

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<sup>9</sup> The AEC submissions to the Committee's report into the AEC Annual Report 2016-2017, available at:

[aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/AECannualreport2016-17](http://aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/AECannualreport2016-17), accessed 22 November 2018.

Committee included representatives from Committees of the UK, Canadian, Irish, Argentine, Brazilian, Singaporean and Latvian Parliaments—highlighting the global seriousness of the issues under consideration.

- 1.43 Rather than delay this report any further, the Committee has chosen to present its initial findings (Chapter 7) and will continue consideration of cyber-manipulation and disinformation under a new reference.<sup>10</sup>

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<sup>10</sup> For full information see Joint Standing Committee on Electoral Matters homepage, <[www.aph.gov.au/em](http://www.aph.gov.au/em)>, accessed 3 December 2018.



## 2. 2016 federal election overview and key issues

### The 2016 federal election

- 2.1 The 2016 federal election was notable in two significant ways:
- 1 it was the first double dissolution election held in Australia since 1987; and
  - 2 it introduced the first major reforms to how Australians vote since 1984.
- 2.2 It was also the first national electoral event that allowed the Australian Electoral Commission (AEC) to test reforms put in place after the loss of ballot papers during the 2013 election.

### A double dissolution

- 2.3 On 8 May 2016 the Prime Minister wrote to the Governor-General to request that he dissolve both Houses of Parliament under section 57 of the Constitution, stating:

I am able to advise that all conditions for a double dissolution have been met with respect to two parcels of legislation: the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 ("ABCC Bills") and the Fair Work (Registered Organisations) Amendment Bill 2014 ("Registered Organisations Bill").

The Senate has, on two occasions, rejected each of the ABCC Bills and the Registered Organisations Bill. The requirement in section 57 that there be an interval of at least three months between the first rejection by the Senate and

the second passage by the House of Representatives has been met in respect of each of those Bills.<sup>1</sup>

2.4 The 2016 election was only the seventh occasion that both Houses have been dissolved simultaneously.<sup>2</sup>

2.5 A double dissolution election has a significant impact on the election of Senators. The threshold for election is much lower in a double dissolution election than a normal half-Senate election:

A normal half-Senate election the quota is 1/7 of the total formal vote, whereas in a double dissolution election the quota is 1/13 of the total formal vote, because of the greater number of vacancies to be filled.<sup>3</sup>

This further increased the size of the Senate ballot paper, as is addressed later in the Report.

2.6 It also affects the terms of Senators:

Under section 13 of the Constitution Senators' terms commence on the first day of July following their election.

In a normal half-Senate election, senators are elected well before their term begins (the senators elected at the September 2013 federal election, for example, did not take their seats until 1 July 2014). However, under section 13, following a dissolution of the Senate and the subsequent election, the terms of the elected senators are backdated to commence on the previous 1 July.

This means that a double dissolution election held prior to July 2016 would see the terms of the elected senators backdated to commence on 1 July 2015. This would mean in turn that the terms of the three-year senators would expire on 30 June 2018 (only two years after they were elected), thereby requiring an election for those senators well before then. The effect of this would either be a

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<sup>1</sup> The Hon. Malcolm Turnbull MP, Prime Minister, 8 May 2016, correspondence to His Excellency General, the Hon. Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, Parliament of Australia, 'Double dissolution', <[https://www.aph.gov.au/Parliamentary\\_Business/Double\\_dissolution](https://www.aph.gov.au/Parliamentary_Business/Double_dissolution)>, accessed 27 April 2018.

<sup>2</sup> Accounts on the 1914, 1951, 1974, 1975, 1983 and 1987 double dissolution events from both a Senate and House perspective are available respectively at: *Odgers' Australian Senate Practice*, 2012, 13<sup>th</sup> Edn, pp. 692–736 and *House of Representatives Practice*, 2012, 6<sup>th</sup> Edn, pp. 472–488.

<sup>3</sup> Parliamentary Library, Parliament of Australia, 29 April 2016, *Flagpost: (Almost) everything you need to know about double dissolution elections*, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2016/April/Double\\_Dissolutions](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2016/April/Double_Dissolutions)>, accessed 27 April 2018.

short parliamentary term leading to a normal general election, or a separate half-Senate election followed by a later House of Representatives election.<sup>4</sup>

2.7 Section 13 of The Constitution provides for how the term of Senators is to be divided following a double dissolution election—terms are determined by which order Senators were declared elected, based on the number of votes received. The Electoral Act was amended in 1983 to provide for a recount of just the elected Senators, excluding the unsuccessful candidates, in order to determine terms (those being elected with the highest vote received six year terms and those with the lower vote receiving 3 year terms)<sup>5</sup> however, this provision has never been utilised.

2.8 The Senate may choose to utilise either of these methods and on 31 August 2016, the Senate resolved to determine terms as per the provisions of The Constitution:

That, pursuant to section 13 of the Constitution, the senators chosen for each state be divided into two classes, as follows:

(1) Senators listed at positions 7 to 12 on the certificate of election of senators for each state shall be allocated to the first class and receive 3 year terms.

(2) Senators listed at positions 1 to 6 on the certificate of election of senators for each state shall be allocated to the second class and receive 6 year terms.<sup>6</sup>

2.9 The use of The Constitution rather than s. 282 of the Electoral Act affected the positions of two NSW<sup>7</sup> and two Victorian<sup>8</sup> senators.<sup>9</sup> This reordering is due to the count methodology, with s. 282 providing that the recount use a

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<sup>4</sup> Parliamentary Library, Parliament of Australia, 29 April 2016, *Flagpost: (Almost) everything you need to know about double dissolution elections*, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2016/April/Double\\_Dissolutions](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2016/April/Double_Dissolutions)>, accessed 27 April 2018.

<sup>5</sup> s. 282.

<sup>6</sup> Senator the Hon. Mitch Fifield (Victoria), Manager of Government Business in the Senate, *Senate Hansard*, Wednesday, 31 August 2016, p. 157.

<sup>7</sup> Senator O'Neill and Senator Rhiannon.

<sup>8</sup> Senator Ryan and Senator Hinch.

<sup>9</sup> Parliamentary Library, Parliament of Australia, 6 September 2016, *Flagpost: Rotation of senators following the 2016 double dissolution*, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2016/September/Rotation\\_of\\_senators](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2016/September/Rotation_of_senators)>, accessed 30 April 2018.

half-Senate quota (14.3 per cent), rather than a full-Senate quota (7.7 per cent).

- 2.10 The terms to be served by Senators elected at the 2016 election are at Appendix C.
- 2.11 Since the 2016 election, the 45<sup>th</sup> Parliament has also been notable for the number of Senators and Members who have been replaced due to the provisions of section 44 of The Constitution. The Committee issued a comprehensive report on this matter in May 2018.<sup>10</sup> Current Senators are listed on the Parliament House website.<sup>11</sup>

## Reform for the Senate

- 2.12 The 2016 election also tested a new system of Senate voting. In the most significant voting reform since 1983, the new system of voting abolished the group voting tickets that had been found to ‘game the system’ and handed greater control of preferences to voters.<sup>12</sup>
- 2.13 The changes:
- removed the use of group voting tickets; and
  - required voters to allocate six or more preferences above the line or 12 or more preferences below the line.
- 2.14 Voters appear to have responded positively to this change; in one state voting against a chosen major party order of candidates. This shows that the reforms have met the intent expressed by this Committee’s predecessor to

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<sup>10</sup> JSCem, May 2018, *Excluded: The impact of section 44 on Australian democracy*, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/Inquiry\\_into\\_matters\\_relatng\\_to\\_Section\\_44\\_of\\_the\\_Constitution/Report\\_1](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Inquiry_into_matters_relatng_to_Section_44_of_the_Constitution/Report_1)>, accessed 22 November 2018.

<sup>11</sup> Parliament of Australia, ‘Senators’, <[aph.gov.au/Senators\\_and\\_Members/Senators/](http://aph.gov.au/Senators_and_Members/Senators/)>, accessed 22 November 2018.

<sup>12</sup> For a comprehensive explanation of the changes to the system see: Parliamentary Library, Research Paper Series, 2017–18, 25 January 2018, *The new Senate voting system and the 2016 election*, <[parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprpub%2F5753272%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprpub%2F5753272%22)>, accessed 22 November 2018.

‘provide the people with the power to express and to have their voting intent upheld.’<sup>13</sup>

- 2.15 The changes to Senate voting contained a ‘savings provision’ where ballot papers with fewer than six preferences were still counted. Mr Antony Green noted:

Were it not for the savings provisions, the 908,305 ballot papers with fewer than six preferences would have been excluded from the count and the informal vote would have returned to the double digit levels that existed prior to 1984.<sup>14</sup>

- 2.16 Nonetheless, as demonstrated by Table 2.1, 86.8 per cent of voters completed six or more preferences above the line.

- 2.17 Further analysis provided by Mr Green suggests that individual state patterns were influenced by state-specific issues:

- There was a higher incidence of 1-only voting in NSW, perhaps caused by the state having a higher proportion of voters from non-English speaking backgrounds. It may also be due to the dogged campaign by radio presenter Ray Hadley to argue that voters only needed to number a single square.
- In Tasmania and the ACT, both of which use the candidate based Hare-Clark system to elect local Assemblies, there was a much higher rate of below the line voting.<sup>15</sup>

## Table 2.1 Preference category of ballot papers by state

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<sup>13</sup> JSCEM, May 2014, *Interim report on the conduct of the 2013 Federal Election: Senate voting practices*, p. 64, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report)>, accessed 22 November 2018.

<sup>14</sup> Antony Green, *Submission 30*, p. 9.

<sup>15</sup> Antony Green, *Submission 30*, pp. 9-10.

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**% of Ballot papers with number of preferences**

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<b>State</b>	<b>1</b>	<b>2–5</b>	<b>6</b>	<b>7–12</b>	<b>&gt;12</b>	<b>BTL</b>
NSW	4.7	4.1	80.9	4.3	0.6	5.4
VIC	2.4	3.6	83.5	4.5	0.8	5.3
QLD	2.0	3.3	83.2	4.5	0.8	6.1
WA	2.2	3.4	83.5	4.2	1.2	5.5
SA	2.3	3.0	79.2	5.2	1.7	8.5
TAS	1.1	2.2	61.1	5.0	2.5	28.1
ACT	1.3	1.8	70.6	11.1	..	15.2
NT	2.3	2.8	50.8	35.5	..	8.6
<b>National</b>	<b>3.0</b>	<b>3.6</b>	<b>81.2</b>	<b>4.8</b>	<b>0.8</b>	<b>6.5</b>

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*Source: Antony Green, Submission 30, p. 9. Note: there were only seven Senate groups in the Northern Territory and 10 in the ACT, which resulted in many more voters going beyond six preferences.*

2.18 Although there were some criticisms<sup>16</sup> of the Senate voting reforms submitted to the inquiry, on the whole, the reforms were positively regarded by the majority of electoral experts who made submissions to this inquiry. Dr Kevin Bonham submitted an analysis of the key concerns raised about the new voting system and concluded:

Every one of the concerns I have mentioned above that was raised by opponents of the new system, and that it is within my ability to assess, has turned out to be either vastly exaggerated or completely false.<sup>17</sup>

## **Count methodology and quotas**

2.19 Given the change from compulsory preferential voting to optional preferential voting, several expert submitters highlighted the need to review the count methodology and quotas used for the election of Senators.

2.20 Dr Kevin Bonham submitted that the continued use of the unweighted Inclusive Gregory system for surplus distributions may lead to a situation

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<sup>16</sup> See: Malcolm Mackerras, *Submission 139*; Chris Curtis, *Submission 45*; Ross Drynan, *Submission 143*; Family Voice Australia, *Submission 27*

<sup>17</sup> Kevin Bonham, *Submission 74*, p. 13.

where the wrong Senator is elected due to increased value at transfers, when they should have otherwise decreased. He argues for a change to Weighted Inclusive Gregory, as used in Western Australia, explaining the impact in Tasmania, which had a high proportion of below-the-line votes:

In total, by my calculations, 3214 papers that were primary votes for Senator Lambie (either above or below the line) reached Senator Bushby at a remaining value of .064 votes per paper. Most of these arrived on the exclusion of Steven Martin. As Senator Bushby had 1.41 quotas in the Weighted Inclusive Gregory system the value of these papers remaining from his surplus would have been reduced to .026 votes per paper. Instead, rather than having their value reduced at all, these papers were passed on at a new value of .091 votes per paper. This meant that if a voter voted for Lambie and then Bushby they got 6.5% of an extra vote for their vote. Other voters would have lost vote value to this problem.

Overall almost 1% of Tasmanian voters had their votes increased in value after already helping to elect two candidates, and the net value of the distortion exceeded the final seat margin.<sup>18</sup>

2.21 Mr Antony Green also identified the need for improvement in the count process:

When a candidate is excluded from the count, their distribution is conducted on the number of VOTES they have. When a candidate is elected and their surplus distributed, the size of their surplus is based on the number of VOTES they have, but its composition is determined by the number of BALLOT PAPERS they hold. This can produce some serious distortions to the flows of preferences from elected candidates and determine who wins the final seats in a state.<sup>19</sup>

2.22 Dr Bonham also argued for a progressively reducing quota, stating:

In the previous Senate system, with an exhaust rate of close to zero, it made sense to keep the same quota for the whole count. In the new system, as exhaust increases through the count, keeping the quota the same means that candidates will keep receiving votes even after their election may be mathematically assured, until they hit the original quota. It also means that the elected candidate retains more votes than they need in order to secure election,

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<sup>18</sup> Kevin Bonham, *Submission 74*, p. 13.

<sup>19</sup> Antony Green, *Submission 30*, p. 11.

and hence that preferences flowing to them do not carry as much value as they could.<sup>20</sup>

2.23 The Proportional Representation Society further submitted:

There were instances of people having more than one vote's worth of influence in all states except South Australia because transfer values rose after certain ballot papers had helped elect someone. That phenomenon can only occur at the expense of certain other voters as the total formal votes and quota are determined at the start of the scrutiny.<sup>21</sup>

2.24 Dr Bonham, the Proportional Representation Society and Electoral Reform Australia all called for the Meek System to be adopted for the Senate count,<sup>22</sup> while Mr Green recommended that a technical report be commissioned on the mathematical formulas behind the distribution of preferences for surplus to quota votes.<sup>23</sup>

2.25 The Committee notes the concerns of electoral experts regarding the count methodology and quota surplus and agrees that it is timely to review the count and surplus transfer methodology to ensure that it most accurately reflects the will of voters under the new Senate voting system.

## **Recommendation 1**

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**2.26 The Committee recommends that the Australian Government commission a technical report on the most appropriate count and surplus transfer methodology for Senate elections.**

**2.27 This technical report should consider the need for a progressively reducing quota.**

2.28 Further, in reviewing the evidence, the Committee expresses its support for the Senate voting system, including the retention of the 'savings provision' for a single 1 above the line. The savings provision may prove to be unnecessary for elections after the public is used to voting in the new system

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<sup>20</sup> Keven Bonham, *Submission 74*, pp. 14-15.

<sup>21</sup> Proportional Representation Society of Australia, *Submission 102*, p. 11

<sup>22</sup> Kevin Bonham, *Submission 74*, Proportional Representation Society of Australia, *Submission 102*, Electoral Reform Australia, *Submission 61*. See also *Committee Hansard*, Adelaide, 17 November 2016

<sup>23</sup> Antony Green, *Submission 30*.



and this should be kept under review. The 'savings provision' and its application to the House is discussed in more detail in Chapter 4.

## **Count and scrutiny of Senate ballot papers**

2.29 Counting changes were put in place as a result of post-2013 election reviews and the changes to Senate voting. The Australian Electoral Commission (AEC) explained:

Under the previous [Senate voting] system, approximately 97 per cent of ballot papers were cast above the line which could easily be entered in the AEC count system. ... Less than half a million (three per cent) Senate ballot papers contained below the line votes, and preferences had to be manually entered.

As a result of the legislative changes, data entry was needed for all 14.4 million Senate ballot papers.

In just over three months the AEC developed, tested, certified and operationalised a new end-to-end solution to count and distribute Senate preferences. The semi-automated process, using scanning and image recognition technology to capture preferences, was developed with a contractor – Fuji Xerox Document Management Services (FX DMS). ...

After election day, Senate ballot papers were progressively despatched to a CSS site in the capital city of each state and territory. Senate ballot papers were scanned to capture an image of everything contained on the ballot paper, except the watermark. Preferences were captured using optical character recognition and verified by a human operator.

The process required the movement of 14.4 million ballot papers, in over 34 000 transport containers, from over 8 000 polling places, via the divisional outposted centre, to a CSS site in each state and territory. At these sites, operating two shifts, seven days a week, over 800 staff scanned and verified preferences for 631 candidates. Counting and distributing preferences required scanning of 14 406 706 ballot papers and entry into the count system by a human operator of 101 535 258 preferences.

All ballot papers were passed to a second human operator for full blind entry of all preferences on the ballot paper and comparison with scanned and verified data. Once verified, a digital record was generated representing the preferences on the ballot paper.

Any discrepancy during verification directed the image and data preference record to the AEC for adjudication and resolution. Scrutineers viewed the

scanning, verification and adjudication processes and could challenge at any time.<sup>24</sup>

2.30 Serious concerns were raised about the capacity of scrutineers to adequately scrutinise the Senate count due to the central count and the computerised count.

2.31 The Australian Greens raised concerns that the large temporary workforce employed by Fuji Xerox for scanning and data entry of Senate ballot papers did not have background in the electoral process. They submitted:

We were concerned by some reports from our scrutineers of data entry operators failing to record all marks upon the ballot, or attempting to independently make formality decisions. These staff should instead record the markings they observe, and if they are unsure they should escalate the ballot to an AEC officer.<sup>25</sup>

2.32 The Australian Greens further submitted that the appointment of sub-contractors to manage the Senate count 'may unfairly limit the number of scrutineers that could be appointed, and make a practical scrutiny of the count impossible.'<sup>26</sup> This process was outlined:

Ballots were processed via queues – some of these queues were “end” queues, meaning that ballots which passed through the queues without a challenge from a scrutineer; or a request from a data entry operator for further assistance, would receive no further scrutiny.

...

We have some concern that a large number of ballots followed the following process:

Optical Computer Recognition (OCR)–Perfect Capture–Data entry 2–admitted to count.

Such a ballot would have only gone through been seen by one member of the data entry personnel during the count. Additionally, the restrictions placed upon the maximum number of scrutineers meant that it was impossible for a candidate’s scrutineers to watch the large number of workstations (in Western Australia, at times more than thirty) processing the “DataEntry 2” queue

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<sup>24</sup> Australian Electoral Commission (AEC), *Submission 66*, pp. 9-10.

<sup>25</sup> Australian Greens, *Submission 89*, p. 16.

<sup>26</sup> Australian Greens, *Submission 89*, p. 15.

- 2.33 The submission notes that this has not been an issue at previous elections as the count was conducted by AEC staff. Ms Gemma Whiting, a scrutineer for the Liberal Party of Australia (WA Division) confirmed this evidence, raising similar concerns.
- 2.34 It was also apparent from Ms Whiting's submission and subsequent evidence to the Committee in Perth that there was a misunderstanding on the part of some Fuji Xerox staff about the role of scrutineers, with some tension arising regarding access to the centre and challenging votes.<sup>27</sup> The Queensland Liberal National Party (LNP) also confirmed reports of scanning staff resisting the escalation of challenges to AEC officials.<sup>28</sup>
- 2.35 Ms Whiting stated:
- In theory the system when explained sounds thorough and an improvement on past practices. However, as a scrutineer what was encountered was continuing issues of Fuji Xerox staff trying to rule on formality instead of AEC officials. There was a strong culture of casual contracted data entry operators who would not allow scrutineers to adequately perform their function and a system that is designed to limit effective scrutiny of the ballots.<sup>29</sup>
- 2.36 The LNP Campaign Director stated that the experience with Fuji Xerox staff in Brisbane was good but also noted:
- ...when they were scanning and processing over 24 hours, I do not think it is reasonable to expect major political parties, let alone independents and minor parties, to have scrutineers at a counting centre for 24 hours. We had teams there throughout the scrutiny process, and I know that the Labor Party had people there most of the time, but that was it. It was a difficult process there. There is also a need for better training for some of those operators at the centre. If a vote was being challenged later in the piece, they were not following their due process where that vote would be looked at by a supervisor. Those issues were resolved; it comes down to a training issue.<sup>30</sup>
- 2.37 A large part of the challenge for scrutineers was the technology used to scan the votes and the legibility of scanned ballot papers. Both the speed of scanning and 'zooming out' of scanned papers made them difficult to read.

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<sup>27</sup> Gemma Whiting, *Submission 99; Committee Hansard*, 18 November 2016, Perth, pp. 32-37.

<sup>28</sup> Liberal National Party, *Submission 68*, p. 4.

<sup>29</sup> Gemma Whiting, *Submission 99*, p. 2.

<sup>30</sup> Lincoln Folo, Campaign Director, Liberal National Party of Queensland, *Committee Hansard*, 25 November 2016, Brisbane, p. 28.

2.38 Ms Whiting noted that in the new scanning system once the 'enter' button had been hit the ballot went through and was irretrievable. Ballot papers would flash onto the screen for sometimes only 2 seconds before the casual data entry staff would hit 'enter' and the ballot paper would be gone. Ms Whiting reported that if a scrutineer asked a casual data entry operator to slow down complaints were made by the casual data entry personnel to Fuji Xerox supervisors.<sup>31</sup>

2.39 The Australian Greens also raised the same concerns about how fast ballot papers were being reviewed, and the inability to recall the ballot paper once it had been accepted:

The amount of time provided for scrutiny of each senate ballot has decreased compared to previous senate elections... the great majority of ballots only appeared on the computer screen for a matter of seconds. As formality decisions were being made from scanned images it was difficult for scrutineers to view the preferences markings in the full context of the ballot paper.

Were a member of the counting staff to consider a ballot's form entered, they had simply to press "enter" on their workstation and the ballot would be entered into the count. This left scrutineers with a very short window to say "challenge"...

The software system in use did not allow the ballot previously on the screen to be recalled, even by AEC officials in the room.<sup>32</sup>

2.40 The Electoral Reform Society of South Australia also reported difficulties in reading the computer terminals and noted that this places independent scrutiny at risk.<sup>33</sup>

2.41 Scrutineers perform an essential role in the conduct of elections, satisfying candidates about their fair treatment and ensuring integrity of electoral processes. Although the AEC is confident that the integrity of the Senate count was maintained, the Committee is seriously concerned that this confidence was not shared by scrutineers.

2.42 In its report on the AEC's procurement of services for the 2016 election, the Australian National Audit Office (ANAO) recommended:

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<sup>31</sup> Gemma Whiting, *Submission 99*, p. 4.

<sup>32</sup> Australian Greens (NSW), *Submission 89*, pp. 15 – 16.

<sup>33</sup> Electoral Reform Society of South Australia, *Submission 65*, p. 4.

When the Australian Electoral Commission uses computer assisted scrutiny in future federal electoral events, the integrity of the data is verified and the findings of the verification activities are reported.<sup>34</sup>

2.43 In response to the ANAO's report, the AEC reaffirmed its confidence in the process and stated:

For future events, the AEC will continue to evaluate and if appropriate, implement additional verification mechanisms to maintain the integrity of the count. The results of verification activities undertaken at future electoral events may be reported in support of the scrutineering process.<sup>35</sup>

2.44 The Committee has received no evidence to suggest that the results were in any way compromised by the counting process. However, noting the evidence put to this inquiry by scrutineers and the ANAO's findings, and recognising the challenges in scrutinising a computer vs manual count, the Committee does find that there is a need to make changes to the scrutiny of the Senate count.

2.45 The Electoral Act currently limits the number of scrutineers to no greater than the number of officers who are engaged in a scrutiny of counting.<sup>36</sup> Submitters noted that this was interpreted as AEC officers, not data entry officers (Fuji Xerox staff) so scrutineers could not observe all terminals in operation.

2.46 However, given the difficulties with observing the electronic count, the Committee is not convinced that more candidate scrutineers would necessarily be an adequate solution, given the challenges in scrutinising technology. Brightwell et al note:

The skills needed for the scrutiny of votes which are electronically captured and managed are obviously quite different to those needed in previous entirely paper based elections. The main reason being that information flow is not tangible and so inherently non-transparent because neither the AEC and

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<sup>34</sup> Australian National Audit Office (ANAO), January 2018, *ANAO Report No. 25 2017-18: Australian Electoral Commission's Procurement of Services for the Conduct of the 2016 Federal Election*, p. 60, <<https://www.anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election>>, accessed 22 November 2018.

<sup>35</sup> ANAO, January 2018, *ANAO Report No. 25 2017-18: Australian Electoral Commission's Procurement of Services for the Conduct of the 2016 Federal Election*, p. 60, <<https://www.anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election>>, accessed 22 November 2018.

<sup>36</sup> s. 264.

the scrutineer can be certain that the computer has faithfully captured and held the electronic ballot preferences and passed them uncorrupted to the count process. The new system only provides scrutineers with “snapshots” of individual ballots on a screen at different stages of the process. These “snapshots” identify which preference marks the computer uses in the final count. However, it is all but impossible for a scrutineer to confirm that the preference marks they saw in a “snapshot” are accurately reflected in the final preference file used for the distribution of preferences process. Given this situation new approaches to transparency are necessary to enable the combination of electronic systems and physical processes to be scrutinised effectively.<sup>37</sup>

#### 2.47 Blom et al submitted:

The recently introduced electronic Senate ballots scanning applies scrutineering procedures that are rooted in a manual process. Rather than scrutinize the process from one end to the other, the scrutiny is at intervals in the process, for example, when data is sent from one system to the next, or when there is an inconsistency in the interpretation. Scrutiny at these points creates the illusion of meaningful scrutiny across the whole process, when in fact it is only providing a view of a small portion, leaving plenty of scope for the introduction of both intentional and unintentional errors. In fact a great deal of trust was vested in the security and accuracy of hardware and software provided by a number of foreign companies.

...

What should happen is that new auditing protocols should be introduced to audit the output of the process, that is, to select some paper ballots at random and use that paper evidence to check the announced result. This permits untrusted hardware and software to be used within the process, whilst still gaining assurance that the result is correct. If the process is well designed, it could give even stronger assurances than those gained from manual counting. The issue is not with the introduction of electronic scanning and counting, it is with the lack of appropriate scrutiny of what is an inherently very different process. Applying the appropriate auditing procedures will not only provide assurance of the electronic counting process, but also reduce the margin of error and provide a greater return on the introduction of electronic scanning and counting.<sup>38</sup>

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<sup>37</sup> Ian Brightwell, Richard Buckland, Roland Wen and Clancy Rye, *Submission 56*, p. 4.

<sup>38</sup> Michelle Blom, Chris Culnane, Peter Stuckey, Vanessa Teague and Rajeev Goré, *Submission 148*, p. 4.

- 2.48 Given the expertise required for technology scrutiny, Brightwell et al proposed that:
- the software and associated processes be made available for independent audit; and
  - random checks are made comparing the captured data to physical ballot papers and reports provided to candidate scrutineers.
- 2.49 The Committee agrees that a consequence of the Senate voting changes is a more complex count and a heavy reliance on automated count processes. As a result, it is more difficult, if not impossible, for candidate scrutineers to adequately scrutinise the vote. The Committee also questions how transparency is achieved in practice during a 24-hour count process.
- 2.50 Therefore changes need to be made to the Senate scrutiny process.
- Firstly, that data entry operators be considered ‘officers engaged in counting’ for the purposes of s. 264 of the Act. This would permit a greater number of candidate scrutineers to be appointed to the centralised Senate count.
  - Secondly, that a non-partisan independent expert scrutineer be appointed to each Central Senate Scrutiny centre in each state and territory to be responsible for:
    - auditing the computer systems and processes used to capture and count votes;
    - undertaking randomised checks between captured data and physical ballot papers throughout the count at a level that provides surety as to the accuracy of the system; and
    - providing reports to candidate scrutineers about their findings on a regular basis during the count.

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## Recommendation 2

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- 2.51 The Committee recommends that Central Senate Scrutiny Centre data entry operators be considered ‘officers engaged in counting’ for the purposes of s. 264 of the *Commonwealth Electoral Act 1918*.**

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## Recommendation 3

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- 2.52 The Committee recommends that a non-partisan independent expert scrutineer be appointed to each Central Senate Scrutiny Centre in each state and territory and be responsible for:**

- **auditing the computer systems and processes used to capture and count votes;**
- **undertaking randomised checks between captured data and physical ballot papers throughout the count at a level that provides surety as to the accuracy of the system; and**
- **providing reports to candidate scrutineers about their findings on a regular basis during the count.**

## Size of Senate ballot papers

2.53 The size and manageability of Senate ballot papers has been an issue of concern for several elections, as voters struggle to manage large ballot papers with small font in small polling booths. The size of the Senate ballot paper has continued to grow each election.

**Table 2.2 Senate nominations at the 2016 and 2013 elections**

Jurisdiction	Nominations (2016)	Nominations (2013)	Nominations (2014)
NSW	151	110	0
Victoria	116	97	0
Queensland	122	82	0
WA	79	62	77
SA	64	73	0
Tasmania	58	54	0
ACT	22	27	0
NT	19	24	0
<b>Total</b>	<b>631</b>	<b>529</b>	<b>77</b>

*Source: AEC, Submission 66, p. 57; AEC, Election 2013, Virtual Tally Room.*

2.54 This has significantly complicated the process of Senate voting for electors and for the Australian Electoral Commission (AEC). The AEC explained:

Additionally, the number of candidates nominating at each election continues to increase. As a result, the Senate ballot paper, in particular, continues to



grow in size (conversely, whilst font size decreases on some ballot papers) presenting challenges for voters in relation to handling, legibility and formal completion, and logistical challenges for the AEC in relation to printing, movement and transportation, and scrutiny increases.<sup>39</sup>

2.55 Mr Antony Green commented on the issues associated with very large Senate ballot papers:

It makes the voting process much more difficult for voters, because the ballot paper is much bigger than the voting space. It makes it more difficult to seal declaration envelopes. If you start getting declaration envelopes bursting because the size of the ballot paper makes it harder for the glue—because the glue is not strong enough to hold that amount of paper inside the ballot paper—you have a problem.<sup>40</sup>

2.56 The AEC also commented on how the changes to the Senate voting system and the size of the Senate ballot paper contributed to longer queues at polling places in the 2016 federal election:

The Senate voting changes, the number of candidates, the size of the Senate ballot paper and the increased number of names on the certified lists, which meant it took longer to look up voters, appear to have made voting for the Senate a longer process than in the past.<sup>41</sup>

2.57 The Electoral Reform Society of South Australia noted the practical challenge electors face in completing a very large Senate ballot paper in a small voting booth:

With the small size of the voting booth and large size of the Senate ballot paper, it was very difficult physically to balance the ballot papers for voters to ensure they were voting for the candidates they wanted to give preferences to. If the current format on Senate ballot papers remains, then the AEC needs to at least double the size of these booths.<sup>42</sup>

2.58 Several options were suggested for reducing the size of the ballot paper:

- raising party membership requirements;
- introducing party deposit fees;

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<sup>39</sup> Australian Electoral Commission (AEC), *Submission 66.15*, p. 2.

<sup>40</sup> Antony Green, *Committee Hansard*, Sydney, 16 November 2016, p. 16.

<sup>41</sup> AEC, *Submission 66*, p. 25.

<sup>42</sup> Electoral Reform Society of South Australia, *Submission 65*, p. 3.

- require locally enrolled nominators; and
- reconfiguration of the ballot paper.

2.59 Mr Green made recommendations in his submission regarding the nomination procedures for the Senate:

JSCEM should re-examine the rules for party registration and consider lifting the membership requirement or introduce a deposit fee. An alternative proposal would be to bring back the requirement for Senate nominators.<sup>43</sup>

2.60 Mr Green added:

All Senate candidates should require locally enrolled nominators, putting Independent and Party candidates on the same footing. This should begin to cull the number of candidates nominating in Senate contests. If a party has little or no membership in a state, the re-introduction of nominator requirements would make it harder for the party to nominate in every state.<sup>44</sup>

2.61 Mr Michael Maley recommended 2 further changes to the Senate ballot paper for reducing the number of Senate groups:

First, the ballot paper could be slightly reconfigured so that instead of having a single column for all ungrouped candidates, there would be two columns of ungrouped candidates, the first listing those against whom a party affiliation was to be shown, and the second listing those who were to have no affiliation (or the word “Independent”) shown. These columns could bear labels such as “Ungrouped Party Candidates” and “Ungrouped Non-Party Candidates”. An attraction of this arrangement for the candidates in question is that it could actually make it easier for their supporters to find them on the ballot paper: rather than having to search through all the above the line groups, they could simply be directed to look for the penultimate column below the line.

Secondly, the deposit structure could be changed, so that candidates would all have to pay a basic deposit at about the current level, but candidates who wished to be grouped would be required to pay a substantial additional deposit (for example, a sum equivalent to the total of the basic deposits of all of the candidates of the group, a formula which would also tend to discourage groups from running an unnecessarily large number of a candidates).<sup>45</sup>

2.62 In its report on Senate voting practices, this Committee’s predecessor recommended changes to provide stronger requirements for party

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<sup>43</sup> Antony Green, *Submission 30*, p. 12.

<sup>44</sup> Antony Green, *Submission 30*, p. 12.

<sup>45</sup> Michael Maley, *Submission 5*, p. 2.

registration, aimed at ensuring the veracity of political parties. These recommendations would have also potentially reduced the number of parties able to run for the Senate.<sup>46</sup> These recommendations were not accepted. However any changes may not have greatly impacted the size of the ballot paper, as between the 2013 and 2016 elections, despite the overall national increase of nearly 100 candidates, there was only an increase of three registered political parties.<sup>47</sup>

- 2.63 The Committee notes the difficulties experienced by many electors completing the very large Senate ballot papers in the 2016 federal election and the valuable suggestions put forward by submitters to reduce the size of the Senate ballot paper.
- 2.64 The Committee further notes that the double dissolution election significantly lowers the quota at which a Senator is elected and that this may have contributed to the increase in candidates at this election, with additional candidates seeking election on the basis of these increased odds.
- 2.65 Nonetheless, the Committee considers that it is timely to review party registration requirements. While the Committee does not wish to discourage people from forming political parties and engaging in our democratic processes, the Committee also does not want voters to be confronted with such a large ballot paper that they cannot find who they want to vote for.
- 2.66 Increasing political party membership requirements strikes an appropriate balance between these two aims. Therefore the Committee is recommending that party registration criteria be strengthened and all current parties be deregistered and required to re-register against the strengthened criteria.
- 2.67 In addition, the Committee questions the provisions in the Act that provides automatic political party status to any parliamentary party that has a member in the Parliament. If current Senators and Members have community support, meeting general party registration requirements should not be onerous.

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<sup>46</sup> JSCEM, May 2014, *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*. Recommendations 4 and 5, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report)>, accessed 22 November 2018.

<sup>47</sup> AEC, *Submission 66*, p. 56.

## Recommendation 4

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2.68 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to:

- increase party membership requirement to a minimum 1,000 unique members who are not relied upon for any other party in order for a federally registered party to field candidates in a federal election; and
- require that parliamentary parties not be exempt from party registration requirements by virtue of their Parliamentary representation.

## Recommendation 5

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2.69 The Committee recommends that all political parties be required to meet the new party registration criteria within three months of the legislation being enacted or the party shall be automatically deregistered.

## Implementation of post-2013 reforms

2.70 The third key feature of the 2016 election was the full implementation of the post-2013 election reforms. Following the loss of ballots in the 2013 Western Australian Senate election, subsequent voiding of the 2013 WA Senate results, and rerun of that election, there were a range of reforms implemented as a result of the 'Keely Report',<sup>48</sup> ANAO reports<sup>49</sup> and recommendations from this Committee's predecessor.<sup>50</sup>

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<sup>48</sup> AEC, 2013, *Inquiry into the 2013 WA Senate Election*, <[https://www.aec.gov.au/About\\_AEC/Publications/Reports\\_On\\_Federal\\_Electoral\\_Events/2013/keely-report.htm](https://www.aec.gov.au/About_AEC/Publications/Reports_On_Federal_Electoral_Events/2013/keely-report.htm)>, accessed 22 November 2018.

<sup>49</sup> Australian National Audit Office (ANAO), Audit Report No. 31 2013–15, *The Australian Commission's storage and transport of completed ballot papers at the September 2013 Federal general election*, <<https://www.anao.gov.au/work/performance-audit/australian-electoral-commissions-storage-and-transport-completed-ballot>>, accessed 22 November 2018, May 2014; Audit Report No. 4 2014–15, *Second follow-up audit into the Australian Electoral Commission's preparation for and conduct of federal elections*, November 2014, <<https://www.anao.gov.au/work/performance-audit/second-follow-up-audit-australian-electoral-commissions-preparation-and-conduct>>, accessed 22 November 2018.

<sup>50</sup> JSCEM, April 2015, *The 2013 Federal Election: Report on the conduct of the 2013 election and matters related thereto*,

- 2.71 The JSCEM report looking at the events of the 2013 election found that the loss of 1 300 WA Senate ballot papers and subsequent investigations pointed to a 'widespread systematic management and ballot accounting failures within the AEC that require systematic reform.'<sup>51</sup>
- 2.72 In its submission to this inquiry, the Australian Electoral Commission (AEC) stated:

The 2013 federal election will be remembered for the failure of the Western Australian Senate election. After the loss of ballot papers, the AEC committed to significant change to ensure the delivery of trusted, consistently reliable, high quality and high integrity electoral events and services.

This period saw comprehensive reforms to election planning, policies, procedures, and conduct, implementing the recommendations from external reports by Mr Mick Keelty AO APM and the Australian National Audit Office (ANAO), and internally driven reforms.<sup>52</sup>

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<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Final\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Final_Report)>, accessed 22 November 2018.

<sup>51</sup> JSCEM, April 2015, *The 2013 Federal Election: Report on the conduct of the 2013 election and matters related thereto*, Canberra, p. 5, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Final\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Final_Report)>, accessed 22 November 2018. This report outlines in detail the events that occurred in 2013 as well as investigations by Mick Keelty AO and the ANAO.

<sup>52</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 1.

2.73 The AEC outlined the key policy and procedural changes put in place for this election, being:

- national consistency through new and reviewed policies, standard operating procedures, election delivery planning and other templates, guidance and tools
- improved contracting framework, logistics and materials management
- improved recruitment and training to support the professionalism of the permanent and temporary workforce
- new ballot paper handling processes from printing to authorised destruction
- polling official training emphasising ballot paper principles, handling and security practices
- clear identification of staff and scrutineers at polling places and scrutiny centres
- character checks for selected and supervisory temporary election staff
- improved waste management at polling centres and outposted centres.<sup>53</sup>

2.74 The implementation of these changes was made public by the publication of the *2016 Federal Election Service Plan*.<sup>54</sup>

2.75 The Committee has engaged closely with the AEC in the implementation of these reforms. The Committee receives regular briefings from the AEC and briefings from the ANAO when appropriate. Through its inquiry into the AEC's annual report, the Committee has formalised its oversight of the AEC and will be reporting regularly on relevant issues.

## **Workforce planning and management**

2.76 Management of the workforce for any electoral event is complex. The Australian Electoral Commission (AEC) noted that this is an issue of concern for electoral management bodies in general:

The AEC's challenges in recruiting and training such a large number of workers for a short period of time are not unique. A working group of seven Commonwealth national election management bodies (EMBs) met in 2015 to discuss common challenges relating to very large temporary workforces

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<sup>53</sup> AEC, *Submission 66*, p. 9. See also *Submission 66*, Appendix A.

<sup>54</sup> AEC, *Submission 66*, p. 9.

delivering services in a time-compressed, highly decentralised electoral process.<sup>55</sup>

2.77 As acknowledged by the AEC, recruitment and training of staff was a key focus of the Keelty, ANAO and JSCEM reviews of the 2013 election. In response, the AEC submitted:

After the 2013 federal election the AEC undertook its largest ever workforce reform project for election staffing. This included:

- a wholesale review of the approach to training for both temporary and APS staff
- the development of an operational workforce planning model
- a feasibility study into options regarding election recruitment
- the introduction of character checks for senior polling staff.<sup>56</sup>

2.78 However, the AEC further submitted that:

...to fully address the expectations outlined above [Keelty, ANAO and JSCEM reviews], fundamental change is also required to the methodologies underpinning recruitment, induction and performance management of temporary staff across the employment lifecycle, including its HR systems: to do so is outside the AEC's current resources.<sup>57</sup>

2.79 This view was supported by feedback on workforce experience—despite the improvements made by the AEC, some staff still felt under-prepared for the delivery of the election. The Community and Public Services Union (CPSU) submitted that staff raised concerns about the short time frame between the release and implementation of the new Standard Operating Procedures stating:

Members informed the CPSU that the Standard Operating Procedures produced were bogged down in electoral jargon and were far too complex to grasp in the extremely short time they were given to absorb them. The suite of Standard Operating Procedures for the election totalled 14, all in excess of 25 pages each, with 13 supporting guides for the procedures.

The procedures were also updated continually (sometimes a few hours prior the relevant event). For example, the ballot paper *Standard Operating Procedures* were updated the Friday before polling day. The CPSU has been informed that

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<sup>55</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 2.

<sup>56</sup> AEC, *Submission 66*, p. 47.

<sup>57</sup> AEC, *Submission 66*, p. 47.

a large number of staff were not able to review the new policy prior to commencing the scrutiny of ballot papers. Most did not review the policy at all.<sup>58</sup>

2.80 In its interim report on AEC modernisation, the Committee identified a series of urgent reforms required to be addressed, namely:

- modernising the current paper-based system and integrating information technology systems;
- new and enhanced training for temporary election staff; and
- technical amendments to legislation.<sup>59</sup>

2.81 The Government has not yet provided a final response to the Committee's report but the AEC has provided the following progress update:

- a business case is being developed in consultation with the Department of Finance, the Digital Transformation Agency and other electoral management bodies to replace the AEC's legacy IT systems;
- an app has been developed to assist voters with checking enrolment, polling places and waiting times and engage with the AEC;
- Electronic Certified List (ECL) system use will be doubled at the next federal election and 'ECL Lite'—involving lower cost devices—is being developed with an aim to be trialled at the next election; and
- new training tools are being produced for both temporary and permanent staff.<sup>60</sup>

2.82 While the Committee is strongly supportive of the need to adequately fund the AEC to undertake the transformation necessary to deliver Australia's electoral system, it also encourages the AEC to continue to be innovative in how it recruits both temporary and permanent workforces.

2.83 For example, People with Disability Australia called on a greater effort to be made to employ people with disabilities. They submitted that 'the current commitment under [the AEC's] disability plan has so far failed to increase the number of people with disability employed'.<sup>61</sup>

2.84 The Committee notes that there are challenges unique to each state that need to be managed on a local level. For example, the AEC State Manager for

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<sup>58</sup> Community and Public Services Union (CPSU), *Submission 92*, p. [4].

<sup>59</sup> The Committee's recommendations are included at Appendix D.

<sup>60</sup> AEC, *Submission 66.9*

<sup>61</sup> People with Disability Australia, *Submission 124*, p. 4.



Western Australia states that a significant feature of the Western Australian workforce is the fly-in, fly-out (FIFO) workforce:

We again provided services at Perth Airport during the last two weeks of polling specifically to cater for the FIFO workforce, and collected 12,051 declaration votes. We visited five mine sites with remote mobile polling runs, and FIFO workers were also able to vote at other early voting centres across WA and by post. ...

Polling hours were set to be in line with flight schedules. We worked with the airport corporation and FIFO groups to understand what the flight schedules were, and they were set to be in line with when the FIFO workers were at the airport and leaving for their workplaces. Hours of polling at all terminals were conducted over a two-week period of weekdays only and did not include polling day. Polling hours were split, with a separate morning and afternoon shift at Cobham, Skippers and T1, but it was a full-day shift at T2 and T3.

Security issues and space limitations required us to move all polling materials out of the airport each night and put them back into AEC premises. The staff arrived very early in the morning each morning to pick them up again and take them back out to the airport. So there was a fair amount of cooperation between us and the airport corporation in order to get around those security issues. We could not store there but we had to do polling there because we have such a big FIFO workforce. We just had to manage that.<sup>62</sup>

- 2.85 These issues are not unique to federal elections and would also be an issue for state electoral management bodies. The Committee understands that electoral management bodies work closely together on a range of matters and would encourage greater cooperation on workforce management.

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<sup>62</sup> Marie Nielson, Australian Electoral Officer and State Manager for Western Australia, *Committee Hansard*, 18 November 2016, Perth, p. 1.



## 3. Voter enrolment and participation

- 3.1 The state of the electoral roll and the rate of voter turnout are key indicators of the health of Australia’s democratic system. By any international measure, Australia does extraordinarily well on both these fronts, with comparatively high enrolment and participation numbers. This is largely due to compulsory voting and the entrenched habits of Australian voters.<sup>1</sup>
- 3.2 The culture of voting in Australia and supporting the local school or community organisation fundraising through a sausage sizzle is so strong that the Australian National Dictionary Centre declared ‘democracy sausage’ to be Australia’s 2016 ‘word of the year’.<sup>2</sup>
- 3.3 While our democratic system remains robust, with a record number of eligible electors enrolled to vote, concerning trends exist. At the 2016 federal election, voter turnout reached record low levels from a 94 per cent turnout in 2007 to a 91 percent turnout in 2016—the lowest since compulsory voting was introduced in 1925. Enrolment and participation figures for some of Australia’s Indigenous communities remains low in comparison to the wider community of eligible voters, with enrolment rates estimated to be around 58 per cent<sup>3</sup>.

### The Electoral Roll

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<sup>1</sup> Malcolm Baalman, *Submission 64*, p. 3.

<sup>2</sup> BBC News, ‘The meaning of “democracy sausage”, Australia’s word of 2016’, 14 December 2016, <<https://www.bbc.com/news/world-australia-38311263>>, accessed 8 August 2018.

<sup>3</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 18

## Enrolment

- 3.4 Enrolment to vote is the first step in ensuring that Australian citizens are electorally franchised. The state of the electoral roll is, therefore, critical to the overall vitality of Australia's democracy. Under section 92(2) of the Electoral Act, the Australian Electoral Commission (AEC) has responsibility 'for the preparation, maintenance and revision of the Rolls'.<sup>4</sup>
- 3.5 In the lead-up to the 2016 election, the AEC achieved its 95 per cent enrolment target for eligible electors. At the close of the rolls, 15 676 659 people from a total population of about 16.5 million eligible voters were enrolled. This is up from an enrolment rate of 92.4 per cent at the 2013 election, an addition of 963 860 people to the roll, and is the largest enrolment in Australia's history.<sup>5</sup> The Committee congratulates the AEC for this achievement.
- 3.6 This achievement included a decrease in people 'missing' from the electoral roll by nearly 400 000, from an estimated 1 210 000 in 2013, to 822 000 in 2016. People 'missing' from the roll are eligible voters who are not enrolled, as estimated using Australian Bureau of Statistics (ABS) data.<sup>6</sup>
- 3.7 This upward trend in enrolment has continued since the election. As at 31 March 2018, of a total population of 16 727 896 eligible voters, 16 115 265 people have been included on the roll—96.3 per cent of eligible voters.<sup>7</sup>
- 3.8 According to the AEC, the improved state of the electoral roll is due to 'the AEC's concerted focus on enrolment since the 2013 federal election and included a range of roll stimulation activities, including Federal Direct Enrolment and Update (FDEU)'.<sup>8</sup>
- 3.9 FDEU allows the AEC to use data gathered by other government agencies, such as Centrelink, and the national driver license database (NEVDIS) to update the electoral roll, without requiring the intervention of the electors concerned. Eligible electors who are found missing from the electoral roll are sent a letter confirming their enrolment/re-enrolment and requiring them to

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<sup>4</sup> *Commonwealth Electoral Act 1918*, section 92(2).

<sup>5</sup> AEC, *Submission 66*, p. 11.

<sup>6</sup> Initial estimates at the Close of the Rolls on 23 May 2016, had this figure as 816 000. AEC, *Submission 66*, p. 11; AEC, *Submission 66: 2*, Attachment A, p. 1.

<sup>7</sup> AEC, 'Enrolment statistics', 19 April 2018, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/)>, accessed 3 May 2018.

<sup>8</sup> AEC, *Submission 66*, p. 11.

contact the AEC if any of their up-dated details are incorrect. The system, therefore, operates in an opt-out, rather than an opt-in, manner.<sup>9</sup>

- 3.10 Between 2013 and the 2016 election, FDEU resulted in 278 727 new enrolments, 151 903 re-enrolments and 2 898 486 enrolment up-dates.<sup>10</sup>
- 3.11 JSCEM had recommended FDEU in its inquiry into the implications of the *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW)*, and in its review of the 2010 federal election. FDEU was legislated in 2012.<sup>11</sup>
- 3.12 Together with FDEU, the AEC's Online Enrolment Service (OES) is the leading gateway onto the electoral roll for eligible voters. Between 2013 and 2016, OES resulted in 365 448 new enrolments, 72 657 re-enrolments, and 2 192 574 enrolment up-dates.<sup>12</sup>
- 3.13 During the close of the rolls period in 2016, OES was the most common channel for enrolment transactions (enrolment, re-enrolment and enrolment up-date), with 84 per cent (or 576 363) of all transactions for this period completed online.<sup>13</sup>
- 3.14 Apart from FDEU and OES, the AEC engages in a range of other activities to encourage voter enrolment, including 'mail, online, phone and one-on-one contact, plus general public awareness activities'. The AEC 'also attends citizenship ceremonies'.<sup>14</sup>

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<sup>9</sup> For information on FDEU, see: Ed Killesteyn, 'Federal Direct Enrolment and Direct Update,' 3 April 2013, <[https://www.aec.gov.au/About\\_AEC/research/caber/files/2c.pdf](https://www.aec.gov.au/About_AEC/research/caber/files/2c.pdf)>, accessed 2 May 2018; and AEC, 'Direct enrolment and update', 8 September 2016, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/About\\_Electoral\\_Roll/direct.htm](https://www.aec.gov.au/Enrolling_to_vote/About_Electoral_Roll/direct.htm)>, accessed 2 May 2018.

<sup>10</sup> AEC, *Submission 66*, p. 17.

<sup>11</sup> See: Joint Standing Committee on Electoral Matters (JSCEM), *Inquiry into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections*, February 2010, recommendation 1, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/autobill2009/report/fullreport.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/autobill2009/report/fullreport.pdf)>, accessed 22 November 2018; JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, recommendation 1, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/elect10/report/final%20report.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/elect10/report/final%20report.pdf)>, accessed 22 November 2018.

<sup>12</sup> AEC, *Submission 66*, pp. 17-18.

<sup>13</sup> AEC, *Submission 66*, p. 11.

<sup>14</sup> AEC, *Submission 66*, pp. 17-18.

- 3.15 The activities of some non-governmental organisation may also lead to higher rates of enrolment and voter participation. Mr Paul Oosting, National Director of GetUp!, for instance, informed the Committee that ‘each and every election we run voter enrolment drives, encouraging all potential voters to join the roll regardless of the party they may choose to vote for’.<sup>15</sup>
- 3.16 While enrolment levels remain consistently high across the nation, there was some variance between jurisdictions. The Australian Capital Territory enjoyed the highest rate of enrolment, at 99.7 per cent, with the Northern Territory having the lowest level, at 81.1 per cent. New South Wales, Victoria, South Australia, and Tasmania each had rates of around 96 per cent. Table 3.1 compares enrolment by state/territory.

**Table 3.1 Enrolment rate by state/territory**

Jurisdiction	Enrolment Rate	Federal Enrolment	Estimated Eligible Enrolment Population
NSW	96.0%	5 087 171	5 301 018
Vic.	96.0%	3 963 538	4 130 337
Qld	93.7%	3 075 709	3 281 097
WA	92.2%	1 578 462	1 711 106
SA	95.9%	1 183 049	1 234 078
Tas.	96.2%	373 584	388 404
ACT	99.7%	282 126	283 117
NT	81.1%	133 020	163 941
National	95.0%	15 676 659	16 493 096

*Source: AEC, Submission 66, p. 13.*

- 3.17 The low enrolment rate for the Northern Territory and the comparatively lower rates for Queensland and Western Australia reflect the higher proportion of Indigenous voters in those jurisdictions. Indigenous enrolment and turnout is examined in more detail below.
- 3.18 Rates of enrolment also vary significantly according to age cohort. The breakdown of enrolment according to age cohort appears in Table 3.2.

<sup>15</sup> Paul Oosting, National Director, GetUp!, *Committee Hansard*, Canberra, 31 January 2018, p. 34.

**Table 3.2 Enrolment by age group**

Age (years)	Enrolment rate
18	71.1%
19	83.7%
20-24	90.4%
25-39	93.3%
40-59	96.1%
60 and over	98.7%

*Source: AEC, Submission 66, p. 13.*

3.19 While youth enrolment remains comparatively low, current enrolment rates are higher than historical levels. The AEC submitted:

Since 2013, enrolment participation by 18-24 year olds has substantially increased from historical averages below 80 per cent to over 86 per cent for the 2016 federal election. The increase in youth participation is the basis for the increase in overall enrolment participation and may be attributed to electronic improvements such as the online enrolment service, and FDEU.<sup>16</sup>

3.20 Currently, enrolment is only possible until the ‘close of the rolls’, set at 8pm 7 calendar days following the issue of writs for the election. ‘After this date, you cannot enrol or update your details on the electoral roll for the federal election.’<sup>17</sup> A number of submitters suggested ways to increase enrolment numbers. The Australian Greens, for example, recommended:

- that the Electoral Act be amended to permit the use of electronic or digitally formed signatures for enrolment purposes; and
- that ‘enrol-and-vote’ provisions be introduced.<sup>18</sup>

3.21 Senator Steele-John, of the Australian Greens, introduced a Bill to enact ‘enrol-and-vote’ measures in June 2018 which was referred to the Committee for inquiry and report. The Committee is currently considering this Bill.<sup>19</sup>

<sup>16</sup> AEC, *Submission 66*, p. 11.

<sup>17</sup> AEC, ‘Enrolment—Frequently Asked Questions’, 5 January 2017, <<https://www.aec.gov.au/FAQs/Enrolment.htm>>, accessed 12 June 2018.

<sup>18</sup> Australian Greens, *Submission 89*, p. 4.

- 3.22 The Australian Greens submitted that while the AEC acknowledges that the biggest avenue for new enrolments was the internet, the AEC ‘is not meeting the community’s expectations in terms of delivery of enrolment services’. They suggested that ‘[l]egislation should be passed to permit the use of electronic or digitally formed signatures for enrolment purposes as guided by the Electoral Act and the *Electronic Transactions Act 1999*’.<sup>20</sup>
- 3.23 The Australian Greens further expressed support for:
- ...voters being able to enrol or update their enrolment at a polling place on election day, provided they have appropriate identification such as a drivers licence or other, and then cast a declaration vote which will be included if the enrolment claim is accepted.<sup>21</sup>
- 3.24 Equality Rights Alliance also suggested this approach, recommending that the ‘experience of election day enrolment in NSW and Victoria should be examined for application to Federal elections’.<sup>22</sup>
- 3.25 Mr Ian Brightwell (private capacity) also supported the introduction of such ‘enrol-and-vote’ provisions. He submitted:
- The use of enrolment votes is now common for most states at their general elections.
- ...
- I would recommend the AEC adopts enrolment voting using similar procedures to NSW. This would result in the AEC potentially accepting into the count an extra 50 000 votes and correcting the enrolment details (and in many cases their division) of about 100 000 electors at the next general election.
- 3.26 Mr Brightwell cautioned that such provisions would require the AEC to ‘update their systems, voting procedures and training’. Additionally, the AEC would have to ‘provide electronic roll lookup devices in all voting

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<sup>19</sup> See: Parliament of Australia, ‘Commonwealth Electoral Amendment (Lowering Voting Age and Increasing Voter Participation) Bill 2018, <[www.aph.gov.au/votingage](http://www.aph.gov.au/votingage)>, accessed 22 November 2018.

<sup>20</sup> Australian Greens, *Submission 89*, pp. 3-4.

<sup>21</sup> Australian Greens, *Submission 89*, p. 4.

<sup>22</sup> Equality Rights Alliance, *Submission 133*, p. [2].



venues.<sup>23</sup> Extending the use of Electronic Certified Lists (ECL) is discussed in more detail in Chapter 6.

- 3.27 The Committee notes that there are online enrolment options made available for some circumstances and agrees online enrolment should be made available for all electors, including those with special enrolment status.
- 3.28 This would not only meet community expectations, but also align with the Government's digital transformation agenda. However, amendments may need to be made to the Act in order to allow the AEC to accept digital evidence of identity requirements.

## Recommendation 6

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- 3.29 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for online enrolment in all enrolment circumstances, provided that an appropriate digital identity verification process is in place.**

### Electoral roll accuracy

- 3.30 According to the Australian Electoral Commission (AEC), roll accuracy refers to 'the percentage of electors enrolled for the address at which they live. It is a measure of how many electors have correctly updated their address details after changing address'.<sup>24</sup>
- 3.31 The AEC conducted a Sample Audit Fieldwork between 8 and 25 May 2015 of approximately 30 440 addresses in 165 randomly drawn geographic areas across 75 divisions to gauge the accuracy of the roll. The results of that survey revealed that roll accuracy was 89.2 per cent—that is, the percentage of electors enrolled at the correct address.<sup>25</sup>
- 3.32 Mr Malcolm Baalman commented that direct enrolment and update positively impacts the accuracy of electoral rolls in jurisdictions which use it: 'with NSW, Victoria and the Commonwealth now accessing data updates from various official sources, the rolls are almost certainly the most accurate they have ever been'.<sup>26</sup>

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<sup>23</sup> Ian Brightwell, *Submission 76*, p. 4.

<sup>24</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 15.

<sup>25</sup> AEC, *Submission 66*, p. 15.

<sup>26</sup> Malcolm Baalman, *Submission 64*, p. 13.

## Roll divergence

- 3.33 Roll divergence is a serious hidden disenfranchisement caused when an elector is on a state or territory electoral roll but not on the federal roll, or vice-versa. Each state and territory maintains an electoral roll, as does the Commonwealth, with each jurisdiction having different eligibility requirements and enrolment procedures. This has led to divergence in the number of people enrolled federally compared with the state and territory level.
- 3.34 At the last election this affected the votes of over half a million Australians, resulting in voters unknowingly being disenfranchised at either state or federal elections.
- 3.35 Roll divergence can be separated into two categories:
- 1 entitlement divergence: occurs 'when the Commonwealth and State laws have different eligibility requirements. Persons with an entitlement divergence will have either a Commonwealth enrolment or a state/territory enrolment, but never both'.
  - 2 procedural divergence: occurs 'where the elector is eligible for enrolment at both Commonwealth and state/territory, but the method of enrolment or information provided by the elector is insufficient for enrolment at both levels'.<sup>27</sup>
- 3.36 Since late 2015, a number of Australian Electoral Commission (AEC) activities, together with greater collaboration between the AEC and its state and territory counterparts, have resulted in a significant reduction in the roll divergence.<sup>28</sup> Australian Electoral Commissioner, Mr Tom Rogers, informed the Committee: 'Divergence is currently less of an issue than it was'.<sup>29</sup>
- 3.37 As at 31 May 2016, the aggregate roll divergence between the federal roll and all state and territory rolls was 572 417. This included 561 753 procedural and 10 664 entitlement divergences.<sup>30</sup> At 7 November 2016, this decreased to an aggregate divergence of 288 991. This represents a

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<sup>27</sup> Australian Electoral Commission (AEC), *Submission 66: 2*, Attachment C3, p. 1.

<sup>28</sup> AEC, *Submission 66*, p. 16.

<sup>29</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 9 November 2016, p. 2.

<sup>30</sup> AEC, *Submission 66*, p. 16-17.

significant reduction from the peak figure at 31 December 2015, which was 785 000.<sup>31</sup>

- 3.38 Most entitlement divergence is between the Commonwealth and Victoria and Western Australia, and is related to the age of enrolment. Whereas for the Commonwealth and other jurisdictions enrolment is allowed from the age of 16, in Victoria and Western Australia enrolment is allowed from the age of 17.<sup>32</sup>
- 3.39 The bulk of the remaining divergence is caused by procedural differences between the Commonwealth, and New South Wales and Victoria, with divergences of 128 395 and 206 873 respectively. This is because the AEC 'does not recognise the processes conducted by the NSW and Victorian electoral commissions, and Victoria does not recognise the process conducted by the AEC'.<sup>33</sup>
- 3.40 The roll divergence as at 31 May 2016 included a divergence of 161 722 between the Commonwealth and Western Australia. This has recently been decreased by 140 000 electors due to the amendment of Western Australia's electoral legislation to recognise the Commonwealth's direct enrolment procedure.<sup>34</sup>
- 3.41 Speaking to the issue of divergence between the Commonwealth and New South Wales, Mr Ian Brightwell submitted that 'the AEC does not have a viable solution to the divergence problem'.<sup>35</sup>
- 3.42 Mr Brightwell also argued that:

Additionally, it should be noted that the NSW Electoral Commission (NSWEC) is in the later stages of implementing a new Roll Management System (RMS). The Business case for the new system is based entirely on removing the need for AEC roll data from the NSW roll preparation process and using 'free' source data. ...

Given the new RMS system may be operational early next year, it is my view, that NSW roll divergence may significantly increase should the NSWEC no longer use the federal roll as its foundation.<sup>36</sup>

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<sup>31</sup> AEC, *Submission 66: 2*, Attachment C3, p. 1.

<sup>32</sup> AEC, *Submission 66*, p. 16.

<sup>33</sup> AEC, *Submission 66*, p. 16.

<sup>34</sup> AEC, *Submission 66*, p. 16.

<sup>35</sup> Ian Brightwell, *Submission 76*, p. 3.

- 3.43 Mr Brightwell suggested that the ‘only way to properly address this issue is for it to be raised at Council of Australian Governments (COAG) and the issue to be treated as a national issue rather than leaving it to the Commissions to resolve by agreement’. He further suggested that ‘the only viable solution to this issue is for a national enrolment body to be formed which can deal with all Commissions roll requirements equitably and reliably’.<sup>37</sup>
- 3.44 Roll divergence can cause serious confusion for electors who may not be aware of the problem until they are unable to vote in an election. As mistrust in political institutions is increasing, it is important that where electors do engage directly with institutions—such as on election day—that their engagement is as seamless and easy as possible.
- 3.45 The Committee agrees that this matter should be raised at the COAG level, as electoral management bodies can only implement the requirements of their respective parliaments and must be addressed before the next election.
- 3.46 This is of critical importance to ensure that the over 100 000 voters currently impacted by this issue are not disenfranchised in the 2019 election.

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## Recommendation 7

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- 3.47 The Committee recommends that the issue of electoral roll divergence between the Commonwealth, state and territory electoral rolls be raised as a matter of priority at the next Council of Australian Governments meeting to harmonise electoral rolls nationally.**

## Voter turnout

- 3.48 In contrast to the high percentage of eligible Australians enrolled to vote, voter turnout for the 2016 federal election reached its lowest point since the introduction of compulsory voting in 1924. On this point, Mr Malcolm Baalman submitted that ‘the past three elections have each successively set a new record for the lowest such results since the 1920s’, and that ‘this trend should be of concern’.<sup>38</sup>

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<sup>36</sup> Ian Brightwell, *Submission 76*, p. 3.

<sup>37</sup> Ian Brightwell, *Submission 76*, pp. 3-4.

<sup>38</sup> Malcolm Baalman, *Submission 64*, pp. 4, 9.

3.49 The Australia Institute submission outlines the positive effects compulsory voting and the ‘culture of voting’ has had in Australia and notes that high voter turnout is important to the overall health of democracy:

A government that better reflects the wishes of all of its people is less likely to see the development of groups that are increasingly dissatisfied, frustrated and angry with their government and society. These groups are likely to form extremist movements ... [studies have] found a strong association between higher voter turnout and less citizen turmoil and violence.<sup>39</sup>

**Table 3.3 Voter turnout 2007-2016**

	2007	2010	2013	2016
Turnout (per cent)				
Senate	94.82	93.83	93.88	91.93
House of Representatives	94.76	93.22	93.23	91.01

*Source: AEC, Submission 66, p. 7*

3.50 Turnout is the number of people who voted in the election (formally and informally) as a percentage of the total enrolled voter population. For the 2016 election, voter turnout was 91.01 per cent for the House of Representatives and 91.93 per cent for the Senate.<sup>40</sup> According to the Australian Electoral Commission (AEC), turnout is ‘a vital indicator of democratic health’.<sup>41</sup>

3.51 These turnout figures mean that of those voters on the roll at the time of the election (15 676 659 persons), 1 409 535 persons did not vote in the House of Representatives election and 1 264 845 persons did not vote in the Senate election—either formally or informally. Of the entire eligible voter population (estimated at 16 493 096 persons), approximately 2.95 million and 2.65 million persons did not cast an effective vote for the House of Representatives and the Senate, respectively.<sup>42</sup>

<sup>39</sup> Australia Institute, *Submission 67*, p. 13.

<sup>40</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 44.

<sup>41</sup> AEC, *Submission 66.2*, Attachment A, p. 1.

<sup>42</sup> AEC, *Submission 66.2*, Attachment A, pp. 1-2.

3.52 The AEC explained the divergence between the turnout rate for the House of Representatives and the Senate:

The difference between the total number of HoR valid votes cast and the total number of Senate valid votes cast is largely due to partial admissions of declaration votes, where the Senate ballot paper can be admitted to the count, but the House of Representatives ballot cannot. This occurs where a voter is issued with the correct state ballot paper because the voter is voting in the correct state, but is issued with the wrong House of Representatives ballot paper likely because the voter is not enrolled at the address (and therefore in the division) the voter indicated on the declaration vote envelope.<sup>43</sup>

3.53 Mr Antony Green supported this analysis, noting that the difference 'is almost certainly due to voters asking for, and being supplied with, a House of Representatives ballot paper that was not for the electorate in which the voter lived'.<sup>44</sup>

3.54 He elaborated further:

With Absent and Declaration Pre-Polls, voters outside of their district nominated the wrong electoral for their address. With Provisional votes, voters were given a ballot paper for the local electorate when they were found missing from the roll, but it was later identified their address was in a different electorate.

In these cases, the Senate ballot paper was allowed to count as the voter was correctly enrolled in the state, but the House ballot paper was the wrong ballot paper for where the voter was enrolled.<sup>45</sup>

3.55 The Committee heard evidence that this divergence could be substantially reduced with a full rollout ECLs at polling places that issue declaration votes. This was discussed in the Committee's third interim report on the 2016 federal election: AEC modernisation.<sup>46</sup>

3.56 The AEC provided the following analysis of the turnout:

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<sup>43</sup> AEC, *Submission 66.2*, Attachment A, pp. 1-2.

<sup>44</sup> Antony Green, *Submission 30*, p. 7.

<sup>45</sup> Antony Green, *Submission 30*, p. 7.

<sup>46</sup> See: JSCEM, *Third interim report on the inquiry into the conduct of the 2016 federal election: AEC modernisation*, June 2017, pp. 18-21, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Third\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Third_Interim_Report)> accessed 22 November 2018.

- while the House of Representatives turnout decreased, effective participation rates (formal votes as a proportion of total potential electors) increased as a result of higher formality rates.
- there are more divisions consistently showing low levels of turnout than divisions consistently showing high levels of turnout.
- the decline in turnout in conjunction with an increase in formality for the House of Representatives is unusual, but not unique.
- turnout and formality decreased for the Senate.
- age, Indigeneity, socio-economic status, and Federal Direct Enrolment and Update processes, as well as an elector's confidence in the electoral system or politics in general influence voter turnout.
- the clear relationship between age and voter turnout at the national level suggests turnout initiatives targeted at people under the age of 40 may increase overall turnout.<sup>47</sup>

3.57 Expanding on the point of elector confidence, AEC submitted that 'results from the 2016 AEC Voter Survey and the 2013 survey imply a decrease in elector confidence, in the electoral system and politics in general, may contribute to the decrease in voter turnout'.<sup>48</sup>

3.58 Addressing this decrease in elector confidence, the Accountability Round Table submitted:

Voters expect, and are increasingly demanding, that their elected representatives must always put public interest above personal and party interests. This, the public office-public trust principle, is one that has been hallowed by time. Recent neglect goes far to explain the present loss of confidence in democratic governance.<sup>49</sup>

3.59 In its submission, the Australia Institute placed the issue of falling voter turnout within the international context. It submitted:

Australia has among the highest participation rates in the world, while electoral turnout has been falling for decades internationally. In Australia, a decline is apparent from the 2010 election—from an average of 95% turnout for the previous 85 years to 91%, a fall of 4 percentage points. In the rest of the

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<sup>47</sup> AEC, *Submission 66*, p. 45.

<sup>48</sup> AEC, *Submission 66*, p. 45.

<sup>49</sup> Accountability Round Table, *Submission 84*, pp. 1-2.

OECD, turnout rates have fallen by some 17 percentage points since the 1960s.<sup>50</sup>

- 3.60 Despite the record low turnout at the last election, Australia's 91 per cent turnout figure was equal to Luxembourg's, which also compels voting, 'as the highest turnout rate for OECD countries for their most recent elections and ranks it well above the OECD average of 66%'.<sup>51</sup>
- 3.61 Added to this, Australia and New Zealand are the only countries which have compulsory enrolment of voters. Because of this, 'in other countries many people eligible to vote do not enrol as a voter'<sup>52</sup> meaning that Australia's turnout rate as a percentage of population is a significant achievement.
- 3.62 The Electoral Commissioner noted:
- Most Australians associate elections with an established ritual of heading down to a local school or community centre, walking past a usually congenial group of party volunteers handing out how-to-vote cards, filling in ballot papers and then visiting the cake stall or sausage sizzle. This year, many social media users added photos of dogs at polling places to that series of activities.<sup>53</sup>
- 3.63 While the Committee is pleased to note the strong voting culture in Australia, which placed well above the majority of the world for voter turnout, it is concerning to note a trend in some divisions for consistently low turnout.
- 3.64 The Committee notes the AEC's reported success with initiatives aimed at increasing voter turnout and considers that these initiatives should be further aimed at divisions that have consistently low turnout.

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## Recommendation 8

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- 3.65 The Committee recommends that the Australian Electoral Commission commission research into the causes of low voter turnout and develop initiatives aimed at improving voter turnout in divisions that have had consistently low turnout over recent elections.**

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<sup>50</sup> The Australia Institute, *Submission 67*, p. 1.

<sup>51</sup> The Australia Institute, *Submission 67*, p. 5.

<sup>52</sup> The Australia Institute, *Submission 67*, p. 4.

<sup>53</sup> AEC, *Submission 66*, p. 1.



## Informality

3.66 An informal vote occurs when the ballot paper has not been completed in accordance with the Act, resulting in the vote being excluded from the count. Section 268 of the Electoral Act stipulates that a vote is informal if one or more of the following occurs:

- the ballot paper is not marked at all;
- the ballot paper does not have the official mark and has not been initialled by the polling official, and the ballot paper is not authentic in the opinion of the Divisional Returning Officer (DRO);
- the ballot paper has writing on it which identifies the voter;
- in the case of an absent vote, the ballot paper is not contained in the declaration envelope;
- in the House of Representatives, the voter has not completed a full preferential vote;
- in the Senate, if the voter has not filled at least six boxes above the line or at least 12 boxes below the line.<sup>54</sup>

3.67 There are savings measures to keep formal some ballot papers marked incompletely or incorrectly.

3.68 Additionally, a vote is considered informal, and therefore not counted, when a voter is issued incorrect Senate and/or House of Representatives ballot papers when casting a declaration vote. That is, the voter's enrolment record does not match the ballot papers on which they have voted. This can also occur when declaration votes are placed in the ballot box for ordinary issued ballot papers at the polling place rather than being returned to the vote issuing officer for inclusion in the declaration vote envelope.<sup>55</sup>

3.69 For the 2016 federal election, the rate of the informal vote for the Senate was 3.9 per cent, compared with 2.9 per cent in 2013. For the House of Representatives, the informal vote rate was 5.1 per cent, a decrease from the 5.9 per cent rate in 2013.<sup>56</sup>

3.70 Informality rates for both houses of Parliament from 1977 to 2016 are shown in Table 3.4. This indicates that the informality rates for the 2016 election were unremarkable compared to recent trends but were nonetheless

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<sup>54</sup> Australian Electoral Commission (AEC), 'Informal voting', 15 February 2017, <[https://www.aec.gov.au/Voting/Informal\\_Voting/](https://www.aec.gov.au/Voting/Informal_Voting/)>, accessed 4 May 2018.

<sup>55</sup> AEC, *Submission 66: 3*, p. 2.

<sup>56</sup> AEC, *Submission 66*, p. 39.

concerning. The increased Senate informality rate may have been due to voters adapting to the new Senate voting rules. The 1 per cent increase in informality for the Senate was significantly lower than many predicted, however, with some suggesting the new rules would result in an increase in informality of 10 per cent.<sup>57</sup>

**Table 3.4 Informal Vote Rates 1977-2016**

Year	Senate	House of Representatives
1977	9.0	2.5
1980	9.6	2.5
1983 <sup>58</sup>	9.9	2.1
1984	4.3	6.3
1987	4.1	4.9
1990	3.4	3.2
1993	2.6	3.0
1996	3.5	3.2
1998	3.2	3.8
2001	3.9	4.8
2004	3.8	5.2
2007	2.6	4.0
2010	3.8	5.6
2013	2.9	5.9
2014	2.5 (WA only)	
2016	3.9	5.1

Source: AEC, 'Informality (%) House of Representatives and Senate', 13 July 2015, <[https://www.aec.gov.au/Voting/Informal\\_Voting/summary.htm](https://www.aec.gov.au/Voting/Informal_Voting/summary.htm)>, accessed 5 May 2018; AEC, Submission 66, p. 39.

<sup>57</sup> Kevin Bonham, Submission 74, p. 11.

<sup>58</sup> 1983 figures include missing and discarded votes.

- 3.71 The informality rates for the 2016 election mean that 720 915 House of Representatives and 567 806 Senate ballots were cast but were not admitted to the count.<sup>59</sup>
- 3.72 Mr Tom Rogers informed the Committee that ‘many of those are deliberate informal votes, but a large number are inadvertent’. He continued: ‘To my mind this is significant, particularly considering the ongoing closeness of results’.<sup>60</sup>
- 3.73 Mr Malcolm Baalman pointed out that due to incidents of informal voting and non-turnout, while the physical turnout for the Senate was 91.9 per cent, only 88.3 per cent of enrolled voters cast formal ballots. Similarly, a physical turnout of 91 per cent of enrolled voters for the House of Representatives equated to a final rate of formal voting of 86.4 per cent of those enrolled. This was down from 87.7 per cent at the 2013 election.<sup>61</sup>
- 3.74 While the Committee does not endorse deliberate informal voting, it does respect that this is the right of electors as a means of expressing their views.
- 3.75 However, the Committee is concerned about the increase in inadvertent informal voting, and resulting disenfranchisement.

### *Savings provisions*

- 3.76 One mechanism to decrease informality of the House vote could be to insert a ‘savings’ provision as is in place for Senate votes.
- 3.77 Savings provisions in the Electoral Act function to ‘save’ some types of incorrect Senate votes from becoming informal. These savings provisions were explained by Ms Gemma Whiting (private capacity) in her submission:

Under the voter saver provisions a ballot paper will be formal if there is a first preference mark ATL [Above the Line]. This first preference mark may be a 1, X, or tick. The marking of multiple x or tick renders the ballot informal. The ATL preferencing can go to 6 as advertised by the AEC or it can exhaust and preference every party above the line, so long as they are a grouped ticket and a box is provided to preference that grouped ticket.

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<sup>59</sup> AEC, *Submission 66: 2*, Attachment A, p. 2.

<sup>60</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, 9 November 2016, Canberra, p. 2.

<sup>61</sup> Malcolm Baalman, *Submission 64*, pp. 3, 9.

BTL's [Below the Line] remained formal if they had a 1-6 clear sequence with no numbers 1-6 repeated. If a number was duplicated after that point the ballot maintained formality until the point of inconsistency in sequence.<sup>62</sup>

3.78 As noted in Chapter 2, due to these savings provisions, 6.56 per cent of formal votes which would otherwise have been informal were included in the count.<sup>63</sup>

3.79 A number of submissions recommended the introduction of savings provisions for the House of Representatives. Mr Jeff Waddell (private capacity), for instance, argued that '[i]n the interests of consistency, some alignment of what constitutes a formal vote should exist between voting for the HOR and voting in the Senate'.<sup>64</sup>

3.80 Dr Kevin Bonham (private capacity) noted the impact of the lack of savings provisions for the House of Representatives vote:

The informal vote in the House of Representatives is still over one point higher than in even this first attempt at the new Senate system, because the House of Representatives lacks adequate savings provisions.<sup>65</sup>

3.81 Such an alignment may take current Senate BTL vote savings provisions as its model. Under such a system, where a voter has indicated a sequential preference of at least 1 to 6 a House of Representatives vote would be admitted to the formal count, irrespective of any unmarked boxes remaining on the ballot paper. Under current House of Representatives voting arrangements, a voter is required to 'number every box with a series of consecutive numbers according to their preference'.<sup>66</sup>

3.82 Another conceivable savings provision for the House of Representatives would be one that requires all boxes to be marked but allows for breaks in numbering sequence, where the preference of the voter is clearly indicated. Dr Bonham commented in relation to this suggestion that '[t]he advantage of

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<sup>62</sup> Gemma Whiting, *Submission 99*, p. [2].

<sup>63</sup> AEC, *Submission 66*, p. 39.

<sup>64</sup> Jeff Waddell, *Submission 3*, p. 11.

<sup>65</sup> Kevin Bonham, *Submission 74*, p. 12.

<sup>66</sup> AEC, 'Voting in the House of Representatives', 28 June 2016, <[https://aec.gov.au/Voting/How\\_to\\_Vote/Voting\\_HOR.htm](https://aec.gov.au/Voting/How_to_Vote/Voting_HOR.htm)>, accessed 5 April 2018.

such a provision is that all formal votes would retain a full order of preferencing and there would still not be any exhaust'.<sup>67</sup>

3.83 This approach was recommended by Mr Antony Green:

...the formality criteria should be amended so that a simple ordered sequence of preferences be permitted as a formal vote rather than the current criteria that requires an exact sequence from 1 to the number of candidates.<sup>68</sup>

3.84 Similarly, Mr Jeremy Buxton (private capacity) submitted that for votes for the House of Representatives, 'it is wrong that electors who have indicated a clear first preference and have filled in all, or all but one squares on the ballot paper, should have their vote invalidated because of a break in numerical sequence.'<sup>69</sup>

## Recommendation 9

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**3.85 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to permit, for House votes, a simple ordered sequence of preferences to be considered formal to the extent that that sequence allocates preferences to candidates. This sequence must still allocate a first preference for the vote to be formal and meet the other existing formality rules in section 268 of the Act.**

## Continuing role of compulsory voting

3.86 Australia's internationally high turnout rates are due to the imposition of compulsory voting and an entrenched culture of voting. At a time of rising levels of non-voting in many of the world's advanced industrial democracies, compulsory voting remains crucial in ensuring the continued integrity of Australia's democratic system. Australia is one of only 27 countries in the world that practices compulsory voting.<sup>70</sup>

3.87 The Committee received limited evidence calling for the end of compulsory voting in Australia. Dr Peter Brent (private capacity) submitted that 'the guiding principle should not be to force people to participate in the electoral

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<sup>67</sup> Kevin Bonham, *Submission 74:1*, p. [3].

<sup>68</sup> Antony Green, *Submission 30*, p.13.

<sup>69</sup> Jeremy Buxton, *Submission 12*, p. [2].

<sup>70</sup> The Australia Institute, *Submission 67*, p. 8.

process, but to construct the best feasible voting infrastructure, and encourage them to avail themselves of it'.<sup>71</sup>

3.88 Most other contributors expressed strong support for Australia's system of compulsory voting. Family Voice Australia, for instance, submitted:

Australia has been well served by a system of compulsory voting. This system has contributed towards making Australia one of the most politically stable countries in the world.

While it could be argued theoretically that true democracy demands the right to refuse to vote, the practical reality is that compulsory voting produces a better indication of the opinion of the people than voluntary voting.<sup>72</sup>

3.89 The compulsory voting system in Australia has been described as an example of international 'best practice' that positively impacts the high standards of probity in Australia's democratic system. Compulsory voting:

...colours electoral authority in a positive way by encouraging electoral commissions to treat every vote as sacred and to expend considerable efforts in ensuring adequate access to the ballot.<sup>73</sup>

3.90 The compulsory nature of voting in Australia positively impacts how the Australian Electoral Commission (AEC) conducts elections:

It would be hard to find an electoral authority in a voluntary setting anywhere that goes to nearly this much trouble to ensure full voting inclusion.<sup>74</sup>

3.91 Mr Tom Rogers adds:

We have said previously that we're the Australian Electoral Commission, so we're the commission for all Australians, not just the ones that we can reach.<sup>75</sup>

3.92 Popular support for compulsory voting in Australia remains high, with support levels 'hovering between 70% and 77% for decades'. This support

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<sup>71</sup> Peter Brent, *Submission 59*, p. [2].

<sup>72</sup> Family Voice Australia, *Submission 27*, p. 8.

<sup>73</sup> Graeme Orr, Bryan Mercurio and George Williams cited in Australian Institute, *Submission 67*, p. 9.

<sup>74</sup> Lisa Hill cited in the Australia Institute, *Submission 67*, p. 9.

<sup>75</sup> Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Proof Committee Hansard*, 29 June 2016, p. 16.

stems from ‘the high standard and integrity with which Australian elections are carried out’.<sup>76</sup>

- 3.93 The Electoral Integrity Project indicated similar levels of support in its own research—the Australian Voter Experience (AVE) survey—with 68 per cent of respondents supporting compulsory voting.<sup>77</sup>
- 3.94 Irrespective of the high level of popular support for compulsory voting, the Electoral Integrity Project’s AVE survey indicated that ‘just 60 per cent of the sample reported that they would definitely vote if voting were not compulsory’. Significantly, the survey found that ‘less than half of those 34 years or younger report that they would definitely vote if they were not compelled to do so, compared to 71 percent of those 55 years and over’.<sup>78</sup>
- 3.95 The Electoral Integrity Project warns that ‘it is possible that in the future, compulsory voting may not be enough to compel citizens to vote, particularly if citizens see the costs of voting as being higher than the cost for abstaining’. They suggest that efforts to make voting more convenient for citizens, such as the facilitation of early voting, may improve voter participation: ‘there is strong evidence that early voting allows more people to vote’.<sup>79</sup> Early voting is discussed in more detail in Chapter 5.
- 3.96 The Australia Institute emphasised the public good compulsory voting brings to Australian society, noting that ‘if you don’t vote, you don’t count’. They highlighted a range of positive outcomes from high levels of citizen participation in the electoral process, including:
- improved income distribution throughout society
  - less citizen turmoil and violence
  - increased social co-operation, co-ordination, and cohesion
  - reduced influence of powerful minority groups
  - more representative governments.<sup>80</sup>
- 3.97 Members of the Committee also regard compulsory voting as a corner-stone of Australia’s democratic system.

### *Compliance measures and penalties for non-voting*

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<sup>76</sup> The Australia Institute, *Submission 67*, p. 9.

<sup>77</sup> The Electoral Integrity Project, *Submission 52*, p. 2.

<sup>78</sup> The Electoral Integrity Project, *Submission 52*, p. 3.

<sup>79</sup> The Electoral Integrity Project, *Submission 52*, pp. 3-4.

<sup>80</sup> The Australia Institute, *Submission 67*, pp. 11-14.

- 3.98 Australia does comparatively well in promoting compliance with compulsory voting laws, as shown by world-leading levels of voter turnout. The Electoral Integrity Project pointed this out, noting that ‘other countries have compulsory voting but have not been as successful in achieving such a high degree of compliance’.<sup>81</sup>
- 3.99 The AEC conducts a range of measures to promote voting and discourage non-voting.
- 3.100 Mr Rogers explained some of these measures. Prior to the 2013 election, for instance, the AEC ‘wrote to a group that I would call “serial non-voters” to explain to them what their obligations were under the Electoral Act. That was an attempt to demonstrate the seriousness with which we treat that. We sent a number of follow-up letters’.<sup>82</sup>
- 3.101 Section 245(1) of the Electoral Act stipulates that ‘it shall be the duty of every elector to vote at each election’. Section 245(5)(b) states that ‘it is an offence to fail to vote at an election without a valid and sufficient reason for the failure’, and s. 245(5)(c)(iii) sets a \$20 penalty for non-voting.<sup>83</sup>
- 3.102 Following an election, the AEC issues ‘apparent failure to vote’ notices to people who did not have their name marked off the electoral roll. Electors issued such notices have the opportunity to provide reasons for their failure to vote, or provide information about the time and location if they did vote.<sup>84</sup>
- 3.103 Those who fail to provide a valid reason for not voting are required to pay a \$20 fine. As Mr Rogers explained: ‘If I write to you and if you pay us \$20 that matter is closed’.<sup>85</sup>
- 3.104 For the 2013 election, fine payments amounted to \$2 million revenue; for the 2016 election, this is estimated to be \$2.1 million. This revenue is ‘paid back to the Commonwealth and not available for the AEC’s use’. Moreover, ‘the estimated cost for the AEC to pursue apparent non-voting and subsequent prosecution following the 2016 election is \$3.4 million’.<sup>86</sup>

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<sup>81</sup> The Electoral Integrity Project, *Submission 52*, p. 3.

<sup>82</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 9 November 2016, p. 8.

<sup>83</sup> *Commonwealth Electoral Act 1918*, s. 245.

<sup>84</sup> AEC, *Submission 66*, p. 46.

<sup>85</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 9 November 2016, p. 9.

<sup>86</sup> AEC, *Submission 66: 2, Attachment A*, p. 3.



3.105 The AEC has the option to take further action against those who refuse to pay fines for non-voting. Mr Rogers, informed the Committee that:

If you do not pay the small sum of \$20 and it goes to court action, that can actually become a significant amount of money. If you do not pay the money, eventually that can lead to some fairly dramatic consequences.<sup>87</sup>

3.106 Following the 2013 election, the AEC took between 3 000 to 3 500 people to court for failure to vote.<sup>88</sup>

3.107 AEC Chief Legal Officer, Mr Paul Pirani, explained the penalty for failing to pay the \$20 fine for non-voting:

One-hundred and eighty dollars. The act actually says \$50, but when you go through process that is in the Crimes Act, section 4AB, it converts across to one penalty unit. The fine for failing to vote is \$180, plus court costs. That is a maximum fine.<sup>89</sup>

3.108 A criminal conviction may also be recorded against the person.<sup>90</sup> Despite this, several submissions argued that the current penalties are an inadequate deterrent against non-voting. The Australia Institute recommended ‘a review of fines for not voting’, and submitted:

The fine for not voting last increased in 1984, to \$20. Average wage earnings—which are used by the federal government to index payments such as child support—have increased roughly 3.5 times since 1984. A fine of \$70 would restore it to the equivalent of what it was in 1984 (adjusted for average wage earnings). The AEC should conduct behavioural economic studies as to whether such a change would incentivise greater participation, and to determine the socio-economic impact of its imposition and enforcement.<sup>91</sup>

3.109 The Electoral Integrity Project’s AVE survey indicated that 57 per cent of respondents ‘believe that there should not be a penalty for abstaining [from voting] or that the penalty should be decreased’.<sup>92</sup>

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<sup>87</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 9 November 2016, p. 8.

<sup>88</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 9 November 2016, p. 8.

<sup>89</sup> Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, Canberra, 9 November 2016, p. 8.

<sup>90</sup> AEC, *Submission 66*, p. 46.

<sup>91</sup> The Australia Institute, *Submission 67*, p. 16. Also: A J Rawling, *Submission 44*, p. 3.

<sup>92</sup> The Electoral Integrity Project, *Submission 52*, p. 2.

## Recommendation 10

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**3.110 The Committee recommends that the Australian Government review the penalty for non-voting.**

### AEC publicity campaigns and electoral education

3.111 The Australian Electoral Commission (AEC) engages in a range of publicity measures to inform people about elections. These include print, television, radio, and social media advertising; the compilation of an official guide to the election; the use of a call centre to respond to voters' enquiries; and tailored material targeting Indigenous voters. Much of this material is provided in 27 languages.<sup>93</sup>

3.112 For the 2016 federal election, the AEC had a total advertising budget of \$55 810 000. This included \$47 000 000 for media buy, \$3 340 000 for publications, and \$3 580 000 for advertising creative.

3.113 On its public relations campaign, the AEC submitted:

The AEC pre-election public relations activities disseminated information about the new Senate voting system. An online kit was promoted to national, state and local community and sporting organisations, for distribution to members, and a range of corporate bodies.<sup>94</sup>

3.114 The AEC's advertising in major metropolitan and regional newspapers included information on:

- the issue of the writs;
- election service centres;
- candidate information sessions; and
- candidates and polling places.

3.115 The AEC provided the *Official guide to the 2016 federal election* to over 10.3 million households leading up to election day. 'The guide provided specific information on when and how to vote, and changes to Senate voting. The guide was translated into 27 languages and available in Braille, large print, audio and electronic versions'.<sup>95</sup>

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<sup>93</sup> Australian Electoral Commission (AEC), *Submission 66*, pp. 22-4.

<sup>94</sup> AEC, *Submission 66*, p. 22.

<sup>95</sup> AEC, *Submission 66*, p. 23.

3.116 The AEC also engages voters via various social media platforms. The AEC submitted that its ‘social media presence on Twitter, Facebook and YouTube was a key part of external communication activities to distribute messages and respond to enquiries’.<sup>96</sup>

3.117 Reflecting on the record low level of voter turnout, the Australian Institute recommended ‘that the AEC adopt more innovative marketing and education by activating other motivations to encourage Australians to enrol, to vote and to vote validly’.<sup>97</sup>

3.118 Elaborating, the Australia Institute stated that:

We encourage the AEC to emphasise voting as a part of Australian tradition and culture through measures such as:

- Promotion of our history of electoral reform and our world-leading participation rates.
- Working with social media trends such as the hashtag #democracysausage...
- Engagement with Australians who come from other countries, where voting is not well practised or doesn’t happen, to help them communicate their experience with voting.<sup>98</sup>

3.119 The Committee heard evidence that more education on Australia’s electoral system in schools may also promote greater voter participation. Dr Harry Philips suggested that ‘voting engagement is one of the most productive dimensions of Civics and Citizenship education and should be integral to virtually all years of the curriculum’. He recommended:

As a dearth of knowledge of the existing electoral system is usually a major problem I strongly recommend that your committee endorse the widespread adoption of mandatory civic and citizenship education, including electoral systems for all Australian students.<sup>99</sup>

3.120 The importance of civics and electoral education in promoting greater engagement with the electoral system has been recognised by the JSCEM for some time.

3.121 In its report on the 2004 federal election, the JSCEM highlighted the generally lower participation rates among younger voters and noted that

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<sup>96</sup> AEC, *Submission 66*, p. 24.

<sup>97</sup> Australia Institute, *Submission 67*, p. 1.

<sup>98</sup> Australia Institute, *Submission 67*, pp. 1-2.

<sup>99</sup> Harry Philips, *Submission 107*, p. 2.

‘more effort is needed to promote democratic opportunities as well as obligations.’ It recommended ‘that the Parliament refer electoral education to the JSCEM for further examination and report’.<sup>100</sup>

3.122 In 2007 the JSCEM examined the issues in detail in its report *Civics and Electoral Education*. The report noted that:

...a healthy democracy needs citizens who are informed and who are involved and engaged in the issues that are important to them. It is therefore concerning that there is evidence to suggest increasing apathy and a decline in traditional forms of political participation such as joining political parties, attending party meetings and voting.<sup>101</sup>

3.123 The report recommended that the AEC be resourced to develop a ‘focused electoral education unit to be delivered to either Year 9 or 10 students, and Year 11 and 12 students, in all secondary schools’ and that the federal government ‘ensure that the delivery of this unit is incorporated into all secondary schools’.<sup>102</sup> This Committee reiterates its support for that recommendation.

3.124 Additionally, the Committee notes that over a decade has passed since this report was released. The world has markedly changed since then, with the proliferation of social media, the circulation of so-called ‘fake news’, and the insidious spread of foreign interference in the electoral processes of democracies around the globe.

3.125 The Committee is strongly of the opinion that increased social media literacy, as part of a strengthened civics and electoral education curriculum, is a vital component in facing the challenges posed by this new social media environment. Australians must be better equipped to critically discern and judge any media which seeks to influence their voting behaviour.

3.126 This issue is further discussed in Chapter 7.

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<sup>100</sup> JSCEM, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, pp. 346, 354, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/elect04/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/elect04/report.htm)>, accessed 22 November 2018.

<sup>101</sup> JSCEM, *Civics and Electoral Education*, May 2007, p. 1, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/education/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/education/report.htm)>, accessed 3 December 2018.

<sup>102</sup> JSCEM, *Civics and Electoral Education*, May 2007, p. xvi, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/education/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/education/report.htm)>, accessed 3 December 2018.

- 3.127 As part of the Committee's overview of the 2016 federal election, the Committee visited the Museum of Australian Democracy. The Committee was impressed by the education activities available and expresses support for the important role our national institutions play for an engaged civil society in Australia.
- 3.128 The Committee notes a recent review of the Parliament and Civics Education Rebate (PACER) program by the Commonwealth Department of Education which recommends changing the eligibility requirements for PACER funding. Currently, for schools to be eligible for PACER funding they are required to visit the Parliament House, Old Parliament House (encompassing the Museum of Australian Democracy and the National Electoral Education Centre) and the Australian War Memorial. The review recommends that only Parliament House be a mandatory prerequisite to receive PACER funding.
- 3.129 The Committee strongly supports the current requirements; all 3 institutions serve vital functions in supporting a buoyant and engaged civil society in Australia. Visits to these national institutions are important milestones in the cultivation of strong civics consciousness in students and should be facilitated for as many Australian students as possible.

## **Recommendation 11**

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- 3.130 The Committee recommends that the Australian Government permanently maintain current requirements that schools visit the Parliament House, the Old Parliament House and the Australian War Memorial to be eligible for PACER funding.**

## **Voter identification**

- 3.131 There is no requirement for voters to produce identification in order to vote in federal elections. This has been a longstanding matter of discussion in Australia with arguments on both sides of the debate.
- 3.132 Those opposed to the introduction of voter identification argue that:
- voter turnout will be affected;
  - voters will be disenfranchised; and
  - an increased administrative burden will be placed on the Australian Electoral Commission (AEC).

- 3.133 Those arguing for the introduction of voter identification point to instances of multiple voting and concerns about fraudulent voting, due to the ease of voters representing themselves as someone else.<sup>103</sup>
- 3.134 This matter was canvassed thoroughly by this Committee's predecessor in its report on the 2013 election. From its examination of voter identification requirements in Queensland<sup>104</sup> and international jurisdictions with compulsory voting the majority of the Committee concluded that voter identification should be introduced in order to prevent instances of multiple voting and voting in another person's name.<sup>105</sup>
- 3.135 In its report, the Committee refuted the arguments against voter identification, noting:
- compulsory voting ensures a high voter turnout;
  - declaration votes are provided for voters who fail to present identification; and
  - administrative burdens will potentially be lessened by reduced issuing officer error and fewer occasions of multiple vote checks to be actioned.
- 3.136 The then Committee recommended that voter ID be introduced alongside the expanded use of Electronic Certified Lists (ECL) (see Chapter 6 for full discussion) with the safeguard that declaration votes be available to those who present themselves to vote without identification.
- 3.137 In a submission to this inquiry, Ms Robyn Nolan noted the growing support, both within the Australian community and internationally for the introduction of voter ID:

There is no doubt that there has been in more recent years an escalation of support and acceptance for voter ID across Australia and the importance of integrity and robustness of the electoral roll. While Voter ID will not prevent a voter voting more than once it will in fact discourage such attempts.

Many democracies around the world including India and Canada require Voter ID (allowing a number of forms of ID) when a person is voting. A

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<sup>103</sup> Lex Stewart, *Submission 118*; Australian Monarchist League, *Submission 122*; Family Voice Australia, *Submission 27*.

<sup>104</sup> These requirements have since been repealed.

<sup>105</sup> JSCEM, *The 2013 Federal Election: Report on the conduct of the 2013 election and matters related thereto*, April 2015, pp. 112-120, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Final\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Final_Report)>, accessed 3 December 2018.

number of American States also require Voter ID while many nations Spain, Greece, France, Malta, Belgium, Italy, Timor-Leste provide national identity documents to their citizens. In many cases these documents are used for many purposes including travel, banking and healthcare access as well as voting.<sup>106</sup>

3.138 The Committee remains convinced by the arguments put forward by its predecessor of the need to introduce voter identification:

Not only will it bring confidence to the system in respect of the identity of the person voting, but it will deliver a robust basis for strengthening the democratic process and the sanctity of the ballot by seeking to best ensure that Australian citizens are exercising their franchise accurately and in the way intended, only once.<sup>107</sup>

3.139 Therefore, the Committee is reiterating its predecessor's recommendation that the requirement for voter identification be introduced for federal elections provided:

- declaration voting is made available to those electors who do not have identification available; and
- authorised identification is suitably broad so as not to actively prevent electors from casting an ordinary ballot, for example:
  - drivers license, passport, or state-issued proof of age card;
  - evidence of electoral enrolment;
  - Commonwealth issued identification card such as a health care card, senior's card, Medicare card or concession card;
  - a voter registration letter and/or confirmation of registration issued by the Australian Electoral Commission;
  - a recent account from a local government or utilities provider (including telephone and internet services);
  - a notice of assessment from the Australian Taxation Office.

3.140 A full rollout of ECL, as discussed in Chapter 5, will make the change to required voter identification much easier than the continued reliance on paper-based Certified Lists.

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<sup>106</sup> Robyn Nolan, *Submission 219*, p. [2].

<sup>107</sup> JSCEM, *The 2013 Federal Election: Report on the conduct of the 2013 election and matters related thereto*, April 2015, pp. 119.

## Recommendation 12

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3.141 The Committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to require that:

- voters must present a form of acceptable identification to be issued with an ordinary pre-poll or election day vote. Authorised identification must be suitably broad so as to not actively prevent electors from casting an ordinary ballot. Examples of acceptable identification would include:
  - photographic ID such as a drivers licence, passport, or proof of age card;
  - government-issued identification card, such as a Medicare card, senior's card of concession card;
  - proof of address, such as an account from a utilities provider, taxation notice of assessment or Australian Electoral Commission issued voter registration letter; or
  - alternatively, a 'voter ID' card be introduced and issued to all voters.
- where voters cannot provide acceptable identification they must be issued with a declaration vote.

3.142 The Committee further recommends that, in order to make this change as easy as possible, the national rollout of Electronic Certified Lists be fully funded (see Recommendation 25).

## Indigenous enrolment and voting

3.143 In contrast to the generally high levels of enrolment and voting by Australians, some of the nation's Indigenous communities continue to experience persistent low levels of enrolment, turnout and formality.<sup>108</sup> Equality Rights Alliance submitted that the low rates of Indigenous

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<sup>108</sup> Australian Electoral Commission (AEC), *Annual Report 2016-17*, p. 62, <<https://annualreport.aec.gov.au/2017/contents/files/aec-annual-report-2016-17.pdf>>, accessed 3 December 2018.



enrolment 'continue to be a concerning blight on Australia's system of compulsory voting'.<sup>109</sup>

3.144 The Australian Electoral Commission (AEC) highlighted the issue:

Areas where a higher proportion of the population are Indigenous tend to have lower enrolment and formality rates, indicating that issues relating to Indigenous electoral participation are broader than turnout alone.<sup>110</sup>

3.145 The Australia Institute also touched on the issue of Indigenous enrolment rates:

Rates are low in the Northern Territory, Queensland and Western Australia. These states contain large Indigenous populations, a group that is among the most marginalised in Australia. It is important that their vote is counted.<sup>111</sup>

3.146 Indeed, as indicated in Table 3.1 above, the enrolment rates for the Northern Territory, Western Australia and Queensland are the lowest in Australia, at 81.1 per cent, 92.2 per cent and 93.7 per cent, respectively.

3.147 Using Australian Bureau of Statistics data, the AEC estimates that only 58 per cent of all eligible Indigenous citizens were enrolled to vote in 2013.<sup>112</sup>

3.148 While Federal Direct Enrolment and Update (FDEU) has been effective in seeing a record number of Australians enrolled to vote, it has been less effective for Indigenous communities, 'particularly, Indigenous communities in the Northern Territory...for a whole range of reasons'.<sup>113</sup>

3.149 The AEC submitted that it has:

a wide range of strategies to increase Indigenous enrolment, including outreach and community engagement activities conducted by the AEC's Indigenous Electoral Participation Program (IEPP). These programs have achieved positive outcomes, including the enrolment of 3 000 people online as a result of the AEC's *Our Vote Our Future* campaign, a 200 per cent increase from 2014-15.<sup>114</sup>

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<sup>109</sup> Equality Rights Alliance, *Submission 133*, p. [1].

<sup>110</sup> AEC, *Submission 66*, p. 45.

<sup>111</sup> The Australia Institute, *Submission 67*, p. 18.

<sup>112</sup> AEC, *Submission 66*, p. 18.

<sup>113</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 28 November 2016, p. 11.

<sup>114</sup> AEC, *Submission 66: 19*, p. [4].

- 3.150 The IEPP was established in 2009-10 'to help close the gap in Indigenous electoral participation and to increase electoral knowledge, enrolment, turnout and formality', with a 'core program goal of providing targeted and culturally appropriate electoral services to Aboriginal and Torres Strait Islander people'.<sup>115</sup>
- 3.151 The program is delivered by the AEC's Indigenous Community Engagement Officers, the majority of whom are Indigenous. Work of the program in 2016-17 included:
- conducting the third National Indigenous Youth Parliament in May 2017;
  - providing electoral information sessions at key community events, meetings, conferences and forums to raise awareness of enrolment, voting, vote formality and democratic processes;
  - raising public awareness for federal, state and local elections; and
  - contributing to the AEC's Reconciliation Action Plan, cultural awareness training and staff development.<sup>116</sup>
- 3.152 In mid-2018 the AEC advised the Committee that it had changed the focus of the IEPP:

Previously a lot of the activity in the Indigenous Electoral Participation Program was focused on field visits. A lot of the outcome of those field visits, in our perspective, was that it looked okay but it wasn't generating enrolments. The model was that we would have vehicles that would go into a community; they'd engage with the community on the day they were there; they'd hand out beanies and footballs and try and generate some interest; and then they moved on. Our assessment of that was that it wasn't actually leading to a sustained increase in the roll. The proof of that is that the Indigenous roll wasn't increasing to the same extent as the rest of the roll. As you know, there was a budget decision, last year I think, for us to reduce the physical footprint in the Northern Territory office. At the same time we were looking at ways of doing fieldwork that is actually going to make a difference. I mentioned to this committee that we've been working on a trial of two flagship programs. One of those is the Electoral Awareness Officer program. It's covering three communities as a pilot. It's going to be the starting point for engagement with remote communities and will seek to improve electoral education for communities in an ongoing way. Then we have the regional council roll integrity program covering 62 communities, which is going to engage with

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<sup>115</sup> AEC, *Submission 66*, p. 24.

<sup>116</sup> AEC, *Annual Report 2016-17*, pp. 62-3, <<https://annualreport.aec.gov.au/2017/contents/files/aec-annual-report-2016-17.pdf>>, accessed 3 December 2018.

remote community regional councils in undertaking roll integrity and enrolment activities. We've also done some work in South Australia. We've partnered with the Electoral Commission of South Australia and helped to deliver an Aboriginal services project right there.<sup>117</sup>

3.153 One of the programs being trialled was in the community of Galiwinku (Arnhem Land) where 6 electoral awareness officers have been trained and are subsequently delivering electoral awareness education in language.<sup>118</sup>

3.154 Mr Warren Snowdon MP also spoke of the importance of providing such targeted and culturally appropriate electoral services to Indigenous voters. He submitted that:

The issue of polling official experience and expertise in remote polling places is finding a comfortable compromise between staff that understand and are well versed in AEC procedures and staff that are able to communicate with skill and empathy when dealing with remote living Aboriginal people.<sup>119</sup>

3.155 Mr Snowdon also suggested that:

The AEC should include in all its policy and procedure documents a much stronger statement to outline the imperative of addressing under-enrolments, particularly amongst Aboriginal and Torres Strait Islander people.<sup>120</sup>

3.156 Some of the issues surrounding Indigenous enrolment and voting were seen in relation to the Aboriginal community of Palm Island in the federal division of Herbert, Queensland. The 2 July federal election coincided with the Townsville show meaning that many Palm Island residents were in Townsville, with many making provisional votes.

3.157 Mr Evan Moorhead, Australian Labor Party (ALP), informed the Committee that 'on Palm Island the system of postal delivery is quite different. Many of the houses and streets are not numbered, and many of the residents on Palm Island collect their post from the post office rather than have it delivered'.<sup>121</sup>

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<sup>117</sup> Tom Rogers, Electoral Commissioner, AEC, *Proof Committee Hansard*, 29 June 2016, p. 15.

<sup>118</sup> Jeff Pope, Deputy Electoral Commissioner, AEC, *Proof Committee Hansard*, 29 June 2016, p. 15.

<sup>119</sup> Warren Snowdon MP, *Submission 73*, p. [3].

<sup>120</sup> Warren Snowdon MP, *Submission 73*, p. [5].

<sup>121</sup> Evan Moorhead, Australian Labor Party (ALP), *Committee Hansard*, Townsville, 31 January 2017, p. 20.

3.158 He continued:

One of the major difficulties in both enrolment and provisional voting has been matching addresses, which are described in a very different way on Palm Island than they would be in Townsville... [T]he application of that to provisional votes meant that the Electoral Commission were excluding votes when there was a clear understanding of who the person was and that they resided at the address, even though the address on the electoral roll and the address that the person had used on their form may have been explained in different ways due to the significant differences in community infrastructure on Palm Island or lack thereof.<sup>122</sup>

3.159 Mr Paul Pirani, Chief Legal Officer, AEC, spoke to the issue of provisional votes and Indigenous communities:

The issue is that under the Electoral Act the electoral roll is required to include the name and address, and the address is a street address. The difficulty in a lot of Indigenous communities—it is not just restricted to Palm Island—is about how that address is expressed on the electoral roll. There are always other issues, particularly in the Indigenous community, about names. Quite often people are known by a local name within the community that might be different to the name they put on the enrolment form when they enrolled, and that causes issues in relation to allowing a declaration vote to get through preliminary scrutiny.

The test for preliminary scrutiny of a declaration envelope in schedule 3 of the act requires the DRO to be satisfied that the person is the elector—so that is the name—and that the address which is there is the address the person has on the roll. Of course, if the address is not the address that is on the roll but it is an address within the state, then only one of the ballot papers from that declaration envelope will be capable of getting through preliminary scrutiny. So it is an issue. I do not think it is restricted to Palm Island, but it is an issue about the requirement of an address.<sup>123</sup>

3.160 Measures should be considered on a community-by-community basis to improve enrolment and voter engagement. Where the Act directly prevents votes being admitted because of a conflict between commonly used community address and an official address, as the example above demonstrated, this is a hurdle to voting that should be removed.

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<sup>122</sup> Evan Moorhead, ALP, *Committee Hansard*, Townsville, 31 January 2017, pp. 20-1.

<sup>123</sup> Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, Townsville, 31 January 2017, p. 22.

- 3.161 For example, the Act already permits people to enrol as ‘no fixed address’ if, for example, they are ‘grey nomads’. The Committee believes this same consideration could be extended to Indigenous communities.
- 3.162 The Committee understands that the Department of Prime Minister and Cabinet is currently supporting initiatives to improve Indigenous voices in decision-making<sup>124</sup> in local communities and may be best placed to contribute to such proposals.
- 3.163 The Committee was pleased to hear that the AEC is trialling the delivery of electoral education programs in language and looks forward to following the progress of these initiatives.

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### Recommendation 13

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- 3.164 The Committee recommends that the Australian Government consult with Indigenous communities and stakeholders to devise culturally appropriate enrolment requirements for Indigenous voters with a view to increase Indigenous engagement with the electoral process.**

### Political participation

- 3.165 Political parties are an essential part of the electoral process in Australia. Senators and Members of Parliament are generally aligned with parties, and the seats won by those parties determine who will fill the essential roles under our Westminster system of both the Government and the official Opposition.
- 3.166 Those who contest an election, but do not get elected, also play an essential role in our democracy. The policy deliberations and decisions of each party contribute to the contest of ideas on which elections are fought. The number of parties and the breadth of the viewpoints available for voters to choose between for House and Senate seats are a core part of Australia’s robust representative democracy.
- 3.167 During 2016 and 2017, the Museum of Australian Democracy and the Institute for Governance and Policy Analysis have undertaken qualitative and quantitative studies on Australian’s attitudes towards the political system and democracy. This study notes that the strength of Australia as

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<sup>124</sup> Australian Government, ‘Empowered Communities’, Department of the Prime Minister and Cabinet, <<https://pmc.gov.au/indigenous-affairs/empowered-communities>>, accessed 22 November 2018.

demonstrated through external measures, such as economic growth, has not been reflected in trust in our democracy:

The Australian economy has experienced twenty years of economic growth. A remarkable performance that is unprecedented both historically and in comparison with other OECD countries over the period. Yet, during the same time Australia has suffered a period of democratic decline and the depth of that decline has increased dramatically since 2007. The level of democratic satisfaction has decreased steadily across each government from 85.6 percent in 2007 (Howard), to 71.5 percent in 2010 (Rudd), 71.7 percent in 2013 (Abbott) and 42 percent in March 2016 under Malcolm Turnbull.<sup>125</sup>

3.168 Attitudes toward political parties play a major part in this decline in trust:

Levels of trust in government and politicians in Australia are at their lowest level since 1993. Only five percent of Australians exhibit strong trust in government with 74 percent displaying a critical perspective. 25 percent trust government ministers in contrast with 72 percent who trust the police and 56 percent the judiciary. The most remarkable finding from our survey work and a measure of the degree of discontent is that the majority of Baby Boomers (citizens born between 1946 and 1964) who have benefited most in economic terms from a period of affluence no longer trust their politicians.

However, it is equally evident that Australian citizens are still interested in politics. Hence the level of partisan dealignment is a reflection of the inability of mainstream political parties to capture the political imagination.<sup>126</sup>

3.169 This shows how intrinsically linked political parties are with politics, democracy and the public good.

3.170 While all political parties acknowledge the decline in public trust is an issue they individually need to overcome, the Committee also notes that parties play an important role in providing not only the political leadership of the country, but also a direct way for the public to be involved in political decision-making. The Committee would like to see more recognition for the central position of political parties in the way our government is formed.

3.171 The Committee therefore places on the record its strong support for all of those who participate in Australia's political system. This includes all candidates for election, whether successfully elected or not, and particularly

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<sup>125</sup> Evans, M. M. Halupka, G. Stoker, (2017) *How Australians imagine their democracy: The Power of Us*, p. 8. Taken as Exhibit 3 to the inquiry.

<sup>126</sup> Evans, M. M. Halupka, G. Stoker, (2017) *How Australians imagine their democracy: The Power of Us*, p. 20. Taken as Exhibit 3 to the inquiry.

the important members—staff and volunteers—of all political parties. Their work is an essential part of running our free and fair elections.





## 4. Voter access

- 4.1 Ensuring access to the vote for all Australians is fundamental to protecting the enfranchisement of the population.
- 4.2 It is important that access to a range of convenient voting options is guaranteed for as many Australians as possible, particularly marginalised and remote voters. The Australian Electoral Commission (AEC) recognises this:

As voting is compulsory in Australia, the AEC endeavours to meet the needs of a diverse range of people when managing electoral events and preparing information for the public.<sup>1</sup>

### Polling places

- 4.3 For the majority of Australians, attending a polling booth on election day is their primary means of engaging with the electoral process. There were 6 822 static polling places for the 2016 federal election which operated from 8am to 6pm on polling day, 2 July. This was a reduction from 7 695 static polling places at the last election in 2013. Polling place numbers for the previous four elections had remained stable at about 7 700, 'despite a clear trend away from voting on election day in home divisions'.<sup>2</sup>
- 4.4 This reduction in the number of polling places was a result of AEC implementation of Australian National Audit Office (ANAO)

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<sup>1</sup> Australian Electoral Commission (AEC), *Annual Report 2016-17*, p. 62, <<https://annualreport.aec.gov.au/2017/contents/files/aec-annual-report-2016-17.pdf>>, accessed 3 December 2018.

<sup>2</sup> AEC, *Submission 66*, p. 29.

recommendations from November 2014,<sup>3</sup> to ‘abolish, replace or consolidate (as appropriate) static polling places that were expected to receive relatively few votes’.<sup>4</sup>

- 4.5 In response to the reduction in the number of static polling places, the AEC adjusted staffing levels and vote estimates, ‘to ensure that all polling places were allocated an appropriate number of polling staff, based on the expected number of votes to be issued at the 2016 federal election’.<sup>5</sup>
- 4.6 The AEC also established ‘superbooths’ in Sydney, Melbourne and Brisbane. The Sydney and Brisbane superbooths issued ordinary votes for all New South Wales and Queensland divisions, respectively. The Melbourne superbooth issued votes for 24 Victorian divisions. The AEC submitted that these superbooths offered various benefits, including:
- improved services for voters by offering more ordinary voting;
  - improved processing efficiency for the AEC by reduced declaration voting; and
  - provision of more timely election results through more ordinary voting.<sup>6</sup>

## Queue times

- 4.7 The Committee heard evidence of longer queueing times at some polling places on election day compared with past elections. This was reflected in the Australian Electoral Commission’s (AEC) 2016 Voter Survey, which revealed that there was 78 per cent satisfaction in response to the question ‘the length of time you had to wait’. This contrasts to 87 per cent satisfaction at the 2013 election.<sup>7</sup>
- 4.8 For pre-polling places, the rate of satisfaction concerning queue times was 95 per cent for this election.<sup>8</sup>
- 4.9 The AEC explained the longer-than-usual queue times:

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<sup>3</sup> Australian National Audit Office (ANAO), *Report No. 4 2014-15*, <[https://www.anao.gov.au/sites/g/files/net4816/f/ANAO\\_Report\\_2014-2015\\_04.pdf](https://www.anao.gov.au/sites/g/files/net4816/f/ANAO_Report_2014-2015_04.pdf)>, accessed 21 June 2018.

<sup>4</sup> ANAO cited in AEC, *Submission 66*, p. 29.

<sup>5</sup> AEC, *Submission 66*, p. 29.

<sup>6</sup> AEC, *Submission 66*, p. 29.

<sup>7</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 25.

<sup>8</sup> AEC, *Submission 66:18*, p. 8.

The Senate voting changes, the number of candidates, the size of the Senate ballot paper and the increased number of names on the certified lists, which meant it took longer to look up voters, appear to have made voting for the Senate a longer process than in the past.<sup>9</sup>

4.10 This assessment was supported by anecdotal evidence provided by the Australian Greens:

Many people we spoke to who witnessed these delays suggested the cause was voters taking longer to fill in their Senate ballot papers due to the new requirement to fill in at least six boxes. This problem may have been exacerbated in states where the Senate ballot paper was very large due to the number of parties contesting the ballot.<sup>10</sup>

4.11 In response to suggestions that the AEC's reduction of the number of polling places factored into increased queueing times, Mr David Molnar, Australian Electoral Officer and State Manager for Tasmania, AEC, contended:

There is no direct relationship between the queueing figures I have seen, where we get to 30 minutes, and the booths we closed, because, equally, we adjusted the staffing numbers. There is no direct correlation between closing a booth and queueing increase.<sup>11</sup>

4.12 Some locations in New South Wales faced long queue times. For example, Bexley East in the division of Barton recorded queue times of 87 minutes at 8am and Hornsby Central in the division of Bradfield, 72 minutes at 10am. The AEC explained why this was so:

... some long queues and voter frustration would have been due to confusion created by the redistribution. Electors may have joined the ordinary voting line at a nearby polling place and were subsequently told that they were at a polling place outside of their enrolled division.

Additionally, eight out of the top 10 divisions in New South Wales where long queue times were experienced were dual polling places. Dual polling places are typically created in polling places located adjacent to divisional boundaries where the one polling place can issue ordinary votes for two of more

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<sup>9</sup> AEC, *Submission 66*, p. 25.

<sup>10</sup> Australian Greens, *Submission 89*, p. 6.

<sup>11</sup> David Molnar, Australian Electoral Officer and State Manager for Tasmania, AEC, *Committee Hansard*, Hobart, 14 November 2016, p. 8.

divisions. Additional time is required to direct electors to the correct ordinary issuing point for the enrolled division.<sup>12</sup>

4.13 Queue times are a significant issue because they can have an impact on voters' overall satisfaction with the electoral process. AEC research results:

... indicate that 20 per cent of Australian voters are likely to become dissatisfied and disappointed with the machinery of elections if they are required to wait longer than five minutes to cast a vote. Given the increasing scale of federal elections, with many more voters at each electoral event, it is unlikely the AEC will be able to continue meeting these community expectations without investing in automation to assist polling place throughput and overall voter experience.<sup>13</sup>

4.14 The Committee notes the negative impact that long queue times can have on the overall voting experience of some electors. It is also cognisant that the AEC is restricted in its ability to address the issue due to lack of resources and the increasing scale of federal elections.

4.15 The impact of queue times on the accessibility of polling places for disabled voters is discussed below.

## **Campaigners and party volunteers at polling places**

4.16 Campaigning by candidates, party volunteers and a range of community groups and non-governmental organisations at pre-polling and polling places is an important part of the Australian election landscape. Section 340 of the Electoral Act governs rules for canvassing near polling booths. This section states that it is an offence to engage in the following acts within a polling booth, or within six metres of the entrance to a polling booth:

- canvassing for votes;
- soliciting the vote of any elector;
- inducing any elector not to vote for any particular candidate;
- inducing any elector not to vote at the election; and
- exhibiting any notice or sign (other than an official notice) relating to an election.<sup>14</sup>

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<sup>12</sup> AEC, *Submission 66.3*, p. 4.

<sup>13</sup> AEC, *Submission 66.18*, p. 8.

<sup>14</sup> Australian Electoral Commission (AEC), 'Electoral Backgrounder – polling place offences', 15 March 2018, <[https://www.aec.gov.au/About\\_AEC/Publications/backrounders/polling-places-offences.htm](https://www.aec.gov.au/About_AEC/Publications/backrounders/polling-places-offences.htm)>, accessed 14 June 2018.

- 4.17 The Committee heard evidence that campaigning outside of polling places can cause access issues for some voters. Voices for Indi, for example, submitted that some activities of campaigners may be in breach of s. 340 of the Electoral Act and are intimidating for some voters:

Indi had 10 candidates at the 2016 election and it was highly contested. At the Wangaratta pre-poll, there were up to 15-20 people handing out HTV [How to Vote] cards at any one time. Such a large number of people converging on 1 or 2 voters as they picked a path through to the polling booth was at times intimidating for some, especially older people. Further, some of the candidate/supporters, were quite aggressive in their determination to get their card into the hands of the vote[r]s, escorting voters up the steps to the front door, in clear breach of the AEC rules. While on occasion the AEC asked some people to move back, the behaviour was repeated and the rule flouted.<sup>15</sup>

- 4.18 Mr Jeffrey Pope, Australian Electoral Officer and State Manager for Victoria, AEC, informed the Committee of some other issues experienced at polling booths in Victoria which may have caused some electors to feel intimidated:

We did have a couple of challenges particularly at our Berwick pre-poll in the division of La Trobe where the CFA [Country Fire Authority] matter was quite prominent. There was a presence from the United Firefighters Union as well as the CFA and political parties. That was one example where we called the Victorian police to come down and assist the OIC in just making sure everybody kept calm and remained focused on what they were there to do. Similarly we had an incident at Langwarrin polling place in the division of Dunkley where we had to call the police for an alleged assault between party workers... We had some other lower level allegations of intimidation.<sup>16</sup>

- 4.19 Confidential evidence received by the Committee also highlighted abusive altercations between campaign volunteers and suggested that volunteers be banned from handing out how-to-vote cards at polling places.
- 4.20 In contrast to this, Mr Michael Maley (private capacity), noted the generally 'calm, peaceful and friendly atmosphere on polling day... the absence of overt presence of police and military, and... the typically polite way in which representatives of different political parties or candidates deal with each other'.<sup>17</sup>

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<sup>15</sup> Voices for Indi, *Submission 55*, p. [1].

<sup>16</sup> Jeffrey Pope, Australian Electoral Officer and State Manager for Victoria, AEC, *Committee Hansard*, Melbourne, 15 November 2016, p. 13.

<sup>17</sup> Michael Maley, *Submission 5*, p. 6.

4.21 Mr Maley suggested that ‘these characteristics of polling day are underpinned by strong cultural foundations: a widely shared societal understanding that the election process is to be respected and supported, and that everybody—including parties, candidates, scrutineers, canvassers and voters—has a role to play in ensuring its success’.<sup>18</sup>

4.22 The Committee also heard evidence that the activities of volunteers and party campaigners are ‘a vibrant part of a robust democracy in action’ that should be supported. Family Voice Australia recommended that:

The current provisions for handing out how-to-vote cards at polling booths should be maintained and no steps should be taken to curtail this democratic activity.<sup>19</sup>

4.23 The AEC, too, recognises the importance of political activities at polling places. Ms Marie Neilson, Australian Electoral Officer and State Manager for Western Australia, AEC, informed the Committee:

Our policy is pretty much to allow party activities where we possibly can, because...it is an incredibly important part of the political process. Where the owners [of polling premises] do not allow us to have party workers outside, we try to negotiate a compromise. If we cannot, we will let the candidates and parties know and put a table inside where they can put their how-to-vote materials, at least.<sup>20</sup>

4.24 While the Committee recognises that the activities of campaigners and party volunteers at polling places can be intimidating for some voters, it regards the right of parties and other organisations to campaign at polling places, within the legislated rules, as an integral component of Australia’s electoral process and an important service to assist voters to be well-informed about their choices. It, therefore, does not consider that changes to the rules on campaigning at polling places are necessary.

4.25 However, it does note that the actions of some political actors can make the voting experience difficult and unpleasant for electors through excessive behaviour at polling places. It hopes the AEC, all political actors, including third-party groups, and candidates will remain vigilant in ensuring these

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<sup>18</sup> Michael Maley, *Submission 5*, p. 6.

<sup>19</sup> Family Voice Australia, *Submission 27*, p. 13.

<sup>20</sup> Marie Neilson, Australian Electoral Officer and State Manager for Western Australia, AEC, *Committee Hansard*, Perth, 18 November 2016, p. 5.

rules are upheld and ensure voters are able to access polling places free from interference and/or intimidation.

- 4.26 In his submission, the Member for Swan, Steve Irons, noted that site limitations imposed on a polling place by the site's building owner resulted in the AEC ruling that party representatives would be unable to hand out How to Vote (HTV) cards. Mr Irons MP noted 'the absence of party workers on site removed an important layer of scrutiny of the electoral process'.<sup>21</sup>
- 4.27 As noted throughout this report, parties and their representatives including volunteers at polling places, play an essential role in informing voters and ensuring the proper conduct of elections. The Committee notes that, due to the nature of election timing, the AEC generally secures venues with short notice and can be limited in its capacity to negotiate conditions. However, the Committee agrees that a venue's capacity to accommodate party workers conducting the normal activities of distributing HTV material should be a criteria in selecting venues for polling places.

## Recommendation 14

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- 4.28 The Committee recommends that the Australian Electoral Commission, when selecting polling places, consider the need to physically accommodate all political party booth workers, thereby ensuring there is no restriction on the ability of workers to distribute How to Vote material.**

### Access for disabled voters

- 4.29 The Australian Electoral Commission (AEC) engages with disability spokespeople from around the country through its Disability Advisory Committee, which meets at least once a year.<sup>22</sup> The Committee aims to 'enable the AEC to promote greater accessibility, inclusion and participation in the electoral process by people with disability'.<sup>23</sup>
- 4.30 Through this forum, the AEC is able to meet with peak disability organisations and provide them with 'specific information on the range of

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<sup>21</sup> Mr Steve Irons MP, Member for Swan, *Submission 117*, p. [1].

<sup>22</sup> Kevin Kitson, First Assistant Commissioner of Network Operations, Australian Electoral Commission (AEC), *Committee Hansard*, Hobart, 14 November 2016, p. 13.

<sup>23</sup> AEC, 'Disability Advisory Committee: Terms of Reference', 27 March 2018, <[https://www.aec.gov.au/About\\_AEC/Publications/files/disability-advisory-committee-terms-of-reference.pdf](https://www.aec.gov.au/About_AEC/Publications/files/disability-advisory-committee-terms-of-reference.pdf)>, accessed on 7 June 2018.

services'. It also provides an 'opportunity for representatives of the disability sector to discuss matters related to the election'.<sup>24</sup>

4.31 Before every election, the AEC inspects thousands of premises to determine their suitability as polling places. In this process, 'the AEC places a high priority on premises that have appropriate access, noting the constraints of availability and other suitability criteria'.<sup>25</sup>

4.32 Table 4.1 shows accessibility rankings for the 2013 and 2016 elections.

**Table 4.1 Polling place accessibility ratings**

	2013		2016	
	Number	Per cent	Number	Per cent
Static Polling Place				
Full	903	11.7%	170	2.5%
Partial	5,405	70.2%	6 103	89.5%
None	1,389	18.0%	549	8.0%
Pre-poll Voting Centre				
Full	202	31.3%	59	9.1%
Partial	389	60.3%	553	85.2%
None	54	8.4%	37	5.7%
Combined				
Full	1,105	13.2%	229	3.1%
Partial	5,794	69.5%	6 565	89.1%
None	1,443	17.3%	586	7.8%

Source: AEC, *Submission 66*, p. 35.

4.33 The AEC explained that 'more robust and accurate assessments by inspectors against the accessibility criteria is likely to have contributed to the

<sup>24</sup> AEC, *Annual Report 2016-17*, p. 62, <<https://annualreport.aec.gov.au/2017/contents/files/aec-annual-report-2016-17.pdf>>, accessed 3 December 2018.

<sup>25</sup> AEC, *Submission 66*, p. 34.



reduction in the number of premises assigned a “fully accessible” rating’ between the 2013 and 2016 elections.<sup>26</sup>

- 4.34 Mr David Molnar, Australian Electoral Officer and State Manager for Tasmania, AEC, explained the meaning of ‘partial’ accessibility:

For instance, a polling place might have a slight ramp going in, or it might have a car park provided for disability access, but it might be too far away from the polling place. There are all these criteria you have to meet. Sometimes it does not quite meet all of them, but it can meet the majority of them...That is what we call ‘partial’. It certainly satisfies the main areas of disability access but not all.<sup>27</sup>

- 4.35 As part of the AEC’s focus on improving disability access to polling places, it introduced a new inspection tool in the lead-up to the 2016 federal election:

One of the key changes implemented by the AEC...was to improve the capture, storage and publication of premises accessibility information via the Electronic Premises Inspection Tool (EPIT) project. The aim was to provide the public with more detailed information about the accessibility of polling places.<sup>28</sup>

- 4.36 The EPIT initiative received positive feedback from advocates for disabled voters. Ms Samantha Jenkinson, Executive Director, People with Disabilities WA Inc., for example, noted that ‘[w]e were very pleased to see the AEC website listing polling places and their access...It is a fantastic assessment’.<sup>29</sup>

- 4.37 Ms Jenkinson also pointed out some issues with the EPIT system:

What it also showed was the depth and breadth of the problem, because one of the issues with the tool was that, although it was useful, it showed pretty much every polling booth needed assisted access to some degree. The way that was done was with the icon that said ‘assisted access’ but when you looked in detail what assisted access meant could be from as little a thing as the car-parking is not within 50 metres of the polling booth to there is a flight of stairs—so quite a big difference if you are not looking at the detail...if people are coming along to a polling booth they are not necessarily going to

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<sup>26</sup> AEC, *Submission 66*, p. 35.

<sup>27</sup> David Molnar, Australian Electoral Officer and State Manager for Tasmania, AEC, *Committee Hansard*, Hobart, 14 November 2016, p. 3.

<sup>28</sup> AEC, *Submission 66*, p. 34.

<sup>29</sup> Samantha Jenkinson, Executive Director, People with Disabilities WA Inc., *Committee Hansard*, Perth, 18 November 2016, p.13.

look at all the detail and there is an expectation that they will be able to access the voting facilities...

It is only by clicking down that you find out that it is actually fully wheelchair accessible but just not accessible for someone with a vision impairment. We found that not a lot of people necessarily went into that detail...<sup>30</sup>

- 4.38 The Committee acknowledges the work the AEC has done in providing detailed information on the accessibility of pre-polling and election day polling places. It notes that improvements could be made in how this information is presented to electors, with greater clarity on the meaning of 'assisted' and 'partial' access.

## **Recommendation 15**

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- 4.39 The Committee recommends that the Australian Electoral Commission consider revising information provided for voters to give greater clarity concerning the meaning of 'assisted access'/'partial access'.**

- 4.40 The Committee heard evidence from submitters about others issues concerning accessibility to polling booths. ParaQuad Association Tasmania Inc., for instance, informed the Committee that:

Access in the immediate vicinity outside polling places can be problematic for larger electronic chairs, especially in more remote rural areas. Sloping, gravelly surfaces were mentioned as an issue.<sup>31</sup>

- 4.41 Lack of disabled parking at polling places and appropriate access from disabled car parks to polling places were other issues of concern. ParaQuad Association Tasmania Inc., emphasised the need for 'increased parking for people with disability close to polling places'. Chairman, David Cawthorn, informed the Committee:

Disabled parking is one thing, as well as not enough accessible parking at polling booths and people parking in them when they do not have permits...We probably need more disabled parking and maybe someone could patrol the use of them in some way.

Also, ramp access from car parks needs to be clear, not blocked. Sometimes in the car parks you have to get up kerbs or something like that, so they put

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<sup>30</sup> Samantha Jenkinson, Executive Director, People with Disabilities WA Inc., *Committee Hansard*, Perth, 18 November 2016, p.13.

<sup>31</sup> ParaQuad Association Tasmania Inc., *Submission 131*, p. [1].

temporary ramps in place, but people just park across them so you cannot access them.<sup>32</sup>

- 4.42 Long queue times were also raised as an accessibility issues for some disabled electors. People with Disability Australia submitted:

People reported queue times that were long, and for many these queue times were longer when compared to previous elections. This impacted negatively on a number of people's ability to vote, due to physical incapacity or impact on their psychosocial wellbeing. Some people's needs were accommodated, either by staff who allowed them to vote without queue, or by the provision of seating while queuing. Unfortunately this wasn't a universal experience. A number of people reported to us that [they] had to give up and leave a polling place due to pain or exhaustion that they experienced as a result of these long queues.<sup>33</sup>

- 4.43 The Committee is mindful that queueing can be a tiring and painful experience for some disabled and elderly electors, which can act as a barrier to some people's participation in the electoral process. While the Committee acknowledges that the AEC works to keep queueing to a minimal, queue times remain an issue for disabled voters even when they are comparatively short.

## Recommendation 16

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- 4.44 The Committee recommends that the Australian Electoral Commission considers the feasibility of offering express-lane queuing options for disabled, pregnant and elderly voters, or, otherwise the provision of seating options for those needing to sit down while queued.**

- 4.45 Ms Jenkins raised the issue of people with cognitive disability and noted: 'Accessibility is not just about physical access, but also information being made available in easy-read and easy-English formats.'<sup>34</sup> The Committee agrees that it is desirable that election-related material be available in these formats.

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<sup>32</sup> David Cawthorn, Chairman, ParaQuad Association Tasmania Inc., *Committee Hansard*, Hobart, 14 November 2016, p. 21.

<sup>33</sup> People with Disability Australia, *Submission 124*, p. 5.

<sup>34</sup> Samantha Jenkinson, Executive Director, People with Disabilities WA Inc., *Committee Hansard*, Perth, 18 November 2016, p.13.

## Recommendation 17

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- 4.46 The Committee recommends that the Australian Electoral Commission consider providing election-related material in easy-to-read and easy-English formats.**
- 4.47 Blind and low vision voters experienced frustrations due to lack of access to candidate information. While acknowledging it is outside of the AEC's mandate, Vision Australia noted 'there is little access for people who are blind or have low vision to local candidate information, party platform positions, and how to vote cards'.<sup>35</sup>
- 4.48 The Committee hopes that candidates, parties and other organisations make efforts to provide election information in a range of accessible formats.

## Pre-poll voting

- 4.49 Early voting<sup>36</sup> remains a long-term and growing trend among the Australian electorate. The Australian Electoral Commission (AEC) submitted:
- ... the trend of increased early voting continued at the 2016 federal election reflecting the Australian community's increased mobility and desire for flexibility in how and where they cast their vote. There is clearly a demand for a range of voter services, which is demonstrated by the fact that pre-poll and postal voting now account for nearly one-third of all votes issued.<sup>37</sup>
- 4.50 Early voting includes pre-poll votes submitted at pre-poll voting centres (PPVCs) in the lead-up to election day. The AEC established 649 PPVCs across Australia.<sup>38</sup>
- 4.51 At the 2016 federal election a total of 3 249 874 Senate and 3 233 640 House of Representatives votes were submitted at PPVCs. This contrasts to 2 507 373 Senate and 2 491 766 House of Representatives votes at the 2013 election.<sup>39</sup> A breakdown of pre-poll voting appears in Table 4.2.

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<sup>35</sup> Vision Australia, *Submission 35*, p. 5.

<sup>36</sup> The Australian Electoral Commission (AEC) notes that the term 'early voting' 'includes all pre-poll votes, postal votes and votes cast through hospital, remote or other mobile teams'. See: AEC, *Submission 66*, p. 27, n. 1.

<sup>37</sup> AEC, *Submission 66:15*, p. 3.

<sup>38</sup> AEC, *Annual Report 2016-17*, p. 33, <<https://annualreport.aec.gov.au/2017/contents/files/aec-annual-report-2016-17.pdf>>, accessed 3 December 2018.

<sup>39</sup> AEC, *Submission 66*, p. 28.

**Table 4.2 Pre-poll voting, 2013 and 2016 federal elections**

	2013	2016
Pre-poll votes cast as ordinary votes		
Senate	1,982,859	2,722,701
House of Representatives	1,982,660	2,724,164
Pre-poll declaration votes		
Senate	524,514	527,173
House of Representatives	509,106	509,476
Total pre-poll votes		
Senate	2,507,373	3,249,874
House of Representatives	2,491,766	3,233,640

Source: AEC, *Submission 66*, p. 28.

- 4.52 While the increase in pre-poll voting reflects an on-going trend, one factor in the increase for the 2016 federal election was the concurrence of election day with the school holiday period. Many electors were travelling away from their electorates on polling day and therefore cast early votes at PPVCs.<sup>40</sup>
- 4.53 Electors need to be eligible to cast a pre-poll vote. Schedule 2 of the Act—Grounds of application for postal or pre-poll vote—stipulates the grounds for pre-poll (and postal) voting. These include:
- absence from one’s electorate on polling day;
  - being more than eight kilometres from a polling place on polling day;
  - having a serious illness, infirmity, or approaching childbirth; or
  - being unable to attend a polling booth due to a reasonable fear for one’s wellbeing or safety.<sup>41</sup>
- 4.54 Despite the legislated eligibility requirements for pre-poll voting, research suggests that ‘convenience’ is consistently given as the main reason people

<sup>40</sup> AEC, *Submission 66*, p. 27.

<sup>41</sup> *Commonwealth Electoral Act 1918*, Schedule 2.

vote via the pre-poll service.<sup>42</sup> ‘Convenience’ is not included in Schedule 2 of the Electoral Act as legitimate grounds for a pre-poll vote.

4.55 Related to this point, Mr Greg Northover (private capacity) informed the Committee:

Ostensibly pre-poll is provided as an exceptional way to cast a vote where it is known that voting on polling day would not be convenient (i.e., impossible). There is an anecdotal view that in 2016 an increasing number of people chose to cast a pre-poll vote on some pretext in order to escape the inconvenience of having to turn up and likely queue with the masses on polling day.

4.56 Mr Northover continued:

This submission is ambivalent about this being a good thing or a bad thing. It is merely noted that it is happening and the AEC and Committee may need to consider the implications of this.<sup>43</sup>

4.57 Other submitters were more explicit in their criticisms of the increase in pre-poll voting. Mr Lex Stuart submitted:

... the CEAct [*Commonwealth Electoral Act*] should be improved, and an education program be implemented, to require almost all voting to take place on the actual election day. The current laws contain legal criteria for eligibility for pre-poll and postal voting, but the law has not been enforced by the AEC, resulting in huge increases in recent years of numbers of pre-poll and postal votes. These criteria should be tightened, and the AEC should enforce them, with the objective of requiring as much voting on the actual day as is possible.<sup>44</sup>

4.58 Some submitters expressed strong support for pre-poll voting services. Unions NSW, for instances, noted the importance of pre-poll voting for ‘the growing number of workers required to work on weekends and unsociable hours’ and for ‘voters with a disability or who care for someone with a disability’.<sup>45</sup>

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<sup>42</sup> A Rojas and D Muller, ‘Early Voting in Australian Federal Elections: Causes and Consequences’, Australian Political Studies Association 2014 Conference—Sydney, p. 6, <[https://www.aec.gov.au/About\\_AEC/research/files/apsa-2014-early-voting-in-australian-federal-elections-causes-and-consequences.pdf](https://www.aec.gov.au/About_AEC/research/files/apsa-2014-early-voting-in-australian-federal-elections-causes-and-consequences.pdf)>, accessed 14 June 2018; also: The Electoral Integrity Project, *Submission 52*, p. 4.

<sup>43</sup> Greg Northover, *Submission 40*, p. 11.

<sup>44</sup> Lex Stewart, *Submission 118*, p. [3].

<sup>45</sup> Unions NSW, *Submission 87*, p. 4.

4.59 Unions NSW submitted that it was:

... concerned suggestions to remove or limit pre-poll are motivated by political parties and campaigners who are more concerned with their ability to staff pre-poll booths than the accessibility of the electoral system for all voters.<sup>46</sup>

4.60 The Australian Greens, while supportive of pre-polling services, suggested that ‘the extended pre-polling period is putting party organisers and their volunteers under pressure’. They recommended that ‘the period of pre-polling is reduced to two weeks before election day’.<sup>47</sup>

4.61 Mr Jeff Waddell (private capacity) submitted:

Either the restrictions around early voting are lifted to allow people to vote at early voting centres regardless of whether they can vote on Election Day Saturday or not; or we change the ‘Saturday, Election day’ to be an ‘Election Weekend’ and open many Polling Places on both a Saturday and a Sunday.<sup>48</sup>

4.62 The Electoral Integrity Project’s survey of voters revealed that: ‘When asked when elections should be held, about half the respondents said on a single day while 28 per cent said over a weekend and 16 per cent said over a week’.<sup>49</sup>

4.63 Currently, ordinary pre-poll votes cast for the House of Representatives are counted on election night, following the close of the polls. Ordinary pre-poll votes for the Senate are counted on the Monday after the election.<sup>50</sup>

4.64 Mr Antony Green (private capacity) touched on the issue of counting pre-poll votes on polling day. He submitted:

In New Zealand, the manual counting of advance votes begins in secret on polling day before the close of polls. The aim is to release the advance vote results as soon as possible after the close of polls.

This would be possible in Australia with an appropriate change to the Act.

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<sup>46</sup> Unions NSW, *Submission 87*, p. 5.

<sup>47</sup> Australian Greens, *Submission 89*, p. 5.

<sup>48</sup> Jeff Waddell, *Submission 3*, p. 9.

<sup>49</sup> The Electoral Integrity Project, *Submission 52*, p. 4.

<sup>50</sup> Australian Electoral Commission, ‘Candidates Handbook: Counting the votes’, <<https://www.aec.gov.au/Elections/candidates/candidates-handbook/counting.htm>>, viewed 13 June 2018.

I do not propose to recommend polling day counting of pre-poll votes because of the likely difficulty of having scrutineers available. However, it should be considered as an option.<sup>51</sup>

- 4.65 On another issue, the Liberal National Party noted that ‘given the length of the election campaign, it was surprising that the locations and times for pre-poll voting centres and mobile voting were not confirmed by the AEC until the day before pre-poll voting commenced in many instances’. They suggested that ‘better forward communication by the AEC of voting locations should be a priority’.<sup>52</sup>
- 4.66 In response, Mr Thomas Ryan, Australian Electoral Officer and State Manager, Queensland, AEC, stated:
- By law, we have to do it at least the day before, and we have a service commitment of a week before. Those details were published on the website long before pre-polling. There might have been some adjustments in terms of times in regional areas...But for all intents and purposes the pre-poll hours and locations were published and we met the commitment.<sup>53</sup>
- 4.67 The Committee hopes the AEC will continue to meet its service commitments to publicise the locations and times of pre-polling booths one week prior to the opening of the polls.

## Recommendation 18

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- 4.68 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to restrict pre-poll voting to no more than two weeks prior to the date fixed by the writs for election day.**

## Postal voting

- 4.69 Like pre-poll voting, postal voting is a vital service to ensure people are politically enfranchised within the compulsory voting regime. As touched on above in relation to pre-poll voting, those eligible to apply for a postal vote include: remote voters, voters unable to attend a polling booth due to a range of reasons, carers of seriously ill or infirm persons, registered silent

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<sup>51</sup> Antony Green, *Submission 30*, p. 8.

<sup>52</sup> Liberal National Party, *Submission 68*, p. 2.

<sup>53</sup> Thomas Ryan, Australian Electoral Officer and State Manager, Queensland, AEC, *Committee Hansard*, Brisbane, 25 November 2016, p. 7.



electors, registered overseas voters, and members of the defence force serving outside of Australia.<sup>54</sup>

- 4.70 The number of people making use of postal votes continued to rise at the 2016 federal election. For 2016, the Australian Electoral Commission (AEC) processed 1 510 640 applications for a postal vote. This was an increase from the number processed in 2013-1 329 948.<sup>55</sup> Table 4.3 provides postal voting numbers for the Senate and House of Representatives for the last four federal elections.

**Table 4.3 Postal voting at federal elections 2007, 2010, 2013 and 2016**

	2007	2010	2013	2016
Senate	704,563	804,973	1,126,528	1,217,528
House of Representatives	706,466	807,376	1,133,630	1,223,019

*Source: AEC, Submission 66, p. 7.*

- 4.71 The majority of these postal votes were received by the AEC prior to the 2 July polling day. The Electoral Act allows a 13-day period after the close of the polls for postal votes to be received. 230 116 votes were received following the close of the polls, but within the 13-day period. 4 930 votes arrived after the deadline and, therefore, were excluded from the count.<sup>56</sup> Additionally, 7 397 postal votes were cast after the 2 July poll and were, therefore, rejected.<sup>57</sup>
- 4.72 Mr Andrew Reid (private capacity), an Australian citizen resident in Cairo, Egypt, is registered as a General Postal Voter. He noted that the AEC had declined to establish an Overseas Voting Centre (OVC) in Cairo, thus requiring him to vote via postal ballot. He claimed that due to the inefficiencies of the postal system, his postal vote failed to arrive at the AEC before the cut-off date for receiving postal votes. He contended that it is

<sup>54</sup> Australian Electoral Commission (AEC), 'Postal vote application form', <<https://www.aec.gov.au/by-elections-2018/files/pva-form.pdf>>, accessed on 13 June 2018.

<sup>55</sup> AEC, *Submission 66*, p. 30.

<sup>56</sup> AEC, *Submission 66*, p. 31.

<sup>57</sup> AEC, *Submission 66:2*, Attachment C2, p. [1].

‘farical that Australian citizens living outside major foreign capitals have to rely on the efficiency of foreign postal systems in order to cast their vote’.<sup>58</sup>

4.73 Mr Reid suggested that the model in use ‘by the Victorian Electoral Commission (VEC), where overseas electors receive ballot papers by mail, but then scan the completed ballot papers and return them via email to the VEC’ could be applied to federal elections. He recommended that the Electoral Act be changed to:

... allow ballot papers for registered overseas electors to be scanned and sent electronically to the AEC.<sup>59</sup>

4.74 E-mail submission and web-loading options for voters unable to attend polling places are discussed in Chapter 6.

4.75 Of the 4 930 postal votes which arrived after the 13-day period following the close of polls, 2 837 of these were sent from overseas locations. By contrast, 1 174 overseas postal votes were admitted to the final count.<sup>60</sup>

4.76 Given that more overseas postal votes fail to arrive in time to be admitted to the count than those that arrive within the 13-day period after the close of the polls, the Committee hopes the AEC will investigate methods to reduce this gap.

4.77 Web-loading of ballot papers is discussed in Chapter 6.

4.78 The Committee heard evidence of confusion over who can act as an authorised witness to a postal vote, particularly for someone voting overseas. According to Mr Paul Pirani, Chief Legal Officer, AEC, the purpose of the witness is to ‘ensure that the person has actually cast their vote before the close of polls on polling day...And that is all they are attesting to’.<sup>61</sup>

4.79 Section 193 of the Electoral Act outlines who can act as an authorised witness. The Act states:

- (1) An elector whose name appears on a Roll is an authorised witness.
- (2) Outside Australia, the following persons are authorised witnesses:

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<sup>58</sup> Andrew Reid, *Submission 9*.

<sup>59</sup> Andrew Reid, *Submission 9*.

<sup>60</sup> AEC, *Annual Report 2016-17*, p. 34.

<sup>61</sup> Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, Townsville, 31 January 2017, p. 26.

- (a) an officer of the Defence Force of the naval, military or air forces of a Commonwealth country;
- (b) a person appointed or engaged under the *Public Service Act 1999*;
- (c) a member of the civil public service of a State or Territory or of a Commonwealth country;
- (d) a Justice of the Peace for a State or Territory of a Commonwealth country;
- (e) a minister of religion or medical practitioner resident in a State or Territory or a Commonwealth country;
- (f) an Australian citizen.<sup>62</sup>

4.80 Judith and Geoffrey Hinspeter informed the Committee that they sent postal votes from the United States of America. They submitted that they had no contact with any other Australian citizens, nor other authorised witnesses listed in s. 193 of the Electoral Act. Believing that they could not witness each other's vote, they returned their ballot papers to Australia without the authorised witness box signed. They later received a letter from the AEC informing them that their votes were invalid.<sup>63</sup>

4.81 On this point, Ms Laura Sinclair submitted that

The definition of **authorised witness** is not made clear to people exercising a postal vote on the certificate form attached to the postal vote envelope, nor is it made clear in the printed leaflet supplied to postal voters. Bone fide ballots can be, and I suspect are, excluded from the count because what would seem reasonable voter interpretations of the term do not strictly accord to the act. <sup>64</sup>

4.82 The Committee believes that there could be greater clarity in postal voting materials on who can act as an authorised witness and what function the authorised witness serves. This is especially so given common-sense understandings about the ineligibility of family members to act as a witness for certain documents.

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<sup>62</sup> *Commonwealth Electoral Act 1918*, s. 193.

<sup>63</sup> Judith and Mr Geoffrey Hinspeter, *Submission 34*, p. [1].

<sup>64</sup> Laura Sinclair, *Submission 37*, p. [1]. Emphasis in original.

## Recommendation 19

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- 4.83 The Committee recommends that the Australian Electoral Commission consider revising its postal voter material to ensure greater clarity on who can act as an authorised witness and the role of an authorised witness.**
- 4.84 ParaQuad Association of Tasmania Inc. suggested that some disabled electors may be unaware that they can apply to become General Postal Voters, enabling them to receive election material by post at every election without having to apply each time. They recommended that:
- People who are eligible to vote who are on a disability benefit or aged pension be notified regularly, by their usual mail that they can apply for a postal vote. It's currently advertised in the media, but we feel a letter with the pertinent information with it would serve people better. Many people do not know they can register for ALL future elections.<sup>65</sup>
- 4.85 The Committee agrees that for many disabled or otherwise eligible voters, becoming a General Postal Voter is the most convenient method to engage with the electoral process. The Committee believes that this service could be better advertised to some electors.

## Recommendation 20

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- 4.86 The Committee recommends that the Australia Electoral Commission work with disability advocates to better inform eligible disabled electors of the General Postal Voter application process.**

## Overseas voting

- 4.87 Australians overseas are not obliged to vote at federal elections. Despite this, the Australian Electoral Commission (AEC) provides access to the vote in a number of overseas locations.
- 4.88 The AEC set up 95 overseas posts which functioned as Overseas Voting Centres for up to two weeks before election day. Major locations included London, Hong Kong, New York, Singapore, Shanghai, and Berlin. Other locations included Port of Spain, Pohnpei, Brasilia, and Sapporo. Overseas Australians could also apply for a postal vote.<sup>66</sup>

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<sup>65</sup> ParaQuad Association Tasmania Inc., *Submission 131*, p. [1].

<sup>66</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 32; Appendix B.

4.89 The provision of these in-person voting services is costly for a number of reasons. The AEC notes:

In-person overseas voting is resource-intensive for the AEC, both in terms of costs and staffing, given the logistical management and reliance upon external contractors to despatch election materials across the DFAT global network. In addition to AEC resources, the delivery of overseas voting services represents a significant impost on overseas posts.<sup>67</sup>

4.90 While acknowledging that the provision of in-person voting services at overseas locations is resource intensive, the Committee believes that this remains an integral component of the political enfranchisement of the population. It hopes the AEC continues to work with the Department of Foreign Affairs and Trade to ensure that Australians overseas have reasonable access to in-person voting services.

4.91 The AEC received a total of 71 406 votes sent to Australia from overseas. The majority of these were pre-poll votes issued at overseas posts.<sup>68</sup> These pre-poll votes were cast as declaration votes ‘which were sealed and returned to the voter’s home division in Australia for scrutiny and counting’.<sup>69</sup>

4.92 Of these votes sent back to Australia, 118 were not received in time to be included in the count. These 118 votes were sent from Santiago in Chile and had failed to arrive in time due to an administrative error by the courier.<sup>70</sup> This meant that a total of 71 288 overseas votes were included in the final count.

4.93 Concerning this issue, the AEC submitted:

The AEC was mindful of the potential impact on close seat results if ballot material was late or missing. Close seat analysis shows that the Santiago consignment did not impact final results.<sup>71</sup>

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<sup>67</sup> AEC, *Submission 66*, p. 32.

<sup>68</sup> AEC, *Submission 66:2*, Attachment B2, p. 6.

<sup>69</sup> AEC, *Submission 66*, p. 32.

<sup>70</sup> AEC, *Submission 66*, p. 32.

<sup>71</sup> AEC, *Submission 66*, p. 32.

## Recommendation 21

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**4.94 The Committee recommends that the Australian Electoral Commission continues to work closely with its external contractors to ensure the integrity of logistics processes for the transmission of votes back to Australia.**

### Australian Defence Force Personnel

- 4.95 At any one time, a significant number of Australian Defence Force (ADF) personnel are deployed overseas. As at June 2018, for instance, over 2 400 personnel are deployed at a number of overseas locations, including the Middle East, Sudan, Afghanistan and the Philippines.<sup>72</sup> At the time of the 2016 federal election, a large number of ADF personnel were deployed at Hawai'i, USA, for participation in the annual Rim of the Pacific joint military operation.
- 4.96 In order to ensure access to the vote for these overseas ADF personnel, 'the AEC and ADF delivered a customised voting service, primarily postal voting', for the 2016 federal election. ADF personnel were encouraged to apply to become General Postal Voters, or otherwise, apply for a postal vote online. Two hundred and twenty-two ADF personnel postal votes were returned to Australia from overseas locations for this election.<sup>73</sup>
- 4.97 In-person voting services were offered to ADF personnel at a number of OVCs, depending on the location of these personnel. For the 2016 federal election, the Australian Electoral Commission (AEC) established an OVC at the Australia Consulate in Pearl Harbor, Honolulu, to cater for participants in the Rim of the Pacific joint military operation. Seven hundred and eighty-five votes were issued at this OVC.<sup>74</sup>
- 4.98 In correspondence with the Committee, the then Defence Minister, Senator the Hon. Marise Payne, expressed the ADF's overall satisfaction with the voting services provided by the AEC for the 2016 federal election. She suggested that dispatch of postal votes at the earliest possible time would allow the ADF time to forward these to ADF personnel for completion and return to Australia. She also suggested that the provision of on-line voting

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<sup>72</sup> Department of Defence, 'Global Operations', <<http://www.defence.gov.au/Operations/>>, accessed 27 June 2018.

<sup>73</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 33.

<sup>74</sup> AEC, *Submission 66*, p. 33.

services for ADF personnel would greatly reduce difficulties for their participation in the electoral process.

4.99 The issue of electronic voting is discussed in more detail in Chapter 5.

## **Recommendation 22**

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**4.100 The Committee notes the importance of Australian Defence Force personnel being able to vote in a timely and efficient manner, and recommends that the Australian Electoral Commission ensures that postal votes for Australian Defence Force personnel are dispatched at the earliest possible time to allow the ADF time to forward those to its personnel for completion and return to Australia.**

## **Mobile voting**

4.101 Mobile polling services are delivered by the Australian Electoral Commission (AEC) to places where the Electoral Commissioner determines they are needed. Mobile polling can commence up to 12 days before election day and can be conducted on election day.

4.102 This election, there were 557 mobile polling teams which visited almost 3 000 locations by land, sea and air. The types of locations these teams visited included:

- hospitals;
- aged care facilities;
- prisons;
- homelessness service providers; and
- remote locations.<sup>75</sup>

4.103 The Committee received evidence of some issues concerning mobile polling teams in some locations.

4.104 Mr Lincoln Folo, Campaign Director, Liberal National Party of Queensland, informed the Committee that '[a]t the Townsville Hospital booth we recognise that the AEC tried to get around to everybody but did not have the resources to get to all the electors in the hospital who were entitled to and wanted to vote'.<sup>76</sup>

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<sup>75</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 32.

<sup>76</sup> Lincoln Folo, Campaign Director, Liberal National Party of Queensland, *Committee Hansard*, Brisbane, 25 November 2016, p. 28.

- 4.105 The Committee heard evidence that mobile polling teams were unable to attend, in particular, Townsville Hospital's subacute ward.<sup>77</sup> On election day, the ward had 39 in-patients who were there for long-term stays. Dr Craig Costello informed the Committee that, according to information he had received, these patients were assured that the AEC mobile polling team would eventually get to them so that they could vote. Later in the day, the AEC informed hospital staff that: 'Look, we are not going to get there. Please give them [the patients] the advice to write a letter [to the AEC] so they do not get fined'.<sup>78</sup>
- 4.106 Dr Costello provided evidence that other patients in other parts of the hospital had also missed the opportunity to vote. Dr Costello estimated the number of voters missed by the polling team to be 'north of 50 in total'.<sup>79</sup>
- 4.107 Given the closeness of the result for the division of Herbert, which was 37 votes<sup>80</sup>, these 50 votes could have changed the outcome of the election.
- 4.108 Ms Laura Sinclair (private capacity), similarly submitted to the Committee that:

Residents of nursing homes, aged hostels, and hospital patients missing out on the opportunity to vote by failure of nursing staff to inform them of time and place or failing to include them in the round.<sup>81</sup>

- 4.109 She gave the example of Garden Settlement nursing home, where some residents missed out in the opportunity to vote and later received failure to vote infringement letters from the AEC. She contended:

... one of the residents inquired well before polling day as to what arrangements were in place to enable him to vote. Evidently the staff member he spoke to said something along the lines of 'Leave it to me. I'll arrange it'. If the AEC polling staff visited Garden Settlement he and perhaps 18 others were left out. I note that the scrutineer's handbook states that 'Once determined the

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<sup>77</sup> In strict terms, Townsville Hospital was setup as a static polling place—Douglas Central. Staff from the polling place took on mobile polling duties while attending patients in the hospital. Thomas Ryan, Electoral Officer and Queensland State Manager, AEC, *Committee Hansard*, 31 January 2017, Townsville, p. 27.

<sup>78</sup> Craig Costello, *Submission 32*, pp. [1]; Craig Costello, *Committee Hansard*, Townsville, 31 January 2017, p. 4.

<sup>79</sup> Craig Costello, *Committee Hansard*, Townsville, 31 January 2017, p. 3.

<sup>80</sup> AEC, 'Herbert, QLD', <<https://results.aec.gov.au/20499/website/HouseDivisionPage-20499-165.htm>>, accessed 25 June 2018.

<sup>81</sup> Laura Sinclair, *Submission 37*, p. [1].



places, days and times of mobile polling arrangements are published on the AEC website'. This is not a lot of help to many elderly voters in nursing homes, or, hospital patients. They rely on advice by administrators or nursing staff.<sup>82</sup>

- 4.110 Mr Brian Jeffrey, a resident of Garden Settlement, informed the Committee that he had relied on the facility's staff to arrange to vote, but later realised that the AEC had left the nursing home before he had the opportunity to cast his ballot. He was subsequently sent a failure to vote notice from the AEC.<sup>83</sup>
- 4.111 The Committee is aware that AEC mobile polling teams have to rely on co-operation with staff of the facilities they visit to ensure all residents are notified of voting options. The Committee hopes that the AEC continues to work closely with facility management to ensure all residents are properly notified of the times and locations of mobile polling team visits.

### Recommendation 23

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- 4.112 The Committee recommends that the Australian Electoral Commission strengthen and improve co-operation with the management of the facilities their mobile polling teams visit to ensure that all electors have the opportunity to vote.**

## Voting services for blind and low vision voters

- 4.113 Blind Citizens Australia (BCA) submitted that the introduction of telephone-assisted voting for blind and low vision (BLV) voters at the 2013 federal election 'brought us one step closer' to 'securing a method of casting a secret, independent and verifiable vote for people who are blind or vision impaired'.<sup>84</sup>
- 4.114 Ms Samantha Jenkinson, Executive Director of People with Disabilities WA Inc., also informed the Committee of 'positive feedback on the ability to use a secret ballot by phone, from people with vision impairment' she had received.<sup>85</sup>

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<sup>82</sup> Laura Sinclair, *Submission 37*, p. [4]. Emphasis in original.

<sup>83</sup> Beverly Montgomery on behalf of Brian Jeffrey, *Submission 33*, p. [1].

<sup>84</sup> Blind Citizens Australia (BCA), *Submission 28*, p. [1].

<sup>85</sup> Samantha Jenkinson, Executive Director, People with Disabilities WA Inc., *Committee Hansard*, Perth, 18 November 2016, p.13.

4.115 The telephone voting system for BLV electors involves a two-step process of registration and voting. The system was open for registrations on 13 June to 12 pm 2 July, and open for voting between 14 June and 6pm on polling day. According to the Australian Electoral Commission (AEC) the 'service allowed people to cast their vote in secret and with a degree of independence'.<sup>86</sup>

4.116 During these periods, 2 175 people registered to use the system and 1 998 people voted via the system. The figures for the 2013 federal election were 3 066 and 2 834, respectively.<sup>87</sup>

4.117 The AEC offered the following explanation of the drop in use of the system:

The increase in the number of Senate candidates made telephone voting in the larger states more onerous. The list of candidates is read to voters by an AEC staff member, and in Queensland, New South Wales and Victoria there were over 100 candidates in the Senate, taking up to 20 minutes.<sup>88</sup>

4.118 Vision Australia, while supportive of the telephone voting service, conveyed to the Committee that it is their:

... strong view that the call centre model, regardless of the manner in which it is implemented, does not provide people who are blind or have low vision with the same amenity and convenience as the rest of the community, not does it represent a secret and independent vote.<sup>89</sup>

4.119 The Committee heard evidence of other issues with the telephone voting system. BCA, Vision Australia, and People with Disability Australia pointed out that as many as 400 individuals in Queensland who used the telephone voting system, incorrectly received infringement notices for non-voting following the election.<sup>90</sup>

4.120 BCA elaborated on the issue:

BCA reported this matter to the AEC and received a response stating that people who had received the infringement notices should call the AEC to have the matter resolved. It was stated that a processing error had occurred,

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<sup>86</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 33.

<sup>87</sup> AEC, *Submission 66*, p. 33.

<sup>88</sup> AEC, *Submission 66*, p. 33.

<sup>89</sup> Vision Australia, *Submission 35*, p. 3.

<sup>90</sup> BCA, *Submission 28*, p. [2]; Vision Australia, *Submission 35*, p. 7; People with Disability Australia, *Submission 124*, p. 5.

meaning that the data from Queensland participants who used... [the] telephone voting service has not been incorporated into the national database. The nature of the processing error was not made clear. BCA was however, assured that the votes of people who received the infringement notices were counted. While this was communicated to people affected, understandably, scepticism among these people is high.<sup>91</sup>

4.121 In order to avoid such misunderstandings in the future, which serve to undermine trust in the electoral process for BLV Australians, BCA recommended:

That a user verification code be provided after the vote of a person who is blind or vision impaired has been cast over the phone. This code should be delivered using the existing methods that have been successfully implemented for the delivery of pin numbers to voters.<sup>92</sup>

4.122 The Committee shares these concerns over the impact such administrative errors can have on trust in the electoral process. The Committee considers that these misgivings can be alleviated if voters are able to confirm that their vote has been properly submitted and accurately received.

4.123 In a submission to the Committee's review of the AEC's 2016-17 Annual Report, Vision Australia argued for the NSW iVote system to be extended federally. This Committee agrees that given that this is Vision Australia's preferred option, that it should be considered as a short-term measure on a fee-for-service basis, only for blind and low vision voters. Although risks remain with this technology, the cohort of voters who would be eligible to access the system is reasonably small and nationally widespread so this minimises both the risk and the attractiveness of this system to interference. The benefits for BLV voters outweighs this risk.

4.124 Vision Australia highlighted the decrease in use of telephone voting compared to the 2013 election. In their analysis, they identified 4 factors contributing to the decrease:

- although anonymous, none of the voting options available at Federal elections provide a secret vote.
- there is a strong objection to the lack of independence. While it is certainly more convenient to telephone from home, rather than having

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<sup>91</sup> BCA, *Submission 28*, p. [2].

<sup>92</sup> BCA, *Submission 28*, p. [3].

to attend a designated polling place, it still requires a third party to record a vote.

- no means to verify their vote had been recorded as intended. There is an awareness that any human-mediated process introduces the possibility of errors, and such errors are more likely to occur when the process becomes complex, such as “below the line” voting for Senate Ballots.
- the amount of time needed to prepare, and then use, the telephone-assisted voting service. People feel uncomfortable about “inconveniencing” call centre operators by asking them to repeat lengthy candidate lists, numerous times, during the voting process. This led to feeling pressured to vote quickly, and in as simple a way as possible (“above the line”).<sup>93</sup>

4.125 BCA, Vision Australia, and People with Disability Australia all recommended the adoption at the federal level of a voting system similar to New South Wales’ iVote system.<sup>94</sup>

## **Recommendation 24**

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**4.126 The Committee recommends that the Australian Government investigate the feasibility of extending the NSW iVote system to blind- and low-vision voters only in federal elections.**

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<sup>93</sup> Vision Australia, *Submission 35*, pp. 8-9.

<sup>94</sup> BCA, *Submission 28*, pp. [3-4]; Vision Australia, *Submission 35*, pp. 9-14; People with Disability Australia, *Submission 124*, p. 6.

# 5. Technology in elections

- 5.1 In recent years there has been an increase in electronically assisted devices and processes designed to make elections easier for voters, faster to count and more accurate. Despite these achievements, the use of technology by the Australian Electoral Commission has not kept up with public expectations nor totally eliminated integrity and security related problems.
- 5.2 This chapter provides an overview of technological developments, how they have effected Australian federal elections up to now, and what can realistically be expected and introduced for the next election.
- 5.3 While the Committee does not believe that electronic and/or online voting can securely be used in Australian elections, there are other technological developments that could significantly improve elections, and the voting experience, namely:
- widespread rollout of electronic certified lists; and
  - scanning of ballot papers.
- 5.4 Notwithstanding concerns about electronic voting discussed below, there may be uses for this technology to assist, in particular, blind and low vision voters.

## Electronic voting

- 5.5 Despite public enthusiasm for electronic voting, there are a number of serious problems with regard to electronic voting – particularly in relation to cost, security and verification of results.
- 5.6 In particular, as technology becomes more sophisticated, as does the capacity to interfere with it, further raising security concerns about how a

‘hack-proof’ electronic election would be delivered. This would not only undermine the integrity of the process, but also electoral outcomes.

- 5.7 As part of its review into the 2013 election, this Committee’s predecessor investigated the issue of electronic voting in some detail. The report reviewed the Australian experience as well as trials conducted internationally in countries such as Ireland, Brazil and Estonia. The Committee concluded:

... irrespective of one’s philosophical view about electronic voting, that there can be no widespread introduction of electronic voting in the near term without massive costs and unacceptable security risks.

Any use of technology in association with the electoral process must have the principle of the sanctity of the ballot at its core, including upholding the right to a secret ballot and ensuring transparency in the counting process.<sup>1</sup>

- 5.8 Despite advances in technology, the same issues regarding security, integrity and cost continue to bedevil further progress on nation-wide electronic voting. As part of this inquiry into the 2016 election, which relied on scanned ballot papers for the count, Dr Vanessa Teague (private capacity) commented:

I have done a lot of research on trying to understand how the advantages of computers could be used while still providing the kind of evidence trail that scrutineers and the public could observe to show us all after the election that it got the answer that the voters actually chose. It is actually really hard to do a good job of scrutinising a computer, because a computer can print up on the screen a very comforting message saying that it has helpfully recorded the vote that you asked it to, but in fact the actual internals of what the computer is doing could be wrong. There could be an accidental configuration error or a software bug, or there could be a deliberate attempt at fraud from either the outside or the inside. So it is a real engineering challenge to design a system that allows verifiable evidence of the right election outcome if the election involves a significant use of computers.<sup>2</sup>

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<sup>1</sup> Joint Standing Committee on Electoral Matters, ‘Second interim report on the inquiry into the conduct of the 2013 federal election: An assessment of electronic voting options’, 20 November 2014, p. 2, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2013\\_General\\_Election/Second\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Second_Interim_Report)>, accessed 30 May 2018.

<sup>2</sup> Vanessa Teague, *Committee Hansard*, Melbourne, 15 November 2016, p. 30.

- 5.9 Mr Antony Green, the ABC's election analyst, was also not enthusiastic about an immediate move to electronic voting. Mr Green commented in his submission that:

At all times so-called technological determinism should be avoided. Just because a new technology exists does not mean old methods should be abandoned. The use of pencils and papers may seem old fashioned compared to computers, but the old methods come with traditional audit trails and the comfort of physical ballot to ensure the certainty of the result.

Any new technology needs to create new methods of ensuring trust in the process. The problems of the 2016 Australian Census will no doubt raise questions about any shift away from traditional methods of conducting elections.

There must be cost-benefit applied to where the technology is introduced first.<sup>3</sup>

- 5.10 The Committee concurs with its predecessor's assessment that as it stands the technology is not sufficiently mature for an election to be conducted through a full scale electronic voting process. However, the Committee remains interested in technological developments which may eventually result in a convenient and secure method of allowing votes to be cast electronically and will continue to consider new technological developments.
- 5.11 Other than electronic voting, there are several other electronically-assisted voting processes which may be more secure and cost-effective to implement for use in limited circumstances.

### **Limited electronic voting**

- 5.12 The Australian Information Industry Association (AIIA) notes that there have been examples of eVoting in Australia as far back as 2001.<sup>4</sup> For example, in New South Wales and Victoria, a limited form of electronic voting has been introduced – iVote<sup>5</sup> and vVote<sup>6</sup> respectively. In both cases,

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<sup>3</sup> Antony Green, *Submission 30*, p. 5.

<sup>4</sup> Australian Information Industry Association (AIIA), *Submission 50*, p. 3. The AIIA provides a table on pp. 3-4.

<sup>5</sup> NSW Electoral Commission, 'Welcome to iVote Online Voting', 23 October 2017, <[ivote.nsw.gov.au/](http://ivote.nsw.gov.au/)>, accessed 7 June 2018.

<sup>6</sup> Victorian Auditor –General's Report, February 2016, 2015–16:24, <[audit.vic.gov.au/sites/default/files/20160224-VEC.pdf](http://audit.vic.gov.au/sites/default/files/20160224-VEC.pdf)>, accessed 7 June 2018, p. 22.

the systems are designed to assist people who may find attending a standard voting booth difficult – particularly those individuals who have vision-impairment, a physical impairment or difficulties with the English language.

## **iVote**

- 5.13 Vision Australia was very positive about the NSW iVote system, recommending to this Committee that a similar system be introduced nationally.<sup>7</sup> Blind Citizens Australia also observed that: ‘the iVote service was very well received by the blind and vision impaired community.’<sup>8</sup>
- 5.14 Despite the enthusiasm of disability advocates, the iVote system is not adequately secure. Dr Vanessa Teague commented:
- ... my colleague Alex Halderman and I did some security analysis of the New South Wales iVote internet voting system during the run of that election. We found there was a serious security hole in that particular system and, using the practice version of the server, we showed that it was possible for a malicious party on the internet to use a vulnerability in the system to take over the person's voting session on their web browser, expose how the person intended to vote, and change the vote before it got sent back in to the Electoral Commission.<sup>9</sup>
- 5.15 The NSW Electoral Commission engaged Mr Roger Wilkins AO to undertake an inquiry on iVote and telephone voting system, in response to the NSW Government's response to the NSW Parliament's Joint Standing Committee on Electoral Matters report on the 2015 State election.
- 5.16 The terms of reference of the report are:
- whether the security of the iVote system is appropriate and sufficient;
  - whether the transparency and provisions for auditing the iVote system are appropriate;
  - whether adequate opportunity for scrutineering of the iVote system is provided to candidates and political parties; and
  - what improvements to the iVote system would be appropriate before its use at the 2019 State General Election.<sup>10</sup>

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<sup>7</sup> Vision Australia, *Submission 35*, p. 1.

<sup>8</sup> Blind Citizens Australia, *Submission 28*, p. 4.

<sup>9</sup> Vanessa Teague, *Committee Hansard*, Melbourne, 15 November 2016, p. 30.

<sup>10</sup> NSW Electoral Commission, ‘Report on the iVote system’, [elections.nsw.gov.au/about-us/plans-and-reports/independent-reports/report-on-the-ivote-system](http://elections.nsw.gov.au/about-us/plans-and-reports/independent-reports/report-on-the-ivote-system), accessed 7 June 2018.



- 5.17 The report was tabled in late November 2018. It would be of benefit for the AEC to closely examine this report and advise both the Committee and the Special Minister of State about the feasibility of extending this system to federal elections, in line with Recommendation 24.

## vVote

- 5.18 The Victorian Electoral Commission (VEC) was an early adopter of electronic voting, deploying such systems in 2006 and 2010. Changes in electoral legislation to allow for electronic voting had the intent of better accessibility for blind, partially sighted, and motor impaired voters through customised computer voting interfaces. The electoral legislation was amended in 2010 to extend access to voters speaking languages other than English and any voters out of state and overseas, enabling a faster return of votes into the tallying process.<sup>11</sup>
- 5.19 Although voters were generally satisfied with the usability of the system,<sup>12</sup> the Victorian Auditor-General noted that vVote has not been widely used:

EAV [electronically assisted voting] has been available on a limited basis in Victoria since the 2006 state election. In the 2014 election, VEC implemented vVote, its modified EAV system for voters with motor impairment, voters with low or no vision, and voters with limited English proficiency, as well as overseas voters at the London early voting centre. vVote was available at 25 early voting centres—including the accessibility super centres—but not on election day. The system was not well utilised, with only 1,121 electronic votes processed. The vast majority of these—87 per cent—were cast overseas in London... VEC [Victorian Electoral Commission] made the decision to pare back the number of voting centres offering EAV between 2010 and 2014.<sup>13</sup>

- 5.20 Both iVote and vVote proved very useful for certain groups and individuals. There are aspects of these systems which can be used to further develop

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<sup>11</sup> C Burton, C Culnane and S Schneider, 'Verifiable Electronic Voting in Practice: the use of vVote in the Victorian State Election', p. 1, <<https://pdfs.semanticscholar.org/023e/22392d19e925e5d79e3b13fa9d49d1394941.pdf>>, accessed 8 June 2018.

<sup>12</sup> C Burton, C Culnane and S Schneider, 'Verifiable Electronic Voting in Practice: the use of vVote in the Victorian State Election', p. 7, <<https://pdfs.semanticscholar.org/023e/22392d19e925e5d79e3b13fa9d49d1394941.pdf>>, accessed 8 June 2018.

<sup>13</sup> Victorian Auditor-General's Report, February 2016, 2015–16:24, p. 22, <[audit.vic.gov.au/sites/default/files/20160224-VEC.pdf](http://audit.vic.gov.au/sites/default/files/20160224-VEC.pdf)>, accessed 7 June 2018,

electronic voting systems in Australia. But their limited utilisation, and the security concerns, mean that they cannot in their current form be considered as templates for a broader national system of comprehensive electronic voting.

## **Web-loading and e-mail submission**

- 5.21 Web-loading and email submission is used by some electoral authorities so that people in remote or overseas locations can lodge their ballots. While this is not intended as a replacement for all voters in a general election, it allows ballot papers to be transferred electronically for those voters who cannot attend a regular polling place or complete a postal ballot.
- 5.22 Mr Antony Green observed that both Tasmania<sup>14</sup> and New Zealand<sup>15</sup> have developed methods to permit overseas voters to vote using less expensive methods than internet voting. He argued that e-mail and so-called ‘web loading’ could be considered as options for overseas voting in federal elections.<sup>16</sup>
- 5.23 In both cases, voters are required to apply for the option of e-mailed or faxed versions of ballot papers. These need to be accompanied by verification documents to match the original applications.
- 5.24 In New Zealand, the material is then scanned after completion and uploaded to their Electoral Commission’s website, while in Tasmania the material is then e-mailed to the Tasmanian Electoral Commission.
- 5.25 Mr Green emphasises that these methods mean that a voter’s ballot paper may not be as secret as the usual voting methods. However, both Commissions seek to protect the voters’ privacy.<sup>17</sup>
- 5.26 The Committee received no expert evidence on whether this would be a feasible option for federal elections, however, it may be worth considering, particularly for overseas voters such as defence personnel on deployment.

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<sup>14</sup> ‘Ways to Vote at the 2018 House of Assembly Elections’ Tasmania Electoral Commission, <[https://www.tec.tas.gov.au/House\\_of\\_Assembly\\_Elections/StateElection2018/WaysToVote.htm](https://www.tec.tas.gov.au/House_of_Assembly_Elections/StateElection2018/WaysToVote.htm)>, accessed 1 June 2018.

<sup>15</sup> See: ‘UPLOAD YOUR VOTING PAPERS FROM OVERSEAS’, NZ Electoral Commission website, <<http://www.elections.org.nz/events/2018-northcote-election-0/going-be-overseas-during-northcote-election/upload-your-voting>>, accessed 1 June 2018.

<sup>16</sup> Antony Green, *Submission 30*, p. 8.

<sup>17</sup> Antony Green, *Submission 30*, p. 8.

## Online and Interactive Voice Response (IVR) systems

- 5.27 In 2017, the Australian Bureau of Statistics (ABS) conducted a national marriage equality survey on behalf of the Australian Government. To provide as inclusive a service as possible, the ABS reported that it utilised online and Interactive Voice Response (IVR) system options. These were developed in partnership with Amazon Web Services (AWS) using contemporary cloud computing technology to securely receive anonymous responses.<sup>18</sup>
- 5.28 The ABS reported that online and IVR systems were available for:
- people overseas;
  - people in aged care facilities;
  - people with a disability, injury or illness;
  - people unable to access mail or living in a remote area with less frequent mail service;
  - people experiencing homelessness; and
  - people in an institution with no mail access.
- 5.29 These groups could request a Secure Access Code (a unique 16 digit code) that could be used to provide an anonymous survey response online or through the IVR system. In total 34 447 eligible Australians responded to the survey through the online (33 889) and the IVR systems (558).<sup>19</sup>
- 5.30 The survey demonstrated that practical electronic alternatives currently exist which can assist certain demographics lodge their vote. It must also be noted that only a little over 34 000 voters used these alternatives out of the over 16 million eligible voters in Australia.<sup>20</sup> At the time of writing this report, no analysis was available on the security of these services and their appropriateness for use in a general election.

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<sup>18</sup> Australian Bureau of Statistics, 'Report on the conduct of the Australian Marriage Law Postal Survey 2017', 30 January 2018, p. 8, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/1800.0main+features382017>>, accessed 8 June 2018,

<sup>19</sup> Australian Bureau of Statistics, 'Report on the conduct of the Australian Marriage Law Postal Survey 2017', 30 January 2018, p. 19, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/1800.0main+features382017>>, accessed 8 June 2018.

<sup>20</sup> Media Release '16 million Australians enrolled – the largest roll since federation', 25 August 2017, AEC website, <<https://www.aec.gov.au/media/media-releases/2017/08-25.htm>>, accessed 12 June 2018.

## Scanning of ballot papers

- 5.31 As discussed in Chapter 2, the 2016 federal election saw the Australian Electoral Commission (AEC) scan millions of Senate ballot papers and record voter preferences for those papers electronically for the first time.<sup>21</sup>
- 5.32 The AEC observed that ‘this was not a small job’ and reported that in just over three months they developed, tested, certified and operationalised a new method to count and distribute Senate preferences. The semi-automated process, using scanning and image recognition technology to capture preferences, was developed with a contractor – Fuji Xerox Document Management Services.<sup>22</sup>
- 5.33 The AEC reported that Senate ballot papers were scanned to capture an image of everything contained on the ballot paper, except the watermark. Preferences were captured using optical character recognition and verified by a human operator. The AEC reported that over 800 staff scanned and verified preferences for 631 candidates. Counting and distributing preferences required scanning of 14.4 million ballot papers and entry into the count system by a human operator of 101.5 million preferences.<sup>23</sup>
- 5.34 The AEC reported that all ballot papers were passed to a second human operator for full blind entry of all preferences on the ballot paper and comparison with scanned and verified data. Once verified, a digital record was generated representing the preferences on the ballot paper. Any discrepancy was directed to the AEC for adjudication and resolution.<sup>24</sup>

## ANAO investigation and report of AEC procurement

- 5.35 In January 2018, the Australian National Audit Office (ANAO) published its report on the Australian Electoral Commission’s (AEC) procurement of services for the conduct of the 2016 federal election.<sup>25</sup> The ANAO were critical of a number of issues surrounding the introduction of scanned ballots for the Senate vote. The ANAO concluded:

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<sup>21</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 66.

<sup>22</sup> AEC, *Submission 66*, p. 9.

<sup>23</sup> AEC, *Submission 66*, p. 9.

<sup>24</sup> AEC, *Submission 66*, p. 10.

<sup>25</sup> *Australian Electoral Commission’s Procurement of Services for the Conduct of the 2016 Federal Election*, ANAO Report, No.25, 2017–18, <[anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election](http://anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election)>, accessed 6 June 2018.

In delivering the 2016 federal election the AEC established and managed contracts for the transportation of ballot papers and, in a short timeframe, for a Senate scanning system. Insufficient emphasis was given by the AEC to open and effective competition in its procurement processes as a means of demonstrably achieving value for money. Its contract and risk management was also not consistently to an appropriate standard.

The AEC has not demonstrably achieved value for money in its procurement of Senate scanning services. It has not used competitive pressure to drive value nor given due consideration to cost in its procurement decision-making. The AEC sought to encourage competition amongst transport providers but at times struggled to achieve value for money. It would have benefited from additional logistics expertise and transport industry knowledge when establishing and managing transport arrangements.

Most contracts with suppliers contained comprehensive security requirements that appropriately reflected the AEC's ballot paper handling policy. The AEC was generally satisfied that the requirements were implemented.

The AEC addressed risks to the security and integrity of ballot paper data through the design and testing of the Senate scanning system. The AEC accepted IT security risk above its usual tolerance. Insufficient attention was paid to ensuring the AEC could identify whether the system had been compromised.

The Senate scanning and transport suppliers delivered the services as contracted. The AEC had limited insight into whether its contractual and procedural risk treatments were effective. Going forward, the AEC needs to be better able to verify and demonstrate the integrity of its electoral data.<sup>26</sup>

- 5.36 The ANAO made four recommendations to improve the AEC's processes and performance. The AEC agreed to two recommendations in full, and agreed with qualifications to the other two.
- 5.37 In its defence, the AEC argued that it had achieved a great deal in a short time. Electoral Commissioner Mr Tom Rogers wrote:

The AEC's Senate scanning solution was developed and implemented in less than 12 weeks, and then operated through the election to deliver the election of 76 Senators to the Australian Parliament. On any reasonable measure, the solution was an impressive accomplishment which functioned as intended. It

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<sup>26</sup> *Australian Electoral Commission's Procurement of Services for the Conduct of the 2016 Federal Election*, ANAO Report, No.25, 2017–18, pp. 7 – 8, <[anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election](http://anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election)>, accessed 6 June 2018.

has subsequently received an innovation award at the 2016 Australian Information Industry Association iAwards ACT.<sup>27</sup>

- 5.38 The Committee notes the ANAO report, its finding and its recommendations. The 2016 federal election was the first occasion that Senate ballot paper scanning was introduced and only a short time before the election itself. ‘Teething problems’ can be expected and, given the circumstances, the AEC performed some remarkable work. The ANAO report shows, however, that there is room for improvement, and the Committee will follow the progress of the ANAO recommendations as part of its AEC oversight inquiry.

### Scanning House of Representatives ballots

- 5.39 Given the apparently successful outcome of the new Senate ballot paper scanning procedure, it has been suggested that a similar procedure could be introduced to count House of Representatives ballot papers.<sup>28</sup>
- 5.40 There is logic in this suggestion; however, it would be beneficial if the Senate scanning system was further developed before adopting the system for the House. As the ANAO report and the scrutineer evidence outlined in Chapter 2 indicated, there are still some deficiencies that need to be remedied.
- 5.41 House of Representative ballots are much smaller and easier to count. The multitude of candidates and the Senate’s proportional voting system mean that Senate papers are large and can be cumbersome. Introducing a scanned counting system for the Senate gives a greater benefit for the cost compared to a similar system for the lower house.
- 5.42 The Committee’s Third Interim Report<sup>29</sup> briefly reviewed this question and recommended that the *Commonwealth Electoral Act 1918* be amended to allow for an electronically assisted counting process. This would permit the AEC

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<sup>27</sup> Response by Mr Tom Rogers, AEC Electoral Commissioner in *Australian Electoral Commission’s Procurement of Services for the Conduct of the 2016 Federal Election*, ANAO Report, No.25, 2017–18, p. 64, <[anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election](http://anao.gov.au/work/performance-audit/aec-procurement-services-conduct-2016-federal-election)>, accessed 6 June 2018.

<sup>28</sup> Michelle Blom, Chris Culnane, Peter J Stuckey, Vanessa Teague, *Submission 148*, p. 1; Jeff Waddell, *Submission 3*, p. 17.

<sup>29</sup> JSCEM, *Third interim report on the inquiry into the conduct of the 2016 federal election: AEC modernisation*, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Third\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Third_Interim_Report)>, accessed 7 June 2018.

to pilot the scanning and electronic counting of House of Representatives ballot papers at the next federal election.<sup>30</sup> The Committee continues to support this recommendation.

- 5.43 Despite implementing the ANAO recommendations, as noted above, evidence to this inquiry raised vulnerabilities with the Senate scanning process and the lack of ability to scrutineer accurately. More work needs to be undertaken to improve this process prior to implementing electronic counting for the House of Representatives ballot.

## Electronic Certified Lists

- 5.44 The Australian Electoral Commission (AEC) reported that during the 2016 federal election 1 544 Electronic Certified Lists (ECLs) were deployed for issuing ordinary and declaration votes by polling teams and voting centres. This followed an evaluation of an ECL pilot at the 2013 federal election, which used about half the number of ECLs. The AEC reported that the pilot found ECLs were most useful in pre-poll voting centres (PPVCs) and mobile teams.<sup>31</sup>
- 5.45 According to the AEC, ECLs enabled elector identification and mark-off and real time update of a central copy of the certified list where network connectivity was present. This reduced the risks of polling official error and multiple voting, and enabled more efficient search for electors, including by location.<sup>32</sup>
- 5.46 Electronic polling place management systems in place in the ACT and the Northern Territory have reduced multiple voting incidents by up to 100 per cent and 80 per cent respectively.<sup>33</sup>
- 5.47 At selected issuing points, ECLs are able to print House of Representatives ballot papers. According to the AEC, where printing was used it virtually eliminated the risk of providing the incorrect House of Representatives ballot paper to an elector. This is a risk in the 'superbooths' and for

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<sup>30</sup> JSCEM, *Third interim report on the inquiry into the conduct of the 2016 federal election: AEC modernisation*, pp. 17 and 28, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Third\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Third_Interim_Report)>, accessed 7 June 2018.

<sup>31</sup> Australian Electoral Commission (AEC), *Submission 66*, p. 35.

<sup>32</sup> AEC, *Submission 66*, p. 35.

<sup>33</sup> AEC, *Submission 66*, p. 37.

declaration vote issuing, where votes are issued for multiple divisions. The AEC reported that this also simplified ballot paper reconciliation at the close of polls.<sup>34</sup>

- 5.48 The current application used in ECLs allows for some monitoring of queue times, ballot paper issue and inventory. The AEC reported that due to resource restrictions, the number of ECLs deployed to polling locations is negligible compared to the total number of polling locations.<sup>35</sup>
- 5.49 Rollout of ECLs to all polling booths will potentially alleviate many problems that arise at polling booths. For example, as discussed earlier, during the 2016 election, there were 148 370 more Senate ballot papers lodged and accepted than for the House of Representatives.<sup>36</sup> This is largely due to confusion about the voter's address and which House of Representatives division they are in when applying for a declaration vote. An elector may be given the wrong House ballot paper even though the correct Senate ballot has been issued resulting in, what is called by the AEC, 'partially admitted declaration votes'.
- 5.50 This effectively disenfranchises voters and, with the trend towards very close elections, has the potential to affect the outcome in close seats. The AEC is aware of these problems and indicated that:

Although a national rollout of the current Electronic Certified List (ECL) system is not feasible in time for the next federal election within current resource constraints, the AEC is planning an extended deployment of ECLs to all pre-poll voting centres and mobile teams. As a result, the AEC will more than double the number of ECLs for the next federal election.

The current ECL deployment plan for the next federal election using the AEC's current ECL system includes approximately 3,900 ECL devices and 2,300 printers for use in all:

- pre-poll voting centres
- mobile polling teams
- interstate voting centres, and

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<sup>34</sup> AEC, *Submission 66*, p. 35.

<sup>35</sup> AEC, *Submission 66*, p. 35.

<sup>36</sup> AEC, *Submission 66.9*, p. 7.



- static super booths (large polling booths that can issue ordinary votes for all divisions within a state/territory).<sup>37</sup>

## ‘ECL Lite’

5.51 The Australian Electoral Commission (AEC) testified that they are exploring options, including a possible Electronic Certified List (ECL) application for mobile phones. Using this app, declaration-issuing officers at polling booths or perhaps even voters themselves could check which House of Representatives division a voter is enrolled in:

one of the things we are exploring at the moment is: could we provide the ECL look-up in a different way? To come to your point—could people bring their own device?—that is one of the things that we're looking at: can we, using the technology, secure that and make it still usable on a range of devices...<sup>38</sup>

5.52 Although the AEC expressed a concern about ensuring security of the information provided,<sup>39</sup> the AEC was open to providing new services through improved technology to minimise anomalies such as roll divergence.

5.53 Accordingly, the AEC will be seeking to expand its ECL capability through the development of ‘ECL Lite’:

The AEC is developing a new ECL Lite solution which could involve a limited pilot of fewer than 1,000 devices enabling look-up and mark-off capabilities on a range of lower-cost devices. Unlike the existing ECL solution, the searchable certified list will be accessed remotely via a mobile network connection. If implemented in time, ECL Lite will be piloted at the next federal election.

The ECL Lite solution will allow a declaration vote issuing officer to confirm the enrolled address of the voter to ensure the correct House of Representatives ballot paper is issued. This capability could reduce the number of partially admitted declaration votes. For example, at the 2016 federal election, 11.2 per cent of declaration votes (provisional, absent and pre-poll) that were issued without using an ECL were partially admitted, while only 0.19 per cent of declaration votes that were issued using an ECL were partially admitted.<sup>40</sup>

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<sup>37</sup> AEC, *Submission 66.19*, p. 2.

<sup>38</sup> David Lang, Assistant Commissioner, Australian Electoral Commission (AEC), *Committee Hansard*, Canberra, 6 December 2017, p. 7.

<sup>39</sup> Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, Canberra, 6 December 2017, p. 6.

<sup>40</sup> AEC, *Submission 66.19*, p. 2.

5.54 The Committee is encouraged by the AEC's recognition of these types of voting anomalies and their innovation through technology in trying to solve them. The Committee, as part of its Third Interim Report on AEC modernisation, already recommended that:

the Australian Electoral Commission extend the deployment of electronic certified lists at the next federal election to ensure all polling places (including all absentee voting points) and mobile teams are equipped with at least one electronic certified list, or as a minimum an electronic roll lookup facility.<sup>41</sup>

5.55 Although this recommendation remains extant, the Committee also encourages the further development of a convenient, accessible and secure mobile phone application through which declaration-issuing at polling booths and perhaps eventually voters themselves can check details, and ensure electors are issued the correct ballot papers.

## **Recommendation 25**

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**5.56 The Committee recommends that a national rollout of Electronic Certified Lists and/or 'ECL Lite' be fully funded and implemented prior to the 2019 federal election.**

## **Conclusion**

5.57 The Committee observes with interest innovation by electoral agencies and software developers with regard to improving the election process. The Committee believes there is a huge potential in making elections faster, more accurate, convenient and efficient while not undermining the security and integrity of the vote.

5.58 Nonetheless, the Committee remains of the view that large scale electronic or internet voting is not achievable at this time, though it encourages future iterations of this Committee to review the question regularly.

5.59 The Committee acknowledges the innovative approach taken by the Australian Electoral Commission and state electoral commissions in designing and trialling their own electronic voting capabilities – such as Electronically Certified Lists and iVote – which can be used to serve niche

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<sup>41</sup> JSCEM, *Third interim report on the inquiry into the conduct of the 2016 federal election: AEC modernisation*, p. 28, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Third\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Third_Interim_Report)>, accessed 7 June 2018.

demographics within the electorate. The Committee is particularly interested in innovation that will assist voters who have physical or mobility impairments, or ensure that declaration ballots are issued with greater accuracy.

- 5.60 The Committee also acknowledges the AEC's achievement of establishing a functional Senate ballot paper scanning system in a short time – one which, despite some teething issues, proved itself to be generally effective in the 2016 poll. The Committee encourages the refinement of the Senate ballot counting system and also encourages development and trial of a similar system for House of Representatives ballot papers. At the same time, the Committee is mindful of the Australian National Audit Office report and the steps that need to be taken by the AEC.
- 5.61 Finally, the Committee notes that the AEC is exploring options for the greater sharing of electoral materials through the Electoral Council of Australia and New Zealand (ECANZ). The Committee strongly encourages the sharing of electronic resources such as ECL tablets to be part of this sharing of materials.



## 6. Political donations

- 6.1 In the terms of reference for the inquiry, the Special Minister of State requested that the Committee undertake a detailed examination of political donations, as outlined in Chapter 1.
- 6.2 During the Committee's detailed review, the Minister for Finance referred the Electoral Legislation Reform (Electoral Funding and Donation Reform) Bill 2017 (the EFDR Bill) to the Committee for inquiry and report. The Committee has issued two reports on the Bill and the Government's response, as noted in Chapter 1.
- 6.3 In the context of political donations, the EFDR Bill deals with:
  - the regulation of foreign donations;
  - the establishment of public registers for key non-party political actors;
  - modernisation of the enforcement and compliance regime for political finance regulation; and
  - the definition of activities that constitute political expenditure.
- 6.4 The EFDR Bill was developed in response to the Committee's interim report on foreign donations. The Bill also addressed the necessarily linked issues of fundraising and expenditure.
- 6.5 The EFDR Bill will have a significant impact on the donations, expenditure and disclosure regime in Australian politics and is, at the time of writing, being considered by the Parliament. This Chapter does not reconsider the matters addressed in the Committee's reports on the Bill.
- 6.6 One issue that was not considered by the EFDR Bill was the taxation treatment of political parties. This Chapter has discussion and recommendations on this issue.

6.7 Aside from this, it is difficult for the Committee to consider and recommend any changes to the political donations regime before the EFDR Bill has been finalised. Therefore this Chapter makes no further recommendations and instead:

- summarises the wider issues regarding political donations that the Committee considered; and
- consolidates the evidence received as part of the Committee's review.

## **Taxation treatment**

6.8 One of the key principles that has guided the Committee's consideration of political donations is **consistency**. There must be a level playing field for all players in the political system so they are able to compete freely in the contest of ideas that is at the heart of Australian democracy.

6.9 It is clear that campaigning is occurring year-round, not just at election time, and established political parties are no longer the only voices in electoral campaigning.

6.10 New organisations have emerged which do not nominate candidates to be elected but seek to be an influencing force on how Australians vote in elections. These third-party campaigners are increasingly influential and play an important role in translating and comparing major party policies for the community. Many of these third party campaigners are also registered with the Australian Charities and Not-for-profits Commission (ACNC) and are subject to more favourable taxation treatment than political parties.

6.11 The participation of non-political party organisations is important for our democracy and should be encouraged. As the Minerals Council of Australia (MCA) noted:

It is great that we have more people and organisations participating in the democratic process, and I think that is only for the good; however, again it is the increased transparency that we are very much focused on, so we know exactly where the money is coming from and who is providing it and who is a political actor and who is not.<sup>1</sup>

6.12 The EFDR Bill aims to introduce more transparency into the system, and to assist voters in understanding who gives money to the organisations trying to influence their vote. The EFDR Bill will apply to political parties and their

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<sup>1</sup> Minerals Council of Australia, *Committee Hansard*, 16 February 2017, p. 14.

associated entities, third party campaigners and larger political campaigners.

- 6.13 However, there remains a disparity in the taxation treatment of third party campaigners that are also registered with the ACNC and political parties.

**Table 6.1 Summary of tax concessions**

Tax concession	Types of Not-for-profit (NFP) organisations		
	Charities	Other NFP organisations	Political parties, sitting members and candidates
Income tax exemption	Y	Y Certain types only	–
FBT exemption	–	Y Certain types only	–
FBT rebate	Y	Y Certain types only	–
GST concessions for charities and gift deductible entities	Y	Y Certain types only	–
GST concessions for NFP organisations	Y	Y	–
DGR endorsement	Y Certain types only	Y Certain types only	No but may receive tax deductible donations of up to \$1,500 per donor
Refunds of franking credits	Y	Y Certain types only	–

Source: Australian Taxation Office, Submission 218, p. [7]. Greater detail available in submission.

- 6.14 The different treatment means that individuals are able to make very large tax deductible donations to charities which then run political campaigns that

seek to influence how voters cast their ballot, but a similar donation to a political party to run political communications in the same campaign would not be tax deductible. Some organisations also benefit from certain tax exemptions while political parties do not.

- 6.15 The Committee received a large volume of evidence in both this inquiry and the inquiry into the EFDR Bill emphasising the importance of charities in Australian society. Charities, it was argued, are acting for the common good of society and 'are not seeking state power and therefore should not be subject to the same regulations as political parties'.<sup>2</sup>
- 6.16 The Committee agrees with this point of view for traditionally understood charitable purposes.
- 6.17 However, many charities do run significant and influential political campaigns and are able to fundraise to support these campaigns with the benefit of offering donors tax deductibility and with certain tax exemptions. Political parties of all sizes, operating in the same campaigning environment are not able to fundraise in the same way and do not benefit from the same tax exemptions.
- 6.18 Political parties play an essential role in Australian democracy. They offer Australians a way to participate in the process of government, whether by engaging in grassroots activities or by putting their names forward for election to office in local, state/territory and federal government spheres.
- 6.19 In recognition of the important role all political parties play in support of Australia's democracy, in an increasingly competitive campaign environment, the Committee's view is that the existing tax deductibility threshold and tax exemptions for political parties should be examined further. The Committee has not examined taxation law in detail and considers that this issue would be better examined by a committee specifically charged with taxation issues.

## **Recommendation 26**

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- 6.20 The Committee recommends that the Australian Government refer the issue of tax deductibility thresholds for donations to political parties and the tax concessions available to political parties to the House of Representatives Standing Committee on Tax and Revenue for detailed consideration.**

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<sup>2</sup> Community Council for Australia, *Submission 160*, p. 8.



## Past Electoral Matters committee inquiries on political donations

6.21 Part XX of the Electoral Act sets out the laws governing disclosure of political donations. The current disclosure regime was introduced in 1983 and remains largely unchanged. Since the 1980s, methods of political campaigning in Western democracies have changed dramatically. Some Australian states have subsequently reformed their disclosure regimes to accommodate these changes.

6.22 At the time of the 1983 changes to the Act, the intention was improved transparency.<sup>3</sup> The Australian Electoral Commission's (AEC) submission highlighted the key legislative changes since 1984:

In 1996 the election funding reimbursement scheme requiring parties and candidates to lodge a claim for electoral expenditure including all receipts with the AEC was repealed. It was replaced by an election funding entitlement scheme and a requirement for political parties to lodge more comprehensive annual returns.

The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* enacted changes to raise the minimum threshold requirement for donations to be made public to \$10,000 for candidates, Senate groups and political parties and for the threshold to be indexed annually to the CPI. It had previously been \$200 for candidates, \$1,000 for groups, and \$1,500 for political parties.

The *Tax Laws Amendment (Political Contributions and Gifts) Act 2010* removed provisions allowing businesses to claim a tax deduction for donations to political parties. This applied retrospectively from 1 July 2008. Provisions still allow tax deductions up to \$1,500 for gifts and contributions to political parties and Independent candidates and members by individual taxpayers.<sup>4</sup>

### *2011 report on the funding of political parties and election campaigns*

6.23 In November 2011, the Committee considered political finance in detail and made 30 recommendations.<sup>5</sup> These recommendations sought to remedy old Electoral Act provisions, rather than to reform Part XX to regulate modern election campaigning. In summary, the Committee recommended:

<sup>3</sup> Australian Electoral Commission (AEC), *Supplementary Submission 66.11*, p. 4.

<sup>4</sup> AEC, *Supplementary Submission 66.11*, p. 5.

<sup>5</sup> JSCEM, 'House of Representatives Committees', <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/political%20funding/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/political%20funding/report.htm)>, accessed 24 May 2018.

- Reducing the disclosure threshold to \$1 000, without indexation;
- Requiring single donations of \$100 000 to be disclosed to the Australian Electoral Commission within 14 days of receipt and this information made publically available;
- Treating related political parties as the same party for the purposes of the disclosure threshold to prevent 'donation splitting' between different branches;
- Categorising money raised from fundraising events as a donation;
- Making disclosure reporting six-monthly instead of annually, and investigating options for real time online disclosure;
- Banning anonymous donations above \$50 and prohibiting foreign donations;
- Introducing administrative funding to assist with the increased workload of disclosing details of donations and expenditure above the existing threshold;
- Requiring political parties and associated entities to disclose more details of expenditure above a prescribed threshold;
- Strengthening penalties for more serious funding and disclosure offences and introducing administrative penalties for more straightforward offences;
- Extending the Australian Electoral Commission's powers to conduct compliance reviews and to make the outcomes of reviews publically available; and
- Regulating third parties:
  - Ensuring the frequency of disclosures and disclosable dollar value threshold align with similar regulations for political parties;
  - Require information about donors to third parties to be disclosed; and
  - Changing some aspects of how political expenditure is defined in the Electoral Act.

6.24 Dissenting reports show that the Committee could not agree unanimously on several recommendations, including:

- Reducing the disclosure threshold;
- Regulating the practice of splitting large donations into small amounts;
- Regulating income derived from fundraising activities;

- Reporting donations received every six months;
- Aligning disclosure requirements for political parties and donors; and
- Consider capping third party expenditure and capping donations to third parties.

6.25 The report also discussed some topics without making a recommendation:

- Capping donations at a fixed value;
- Banning donations from corporations and certain industries;
- Capping expenditure, including advertising expenditure; and
- Registering third party campaigners.

### ***2012 report relating to Part XX of the Electoral Act***

6.26 In September 2012, the Committee reported on the AEC's analysis of a Fair Work Commission report on the Health Services Union national office. The inquiry referral asked the Committee to consider 17 possible changes to Part XX of the Electoral Act, relating to election funding and financial disclosure.

6.27 The possible changes related to:

- Improving disclosure, which included reducing the disclosure threshold to \$1 000, more frequent reporting and expanding the definition of 'electoral expenditure';
- Whether associated entities should be classed as third parties; and
- Additional compliance measures; for example, administrative penalties withholding public funding, increased penalties for wilful fraud and identify who is responsible for reporting obligations.

6.28 The majority report supported 13 of 17 possible changes. A dissenting report from the then-Opposition opposed all the possible changes.<sup>6</sup>

### ***2018 – Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017***

6.29 In response to the Committee's second interim report on the 2016 election on Foreign Donations, the Government introduced the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (EFDR Bill).

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<sup>6</sup> The inquiry is archived on the Committee's website: JSCEM, 'Inquiry into political donations', <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/Political\\_Donations](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Political_Donations)>, accessed 24 May 2018.

- 6.30 The Committee's report addresses the provisions proposed by the EFDR Bill, and also outlines its preferred approach to:
- the establishment of public registers to improve transparency in political campaigning;
  - the regulation of third party campaigners;
  - the prohibition of foreign donations for political purposes; and
  - modernisation of the compliance and enforcement regimes under the Electoral Act.<sup>7</sup>
- 6.31 A minority report called for a more comprehensive approach to political donations than proposed under the EFDR Bill.

### **Government responses**

- 6.32 While some changes have been made to political donation regulation as noted above, there has been no wholesale reform of political donations in response to these reports.
- 6.33 The Committee is aware that many inquiries have been held into the topic of political donations, and that a degree of fatigue has set in. Professor George Williams AO commented:

I'm someone who has worked in the area of political donations and reform for many years; in fact I remember many of the prior inquiries on this subject. I note in the submission of the Australian Electoral Commission they found six prior inquiries on political donations since 2011. With the two current inquiries, that gives us eight over a period of seven years...

I would say that, for many experts involved, it has almost reached the point of submission fatigue on this subject. To be honest with you, it's a matter now of my cutting and pasting the same submission that I have now used for roughly 10 years on this topic. I'm not going to pretend to you I have new material, because in fact if you look at what the experts are talking about, they have largely had a consensus on this topic now for the best part of a decade about what needs to be done.<sup>8</sup>

- 6.34 The proposed EFDR Bill will set a new framework for political donations should it be passed into law. New initiatives and proposals can then be

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<sup>7</sup> The report is available at: JSCEM, 'Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017', April 2018, <[https://www.aph.gov.au/efdr/Advisory\\_Report](https://www.aph.gov.au/efdr/Advisory_Report)>, accessed 24 May 2018.

<sup>8</sup> George Williams, *Committee Hansard*, Sydney, 2 February 2018, p. 10.

considered, drawing on the large amount of evidence gathered through the many inquiries already concluded.

## High Court judgments

- 6.35 Recent High Court judgments have given clearer guidance on the constitutional limits of legislation aimed at restricting political donations. This will have an impact on political donations reform.
- 6.36 The High Court has considered two important cases relating to political donations laws in NSW: the *Unions NSW* case (2013)<sup>9</sup> and the *McCloy* case (2015).<sup>10</sup> In both cases, the High Court considered whether restrictions on donations put in place by legislation had infringed the implied right in the Constitution to freedom of political communication.
- 6.37 The High Court agreed that some of the restrictions were inconsistent with the implied right to political communication, and thus invalid. For the Committee, this means that careful consideration is required to ensure that subsequent reform does not infringe on Constitutional freedoms.
- 6.38 Although this summary may simplify some legal nuances,<sup>11</sup> the High Court has indicated through these rulings that it is less likely to support:
- a ban on political donations from organisations and corporations; and
  - a ban on sourcing political donations from a small group or class of donors, if the risk of corruption is low.
- 6.39 Evidence received suggests the High Court would be more likely to support:
- caps on donations;
  - caps on expenditure, provided they are reasonable; and
  - a ban on sourcing donations from a small group or class of donors, if there is an evident risk of corruption.
- 6.40 There is an element of uncertainty about how the High Court may view other available options for limiting or restricting political donations. This requires a more complex analysis of the specific proposal and its effects on political communication.
- 6.41 A third case of some significance is *AidWatch*.<sup>12</sup> In this decision the High Court clarified the capacity of charities to engage in campaign activities.

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<sup>9</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530.

<sup>10</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178.

<sup>11</sup> This chapter and other statements in this report are not intended to be used as legal advice.

## The implied right to freedom of political communication

6.42 The High Court's interpretation of the Constitution has developed the concept of an implied right to freedom of political communication.<sup>13</sup> Unlike the United States Constitution, this right is not expressly stated in Australia's Constitution.<sup>14</sup>

6.43 The High Court has characterised the implied right as a qualified limitation on legislative power, rather than an absolute freedom. A series of tests are used to determine whether a challenged law infringes the implied right.<sup>15</sup> The questions are tested in sequence. They are summarised below:

- 1 **Burden** – does the law effectively burden the freedom?
- 2 **Compatibility** – is the law's purpose legitimate to the maintenance of representative government provided for in the Constitution?
- 3 **Proportionality** – is the law reasonably appropriate and adapted to advancing the legitimate object? Are the means employed compatible with that system? This involves three steps:
  - a. Is the law suitable?
  - b. Is the law necessary?
  - c. Is the law adequate in its balance?

6.44 In the *McCloy* case, the majority of High Court justices discussed why proportionality is tested using the above steps:

Proportionality provides a uniform analytical framework for evaluating legislation which effects a restriction on a right or freedom... It has the advantage of transparency. Its structured nature assists members of the legislature, those advising the legislature, and those drafting legislative

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<sup>12</sup> *Aid/Watch Inc v Commissioner of Taxation*, (2010) 241 CLR 539.

<sup>13</sup> See *Australian Capital Television v Commonwealth* (1992), volume 177, Commonwealth Law Reports (CLR), starting at page 106 and *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

<sup>14</sup> The First Amendment of the US Constitution states: 'Congress shall make no law... abridging the freedom of speech, or of the press... and to petition the Government for a redress of grievances.'

<sup>15</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 193-194; see also *Brown v State of Tasmania*, [2017] HCA 43 and Associate Professor Joo-Cheong Tham, *Submission 25*, Attachment 2.

materials, to understand how the sufficiency of the justification for a legislative restriction on a freedom will be tested.<sup>16</sup>

- 6.45 Justice Gageler disagreed with the majority's approach, questioning whether standardised criteria are necessarily appropriate in relation to political communication and questioned whether the concept of balance captures all relevant considerations.<sup>17</sup>
- 6.46 Professor Anne Twomey, University of Sydney, commented on the tests used in the *McCloy* case, noting that the majority judgment could be viewed as a directive to Parliament on how to legislate. Professor Twomey stated:

The joint judgment accepted that the 'balance struck between the importance of the purpose and the extent of the restriction on the freedom necessarily involves a value judgment', but their Honours contended that this 'does not entitle the courts to substitute their own assessment for that of the legislative decision-maker'.<sup>18</sup>

It is hard to see how this is so. If the Parliament decides that the importance of the legitimate end far outstrips the significance of the burden on the implied freedom, and the High Court then decides the opposite, surely it is substituting its own assessment for that of the Parliament in striking down the law?<sup>19</sup>

## Unions NSW case

- 6.47 The High Court unanimously found invalid certain NSW state laws regulating how political donations are sourced, as the laws infringed the implied right to freedom of political communication.
- 6.48 In March 2012, amendments to the *Election Funding, Expenditure and Disclosure (EFED) Act 1981 (NSW)* ('the Act') added new restrictions;

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<sup>16</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 215-216.

<sup>17</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 236.

<sup>18</sup> Anne Twomey, 'Proportionality and the Constitution', Australian Law Reform Commission Freedoms Symposium, 8 October 2015, <<https://www.alrc.gov.au/proportionality-constitution-anne-twomey>>, accessed 24 May 2018. See also *McCloy v State of New South Wales* (2015) 257 CLR 178, at 219.

<sup>19</sup> Anne Twomey, 'Proportionality and the Constitution', Australian Law Reform Commission Freedoms Symposium, 8 October 2015, at <<https://www.alrc.gov.au/proportionality-constitution-anne-twomey>>, accessed 24 May 2018.

political parties could only source donations from individuals on the electoral roll.<sup>20</sup> At the time, s. 96D(1) of the Act stated:

It is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is an individual who is enrolled on the roll of electors for State elections, the roll of electors for federal elections or the roll of electors for local government elections.<sup>21</sup>

6.49 The Act included caps on expenditure. In s. 95G(6), the Act included a rule whereby expenditure among related parties and organisations could be counted collectively.<sup>22</sup>

6.50 Although the Act also banned corporate donations, media reporting suggested that the changes were designed to disadvantage the ALP and unions relative to their political opponents.<sup>23</sup>

6.51 Unions NSW challenged the validity of these laws, arguing that they reduced (or ‘burdened’) the ability of parties and affiliated organisations to exercise their right to political communication. The NSW Government countered that the burden in s. 96D was an inconsequential, indirect and limited burden on political communication.<sup>24</sup>

6.52 To determine whether the laws were compatible with the implied right to political communication, the High Court used a two-stage test:<sup>25</sup>

A law will be invalid under the Lange test if:

(a) the law effectively burdens freedom of communication about government or political matters either in its terms, operation or effect, and

(b) it is not reasonably appropriate and adapted to serve a legitimate end the fulfilment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and the

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<sup>20</sup> *Election Funding, Expenditure and Disclosures Amendment Act 2012 No. 1 (NSW)*, Schedule 1.

<sup>21</sup> *Election Funding, Expenditure and Disclosures Amendment Act 2012 No. 1 (NSW)*.

<sup>22</sup> *Election Funding, Expenditure and Disclosures Amendment Act 2012 No. 1 (NSW)*.

<sup>23</sup> Sun Herald, ‘Unions Challenge Rules on Donations’, 3 November 2013, p. 4. See also *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 560.

<sup>24</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 532 to 538. See also Unions NSW, *Submission 87*, p. 4.

<sup>25</sup> For the origins of the test, see *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.



procedure prescribed by s 128 for submitting a proposed amendment of the Constitution to the informed decision of the people.<sup>26</sup>

- 6.53 On the first test, the Court agreed that s. 96D, whereby donations could only be sourced from individuals, amounted to an effective burden on the implied right to political communication.<sup>27</sup>
- 6.54 The Court viewed s. 95G(6) on how expenditure is calculated for parties and affiliates to be an effective burden, because it restricted what a political party could spend on campaigning. Justice Keane said this section amounted to differential treatment and distortion.<sup>28</sup>
- 6.55 On the second test of being appropriate and adapted to their purpose (the 'proportionality test'), the Court considered the objectives of both s. 96D and s. 95G(6). The Court acknowledged that provisions in the Act relating to donations and expenditure were 'directed to the mischief of possible corruption'. The prohibitions in s. 96D, however, were viewed as having a selective and unbalanced intention.<sup>29</sup>
- 6.56 The Court determined the anti-corruption goal in s. 96D could not be established nor justified. The Court then considered how s. 95G(6) had been intended to prevent circumvention of the spending caps imposed on political parties, but did not believe a link to anti-corruption existed.<sup>30</sup>
- 6.57 In passing, the majority judgment offered a view on whether banning all political donations might be permissible to prevent corruption:
- A complete prohibition might be understood to further, and therefore to share, the anti-corruption purposes of the EFED Act. ...if challenged, it would be necessary for the defendant to defend a prohibition of all donations as a proportionate response to the fact that there have been or may be some instances of corruption, regardless of source.<sup>31</sup>
- 6.58 Justice Keane made a general observation that political communication requires campaigning, which costs money,<sup>32</sup> however added:

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<sup>26</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 553, 556 and 573.

<sup>27</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 554 and 574.

<sup>28</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 560 and 586.

<sup>29</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 558 and 579, and 559.

<sup>30</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 560-561.

<sup>31</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 559-560.

<sup>32</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 574.

It cannot be doubted that the protection of the integrity of the electoral process from secret or undue influence is a legitimate end the pursuit of which is compatible with the freedom of political communication.<sup>33</sup>

6.59 The majority found expenditure caps have a clear purpose and general application.<sup>34</sup>

### **McCloy case**

6.60 In the McCloy case, the High Court upheld NSW laws prohibiting property developers from donating to political parties. The plaintiffs argued these laws impact on political communication, because prohibiting donations curtailed access and influence.<sup>35</sup>

6.61 Mr Jeffrey McCloy (a company director), McCloy Administration Pty Ltd and North Lakes Pty Ltd were property developers within the meaning of the *Election Funding, Expenditure and Disclosure (EFED) Act 1981 (NSW)*. The Act prohibited property developers or their close associates from making donations to political parties or making indirect contributions. The Act also imposed caps on political donations. Mr McCloy had made (or intended to make) donations in excess of the donation caps.<sup>36</sup>

6.62 In the Unions NSW case, the purpose of regulating political donors had been open to debate. In 2014, a new section was inserted into the EFED Act, which clarified that the objective of the law included 'to help prevent corruption and undue influence in the government of the State'.<sup>37</sup> The NSW Government argued that there had been a history of property developers being involved in corruption, which justified measures to protect the integrity of government.<sup>38</sup>

### ***The majority view***

6.63 Whereas the Unions NSW case produced a unanimous outcome, in this instance the High Court diverged and alternative judgments were presented. Chief Justice French and Justices Kiefel, Bell and Keane (the

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<sup>33</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 579.

<sup>34</sup> *Unions NSW v State of New South Wales* (2013) 252 CLR 530, at 558.

<sup>35</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 182.

<sup>36</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 178-179.

<sup>37</sup> *Electoral Lobbying and Legislation Amendment (Electoral Commission) Act 2014 (NSW)*, Schedule 2.

<sup>38</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 184.

plurality) found the laws in question to be valid. Justice Gageler agreed, but applied different reasoning.<sup>39</sup> Justice Gordon also concurred.

- 6.64 The plurality began with defining the implied right of political communication in Australia. The plurality noted that, in this case, the effect of caps on political donations is intended to reduce corruption or the perception of corruption. They rejected a narrow view of corruption, contending its forms could vary.<sup>40</sup> The plurality concluded that caps on donations are one way to protect and enhance our system of Government.<sup>41</sup>
- 6.65 The High Court then addressed whether property developers could be prohibited from donating to political parties. The plurality agreed that they are 'sufficiently distinct' from other donors. Adverse reports from the Independent Commission Against Corruption suggested there is a 'risk of corruption and the loss of public confidence'. Banning property developers furthered the anti-corruption purpose of the EFED Act and, in the plurality's view, qualified as being a legitimate means of reducing corruption.<sup>42</sup>
- 6.66 The plurality considered the plaintiff's argument that other means are available (such as improved disclosure and reporting). This was rejected:

Whilst provisions requiring disclosure of donations are no doubt important, they could not be said to be as effective as capping donations in achieving the anti-corruption purpose of the EFED Act. ...it is not the subjective intention of the donor so much as the objective tendency of large payments of money to corrupt both government and the electoral system which is the justification for the restriction.<sup>43</sup>

- 6.67 The High Court then considered, in some detail, whether the caps and restrictions on property developers are proportionate and concluded:

The provisions do not affect the ability of any person to communicate with another about matters of politics and government... in ways other than those involving the payment of substantial sums of money. ... By reducing the funds available to election campaigns there may be some restriction on communication... On the other hand, the public interest in removing the risk

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<sup>39</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 222, 235-239.

<sup>40</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 202-205.

<sup>41</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 208.

<sup>42</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 208-209.

<sup>43</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 211.

and perception of corruption is evident. ... The restriction on the freedom is more than balanced by the benefits sought to be achieved.<sup>44</sup>

- 6.68 General comments were made reiterating that the implied right to political communication is not absolute in Australia and does not work the same way as the right to free speech in the United States Constitution.<sup>45</sup>

### *Dissenting opinion*

- 6.69 Justice Nettle agreed with the majority that donation caps and indirect contributions were valid; however, found bans on property developer donations to be invalid. The prohibition's discriminatory nature meant the justification needed to be strong and the focus on property developers was arbitrary.<sup>46</sup> Justice Nettle concluded that the prohibition on property developer donations was not 'appropriate and adapted' (or proportionate) to maintaining a system of representative and responsible government.<sup>47</sup>

### **Implications for making laws on regulating political donations in Australia**

- 6.70 A number of academic experts provided the Committee with their views on the High Court's decisions in *Unions NSW* and *McCloy*.
- 6.71 Professor Anne Twomey said the proportionality test has provided useful certainty. She said 'you can be reasonably confident' a model similar to *NSW* will survive a legal challenge. She added: 'I think that the Commonwealth has... much better guidance than they had previously on how the High Court would decide things.'<sup>48</sup>
- 6.72 Professor Twomey argued that caps should be reasonable<sup>49</sup> and both she and Professor George Williams AO, University of New South Wales, submitted the High Court has confirmed that donation caps are acceptable and valid.<sup>50</sup>

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<sup>44</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 221.

<sup>45</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 205, 213, 229 and 283.

<sup>46</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 270, 267 and 272.

<sup>47</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 273.

<sup>48</sup> Anne Twomey, *Committee Hansard*, 16 November 2016, p. 59.

<sup>49</sup> Anne Twomey, *Submission 24*, pp. 2-3.

<sup>50</sup> Anne Twomey, *Submission 24*, p. 2; Professor Williams, *Submission 149*, p. 1.

- 6.73 Professor Twomey submitted the High Court has accepted that certain categories of donors can be banned, if there is a legitimate reason – such as evidence of serious risk of corruption.<sup>51</sup> Professor Williams agreed that ‘categories of donors may be banned where they give rise to an unacceptable risk to the political process.’<sup>52</sup> Dr Luke Beck, University of Western Sydney, noted that this would need to be demonstrated through empirical evidence.<sup>53</sup>
- 6.74 A general ban on corporations and organisations making donations is likely to be invalid. Professor Williams submitted:
- the decision in *Unions NSW v New South Wales* suggests that any attempt to limit donations to individuals on the electoral roll has an unacceptable risk of being struck down.<sup>54</sup>
- 6.75 Dr Beck had a similar view:
- ... to ban donations from all Australian companies, voluntary associations, lobby groups and other such entities would be in breach of the implied freedom of political communication. There is nothing ‘sufficiently distinct’ about any of those classes of donor that would warrant specific regulation in light of their self-interested pursuit of political influence.<sup>55</sup>
- 6.76 The law challenged in the *McCloy* case covered both property developers and others, such as tobacco and gambling companies. The parties and the High Court did not give a view on whether tobacco and gambling could be distinctly linked to corruption and influencing elections.
- 6.77 On the other hand, capping expenditure is likely to be valid in principle, depending on the effect this has on the freedom to campaign. Professor Twomey submitted:
- ... limits on expenditure must be calibrated in such a way that parties, candidates and third party campaigners all have a reasonable opportunity to communicate their policies and political preferences to the public and engage in political communication.<sup>56</sup>

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<sup>51</sup> Anne Twomey, *Submission 24*, p. 2.

<sup>52</sup> George Williams, *Submission 149*, p. 1.

<sup>53</sup> Luke Beck, *Submission 29*, p. 2.

<sup>54</sup> George Williams, *Submission 149*, p. 1.

<sup>55</sup> Luke Beck, *Submission 29*, p. 2.

<sup>56</sup> Anne Twomey, *Submission 24*, p. 2.

6.78 Dr Beck submitted that capping campaign expenditure in a way that counts the spending of an affiliated organisation and a political party is likely to be invalid but added that there could be an exception to this rule:

It follows that there must be serious doubts about the constitutional validity of any attempt by Parliament to legislate to impose caps on campaign expenditure and to count the expenditure of third party entities under the cap of an affiliated political party.

This observation is subject to the proviso that the third party is genuinely a third party and not simply an entity set up for the purpose of circumventing any cap on electoral expenditure.<sup>57</sup>

6.79 In the McCloy case, the High Court used a broad view of corruption. Associate Professor Joo-Cheong Tham, Melbourne Law School, submitted:

It was in part because of this broad approach towards the meaning of ‘corruption’ that the joint judgment concluded that caps on political donations... the ban on indirect campaign contributions... and the ban on ‘property developers’... did not infringe the implied freedom of political communication.<sup>58</sup>

## Reform proposals put to this inquiry

6.80 A submission from the Australian Electoral Commission (AEC)<sup>59</sup> identified a series of ‘persistent issues’ with political donations that have been regularly discussed, but remain unresolved:

- The timely disclosure of donations. While the frequency of reporting varies in Australia, the AEC suggested that more frequent or real time disclosure provides a greater level of public confidence.
- Disclosure thresholds vary in Australia and are subject to ‘considerable debate’.
- Defining donations and what constitutes a gift.
- Differences among federal, State and Territory laws. The AEC suggested this lack of harmonisation and complexity ‘may add to a perception of a lack of transparency’.

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<sup>57</sup> Luke Beck, *Submission 29*, p. 4.

<sup>58</sup> Joo-Cheong Tham, *Supplementary Submission 25.1*, p.4; see also *Committee Hansard*, 15 November 2016, p. 51.

<sup>59</sup> Australian Electoral Commission (AEC), *Supplementary Submission 66.11*, pp. 7-10.

- Associated entities and third parties. The AEC noted there is frequent debate on this question. In the United Kingdom, third parties are required to register before incurring expenditure.
- Foreign donations. The AEC noted the *Commonwealth Electoral Act 1918* ('the Electoral Act') applies within Australia and 'overseas donors cannot be compelled to comply with Australian law.'
- Donation splitting, whereby a donation is made in small amounts to avoid limits or thresholds.

6.81 Reform proposals from witnesses and submissions are summarised below. It does not include issues or evidence that were discussed in the EFDR Bill inquiry report.

#### *Limiting or capping donations*

6.82 The amount of money an individual or organisation can donate to a candidate or political party could be limited to a prescribed value. The suggested value ranged from \$1 000 to \$5 000 and reset to zero after a period of time had elapsed.<sup>60</sup>

6.83 Professor Anne Twomey submitted that capping donations may provide incentive to political parties to 'broaden their public support and collect small donations from larger numbers at the grass-roots level'.<sup>61</sup> Similarly, the Accountability Round Table (ART) supported caps to achieve equality in Australia's political system.<sup>62</sup> Get Up! said this reform would 'remove incentives to amass huge political fighting funds.'<sup>63</sup> Get Up! favoured capping donations at \$1 000 per year and disclosing donations above \$500 in real time.<sup>64</sup>

6.84 Associate Professor Martin Drum noted that even if caps were introduced, this would not make the system foolproof: a wealthy donor could pass money to ten friends and ask them to donate.<sup>65</sup>

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<sup>60</sup> Luke Beck, *Submission 29*, p. 2; George Williams, *Submission 149*, p. 1; Australian Conservation Foundation, *Submission 202*, p. 4; Get Up!, *Submission 194*, p. 12; Market Forces, *Submission 165*, p. 5.

<sup>61</sup> Anne Twomey, *Submission 24*, p. 2.

<sup>62</sup> Accountability Round Table, *Submission 84*, p. 4.

<sup>63</sup> Get Up!, *Submission 81*, p. 7

<sup>64</sup> Get Up!, *Submission 194*, p. 12.

<sup>65</sup> Martin Drum, *Committee Hansard*, 18 November 2016, p. 30.

6.85 The Minerals Council of Australia (MCA) suggested all organisations engaging in political advocacy should be subject to the same rules as political parties, with the qualification that the Committee should use its own discretion when considering ‘the best means’ to achieve transparency.<sup>66</sup>

6.86 In contrast, some submissions and witnesses did not support donation caps, instead preferring other measures to improve transparency.<sup>67</sup> For example, Kate Minter, Research Officer, Unions NSW, said:

We do not believe there is a problem. No-one is putting \$1 billion into bank accounts in the six months before an election. It is not something we believe was an issue at the last election and we believe it is best addressed through real-time disclosures.<sup>68</sup>

#### *Limiting or capping expenditure*

6.87 The amount of money a candidate or political party could spend on election campaigning could be limited.<sup>69</sup> Those supporting this reform gave reasons, but did not always specify a desired limit that should be imposed.<sup>70</sup>

6.88 Associate Professor Tham supported capping expenditure:

The other reason I support caps... is that they provide a degree of fairness in election campaigns by preventing disproportionate spending by political parties and candidates, and... also third parties.<sup>71</sup>

6.89 Professor Twomey also supported caps on expenditure:

This will reduce the amount that needs to be raised by way of donations and also reduce the need for increased public funding. It will have an effect in levelling the playing field, to the extent that there are maximum amounts that can be spent for parties running candidates in all seats.<sup>72</sup>

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<sup>66</sup> Minerals Council of Australia, *Submission 138*, p. 2; Minerals Council of Australia, *Supplementary Submission 138.1*, p. 2.

<sup>67</sup> Family Voice Australia, *Submission 156*, p.5; Liberal Democratic Party, *Committee Hansard*, 25 November 2016, p. 42.

<sup>68</sup> Unions NSW, *Committee Hansard*, 16 November 2016, p. 37.

<sup>69</sup> Uniting Church in Australia (Synod of Victoria and Tasmania), *Submission 196*, p.5; George Williams, *Submission 149*, p. 2.

<sup>70</sup> Neil Freestone suggested a formula based on average annual wages; see *Submission 26*, p.5. The Australian Greens suggested the limit should be ‘modest’; see *Submission 161*, p. 1.

<sup>71</sup> Joo-Cheong Tham, *Committee Hansard*, 16 February 2017, p. 8.

<sup>72</sup> Anne Twomey, *Submission 24*, p. 3.



- 6.90 Some submissions likened campaign spending to an arms race.<sup>73</sup> For example, the Australian Conservation Foundation (ACF) supported expenditure limits, in order to ‘remove the incentive for politicians to amass big money war chests, and ensure a level democratic playing field for everyone’.<sup>74</sup>
- 6.91 The World Wildlife Fund supported extending expenditure limits to independent advocacy organisations.<sup>75</sup>

*Reducing the disclosure threshold*

- 6.92 Donations above a small value could be disclosed,<sup>76</sup> along with information about who made the donation. Generally, the suggested value ranged from \$500 to \$1 000.<sup>77</sup>
- 6.93 Associate Professor Tham said reducing the threshold would uncover instances of donation splitting:

Donation splitting, for example, is a problem... where you are allowed to make an anonymous donation up to the disclosure threshold, which... is about \$13,000. One could split a donation of \$50,000 across the different branches of a major political party and get the benefit of anonymity.<sup>78</sup>

- 6.94 The Nationals supported the current disclosure threshold and made the following observation:

Disclosure law should recognise the fine balance that exists between the public interest and an individual’s right to privacy. Disclosure provisions should not

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<sup>73</sup> Accountability Round Table, *Submission 84*, p. 8; David Lewis, *Submission 111*, p. 3; Anne Twomey, *Submission 24*, p. 3; Get Up!, *Submission 81*, p. 7.

<sup>74</sup> Australian Conservation Foundation, *Submission 202*, p.4.

<sup>75</sup> World Wildlife Fund, *Submission 94*, p. 2. The Australian Conservation Foundation supported a similar recommendation, but limited its scope to party candidates and associated entities. See *Submission 202*, p. 4.

<sup>76</sup> From 1 July 2017 to 30 June 2018, the federal political donations disclosure threshold is \$13 500, <[aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/threshold.htm](http://aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm)>, accessed 23 May 2018.

<sup>77</sup> George Williams, *Submission 19*, p. 5 (see also *Submission 149*, p. 1); Australian Labor Party, *Submission 69*, p. 1; Martin Drum, *Submission 108*, p. 2; Get Up, *Submission 81*, p. 7; 350.org (Australia), *Submission 85*, p. 3. Anne Twomey suggested a threshold of \$50; see *Submission 24*, p. 2.

<sup>78</sup> Joo-Cheong Tham, *Committee Hansard*, Canberra, 16 February 2017, p. 5.

be so onerous as to discourage individual participation in the political process.<sup>79</sup>

6.95 Family Voice Australia favoured making large donations transparent, because they ‘may accompany attempts to exert undue influence’. However, for reasons of protecting privacy and compliance costs, Family Voice Australia preferred leaving small donations undisclosed.<sup>80</sup> Mr John Gregan (private capacity) suggested individual donations should remain anonymous, ‘due to the modern trend of victimisation by activists’.<sup>81</sup>

6.96 Some submissions and witnesses discussed ways donations could be received in another form or via an intermediary in an effort to avoid transparency. The Uniting Church (Synod of Victoria and Tasmania) submitted:

Many of these arm’s length organisations do not disclose the payments that are made to them, effectively concealing the origins of the money...<sup>82</sup>

6.97 Market Forces observed that donations could be disguised; for example, by categorising these funds as ‘other receipts’. Their submission stated:

This category can include anything from dividends, to attendance fees for events to membership fees for interest groups. ...political parties and donors should be required to provide far more information on events attended and interest groups, including dates, attendees and policies discussed.<sup>83</sup>

6.98 The MCA said it ‘does not make donations as such’, but contributes to political parties in return for attending functions. The MCA added that it does not receive donations because its members pay subscriptions, ‘just like workers who pay subscriptions to the union’.<sup>84</sup> The MCA said these subscriptions are tax deductible.<sup>85</sup>

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<sup>79</sup> The Nationals, *Submission 185*, p. 1.

<sup>80</sup> Family Voice Australia, *Submission 156*, p. 5.

<sup>81</sup> John Gregan, *Submission 177*, p. 5.

<sup>82</sup> Uniting Church of Australia (Synod of Victoria and Tasmania), *Submission 196*, p. 6.

<sup>83</sup> Market Forces, *Submission 165*, p. 5; see also Uniting Church of Australia (Synod of Victoria and Tasmania), *Submission 196*, p. 7; George O’Farrell said paying for access at dinners and functions ‘must be outlawed’, see *Submission 191*, p. 2.

<sup>84</sup> MCA, *Committee Hansard*, Canberra, 16 February 2017, p. 14.

<sup>85</sup> MCA, *Committee Hansard*, Canberra, 16 February 2017, p. 16. A submission from Gene Ethics contrasted the tax status of charities with other lobby groups; see *Submission 167*, p. 5.

### *Timing of disclosures*

6.99 There is currently a significant time lag before donations are disclosed. For the 2016 federal election, returns are published 24 weeks after election day – 19 December 2016.<sup>86</sup>

6.100 A number of witnesses supported real time disclosure and other changes to improve transparency.<sup>87</sup> Unions NSW submitted that voters have the right to be informed before they vote, so they can scrutinise the monetary support base of parties and candidates.<sup>88</sup> 350.org (Australia) submitted:

... a coal company could donate generously to a pro-coal candidate in advance of an election being called and not have to disclose their donation until well after the new Government is sworn in.<sup>89</sup>

6.101 Associate Professor Drum said that with advances of technology, the release of information should occur soon after the donation.<sup>90</sup> Dr Belinda Edwards, University of New South Wales, said this ‘should be entirely possible in this day and age’.<sup>91</sup> Dr Edwards submitted that donations data could be improved for easier analysis:

There are thousands of lines of data, with limited means to sort or categorize the data ...journalists and those seeking to report on political donations matters struggle to piece together meaningful perspectives within the resources available to them.<sup>92</sup>

6.102 The Nationals cautioned against increased disclosure frequency, noting the added costs involved:

Any move to increase the frequency of reporting donations must acknowledge... These compliance costs have a disproportionate impact on

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<sup>86</sup> AEC, *Submission 66*, p. 59.

<sup>87</sup> Australian Conservation Foundation, *Submission 58*; Dr Colleen Lewis, *Committee Hansard*, 15 February 2017, p. 19; Malcolm Baalman, *Submission 64*, p. 16; 350.org (Australia), *Submission 85*, p. 4; Australian Greens, *Submission 161*, p. 2; Market Forces, *Submission 165*, p. 6.

<sup>88</sup> Unions NSW, *Submission 87*, p. 5.

<sup>89</sup> 350.org (Australia), *Submission 85*, p. 2.

<sup>90</sup> Martin Drum, *Committee Hansard*, 18 November 2016, p. 26.

<sup>91</sup> Belinda Edwards, *Committee Hansard*, 15 February 2017, p. 15.

<sup>92</sup> Belinda Edwards, *Submission 91*, p. 2.

smaller parties such as The Nationals, which needs to be taken into account when assessing the impact they have on parties.<sup>93</sup>

6.103 The Liberal Party of Australia also commented on the ‘considerable burdens’ associated with compliance and suggested that if changes are being contemplated, the Committee consider whether ‘regular funding for administrative purposes would assist the parties in meeting these increased compliance obligations’.<sup>94</sup>

6.104 The Australian Labor Party (ALP) supported real-time disclosure in principle, but noted its potential to be ‘an unrealistic burden’ that would need to be widely understood among party members and volunteers.<sup>95</sup> Vote Australia commented that short time periods could ‘impinge on accuracy.’<sup>96</sup>

*Require all donations to be lodged via a trust fund*

6.105 To improve transparency, it was proposed that the AEC could receive donated funds.<sup>97</sup> Instead of parties receiving donations directly, Professor Twomey said that this method would assist with real-time disclosure and the AEC could validate the donation and reject irregular or banned donations.<sup>98</sup> Mr Malcolm Baalman (private capacity) suggested that this should cover both federal and state donations.<sup>99</sup>

*Banning donations from types or classes of donors*

6.106 Certain groups or organisations could be prohibited from donating to political parties or candidates. Some proposed that only individuals should be allowed to donate – not corporations or unions.<sup>100</sup>

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<sup>93</sup> The Nationals, *Submission 185*, p. 1.

<sup>94</sup> Liberal Party of Australia, *Submission 193*, p. 2.

<sup>95</sup> Australian Labor Party, *Supplementary Submission 69.1*, p. 2; see also Australian Labor Party, *Committee Hansard*, Canberra, 15 February 2017, p.2 and p. 4.

<sup>96</sup> Vote Australia, *Submission 192*, p. 1.

<sup>97</sup> George Williams, *Submission 149*, p. 1; Dr Ken Coghill, *Submission 48*, p. 4.

<sup>98</sup> Anne Twomey, *Committee Hansard*, 16 November 2016, p. 55; see also Anne Twomey, *Submission 24*, p. 2.

<sup>99</sup> Malcolm Baalman, *Submission 64*, p. 17.

<sup>100</sup> Neil Freestone, *Submission 26*, p. 4; Ken Coghill, *Submission 48*, p. 3. The Australian Greens recommended that donations individuals and not-for-profit organisations should be capped at a low value; see *Submission 161*, p. 1.

6.107 The Australian Greens recommended a ban on political donations from developers, banks, mining companies and tobacco, alcohol, gambling and pharmaceutical industries.<sup>101</sup> The submission added:

While the Greens support a ban on all for profit bodies we recognise that this will not be immediately achieved without constitutional reform. Bringing in a ban on sectors that have been found to have a corrupting influence on the political process or are perceived to have such an influence is another way to take meaningful steps to cleaning up political donations.<sup>102</sup>

6.108 350.org (Australia) shared a similar view, submitting:

Big Coal and Gas cause just as much if not more damage than Big Tobacco. Fossil fuel money should be rejected. Sectoral bans on socially damaging industries, like those currently in force in NSW... should be applied to fossil fuels.<sup>103</sup>

6.109 Legal experts gave evidence on how two recent High Court decisions are likely to affect the way classes of donors can be regulated. For example, Dr Beck cautioned:

It seems to me that to ban donations from all Australian companies, voluntary associations, lobby groups and other such entities would be in breach of the implied freedom of political communication.<sup>104</sup>

6.110 The ALP did not support bans on classes of donors:

Any new proposal to regulate campaign donations to exclude certain participants... from making donations, as a matter of law, has the ability to advantage one group of campaigners over another group of campaigners. This is antidemocratic and potentially unconstitutional.<sup>105</sup>

6.111 The ALP's submission added that nothing prevents a political party from voluntarily declining to accept donations from certain sources.<sup>106</sup>

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<sup>101</sup> Australian Greens, *Submission 161*, p. 2.

<sup>102</sup> Australian Greens, *Submission 161*, p. 2.

<sup>103</sup> 350.org (Australia), *Submission 85*, p. 4.

<sup>104</sup> Luke Beck, *Submission 29*, p. 2.

<sup>105</sup> Australian Labor Party, *Submission 69*, pp. 7-8; see also Australian Labor Party, *Committee Hansard*, 15 February 2017, p. 7; Unions NSW, *Committee Hansard*, 16 November 2016, p. 33; Community and Public Sector Union, *Submission 92*, p. 6.

<sup>106</sup> Australian Labor Party, *Submission 69*, p. 8.

6.112 ART suggested that rather than banning donations from any class of donor, a cap on all sources of donations would address concerns relating to undue influence.<sup>107</sup> The Nationals preferred an approach based on transparent disclosure, submitting that ‘the appropriateness of accepting any donation should be the prerogative of the intended recipient.’<sup>108</sup>

#### *Establish an anti-corruption body*

6.113 The Committee received evidence recommending the creation of a federal anti-corruption body with powers to investigate donations.<sup>109</sup> Associate Professor Drum said an anti-corruption body could better oversight political donations:

Problems surrounding political donations at state level have been regularly investigated by anti-corruption bodies. An anti-corruption body at a national level would be a welcome development.<sup>110</sup>

6.114 The ACF said this would ‘strengthen public confidence in the Australian Parliament.’<sup>111</sup>

## **Committee comment**

6.115 The EFDR Bill, if passed, will significantly reform the transparency of political donations in Australia: including introducing new regulations for third party campaigners and political campaign organisations; banning foreign donations; and increasing penalties for non-compliance.

6.116 After this Bill is passed and implemented, it will be time to review other proposed reforms, built on the groundwork laid by this Committee.

## **Other jurisdictions**

6.117 The following provides a summary of regulatory arrangements for political donations (or campaign finance) among Australian and selected international jurisdictions. It mainly considers:

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<sup>107</sup> Accountability Round Table, *Submission 84*, p. 3.

<sup>108</sup> The Nationals, *Submission 185*, p. 1.

<sup>109</sup> For example, Get Up!, *Submission 194*, p. 12; Dr Colleen Lewis, *Submission 77*, Attachment A, p. 32; p.6; 350.org (Australia), *Submission 85*, p. 4; Mr Robert Grigg, *Submission 183*, p. 1; Australian Conservation Foundation, *Submission 159*, p. 3.

<sup>110</sup> Martin Drum, *Submission 108*, p. 3.

<sup>111</sup> Australian Conservation Foundation, *Submission 159*, p. 3.

- donation and expenditure limits or other notable restrictions;
- disclosure of donations and expenditure;
- public funding for political parties and candidates;
- third party campaigners; and
- significant court rulings involving questions of both political donations and freedom of speech in the US and Canada. These are contrasted with Australian cases.<sup>112</sup>

6.118 There are diverse regulatory arrangements for political donations among both international and Australian jurisdictions with comparable democratic political systems.

6.119 This reflects the status quo as at August 2018, and does not incorporate proposals currently before the Federal Parliament in the form of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017.

## How does Australia compare to other countries?

6.120 Australian Federal election campaigns are unique in four areas when compared to Canada, New Zealand, the UK and the USA:

- donations are not limited or capped and can be received from any source, including from foreign entities, corporations and unions;
- there are no limits or caps on campaign expenditure;
- reporting and disclosure occurs annually; and
- Australian federal elections are not fixed term.<sup>113</sup>

6.121 Table 6.2 provides a comparison of Australia with selected countries.

	Australia	Canada	New Zealand	UK	USA
<b>Foreign Donor Ban<sup>114</sup></b>	No	No	No <sup>115</sup>	Yes	Yes

<sup>112</sup> This appendix and other statements in this report are not intended to be used as legal advice.

<sup>113</sup> US Congressional and Presidential elections occur on the first Tuesday in November; in the United Kingdom, general elections are held on the first Thursday of May every five years.

<sup>114</sup> A 'ban' in this table refers to donations made to political parties rather than to candidates.

<b>Union and corporate donor ban</b>	No	Yes	No	No	Yes
<b>Anonymous donor ban</b>	No – but \$ limit	No – but \$ limit	No – but \$ limit	No – but £ limit	No – but \$ limit
<b>Expenditure limits</b>	No	Yes	Yes	Yes	Yes – for party committees
<b>Public funding</b>	Yes	Yes	Yes – for campaigns and policy	Yes	Yes
<b>Public Reporting</b>	Annual	Annual and quarterly	Annual	Quarterly – but more often during elections	Periodic – but more often during elections

Source: International Institute for Democracy and Electoral Assistance – Political Finance Database

## Australian jurisdictions

6.122 In Australia, different rules apply federally and in each state and territory.<sup>116</sup>

6.123 These arrangements are summarised in the table below.

NSW	VIC <sup>117</sup>	QLD	WA	SA <sup>118</sup>	TAS	ACT	NT
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<sup>115</sup> Foreign donations less than NZD \$1 500 are permitted.

<sup>116</sup> The next several sections rely upon information from electoral management body websites and includes content extracted and adapted from a Parliamentary Library research paper on election funding and disclosure in Australia; see Parliamentary Library, 'Election Funding and Disclosure in Australian States and Territories: A Quick Guide', 9 November 2017, at <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22library%2Fprpub%2F5621507%22>>, accessed 29 May 2018. See also Colleen Lewis, *Submission 77*, Attachment A, pp. 34-51.



<b>Foreign donor restriction</b>	Yes	Yes	Yes	No	No	No	No	No
<b>Banned donor industries</b>	Yes	Yes	No	No	No	No	No	No
<b>Anonymous donor threshold</b>	\$1,000	\$1,000	\$1,000	\$2,300	\$200	None	\$1,000	\$1,000
<b>Donor contribution limits<sup>119</sup></b>	\$6,100 per year	\$4,000 per election period	None	None	None	None	None	None
<b>Expenditure limits<sup>120</sup></b>	\$1.1m	None	None	None	\$4m	None <sup>121</sup>	\$1m	None
<b>Public funding</b>	Yes	Yes	Yes	Yes	Yes	No	Yes	No
<b>Public reporting and disclosure</b>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

Source: Parliamentary Library, 'Election Funding and Disclosure in Australian States and Territories: A Quick Guide', November 2017. Updated November 2018 to reflect changes to Victorian electoral law.

## Federal

<sup>117</sup> Changes to the *Electoral Act 2002* (Vic) came into effect in August and November 2018.

<sup>118</sup> Limits and restrictions apply to political parties opting into the public funding scheme.

<sup>119</sup> Limits on donations to political parties.

<sup>120</sup> Limits on donations for political parties.

<sup>121</sup> For Legislative Council elections, political parties cannot incur expenditure and candidates are limited to spending \$16 000.

- 6.124 Details of donations over \$13 500 (indexed) must be disclosed by parties and their associated entities and donors annually, and by candidates in their election returns.
- 6.125 Parties and their associated entities must lodge annual returns listing their total receipts, total payments and total debts. Candidates and unendorsed Senate groups must disclose electoral expenditure during the election period. The Australian Electoral Commission publishes annual returns for each financial year its website the following February.
- 6.126 Public funding of \$2.68 per formal first preference vote (indexed) is provided to candidates and parties who receive more than 4 per cent of the total vote in their electorate. There is no public funding available for administration or other organisational or policy development purposes.

## **New South Wales**

- 6.127 Donations to political parties are currently capped at \$6 100 per year and \$2 700 for a candidate (indexed).
- 6.128 Donations or gifts of \$1 000 or more must be disclosed. Only individuals on the electoral roll or organisations with an Australian Business Number can donate. Property developers, tobacco, liquor and gambling industries or their close associates cannot donate.
- 6.129 Political parties are limited to expenditure of up to \$1.1 million (indexed) in the period leading towards an election. A secondary limit of \$61 500 is applied to each electorate. Third party expenditure is capped at \$1.3 million. All electoral expenditure must be disclosed annually by parties, candidates and third party campaigners.
- 6.130 Parties receive public funding for election campaign expenditure, administrative expenses and policy development. Parties need to receive 4 per cent of primary votes to be eligible. Reimbursement is structured on a sliding scale. A political party with candidates in the Legislative Assembly will receive a maximum reimbursement of 100 per cent of the first 10 per cent of expenditure, 75 per cent of the next 10 to 90 per cent of expenditure, and 50 per cent of the last 90 to 100 per cent of expenditure. Payments for administrative funding are based on the number of elected members, starting at \$265 000 per annum (indexed) and limited to \$3 million.

## **Victoria**

- 6.131 Victoria introduced wide-reaching changes to funding and disclosure requirements in 2018.

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- 6.132 From 1 August, foreign donations and anonymous donations of \$1 000 or more were banned.
- 6.133 From 25 November, donors and recipients are required to disclose all donations of \$1 000 or more to the Victorian Electoral Commission within 21 days.
- 6.134 Donations from a single donor to any one recipient are capped at \$4 000 per election period (normally 4 years). For the purposes of this cap, a registered political party, including its candidates, are considered a single recipient. This precludes a donor making multiple donations to individual candidates endorsed by the same party.
- 6.135 Federally-registered parties submit a copy of their return to the AEC.
- 6.136 All candidates, elected members and groups not endorsed by a registered party who received any donations from a single donor totalling \$1 000 or more are now required to submit an annual return.
- 6.137 Public funding of \$1.67 per vote is provided to political parties or candidates who received at least 4 per cent of first preference votes. Eligible parties and candidates submit an audited statement of total actual expenditure. The Victorian Electoral Commission reimburses these expenses and publishes the amount paid.

## **Queensland**

- 6.138 Donations or gifts of \$1 000 or more must be disclosed. Donations or loans of \$1 000 or more must be declared within days and total donations, loans and electoral expenditure must be declared within 15 weeks of polling day. Third parties who incur electoral expenditure over \$1 000 must declare donations over \$1 000 within 7 days.
- 6.139 Electoral expenditure returns must be submitted by parties, candidates and third parties, regardless of whether the spending is during the election period. Evidence of expenditure must be retained.
- 6.140 Public funding is provided to political parties and candidates for election campaign expenditure and policy development.
- 6.141 Election funding is calculated as an amount per formal first preference vote for political parties or candidates who receive more than 6 per cent of the total number of formal first preference votes. As of July 2017, the amount is \$3.14 for political parties and \$1.57 for individual candidates (indexed). If the electoral expenditure of the party or candidate is less than the amount calculated based on the number of votes, the lesser amount is paid. A

\$3 million pool of funding for policy development is available to eligible political parties, distributed proportionately based on first preference votes.

## **Western Australia**

- 6.142 All political parties and associated entities are required to disclose the value of all gifts and other income received. Gifts above \$2 300 (indexed) must be detailed along with the details of donors.
- 6.143 Political parties, associated entities, candidates and groups who incur expenditure for political purposes are required to disclose all gifts received and expenditure incurred for election purposes.
- 6.144 Public funding of \$1.87 per vote is provided to candidates who received at least 4 per cent of first preference votes, up to the actual election expenditure incurred. There is no public funding for administration or other organisational or policy development purposes.

## **South Australia**

- 6.145 Donations, gifts and loans over \$5 000 (indexed) must be disclosed by political parties, candidates, associated entities and third party campaigners. Donors must declare gifts over \$5 000. Parties or candidates that have incurred more than \$5 000 (indexed) of political expenditure during a campaign period must lodge a political expenditure return.
- 6.146 South Australia has an optional public funding scheme. Those who opt-into public funding are subject to an indexed expenditure cap. Candidates who receive at least 4 per cent of the primary vote are eligible for public funding, ranging from \$3.00 to \$3.50 for every formal first preference vote.
- 6.147 Political parties represented in Parliament are eligible for administrative funding of up to \$12 000 (indexed), depending on the number of representatives.

## **Tasmania**

- 6.148 There are no legislated requirements for donations to be disclosed. Federally-registered parties submit a copy of their return to the AEC.
- 6.149 There are no expenditure limits for House of Assembly elections. There is no public funding for election campaigning or administrative costs.
- 6.150 Legislative Council elections are subject to an indexed candidate expenditure limit, which is currently at \$16 000. Political parties cannot

incur any expenditure. Legislative Council candidates must submit election returns detailing their campaign expenditure.

## **Northern Territory**

- 6.151 Political parties must submit annual returns showing total amounts received and detailing gifts of \$1 500 or more. Donors of \$1 500 or more must submit returns. Candidates must disclose details of gifts of \$200 or more. Political parties report Candidate expenditure on their behalf. Publishers and broadcasters must lodge returns detailing electoral advertisements totalling more than \$1 000.
- 6.152 There is no public funding of election campaigns.

## **Australian Capital Territory**

- 6.153 Members of the Legislative Assembly, registered political parties and associated entities are required to disclose details of donations greater than \$1 000 in annual returns. There are additional disclosure requirements during election years for political parties, non-party candidates, associated entities and third party campaigners.
- 6.154 Election campaign expenditure is limited to \$40 000 per candidate (indexed). Associated entities and third parties are also subject to expenditure caps.
- 6.155 Public funding of \$8.00 per vote is provided to candidates who receive more than 4 per cent of first preference votes. Eligible Members of the Legislative Assembly receive administrative funding of \$21 322 per annum (indexed).

## **Selected international jurisdictions**

### **New Zealand**

- 6.156 Political party expenses (and their candidates) are limited to NZ\$1.115m plus NZ\$26 000 per electorate contested. This applies during a regulated period immediately prior to a general election. Audited returns detailing expenses must be lodged within 90 working days after election day.<sup>122</sup>
- 6.157 Donations exceeding NZ\$15 000 (or a series of donations greater than \$1 500 reaching this threshold) must be declared in an annual return. Anonymous

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<sup>122</sup> New Zealand Electoral Commission, 'Party Secretary Handbook', Part 3, <<http://www.elections.org.nz/party-secretary-handbook/part-3-election-expenses-donations-and-loans>>, accessed 29 May 2018.

donations and foreign donations above \$1 500 are prohibited. Donations greater than \$30 000 must be disclosed within ten working days.<sup>123</sup>

6.158 All registered political parties are allocated public funding for election advertising during the general election period. During the 2017 general election, a pool of NZ\$4.145 million was available.<sup>124</sup>

6.159 Third parties are subject to spending limits during a regulated general election period. Registered promoters are limited to NZ\$315 000 and unregistered promoters are limited to NZ\$12 600. Registered promoters who spend more than NZ\$100 000 must lodge an expense return within 70 working days of election day. There are no limits on donations to third parties or requirements to report those donations.<sup>125</sup>

## United Kingdom

6.160 Donations over £500 can only be received from permitted donors. These include an individual voter on the UK electoral register and companies, associations, unions and other organisations that are registered in the UK. Single donations (or a series of donations) over £7 500 must be disclosed and reported. Returns must be submitted on a quarterly basis and on a weekly basis when an election is called.<sup>126</sup>

6.161 Expenditure caps apply during the year prior to an election. During the 2017 election, a £30 000 cap was applied to each seat contested.<sup>127</sup>

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<sup>123</sup> New Zealand Electoral Commission, 'Party Secretary Handbook', Part 3, <<http://www.elections.org.nz/party-secretary-handbook/part-3-election-expenses-donations-and-loans>>, accessed 29 May 2018.

<sup>124</sup> New Zealand Electoral Commission, 'Broadcasting Allocations', <<http://www.elections.org.nz/parties-candidates/broadcasting/broadcasting-allocations>>, accessed 29 May 2018.

<sup>125</sup> New Zealand Electoral Commission, 'Third Party Handbook; Part 4, <<https://www.elections.org.nz/third-party-handbook/part-4-election-expenses>>, accessed 29 May 2018.

<sup>126</sup> UK Electoral Commission, 'Overview of Donations to Political Parties', <[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0014/102263/to-donations-rp.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0014/102263/to-donations-rp.pdf)>, accessed 29 May 2018.

<sup>127</sup> UK Electoral Commission, 'UK Parliamentary General Election 2017: Political Parties', <[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0017/224810/UKPGE-2017-Political-Parties-guidance.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0017/224810/UKPGE-2017-Political-Parties-guidance.pdf)>, accessed 29 May 2018.

- 6.162 A £2 million pool is available for policy development grants to eligible political parties.<sup>128</sup> Some funding is available to assist opposition parties with parliamentary business.<sup>129</sup>
- 6.163 Third party campaigners must register if they intend to spend more than £20 000 in England or £10 000 in Scotland, Wales or Northern Ireland in the year preceding a general election. Unregistered campaigners are limited to these amounts.<sup>130</sup> During the 2017 election, a general limit of £390 000 applied to third party campaigners for whole-of-UK campaigns. Lower limits applied for regional or constituency campaigns.<sup>131</sup> Donations above £500 can only be accepted from permitted sources. Single donations (or a series of donations) over £7 500 must be disclosed and reported.<sup>132</sup>

## Canada

- 6.164 Political donations are capped at CA\$1 500 per calendar year to political parties and party-endorsed candidates. There are also caps on candidate contributions to their own campaigns.<sup>133</sup> Unions and corporations cannot make political donations.<sup>134</sup>

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<sup>128</sup> UK Electoral Commission, 'Public Funding for Parties', <<https://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/public-funding-for-parties#other>>, accessed 29 May 2018.

<sup>129</sup> House of Commons Library, 'Short Money', December 2016, <<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01663#fullreport>>, accessed 29 May 2018.

<sup>130</sup> UK Electoral Commission, 'Overview of Non-Party Campaigners', <[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0004/224950/UKPGE-2017-Overview-of-non-party-campaigns.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/224950/UKPGE-2017-Overview-of-non-party-campaigns.pdf)>, accessed 29 May 2018.

<sup>131</sup> UK Electoral Commission, 'Managing Non-Party Campaign Spending', <[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/224958/UKPGE-2017-Managing-non-party-campaigner-spending.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/224958/UKPGE-2017-Managing-non-party-campaigner-spending.pdf)>, accessed 29 May 2018.

<sup>132</sup> UK Electoral Commission, 'Overview of Donations for Non-Party Campaigners', <[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/224965/UKPGE-2017-Donations-to-non-party-campaigners.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/224965/UKPGE-2017-Donations-to-non-party-campaigners.pdf)>, accessed 29 May 2018.

<sup>133</sup> Elections Canada, 'The Electoral System of Canada', (4ed), p.42, <<http://www.elections.ca/content.aspx?section=res&dir=ces&document=index&lang=e>>, accessed 29 May 2018.

<sup>134</sup> Elections Canada, 'The Electoral System of Canada', (4ed), p.41, <<http://www.elections.ca/content.aspx?section=res&dir=ces&document=index&lang=e>>, accessed 29 May 2018.

- 6.165 Expenses are capped for each electoral district, based on the number of electors and the length of the election period. In 2015, these limits ranged from around CA\$170 000 – \$250 000 for candidates and up to CA\$55 million for larger political parties. Party limits vary depending upon how many districts are being contested.<sup>135</sup>
- 6.166 Eligible political parties receive public funding for up to 50 per cent of their general election expenses. Candidates receive public funding for up to 60 per cent of their election expenses. Eligible political parties and candidates are allocated public broadcasting time.<sup>136</sup>
- 6.167 Third parties are required to register with Elections Canada when they have incurred electoral advertising expenditure greater than CA\$500.<sup>137</sup> Third party electoral advertising is subject to a general limit of CA\$211 000, which is adjusted for inflation and the length of the election period.<sup>138</sup> Third parties must submit a report on their expenditure and funding obtained for the purpose of electoral advertisements.<sup>139</sup>
- 6.168 Third parties can be an individual, a corporation or a group – a ‘group’ can be an unincorporated trade union, trade association or others who are acting together for a common purpose. Third parties may not act in concert to circumvent the limit of election advertising expenditure.<sup>140</sup>

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<sup>135</sup> Elections Canada, ‘Expenses Limits’, <[www.elections.ca/content.aspx?section=pol&dir=limits&document=index&lang=e](http://www.elections.ca/content.aspx?section=pol&dir=limits&document=index&lang=e)>, accessed 29 May 2018.

<sup>136</sup> Elections Canada, ‘The Electoral System of Canada’, (4ed), pp.45, 16 <[www.elections.ca/content.aspx?section=res&dir=ces&document=index&lang=e](http://www.elections.ca/content.aspx?section=res&dir=ces&document=index&lang=e)>, accessed 29 May 2018.

<sup>137</sup> Elections Canada, ‘The Electoral System of Canada’, (4ed), p.45, <<http://www.elections.ca/content.aspx?section=res&dir=ces&document=index&lang=e>>, accessed 29 May 2018.

<sup>138</sup> Elections Canada, ‘Third Party Election Advertising Expenses Limits’, <<http://www.elections.ca/content.aspx?section=pol&dir=thi/limits&document=index&lang=e>>, accessed 29 May 2018.

<sup>139</sup> Elections Canada, ‘Information on Third Parties and Election Advertising’, <[www.elections.ca/content.aspx?section=pol&document=info&dir=thi&lang=e](http://www.elections.ca/content.aspx?section=pol&document=info&dir=thi&lang=e)>, accessed 29 May 2018.

<sup>140</sup> Elections Canada, ‘Election Advertising Handbook for Third Parties, Financial Agents and Auditors’, April 2017, p.13, <[http://www.elections.ca/pol/thi/ec20227/ec20227\\_e.pdf](http://www.elections.ca/pol/thi/ec20227/ec20227_e.pdf)>, accessed 29 May 2018.



6.169 Traditional forms of advertising (such as pamphlets and billboards) must show a third party's authorisation. Election advertising on the Internet is regulated if there was a placement cost or partisan statements; however not all forms of media or communication are necessarily covered:

- social media posts placed free of charge;
- emails and text messages; and
- telephone calls.<sup>141</sup>

### *Harper case (2004) – third party expenditure limits*

6.170 Freedom of thought, belief, opinion and expression is entrenched in Canadian Charter of Rights and Freedoms. This is subject to a qualification:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.<sup>142</sup>

6.171 In 2004, Mr Stephen Harper, a future Canadian prime minister, challenged a law limiting 'third party' election advertising expenses. Mr Harper won, but lost on appeal to the Canadian Supreme Court.

6.172 The majority found that the right to free speech has to be reconciled with the right to vote in an informed way and concluded that the limits on third party spending were justified, as there were not overly restrictive and did not interfere with an individual's right to participate in the electoral process. The Court held that Equal opportunity for participation in the political process enhanced voting rights.<sup>143</sup>

6.173 When the Australian High Court considered the McCloy case,<sup>144</sup> the majority referred to the Harper case with supportive sentiments.<sup>145</sup>

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<sup>141</sup> Elections Canada, 'Election Advertising Handbook for Third Parties, Financial Agents and Auditors', April 2017, pp.15-18, <[www.elections.ca/pol/thi/ec20227/ec20227\\_e.pdf](http://www.elections.ca/pol/thi/ec20227/ec20227_e.pdf)> accessed 29 May 2018.

<sup>142</sup> *Canadian Charter of Rights and Freedoms*, s.1 and s.2.

<sup>143</sup> *Harper v Canada* [2004] 1 SCR 827, at 830.

<sup>144</sup> In the McCloy case, when the High Court of Australia considered the validity of a ban on property developer donations in NSW, it held that an evident risk of corruption and risks to the integrity of the political process could justify such laws. The definition of corruption included more than quid pro quo forms of corruption. The High Court also considered dependency between an office holder and donor and 'war chest' corruption where the power of money might affect government decisions. See also Justice Nettle's comments on circumvention in his dissenting judgment in *McCloy v State of New South Wales* (2015) 257 CLR 178, at 270-271.

## United States

6.174 In the United States, political expenditure and political donations differs from the Australian judicial perspective<sup>146</sup> as freedom of speech is entrenched in the United States Constitution's First Amendment.<sup>147</sup>

6.175 Election campaigns are subject to donation limits.

- US\$2 700 per election to a federal candidate or candidate committee (each stage of the election process – primaries, runoffs and general elections are counted separately).
- US\$5 000 per year to a federal Political Action Committees (PACs). PACs are groups that receive donations to support federal candidates or to fund other election activities.
- US\$10 000 per year to a State or local party committee. A State party committee shares its limits with local party committees in that state unless a local committee's independence can be demonstrated.
- US\$33 400 per year to a national party committee. This limit applies separately to a party's national committee, House campaign committee and Senate campaign committee.
- US\$100 in currency (cash) to any political committee and anonymous cash donations are limited to US\$50.
- Super PACs (which do not directly support a candidate or committee) can receive unlimited donations.<sup>148</sup>
- Unions and corporations cannot donate to candidates, but can provide unlimited amounts to Super PACs.<sup>149</sup>

6.176 Candidate committees report money raised and spent on a quarterly basis.<sup>150</sup> There are additional reporting Candidate committees within 20 days of

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<sup>145</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 207; see also *Australian Capital Television v Commonwealth* (1992) 177CLR 106.

<sup>146</sup> *McCloy v State of New South Wales* (2015) 257 CLR 178, at 206.

<sup>147</sup> The First Amendment of the US Constitution states: 'Congress shall make no law... abridging the freedom of speech, or of the press... and to petition the Government for a redress of grievances.'

<sup>148</sup> Federal Election Commission, 'Contribution Limits', <<https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits-candidates/>>, viewed 29 May 2018.

<sup>149</sup> Federal Election Commission, 'Contributions to Super PACs and Hybrid PACs', <<https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/contributions-to-super-pacs-and-hybrid-pacs/>>, viewed 29 May 2018.

<sup>150</sup> Federal Election Commission, 'Quarterly Reports', <<https://www.fec.gov/help-candidates-and-committees/filing-reports/quarterly-reports/>>, viewed 29 May 2018.

election day. Any contribution over \$1 000 has to be reported within 48 hours.<sup>151</sup> The Federal Election Commission's website has a searchable portal with information on donors and the amounts donated.<sup>152</sup>

6.177 Presidential nominees can be eligible for a grant of up to US\$20 million of public funding, provided they limit their spending to this same amount and do not receive private contributions.<sup>153</sup> Individual taxpayers can check a box on their federal income tax return to indicate whether US\$3 from their taxes can be used for the Presidential Election Campaign Fund.<sup>154</sup>

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<sup>151</sup> Federal Election Commission, '48-Hour Notices', <https://www.fec.gov/help-candidates-and-committees/filing-reports/48-hour-notices/>, viewed 29 May 2018.

<sup>152</sup> Federal Election Commission, 'Campaign Finance Data', <<https://www.fec.gov/data/>>, viewed 29 May 2018.

<sup>153</sup> Federal Election Commission, 'Public Funding of Presidential Elections', <<https://transition.fec.gov/pages/brochures/pubfund.shtml>>, accessed 29 May 2018.

<sup>154</sup> Federal Election Commission, 'The \$3 Tax Checkoff', <<https://transition.fec.gov/pages/brochures/checkoff.shtml>>, accessed 29 May 2018.



# 7. Democracy and digital technology

- 7.1 Participation and engagement measure the health of our democracy. Through the growth of the digital sphere, citizens can better connect with their representatives, strengthening Australia's democratic system. This Chapter presents the Committee's initial consideration of this issue. As noted in Chapter 1, the Committee's inquiry into this subject will continue under a new reference and evidence presented at hearings will be reported at a later date.
- 7.2 It is because of this that the growth of digital technologies and the integrity of the online environment need to be protected from manipulation or malicious intent.
- 7.3 Mr Chris Zappone highlighted the broader threat:
- Social media manipulation is not simply the technological issue of bots and trolls, but the social dynamics and choice in ideas promoted online which can be optimised for maximum destruction. The medium affects the choice in messaging. Conspiracy theories and half true narratives as well as visceral, hot-button imagery are more likely to go viral than other material. This has implications for any liberal democracy which relies on a reason-driven discussion.<sup>1</sup>
- 7.4 Although flexibility and freedom online are a vital extension of political discussion, they bring new challenges. The Digital Industry Group Inc (DIGI) is a group of organisations that provide digital services to Australians, including Facebook, Google, Oath and Twitter. In its submission to this inquiry, DIGI noted that:

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<sup>1</sup> Chris Zappone, *Submission 221*, p. 1.

One of the challenges of the modern media landscape is that anyone can be a publisher. While on one hand, the rise of micro publishers on the web, where anyone with an internet connection can publish information on events, politics, and ideas, has empowered more voices and offered more views in turn making the media ecosystem more pluralistic and democratic; on the other, everyday people can have huge audiences, but lack any kind of professional training in media and media ethics, which is particularly important in the reporting of public interest news.<sup>2</sup>

- 7.5 The dangers of cyber manipulation and the spread of disinformation became particularly apparent in 2016, with alleged interference in both the UK Brexit campaign and US Presidential election.
- 7.6 Accordingly, as part of the inquiry into and report on all aspects of the conduct of the 2016 Federal Election, the Committee chose to conduct a review of cyber manipulation of elections, specifically considering:
- the extent to which social media bots may have targeted Australian voters and political discourse in the past;
  - the likely sources of social media manipulation within Australia and internationally;
  - way to address the spread of deliberately false news online during elections; and
  - measures to improve the media literacy of Australian voters.
- 7.7 From the outset, it should be noted that while ‘fake news’ became highly contested during 2016, there is no agreed definition. Many international inquiries, such as the European Union’s independent High Level Group on fake news and online disinformation, are choosing to avoid the term, particularly as it comes to be used by political opponents and those seeking to discredit uncomplimentary press.<sup>3</sup>
- 7.8 The EU’s High Level Group eschewed the term ‘fake news’ in favour of ‘disinformation’ because:

The term [fake news] is inadequate to capture the complex problem of disinformation, which involves content that is not actually or completely “fake” but fabricated information blended with facts, and practices that go

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<sup>2</sup> DIGI, *Submission 227*, p. 2.

<sup>3</sup> Directorate-General for Communication Networks, Content and Technology, ‘A multi-dimensional approach to disinformation. Report of the independent High Level Group on fake news and online disinformation’, Luxembourg: Publications Office of the European Union, 2018, <<https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>>, accessed 3 December 2018.

well beyond anything resembling “news” to include some forms of automated accounts used for astroturfing,<sup>4</sup> networks of fake followers, fabricated or manipulated videos, targeted advertising, organized trolling, visual memes, and much more.<sup>5</sup>

- 7.9 For similar reasons, the Committee uses the term ‘disinformation’ in this Chapter.
- 7.10 This Chapter discusses the growth of social media and ‘fake news’ and the resulting dangers, as well as the need for greater definitional clarity when attempting to regulate fake news and online platforms. The level of threat social media manipulation presents in Australia and abroad is also analysed. Finally, the Chapter considers the need for higher levels of media literacy for all Australians.
- 7.11 The Committee notes that there has been no evidence of any cyber manipulation in the 2016 Australian federal election. However, given international events, as discussed in this Chapter, it is essential that this issue be actively considered as a part of Australian elections. The Committee therefore makes a number of recommendations to prevent cyber manipulation occurring in the future, and to form a basis for future inquiries.

## **The growth of disinformation**

- 7.12 Data analysed at the Australian Strategic Policy Institute showed that the dissemination of disinformation is one of the most powerful forces undermining the integrity of the electoral process:

The power of cyberspace to influence the democratic process lies in much more than just the nuts and bolts of the election infrastructure. Every vote cast on election day is the product of the information ecosystem of the preceding months. Shaping the nature and volume of information available to the public in the lead-up to an election is a sophisticated way of influencing voter decision-making and election outcomes.

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<sup>4</sup> Astroturfing is the practice of manufacturing the appearance of grassroots support by obfuscating the true origin or sponsor of a message.

<sup>5</sup> Directorate-General for Communication Networks, Content and Technology, ‘A multi-dimensional approach to disinformation. Report of the independent High Level Group on fake news and online disinformation’, Luxembourg: Publications Office of the European Union, 2018, p. 10, <<https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>>, accessed 3 December 2018.

In this method of tampering with elections, a culprit's digital fingerprints can never be directly linked to the election process. Election decision-making can be influenced through the dissemination of 'fake news' or 'strategic disclosures', and the impact of this false or previously unavailable information can be increased through the creation of an 'artificial consensus' online.<sup>6</sup>

- 7.13 In addition to this concern, the Committee was cognisant of a further problem, highlighted by the independent democracy watchdog, Freedom House. Their analysis found that the number of countries in which physical violence in response to online speech occurred had risen by 50 per cent between 2016 and 2017.<sup>7</sup>
- 7.14 For example, social media debate and misinformation have resulted in violent attacks and deaths in India, Myanmar, and Sri Lanka.
- 7.15 In India, false allegations concerning child kidnappers went viral on WhatsApp. In response, angry mobs across the country attacked and killed people they accused of kidnapping. The Government's response has been to monitor and restrict social media access.<sup>8</sup>
- 7.16 According to Freedom House, Australia ranks number 1 in the Asia-Pacific for internet freedom (see Figure 7.1).<sup>9</sup> It is unlikely that the Australian Government will seek to enforce internet restrictions.
- 7.17 Despite this, the Committee is aware of the potential misuse of messaging services within similarly free countries, with evidence from *The Guardian's* investigation into the 2011 London riots showing that use of the BlackBerry Messenger service was highly influential in escalating the crisis.<sup>10</sup>

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<sup>6</sup> Zoe Hawkins, 'Securing Democracy in the Digital Age', Australian Strategic Policy Institute, 2017, p. 8, <[https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2017-08/ASPI%20Securing%20Democracy.pdf?j6I4yMJ0WZvVnLo3JodbYjg\\_2PLx6Jlp](https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2017-08/ASPI%20Securing%20Democracy.pdf?j6I4yMJ0WZvVnLo3JodbYjg_2PLx6Jlp)>, accessed 11 September 2018.

<sup>7</sup> Freedom House, *Manipulating Social Media to Undermine Democracy*, Freedom on the Net, November 2017, p. 30, <<https://freedomhouse.org/report/freedom-net/freedom-net-2017>>, accessed 3 December 2018.

<sup>8</sup> BBC News, 'India "WhatsApp child abduction rumours": Five more lynched', 2 July 2018, <<https://www.bbc.com/news/world-asia-india-44678674>> accessed 24 September 2018.

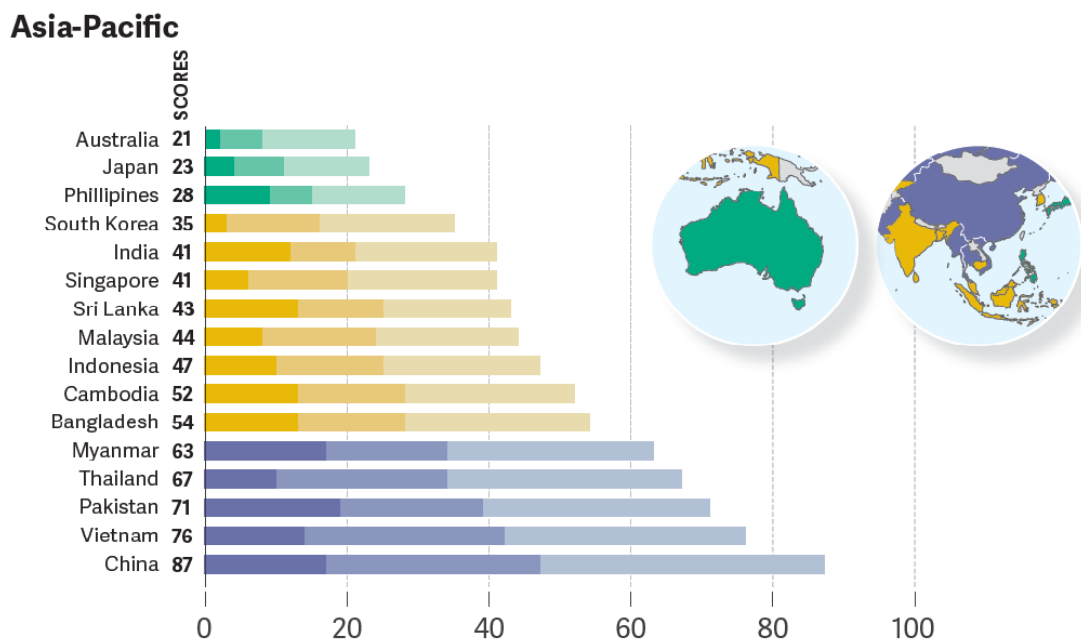
<sup>9</sup> Freedom House, *Manipulating Social Media to Undermine Democracy*, Freedom on the Net, November 2017, p. 30, <<https://freedomhouse.org/report/freedom-net/freedom-net-2017>>, accessed 3 December 2018.

<sup>10</sup> Josh Halliday, 'London riots: how BlackBerry Messenger played a key role', *The Guardian*, 8 August 2011, <<https://www.theguardian.com/media/2011/aug/08/london-riots-facebook-twitter-blackberry>>, accessed 24 September 2018.



7.18 Additionally, given the evidence found by the News and Media Research Centre (NMRC) that the use of messaging apps for news content is increasing,<sup>11</sup> the Committee is aware of the need to monitor the misuse of such technology.

**Figure 7.1 Internet freedom across the Asia-Pacific (2017)**



Source: *Freedom on the Net*, November 2017, p. 30.

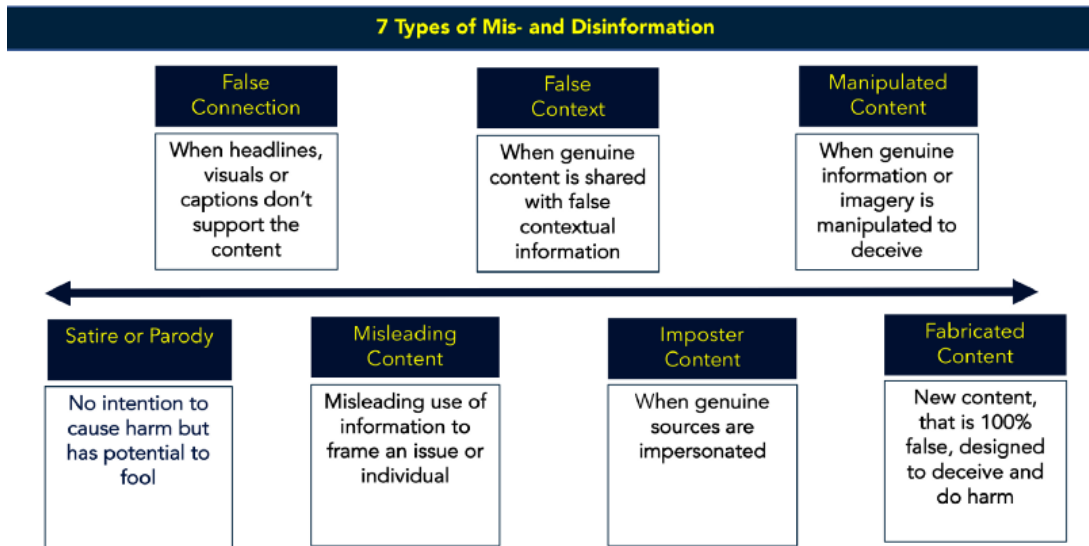
## Understanding disinformation

7.19 Dr Claire Wardle, an expert in information disorders, identified 7 'distinct types of problematic content that sit within our information ecosystem'.<sup>12</sup> See Figure 7.2.

**Figure 7.2 7 types of disinformation**

<sup>11</sup> News and Media Research Centre (NMRC), *Submission 222*, p. 4.

<sup>12</sup> C Wardle, 'Fake news. It's complicated', First Draft, 17 February 2017, <<https://medium.com/1st-draft/fake-news-its-complicated-d0f773766c79>>, accessed 12 September 2018.



C Wardle, 'Fake news. It's complicated'.

7.20 Dr Wardle's analysis also presented evidence of the motivations behind the dissemination of disinformation. Satire, for example, while technically being a form of disinformation, has a very different objective from propaganda or manipulated political or commercial content.<sup>13</sup> See Figure 7.3.

**Figure 7.3 Motives behind disinformation**

<sup>13</sup> C Wardle, 'Fake news. It's complicated', First Draft, 17 February 2017, <<https://medium.com/1st-draft/fake-news-its-complicated-d0f773766c79>>, accessed 12 September 2018.

	Satire	False Connection	Misleading Content	False Context	Imposter Content	Manipulated Content	Fabricated Content
Poor journalism		✓	✓	✓			
To Parody	✓				✓		✓
To Provoke or to 'punk'					✓	✓	✓
Passion				✓			
Partisanship			✓	✓			
Profit		✓			✓		✓
Political Influence			✓	✓		✓	✓
Propaganda			✓	✓	✓	✓	✓

Source: C. Wardle, 'Fake news. It's complicated'.

## Quantifying disinformation

7.21 The News and Media Research Centre (NMRC) provided extensive statistical analysis into Australia's vulnerability to fake news.<sup>14</sup>

7.22 The submission considered 6 forms of misinformation:

- i. poor journalism;
- ii. stories where facts are spun to push an agenda;
- iii. fictional stories created for political or commercial reasons;
- iv. misleading headlines disguising advertisements;
- v. satire; and
- vi. the use of 'fake news' to discredit opposing media stories.<sup>15</sup>

7.23 NMRC found that the majority of their survey respondents had been exposed to one or more forms of disinformation. However, it is worth noting that only 25 per cent of those surveyed had experienced political

<sup>14</sup> NMRC, *Submission 222*.

<sup>15</sup> NMRC, *Submission 222*, pp. 4-5.

manipulation. This is disproportionate to the level of concern about political manipulation, which was at 67 per cent.<sup>16</sup>

7.24 NMRC recommended that:

... the government fund continued monitoring of Australians' use of social media and messaging apps to inform strategies for combatting the spread of fake news. It is particularly important to understand how Australian news consumers come across information while engaging in online activities—incidental news exposure—and what impact this may have on news consumers' engagement with politics and the society. Previously, much focus was on monitoring the content of news. However, in an age of information abundance it is critical to understand what, how and how much information consumers are accessing via various platforms.<sup>17</sup>

## Who should combat disinformation?

7.25 In its submission to the ACCC Digital Platforms Inquiry, the Australian Press Council noted a dangerous double-standard:

If Press Council members are being held to high standards of practice as to the accuracy of materials they produce and distribute, it can be seen to be highly unfair that powerful players such as Facebook and Google are not also required to make some effort to reduce the adverse effects on public discourse and democracy of fake news being systematically and widely produced.<sup>18</sup>

7.26 The level of accountability and the responsibilities that come with that is a debated issue. With regards to accountability and possible regulation of disinformation, one of the most vital questions appeared to be the definition of social media companies as either a **platform** or **publisher**.

7.27 Facebook itself has an inconsistent approach to whether it is a platform or publisher. While the majority of Facebook CEO Mark Zuckerberg's statements label Facebook as a platform and technology company, in a recent court case, a lawyer for Facebook discussed the protections publishers

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<sup>16</sup> NMRC, *Submission 222*, p. 5.

<sup>17</sup> NMRC, *Submission 222*, p. 9.

<sup>18</sup> Australian Press Council, Submission to the ACCC Digital Platforms Inquiry, April 2018, <<https://www.accc.gov.au/system/files/Australian%20Press%20Council%20%28April%202018%209.pdf>>, accessed 14 August 2018

have with regards to content decisions.<sup>19</sup> This seems to suggest that Facebook considers it has the protections of a publisher.

7.28 This is in contrast to evidence presented at a US Senate Committee on 10 April 2018, where Mr Zuckerberg was asked by Alaskan Senator Sullivan:

You know, you — you mention you're a tech company, a platform, but there's some who are saying that you're the world's biggest publisher. I think about 140 million Americans get their news from Facebook, and when you talk to — when you mentioned that Senator Cornyn — Cornyn, he — you said you are responsible for your content.

So which are you, are you a tech company or are you the world's largest publisher, because I think that goes to a really important question on what form of regulation or government action, if any, we would take.<sup>20</sup>

7.29 Mr Zuckerberg responded:

Well, I agree that we're responsible for the content, but we don't produce the content. I — I think that when people ask us if we're a media company or a publisher, my understanding of what — the heart of what they're really getting at, is do we feel responsibility for the content on our platform.

The answer to that, I think, is clearly “yes.” And — but I don't think that that's incompatible with fundamentally, at our core, being a technology company where the main thing that we do is have engineers and build products.<sup>21</sup>

7.30 Even without producing content, social media sites control access to information. Evidence by a Microsoft researcher, Mr Tarleton Gillespie, suggested that social media sites frequently define and determine what we see and how we see it. This is done in two ways; by preventing or removing content that breaches their own terms and conditions, and by using algorithms to determine what an individual sees and how often they see it:

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<sup>19</sup> Sam Levin, 'Is Facebook a publisher? In public it says no, but in court it says yes', The Guardian, 3 July 2018, <<https://www.theguardian.com/technology/2018/jul/02/facebook-mark-zuckerberg-platform-publisher-lawsuit>>, accessed 14 September 2018.

<sup>20</sup> Senator Sullivan cited in Bloomberg Government, 'Transcript of Mark Zuckerberg's Senate hearing', The Washington Post, 10 April 2018, <[https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?noredirect=on&utm\\_term=.db776976a9e1](https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?noredirect=on&utm_term=.db776976a9e1)>, accessed 14 September 2018.

<sup>21</sup> Mark Zuckerberg cited in Bloomberg Government, 'Transcript of Mark Zuckerberg's Senate hearing', The Washington Post, 10 April 2018, <[https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?noredirect=on&utm\\_term=.db776976a9e1](https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?noredirect=on&utm_term=.db776976a9e1)>, accessed 14 September 2018.

These sites also emphasize that they are merely hosting all this content, while playing down the ways in which they intervene – not only how they moderate, delete, and suspend, but how they sort content in particular ways, algorithmically highlight some posts over others, and grant their financial partners privileged real estate on the site.<sup>22</sup>

7.31 One problem raised by Mr Gillespie is that, even when appearing to act ‘rationally’ and in accordance with their terms of service, the process of moderation or removal of content is so opaque that the validity of the decision can easily be challenged.<sup>23</sup>

7.32 Mr Gillespie highlighted the need to bring greater transparency to the moderation process:

As more and more of our public discourse, cultural production, and social interactions move online, and this handful of massive, privately owned digital intermediaries continues to grow in economic and cultural power, it is crucial that we examine the choices moderators make.<sup>24</sup>

## **The implied freedom of political communication**

7.33 In discussing possible restrictions, the Committee is cognisant of the need to protect the implied freedom of political communication, which has been upheld by the High Court since *Australian Capital Television Pty Ltd v Commonwealth*.<sup>25</sup>

7.34 With regards to the limitations of this freedom, Justice Brennan stated:

It is both simplistic and erroneous to regard any limitation on political advertising as offensive to the Constitution. If that were not so, there could be no blackout on advertising on polling day; indeed, even advertising in the polling booth would have to be allowed unless the demands of peace, order and decorum in the polling booth qualify the limitation. Though freedom of political communication is essential to the maintenance of a representative

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<sup>22</sup> Gillespie, T. *Custodian of the Internet. Platforms, content moderation, and the hidden decisions that shape social media*, United States of America, Yale University Press, 2018, p. 7.

<sup>23</sup> Gillespie, T. *Custodian of the Internet. Platforms, content moderation, and the hidden decisions that shape social media*, United States of America, Yale University Press, 2018, p. 6.

<sup>24</sup> Gillespie, T. *Custodian of the Internet. Platforms, content moderation, and the hidden decisions that shape social media*, United States of America, Yale University Press, 2018, p. 6.

<sup>25</sup> [1992] HCA 45.

democracy, it is not so transcendent a value as to override all interests which the law would otherwise protect.<sup>26</sup>

7.35 The consequence of this clarification is that Parliament can, in some instances, impose restrictions; balancing the need for such measures with the importance of political discussion.

7.36 In *Lange v Australian Broadcasting Corporation*,<sup>27</sup> a two-step test was introduced:

First, does the law effectively burden freedom of communication about government or political matters either in its terms, operation or effect? Second, if the law effectively burdens that freedom, is the law reasonably appropriate and adapted to serve a legitimate end the fulfilment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and the procedure prescribed by s 128 for submitting a proposed amendment of the Constitution to the informed decision of the people ... If the first question is answered 'yes' and the second is answered 'no', the law is invalid.<sup>28</sup>

7.37 A further restriction, however, was stated by Justice McHugh in *Australian Capital Television*:

[H]aving regard to the conceptions of representative government, Parliament has no right to prefer one form of lawful electoral communication over another. It is for the electors and the candidates to choose which forms of otherwise lawful communication they prefer to use to disseminate political information, ideas and argument. Their choices are a matter of private, not public, interest. Their choices are outside the zone of governmental control.<sup>29</sup>

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<sup>26</sup> Brennan J cited in George Williams, 'The State of Play in the Constitutionally Implied Freedom of Political Discussion and Bans on Electoral Canvassing in Australia', 1996-97, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP9697/97rp10](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9697/97rp10)>, accessed 10 September 2018.

<sup>27</sup> [1997] HCA 25.

<sup>28</sup> *Lange v Australian Broadcasting Corporation*, 1997 cited in Dan Meagher, 'What is "Political Communication"? The Rationale and Scope of the Implied Freedom of Political Communication', 2004, Melbourne University Law Review, <<http://www.austlii.edu.au/au/journals/MULR/2004/14.html#fnB1>>, accessed 10 September 2018.

<sup>29</sup> McHugh J cited in George Williams, 'The State of Play in the Constitutionally Implied Freedom of Political Discussion and Bans on Electoral Canvassing in Australia', 1996-97, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP9697/97rp10](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9697/97rp10)>, accessed 10 September 2018.

7.38 This must be remembered when attempting to address online political communication and contrasting it to more ‘traditional’ advertising. However, it is not an insurmountable obstacle to redressing dark advertising or disinformation. In concluding his paper, Professor George Williams AO noted that:

Legislation carefully and proportionately targeted to meet some other purpose, such as the purpose of ensuring free and fair elections, will survive the scrutiny of the constitutional freedom. Free speech and the regulation of electoral canvassing need not be in conflict.<sup>30</sup>

## Social media manipulation

7.39 The Committee considered both the domestic and international threat of social media manipulation, including the use of automated bots.

7.40 Bots are programs that are capable of generating their own followers and can be either automated or human driven (referred to as ‘cyborgs’). The definition of bots given by the UK House of Commons’ Digital, Culture, Media and Sport Committee in its inquiry into ‘Disinformation and “fake news”’ is:

... algorithmically-driven computer programmes designed to carry out specific tasks online, such as analysing and scraping data. Some are created for political purposes, such as automatically posting content, increasing follower numbers, supporting political campaigns, or spreading misinformation and disinformation.<sup>31</sup>

7.41 Bots are one of the most effective methods of spreading disinformation and, while there are several inquiries being conducted around the world, it appears that laws need to evolve to bring transparency and regulation to their use.

## The international landscape

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<sup>30</sup> George Williams, ‘The State of Play in the Constitutionally Implied Freedom of Political Discussion and Bans on Electoral Canvassing in Australia’, 1996-97, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP9697/97rp10](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9697/97rp10)>, accessed 10 September 2018.

<sup>31</sup> House of Commons Digital, Culture, Media and Sport Committee, Disinformation and “fake news”: Interim Report, Fifth Report of Session 2017-19, 2018, p. 19, <<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/363/363.pdf>>, accessed 3 December 2018.



- 7.42 There have been significant security breaches and allegations of cyber interference in the electoral process in countries such as Britain, the US, France and the Philippines.
- 7.43 Many of the problems facing these countries are either already present in, or are likely to reach, Australia.
- 7.44 In the US, Facebook CEO Mark Zuckerberg estimated that the Russian disinformation agency—the Internet Research Agency (IRA)—was linked to 470 accounts, which generated around 80 000 posts over 2 years which were viewed by around 126 million people. IRA also spent an estimated US\$100 000 on more than 3 000 advertisements on both Facebook and Instagram. These were seen by approximately 11 million Americans.<sup>32</sup>
- 7.45 When questioned about motive, testimony by Google Senior Vice President and General Counsel Kent Walker noted that ‘the large majority of the material we saw was in the socially divisive side, rather than direct electoral advocacy’.<sup>33</sup> This does not appear to be any less damaging.
- 7.46 Reforms have been put in place since the 2016 US election, with Twitter and Facebook taking steps to address disinformation through an increase in fact-checking and greater transparency with regards to advertising.<sup>34</sup>
- 7.47 These reforms come as Facebook is drawn into investigations over Russian interference. In a hearing before the United States Senate Select Committee on Intelligence on 5 September 2018, Facebook’s Chief Operating Officer, Sheryl Sandberg, apologised for being ‘too slow to spot this [Russian interference] and too slow to act’.<sup>35</sup>
- 7.48 Ms Sandberg continued to outline the improvements and measures made by Facebook:

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<sup>32</sup> Mark Zuckerberg cited in ‘Hearing before the United States Senate Committee on the Judiciary and the United States Senate Committee on Commerce, Science and Transportation, 10 April 2018, p. 4, <<https://www.judiciary.senate.gov/imo/media/doc/04-10-18%20Zuckerberg%20Testimony.pdf>>, accessed 17 September 2018.

<sup>33</sup> Kent Walker cited in US Senate Select Committee on Intelligence, <<https://www.intelligence.senate.gov/hearings/open-hearing-social-media-influence-2016-us-elections#>>, accessed 17 September 2018.

<sup>34</sup> Sheryl Sandberg, ‘Hearing before the United States Senate Select Committee on Intelligence’, September 5 2018, <<https://www.intelligence.senate.gov/sites/default/files/documents/ossandberg-090518.pdf>> p. 1, accessed 10 September 2018; Twitter, *Submission* 228, p. 3.

<sup>35</sup> Sheryl Sandberg, ‘Hearing before the United States Senate Select Committee on Intelligence’, September 5 2018, p. 1, <<https://www.intelligence.senate.gov/sites/default/files/documents/ossandberg-090518.pdf>>, accessed 10 September 2018.

We're investing heavily in people and technology to keep our community safe and keep our service secure. This includes using artificial intelligence to help find bad content and locate bad actors. We're shutting down fake accounts and reducing the spread of false news. We've put in place new ad transparency policies, ad content restrictions, and documentation requirements for political ad buyers. We're getting better at anticipating risks and taking a broader view of our responsibilities. And we're working closely with law enforcement and our industry peers to share information and make progress together.

This work is starting to pay off. We're getting better at finding and combating our adversaries, from financially motivated troll farms to sophisticated military intelligence operations. We've removed hundreds of Pages and accounts involved in coordinated inauthentic behavior — meaning they misled others about who they were and what they were doing.<sup>36</sup>

- 7.49 In an earlier hearing, Virginian Senator Warner took aim at Facebook, Twitter, Google and YouTube to highlight the scale of the problem, calling not only on the platforms to take action, but also the government, the President, and the public.<sup>37</sup> There appears to be growing recognition that the problem of foreign interference and disinformation can only be tackled by a coordinated effort.
- 7.50 In Britain, there are current investigations and inquiries into the role data breaches, fake news, twitterbots, inappropriate funds and foreign interference played in the Brexit result.
- 7.51 As with the US 2016 Presidential election, questions have been raised over alleged Russian interference. Mr Tom Brake MP (UK) said that for Russian President Vladimir Putin, 'the use of social media to interfere in foreign states is a vital, weaponised tool'.<sup>38</sup>

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<sup>36</sup> Sheryl Sandberg, 'Hearing before the United States Senate Select Committee on Intelligence', September 5 2018, p. 1, <<https://www.intelligence.senate.gov/sites/default/files/documents/ossandberg-090518.pdf>>, accessed 10 September 2018.

<sup>37</sup> Senator Mark R. Warner, 'Opening statement', 1 November 2017, <<https://www.intelligence.senate.gov/hearings/open-hearing-social-media-influence-2016-us-elections#>> accessed 10 September 2018.

<sup>38</sup> Mr Tom Brake MP, Hansard UK, HC 21, December 2017, vol. 633, col. 1325.

- 7.52 Dr Dan Mercea and Dr Marco T Bastos found evidence that 13 494 twitterbots were active during the Brexit campaign, with rates of support higher for Vote Leave than the Remain campaign.<sup>39</sup>
- 7.53 The 2017 French election also witnessed attempts at cyber manipulation—in this case through a mix of disinformation and what Ms Hawkins terms ‘strategic disclosures’.<sup>40</sup>
- 7.54 As explained by Ms Hawkins, strategic disclosures are, as the leaking of Presidential Candidate Hillary Clinton’s emails showed, potentially very damaging to a campaign:
- Information doesn’t have to be false to influence voters’ decision-making. Acquiring and distributing true but previously unavailable facts can change the way people make choices during an election.<sup>41</sup>
- 7.55 In the closing days of the 2017 French presidential election campaign, emails connected to President Macron’s campaign were leaked and quickly spread via the internet. Despite a 44-hour media blackout prior to polling, because of the viral nature of online, non-mainstream media, the emails spread quickly across popular channels such as 4chan.<sup>42</sup>
- 7.56 These international instances and the subsequent investigations validate the Committee’s concerns over the potential misuse of online platforms, disinformation and bots.

## The threat to Australia

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<sup>39</sup> M T Bastos and D Mercea, ‘The Brexit Botnet and User-Generated Hyperpartisan News’, *Social Science Computer Review*, 2017, p. 7, DOI: 10.1177/0894439317734157.

<sup>40</sup> Zoe Hawkins, ‘Securing Democracy in the Digital Age’, Australian Strategic Policy Institute, 2017, p. 10, <[https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2017-08/ASPI%20Securing%20Democracy.pdf?j6I4yMI0WZvVnLo3JodbYjg\\_2PLx6Ijp](https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2017-08/ASPI%20Securing%20Democracy.pdf?j6I4yMI0WZvVnLo3JodbYjg_2PLx6Ijp)>, accessed 12 September 2018.

<sup>41</sup> Zoe Hawkins, ‘Securing Democracy in the Digital Age’, Australian Strategic Policy Institute, 2017, p. 10, <[https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2017-08/ASPI%20Securing%20Democracy.pdf?j6I4yMI0WZvVnLo3JodbYjg\\_2PLx6Ijp](https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2017-08/ASPI%20Securing%20Democracy.pdf?j6I4yMI0WZvVnLo3JodbYjg_2PLx6Ijp)>, accessed 12 September 2018.

<sup>42</sup> Lizzie Dearden, ‘Emmanuel Macron hacked emails: French media ordered by electoral commission not to publish content of messages’, *Independent*, 6 May 2017, <<https://www.independent.co.uk/news/world/europe/emmanuel-macron-email-hack-leaks-election-marine-le-pen-russia-media-ordered-not-publish-commission-a7721111.html>>, accessed 24 September 2018.

- 7.57 According to the News and Media Research Council (NMRC), the threat to Australia of social media manipulation, spread of fake news, and the use of bots appears to currently be more of a domestic threat than one of foreign interference.<sup>43</sup>
- 7.58 While the security concerns related to the malicious use of bots by foreign actors cannot be ignored, new legislation such as the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* and the *Foreign Influence Transparency Scheme Act 2018* may cover foreign interference during Australia's democratic or government processes.<sup>44</sup>
- 7.59 The legislative gap instead appears to be in domestic and commercial communications. Further consideration of spam laws, privacy laws, advertising laws, and regulatory guidelines is warranted.
- 7.60 Evidence to this inquiry demonstrated the ways in which companies were themselves addressing these gaps. For example, Twitter outlined its commitment to safeguarding the integrity of its platform:
- It's important to note our work to fight both maliciously automated accounts and disinformation goes beyond any one specific election, event, or time period. We've spent years working to identify and remove spammy or malicious accounts and applications on Twitter. We continue to improve our internal systems to detect and prevent new forms of spam and malicious automation in real time while also expanding our efforts to educate the public on how to identify and use quality content on Twitter.<sup>45</sup>
- 7.61 For Australia, however, evidence suggested only minimal disruption. NMRC presented an analysis of the #auspol hashtag to quantify the prevalence of Russian trolls and news sources within a prominent location for online political debate. The focus of the investigation was the presence of state-sponsored media, Russia Today and Sputnik, in the #auspol debate.<sup>46</sup>
- 7.62 #auspol is over 8 years old and 'the endurance of the hashtag from election to election and between elections, combined with the evidence that platforms like Twitter are an increasingly important source of news for

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<sup>43</sup> News and Media Research Council (NMRC), *Submission 222*, p. 15.

<sup>44</sup> Attorney-General's Department, 'Espionage, foreign interference and foreign influence', Australian Government, <<https://www.ag.gov.au/NationalSecurity/EspionageForeignInterferenceandForeignInfluence/Pages/default.aspx>>, accessed 24 September 2018.

<sup>45</sup> Twitter, *Submission 228*, p. 3.

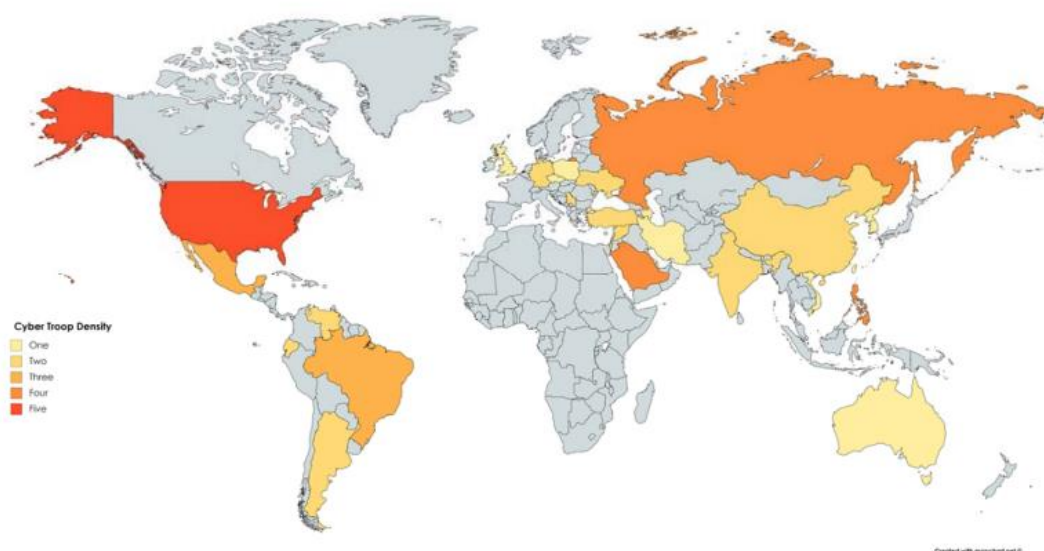
<sup>46</sup> NMRC, *Submission 222*, pp. 9-16.

Australians lends credence to concerns about security of Twitter as an information space'.<sup>47</sup>

7.63 The NMRC found that Russian accounts were more likely to engage in an international rather than national debate.<sup>48</sup>

7.64 The absence of a concerted bot effort in Australia was also found by an Oxford study which studied 28 countries and found that Australia had only minimal evidence of 'cyber troop capacity'.<sup>49</sup> See Figure 7.4.

**Figure 7.4 Organisational density of cyber troops, 2017**



S Bradshaw and P N Howard, 'Troops, Trolls and Troublemakers: A Global Inventory of Organized Social Media Manipulation'.

7.65 Similarly, in both submissions, Twitter and Facebook research has found minimal evidence of interference in Australia's electoral and voting process.<sup>50</sup> Facebook noted that during the 2017 Postal Survey, it worked in conjunction with the Australian Electoral Commission (AEC) to remove

<sup>47</sup> NMRC, *Submission 222*, p. 10.

<sup>48</sup> NMRC, *Submission 222*, p. 15.

<sup>49</sup> S Bradshaw and P N Howard, 'Troops, Trolls and Troublemakers: A Global Inventory of Organized Social Media Manipulation', University of Oxford, Working paper no 2017.12, p. 22, <<http://comprop.oii.ox.ac.uk/wp-content/uploads/sites/89/2017/07/Troops-Trolls-and-Troublemakers.pdf>> accessed 3 December 2018.

<sup>50</sup> Facebook, *Submission 224*; Twitter, *Submission 228*.

content that violated Australia's policies and laws, as well as running advertisements encouraging voters to enrol.<sup>51</sup>

7.66 While the success of this enrolment campaign is difficult to quantify, the Postal Survey did see an enormous increase in new electoral enrolments and,<sup>52</sup> given the difficulty in enrolling voters in the 18-24 age group, social media campaigns present an avenue to foster engagement.

7.67 Some submitters expressed concern at the length of time Facebook took to respond to AEC inquiries, specifically in the context of the *Marriage Law Survey (Additional Safeguards) Act 2017*. Digital Rights Watch recommended that the Committee consider potential options to empower the AEC in the social media space, including requiring Facebook to respond to AEC enquiries within a set period of time and increasing resources for the AEC to handle digital and social media-related issues. They also noted:

Dark ads are also playing an increasingly prominent role in the Australian political context. In the lead up to the 2017 postal vote on same-sex marriage, the federal parliament passed a law intended to safeguard against vilification or intimidation, including requiring paid advertisements to be authorised. However during the months and weeks before the vote, sponsored Facebook posts (i.e. paid advertising) which were openly homophobic and were clearly targeting Australian Facebook users with the intention of influencing their vote continued to appear without authorisation. At least one such ad took more than a month to be blocked, despite the direct intervention of the Australian Election Commission and Special Minister of State with Facebook.

The fact that these unauthorised ads were able to target Australian voters with more or less complete impunity despite the safeguards law, and the difficulty in identifying who was behind the campaigns and who was exposed to them, should be a matter of serious concern for the parliament.<sup>53</sup>

## Micro-targeting and 'dark adverts'

7.68 Micro-targeting came to light when the political consulting firm Cambridge Analytica was linked to a major privacy breach, involving the harvesting of an estimated 87 million Facebook users' personal data. This data could be used to better target political advertisements. Its potential misuse is subject

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<sup>51</sup> Facebook, *Submission 224*, [p. 2].

<sup>52</sup> Australian Electoral Commission, 'National youth enrolment rate', 17 July 2018, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/national-youth.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/national-youth.htm)>, accessed 24 September 2018.

<sup>53</sup> Digital Rights Watch, *Submission 220*, p. [6].

to inquiries in relation to both the 2016 US Presidential election and the 2016 Brexit campaign.

7.69 On 17 March 2018 *The New York Times* and *The Observer* published articles alleging Cambridge Analytical had harvested millions of Facebook profiles, initially through thisisyourdigitallife, an app created by Aleksandr Kogan and his company Global Science Research. The app gave access to not only users' profiles, but also the profiles of their friends.

7.70 In the UK, Facebook has been fined £500 000 by the Information Commissioner's Office for two breaches of the *UK Data Protection Act 1998* related to the Cambridge Analytica scandal. Information Commissioner Elizabeth Denham highlighted the broader issue:

It's part of our ongoing investigation into the use of data analytics for political purposes which was launched to consider how political parties and campaigns, data analytics companies and social media platforms in the UK are using and analysing people's personal information to micro-target voters.<sup>54</sup>

7.71 Similar questions have been raised in Australia. The Office of the Australian Information Commissioner opened an inquiry on 5 April 2018 into whether Facebook had breached the *Privacy Act 1988*.<sup>55</sup> There is currently no report date for this inquiry.

7.72 A further question regarding privacy was raised by Digital Rights Watch and related to political campaigners' exemption from the Privacy Act and the potential misuse of data:

The exemption of political parties, and their contractors, sub-contractors and volunteers, from the Privacy Act ... poses not only a data security risk, but also a major reputational risk for political parties themselves.<sup>56</sup>

7.73 Misuse of data appeared to be a serious threat not only in terms of privacy laws, but also through the potential dangers of 'dark advertising', as evidenced by groups such as Who Targets Me—a UK initiative aimed at

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<sup>54</sup> Information Commissioner (UK) Elizabeth Denham cited in C Cadwalladr and E Graham-Harrison, 'Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach', 17 March 2018, *The Guardian*, <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>>, accessed 13 August 2018.

<sup>55</sup> Office of the Australian Information Commissioner, 'Facebook and Cambridge Analytica', Australian Government, 5 April 2018, <<https://www.oaic.gov.au/media-and-speeches/statements/facebook-and-cambridge-analytica>>, accessed 24 September 2018.

<sup>56</sup> Digital Rights Watch, *Submission 220*, p. [8].

bringing transparency to political advertising on social media (primarily Facebook).<sup>57</sup>

7.74 Dark advertising allows groups and companies to target specific individuals or groups (micro-targeting), with the goal of shifting their opinions. It is different from normal advertising because it will be seen by only the intended recipient.

7.75 Who Targets Me highlighted the problem:

Imagine during an election campaign, a particular party advertises the message “We will ban all migration” on a billboard in one part of the country, and that same party puts the message “We will allow unrestricted migration” on a billboard in another part of the country in an attempt to attract voters from both sides of a debate. Now imagine someone from one end of the country is visiting friends in the other, they notice the mismatch and naturally the party is ridiculed by the public.

Now imagine instead of billboards, those were online “dark” adverts. How would you go about determining if your neighbours or those of different demographics were seeing different adverts to you? How can you be sure you truly understand what a party stands for when the vast majority of campaign material is hidden from view?<sup>58</sup>

7.76 In Australia, *The Guardian* set up a similar initiative to publicise dark adverts shared during the 2018 Tasmanian, South Australian and Victorian elections. ProPublica developed a browser plugin capable of automatically collecting ads from Facebook. Users also have the option to send screenshots of ads directly to the initiative.<sup>59</sup>

7.77 Facebook and Twitter have launched initiatives aimed at bringing transparency to dark ads. They have promised to publish online databases of the political adverts that have appeared on their sites prior to the November 2018 US mid-term elections.

7.78 Facebook and Twitter have launched initiatives aimed at bringing transparency to dark ads. It is now possible to track dark ads on the

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<sup>57</sup> Who targets me?, 2017, ‘Dark Advertising’, <<https://whotargets.me/en/definitions/>>, accessed 10 August 2018.

<sup>58</sup> Who targets me?, 2017, ‘Dark Advertising’, <<https://whotargets.me/en/definitions/>>, accessed 10 August 2018.

<sup>59</sup> N Evershed, ‘Help us monitor political advertising on Facebook in your state’, 14 February 2018, *The Guardian*, <<https://whotargets.me/en/definitions/>>, accessed 10 August 2018.



Facebook platform and access an Ad Library which collects political advertisements.

- 7.79 Twitter also outlined its own improvements in the area of political advertising and discussed its coordination with national laws:

Twitter's current advertising policies permit political campaigning advertising, but we maintain additional country level restrictions. In addition to Twitter advertising policies, all political campaigning advertisers must comply with applicable laws regarding disclosure and content requirements, eligibility restrictions, and blackout dates for the countries where they advertise, including Australia.<sup>60</sup>

- 7.80 Similarly, when speaking at a US Senate hearing, Google's Senior Vice President and General Counsel, Kent Walker, outlined the company's response to evidence of political manipulation:

Going forward, we will continue to expand our use of cutting-edge technology to protect our users and will continue working with governments to ensure that our platforms aren't abused. We will also be making political advertising more transparent, easier for users to understand, and even more secure. In 2018, we'll release a transparency report showing data about who is buying election ads on our platform and how much money is being spent. We'll pair that transparency report with a database, available for public research, of election and ad content across our ads products.

We're also going to make it easier for users to understand who bought the election ads they see on our networks. Going forward, users will be able to easily find the name of any advertiser running an election ad on Search, YouTube, or the Google Display Network through an icon on the ad. We'll continue enhancing our existing safeguards to ensure that we permit only U.S. nationals to buy U.S. election ads.<sup>61</sup>

## Media literacy

- 7.81 Evidence from the News and Media Research Council (NMRC) suggested that media literacy should be the first line of defence when combatting disinformation.<sup>62</sup>

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<sup>60</sup> Twitter, *Submission 228*, p. 3.

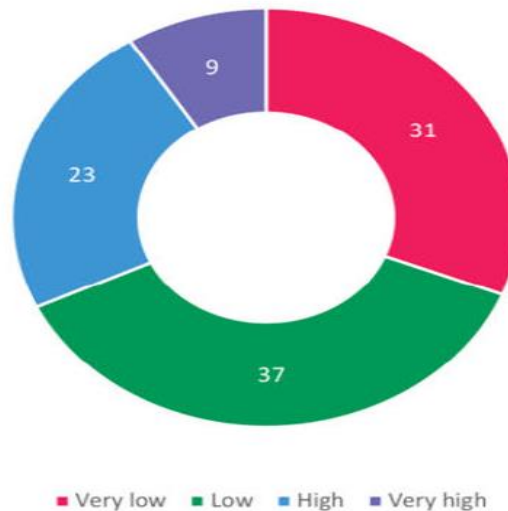
<sup>61</sup> Kent Walker, 'Statement', 1 November 2017, <<https://www.intelligence.senate.gov/hearings/open-hearing-social-media-influence-2016-us-elections#>>, accessed 10 September 2018.

<sup>62</sup> News and Media Research Council, *Submission 222*, p. 16.

- 7.82 NMRC provided evidence of the relatively low level of media literacy in Australia.<sup>63</sup> See Figures 7.5 and 7.6.
- 7.83 NMRC found that the type of news platforms used influenced the level of news literacy. For instance, 76 per cent of social media news consumers recorded low/very low levels of literacy, compared to 58 per cent of consumers using online news sources.<sup>64</sup>
- 7.84 Importantly, the submission also showed that news literacy increases the ability to spot fake news.<sup>65</sup>

**Figure 7.5 Levels of news literacy in Australia (%)**

**Figure 3-1. Levels of news literacy in Australia (%)**



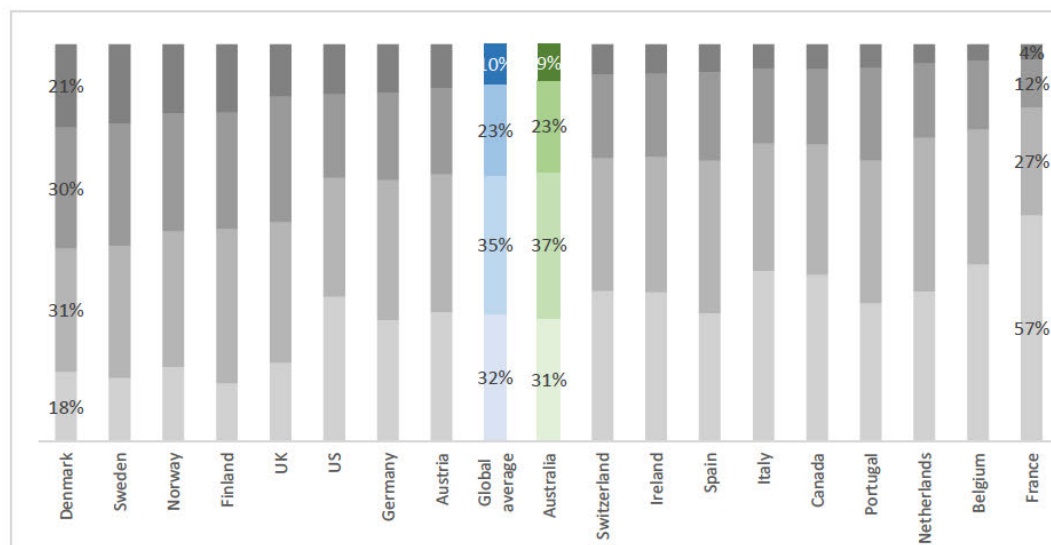
Source: NMRC, *Submission 222*, p.17.

**Figure 7.6 International comparison of media literacy**

<sup>63</sup> NMRC, *Submission 222*, p. 16-19.

<sup>64</sup> NMRC, *Submission 222*, p. 18.

<sup>65</sup> NMRC, *Submission 222*, p. 19.



Source: NMRC, *Submission 222*, p. 17.

- 7.85 Based on their findings and the low level of news literacy in Australia, NMRC recommended all school and university students be instructed in information literacy, including providing them an understanding of algorithms and artificial intelligence (AI).<sup>66</sup>
- 7.86 The inclusion of algorithms and AI should help users identify bot activities and fake accounts.
- 7.87 In its own submission, it was unclear whether Facebook-supported initiatives provided information on algorithms or AI. However, there was an attempt to get media literacy programs into schools through their Digital Literacy Library.<sup>67</sup>
- 7.88 Evidence suggested that given political participation increasingly occurs online, media literacy could perhaps be incorporated into a strengthened civics education curriculum. Twitter identified that its media literacy programs focused on, among other things, ‘active citizenship online’.<sup>68</sup>

## Media literacy templates

<sup>66</sup> NMRC, *Submission 222*, p. 19.

<sup>67</sup> Facebook, *Submission 224*, p. [6].

<sup>68</sup> Twitter, *Submission 228*, p. 7.

- 7.89 Internationally, concerns have always existed over the level of critical analysis of media that should be taught in schools. However the necessity for such education has only increased with the advent of social media and the rise of bloggers and self-publishers.
- 7.90 UNESCO has published a Handbook for Journalism Education and Training—*Journalism, ‘Fake news’ & Disinformation*—which provides guidance on the development and aim of modules, as well as possible activities and resources.<sup>69</sup>
- 7.91 Similarly, Stony Brook University runs an undergraduate course which has also been adapted to school settings. It also provides links to resources and potential course modules.<sup>70</sup>
- 7.92 These international examples could form the basis for an Australian curriculum targeted at both school and university level.

## Interim committee conclusions

- 7.93 In light of the terminological confusion surrounding ‘fake news’, the Committee recommends that future inquiries adopt the term ‘disinformation’. This recommendation accords with investigations in Europe and elsewhere and should allow for more exact exploration, while preserving free speech and expression for legitimate forms of communication.

## Recommendation 27

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- 7.94 **The Committee recommends to the Australian Government that all future inquiries into issues concerning ‘fake news’, instead use the term ‘disinformation’.**
- 7.95 During its inquiry, the Committee found limited evidence of social media manipulation within Australia, including minimal use of bots; however, given recent international incidents, the Committee recommends this issue continue to be monitored, particularly during election periods.

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<sup>69</sup> Cheryl Ireton and Julie Posetti (eds.), *Journalism, ‘Fake news’ & Disinformation*, 2018, United Nations Educational, Scientific and Cultural Organization, <<http://unesdoc.unesco.org/images/0026/002655/265552E.pdf>>, accessed 11 September 2018.

<sup>70</sup> Digital Resource Center, ‘Course Building’, Stony Brook University, <<http://drc.centerfornewsliteracy.org/course-building>>, accessed 11 September 2018.

- 7.96 The Committee supports Mr Chris Zappone's suggestion that lines of communication should be opened between the Department of Foreign Affairs and Trade and Silicone Valley companies. This would encourage companies to bring greater transparency to changes to their platforms, and ensure that they are conducive to a liberal democratic environment.<sup>71</sup>

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## Recommendation 28

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- 7.97 The Committee recommends that the Australian Government establish a permanent taskforce to prevent and combat cyber manipulation in Australia's democratic process and to provide transparent, post-election findings regarding any pertinent incidents. The taskforce is to focus on systemic privacy breaches.**
- 7.98 The evidence presented to the Committee and other international investigations shows the power of social media companies to shape what we see and how we see it. Governments must address the degree of responsibility of social media companies for their content, together with ways to bring greater transparency to their methods of regulation and moderation. Inconsistency and ambiguity over Facebook's responses on its status as a platform or publisher suggests self-regulation is problematic. Consequently, determining the nature of Facebook and similar social media 'platforms' is crucial.

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## Recommendation 29

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- 7.99 The Committee recommends that the Australian Government bring greater clarity to the legal framework surrounding social media services and their designation as 'platform' or 'publisher'.**
- 7.100 Of particular interest in US hearings has been discussion concerning FEC law which prohibits foreign nationals from spending funds in a US election. Given this law applies to Facebook it appears more could have been done to authenticate the true source of political advertising funding to ensure the money originated from a domestic source.
- 7.101 Also of concern to the Committee are the low levels of media literacy and the rapid spread of disinformation in Australia. The Committee recommends increased focus on improving media literacy levels among both students and the general public.

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<sup>71</sup> Chris Zappone, *Submission 221*, p. 3.

## **Recommendation 30**

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**7.102 The Committee recommends that the Australian Government consider ways in which media literacy can be enhanced through education programs that teach students not only how to create media, but also how to critically analyse it.**

## **Recommendation 31**

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**7.103 The Committee recommends that the Australian Electoral Commission examine ways in which media literacy can be incorporated into a modern, relevant civics education program.**

7.104 Some submitters recommended that the AEC should have a role in producing and circulating a comparative table of political positions as one strategy to tackle misinformation. According to Mr Chris Zappone, Foreign News Editor, *The Age* and Fellow, Futures Council, ANU National Security College:

With the structural demise of traditional media, there may be a role in the Australian Electoral Commission producing a simplified gazette of political parties' views on issues, which can be heavily publicised through multiple channels in the days before the elections. Voters can be directed to these charts that contain verified information on the views of politicians, where they can compare and contrast the positions of parties. The government could limit the word count of the statements, which would increase the importance of the statements. In a time of unrestrained information flows, the brevity of the statement would increase its value to the public.<sup>72</sup>

7.105 The Committee will consider this, and other proposals, in its next report on this issue.

**Senator the Hon James McGrath  
Chair  
29 November 2018**

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<sup>72</sup> Chris Zappone, *Submission 221*, p. 2.

# A. Submissions and Exhibits

## Submissions

- 1 Mr Frank Rayner
- 2 Mr Tony Magrathea
  - 2.1 Supplementary submission
  - 2.2 Supplementary submission
  - 2.3 Supplementary submission
- 3 Mr Jeff Waddell
- 4 Mr Allan Oakes
- 5 Mr Michael Maley
  - 5.1 Supplementary submission
- 6 Australians for Honest Elections
- 7 Mr Paul Higgins
- 8 *Name Withheld*
- 9 Mr Andrew Reid
- 10 Dr Richard Gould
- 11 Ms Haille Smith
- 12 Mr Jeremy Buxton
- 13 Mr Keith Jurd
- 14 Australian Charities and Not-for-profits Commission
- 15 CPS Industry Networks Pty Ltd

- 16 Mr Tim Leeder
- 17 Ms Margot Martin
- 18 Mr Victor Batten
- 19 Mr George Williams AO
- 20 Dr Bede Harris
- 21 Council For The National Interest
- 22 Mr Bruce Kirkpatrick AOM
- 23 Ms Margot Bunt
- 24 Dr Anne Twomey
- 25 Assoc Professor Joo-Cheong Tham
  - 25.1 Supplementary submission
- 26 Mr Neil Freestone
- 27 FamilyVoice Australia
- 28 Blind Citizens Australia
- 29 Dr Luke Beck
- 30 Mr Antony Green
- 31 Mr Graeme Holloway
- 32 Dr Craig Costello
- 33 Beverly Montgomery on behalf of Brian Jeffrey
- 34 Mr Geoffrey and Ms Judith Hinspeter
- 35 Vision Australia
  - 35.1 Supplementary submission
- 36 Smartmatic International
- 37 Ms Laura Sinclair
- 38 *Name Withheld*
- 39 Mr John Gegan
- 40 Mr Greg Northover
- 41 Mr David Anderson
- 42 Liberal Democratic Party



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- 43 Mr Ron Daley
- 44 Dr A.J Rawling
- 45 Mr Chris Curtis
- 46 Mr John Spark
- 47 The Hon Peter Lindsay AOM
- 48 Dr Ken Coghill
- 48.1 Supplementary submission
- 49 Mr Michael Dickson
- 50 AIIA
- 51 ScytI Australia Pty. Ltd.
- 52 Electoral Integrity Project
- 53 Mr Jack and Michele Miller
- 54 Pirate Party Australia
- 55 Voices for Indi
- 56 Brightwell - Buckland - Wen - Rye
- 56.1 Supplementary submission
- 57 Australia Post
- 58 Australian Conservation Foundation
- 59 Dr Peter Brent
- 60 Ms Carolyn Harkins
- 61 Electoral Reform Australia
- 62 Dominion Voting Systems
- 63 Mr Thomas Killip
- 64 Mr Malcolm Baalman
- 65 Electoral Reform Society of SA
- 65.1 Supplementary submission
- 66 Australian Electoral Commission
- 66.1 Supplementary submission
  - 66.2 Supplementary submission
  - 66.3 Supplementary submission

- 66.4 Supplementary submission
- 66.5 Supplementary submission
- 66.6 Supplementary submission
- 66.7 Supplementary submission
- 66.8 Supplementary submission
- 66.9 Supplementary submission
- 66.10 Supplementary submission
- 66.11 Supplementary submission
- 66.12 Supplementary submission
- 66.13 Supplementary submission
- 66.14 Supplementary submission
- 66.15 Supplementary submission
- 66.16 Supplementary submission
- 66.17 Supplementary submission
- 66.18 Supplementary submission
- 66.19 Supplementary submission
- 66.20 Supplementary submission

67 The Australia Institute

68 Liberal National Party

69 Australian Labor Party

- 69.1 Supplementary submission

70 Science Party

71 Mr Peter Brun

72 National Party of Australia - NSW

73 Warren Snowdon

74 Dr Kevin Bonham

- 74.1 Supplementary submission

75 Mr James Jansson

76 Mr Ian Brightwell

- 76.1 Supplementary submission

77 Dr Colleen Lewis

78 Uniting Church in Australia

- 78.1 Supplementary submission

- 
- 79 Mr Thor Prohaska
- 80 Mr W Bruce Kirkpatrick OAM
- 81 GetUp!
- 81.1 Supplementary submission
  - 81.2 Supplementary submission
  - 81.3 Supplementary submission
  - 81.4 Supplementary submission
  - 81.5 Supplementary submission
- 82 Victorian Gay & Lesbian Rights Lobby
- 83 Communications Alliance Ltd
- 84 Accountability Round Table
- 84.1 Supplementary submission
- 85 350.org Australia
- 86 Professor Graeme Orr
- 87 Unions NSW
- 87.1 Supplementary submission
- 88 Ms Sue Swann
- 89 Australian Greens
- 90 Free TV
- 91 Dr Belinda Edwards
- 92 CPSU
- 93 Mr Mark Rice
- 94 WWF - Australia
- 95 Mr Craig Burton
- 96 Dr Vanessa Teague - Dr Chris Culnane - Prof Rajeev Gore
- 96.1 Supplementary submission
- 97 Mr Matthew Potocnik
- 97.1 Supplementary submission
- 98 Commercial Radio Australia Limited
- 99 Ms Gemma Whiting

- 100 Liberal Party of Australia
- 101 *Confidential*
- 102 Proportional Representation Society of Australia
  - 102.1 Supplementary submission
- 103 Financial Services Council
- 104 Ms Teresa Liddle
- 105 Mr Klaas Woldring
- 106 Mr Toby Jones
- 107 Dr Harry Phillips
- 108 Dr Martin Drum
- 109 Mr Nick Hannaford
- 110 *Confidential*
- 111 Mr David Lewis
- 112 Mr Alastair Wood
- 113 Ms Emma Godfrey
- 114 Printing Industries Association of Australia
- 115 Mr S Laurence Cachia
- 116 Communications Alliance Ltd
- 117 Mr Steve Irons MP
- 118 Mr Lex Stewart
- 119 Mr Rowan Ramsey MP
- 120 Mr Dave Allen
- 121 Mr John Hollands
- 122 The Australian Monarchist League Inc.
- 123 Mr Timothy McCarthy
- 124 People with Disability Australia
- 125 NSW Electoral Commission
- 126 *Confidential*
- 127 Senator Dr Christopher Back

- 
- 128 Mr Gerard Shea
- 129 Mr Walter Broussard
- 130 Mr Robert Lange
- 131 ParaQuad Association of Tasmania Inc.
- 132 Mr George Matthews
- 133 Equality Rights Alliance
- 134 Council of State Retirees' Associations Victoria Inc.
- 135 Mr Kevin Andrews MP
- 136 Australian Public Service Commission
- 137 Ms Lisa McDermott
- 138 Minerals Council of Australia
- 138.1 Supplementary submission
- 139 Mr Malcolm Mackerras AO
- 140 International Institute for Democracy and Electoral Assistance's  
(International IDEA)
- 141 The Nationals
- 142 Mr Ted O'Brien
- 143 Ross Drynan
- 144 Ms Joanna Seczkowski
- 145 Mr Robert Coughlin
- 146 Shire of Halls Creek
- 147 Carmen-Emilia Tudorache
- 148 Dr Michelle Blom, Dr Chris Culnane, Prof Rajeev Goré, Prof Peter Stuckey,  
Dr Vanessa Teague
- 149 Professor George Williams AO
- 149.1 Supplementary submission
- 150 CARE Australia
- 151 Australian Council for International Development
- 152 Dr Colleen Lewis
- 153 *Name Withheld*

- 154 Union Aid Abroad–APHEDA
- 155 International Institute for Democracy and Electoral Assistance
- 156 FamilyVoice Australia
- 157 Pew Charitable Trusts
- 158 World Vision Australia
- 159 Australian Conservation Foundation
- 160 Community Council for Australia
- 161 Australian Greens
- 162 Mr Andrew Wilkie MP & Ms Cathy McGowan AO MP
- 163 Human Rights Law Centre
- 164 Hon. Michael Danby MP
- 165 Market Forces
- 166 Save the Children Australia
- 167 Gene Ethics
- 168 Australian Council of Trade Unions
- 169 Aid Watch
- 170 Association of Australian Medical Research Institutes
- 172 Senator the Hon Eric Abetz
- 173 Mr Roger Woodward FCA
- 175 The Australian Monarchist League Inc
- 176 Accountability Round Table
- 177 Mr John Gregan
- 178 Australian Environmental Grantmakers Network
- 179 Electoral Reform Society of SA
- 180 Philanthropy Australia
- 181 Oxfam Australia
- 182 RESULTS International (Australia)
- 183 Mr Robert Grigg
- 184 Ms Frances Wood

- 
- 185 The Nationals
- 186 Mr Damian McCrohan
- 187 Conservation Council SA
- 188 350.org Australia
- 190 Ms Emma Pocock
- 191 Mr George O'Farrell
- 192 VOTE Australia
- 193 Liberal Party of Australia
- 194 GetUp!
- 194.1 Supplementary submission
  - 194.2 Supplementary submission
  - 194.3 Supplementary submission
  - 194.4 Supplementary submission
  - 194.5 Supplementary submission
  - 194.6 Supplementary submission
- 195 Ms Elizabeth O'Dea
- 196 Synod of Victoria and Tasmania, Uniting Church in Australia
- 197 Gene Ethics
- 198 Queensland Law Society
- 199 AidWatch
- 200 Business Council of Australia
- 201 Friends of the Earth Australia
- 202 Australian Conservation Foundation
- 204 Mr John Winzer
- 205 Mr Graham Rollings
- 206 Ms Christella George
- 207 Mr Cec Thompson
- 208 Mr Daniel Hirschfeld
- 209 Ms Julie Emerald
- 210 Ms Gina Boyanton

- 211 Dr Judith Bourne
- 212 Mr Andrew Ciseau
- 213 Ms Anne Layton-Bennett
- 214 The Hon Wilson Tuckey
- 215 Australian Taxation Office
  - 215.1 Supplementary submission
- 216 ACFID
- 217 Mr John Carrick
- 218 Mervyn Youl AM & Ann Youl OAM
- 219 Ms Robyn Nolan
- 220 Digital Rights Watch
- 221 Mr Chris Zappone
- 222 News and Media Research Centre, University of Canberra
- 223 Mr Tom Sear
- 224 Facebook
- 225 Mrs Lynne Dickson
- 226 Ms Gai Brodtmann MP
- 227 Digital Industry Group Inc (DIGI)
- 228 Twitter



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## Exhibits

- 1 *View of residential retirement village clubrooms*, received from Senator Brown, 14 November 2016
- 2 *Documents tabled by Mr Morton*, received from Mr Morton, 28 November 2016
- 3 *How Australians Imagine Their Democracy*, received from Mr Morton, 6 December 2017
- 4 *Social media posts from Australian Aid and other user accounts*, received from Mr Morton, 31 January 2018
- 5 *Pamphlet – Why we need a frack free future*, received from Senator Reynolds, 31 January 2018
- 6 *Documents present by M. Coleman 1 February 2018*, received from Marie Coleman, Global Health Alliance Melbourne, 1 February 2018
- 7 *Document – campaign for Australian Aid evaluation*, received from Mr Morton, 1 February 2018
- 8 ABN lookups, campaign advertising and policy document, received from Mr Morton, 29 June 2018



## **B. Public hearings and witnesses**

### **Wednesday, 9 November 2016**

Parliament House, Canberra

*Australian Electoral Commission*

- Mr Tom Rogers, Electoral Commissioner
- Mr Kevin Kitson, First Assistant Secretary
- Mr Paul Pirani, Chief Legal Officer
- Ms Anna Robinson, Acting Assistant Commissioner

### **Friday, 11 November 2016**

Parliament House, Canberra

*Australian Electoral Commission*

- Mr Tom Rogers, Electoral Commissioner
- Mr Paul Pirani, Chief Legal Officer

*Department of Communications and the Arts*

- Dr Simon Pelling, First Assistant Secretary , Content Division

*Australian Communications and Media Authority*

- Ms Jennifer McNeill, General Manager, Content Consumer and Citizen

*Communications Alliance Ltd*

- Mr John Stanton, CEO

*Australian Mobile Telecommunications Association*

- Mr Chris Althaus, CEO

*Association for Data-Driven Marketing & Advertising*

- Ms Jodie Sangster, CEO

*Australian Labor Party*

- Mr Noah Carroll, National Secretary and Campaign Director

*Private capacity*

- Professor Graeme Orr

## **Monday, 14 November 2016**

Parliament of Tasmania, Hobart

*Australian Electoral Commission*

- Mr David Molnar, State Manager for Tasmania
- Mr Kevin Kitson, First Assistant Commissioner

*Private capacity*

- Dr Kevin Bonham

*ParaQuad Association of Tasmania*

- Mr David Cawthorn, Chairman
- Mr Gregory Perry, General Manager

*COTA Tasmania (advocates for older Australians)*

- Ms Sue Leitch, CEO

## **Tuesday, 15 November 2016**

Parliament of Victoria, Melbourne

*Australian Electoral Commission*

- Mr Jeff Pope, State Manager for Victoria
- Mr Kevin Kitson, First Assistant Commissioner

*Uniting Church of Australia*

- Mr Mark Zirnsak, Director

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*Private Capacity*

- Dr Chris Culnane
- Dr Vanessa Teague

*Blind Citizens Australia*

- Mr Rikki Chaplin, Advocacy and Policy

*Liberal Party*

- Mr Tony Nutt, Federal Director

*Accountability Round Table*

- The Hon David Harper, Secretary/Director

*Private capacity*

- Associate Professor Joo-Cheong Tham

## **Wednesday, 16 November 2016**

Commonwealth Parliamentary Offices, Sydney

*Australian Electoral Commission*

- Mr Doug Orr, State Manager
- Mr Kevin Kitson, First Assistant Commissioner

*Private capacity*

- Mr Antony Green

*National Party of Australia*

- Mr Nathan Quigley, State Director

*Unions NSW*

- Mr Thomas Costa, Assistant Secretary
- Ms Kate Minter, Research Officer

*Private capacity*

- Mr Ian Brightwell

*Private capacity*

- Dr Roland Wen

*Private Capacity*

- Dr Anne Twomey

*GetUp!*

- Mr Paul Oosting, National Director
- Ms Henrietta Smith, Chief of Staff

**Thursday, 17 November 2016**

Parliament of South Australia, Adelaide

*Australian Electoral Commission*

- Mr Paul Hawes, State Manager
- Mr Kevin Kitson, First Assistant Commissioner

*Electoral Reform Society of SA*

- Ms Deane Crabb, Secretary

*Printing Industry Association of Australia*

- Ms Mary-Jo Fisher, Membership Services Director

*FamilyVoice Australia*

- Mr David Phillips, National Director
- Mr Ashley Lyndon Saunders, National Director Designate

**Friday, 18 November 2016**

Parliament of Western Australia, Perth

*Australian Electoral Commission*

- Ms Marie Neilson, State Manager
- Mr Kevin Kitson, First Assistant Commissioner

*People with Disabilities WA*

- Ms Samantha Jenkinson, Executive Director

*Private capacity*

- Mr Jeremy Clifton Gurney Buxton

*Veri.vote*

- Mr Cam Sinclair, Chief Marketing Officer and Co-founder

*Private capacity*

- Mr Martin Drum

*Private capacity*

- Ms Gemma Whiting

**Friday, 25 November 2016**

Queensland Parliament, Brisbane

*Australian Electoral Commission*

- Mr Thomas Ryan, Queensland State Manager
- Mr Kevin Kitson, First Assistant Commissioner
- Mr Paul Pirani, Chief Legal Officer

*Australian Electoral Commission*

- Mr Mick Sherry, Northern Territory State Manager

*Liberal National Party*

- Mr Lincoln Folo, Campaign Director

*Liberal Democratic Party*

- Mr Gabriel Buckley, National President

*Vision Australia*

- Ms Julie McKay, Government Relations Adviser
- Ms Karen Knight, General Manager–Advocacy & Engagement

*Private capacity*

- Mr Thor Prohaska

**Monday, 28 November 2016**

Parliament House, Canberra

*Australian Electoral Commission*

- Mr Tom Rogers, Electoral Commissioner

- Mr Paul Pirani, Chief Legal Officer
- Mr Kevin Kitson, First Assistant Commissioner - Network Operations
- Mr Pablo Carpay, First Assistant Commissioner - Election Operations & Reform
- Mr Andrew Gately, Assistant Commissioner - Roll Management

## **Tuesday, 31 January 2017**

Townsville Council Chambers, Townsville

### *Private Capacity*

- Ms Laura Sinclair
- Ms Judith Hinspeter
- Dr Craig Costello

### *Private capacity*

- The Hon Peter Lindsay AOM

### *Australian Labor Party*

- Mr Evan Moorhead

### *Australian Electoral Commission*

- Mr Kevin Kitson, First Assistant Commissioner
- Mr Thomas Ryan, State Manager - QLD
- Mr Paul Pirani, Chief Legal Officer

## **Wednesday, 15 February 2017**

Parliament House, Canberra

### *Australian Labor Party*

- Mr Paul Erickson, Assistant National Secretary

### *University of New South Wales*

- Dr Belinda Edwards

### *Monash University Caulfield Campus*

- Dr Colleen Lewis, Adjunct Professor



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## Wednesday, 31 January 2018

Parliament House, Canberra

### *Private capacity*

- Mr Malcolm Baalman

### *Australian Council for International Development*

- Mr Marc Purcell, Chief Executive Officer
- Mr Gareth Beyers, Government Relations Manager

### *Australasian Centre for Corporate Responsibility*

- Mr Howard Pender, Convenor

### *Philanthropy Australia*

- Mr Krystian Seibert, Advocacy and Insight Manager

### *GetUp!*

- Mr Paul Oosting, National Director
- Ms Alice Drury, Legal Director

### *Community Council for Australia*

- Mr David Crosbie, Chief Executive Officer

### *Australian Labor Party*

- Mr Noah Carroll, National Secretary

## **Thursday, 1 February 2018**

Parliament of Victoria, Melbourne

*Shooting Industry Foundation Australia*

- Mr Rodney Drew, Executive Officer

*Accountability Round Table*

- Associate Professor Dr Colleen Lewis, Director

*Global Health Alliance*

- Ms Misha Coleman, Executive Director

*Oxfam Australia*

- Dr Nicole Bieske, Humanitarian Advocacy Lead
- Dr Helen Szoke, Chief Executive

*Pro Bono Australia*

- Ms Karen AM Mahlab, Founder

*World Vision Australia*

- Reverend Tim Costello, Chief Advocate

## **Friday, 2 February 2018**

New South Wales Parliament, Sydney

*AidWatch*

- Mr James Goodman, Chair, Management Committee

*Private capacity*

- Professor George Williams

*New Democracy Foundation*

- Dr Luca Belgiorno-Nettis, Founder and Director
- Mr Iain Walker, Executive Director

## **Friday, 16 February 2018**

Parliament House, Canberra

*Private Capacity*

- Associate Professor Joo-Cheong Tham

*Minerals Council of Australia*

- Dr Matthew Steen, Director, Economics and Industry Policy
- Mr Jonathan Hawkes, Director, Public Affairs

*Accountability Round Table*

- The Hon Tim Smith QC, Chair

*International IDEA*

- Mr Samuel David Jones, Programme Officer

**Monday, 19 February 2018**

South Australian Parliament, Adelaide

*Conservation Council SA*

- Mr Craig Wilkins, Chief Executive

**Tuesday, 20 February 2018**

Western Australian Parliament, Perth

*Private capacity*

- Dr Martin Drum

**Friday, 29 June 2018**

Museum of Australian Democracy, Old Parliament House, Canberra

*Australian Taxation Office*

- Mr Tim Dyce, Deputy Commissioner, Indirect Tax
- Ms Kate Roff, Assistant Commissioner, Indirect Tax Legal Assurance

*Australian Charities and Not-for-profits Commission (Via Teleconference)*

- Hon Dr Gary Johns, Commissioner

*Australian Electoral Commission*

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

## **Tuesday, 20 November 2018**

Parliament House, Canberra

### *Digital Rights Watch*

- Mr Tim Singleton Norton, Chair

*News and Media Research Centre, University of Canberra*

- Dr Sora Park, Director
- Dr Caroline Fisher, Assistant Professor
- Dr Michael Jensen, Senior Research Fellow
- Dr Mathieu O'Neil, Associate Professor of Communication

### *Private capacity*

- Mr Chris Zappone

### *Private capacity*

- Mr Tom Sear

## C. Terms of Senators elected in 2016

### New South Wales

Six year term		Three year term	
Marise Payne	LIB	Concetta Fierravanti-Wells	LIB
Sam Dastyari <sup>(a)</sup>	ALP	Doug Cameron	ALP
Arthur Sinodinos	LIB	Lee Rhiannon <sup>(c)</sup>	GRN
Jenny McAllister	ALP	John Williams	NAT
Fiona Nash <sup>(b)</sup>	NAT	Brian Burston <sup>(d)</sup>	ONP
Deborah O'Neill	ALP	David Leyonhjelm	LDP

<sup>(a)</sup> Resigned 25 January 2018, casual vacancy filled by Kristina Keneally (ALP)

<sup>(b)</sup> s. 44 vacancy filled by recount by Jim Molan (LIB)

<sup>(c)</sup> Resigned 14 August 2018, casual vacancy filled by Mahreen Faruqi (GRN)

<sup>(d)</sup> Elected as a member of the One Nation Party, now sits as a member of United Australia Party.

## Victoria

Six year term	Three year term		
Mitch Fifield	LIB	Jacinta Collins	ALP
Kim Carr	ALP	James Paterson	LIB
Richard Di Natale	GRN	Gavin Marshall	ALP
Bridget McKenzie	NAT	Derryn Hinch	JP
Stephen Conroy <sup>(a)</sup>	ALP	Janet Rice	GRN
Scott Ryan	LIB	Jane Hume	LIB

<sup>(a)</sup> Resigned 30 September 2016, casual vacancy filled by Kimberley Kitching (ALP)

## Queensland

Six year term	Three year term		
George Brandis <sup>(a)</sup>	LNP	Claire Moore	ALP
Murray Watt	ALP	Ian McDonald	LNP
Pauline Hanson	ONP	Larissa Waters <sup>(b)</sup>	GRN
Matthew Canavan	LNP	Barry O'Sullivan	LNP
Anthony Chisholm	ALP	Chris Ketter	ALP
James McGrath	LNP	Malcolm Roberts <sup>(c)</sup>	ONP

<sup>(a)</sup> Resigned 7 February 2018, casual vacancy filled by Amanda Stoker (LIB)

<sup>(b)</sup> s. 44 vacancy filled by recount by Andrew Bartlett (GRN). Andrew Bartlett resigned on 27 August 2018, casual vacancy filled by Larissa Waters (GRN)

<sup>(c)</sup> s. 44 vacancy filled by recount by Fraser Anning (elected as a member of the One Nation Party, then sat as an independent, now a member of Katter's Australian Party)

## Western Australia

Six year term		Three year term	
Mathias Cormann	LIB	Patrick Dodson	ALP
Sue Lines	ALP	Linda Reynolds	LIB
Scott Ludlam <sup>(a)</sup>	GRN	Chris Back <sup>(b)</sup>	LIB
Michaelia Cash	LIB	Louise Pratt	ALP
Glenn Sterle	ALP	Rodney Culleton <sup>(c)</sup>	ONP
Dean Smith	LIB	Rachel Siewert	GRN

<sup>(a)</sup>s. 44 vacancy filled by recount by Jordon Steele-John (GRN)

<sup>(b)</sup>Resigned 31 July 2017, casual vacancy filled by Slade Brockman (LIB)

<sup>(c)</sup>s. 44 vacancy filled by recount by Peter Georgiou (ONP)

## South Australia

Six year term		Three year term	
Simon Birmingham	LIB	Anne Ruston	LIB
Penny Wong	ALP	Alex Gallacher	ALP
Nick Xenophon <sup>(a)</sup>	NXT	David Fawcett	LIB
Cory Bernardi	LIB <sup>(b)</sup>	Skye Kakoschke-Moore <sup>(c)</sup>	NXT
Don Farrell	ALP	Sarah Hanson-Young	GRN
Stirling Griff	NXT	Bob Day <sup>(d)</sup>	FFP

<sup>(a)</sup>Resigned on 31 October 2017, casual vacancy filled by Rex Patrick (Nick Xenophon Team/Centre Alliance).

<sup>(b)</sup>Now sits as a member of the Australian Conservatives

<sup>(c)</sup>s. 44 vacancy filled by recount by Tim Storer (elected as a member of the Nick Xenophon Team, now sits as an independent)

<sup>(d)</sup>s. 44 vacancy filled by recount by Lucy Gichuhi (elected as a member of the Family First Party, sat first as an independent, and later joined the Liberal Party of Australia)

## Tasmania

Six year term	Three year term		
Eric Abetz	LIB	Jonathon Duniam	LIB
Anna Urquhart	ALP	Carol Brown	ALP
Peter Whish-Wilson	GRN	David Bushby	LIB
Jacqui Lambie <sup>(a)</sup>	JLN	Lisa Singh	ALP
Stephen Parry <sup>(b)</sup>	LIB	Catryna Bilyk	ALP
Helen Polley	ALP	Nick McKim	GRN

<sup>(a)</sup>s. 44 vacancy filled by recount by Steve Martin (elected as a member of the Jacqui Lambie Network, sat first as an independent, and later joined The Nationals)

<sup>(b)</sup>s. 44 vacancy filled by recount by Richard Colbeck (LIB)

Senators for the Northern Territory and the Australian Capital Territory only serve three year terms.



# Dissent – Australian Labor Party

Labor is committed to realising a vision of Australian democracy in which every Australian has an equal say in our nation's future.

Accordingly, we reject Recommendation 12 as proposed by the Government Members of the JSCEM.

We see the proposals set out there as a pathway to voter suppression. We are especially concerned that those citizens most likely to be disenfranchised through such changes include First Nations Australians, people affected by family and domestic violence, younger Australians, homeless people and itinerant people.

While it has often been contended by conservatives that the present arrangements for voter identification may lead to irregularities in the form of multiple voting and impersonation, these ideological arguments are unsupported by the evidence. We note that this report does not include a single reference to such an irregularity identified in the course of the 2016 election.

Much effort has been put into increasing electoral participation in Australia, and to engaging with population groups which have historically been less likely to vote or which face particular barriers to electoral involvement. This report recognises some of this work, appropriately, and makes other recommendations designed to further progress an expansion of the effective franchise.

But this would be fundamentally undermined if Recommendation 12 were to be enacted.

We note that a similar recommendation was put forward by Government Members of the JSCEM in the report on the 2013 election. On that occasion, the Labor Members of the Committee, together with Senator Rhiannon representing the Greens, also dissented.

We share the concerns they expressed, and repeat them. The experience of the Queensland introduction of similar measures is telling and concerning. Voter turnout fell significantly at the 2015 Queensland election, such that turnout was the lowest since 1980. An equivalent decline at a federal election would exclude more than 160 000 Australians from having their say in our country's political direction - over decisions taken in their names, and shaping their lives.

It is pleasing to be able to note that the Queensland Parliament has since reversed these regressive changes.

This Parliament should not take any step which would have the effect of reducing the number of Australians participating in our democracy, and should reject Recommendation 12.

**Mr Andrew Giles MP**  
**Deputy Chair**

**Senator Carol Brown**

**Mr Milton Dick MP**

**Senator Chris Ketter**

# Dissent and additional comments – Australian Greens

## Dissenting remarks

### *Recommendation 12*

The Australian Greens dissent to Recommendation 12 regarding additional requirements for voter identification.

There are serious implications for voter engagement for many groups of disadvantaged voters, including itinerant and indigenous voters as well as those escaping domestic violence. It is not an appropriate response to take actions that would impact on the involvement of these voters in order to address an issue where there is little evidence of any problem and where the proposed solution only addresses one aspect of the stated concern. That is, while there is some limited evidence of individuals voting multiple times in their own name, the added requirement to present photo ID, proof of address or a 'voter ID' card will not address this. It will address the concern of people impersonating others but there has been no evidence produced that would suggest this has occurred.

## Additional comments

### *Recommendation 4*

The Australian Greens have some concerns about Recommendation 4 to increase the requirement for political parties to have 1 000 members before they can field candidates in a federal election, because it will be a disincentive and barrier to new political parties.

Legitimate political participants in the political process should be welcomed and encouraged, and the 500 member threshold is an adequate balance between allowing new entrants to our democracy and ensuring that fake parties can't game elections.

### ***Recommendation 10***

The Australian Greens have some concerns about Recommendation 10 to increase the current penalty for not voting to more than \$20, as the higher cost is highly unlikely to deter non-voting. What is needed to encourage voting is to restore community confidence that our political system is capable of representing people, rather than just vested interests and big donors.

The Australian Greens believe that when electoral processes encourage people to participate in our political system, it makes for a healthier democracy. Rather than entrenching a punitive approach to non-compliance, we want to make sure the AEC has sufficient resources to educate the electorate on the importance, legal requirements and systems of voting, as well as the facilities for the enrolment of voters. We support funding education and outreach programmes that assist Aboriginal and Torres Strait Islander people, newly eligible voters and all other groups with lower voter turnout, to participate fully in electoral processes.

### ***Recommendation 26***

The Australian Greens note Recommendation 26 which refers for further enquiry into the question of increasing the threshold for tax-deductibility of donations to political parties. The Australian Greens oppose increasing the amount of money people can donate to political parties—let alone tax-deduct it. We believe that we need to get the influence of big money out of politics, not encourage it.

Donations from corporations and influential individuals have a corrupting effect on Australian democracy. Rather than encouraging more gifts, The Australian Greens would like to see a cap of \$3 000 per parliamentary term on all donations to political parties, candidates and associated entities. Contributions from the same donor should be aggregated for the purpose of the cap.

The *Commonwealth Electoral Act 1918* should also be amended to ban all donations from developers, banks, mining companies and the tobacco, liquor, gambling, defence and pharmaceutical industries to political parties, candidates and associated entities.

**Senator Larissa Waters**