

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

# **Report on the conduct of the 2019 federal election and matters related thereto**

Joint Standing Committee on Electoral Matters

December 2020  
CANBERRA

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# Foreword

## Australia is lucky

We are blessed that we live in one of the oldest and most successful democracies in the world.

Our good fortune has come not through chance. Our democracy works because over a century a lot of people, paid and unpaid, have worked to make it so through blood, sweat and tears.

Our democracy works because countless Australians have made the ultimate sacrifice to protect the freedoms inherent in democracy.

As society has changed, so should our electoral system be fine-tuned. Now is the time for immediate action by Parliament on certain changes and for a longer conversation about other reforms.

## Time for Action

To maximise voter choice compulsory preferential voting should be replaced by optional preferential voting. To increase fairness and to reduce the luck of the ballot draw while minimising the so-called donkey vote, the Robson Rotation of candidates on the ballot paper should be introduced for the House of Representatives in tandem.

Elections should not only be fair, open and transparent they should be seen to be so. And an important element is the sanctity of the electoral roll and the importance of each citizen equally exercising equally one vote. Voter ID should be introduced for all voters with savings measures similar to provisional votes.

Likewise, all electoral enrolments, whether new or changes should require proof of ID.

The pre poll voting period should be reduced from three weeks to a maximum of two weeks. Voters who choose to vote early should be required to explain why they are unable to attend on the day rather than it being a matter of convenience.

The Electoral Act should be completely rewritten to make it fit for purpose. A new offence of political violence, both physical and verbal should be introduced.

The rules governing the use of Party names should be tightened to restrict the use of existing party names by new political entrants.

### Time for a Conversation

Parliament should also commence a conversation about whether the Parliament should be increased in size as the last increase was in 1984. Part of the dialogue should consider whether the nexus between the Senate and the House of Representatives should be reformed.

In addition, consideration should be given to changing the term of the House of Representatives from three years to four years.

By-elections could be abolished with the Party or group elected at the general election choosing the replacement. In a similar vein, an MP who voluntarily resigns from the Party under which they were elected at the general election will be deemed to have vacated their seat.

### Closing

We sleep safely in our beds protected from the claws of the banality of evil because we decide who governs. These reforms are about empowering further the voter. Governments in democracies should always be wary of the voter. Long may it be so.

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

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# Members

## *Chair*

Senator the Hon James McGrath LP, QLD

## *Deputy Chair*

Senator Carol Brown ALP, TAS

## *Members*

Senator Wendy Askew LP, TAS

Mr Pat Conaghan MP (*from 7 December 2020*) NAT, NSW

Senator Anthony Chisholm (*from 8 October 2020*) ALP, QLD

Mr Milton Dick MP Oxley, QLD

Mr Tony Pasin MP Barker, SA

Senator Marielle Smith (*from 22 July 2019 to 8 October 2020*) ALP, SA

Mr James Stevens MP Sturt, SA

Ms Kate Thwaites MP Jagajaga, VIC

Senator Larissa Waters AG, QLD

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Senator Alex Antic

Senator Tim Ayres

Senator Catryna Bilyk

Senator Andrew Bragg

Senator Slade Brockman

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Senator Claire Chandler

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Senator Katy Gallagher

Senator Nita Green

Senator Pauline Hanson

Senator Hollie Hughes

Senator the Hon Kristina Keneally

Senator Kimberley Kitching

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Senator Jenny McAllister

Senator Malarndirri McCarthy

Senator Susan McDonald

Senator Sam McMahon

Senator Matt O'Sullivan

Senator James Paterson

Senator Helen Polley  
Senator Louise Pratt  
Senator Gerard Rennick  
Senator Malcolm Roberts  
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Senator Tony Sheldon  
Senator Dean Smith  
Senator Marielle Smith  
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# List of Recommendations

## **Recommendation 1**

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- 2.7 The Committee recommends that the Candidate Qualification Checklist be revised before the next election to make mandatory the provision of information about the date and country of birth for candidate, their parents and grandparents. Where any of this is not known, a candidate should be required to make a categorical statement that the information is not known. Where exact date is not known for the birth of the candidate, their parent, or a grandparent, an option should be allowed to state the year instead. The AEC should also be required to identify the day on which checklists will be published, when publishing the timeline for an election.

## **Recommendation 2**

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- 2.30 The Committee recommends that the Electoral Act be amended to:
- replace compulsory preferential voting with optional preferential voting; and
  - introduce the Robson Rotation of ordering candidates on ballot papers for the House of Representatives.

## **Recommendation 3**

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- 2.45 The Committee recommends that the Electoral Act be amended to include new offences for siphoning money through intermediaries. The offences should be drafted to deal with avoidance behaviour by donors who channel money through intermediaries, to avoid transparency. The offences should likewise cover any funnelling entities, including persons or organisations

who play a part in a chain of entities that siphon money. The offences should also cover receiving entities that had knowledge of siphoning arrangements and who did nothing to stop, or repay siphoned amounts. Persons who coordinate siphoning arrangements should also be liable to appropriate sanctions.

#### **Recommendation 4**

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2.52 The Committee recommends, as per its recommendation in the 2016 report, that the Government refer the issue of increasing 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 5**

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2.70 The Committee recommends that the Government issue a re-write schedule to replace each part of the Commonwealth Electoral Act with a 'fit-for-purpose' Electoral Act, to modernise the administration of Australia's electoral system.

#### **Recommendation 6**

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2.71 The Committee recommends that the Australian Electoral Commission bring forward a costed proposal and timeline for the introduction of an electronic certified roll before the next federal election.

#### **Recommendation 7**

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2.81 The Committee recommends that the AEC include local government areas and their internal ward / division boundaries and codes as part of the Roll Management System (RMANS) and Elector Enrolment Information (ELIAS) data to assist Members of Parliament in servicing their electors.

#### **Recommendation 8**

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3.27 The Committee recommends that, as per its recommendation in the 2016 election report, the pre-poll period be statutorily limited to be a maximum of two weeks prior to election and that the Australian Electoral Commission provides parties and candidates with the earliest possible advice about pre-poll locations as they are booked.



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## **Recommendation 9**

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- 3.28 The Committee recommends that the Australian Electoral Commission ensure that voters attending at a pre-poll centre meet the legislated criteria for exercising a pre-poll vote.

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## **Recommendation 10**

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- 3.29 The Committee recommends that the Australian Electoral Commission, as part of its existing election advertising campaigns, remind voters of the need to meet legislated criteria for exercising a pre-poll vote.

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## **Recommendation 11**

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- 3.55 The Committee recommends that the Government and Australia Post reports back with advice on premium mail products that can support Postal Vote materials in future, including services for the Australian Electoral Commission and for election contestants.

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## **Recommendation 12**

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- 3.77 The Committee recommends that, following consultation with stakeholders, including registered political parties, the Electoral Act be reformed to:
- Permit at the very least the unfolding and sorting of pre-poll ordinary votes from 4 pm, to be ready to counted from 6 pm.
  - Commence counting the pre-poll ordinary votes prior to 6 pm on election night, but no earlier than 4 pm. In this window there should be a prohibition on use of communication devices by scrutineers and Australian Electoral Commission staff, other than Australian Electoral Commission Officers-In-Charge at each polling place. To deter early unauthorised communication of results before 6 pm, appropriate penalties should also be included in the Act.
  - Allow postal votes and other declaration envelopes to be checked and ballot papers from qualified electors to be extracted face down and placed in secure ballot boxes. This process should be permitted over a very limited number of days before election day, to permit commencement of the count of these ballots from election night.

### **Recommendation 13**

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5.50 The Committee recommends that the media blackout, known as the relevant period in the *Broadcasting Services Act 1992* be reviewed with a view that the restrictions on commercial radio and television broadcasters be removed.

### **Recommendation 14**

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5.51 The Committee recommends that the current work of the Australian Competition and Consumer Commission and the Australian Communications and Media Authority to adapt regulation so it can keep pace with technological change, clearly addresses electoral and political advertising. It also recommends these agencies form a working group with the Australian Electoral Commission and other key stakeholders to ensure this important area is addressed as a priority.

### **Recommendation 15**

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6.75 The Committee recommends that the Electoral Integrity Assurance Taskforce be engaged permanently to prevent and combat cyber manipulation and electoral/foreign interference in Australia's democratic process and to provide post-election findings regarding any pertinent incidents to the Joint Standing Committee on Electoral Matters, including through in camera and open briefing.

### **Recommendation 16**

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6.104 The Committee recommends that new offence of 'electoral violence' be added to the Electoral Act to address behaviour arising in an election such as violence, obscene or discriminatory abuse, property damage, and stalking candidates or their supporters to intimidate them or make them feel unsafe.

### **Recommendation 17**

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6.105 The Committee recommends that the Electoral Act be amended so the test for affiliated organisations be broadened.

### **Recommendation 18**

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6.108 The Committee recommends that the threshold for political campaigners be reduced to \$100,000 or, circumstances where an entity's expenditure on electoral matter exceeds one third of its annual income, whichever is lower.

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## Recommendation 19

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6.111 The Committee recommends that persons who do not represent a candidate and hand out vote-influencing material or are attempting to influence voters in any other manner, whether individually or for a third party or group, are to be restricted to not being within 100 metres of a polling booth entrance; and

6.112 that persons handing out vote-influencing material or attempting to influence voters in any other manner for an endorsed candidate, whether running for a Party or as an independent are restricted to not being within 6m of a polling booth entrance; and

6.113 that the AEC encourage consistency in determination of polling booth entrances and application of the six metre rule.

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## Recommendation 20

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7.28 The Committee notes the importance of Australian Defence Force personnel being able to vote, and recommends, in addition to the 2016 report, that the Australian Electoral Commission ensures that postal votes for Australian Defence Force personnel are dispatched at the earliest possible time, with consideration given to premium or priority mail services, to allow the Australian Defence Force time to forward those to its personnel for completion and return to Australia.

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## Recommendation 21

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7.39 The Committee recommends that, as per its recommendation in the 2016 report, 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
- where voters cannot provide acceptable identification they must be issued with a declaration vote.
- with exceptions included for itinerant, remote Indigenous voters, and other disadvantaged persons, for instance enabling a local Health or Welfare service to vouch for the identity of a person.

### **Recommendation 22**

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7.40 The Committee recommends that the electoral roll be strengthened to ensure only those with photo ID or other forms of suitable ID can enrol or change enrolment.

### **Recommendation 23**

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7.45 The Committee recommends that section 129 of the *Commonwealth Electoral Act 1918* should be amended to permit the Electoral Commissioner to remove a name or a part of a name from an existing or proposed party that replicates a key word or words in the name of another recognised party that was first established at an earlier time.

### **Recommendation 24**

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8.64 The Committee recommends that consideration be given to a future constitutional referendum to break the nexus between the number of Senators for the States and the number of Members of the House of Representatives.

### **Recommendation 25**

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8.65 The Committee recommends that the Government consider asking the Committee to inquire into the size of the House of Representatives, with consideration to the growing average size of electorates and growing demands of the electorate.

### **Recommendation 26**

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8.66 The Committee recommends that the Government consider asking the Committee to inquire into the length of Parliamentary terms with a view to

introducing non-fixed four year terms for the House of Representatives (and consequently eight year terms for the Senate) to bring the Commonwealth Parliament into line with State Parliaments.

## **Recommendation 27**

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8.67 The Committee recommends that the Government consider asking the Committee to inquire into:

- The viability of replacing by-elections for the House of Representatives with alternative methods of selecting the replacement MP; and
- The viability and ramification of determining a seat to be declared vacant when the sitting MP resigns from or leaves the Party under which they were elected.



# 1. Introduction

## Overview

- 1.1 Members of the 46<sup>th</sup> Parliament of Australia were elected at the 2019 federal election, which took place on Saturday, 18 May 2019.
- 1.2 Australia's reputation as a successful democracy was upheld by the delivery of a transparent and robust election outcome. Australia's electoral system remained in good health, albeit with identified room for improvement in the process behind the election event. The Australian Electoral Commission (AEC) highlighted that it administers 'a voting service that is one of the fairest, most open and accessible in the world'.<sup>1</sup>
- 1.3 The election was participated in by a record number of Australians, with 96.8 per cent enrolled to vote (16.4 million people). This is an indicator of 'democratic health'.<sup>2</sup> The increased turnout from the previous federal election and steady levels of overall vote 'formality' were also noted by the AEC.<sup>3</sup>
- 1.4 The AEC stated that the '2019 federal election was, in many ways, the most complex since Federation', and called federal elections 'perhaps the biggest peacetime logistical event in Australia'.<sup>4</sup>

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<sup>1</sup> Australian Electoral Commission, *Submission 120*, p. 14.

<sup>2</sup> Australian Electoral Commission, *Submission 120*, p. 1.

<sup>3</sup> Australian Electoral Commission, *Submission 120*, p. 1.

<sup>4</sup> Australian Electoral Commission, *Submission 120*, pp. 1-2.

- 1.5 A trend towards increased complexity of federal elections requires analysis of the electoral process, a commitment to modernisation and security in order to address concerns raised after the 2019 federal election.
- 1.6 The 2019 federal election took place during a time of economic and social stability, in the 'pre-COVID era'. Subsequent federal elections may not enjoy the level of certainty and precedence of elections past, and will need to respond to new concerns. The Joint Standing Committee on Electoral Matters (JSCEM) notes the significant impact a pandemic or other emergency event would have on a logistical endeavour such as a federal election, and is undertaking an inquiry into this matter which will report in 2021.

### **Voting before election day**

- 1.7 Nearly one-third (32.5 per cent) of votes for the 2019 federal election were delivered by the early voting, or 'pre-poll' system. This is an enormous increase from the 2010 election, which saw 11 per cent of votes coming in from pre-poll voting.
- 1.8 If the rise in pre-poll voting continues, there is a risk of creating a 'voting period' rather than a polling day.<sup>5</sup> The significant increase of more than 31 per cent in pre-poll voting recorded in this election is unlikely to reflect a genuine cohort of voters unable to attend on the day, and strong consideration should be given to this trend.<sup>6</sup>
- 1.9 Early voting eligibility, in theory, limits the eligibility of a person to vote ahead of the polling day. Generally speaking, a person should be unable to vote in their own electorate on election day for travel, access, medical or religious reasons, among others.<sup>7</sup> In practice, however, it appears that the continued rise in pre-poll voting has seen many people subvert the eligibility requirements. Where a voter can be found on the electoral roll at a pre-poll centre, the AEC permits voters to self-assess their eligibility to cast an ordinary pre-poll vote. This permissive approach, to admitting persons for ordinary pre-poll voting, can mean that people choose this option without

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<sup>5</sup> The Electoral Act provides for pre-poll voting to commence five days after the declaration of nominations. This allows a three-week long pre-poll voting period.

<sup>6</sup> Australian Electoral Commission, '2019 Federal Election Factsheet', viewed on 10 September 2020, <[https://www.aec.gov.au/Elections/Federal\\_Elections/2019/files/19-1201-fe19-fastfacts-A3-poster.pdf](https://www.aec.gov.au/Elections/Federal_Elections/2019/files/19-1201-fe19-fastfacts-A3-poster.pdf)>

<sup>7</sup> Australian Electoral Commission, 'Voting options', viewed 10 September 2020, <[https://www.aec.gov.au/voting/ways\\_to\\_vote/](https://www.aec.gov.au/voting/ways_to_vote/)>



really understanding the eligibility issues. It can even result in disingenuous individual claims about whether electors are entitled to vote at pre-poll.

- 1.10 The pre-poll voting period, at three weeks, is a similar length to the last two elections but the trends show that people are tending to vote early very close to the polling day. The AEC stated that this trend does not affect Australia alone, with early voting numbers increasing ‘in just about every jurisdiction across the world, including every Australian state and territory, and closely related overseas electoral jurisdictions in Canada and New Zealand.’<sup>8</sup>
- 1.11 The pre-poll voting increase may have been facilitated in part by the increase in early voting centres (from approximately 436 for the 2016 election to 511 for the 2019 election).<sup>9</sup>
- 1.12 Inquiry participants raised concerns that pre-poll voting puts pressure on many parts of the electoral process, and that a lack of consistent application of campaigning rules across early voting centres created confusion.<sup>10</sup> Professor George Williams stated that:
- The result is a distorted election process in which many people elect their representatives based on incomplete information. Much of the electorate cast their ballot before Labor released its election costings and Prime Minister Scott Morrison launched his campaign.<sup>11</sup>
- 1.13 Concerns raised by inquiry participants included: the cost of an extended voting period; the number of party volunteers needed and the toll of an increased workload; consistent access to campaign information across the period and safety at early voting centres.<sup>12</sup>
- 1.14 One inquiry participant suggested that pre-poll voting could actually be a sign of high voter engagement and be a convenient method for a lot of voters.<sup>13</sup> Another stated that although pre-poll voting added much-

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<sup>8</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 1.

<sup>9</sup> Australian Electoral Commission, *Submission 120*, p. 16.

<sup>10</sup> For example: Professor George Williams AO, Private capacity, *Submission 3*, p. 2; The Hon. Keith Pitt MP, *Submission 21*, pp. 1-3; Vote Australia, *Submission 49*, pp. 1-4; Sean Carmichael, Private capacity, *Submission 66*, p. 3; Democratic Audit of Australia, *Submission 67*, p. 3.

<sup>11</sup> Professor George Williams AO, Private capacity, *Submission 3*, p. 2.

<sup>12</sup> Dr Stephen English, Private capacity, *Submission 40*, p. 1; Mr Pourus Bharucha, Private capacity, *Submission 22*, p. 3; Ms Louise Hislop, Private capacity, *Submission 92*, p. 1.

<sup>13</sup> Mr Pourus Bharucha, Private capacity, *Submission 22*, p. 3.

appreciated convenience for Australians, the duration of the early voting period was too long.<sup>14</sup>

- 1.15 In its report on the 2016 election, the JSCEM recommended that the early voting period be no more than two weeks.<sup>15</sup>

## **Appalling and abusive behaviour**

- 1.16 Unfortunately, a number of incidences of abusive and damaging behaviour took place throughout the election campaign period which endangered the safety of workers, volunteers and those attending to vote, and marred an otherwise successful event.
- 1.17 Parliamentarians, candidates, campaign staff and party volunteers were subjected to abuse, and properties and vehicles damaged by vandals. In the most extreme example of violence during the campaign, a campaign volunteer was attacked and stabbed with a corkscrew.
- 1.18 Other parliamentarians were subjected to horrific and obscene personal abuse, with incidences of stalking and harassment of a female candidate and anti-Semitic vandalism occurring at various times throughout the campaign.
- 1.19 This escalation in abusive behaviour requires serious consideration and action in order to make the campaign period, and polling day, a safe place for candidates and anyone attending.

## **Electoral advertising**

- 1.20 Issues related to a 'shift' in political and electoral advertising were raised by a number of inquiry participants. The volume, amount spent and rules surround advertising were flagged as areas for reform.<sup>16</sup> Potentially deceptive and misleading conduct was also a key concern.<sup>17</sup>
- 1.21 The AEC received more than 1,000 enquiries and complaints which related to electoral communication, and provided advice in relation to 544 of these and investigated 528.<sup>18</sup>

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<sup>14</sup> Name withheld, *Submission 50*, p. 1.

<sup>15</sup> Joint Standing Committee on Electoral Matters, 'Report on the conduct of the 2016 federal election and matters related thereto', November 2018, p. 88.

<sup>16</sup> Responsible Technology Australia, *Submission 69*, pp. 2-3.

<sup>17</sup> Ms Sally Woodward, Private capacity, *Submission 77*, pp. 1-2.

<sup>18</sup> Australian Electoral Commission, *Submission 120*, p. 33.

1.22 The AEC's 'Stop and Consider' campaign has sought to raise awareness of issues around legitimacy of information shared during election campaigns, and empower electors to question the validity of material shared.<sup>19</sup>

1.23 The political advertising blackout period was critiqued by the News and Media Research Centre at the University of Canberra:

We recommend the political advertising blackout be extended to social media and other online platforms. A social media blackout could mitigate the influence on voting of some of the risk of online 'scare campaigns' and unverified news in the final hours of the campaign, and go some way to protecting more vulnerable members of the community and introduce consistency across all news media platforms.<sup>20</sup>

1.24 This suggestion fails however to take account of the porous international nature of the internet and various application-based social media channels. Campaign expenditure is increasingly going towards online platforms and social media advertising. A blackout on online publishing by persons based in Australia would have the perverse consequence of enabling offshore actors to play an inordinate role in the closing days of an Australian election. This would particularly open our elections to influence by foreign powers, at the very time when foreign interference in democratic elections is an emerging global problem.

## Election timeline

1.25 The path to an election comprises a series of set deadlines. A timeline of election milestones is below:

Milestone	Date
Announcement of election	11 April 2019
Issue of the writs	
Postal vote applications opened	
Close of the rolls	18 April 2019
Close of candidate bulk nominations	21 April 2019
Close of nominations	23 April 2019

<sup>19</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 3.

<sup>20</sup> News and Media Research Centre, University of Canberra, *Submission 75*, p. 20.

Declaration of nominations	24 April 2019
Early voting commences	29 April 2019
Mobile voting commences	
Preliminary scrutiny commences <sup>21</sup>	
Election advertising blackout commences	15 May 2019
Closure of postal vote applications	
Polling day	18 May 2019
Count of votes	
Writs returned	21 June 2019
Last day for return of the writs	28 June 2019

*Source: Australian Electoral Commission, '2019 Federal Election Timetable', viewed 14 September 2020, <[https://www.aec.gov.au/Elections/Federal\\_Elections/2019/timetable.htm](https://www.aec.gov.au/Elections/Federal_Elections/2019/timetable.htm)>; Parliamentary Library, Research Paper Series 2019-20, 2019 Federal Election, 29 June 2020, p. 19.*

## About the inquiry

### Objectives and scope

- 1.26 Conducting a review of the most recent Federal election is standard practice for the JSCEM, with a review of every election since the 1987 federal election which elected the 33rd Parliament.
- 1.27 On 29 July, the Minister for Finance, Senator the Hon Mathias Cormann, asked the JSCEM to inquire into and report on all aspects of the 2019 federal election.

### Inquiry conduct

- 1.28 A media release announcing the inquiry was issued on 9 August 2019, calling for submissions to be received by 20 September 2019.

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<sup>21</sup> Preliminary scrutiny is conducted to ensure that a person lodging a postal vote certificate or declaration envelope is entitled to vote. No ballot paper is opened or scrutinised prior to the close of the poll at 6pm on election day.

- 1.29 The JSCEM also invited submissions from a number of relevant and interested parties, including: political parties, government agencies, academics, non-government and civil society organisations, businesses, peak bodies, social media platforms and individuals.
- 1.30 The inquiry received 172 submissions and held 9 public hearings which are listed at Appendix A and B respectively.

## Summary of recommendations made in previous reports

- 1.31 The JSCEM's *Report on the conduct of the 2016 Federal election and matters related thereto* (2016 election report) produced 31 recommendations. The JSCEM made a number of recommendations designed to enhance the work of the AEC, the Australian Government, and the operation of the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) to deliver improved electoral processes, and focused on:
- accessibility;
  - enrolment and engagement;
  - vote integrity, scrutiny and counting;
  - voter identification; and
  - party membership and registration.
- 1.32 In its 10 recommendations to the Australian Government, the JSCEM recommended the Government commission a technical report on count and surplus transfer methodology for Senate elections; review penalties for non-voting; provide ongoing funding for the PACER program; investigate culturally appropriate enrolment requirements for Aboriginal and Torres Strait Islander communities; investigate the NSW iVote system and options to extend the system to vision impaired voters; tax deductibility thresholds for donations and concessions to political parties; adapt terminology; establish a permanent cyber taskforce; establish greater clarity regarding the role of social media services in the provision of news; and explore media literacy education programs.
- 1.33 The JSCEM put forward 10 recommendations directed to the AEC, focusing on areas for further research into lower voter turnout and media literacy in civics education; expedition of postal votes for Australia Defence Force personnel; improving co-operation with management of polling places; and

a number of recommendations focused on encouraging improved accessibility for voters, and political party booth workers.

- 1.34 These accessibility recommendations to the AEC focused on physical access to polling places, supportive arrangements for voters who are unable to queue, and revision of information provided to be in more inclusive, clear and simple language, providing for a diversity of needs from voters.
- 1.35 Recommendations pertaining to the Electoral Act and the Referendum Act proposed the following amendments to:
- party membership and registration requirements;
  - expand access to online enrolment;
  - change sequences for House votes and preferences;
  - require voter identification; and
  - restrict pre-poll voting to two weeks or less.
- 1.36 Additional recommendations included changes to Central Senate Scrutiny Centres including the role of data entry operators and introduction of a nonpartisan independent expert scrutineer.
- 1.37 The Government has responded to some recommendations through successive legislation, but has yet to provide a final complete response to all aspects of the 2016 report, or the *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto* (the 2013 report).
- 1.38 However, since the 2016 report the following actions or inquiries have been undertaken:
- introduction of the ‘News media bargaining code’ by the Australian Competition and Consumer Commission;<sup>22</sup>
  - Senate inquiry into Foreign Interference through Social Media;<sup>23</sup>
  - establishment of the Electoral Integrity Assurance Taskforce;<sup>24</sup>
  - Digital Literacy Skills Framework;<sup>25</sup>

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<sup>22</sup> Australian Competition and Consumer Commission, ‘News media bargaining code’, viewed 18 September 2020, <<https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code>>

<sup>23</sup> Select Committee on Foreign Interference through Social Media, <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Interference\\_through\\_Social\\_Media/ForeignInterference](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Interference_through_Social_Media/ForeignInterference)> viewed 18 September 2020.

<sup>24</sup> Australian Electoral Commission, Electoral Integrity Assurance Taskforce, viewed 18 September 2020, <<https://www.aec.gov.au/elections/electoral-advertising/electoral-integrity.htm>>

<sup>25</sup> Department of Education, Skills and Employment, ‘Digital Literacy Skills Framework’, April 2020, viewed 18 September 2020,

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- Passage of the Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020; and
  - Passage of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2018.
- 1.39 A number of recommendations from the 2013 report were similarly reinforced in the 2016 report, with Voter ID and Aboriginal and Torres Strait Islander engagement both common issues.

## Report structure

- 1.40 Chapter Two sets out a high level overview of the trends and key issues which arose from the 2019 election, including an examination of metropolitan and regional voting trends, state and territory breakdowns and key challenges for the AEC in future elections.
- 1.41 Chapter Three examines the rise in voting prior to election day, which was one of the significant takeaways from the 2019 election.
- 1.42 Chapter Four considers the shift in political advertising and the increase in volume and expenditure which was notable in the 2019 election, as well as the regulations regarding digital and offline publishers.
- 1.43 Chapter Five continues to discuss the role of publishers through considering media blackouts, evolving platforms and accompanying regulatory burden.
- 1.44 Chapter Six outlines the actions and implications of third party and foreign actor interference, highlighting methods to improve transparency and reduce misinformation.
- 1.45 Chapter Seven examines polling accessibility needs and the role of voter identification, regional and online polling options.
- 1.46 Chapter eight explores potential changes to Senate seats and the possible role of divisional representation.





## 2. Overview and key Issues

### Overview

- 2.1 The Australian Electoral Commission (AEC) stated that, in terms of the electoral process, the 2019 election was a success:

...it's absolutely critical to note that, as is the case with most Australian elections, the 2019 election was well-delivered, with an outcome that would be declared on any international standard as a very sound election with a safe result.<sup>1</sup>

- 2.2 The large scale of the election means that the AEC delivers 'what is essentially one of Australia's largest peacetime logistic events'.<sup>2</sup>

- 2.3 The need to deliver an accurate, trusted and speedy election result at the close of the polls on polling day was highlighted by the AEC:

Electoral integrity and security have never been more topical and indeed more critical than at any point in our history. Building confidence and trust in elections is as complex as it's ever been. Further, the electoral landscape continues to change rapidly, and we continue to monitor, assess and adapt our approach in partnership with other government agencies, cybersecurity experts and our domestic and international counterparts.<sup>3</sup>

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<sup>1</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 1.

<sup>2</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 1.

<sup>3</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, p. 32.

- 2.4 This was the first election to follow the ‘citizenship crisis’ of the 45<sup>th</sup> Parliament, in which 15 senators and members of the House of Representatives were disqualified or resigned from Parliament due to their citizenship status.<sup>4</sup> A further two senators were disqualified from the 45<sup>th</sup> Parliament due to other disqualifying factors under Section 44 of the Australian Constitution.<sup>5</sup>
- 2.5 For this election, candidates were required to complete a checklist regarding their qualification when they nominated which set out their family history and citizenship.<sup>6</sup> Completed checklists were made available on the AEC website. There were no successful citizenship challenges following the election.
- 2.6 Although the Candidate checklist worked well in the 2019 election, with significantly fewer issues arising about the possible credentials of candidates. No MP or Senator has lost a seat in the current Parliament due to citizenship issues. However, the wording on the 2019 election Checklist did not ensure that date and country of birth were required as mandatory data. Accordingly, some candidates left the fields blank or provided obscuring information, where it could have been possible to provide those key facts, for publication and public scrutiny. This information is highly relevant to ascertaining a candidate’s citizenship status. To the extent that there are potential privacy law interactions, the law should be amended to override privacy law because of the strong public interest in knowing that a candidate is qualified to sit in Parliament.

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<sup>4</sup> Section 44 of the Australian Constitution sets out that any person who ‘Is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power...shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.’

<sup>5</sup> Senator Rodney Culleton was found to be ineligible in February 2017 due to being convicted and under sentence for a crime, disqualifying him under s44(ii), and Senator Bob Day was found to be ineligible under s44(v) due to direct or indirect pecuniary interest with the public service of the Commonwealth.

<sup>6</sup> The passage of the *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2018* made the completion of a qualification checklist a requirement upon nomination. The checklist had been voluntary prior to the passage of the legislation.

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## Recommendation 1

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- 2.7 **The Committee recommends that the Candidate Qualification Checklist be revised before the next election to make mandatory the provision of information about the date and country of birth for candidate, their parents and grandparents. Where any of this is not known, a candidate should be required to make a categorical statement that the information is not known. Where exact date is not known for the birth of the candidate, their parent, or a grandparent, an option should be allowed to state the year instead. The AEC should also be required to identify the day on which checklists will be published, when publishing the timeline for an election.**
- 2.8 The 2019 federal election saw 10 candidates resign or lose their party endorsement after the close of nominations and prior to the election – an ‘unprecedented number’.<sup>7</sup> The *Commonwealth Electoral Act 1918* (the Electoral Act) does not provide for the removal of disendorsed candidates to be removed from the ballot paper. None of the disendorsed candidates were elected.
- 2.9 The original party listed against a disendorsed candidate’s name will continue to be on the ballot paper, and the party will receive per-vote public funding for any votes received by that candidate, provided they reach the four per cent threshold needed to qualify for public funding.<sup>8</sup>
- 2.10 The rate of informality (votes incorrectly cast or incomplete) was slightly lower in the 2019 federal election than the previous election, at 3.81 per cent. The rate of informality for the House of Representatives was 5.54 per cent, a 0.48 per cent increase from 2016. The AEC stated that the 2016 election was ‘the first time that we assessed that the level of deliberate informality overtook inadvertent informality’.<sup>9</sup> No analysis of deliberate versus unintentional informality was undertaken for the 2019 election. Informality is discussed further later in this report, in the context of Optional Preferential Voting.

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<sup>7</sup> Australian Parliamentary Library, Research Paper Series 2019-20, *The 2019 federal election*, 29 June 2020, p. 23.

<sup>8</sup> Australian Parliamentary Library, Research Paper Series 2019-20, *The 2019 federal election*, 29 June 2020, p. 24.

<sup>9</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, p. 36.

- 2.11 The AEC is working to ensure that Australians understand how to correctly cast a vote, and address the factors which go into the informal vote number, such as: English as a second language, high numbers of candidates in one electorate and proximity to a state election leading to confusion over rules.<sup>10</sup>

## Metropolitan and regional trends

- 2.12 The AEC classifies each electoral division based on the following criteria:
- **Inner Metropolitan** – situated in capital cities and consisting of well-established built-up suburbs.
  - **Outer Metropolitan** – situated in capital cities and containing large areas of recent suburban expansion.
  - **Provincial** – outside capital cities, but with a majority of enrolment in major provincial cities.
  - **Rural** – outside capital cities and without majority of enrolment in major provincial cities.<sup>11</sup>
- 2.13 At the 2019 Federal election there were 45 Inner and Outer metropolitan divisions each, 23 Provincial and 38 Rural divisions. A full list of divisions and their classification is at Appendix C.

## Pre-poll voting

- 2.14 Pre-poll voting consists of both ‘ordinary’ pre-poll votes, where the ballots are placed directly into a ballot box in the same manner as an ordinary vote on the day of the election; and ‘declaration’ pre-poll, where a voter’s name either cannot be found on the certified list, or the name has already been marked as having voted. The voter is required to sign a declaration that they are entitled to vote.
- 2.15 Pre-poll votes were able to be cast from dedicated pre-poll voting centres and divisional offices from Monday 29 April 2019.<sup>12</sup>

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<sup>10</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, p. 36.

<sup>11</sup> Australian Electoral Commission, ‘Maps and spatial data’, viewed on 7 October 2020, <<https://www.aec.gov.au/electorates/maps.htm>>

<sup>12</sup> Australian Electoral Commission, *Submission 120*, p. 15

**Table 2.1 Pre-poll voting breakdown, 2019 election**

Demographic	Ordinary pre-poll	Declaration pre-poll	Total votes
Inner Metropolitan	1,014,842	203,565	4,374,970
Outer Metropolitan	1,189,870	184,522	4,504,902
Provincial	771,039	79,312	2,375,657
Rural	1,312,700	152,981	3,833,087
<b>Total</b>	<b>4,288,451</b>	<b>620,380</b>	<b>15,088,616</b>

Sources: Australian Electoral Commission, 'Vote type by division', viewed 7 October 2020, <<https://results.aec.gov.au/24310/Website/HouseVotesCountedByDivision-24310-NAT.htm>>; Australian Electoral Commission, 'First preferences by candidate polling place', viewed 9 October 2020, <<https://results.aec.gov.au/24310/Website/HouseDownloadsMenu-24310-Csv.htm>>; Australian Electoral Commission, 'Demographic classification as at 1 January 2019', viewed 9 October, <<https://www.aec.gov.au/Electorates/files/demographic-classification-as-at-1-january-2019.xlsx>>

- 2.16 Rural and Provincial divisions recorded noticeably higher levels of pre-poll voting compared with metropolitan divisions, with more 38.2% of voters in rural electorates opting for some form of pre-poll voting compared with 27.9% of Inner Metropolitan voters.
- 2.17 The AEC noted in their submission that pre-poll voting has consistently increased over recent elections, rising from 11.3% of the total vote in 2010 to 32.5% (across all demographic classifications) in 2019.<sup>13</sup>

## Informal voting

**Table 2.2 Informal lower house voting, 2019 election**

Demographic	Informal votes	Informal %	Average informal swing per division %
Inner metropolitan	203,693	4.66	-0.01
Outer metropolitan	263,745	5.85	+0.63
Provincial	137,246	5.78	+0.65
Rural	230,539	6.01	+0.69

<sup>13</sup> Australian Electoral Commission, *Submission 120*, p. 16.

Sources: Australian Electoral Commission, 'Informal votes by division', viewed on 7 October 2020 <<https://results.aec.gov.au/24310/Website/HouseInformalByDivision-24310-NAT.htm>>; Australian Electoral Commission, 'Demographic classification as at 1 January 2019', viewed on 7 October 2020, <<https://www.aec.gov.au/Electorates/files/demographic-classification-as-at-1-january-2019.xlsx>>

- 2.18 Across Australia, informal voting was lowest in inner metropolitan divisions (4.66%), with a negligible average swing (-0.01%). The remaining demographic classifications experienced informal voting rates closer to 6% and notably, all saw average informal swings of between +0.6% and +0.7%.

## Other voting types

**Table 2.3** Vote type breakdown, 2019 election

Demographic	Postal	Absent	Provisional	Total votes
Inner metropolitan	391,504	213,910	16,705	4,374,970
Outer metropolitan	406,710	204,482	17,952	4,504,902
Provincial	176,346	79,797	6250	2,375,657
Rural	272,610	118,493	9111	3,833,087
<b>Total</b>	<b>1,247,170</b>	<b>616,682</b>	<b>50,018</b>	<b>15,088,616</b>

Sources: Australian Electoral Commission, 'Vote type by division', viewed on 7 October, <<https://results.aec.gov.au/24310/Website/HouseVotesCountedByDivision-24310-NAT.htm>>; Australian Electoral Commission, 'Demographic classification as at 1 January 2019', viewed on 7 October, <<https://www.aec.gov.au/Electorates/files/demographic-classification-as-at-1-january-2019.xlsx>>

- 2.19 There were less notable variances amongst the demographic classifications in other voting types. Postal voting was higher amongst metropolitan divisions, at around 9%.

## State and Territory breakdowns

- 2.20 The electoral roll for the 2019 election was the most complete in history. A breakdown of enrolment by state and territory shows enrolment broadly in line with the population for each state and territory, as expected for a total enrolment of nearly 97 per cent.

**Table 2.4 Enrolment by state, 2019 election**

<b>State</b>	<b>Close of rolls</b>
New South Wales	5,298,606
Victoria	4,184,955
Queensland	3,262,848
Western Australia	1,645,637
South Australia	1,210,867
Tasmania	386,076
Australian Capital Territory	295,933
Northern Territory	139,326
<b>National</b>	<b>16,424,248</b>

Source: Australian Electoral Commission, *Enrolment by State*, viewed on 16 September 2020, <<https://results.aec.gov.au/24310/Website/HouseEnrolmentByState-24310.htm>>

2.21 Divergence between federal and state electoral rolls can occur where information provided by the elector is insufficient for enrolment at both levels due to differing legislative requirements. The AEC provided a recent update on electoral divergence to the Joint Standing Committee on Electoral Matters (JSCEM):

As at 30 September 2020, there were 85,069 enrolments for persons aged 18 and over that were divergent due to procedural reasons. This is a reduction of approximately 700,000 enrolments or 89 per cent since December 2015.<sup>14</sup>

2.22 In the Northern Territory its two electorates, Solomon and Lingiari, had enrolment rates of 95 to less than 98 per cent, and 75 to less than 80 per cent respectively.<sup>15</sup> Lingiari is classed as a rural demographic, while Solomon is Inner Metropolitan. Both seats changed from a previous seat status of 'Fairly Safe' to 'Marginal'.<sup>16</sup>

<sup>14</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 5.

<sup>15</sup> Australian Electoral Commission, '2020 enrolment rates by division', viewed 30 September 2020, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/rate-div/index.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/rate-div/index.htm)>

<sup>16</sup> Australian Electoral Commission, 'Tally Room', viewed 1 October 2020, <<https://results.aec.gov.au/24310/Website/HouseDivisionClassifications-24310-NAT.htm>>

**Table 2.5** Vote type breakdown, 2019 election

<b>State or territory</b>	<b>Ordinary %</b>	<b>Absent %</b>	<b>Provisional %</b>	<b>Declaration pre-poll %</b>	<b>Postal %</b>
New South Wales	86.22	3.98	0.3	3.8	5.71
Victoria	80.92	4.18	0.29	4.75	9.87
Queensland	81.74	3.65	0.3	3.94	10.37
Western Australia	80.67	5.46	0.5	4.92	8.45
South Australia	82.45	4.57	0.48	3.02	9.48
Tasmania	86.09	3.35	0.33	2.51	7.72
Australian Capital Territory	88.51	1.96	0.35	4.21	4.96
Northern Territory	88.62	2.04	0.42	5.55	3.37
<b>National</b>	<b>83.2</b>	<b>4.09</b>	<b>0.33</b>	<b>4.11</b>	<b>8.27</b>

Source: Australian Electoral Commission, *Enrolment by State*, viewed 16 September 2020, <<https://results.aec.gov.au/24310/Website/HouseVoteTypeBreakdownByState-24310.htm>>

2.23 The 2019 federal election saw a significant increase in pre-poll and postal voting. In 2010 pre-poll and postal voting comprised 17.44 per cent of votes, while in 2019 they accounted for 40.80 per cent of the total votes.<sup>17</sup> This change has produced administrative challenges for the AEC, as the Electoral Commissioner noted, ‘that the more votes there are in envelopes ... the longer it takes to count them.’<sup>18</sup>

<sup>17</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 33.

<sup>18</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 33.



2.24 The Australian Electoral Commissioner noted that ‘there are always, as you know, a number of seats where a result is not clear until after all postal votes are in, 13 days after the event.’<sup>19</sup> Given this, the AEC noted its focus on following procedure to deliver safe, accurate elections.

## Informal voting

**Table 2.6 Informal lower house voting, 2019 election**

State or territory	Informal votes	Informal %	Informal swing %
New South Wales	342,051	7.01	+0.84
Victoria	180,426	4.66	-0.11
Queensland	147,290	4.95	+0.25
Western Australia	80,575	5.44	+1.45
South Australia	54,202	4.81	+0.63
Tasmania	15,970	4.39	+0.41
Australian Capital Territory	9,616	3.49	+0.73
Northern Territory	5,093	4.69	-2.66
<b>National</b>	<b>835,223</b>	<b>5.54</b>	<b>+0.49</b>

Source: Australian Electoral Commission, *Informal votes by state*, viewed 7 October 2020  
 <<https://results.aec.gov.au/24310/Website/HouseInformalByState-24310.htm>>

2.25 The number of informal votes rose by less than one per cent in five states and one territory, and grew by 1.45 per cent in Western Australia. The informal vote fell by 2.66 per cent in the Northern Territory and by 0.11 per cent in Victoria. The national informal swing was 0.49 per cent.<sup>20</sup>

<sup>19</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 33.

<sup>20</sup> Australian Electoral Commission, ‘Enrolment, informal, turnout and votes’, viewed 16 September 2020, <<https://results.aec.gov.au/24310/Website/HouseResultsMenu-24310.htm>>

- 2.26 A number of factors were noted by the AEC as influencing the informality of votes, including; English as a second language; number of candidates on ballot paper; and proximity to a state or territory election which has a different voting system.<sup>21</sup>
- 2.27 Amongst the states and territories, New South Wales saw the highest level of informal voting at 7%. 13 of the 15 divisions with the highest informal voting rate (all between 8% and 14%) were from NSW, and 8 of the top 10 were from metropolitan (inner or outer) divisions with NSW.
- 2.28 The NSW state election occurred on Saturday 23 March 2020, just 7 weeks prior to the Federal election. NSW utilises an optional preferential voting system, meaning that only one preference needs to be recorded for a vote to be considered valid. Federal elections utilise a full preferential voting system, in which voters must enter a preference for each and every lower house candidate for a vote to be valid.
- 2.29 It is likely that a number of voters in NSW mistakenly thought that providing only one preference (or anything less than numbering all candidate boxes on the lower house ballot) was also a valid method of voting for the 2019 Federal Election.

## **Recommendation 2**

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- 2.30 **The Committee recommends that the Electoral Act be amended to:**
- **replace compulsory preferential voting with optional preferential voting; and**
  - **introduce the Robson Rotation of ordering candidates on ballot papers for the House of Representatives.**

## **Indigenous voter engagement**

- 2.31 The AEC outlined its approach to increase Aboriginal and Torres Strait Islander enrolment, which since 2012 has ‘given voice to something like 1.4 million Australians’, while:

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<sup>21</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 36.

The national rate of Indigenous enrolment, over the last period, has actually exceeded the general increase in enrolment, and, in the same way, the estimated increase in Indigenous enrolment in the Northern Territory has exceeded the general rate of increase around Australia.<sup>22</sup>

2.32 Work to increase Indigenous enrolment by the AEC is ongoing, and includes a focus on engagement and communication through a range of channels:

The new process that we have in place, where we're partnering with a range of other agencies, including the Department of Human Services, and working with local communities in a big outreach and ensuring that we're providing in-language material, including in-language material spoken by local elders, at the very least is demonstrating an increase in enrolment.<sup>23</sup>

2.33 One such effort was the Electoral Awareness Officer pilot program, which engaged 12 Indigenous people to undertake electoral participation activities in the communities of Galiwin'ku, Milingimbi and Ramingining. This pilot program resulted in 280 enrolments.<sup>24</sup>

2.34 During the 2018-19 year the AEC further engaged with Indigenous voters through a range of other modes which notably included Indigenous Language videos, community outreach and partnerships with the AFL and other sporting teams to deliver and distribute educational material.<sup>25</sup>

2.35 Indigenous Australian enrolment estimates as at 30 June 2019 were estimated at 76.6 per cent, with the highest enrolment rate found in New South Wales with 86.2 per cent enrolment, and the lowest rate of enrolment found in Western Australia at 65 per cent.<sup>26</sup> From 30 June 2018 to 30 June 2019 there was an overall increase in Indigenous enrolment of 0.2 per cent, while the period of 30 June 2019 to 30 June 2020 saw an increase in the Indigenous enrolment rate of 1.4 per cent, up to 78 per cent.<sup>27</sup>

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<sup>22</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 35.

<sup>23</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 35.

<sup>24</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 2.

<sup>25</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 5

<sup>26</sup> Australian Electoral Commission, 'Indigenous Enrolment Rate', viewed 29 September 2020, <[aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/indigenous-enrolment-rate.htm](http://aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm)>

<sup>27</sup> Australian Electoral Commission, 'Indigenous Enrolment Rate', viewed 29 September 2020, <[aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/indigenous-enrolment-rate.htm](http://aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm)>

## Political donations

### Past inquiries

- 2.36 The governing framework for disclosure of political donations at a federal level is set out in Part XX of the Electoral Act.
- 2.37 The JSCEM has undertaken several inquiries into the issue of political donations in recent years.
- 2.38 The *Report on the conduct of the 2016 federal election and matters related thereto* (the 2016 Report) contained a comprehensive overview of these past inquiries and of issues relating to political donations. It also contained a comprehensive overview of the political donation regimes in Australia's state and territory jurisdictions and how these compare with the federal regime.<sup>28</sup>
- 2.39 The 2016 Report recommended that the issue of tax deductibility thresholds and tax concessions for political parties be referred to the Standing Committee on Tax and Revenue for consideration.
- 2.40 Siphoning of donations is a practice that can help a political actor avoid various obligations in the Electoral Act, such as disclosure, registration, or limitations on conduct (such as the foreign donation ban).
- 2.41 Evidence was adduced by Senator Abetz during Senate Estimates regarding funnelling of funding through front groups, before large donations were made by climate-related groups in key electoral battlegrounds.
- 2.42 The final entity in the chain disclosed the total that they provided, shielding the true source of the funds that passed through the funnelling entity. The key entity that siphoned money was formed in close proximity to the last election, suggesting it could have been established principally or partly for an avoidance purpose.
- 2.43 This behaviour is not however sanctioned under the two very narrow anti-avoidance rules in the Electoral Act (section 287S deals just with avoiding certain registration obligations and section 302H deals just with foreign donations).
- 2.44 Siphoning itself ought to be an offence in its own right, otherwise it is not possible to investigate and establish what other Electoral Law breaches arose

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<sup>28</sup> Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2016 federal election and matters related thereto*, November 2018, pp. 144-149.

from it. A number of law-abiding entities are established as associated entities, and report donations that they receive to the AEC. Entities that are engaging in siphoning should likewise be registered as associated entities and subject to the same laws as others. Siphoning conduct should be liable to punishment with either criminal or civil penalties, so that the AEC has a graduated range of sanctions at its disposal to address conduct at different levels of seriousness.

### Recommendation 3

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- 2.45 The Committee recommends that the Electoral Act be amended to include new offences for siphoning money through intermediaries. The offences should be drafted to deal with avoidance behaviour by donors who channel money through intermediaries, to avoid transparency. The offences should likewise cover any funnelling entities, including persons or organisations who play a part in a chain of entities that siphon money. The offences should also cover receiving entities that had knowledge of siphoning arrangements and who did nothing to stop, or repay siphoned amounts. Persons who coordinate siphoning arrangements should also be liable to appropriate sanctions.**

### Disclosure

- 2.46 The AEC website outlines the entities required to disclose political donations. Registered political parties and their state and territory branches, associated entities, political campaigners, third parties and donors must lodge an annual return each financial year. Candidates for the 2019 federal election were also required to lodge an election return no later than 15 weeks after polling day.<sup>29</sup>
- 2.47 Annual returns are available to the public from the first working day in February the following financial year;<sup>30</sup> election returns are available 24 weeks from polling day.<sup>31</sup>

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<sup>29</sup> Australian Electoral Commission, 'Financial disclosure', viewed 22 October 2020, <[https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/Overview.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/Overview.htm)>

<sup>30</sup> Australian Electoral Commission, 'Financial Disclosure Guide for Political Parties' page 4, viewed 28 October, <[https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/political-parties/files/political-parties-2019-20.pdf](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/political-parties/files/political-parties-2019-20.pdf)>

<sup>31</sup> Australian Electoral Commission, 'Financial Disclosure Guide for Candidates and Senate Groups' page 18, viewed 28 October,

- 2.48 In the financial year leading up to and including the 2019 election, the disclosure threshold was \$13,800.

## Committee comment

- 2.49 The JSCEM notes the concerns raised by inquiry participants regarding political donations, and the overall interest in improving transparency in the system. This interest must be balanced with the practical considerations of implementing a more onerous reporting regime.
- 2.50 As noted in recent inquiries, it is important that an increasing administrative burden does not deter ordinary Australians from participating in the political process. Changes to the political donation regime must be assessed for disproportionate impact on minor parties and independents, which typically have fewer resources to call upon to meet disclosure obligations.
- 2.51 The JSCEM will have an opportunity explore these issues further when it undertakes the Statutory Review of the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018*, which commenced in November 2020.

## Recommendation 4

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- 2.52 The Committee recommends, as per its recommendation in the 2016 report, that the Government refer the issue of increasing 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.**

## Key challenges for the Australian Electoral Commission

- 2.53 The 2019 election saw a number of highlights, such as a record enrolment and a 94 per cent satisfaction rating in the AEC's 2019 voter survey.<sup>32</sup> There were also a number of challenges identified by the AEC and other inquiry participants which affected the 2019 election. Some of these challenges, such

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<[https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/files/financial-disclosure-guide-for-candidates-and-senate-groups-2019-federal-election.pdf](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/files/financial-disclosure-guide-for-candidates-and-senate-groups-2019-federal-election.pdf)>

<sup>32</sup> Australian Electoral Commission, *Submission 120*, p. 4.

as security, are expected to feature in future elections and will require extended consideration.

- 2.54 Legislative amendments during the 45<sup>th</sup> Parliament led to some changes to the AEC process in the lead up and holding of the 2019 election:
- the *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019* made the qualifications checklist mandatory for candidates, among other provisions;
  - *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* relating to public funding of election campaigns and the receipt and reporting of donations; and
  - *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018*, which enhanced the transparency of the electoral system.<sup>33</sup>

## Increasing complexity of Federal elections

- 2.55 The AEC noted the record enrolment of nearly 97 per cent in the 2019 election, and highlighted that although this is an indicator of a successful democracy, it adds complexity:

The significant growth in the electorate coupled with dynamic shifts in the electoral environment, especially in the area of electoral security, made the 2019 federal election not only Australia's largest ever but also wickedly complex. In observing the domestic and international electoral environments closely, I'm confident in predicting that the next event will be not only larger in scale again but also even more complex to administer.<sup>34</sup>

- 2.56 Further, the AEC does not know the date for the election until the writs are issued, and highlighted that elections are organised and held within a short space of time. The AEC prepares for elections by working to improve and protect systems, create efficiencies and enhance services for voters.<sup>35</sup>
- 2.57 The AEC recognises that the public has high expectations; with 'little tolerance for any delay at the polling place and, understandably, zero tolerance for any errors in the electoral process'.<sup>36</sup>

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<sup>33</sup> Australian Electoral Commission, *Submission 120*, p. 2.

<sup>34</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, Canberra, p. 1.

<sup>35</sup> Australian Electoral Commission, *Submission 120*, p. 2.

<sup>36</sup> Australian Electoral Commission, *Submission 120*, p. 2.

2.58 Part of the increasing complexity of elections is found in the distribution of misinformation, the AEC introduced its ‘Stop and Consider’ campaign which aimed to prompt voters to analyse the accuracy and authenticity of information.<sup>37</sup> Further, the AEC monitored social media nearly 24 hours per day, which allowed it to ‘refute potentially damaging claims and stop them from gaining currency’.<sup>38</sup>

## Secure elections

2.59 The AEC noted the ‘dynamic shift’ in the area of electoral security in the lead up to the 2019 election.<sup>39</sup>

2.60 A multi-agency taskforce was brought together to address rising concerns over threats to the integrity of the electoral system:

The Electoral Integrity Assurance Taskforce was also convened during the 2019 federal election, which proved to be a successful model for agencies working together to support the integrity of the election. Advice from the taskforce members was that no foreign interference, malicious cyber-activity or security matters were identified that undermined the integrity of the federal election.<sup>40</sup>

2.61 The Electoral Integrity Assurance Taskforce is made up of members of the following Commonwealth government agencies:

- Australian Electoral Commission;
- Department of Finance;
- Department of Prime Minister and Cabinet;
- Department of Infrastructure, Transport, Regional Development and Communications;
- Attorney-General’s Department;
- Department of Home Affairs; and the
- Australian Federal Police.

2.62 The Taskforce is also supported by the national intelligence community as needed.

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<sup>37</sup> Australian Electoral Commission, *Submission 120*, p. 3.

<sup>38</sup> Australian Electoral Commission, *Submission 120*, p. 3.

<sup>39</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, Canberra, p. 1.

<sup>40</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, Canberra, p. 1.



2.63 Operational aspects of the electoral process, including the physical security of voters and cyber security, are protected by the AEC in association with security and law enforcement agencies:<sup>41</sup>

... the electoral landscape continues to change rapidly, and we continue to monitor, assess and adapt our approach in partnership with other government agencies, cybersecurity experts and our domestic and international counterparts.<sup>42</sup>

2.64 This broad reaching focus on security was consistently emphasised by the AEC, with particular consideration given to the impact of security of voters' 'trust in electoral results'.<sup>43</sup>

### Need for further modernisation

2.65 The AEC described the Electoral Act as 'highly prescriptive', and consider that the Act requires them to use 'what is essentially an "analogue" system' without the AEC having the licence to lawfully alter or streamline the process used.<sup>44</sup>

2.66 The continued commitment to reform and modernisation was expressed by the AEC, and was linked to the increasing complexity and scale of elections:

It's also important to reiterate that the complexity of elections and the urgent need for modernisation continue to be a focal point for the AEC. Every federal election is larger in scale than the previous one, particularly so for the 2019 election, with a record enrolment of 97 per cent and a slight increase in turnout resulting in an additional 800,000 voters.<sup>45</sup>

2.67 Modernisation is restricted in a range of ways, while the AEC is aware of the public expectation that an indicative election result be available as soon as possible after polls close at 6pm on election day, many of the options to improve timeliness would depend upon legislative change.<sup>46</sup> Given this, the

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<sup>41</sup> Australian Electoral Commission, 'Electoral Integrity Assurance Taskforce', viewed 16 September 2020, <<https://www.aec.gov.au/elections/electoral-advertising/electoral-integrity.htm>>

<sup>42</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 32.

<sup>43</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, Canberra, p. 32.

<sup>44</sup> Australian Electoral Commission, *Submission 120*, p. 2.

<sup>45</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, Canberra, p. 1.

<sup>46</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

AEC has limited capacity to change its processes 'to deliver services in the most efficient manner possible'.<sup>47</sup> Given the importance of our democratic system and the need for accountability around the conduct of elections, the Parliament has seen fit to enact prescriptive rules about how elections are to be managed.

- 2.68 The AEC highlighted its ongoing focus to update critical infrastructure and IT systems, which 'are not able to be quickly (or safely) reconfigured to adapt to short notice legislative or procedural changes'.<sup>48</sup> This could also serve to facilitate the expanded use of Electronic Certified Lists, which were used effectively at the 2019 Federal Election.<sup>49</sup>
- 2.69 In the most recent Federal Budget, the Australian Government recognised the need for renewal of the AEC's ageing IT infrastructure, by announcing \$96.7 million over three years for the first tranche of investment to replace the core election systems. These new systems will be better suited to implementing future policy change and supporting administrative flexibility. However the corollary is that the new systems will take a number of years to build to achieve the standard for robust and adaptive IT systems.

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## **Recommendation 5**

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- 2.70 The Committee recommends that the Government issue a re-write schedule to replace each part of the Commonwealth Electoral Act with a 'fit-for-purpose' Electoral Act, to modernise the administration of Australia's electoral system.**

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## **Recommendation 6**

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- 2.71 The Committee recommends that the Australian Electoral Commission bring forward a costed proposal and timeline for the introduction of an electronic certified roll before the next federal election.**

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<sup>47</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

<sup>48</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

<sup>49</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

## Inquiry participant views of the Australian Electoral Commission

- 2.72 A number of inquiry participants raised concerns over the clarity of information provided by the AEC, the management of pre-poll early voting centres, consistency of communications across polling places, and other issues.
- 2.73 One inquiry participant noted the narrow focus on matters the AEC is able to act upon under the Electoral Act regarding potentially misleading and deceptive information.<sup>50</sup>
- 2.74 An inquiry participant noted the important role of the AEC in facilitating elections, 'I've often disagreed with their decisions, but I've never questioned their impartiality or professionalism'.<sup>51</sup> They further suggested that the AEC's oversight role should be expanded to include state, territory and local government elections to operate as an 'independent and professional arbiter'.<sup>52</sup>
- 2.75 Inclusion Melbourne noted the AEC's focus on accessibility:
- A lot of the accessibility stuff from the AEC is fantastic in terms of the accessible voting centres and also plain language advertising just before elections, encouraging people to vote.<sup>53</sup>
- 2.76 By contrast, GetUp suggested that the AEC has adopted a 'one-size-fits-all approach to electoral management' which is not inclusive of many Indigenous Australians, particularly for those living in remote communities.<sup>54</sup> GetUp highlighted the issue of voters being contacted by mail by the AEC prior to removal from the electoral roll, with voters being turned away due to their inadvertent removal from the electoral roll.<sup>55</sup>

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<sup>50</sup> Sally Woodward, Private capacity, *Submission 77*, p. 1.

<sup>51</sup> Mr Mark Yore, Private capacity, *Transcript*, 9 September 2020, Canberra, p. 24.

<sup>52</sup> Mr Mark Yore, Private capacity, *Transcript*, 9 September 2020, Canberra, p. 24.

<sup>53</sup> Mr Nathan Despott, Manager, Policy and Projects, Inclusion Melbourne, *Transcript*, 9 September 2020, Canberra, p. 39.

<sup>54</sup> Miss Larissa Baldwin, First Nations Justice Campaign Director, GetUp, *Transcript*, 14 September 2020, Canberra, p. 2.

<sup>55</sup> Miss Larissa Baldwin, First Nations Justice Campaign Director, GetUp, *Transcript*, 14 September 2020, Canberra, p. 2.

- 2.77 The Liberal Party of Australia expressed concern over the AEC's criteria for selecting locations of pre-polling centres, and divergent interpretation of campaigning rules by individual AEC staff, many of whom are temporary staff.<sup>56</sup> The Liberal Party suggested greater consideration be given to the location of polling places, and the impact they pose for their surrounds, 'prior to leasing a property for early voting polling places'.<sup>57</sup>
- 2.78 In response to the AEC's 2019 Voter Survey, which measured voter satisfaction with the AEC's conduct of the 2019 federal election, 94 per cent of respondents were satisfied with their overall voting experience, while 89 per cent of respondents were 'confident in the AEC's ability to deliver electoral services'.<sup>58</sup>
- 2.79 Julian Simmonds MP asked for the Committee to consider the inclusion of local government areas and their internal ward / division boundaries and codes as part of the Roll Management System (RMANS) and Elector Enrolment Information (ELIAS) data.<sup>59</sup>
- 2.80 Mr Simmonds believes such a move would 'greatly assist' in his duties, particularly during boundary redistributions, as the electorate of Ryan covers several local government areas.<sup>60</sup>

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## **Recommendation 7**

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- 2.81 The Committee recommends that the AEC include local government areas and their internal ward / division boundaries and codes as part of the Roll Management System (RMANS) and Elector Enrolment Information (ELIAS) data to assist Members of Parliament in servicing their electors.**

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<sup>56</sup> The Liberal Party of Australia, *Submission 129*, p. 2.

<sup>57</sup> The Liberal Party of Australia, *Submission 129*, p. 2.

<sup>58</sup> Australian Electoral Commission, *Submission 120*, p. 4.

<sup>59</sup> Mr Julian Simmonds MP, *Supplementary submission 59.1*, p. 1.

<sup>60</sup> Mr Julian Simmonds MP, *Supplementary submission 59.1*, p. 1.

# 3. The rise in voting prior to election day

## Pre-poll

- 3.1 The 2019 election saw more Australians than ever cast their vote prior to election day. There are several ways a vote can be cast early: through pre-poll, postal or mobile polling.
- 3.2 The grounds for application of a postal or pre-poll vote are set out under Schedule 2 of the *Commonwealth Electoral Act 1918* (the Electoral Act).<sup>1</sup>
- 3.3 The Australian Electoral Commission (AEC) website states you can vote early either in person or by post if on election day you:
  - are outside the electorate where you are enrolled to vote;
  - are more than 8km from a polling place;
  - are travelling;
  - are unable to leave your workplace to vote;
  - are seriously ill, infirm or due to give birth shortly (or caring for someone who is);
  - are a patient in hospital and can't vote at the hospital;
  - have religious beliefs that prevent you from attending a polling place;
  - are in prison serving a sentence of less than three years or otherwise detained;
  - are a silent elector;
  - have a reasonable fear for your safety.<sup>2</sup>

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<sup>1</sup>*Commonwealth Electoral Act 1918*, Schedule 2 Grounds of application for postal or pre poll vote, p. 550.

3.4 Despite this prescriptive list early voting has increased over the past decade in both federal and state elections ‘demonstrating the public’s expectation to be able to choose their time of voting’.<sup>3</sup>

3.5 In the 2019 election, more than 40 per cent of all votes counted were pre-poll (either ordinary or declaration).<sup>4</sup> Table 3.1 provides a summary of votes by type, comparing the 2016 and 2019 elections which shows that:

Pre-poll ordinary voting for the 2019 federal election was approximately 4.29 million votes — an increase of about 58 per cent on the 2016 figure (which was 2.72 million votes). In comparison, the increase between the 2013 and 2016 elections was approximately 37 per cent.<sup>5</sup>

**Table 3.1 Summary of votes by type**

	2016	2019
<b>Senate</b>		
Ordinary votes	11,819,376	12,558,490
<i>Pre-poll ordinary votes</i>	2,722,701	4,286,607
Absent votes	713,165	659,726
Provisional votes	129,464	99,017
Pre-poll declaration votes	527,173	624,217
Postal votes	1,217,528	1,242,635
<b>TOTAL VOTES</b>	<b>14,406,706</b>	<b>15,184,085</b>
<b>House of Representatives</b>		
Ordinary votes	11,815,908	12,554,366
<i>Pre-poll ordinary votes</i>	2,724,164	4,288,451
Absent votes	658,511	616,682
Provisional votes	55,102	50,018

<sup>2</sup> Australian Electoral Commission, ‘Voting Options’, viewed 2 October 2020, <[https://www.aec.gov.au/voting/ways\\_to\\_vote/](https://www.aec.gov.au/voting/ways_to_vote/)>

<sup>3</sup> Australian Electoral Commission, *Submission 120*, p. 15.

<sup>4</sup> Australian Electoral Commission, *Submission 120*, p. 15.

<sup>5</sup> Australian Electoral Commission, *Submission 120*, p. 16.

Pre-poll declaration votes	509,476	620,380
Postal votes	1,223,019	1,247,170
<b>TOTAL VOTES</b>	<b>14,262,016</b>	<b>15,088,616</b>

*Source: Australian Electoral Commission, Submission 120, p. 14.*

- 3.6 Early voting for the Saturday 18 May 2019 election started on Monday 29 April 2019. Eligible voters had the following options:
- Attend a pre-poll voting centre;
  - Make a request for a postal vote directly to the AEC;
  - Use a postal vote application from a political party, candidate or other source;
  - Participate in mobile polling.
- 3.7 The Joint Standing Committee on Electoral Matters (JSCEM) took evidence regarding the nearly three-week (19 day) window for pre-poll voting. Several submitters expressed concern that the pre-poll period was too long.
- 3.8 The AEC explained despite the perception that pre-poll had been extended over the years, the early voting window remained almost identical for the 2019, 2016 and 2013 elections, stating:
- Pre-poll voting is legislated to commence from the fifth day after the declaration of nominations (section 200D of the Electoral Act). The official writs issued by the Governor-General determined the election timetable, which provided for pre-poll voting to be available from Monday 29 April 2019. Pre-poll voting was available for one day more, at the 2019 federal election, than at the 2013 and 2016 elections.<sup>6</sup>
- 3.9 Evidence presented to the JSCEM focused on several concerns regarding pre-poll voting:
- voters may not have all the most relevant and up-to-date information they should before casting their vote;
  - the eligibility criteria are not well recognised;
  - confusion arises because the widespread take-up of the pre-polling option has led to a view that it is socially acceptable to bend or ignore the rules on eligibility;
  - pre-poll creates staffing and venue hire expense for the AEC

<sup>6</sup> Australian Electoral Commission, *Submission 120*, p. 16.

- pre-poll presents challenges for candidates and political parties to provide cover across voting locations; and
- an increase in pre-poll voting presents a challenge for the AEC to count votes and deliver a clear and timely election outcome.

3.10 Legal academic Professor George Williams AO noted ‘pre-poll voting has become so popular that it is redefining what it means to hold a federal election’.<sup>7</sup> He went on to say:

Most of the 2019 election campaign overlapped with pre-poll voting. This is unsatisfactory, and the campaign may need to be lengthened to ensure that candidates and parties can explain their policies and make announcements before pre-polling begins. The blackout on election advertising on television and radio immediately before election day should also be re-examined. It makes little sense to impose the blackout after millions of voters have already made their choice.<sup>8</sup>

3.11 The intersection of pre-poll voting, and media blackout is discussed further in Chapter 5.

3.12 The Australian Labor Party expressed agreement with Professor Williams AO position, adding:

... the growth in pre-poll voting over the last few decades has occurred by accident rather than by deliberation or design on the part of policy makers. What was once an exceptional method of voting has become the norm for many Australians, and from all the available evidence it appears that the key driver is convenience.<sup>9</sup>

3.13 Incumbent parliamentarians made submissions to the JSCEM regarding the length of pre-poll.

3.14 Member for Goldstein, Mr Tim Wilson MP advocated ‘It is my view that opening the polls three weeks in advance is too early. They should instead be opened one week earlier and three weeks earlier for Central Business Districts and airports.’<sup>10</sup>

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<sup>7</sup> Professor George Williams AO, Private capacity, *Submission 3*, p. 1.

<sup>8</sup> Professor George Williams AO, Private capacity, *Submission 3*, p. 2.

<sup>9</sup> Australian Labor Party, *Submission 119*, p. 3.

<sup>10</sup> Mr Tim Wilson MP, *Submission 18*, p. 1.



- 3.15 Member for Hinkler, Mr Keith Pitt MP identified that the seven pre-polling booths in the 3,504km square electorate resulted in problems with AEC staffing and rental and difficulty in candidates and volunteers getting to booths equally.<sup>11</sup>
- 3.16 The Liberal Party of Australia noted ‘Millions of Australians are now voting when many key aspects of an Australian election campaign – such as the release of major policies, campaign launches, leaders’ debates and ‘free-time’ election broadcasts – have not yet taken place.’<sup>12</sup>
- 3.17 They went on to argue that reducing pre-poll to two weeks would:
- ...still allow a reasonable opportunity for early voting to support voters with legitimate reasons for not being able to attend a polling place on election day. Furthermore, the existing postal vote arrangements would still provide the additional flexibility required for voters with genuine difficulty in attending a polling place on election day, particularly Australians who live in remote communities.<sup>13</sup>
- 3.18 The Australian Greens also advocated for a limit of two weeks for pre-poll, noting a longer period creates ‘significant strain on volunteer resources, advantaging parties with large supporter bases over smaller parties and individual candidates’.<sup>14</sup>
- 3.19 Pre-poll attendance data over successive elections shows that the earliest days of the pre-poll window are highly inefficient, with the least numbers of voters attending at that early point in the election period. Attendance escalates over the pre-poll period, towards a high point of attendance at the end.<sup>15</sup>

## Committee comment

- 3.20 Pre-poll is an important mechanism that ensures people who have a legitimate reason to vote early can do so. It has become clear over the past decade that there is an expectation in the community to vote when

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<sup>11</sup> Mr Keith Pitt MP, *Submission 21*, p. 1.

<sup>12</sup> Liberal Party of Australia, *Submission 129*, p. 4.

<sup>13</sup> Liberal Party of Australia, *Submission 129*, p. 4.

<sup>14</sup> The Australian Greens, *Submission 112*, p. 9.

<sup>15</sup> See table titled ‘Pre-poll Ordinary Votes by Day’ at:

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2019/May/Trends\\_in\\_early\\_voting\\_in\\_federal\\_elections](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2019/May/Trends_in_early_voting_in_federal_elections)

convenient, and not necessarily because of having a reason as laid out Schedule 2 of the Electoral Act.

- 3.21 Pre-poll creates expense for the AEC and presents challenges for candidates and political parties to staff booths.
- 3.22 The JSCEM notes that the AEC has acted within the remit of the Electoral Act and the pre-poll period for the 2019 election was only a day longer than the 2016 election. However, more significantly, the AEC sizeably increased the number of pre-poll locations. While this intentionally mitigated against the risk of queues on election day, and was an effective strategy for that purpose, it adversely affected those who contested the election because of the challenge of finding volunteers to canvas for support at each location.
- 3.23 The JSCEM recommended in its report on the 2016 election that pre-poll be reduced to two weeks. Subsequent reaction to the 2019 election, at which the AEC stepped up its pre-poll footprint, has led to renewed calls for a two week limit. The consensus is that a two week period best balances the opportunity to participate in an election as a voter, with the logistic demands placed on those who participate as contestants. A two week period is still a lengthy time window in which electors can choose to vote.
- 3.24 The JSCEM finally notes that a shorter pre-poll period will provide an improved opportunity for the AEC to select the best locations that offer superior access in terms of parking, disabled entry, toilets and waiting areas that are sheltered from the weather and/or afford seating for people who have difficulty standing. The extra time to plan and secure pre-poll locations should also help mitigate against uneven geographic selection of sites, where booths are either in excessive proximity or excessively distant.<sup>16</sup>
- 3.25 Where bookings can be secured early, the AEC should afford as much notice as possible to candidates, so that they can organise their volunteers. Inadequate notice about pre-poll locations has been a continual source of angst for some parties, candidates and their volunteer supporters. Information about separate locations could be advised to candidates in each Division as bookings are progressively secured, rather than together when the final bookings are confirmed.
- 3.26 The JSCEM considers that the volunteer activities associated with pre-polling are integral to a well-organised electoral event, so the AEC should encourage its logistics organisers to recognise these as complementary parts

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<sup>16</sup> Hon Paul Fletcher MP, *Submission 44*, p. 2.

of the election process rather than extraneous activity, or in a number of small cases, a burden.

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## **Recommendation 8**

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- 3.27 The Committee recommends that, as per its recommendation in the 2016 election report, the pre-poll period be statutorily limited to be a maximum of two weeks prior to election and that the Australian Electoral Commission provides parties and candidates with the earliest possible advice about pre-poll locations as they are booked.**

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## **Recommendation 9**

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- 3.28 The Committee recommends that the Australian Electoral Commission ensure that voters attending at a pre-poll centre meet the legislated criteria for exercising a pre-poll vote.**

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## **Recommendation 10**

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- 3.29 The Committee recommends that the Australian Electoral Commission, as part of its existing election advertising campaigns, remind voters of the need to meet legislated criteria for exercising a pre-poll vote.**

## **Postal vote**

- 3.30 Eligible voters as prescribed under Schedule 2 of the Electoral Act can apply for a postal vote. Postal Vote Applications (PVAs) can be made online or by completing a postal vote application from AEC offices.
- 3.31 The AEC then issues ballot papers in the mail, which are then returned by post to the AEC.
- 3.32 Some voters have the option of becoming a general postal voter. This means they have pre-registered their details, so they are automatically sent their ballot papers in the post once an election is announced.
- 3.33 The JSCEM received evidence regarding concern in the community when political parties or candidates send postal vote applications along with campaign material to voters. This is sometimes described as a declaration vote or Party postal vote.

3.34 In their submission the AEC noted they:

...received complaints of privacy breaches related to political parties or candidates sending out PVAs that are then returned to the party or candidate prior to forwarding to the AEC.

The Electoral Act gives 'any person or organisation' the power to issue PVAs and to receive completed applications before passing them on to the AEC. As a result, the AEC is not able to control the collection and use of the PVA data (or the manner of its collection).<sup>17</sup>

3.35 The Australian Greens expressed concern over the handling of postal vote applications by political campaigners, submitting:

There are no grounds from an administrative or participatory democracy perspective for postal vote applications supplied by parties or candidates to be returned to them prior to being forwarded to the AEC. This practice of doublehandling presents the very real risk of postal vote applications not being processed as intended by electors. This practice is also being used by political parties to harvest voter information without their knowledge or consent.<sup>18</sup>

3.36 The Australian Greens elaborated that the 'party' postal vote applications could potentially diminish a voters privacy and heightens the risk that the PVA may not be received by the AEC:

'Party' postal vote applications contain a return address to a local or state-based campaign postal address, where electors' information can be recorded before the information is passed on to the AEC. This diminishes electors' privacy and runs the risk that, when matched with other information that may be held about the elector, a party or candidate may not forward all PVAs to the AEC'.<sup>19</sup>

3.37 Mr Oliver Yates, private capacity, expressed frustration that independent candidates were not able to send out PVA's as they do not have the same access to the electoral rolls as political parties, writing:

As the AEC refuses to provide access to an electronic data base of electors until 5 days before voting starts as an independent candidate you cannot issue

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<sup>17</sup> Australian Electoral Commission, *Submission 120*, p.17.

<sup>18</sup> The Australian Greens, *Submission 112*, pp.9-10.

<sup>19</sup> The Australian Greens, *Submission 112*, pp.9-10.

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postal votes and you can't send addressed mail to electors. This is directly discriminatory. Parties and sitting Members have these lists.<sup>20</sup>

3.38 The reliability of the postal system also has an impact on whether, once a PVA is made, the ballots are sent to the voter on time – and if there is enough time for the completed ballots to be sent back to the AEC.

3.39 The AEC said that 'applications received directly by the AEC enable the most timely processing and provide maximum opportunity for electors to receive and return their postal votes'.<sup>21</sup>

3.40 They suggested an improvement to the PVA process, stating:

The supply of paper PVAs by political parties and candidates is an established and accepted method of providing party material to electors. A possible approach to improving the timeliness and accuracy of processing these PVAs is for the AEC to provide political parties and candidates with a "personalized link" to the AEC online PVA system. This link could be included in their mailed campaign letters and might assist in reducing any risk of disenfranchisement.

The increasing number of electors completing online PVAs continues the trend of voters choosing to interact electronically with the AEC and further supports this modernization.<sup>22</sup>

3.41 The JSCEM recognises that it is appropriate for election contestants to build relationships with supporters during the postal vote process, by providing How to Vote materials in conjunction with Postal Vote Application forms. Although the JSCEM recognises that the AEC suggestions are constructive, in seeking to improve the process, it also considers that it would be a backward step if any changes diminished the opportunity for complementary outreach by parties and candidates.

## **Impact of the variability of the postal service**

3.42 The AEC noted in its submission that it has no control over the postal service, particularly when voters are based overseas. The delay in voters both receiving their postal vote ballot papers from the AEC and the time

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<sup>20</sup> Mr Oliver Yates, Private capacity, *Submission 36*, p. 5.

<sup>21</sup> Australian Electoral Commission, *Submission 120*, p.18.

<sup>22</sup> Australian Electoral Commission, *Submission 120*, p.18.

taken for completed ballots to be returned was a topic several submitters reflected on:

...one of the issues with the increase in pre-poll voting is that it's more difficult for us – or not more difficult, but it takes longer – to count declaration votes. In the week before the election, we made some statements to the effect that, given the increase in pre-poll voting, it would likely take us a longer period to determine a result'.<sup>23</sup>

3.43 The JSC EM received evidence of how the number of postal votes can cause a delay in calling the election. The AEC referred to 'variable' service standards of Australia Post, elaborating this was not just an issue for federal elections but also state elections.<sup>24</sup>

3.44 Timeliness is a key challenge of managing postal votes. PVAs may be made up to the Wednesday evening before the Saturday election - and may be returned up to 13 days after the election day. This means it can be challenging to ensure everyone who has made a PVA receives their ballots in time to vote, as postal votes must happen before or on election day - but not after.

3.45 The Electoral Commissioner, Mr Tom Rogers told the JSC EM:

It's worth noting that people are able to apply for a vote up until the Wednesday evening before polling day. That gives us two days to process that for the vote to get out, for people to complete the vote on polling day and then send it back. Whilst it's a great way of providing access to people who might otherwise be travelling on polling day, I think that Wednesday evening cut-off makes it very difficult for us to get votes back in the hands of electors in time.<sup>25</sup>

3.46 The AEC submitted examples of commendable discretionary efforts by AEC staff efforts - around the country - to ensure postal vote ballot papers are received in time, saying:

They go to extraordinary lengths on that Wednesday, Thursday and Friday to deliver those postal votes – to the extent that we sometimes engage couriers and also to the extent that sometimes our staff, in their own car, will drive a

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<sup>23</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 7.

<sup>24</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 8.

<sup>25</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 8.

postal vote out to an elector, particularly if they are elderly and they know they are desperate to get a postal vote, to make sure they have that opportunity. So they do go to extraordinary lengths in that very short 72-hour window to try and deliver the franchise.<sup>26</sup>

3.47 The Electoral Act mandates the 13-day window for the return of postal votes. However, despite this window the JSCEM heard that there are always votes that are returned after the cut-off and are not included in the count:

...all the postal vote certificates, the votes, have got to be received back by us 13 days after the event. If I'm correct, 1,291,564 postal vote certificates were returned to us before the 13-day deadline, so they all arrived back in the AEC. About a million of those were received prior to election day, and 256,000-odd were received after election day but within the period. But I'd have to say that we had something like 3,140 votes that were received back after the 13th day and weren't admitted to the count. About 50 per cent of those votes that were received back after the 13th day were received from overseas.<sup>27</sup>

3.48 The AEC put forward the suggestion that changing the cut-off date for PVAs from the Wednesday prior to election, to the Friday the week prior to the election,<sup>28</sup> with the aim of mitigating the challenge of ensuring ballot papers are distributed prior to election day and thus potentially creating a greater window for papers to be returned.

## Committee comment

3.49 The JSCEM notes the changing reliability of the Australian postal service and the challenges of reliance on overseas distribution services. While any late ballot paper is regrettable, the figure of 3,140 was relatively small both in the context of overall votes cast and in the context of postal vote numbers.

3.50 The bigger issue however is concern that letter delivery times may no longer be as reliable as they were, in large part due to the COVID pandemic. The reduction in the number of airflights is impacting adversely on the fastest mail channels.

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<sup>26</sup> Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 9.

<sup>27</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 8.

<sup>28</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 9.

- 3.51 Whilst it is heartening to hear of the lengths AEC staff will go to in order to ensure postal ballots are received in time – sometimes amounting to exemplary and outstanding examples of public service – it is concerning that any vote is missed.
- 3.52 Changing the PVA cut-off from the Wednesday prior to the election, to the Friday the week prior to the election is one suggestion to improve the process. The JSCEM notes that there is no clear evidence to suggest why it should be the Friday prior (rather than any other day).
- 3.53 The fundamental problem with an earlier cut-off date is that it may disenfranchise people who have no other feasible means to participate, for instance due to remote travel or long hours of work. Given that the underlying risk relates to the pace of postal deliveries, that is where the JSCEM considers that a solution should be focussed. Only if it is not possible to improve the mail service, should it be necessary to limit the opportunity for voters to choose this means for casting a vote. Australia Post has a monopoly over letter services and provides a vital community service in relation to postal voting.
- 3.54 The JSCEM considers that there are few more important or urgent letter products than Postal Vote materials, including applications and returned ballot papers.

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## **Recommendation 11**

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- 3.55 The Committee recommends that the Government and Australia Post reports back with advice on premium mail products that can support Postal Vote materials in future, including services for the Australian Electoral Commission and for election contestants.**

## **Early voting and the ability to deliver a clear outcome on election night**

- 3.56 Australians have come to expect the delivery of an election result on election night. However, the JSCEM took evidence that the rise of pre-poll voting is affecting the AEC's ability to deliver a clear result quickly.
- 3.57 Although candidates may claim or concede seats on election night, the AEC must comply with multiple tests under the Act before making a formal declaration. There is also a requirement under the Act that declaration votes – including postal votes – have 13 days after the election to be received by



the AEC.<sup>29</sup> The key principle is that a seat cannot be declared until the margin of the leading candidate exceeds the number of outstanding ballot papers that are yet to be counted (see section 284(2)(c) of the Electoral Act). This means that safe seats are obviously easier to officially declare, whereas marginal seats, that determine who forms government, would usually take longer to finalise.

3.58 The AEC elaborated, writing:

The increasing proportion of pre-poll votes has a direct impact on the timing and percentage of the indicative results known on election night. The significantly larger vote counts that result from pre-poll voting centres take longer to process and count on election night.<sup>30</sup>

... the AEC is acutely aware of the expectation that an indicative election result will be available soon after the close of polls on election day. However, the AEC must conduct the counting of votes strictly in accordance with the Electoral Act.<sup>31</sup>

3.59 The AEC identified options for improvement that would require legislative change including:

- Introducing an automated or electronic counting system for the House of Representatives;
- Commence counting the pre-poll ordinary votes prior to 6pm on election night (as occurs in New Zealand)<sup>32</sup>; and/or
- Allow postal votes and declaration votes to be opened and ballot papers extracted ready for the count prior to 6pm on election night (as occurs in the United Kingdom).<sup>33</sup>

3.60 Election analyst Antony Green has observed that the 'release of pre-poll counts completed shortly after the 6 pm close of polls will provide a better picture of the overall election result compared to the current system that

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<sup>29</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

<sup>30</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

<sup>31</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

<sup>32</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

<sup>33</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 2.

usually begins with a slow trickle of unrepresentative small rural polling places.’<sup>34</sup>

## **Committee comment**

- 3.61 The JSCEM notes the desire of the public for a clear election outcome on election night. However, the requirement for the AEC to wait for 13-days to receive all postal votes, combined with the rise of pre-poll voting affects the AEC’s ability to deliver a timely and clear outcome.
- 3.62 The JSCEM understands that the prescriptive nature of the Electoral Act limits the options available to the AEC to be able to deliver an outcome on election night. It appreciates that changes in voter habits in favour of pre-poll voting will slow the count and can create unwarranted perceptions that the count is somehow defective. Further public take-up of pre-poll or postal voting could mean a slower count, unless changes are made to the Act to enable early counting or preparatory work so that pre-poll votes can be counted on election night.
- 3.63 Legislative change will be required to enable the AEC to introduce new systems – such as commencing counting pre-poll votes prior to the 6pm close of polls on election day. Such changes will need to be carefully considered to ensure they are workable and do not create inadvertent problems.

## **Key principles of the present system**

- 3.64 The JSCEM notes that the manual counting practices used on election night, in conjunction with on-site scrutineering at polling places by representatives of candidates, together ensure that the count is conducted with a high degree of transparency and integrity. These practices should give the public high confidence that the counting of Australian elections is conducted with accuracy and honesty by officials.
- 3.65 Scrutineers appointed by candidates can ask officials to re-check individual papers and escalate ballots that they consider were incorrectly counted or set aside. Scrutineers can vouch for the veracity of a manual count. By contrast an electronic system is inherently closed to observation and cannot promote public confidence to the same degree. Electronic systems are also not

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<sup>34</sup> Antony Green's Election Blog, 'Should we Count Pre-poll votes before 6pm on Election Day?', viewed on 30 November 2020, <<https://antonygreen.com.au/should-we-count-pre-poll-votes-before-6pm-on-election-day/>>

immune from programming errors. The market for electronic vote counting software is relatively new and small. Recently the electronic counting system in the ACT was criticised by independent academic analysts, who claim that the coding for the counting software used in the 2020 ACT election included errors.<sup>35</sup>

- 3.66 The Electoral Act prevents anyone from observing completed ballot papers ahead of 6pm on election night. This is aimed at preventing people who are still voting from being influenced by perceptions about how their fellow electors have voted. For instance if an elector were misled into thinking the election outcome was a forgone conclusion before they had voted, then they may not bother to cast their own vote. Although time zone differences between the states and territories mean that there are obvious imperfections to how this principle operates in practice (principally some Western Australians who late may hear news reports about early results from small Eastern booths), the JSCEM considers that it would be important that early counts do not get publicly disclosed before 6pm local time in each Division.

### **Safeguards required for early counting of votes**

- 3.67 The JSCEM considers that any statutory change to permit early counting of votes must be open to scrutineering and therefore cannot conflict with peak period voting, when party and candidate volunteers are at their busiest handing out How to Vote material.
- 3.68 The JSCEM recognises that voter numbers in the last hour or two of polling on election day are relatively subdued, which does create an opportunity to commence some activities that support the count. For instance, pre-poll ballot boxes could be unpacked and sorted after 4pm (separating for instance Senate and House papers) and counting could commence after 5pm.
- 3.69 Such efforts could only occur where a polling place has enough space and staff to permit segregation of the venue into two areas, to allow the continued concurrent issuance of ballot papers to the final stream of voters.

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<sup>35</sup> The critique revealed by Dr Vanessa Teague, Adjunct Professor at the Australian National University's College of Engineering and Computer Science, is that certain votes were incorrectly transferred after a candidate was excluded. It was acknowledged that this fortuitously did not appear to impact who was elected on this occasion.  
<<https://www.canberratimes.com.au/story/7027348/act-electronic-voting-system-flawed-experts-say/>>

Pre-counting spaces ought to be enclosed rooms to avoid the risk that people casting votes can overhear counting.

- 3.70 It would not be practical to also permit counting of ordinary votes cast on election day, as those ballot boxes will still be in use prior to 6pm.
- 3.71 The impact of counting after 4pm or 5pm would have some impact for scrutineers, but would be less disruptive than if counting began earlier. It would permit some scrutineers to make more productive use of their time at the end of the day (when there are few voters arriving seeking How to Votes) and enable some of these volunteers to conclude their evening at an earlier hour.
- 3.72 If the Act is amended to permit early counting, it will be important to avoid leaking of early counts, as any unofficial information could be disseminated to the public in a misleading form, whether deliberately or inadvertently. Accordingly the JSCEM proposes that persons in attendance at an early count should be prohibited from using electronic devices until after 6pm or such later time when any part of the pre-count result is first remitted by the AEC Officer-in-Charge at a polling place to the AEC.
- 3.73 An exception should be allowed for the Officer in Charge at each polling place, only for their official duties (communicating with central AEC staff about management of resources, to report incidents, or return data through official secure channels). In central AEC offices where any data would be received before 6pm, it is also important that any personal communication devices have been handed in and landline use is tightly controlled for defined purposes.

### **Safeguards required for preliminary scrutiny (checks of declaration envelopes)**

- 3.74 Preliminary scrutiny is the process for ascertaining if voters who could not be found on the electoral roll are entitled to vote, before their ballot paper is placed in a ballot box. These ballot papers are collectively known as 'declaration votes', because individuals have to declare in writing that they are entitled to vote and provide details of their address so they can subsequently be checked against the roll. Declaration votes include absentee ballots (from voters who attended a polling place outside their own division); provisional votes (voters who could not be immediately found on the roll); postal votes; and silent votes.

- 3.75 It could be possible to permit 'preliminary scrutiny' of declaration vote envelopes, provided that AEC staff endeavour to extract ballot papers face-down so that they cannot be seen before being placed in secure ballot boxes. The danger, if ballot papers can be seen during extraction ahead of election day, is that an observer could count samples of preferences to get an early indication of an election outcome. The JSCEM considers that postal votes and other forms of pre-poll declaration votes should only be counted on election day.
- 3.76 Preliminary scrutiny of declaration envelopes is a very time consuming process and therefore the JSCEM considers this better suits being done at central scrutiny points in the days preceding the election. To do this at polling places on election day could slow rather than speed up the count. The JSCEM proposes that preliminary scrutiny of declaration envelopes should occur at times and places that are advised to relevant candidates for each Division, so that they have the opportunity to send scrutineers. It is not common for scrutineers to observe the preliminary scrutiny process, but it is important to public confidence that the opportunity is provided.

## **Recommendation 12**

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- 3.77 **The Committee recommends that, following consultation with stakeholders, including registered political parties, the Electoral Act be reformed to:**
- **Permit at the very least the unfolding and sorting of pre-poll ordinary votes from 4 pm, to be ready to counted from 6 pm.**
  - **Commence counting the pre-poll ordinary votes prior to 6 pm on election night, but no earlier than 4 pm. In this window there should be a prohibition on use of communication devices by scrutineers and Australian Electoral Commission staff, other than Australian Electoral Commission Officers-In-Charge at each polling place. To deter early unauthorised communication of results before 6 pm, appropriate penalties should also be included in the Act.**
  - **Allow postal votes and other declaration envelopes to be checked and ballot papers from qualified electors to be extracted face down and placed in secure ballot boxes. This process should be permitted over a very limited number of days before election day, to permit commencement of the count of these ballots from election night.**

## A shift from pre-poll to an election window

- 3.78 As pre-poll numbers are expected to only increase in the future, the JSCEM took evidence regarding the introduction of moving to an election window.
- 3.79 Professor Williams AO suggested an alternative option to the current pre-poll period and election day may be ‘embracing the idea of multiple election days by enabling every person to choose when they vote over say four days or at most a week’.<sup>36</sup>
- 3.80 The Voter Choice Project put that voters want convenience and should not need to give a reason to vote early, submitting:
- We now have a voting period rather than an election day. While there has been some angst about this from political commentators, voters like it. Many of our respondents argued the list of ‘acceptable reasons’ for voting early should be abandoned, as any reason is valid.<sup>37</sup>
- 3.81 Election windows are used in other jurisdictions. This is where pre-poll is available, but voters do not have to meet a list of strict criteria.

### *Australian Capital Territory 2020*

- 3.82 During the ACT Legislative Assembly election all voters were encouraged to attend a pre-poll centre over a three-week period ‘to allow smaller numbers in a polling place at any one time for COVID safety’.<sup>38</sup>
- 3.83 Early voting centres were open every day from 28 September and 17 October 2020. This included weekends and public holidays. Operating hours were 9am – 5pm Saturday to Thursday with extended hours to 8pm on Fridays (to coincide with late night shopping in the ACT). Voters had the choice of 15 different early voting centres and were not required to vote within the electorate they were enrolled in.
- 3.84 On the final day of the election period additional polling places, offering voters a choice of 82 locations, were open from 8am to 6pm.<sup>39</sup>

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<sup>36</sup> Professor George Williams AO, Private capacity, *Submission 3*, p. 2.

<sup>37</sup> The Voter Choice Project, *Submission 73*, p. 8.

<sup>38</sup> ACT Electoral Commission, ‘FAQ COVID-19 and the 2020 election’, viewed 29 October 2020, <[https://www.elections.act.gov.au/elections\\_and\\_voting/2020\\_legislative\\_assembly\\_election/covid-19-and-the-2020-act-election/faq-covid-19-and-the-2020-election](https://www.elections.act.gov.au/elections_and_voting/2020_legislative_assembly_election/covid-19-and-the-2020-act-election/faq-covid-19-and-the-2020-election)>

3.85 ACT early voting centres utilised an electronic voting system and voters were encouraged to use the system, although they could request the choice of a paper ballot. It has subsequently been suggested by independent academic analysts, that the counting software contained programming flaws that had potential to impact the accuracy of the count.<sup>40</sup> Additional polling places opened on the final election day.

### *Victoria Local Government 2020*

3.86 In October 2020, 76 of Victoria's local governments had elections. Due to COVID-19 all were conducted by post. Ballot papers were sent 15 to 17 days before the close of voting. Ballots needed to be completed and posted back before the close of polls on 23 October 2020.

### *New Zealand 2020*

3.87 Voters in New Zealand can vote early – for any reason – in several ways. During the 2020 election, advance voting started on 3 October and ended at 7pm on election day, Saturday 17 October. Voters also had the choice to postal vote or 'takeaway' vote – where they pick up their ballot papers and take them away for themselves or on behalf of another person. Voters in isolation had the option to telephone vote via a dictation service.<sup>41</sup>

## **Committee comment**

3.88 Since the launch of this inquiry the COVID-19 pandemic has had a significant impact on the way government systems and services operate. JSCEM is currently undertaking an Inquiry into the future conduct of elections operating during times of emergency situations to understand how elections could work the future.

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<sup>39</sup> ACT Electoral Commission, 'Early Voting', viewed 29 October 2020, <[https://www.elections.act.gov.au/elections\\_and\\_voting/2020\\_legislative\\_assembly\\_election/2020-polling-places](https://www.elections.act.gov.au/elections_and_voting/2020_legislative_assembly_election/2020-polling-places)>

<sup>40</sup> The Canberra Times, 'ACT election 2020: Electronic voting system flawed in 2020 poll, experts say' viewed on 30 November 2020, <<https://www.canberratimes.com.au/story/7027348/act-electronic-voting-system-flawed-experts-say/>>

<sup>41</sup> Te Kaitiaki Take Kōwhiri, New Zealand Electoral Commission, 'COVID-19', viewed 29 October 2020, <<https://vote.nz/voting/2020-general-election/covid-19/>>

- 3.89 In their current format, elections require queues and large numbers of people grouping together which creates challenges for the AEC in selecting locations and designing queuing processes to manage public health social distancing requirements.
- 3.90 The JSCEM understands there are a variety of approaches in other jurisdictions regarding election windows, and other methods of voting beyond pre-poll, postal and ordinary methods.
- 3.91 The JSCEM can explore the issues around different methods of participation as part of its Inquiry into the future of conduct of elections operating during times of emergency situations.



## 4. The shift in political advertising

- 4.1 Concerns were raised during the course of this inquiry that there had been a structural shift in the use of political advertising during the last federal election compared to previous elections.
- 4.2 This chapter will examine the volume of political advertising, how much was spent, and whether there were any deliberate political campaigns to actively mislead or deceive.

### Volume

- 4.3 The Joint Standing Committee on Electoral Matters received anecdotal evidence from submitters that were of the view that the volume of electoral advertising in the 2019 Federal election appeared to be larger than normal.
- 4.4 Two submitters who asked for their name to be withheld commented on the volume of negative advertising in their electorate. They noted that there was advertising ‘on huge billboards, on shopfronts, of trucks being towed across the electorate, on volunteer t-shirts, on leaflets and newsletters, [and] in online ads.’<sup>1</sup> They also questioned whether the volume of material such as posters and corflutes posed a danger to the community when put in areas that blocked traffic signs.<sup>2</sup>
- 4.5 GetUp, who is classified as a political campaigner<sup>3</sup>, believed that there was an ‘enormous volume of paid advertising’, calling for expenditure cuts.<sup>4</sup>

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<sup>1</sup> Name withheld, *Submission 9*, p. 1.

<sup>2</sup> Name withheld, *Submission 1*, p. 1.

<sup>3</sup> Australian Electoral Commission, ‘Transparency Register - Annual returns - Political campaigners’ (last updated 26 September 2019), viewed on 22 October 2020,

- 4.6 Mr Brian Sawyer, who provided a submission in a private capacity, commented on how he was ‘bombarded with phone, internet and postal information.’<sup>5</sup> He also noted that campaign material was being erected into the entry areas of a school hall and that corflutes were still present weeks after polling day.<sup>6</sup>
- 4.7 Mr Sawyer suggested that political parties:  
... should be faced with increasing fines for each day they remain after the election. This may limit the amount put up in the first place.<sup>7</sup>
- 4.8 Dr Stephen English, who provided a submission in a private capacity, recommended regulating the amount of ‘people and signs (corflutes), banners, A-frames etc that can be displayed at each entrance.’<sup>8</sup>
- 4.9 Ms Ursula Hogben, who also provided a submission in a private capacity, also raised concerns about the danger around signage blocking street signs and recommended limiting the amount:  
That each candidate be permitted to have a set number of pre-polling volunteers and signage at each pre-polling booth, for example maximum of 2 volunteers (and no paid staff) and a maximum of 2 standard corflute size signs, at each pre-polling booth.<sup>9</sup>
- 4.10 Rite-On, a third-party disclosure entity, stated that they were overwhelmed by the amount of advertising material which ‘in some cases restricted movement of people and vehicles.’<sup>10</sup> They added that ‘Large areas of available fence space was dominated with hundreds of meters of plastic wrapping leaving little space for any other candidate to display signage.’<sup>11</sup>

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<[https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/transparencyregister](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/transparencyregister)>

<sup>4</sup> Mr Andrew Blake, Project Lead, Democracy and Risk, GetUp, *Transcript*, 14 September 2020, p. 17.

<sup>5</sup> Mr Brian Sawyer, *Submission 33*, p. 1.

<sup>6</sup> Mr Brian Sawyer, *Submission 33*, pp. 1-2.

<sup>7</sup> Mr Brian Sawyer, *Submission 33*, p. 2.

<sup>8</sup> Dr Stephen English, *Submission 40*, p. 2.

<sup>9</sup> Ms Ursula Hogben, *Submission 97*, p. 5.

<sup>10</sup> Rite-On, *Submission 164*, p. 8.

<sup>11</sup> Rite-On, *Submission 164*, p. 8.

## Spend

- 4.11 There has been a significant exponential increase in election campaigning expenditure since 1987. Increased campaigning activity has been accompanied by an increase in overall amounts of expenditure by political parties and candidates.
- 4.12 The 2008 Electoral Reform Green Paper, *Donations, Funding and Expenditure* cited figures based on the 'difference in the reported total yearly expenditures for the Australian Labor Party (ALP) and the Liberal Party for the years 2003-04 (a non-election year) and 2004-05 (an election year), indicating estimates of electoral expenditure at approximately \$19.4 million and approximately \$22 million respectively.'<sup>12</sup>
- 4.13 As political parties were not required to continue to lodge returns on their electoral expenditure after 1996, ascertaining the exact figures that are being spent, particularly on political advertising, after that date is not easily accessible. The Parliamentary Library in their research paper on the 2019 Federal election noted:

Accurate expenditure details are not available for Australian federal elections because parties are not required to report their electoral expenditure. Annual returns to the AEC listing donors over the disclosure threshold (\$13,800 for the 2019 federal election) and total party income and expenditure were released by the AEC in February 2020 for the 2018-19 financial year, which includes the May 2019 election.<sup>13</sup>

- 4.14 In the research paper the Parliamentary Library did however highlight some media reporting from commentators which contained estimated figures on electoral expenditure:

In the absence of any actual figures on expenditure, a number of commentators have provided figures which appear to be either estimates or leaks. While it is not clear where the figures come from, one media article has claimed that Clive Palmer spent \$53 million on ads for the campaign, the Greens spent \$320,000 and Jacqui Lambie spent \$50,000.<sup>14</sup>

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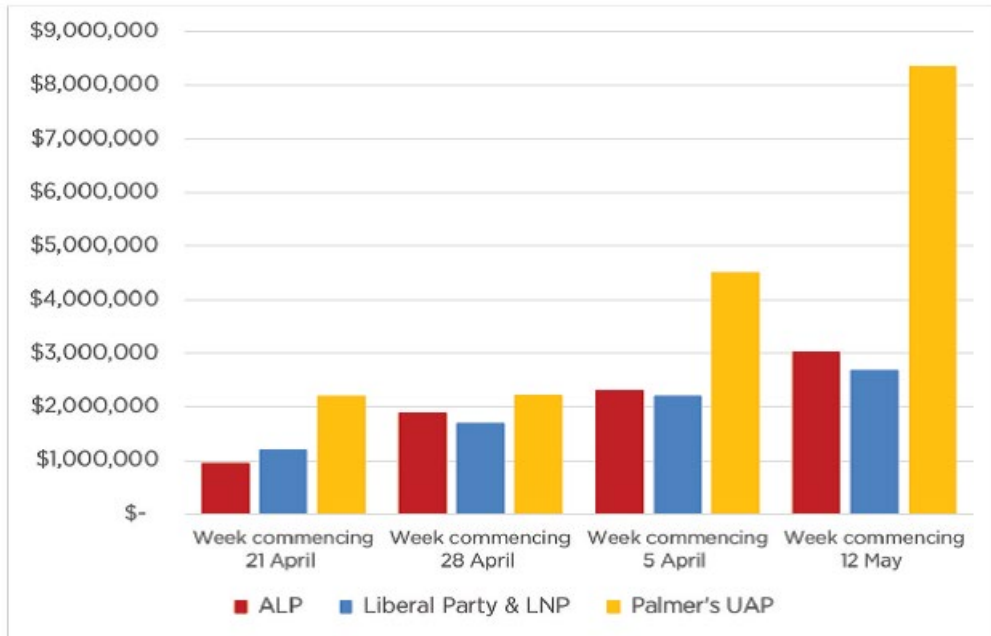
<sup>12</sup>*Electoral Reform Green Paper, Donations, Funding and Expenditure*, December 2008, p. 11.

<sup>13</sup> Parliamentary Library, *Research Paper Series 2019-20, 2019 Federal Election*, 29 June 2020, p. 34.

<sup>14</sup> Parliamentary Library, *Research Paper Series 2019-20, 2019 Federal Election*, 29 June 2020, p. 34.

4.15 A review of Labor’s federal election campaign contained some industry analysis on metropolitan TV, radio and print expenditure by the ALP, Coalition and United Australia Party (UAP). Between April and May 2019, the ALP is estimated to have spent approximately \$8 million; the Coalition approximately \$7.5 million; and the UAP approximately \$16 million.<sup>15</sup>

**Figure 4.1 Weekly expenditure - metropolitan TV, radio and print April-May 2019**



Source: Australian Labor Party, *Review of Australia’s 2019 Federal Election Campaign*, November 2019, p. 75.

4.16 For the first time prior to a federal election, an individual through a political party, managed to outspend both the ALP and the Coalition in major advertising markets. Mr Clive Palmer, through the United Australia Party (UAP), was estimated to have spent ‘spent almost \$70 million in the months leading up the 2019 election’ on television, print and digital political advertising.<sup>16</sup>

<sup>15</sup> Australian Labor Party, *Review of Australia’s 2019 Federal Election Campaign*, November 2019, p. 75.

<sup>16</sup> Australian Labor Party, *Review of Australia’s 2019 Federal Election Campaign*, November 2019, p. 74.

- 4.17 In that same period, the UAP advertising budget was more than the advertising budgets of McDonald's, Foxtel, Telstra or any of the banks and 'no other political party made it into the top 50 Australian organisations' spending on advertising over that period.<sup>17</sup>
- 4.18 Dr Colleen Lewis at a public hearing likened the amount that was being spent on election advertising as 'an arms race' even if the cost of advertising has come down due to the availability to advertise on social media platforms.<sup>18</sup>
- 4.19 Free TV argued that advertising restrictions, such as the advertising blackout laws applicable to commercial broadcasters, prevented 'people from spending it on television but directly encourage[d] people to spend it on other platforms.'<sup>19</sup>
- 4.20 It is clear, that even just based on estimates, the amount spent on electoral advertising has significantly increased over the past fifteen years vastly outspending the total yearly expenditures of political parties.

## Campaign spending

- 4.21 Given the rise in campaign spending, and the unprecedented amount spent by the UAP at the last election, a number of submitters advocated for limiting the amount that a candidate can spend on a campaign.
- 4.22 One submitter recommended limiting the amount a candidate can spend on a campaign, including advertising as well as limiting the amount a party can spend.<sup>20</sup> Ms Chris Anderson, who provided a submission in a private capacity, agreed that spending limits should be implemented 'especially in the six months leading up to elections.'<sup>21</sup>
- 4.23 Professor Joo-Cheong Tham, University of Melbourne, argued that not placing limits on campaign spending was inherently unfair:

With no limits on election campaign spending, such unfairness in fund-raising easily translates into unfairness in the electoral contests, with political parties favoured by corporate sponsors enjoying a significant spending advantage.

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<sup>17</sup> Australian Labor Party, *Review of Australia's 2019 Federal Election Campaign*, November 2019, pp. 74-75.

<sup>18</sup> Dr Colleen Lewis, Private capacity, *Transcript*, 16 March 2020, pp. 11-12.

<sup>19</sup> Ms Bridget Fair, Chief Executive Officer, Free TV Australia, *Transcript*, 7 September 2020, p. 9.

<sup>20</sup> Name withheld, *Submission 9*, p. 4.

<sup>21</sup> Ms Chris Anderson, Private capacity, *Submission 82*, p. 1.

The very same absence of spending limits enables Clive Palmer to pour more than \$50 million into the coming federal election, potentially outspending the Liberal Party and also the Australian Labor Party. With an estimated wealth of \$1.8 billion, Palmer's spending shows how big money in elections is small change for the mega-rich.<sup>22</sup>

4.24 Professor Tham, highlighted that expenditure limits on candidates were in place at the federal level for 80 years:

Expenditure limits on candidate spending were, in fact, a long-standing feature of political finance regulation in Australia. They were in place at the federal level for 80 years and were also common at the state level, including Victoria, South Australia and Western Australia. However, after decades in operation these limits on the campaign expenditure of candidates were removed in 1980.<sup>23</sup>

4.25 Professor Tham recommended establishing 'stricter limits on government advertising in [the] period leading up to [an] election.'<sup>24</sup> He provided detailed reasons for establishing limits on political expenditure in his submission to JSCEM's inquiry into the 2010 Federal election:

There is a range of ways to configure election spending limits so that they lessen the risk of corruption and promote electoral fairness (thereby enhancing 'freedom to' engage in political expression), whilst also ensuring that political expression enjoys meaningful 'freedom from' regulation, so as to conform to constitutional restrictions. The key aspects of such limits that need to be determined are:

- the political expenditure to which they apply;
- the period for which they apply;
- the political participants covered by the limits (for example, political parties, candidates, third parties);
- types of limits (national, state and/or electorate); and
- the amounts at which they are set and how they are calculated.<sup>25</sup>

4.26 Ms Daphne Lascaris, also in a private capacity, advocated for the implementation of spending caps.<sup>26</sup>

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<sup>22</sup> Professor Joo-Cheong Tham, University of Melbourne, *Submission 17*, p. 10.

<sup>23</sup> Professor Joo-Cheong Tham, University of Melbourne, *Submission 17*, p. 433.

<sup>24</sup> Professor Joo-Cheong Tham, University of Melbourne, *Submission 17*, p. 1.

<sup>25</sup> Professor Joo-Cheong Tham, University of Melbourne, *Submission 17*, p. 447.

4.27 Ms Rosemary Cutrone, who provided a submission in a private capacity, called for private spending on political campaigns to be limited or banned altogether.<sup>27</sup> Ms Sue Strodl, private capacity, believed that the absence of a spending cap was a corruption to the democratic purpose calling for financial caps on the amount of money spent for an election campaign.<sup>28</sup>

4.28 The joint submission by Reproductive Choice Australia, South Australian Abortion Action Coalition, Children By Choice and Marie Stopes Australia supported regulation on campaign expenditure providing that it did not disadvantage small players with red tape:

We strongly support the Joint Standing Committee on Electoral Matters recommending that spending caps be placed on the amount of funding that candidates, political parties, political campaigners and other parties can spend before and during Federal elections. We believe this will provide equality of political power and build trust in Australian democracy. Spending caps are an important means of decreasing the risk of disproportionate political influence before and during elections.<sup>29</sup>

4.29 Mr Antony Green, supported implementing expenditure caps as ‘a way of controlling expensive elections’, adding:

It forces parties to think a little bit more about what they're spending money on. I think that sometimes there's a sense of a degree of mutually assured destruction in election campaigning. You've got the money so you just keep spending. You keep sending more and more letters out to candidates. We've seen that targeted advertising is more effective than blanket advertising, but if there are no expenditure limits then you'll continue to get blanket advertising as well.<sup>30</sup>

4.30 The Democratic Audit of Australia (DAA) believed that the absence of spending limits on election advertising was leading to an arms race:

Presently, candidates and political parties are free to spend as much as they want on election campaigning. This unregulated context is both to the detriment of political equality and the perceived integrity of the electoral process. It leads to an arms race in pursuit of political donations and relentless

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<sup>26</sup> Ms Daphne Lascaris, Private capacity, *Submission 63*, p. 1.

<sup>27</sup> Ms Rosemary Cutrone, *Submission 31*, p. 2.

<sup>28</sup> Ms Sue Strodl, Private capacity, *Submission 30*, p. 1.

<sup>29</sup> Reproductive Choice Australia, South Australian Abortion Action Coalition, Children By Choice and Marie Stopes Australia, *Submission 111*, p.1.

<sup>30</sup> Mr Antony Green, Private capacity, *Transcript*, 16 September 2020, p. 15.

negative advertising, with both of these contributing to the loss of trust in political parties and electoral politics. A majority of voters now believe that government is run primarily for the benefit of ‘a few big interests’ and the latest Perceptions of Electoral Integrity survey places Australia 26th out of 33 OECD countries on the campaign finance aspect of electoral integrity.<sup>31</sup>

- 4.31 The Australian Conservation Foundation (ACF) believed that establishing expenditure limits would ensure that there was a level playing field in ‘elections and to ensure that it is not simply those with the largest wallets who have the most access to participate in the electoral process, dominate policy debates, or to run for office.’<sup>32</sup>
- 4.32 The joint submission from the Human Rights Law Centre (HRLC), the ACF and the Uniting Church in Australia, Synod of Victoria and Tasmania (the Uniting Church), suggested that spending caps would provide the following benefits:
- Restore democracy: Without spending caps, our election debates are dominated by those with the biggest bank balance, not those with the best ideas. By reining this spending in, we can hope to restore Australians’ trust in democracy.
  - Restore equality: Spending caps are essential to realising a foundational principle of the Commonwealth Constitution: that Australians enjoy an equal share of political power.
  - Focus on national interest: Spending caps allow politicians.<sup>33</sup>
- 4.33 GetUp highlighted the results of the *Democracy 2025* survey, conducted by the Museum of Australian Democracy (MoAD) and the Institute for Governance and Policy Analysis at the University of Canberra, which found that 75 per cent of federal MPs supported an expenditure cap.<sup>34</sup>
- 4.34 When questioned what level of expenditure would be appropriate to set the cap at, GetUp stated ‘somewhere closer to \$20 million globally is probably closer to the mark for political parties, and a proportion of that for third parties is appropriate as well, but that does need a lot more work.’<sup>35</sup>

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<sup>31</sup> The Democratic Audit of Australia, *Submission 67*, p. 1.

<sup>32</sup> Australian Conservation Foundation, *Submission 117*, p. 3.

<sup>33</sup> Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 84*, p. 1.

<sup>34</sup> Mr Andrew Blake, Project Lead, Democracy and Risk, GetUp, *Transcript*, 14 September 2020, p. 2.

<sup>35</sup> Mr Andrew Blake, Project Lead, Democracy and Risk, GetUp, *Transcript*, 14 September 2020, p. 16.



4.35 Ms Sally Woodward, who provided a submission in a private capacity, also identified two surveys where respondents supported limits on campaign expenditure believing that ‘the lack of restrictions on political expenditure or donations at the federal level has contributed to perceptions that government is run primarily for the benefit of the big business.’<sup>36</sup> Calling for greater transparency, Ms Woodward suggested ‘implementing spending caps on federal campaign expenditure’.<sup>37</sup>

4.36 Professor George Williams, private capacity, supported instituting caps on electoral expenditure by parties and candidates as a way to even the playing field:

... we run the risk, as we saw at the last election, where a billionaire is able to massively outspend other participants—at least some participants—in ways that can have a very large and distorting impact upon electoral preferences. We do want people to put their ideas out there, but we know that money has a big impact on the ability to get the message across, so we need a level playing field.<sup>38</sup>

4.37 The Centre for Public Integrity (CPI) added that they did not want to limit the ‘advocacy of third parties, which is very important to our democracy’<sup>39</sup>, stating:

We need to make sure that electoral expenditure is defined in a way that allows organisations to be involved and advocate on issues and advocate on behalf of constituents. The definition of ‘electoral expenditure’ that is currently in the Commonwealth Electoral Act is one that we think is adequate in capturing electoral expenditure of third parties, which includes any expenditure whose dominant purpose is for influencing the way people vote in an election.<sup>40</sup>

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<sup>36</sup> Ms Sally Woodward, Private capacity, *Submission 77*, p. 4.

<sup>37</sup> Ms Sally Woodward, Private capacity, *Submission 77*, p. 5.

<sup>38</sup> Professor George Williams, Private capacity, *Transcript*, 7 September 2020, p. 22.

<sup>39</sup> Ms Hannah Aulby, Executive Director, The Centre for Public Integrity, *Transcript*, 16 March 2020, p. 12.

<sup>40</sup> Ms Hannah Aulby, Executive Director, The Centre for Public Integrity, *Transcript*, 16 March 2020, p. 13.

## Expenditure caps in other jurisdictions

4.38 The DAA highlighted that nineteen European countries, including the United Kingdom, in addition to Canada and New Zealand have campaign expenditure limits.<sup>41</sup>

4.39 Ms Woodward also pointed out that a number of European countries had also implemented limits on campaign spending:

Many countries in Europe, including the UK, Ireland and the Scandinavian countries have never allowed such paid political advertising. Two-thirds of European countries limit the amount a candidate can spend on a campaign, including advertising, and many limit the amount a party can spend.<sup>42</sup>

4.40 The Australian Greens also recommended adopting 'electoral funding rules similar to the system in force in Canada prior to 2011' which included capped campaign spending for both political parties and third parties.<sup>43</sup>

4.41 The United Kingdom (UK), New Zealand (NZ) and Canada all have political campaign expenditure caps in place that include third parties.

4.42 In the UK, spending limits during election campaigns, which can vary for different elections, apply to candidates, political parties, and non-party campaigners. Political parties need to record what they spend during the election campaign and report their spending to the UK Electoral Commission in a spending return.<sup>44</sup>

4.43 In NZ candidates can spend up to NZD\$28,200; registered political parties can spend up to NZD\$1,199,000 if they contest the party vote plus NZD\$28,200 for each electorate candidate for the party; registered third party promoters can spend up to NZD\$338,000; unregistered third party promoters can spend up to NZD\$13,600.<sup>45</sup>

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<sup>41</sup> The Democratic Audit of Australia, *Submission 67*, p. 2.

<sup>42</sup> Ms Sally Woodward, Private capacity, *Submission 77*, p. 4.

<sup>43</sup> Australian Greens, *Submission 112*, p. 2.

<sup>44</sup> United Kingdom Electoral Commission, 'Campaign spending: Political parties and non-party campaigners', viewed on 27 October 2020, <<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting/campaign-spending-political-parties-and-non-party-campaigners>>

<sup>45</sup> New Zealand Electoral Commission, Te Kaitiaki Take Kōwhiri, 'About election advertising', viewed on 27 October 2020, <<https://elections.nz/guidance-and-rules/for-voters/about-election-advertising/>>

4.44 Canada regulates activities and spending in the pre-election and election periods including:

- The costs to produce and place ads are election expenses, which mean spending on them is limited by the overall election expense limit of the party and candidate, electoral district association or third party placing the ads.
- Overall election expense limits are set using a formula described in the *Canada Elections Act* (CEA).
- The CEA imposes separate expense limits to third parties for regulated activities that take place during a pre-election period or an election period.<sup>46</sup>

4.45 The formula is based on the number of names on the preliminary or revised lists of electors for each electoral district, and on the length of the election period:

- \$2.1735 for each of the first 15,000 electors;
- \$1.092 for each of the next 10,000 electors; and
- \$0.546 for each of the remaining electors.<sup>47</sup>

4.46 Nationally, New South Wales (NSW), South Australia (SA), Tasmania (TAS) and the Australian Capital Territory (ACT) limit campaign expenditure.

4.47 The DAA suggested that there was ‘evidence that the New South Wales spending limits have been effective in significantly reducing the amounts spent on election campaigning.’<sup>48</sup>

4.48 The joint submission from the HRLC, ACF and the Uniting Church, also noted the regulation in NSW and the ACT to limit campaign expenditure adding:

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<sup>46</sup> Elections Canada, ‘The Electoral System of Canada. Political Financing’, viewed on 27 October 2020, <<https://www.elections.ca/content.aspx?dir=ces&document=part6&lang=e&section=res>>; Elections Canada, ‘Political Financing, Spending, and Advertising Safeguards’, viewed on 27 October 2020, <<https://www.elections.ca/content.aspx?section=vot&dir=bkg/safe&document=pol&lang=e>>

<sup>47</sup> Section 477.5(3), *Canada Elections Act*, Calculation using preliminary lists of electors.

<sup>48</sup> The Democratic Audit of Australia, *Submission 67*, p. 2.

The Federal Government is increasingly lagging behind the States and Territories: New South Wales, South Australia, Tasmania and the ACT all have spending caps, and the Queensland Government is looking to reintroduce them.<sup>49</sup>

**Table 4.1 Spending caps at State and Territory level in Australia**

State/Territory	Amount of spending cap	At what point before an election does the spending cap apply?	Cap includes volunteer time speaking to voters?
NSW	Up to - \$12m for political parties - \$140,000 for candidates	Commences 1 October in the year before the election (approx. 6 months)	No
SA	Up to - \$3.5m for political parties - \$100,000-\$125,000 for candidates	Commences 1 July in the year before the election (approx. 9 months)	No
TAS (Legislative Council)	Political parties are prohibited from incurring expenditure. \$17,000 for candidates	Commences 1 January in the year before the election (approx. 5 months)	Not clear
ACT	Up to - \$1m for political parties - \$40,000 for candidates	Commences 1 January in the year before the election (approx. 10 months)	No

*Source: Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, Submission 84, p. 6.*

<sup>49</sup> Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 84*, p. 2.

4.49 In addition to placing a limit on electoral expenditure, the CPI also advocated for requiring campaign accounts for electoral expenditure similar to NSW and Victoria:

So you have a campaign account where all the money coming in is declared if it's above the threshold, and you can only spend money from that account. This account makes every type of regulation easier because you can ensure that that campaign account is audited. ... You can also put in expenditure caps so that you're not allowed to spend money unless it's come from that account and it's only up to a certain amount.<sup>50</sup>

4.50 Both Victoria and NSW require all political parties, elected members, candidates, groups of candidates, third-party campaigners and associated entities to maintain a campaign account for all State elections.

4.51 In Victoria, the campaign account:

... is a financial account that all funding recipients must set up to deposit: political donations, public funding. All political expenditure must be paid from this account. The State campaign account must be with an authorised deposit-taking institution.<sup>51</sup>

4.52 An authorised deposit-taking institution is a bank, credit union, or building society within Australia and:

All political donations received for State electoral purposes must be paid into the State campaign account and all political and electoral expenditure must be paid from the State campaign account.<sup>52</sup>

4.53 NSW has established similar requirements with 'political parties, elected members (NSW Members of Parliament and councillors), candidates, groups of candidates, third-party campaigners and associated entities required may be required to use a campaign account.'<sup>53</sup>

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<sup>50</sup> Ms Hannah Aulby, Executive Director, The Centre for Public Integrity, *Transcript*, 16 March 2020, p. 14.

<sup>51</sup> Victorian Electoral Commission, 'Funding', viewed on 23 October 2020, <<https://www.vec.vic.gov.au/candidates-and-parties/funding>>

<sup>52</sup> Victorian Electoral Commission, *Funding and Disclosure Information for Registered Political Parties*, Fact Sheet, 2018, p. 2 Victorian Electoral Commission, *Funding and Disclosure Information for Elected Members*, Fact Sheet, 2018, p. 2.

<sup>53</sup> New South Wales Electoral Commission, 'What is a campaign account?', viewed on 23 October 2020, <<https://elections.nsw.gov.au/Funding-and-disclosure/Campaign-accounts/What-is-a-campaign-account>>

- 4.54 The campaign account must be held in ‘Australian dollars with a financial institution.’<sup>54</sup>
- 4.55 The NSW Electoral Commission defines electoral expenditure as:
- promoting or opposing (directly or indirectly):
    - a political party;
    - the election of a candidate or candidates.
  - influencing (directly or indirectly) the voting at an election.<sup>55</sup>
- 4.56 For a third-party campaigner in NSW, electoral expenditure only includes ‘the expenditure which is incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election.’<sup>56</sup>

### **Limiting expenditure on not-for-profit organisations**

- 4.57 Ms Seibert was of the view that limiting political expenditure could also potentially limit political speech ‘through advocacy and campaigning, making it more difficult for not-for-profit organisations to contribute to our democracy.’<sup>57</sup>
- 4.58 Ms Seibert did however believe that it was in the public interest to establish greater transparency around political campaign expenditure for not-for-profit organisations ‘where its dominant purpose is to influence the decisions of voters in an election.’<sup>58</sup> She added that transparency:
- enables the public to make informed decisions and give proper weight to different speakers and messages, based on an understanding not only of what the political speech is but also by who is funding it, which may influence how the public react to the political speech;

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<sup>54</sup> New South Wales Electoral Commission, ‘What is a campaign account?’, viewed on 23 October 2020, <<https://elections.nsw.gov.au/Funding-and-disclosure/Campaign-accounts/What-is-a-campaign-account>>

<sup>55</sup> New South Wales Electoral Commission, ‘What is electoral expenditure?’, viewed on 23 October 2020, <<https://elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/What-is-electoral-expenditure>>

<sup>56</sup> New South Wales Electoral Commission, ‘What is electoral expenditure?’, viewed on 23 October 2020, <<https://elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/What-is-electoral-expenditure>>

<sup>57</sup> Ms Krystian Seibert, Industry Fellow, Swinburne University of Technology, *Submission 148*, p. 2.

<sup>58</sup> Ms Krystian Seibert, Industry Fellow, Swinburne University of Technology, *Submission 148*, p. 2.

- can also guard against corruption, because if entities can incur significant expenditure on advocacy and campaigning anonymously (be it through donations or direct expenditure themselves), it may be easier for them to seek a quid pro quo from those whom they support with those activities or to exert other forms of undue influence.<sup>59</sup>

4.59 The HRLC, ACF and Uniting Church believed that the spending cap could potentially 'impose a significant administrative burden on small organisations and discourage participation in elections at the grassroots level.'<sup>60</sup> They added:

The requirement to monitor spending should, therefore, only apply when third parties anticipate spending over a sufficiently high threshold that will leave small-scale advocacy, for instance by volunteers wanting to host a meeting in their local electorate, unaffected. The flipside is that this threshold should not be so high as to incentivise political actors to avoid the spending caps by establishing multiple small organisations. Evidence as to the amount small grassroots campaigners typically incur may assist the Committee to determine the quantum for the cap.<sup>61</sup>

## Government campaign expenditure before elections

4.60 Australian Greens did raise a separate concern about the amount of taxpayer funded campaign expenditure used on Government advertising. Noting an audit on Government advertising by the Australian National Audit Office (ANAO), the Australian Greens stated:

The National Audit Office has confirmed a long-term trend of increased campaign expenditure before elections. This was evident again in advance of the 2019 election when millions of taxpayer dollars were spent on ads promoting government initiatives just prior to the Federal election being called.<sup>62</sup>

4.61 Dr Lewis held the view that it was necessary to place a cap on the amount of taxpayers money used on election advertising:

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<sup>59</sup> Ms Krystian Seibert, Industry Fellow, Swinburne University of Technology, *Submission 148*, p. 2.

<sup>60</sup> Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 84*, p. 4.

<sup>61</sup> Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 84*, p. 4.

<sup>62</sup> Australian Greens, *Submission 112*, p. 7.

It would also be necessary to place a cap on the amount of taxpayers' money that could be spent on an election campaign. Without such a cap there would be no limit on the amount that could be expended by political parties and candidates trying to win government and/or be elected to parliament.<sup>63</sup>

4.62 Dr Lewis recommended canvassing the views of the Australian community prior to any raise in taxpayer contributions to election campaigns.<sup>64</sup>

4.63 The analysis undertaken in the ANAO audit report, *Government Advertising: June 2015 to April 2019*, found that 'campaign media expenditure increased in the lead up to the last six federal elections.'<sup>65</sup> The report provided an example of how much was spent on media prior to the 2013 and 2016 federal elections:

For example, in the three months prior to the 2013 general election, the Commission accounted for \$15.8 million of the \$61.3 million total media expenditure (or 25.8 per cent). During the 2016 general election, when the Commission was advertising to inform the public about changes to the Senate voting system, it spent \$43.4 million of the \$95.0 million total media expenditure (45.7 per cent) in the three months prior to the election.<sup>66</sup>

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<sup>63</sup> Dr Colleen Lewis, Private capacity, *Submission 118*, p. 8.

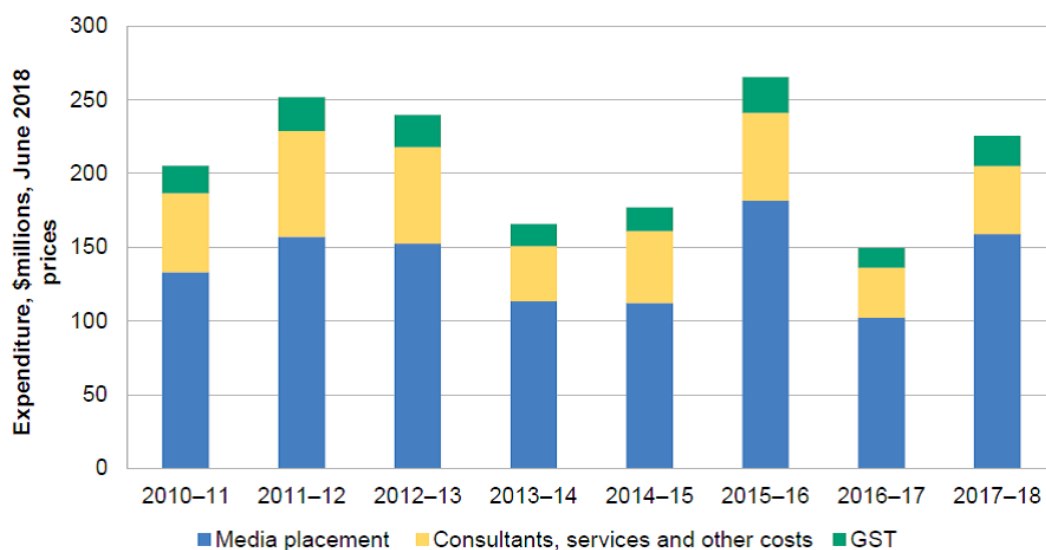
<sup>64</sup> Dr Colleen Lewis, Private capacity, *Submission 118*, p. 8.

<sup>65</sup> Australian National Audit Office, *Auditor-General Report No.7 2019–20, Government Advertising: June 2015 to April 2019*, 26 August 2019, p. 38.

<sup>66</sup> Australian National Audit Office, *Auditor-General Report No.7 2019–20, Government Advertising: June 2015 to April 2019*, 26 August 2019, p. 38.



**Figure 4.2 Campaign advertising expenditure 2010–11 to 2017–18, June 2018 prices**



Source Australian National Audit Office, *Auditor-General Report No.7 2019–20, Government Advertising: June 2015 to April 2019, 26 August 2019*, p. 38.

4.64 The ANAO report concluded that while there was scope for improving administrative practices relating to: documenting the accuracy of campaign statements; procurement and financial commitments; assessing and documenting the need for additional campaign activity; and the basis for evaluating campaigns; the Department of Finance and the selected entities have been largely effective in elements of their administration of framework requirements.<sup>67</sup>

## Recommendations for reform

4.65 The HRLC, ACF and Uniting Church provided some guidance on the drafting of federal legislation to implement spending caps, including constitutional consideration from the High Court:

- Spending caps are not only constitutional, but benefit Australian democracy.
- Spending caps should be set at the same level for political parties and third parties. The High Court unanimously struck down a NSW law imposing a spending cap on third parties that was less than half of that of political parties in *Unions NSW v New South Wales* [2019] HCA 1.

<sup>67</sup> Australian National Audit Office, *Auditor-General Report No.7 2019–20, Government Advertising: June 2015 to April 2019, 26 August 2019*, p. 7.

- Each entity should be subject to its own spending cap, unless that entity is controlled by or working closely with another entity on a campaign. In *Unions NSW v New South Wales* [2013] HCA 58, the High Court struck down a NSW law that aggregated the expenditure of political parties with their “affiliated organisations” – in effect, requiring unions and the ALP to operate under the same spending cap – on the basis that affiliation to a political party under the legislation did not imply that they had the same political views.<sup>68</sup>

4.66 Supported by another nine organisations,<sup>69</sup> the HRLC, ACF and Uniting Church set out a number of additional best practice examples on implementing spending caps including that they should:

- aim to improve current levels of political equality and apply to everyone equally;
- not impose red tape on small players or limit volunteers’ ability to communicate with voters; and
- apply at least two years from the last Federal election.<sup>70</sup>

4.67 Recommending that the Joint Standing Committee on Electoral Matters (JSCEM) examine implementing expenditure caps on all political parties, candidates and third-parties, the ACF added:

Regardless of political affiliation, the ability of a single individual to use their personal fortune to drown out the voices of others and to influence election outcomes raises grave concerns about fairness and the integrity of the electoral system. The UAP’s spending in the election sets an unnerving precedent where future parties must now consider the possibility of having to compete with the private war chests of wealthy individuals. Without regulation of expenditure, we can expect expenditure to continue to increase, leading to pressure to raise more funds which both distracts candidates from their parliamentary duties and increases the risk of corruption that arises with political donations.<sup>71</sup>

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<sup>68</sup> Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 84*, p. 3.

<sup>69</sup> 350 Australia; Australian Council of Social Service; Alliance for Gambling Reform; Combined Pensioners and Superannuants Association; Consumer Action Law Centre; Gun Control Australia; Oxfam Australia; Public Interest Advocacy Centre; Sunshine Coast Environment Council.

<sup>70</sup> Human Rights Law Centre, the Australian Conservation Foundation and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 84*, pp. 4-5.

<sup>71</sup> Australian Conservation Foundation, *Submission 117*, p. 4.

- 4.68 Ms Woodward recommended ‘implementing spending caps on federal campaign expenditure and providing greater transparency over political donations’ in order to ‘rein in the ever-increasing role private money is playing in its federal elections.’<sup>72</sup>
- 4.69 The CPI agreed with the view to place caps on electoral expenditure adding another suggestion that the Government should purchase and distribute advertising space. They recommended:
- Caps on all electoral expenditure covering political parties, associated entities and third parties similar to Electoral Funding Act 2018 (NSW);
  - Level set through review and tied to donations caps and public funding;
  - Finance or Attorney Generals’ Department to purchase and distribute advertising space from commercial broadcasters and major newspapers during each election year, with limits also applied to the amount of advertising space available for each party, candidate and third-party campaigners.<sup>73</sup>
- 4.70 When discussing the role of public funding in electoral expenditure, the CPI stated their preference for half public and half private funding once an expenditure cap was set.<sup>74</sup>
- 4.71 Mrs Kathleen Chappell, who provided a submission in a private capacity, made a more targeted recommendation suggesting to limit ‘the amount of advertising dollars that can be spent in each electorate.’<sup>75</sup>
- 4.72 Ms Hogben made a number of suggestions aimed at curtailing electoral advertising expenditure and increasing transparency including caps, timely disclosure and enforcement when regulations have been breached:
- That there be reasonable caps on election advertising expenditure and volume and frequency of advertising, regarding any one candidate and any one party.
  - That the caps on election advertising apply to candidates, politicians, political parties, their associated entities, and third-parties.
  - That election advertising expenditure be disclosed publicly and in a timely manner so that it can be monitored.

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<sup>72</sup> Ms Sally Woodward, *Submission 77*, p. 5.

<sup>73</sup> The Centre for Public Integrity, *Submission 79*, p. 1.

<sup>74</sup> Ms Hannah Aulby, Executive Director, The Centre for Public Integrity, *Transcript*, 16 March 2020, p. 12.

<sup>75</sup> Mrs Kathleen Chappell, Private capacity, *Submission 90*, p. 1.

- That the laws imposing sensible caps, give the regulator powers to curtail further advertising expenditure, if the regulator considers that laws have been breached.<sup>76</sup>

4.73 The HRLC at a public hearing provided their suggestion on how a spending cap could work in practice:

In practice, we would probably need two levels of spending cap—one to work on the national level and one to work per electorate. We haven't put forward a specific figure, but we have provided some kind of guidance or principle by which that figure could be settled on. We think it should be less than the current spending of the major parties to start with, and we think that, as a guide, on a per electorate basis, it could be done by reference to what seems like a reasonable amount that any Independent could feasibly raise to run. So it's just relying on a greater-equality basis—certainly not strict equality. We think that that seems like a fair guide.<sup>77</sup>

4.74 While the majority of submitters advocated for establishing caps on campaign spending, there were some who identified some possible issues.

4.75 Professor Tham did however identify two arguments against legislating election spending limits including that:

- expenditure limits are unenforceable or unworkable; and
- election spending limits constitute an unjustified interference with freedom of political communication.<sup>78</sup>

4.76 Ms Krystian Seibert, Industry Fellow at Swinburne University of Technology, did hold some 'reservations regarding the introduction of expenditure limits at a Federal level.'<sup>79</sup> Ms Seibert hypothesised that establishing expenditure caps could have the negative effect of:

- Shifting the balance of power further towards government and away from citizens acting together; and
- Reducing the ability of citizens acting together to hold the government to account for its decisions.<sup>80</sup>

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<sup>76</sup> Ms Ursula Hogben, *Submission 97*, p. 4.

<sup>77</sup> Ms Alice Drury, Senior Lawyer, Human Rights Law Centre, *Transcript*, 16 March 2020, p. 24.

<sup>78</sup> Professor Joo-Cheong Tham, University of Melbourne, *Submission 17*, p. 437 and 439.

<sup>79</sup> Ms Krystian Seibert, Industry Fellow, Swinburne University of Technology, *Submission 148*, p. 5.

<sup>80</sup> Ms Krystian Seibert, Industry Fellow, Swinburne University of Technology, *Submission 148*, p. 4.

4.77 Ms Seibert also raised concerns that different limits would be applied to political parties compared to third parties or political campaigners potentially stifling political discussion.<sup>81</sup>

## Deceptive and misleading conduct

4.78 One theme among some submissions was the perception that there were a number of coordinated misinformation and disinformation campaigns being undertaken by domestic actors during the 2019 Federal election.

4.79 Ms Margaux Saita, private capacity, commented that fake news was ‘one of the biggest threats to both global and domestic democracy and international relations.’<sup>82</sup> She was of the view that the algorithms employed by social media platforms to target their users were having detrimental effects:

- Makes it difficult (sometimes near impossible) for potential voters to receive online news from another political perspective; and
- Creates an environment of political encapsulation for voters, facilitating communication with those of their opinion, nursing potential radicalisation and inciting intolerance.<sup>83</sup>

4.80 The joint submission from Ms Rita Spencer, Mr Michael Lyons, Mr Gary Dowling, and Mr Kevin Turnbull commented that there was an urgent need to address the issues of fake news.<sup>84</sup> They added that a ‘lack of enforceable standards is creating vulnerability to the ever-threatening virus of fake news.’<sup>85</sup>

4.81 The Australia Institute highlighted some key aspects of social media advertising from the 2019 Federal election, including algorithmic amplification and fake news:

- The ‘narrowcasting’ of customised Facebook ads based on specific preferences, like ads that feature a make of car the viewer is known to be interested in;

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<sup>81</sup> Ms Krystian Seibert, Industry Fellow, Swinburne University of Technology, *Submission 148*, p. 5.

<sup>82</sup> Ms Margaux Saita, Private capacity, *Submission 39*, p. 1.

<sup>83</sup> Ms Margaux Saita, Private capacity, *Submission 39*, p. 1.

<sup>84</sup> Ms Rita Spencer, Mr Michael Lyons, Mr Gary Dowling, and Mr Kevin Turnbull, Private capacity, *Submission 42*, p. 2.

<sup>85</sup> Ms Rita Spencer, Mr Michael Lyons, Mr Gary Dowling, and Mr Kevin Turnbull, Private capacity, *Submission 42*, p. 4.

- The Australian debut of the Facebook Ad Library (albeit in a much more limited form than in some other countries), making publicly available any political ads that were running on Facebook at the time;
- The use of the Guardian’s Australian election database, for the first time in a federal election, which archives political Facebook ads for future reference; and
- Widespread political advertising on the Chinese social media app WeChat, including some ‘fake news’.<sup>86</sup>

## Recommendations for reform

4.82 Ms Margaux Saita suggested that government work with online platforms to regulate the spread of fake news and implement accountability measures:

- The government should work with social media and other online platforms to encourage the regulation of the spread of fake news (especially in the very obvious electoral context); and
- Parties known to have relied on false information, and therefore the taking advantage of their citizens, in order to advance an agenda purely for political power, should be held accountable.<sup>87</sup>

4.83 Ms Spencer, Mr Lyons, Mr Dowling, and Mr Turnbull called for legislation ‘to control false and misleading political advertising.’<sup>88</sup>

## Australian’s trust in news and information

4.84 As part of its submission to the Senate Select Committee on Foreign Interference through Social Media, the Department of Home Affairs provided definitions for disinformation and misinformation:

- *Disinformation*: False information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes. Disinformation can be intended for financial gain (such as clickbait stories), but have an incidental effect on public opinion or debate.
- *Misinformation*: False information that is spread due to ignorance, by error or mistake with good intentions/without the intent to deceive.<sup>89</sup>

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<sup>86</sup> The Australia Institute, *Submission 54*, p. 1.

<sup>87</sup> Ms Margaux Saita, Private capacity, *Submission 39*, p. 2.

<sup>88</sup> Ms Rita Spencer, Mr Michael Lyons, Mr Gary Dowling, and Mr Kevin Turnbull, Private capacity, *Submission 42*, p. 11.

<sup>89</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Home Affairs, *Submission 16*, p. 4.

4.85 The News and Media Research Centre (NMRC) at the University of Canberra's submission explored whether there was any evidence of political disinformation campaigns from foreign actors compared to domestic actors. While the increased prevalence of disinformation globally may have increased community awareness of the issue, the NMRC believed that there was little evidence to suggest that disinformation from foreign actors had an impact on the 2019 Federal election:

Australians are increasingly accessing news and information from online sources, including via social media platforms. During the 2019 federal election there was heightened awareness of the possibility of the dissemination of political disinformation from foreign actors. This in part stemmed from the impact of fake news on the 2016 US election as well as other democracies, such as the Philippines. While there is little evidence that disinformation from foreign actors had a major impact on the 2019 Australian election result, disinformation generated by political parties and candidates in the form of political advertising and extreme spin ... arguably helped tipped the balance in favour of the incumbent government.<sup>90</sup>

4.86 The NMRC undertook an analysis of the *Digital News Report: Australia 2019* (DNR 2019) which:

... provides analysis of consumer interest in politics, news use based on the political orientation of Australian citizens, fake news and fact-checking behaviour, which can help interpret the result of the 2019 election and the impact of political advertising spread via social and traditional media on vulnerable sections of the Australian electorate.<sup>91</sup>

4.87 The findings in the DNR 2019 report were based on an analysis of survey results that was 'conducted by YouGov using an online questionnaire at the end of January/beginning of February 2019.'<sup>92</sup> The online questionnaire was completed by a panel of consumers drawn from 72,242 online Australians and a sample of 2010<sup>93</sup> individuals. Out of those 2010 consumers, the majority were concerned about the challenges determining what was real or fake:

- 65% of Australian news consumers were concerned about fake news;

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<sup>90</sup> News and Media Research Centre, University of Canberra, *Submission 75*, p. 3.

<sup>91</sup> News and Media Research Centre, University of Canberra, *Submission 75*, p. 3.

<sup>92</sup> News and Media Research Centre, *Digital News Report: Australia 2019*, 17 June 2019, p. 3.

<sup>93</sup> News and Media Research Centre, *Digital News Report: Australia 2019*, 17 June 2019, p. 3.

- 65% of those who live in regional, rural and remote areas are more likely to say they are concerned about what is real and fake online compared to 60% of news consumers in the cities;
- 74% of those who mainly access news via social media are concerned about fake news;
- 49% of those who mainly access news via search engines and 75% those who mainly access online news via news aggregators are less concerned;
- 70% of those with a high interest in politics are much more likely to be concerned about what is real and fake online;
- 36% said they did compare the reporting of a story across news outlets to check its accuracy; and
- 26% said they began to use more reliable news sources.<sup>94</sup>

4.88 On whether participants undertook fact-checking activities in the previous twelve months, the NMRC highlighted:

- 36% said they did compare the reporting of a story across news outlets to check its accuracy;
- 26% said they began to use more reliable news sources;
- 28% of those who are concerned say they would not share a story they had doubts about, compared to 17% of people who are not concerned;
- 27% say they have stopped using news sources they are unsure about, and 30% say they have started using more trustworthy news sources; and
- 83% of Australians who have high interest in politics have engaged in one or more fact-checking activities.<sup>95</sup>

4.89 The *Digital News Report: Australia 2020* (DNR 2020) found that respondents overall trust in news continued to decline between 2019 and 2020:

... from 44% in 2019 to 38% at the end of January and beginning of February this year. Trust in the news people use also fell from 51% to 46%. The trust levels in news found on social media or from search engines remain similar to last year. However, there was an increase in the number of news consumers who expressed distrust in news found on these platforms. More than half (52%) of news consumers said they do not trust news found on social media and almost one-third (31%) do not trust news from search engines.<sup>96</sup>

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<sup>94</sup> News and Media Research Centre, University of Canberra, *Submission 75*, pp. 5-7.

<sup>95</sup> News and Media Research Centre, University of Canberra, *Submission 75*, pp. 6-7.

<sup>96</sup> News and Media Research Centre, *Digital News Report: Australia 2020*, June 2020, p. 75.



- 4.90 The DNR 2020 report also highlighted a growing concern in misinformation produced by our political representatives:

More than one-third (35%) indicate they are most concerned about misinformation produced by the Australian government, politicians or political parties and one-fifth say they are worried about misinformation generated by activists and activist groups. Only 14% say they are concerned about journalists and news organisations as sources of misinformation.<sup>97</sup>

## Truth in advertising

- 4.91 Some organisations and individuals who provided a submission to this inquiry called for truth in advertising legalisation to be established at the federal level.
- 4.92 A submitter who asked for their name to be withheld held the view that there should be truth in advertising laws at the Federal level, ‘all political slogans should be true and not based on misleading claims’ and that the AEC ‘should be given the authority to approve or reject electoral communications for publication, including online.’<sup>98</sup>
- 4.93 Ms Daphne Lascaris, Ms Kathie Chappell, Ms Carrie Dennes and Mr John Mattes, private capacity, all advocated for applying truth in advertising laws. Mr Mattes suggested applying the same truth in advertising standards required by advertisers to political parties.<sup>99</sup>
- 4.94 Dr Lewis recommended establishing the SA model of truth in advertising laws at the federal level.<sup>100</sup>
- 4.95 The CPI agreed that the South Australian truth in advertising laws were a good model that worked effectively:

This committee has an advantage in that it can look to state examples. In South Australia they have an independent Court of Disputed Returns that assesses allegations—the point being, that there must be an independent decision-maker looking at cases where there are allegations that there has been misleading information put in the advertising laws. After that experience, South Australia still has functioning election campaigns, and I don't think it's

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<sup>97</sup> News and Media Research Centre, *Digital News Report: Australia 2020*, June 2020, p. 79.

<sup>98</sup> Name withheld, *Submission 9*, p. 1.

<sup>99</sup> Ms Daphne Lascaris, Private capacity, *Submission 63*, p. 1; Ms Kathie Chappell, Private capacity, *Submission 90*, p. 1; Ms Carrie Dennes, Private capacity, *Submission 142*, p. 1; Mr John Mattes, Private capacity, *Submission 47*, p. 1.

<sup>100</sup> Dr Colleen, Private capacity, *Transcript*, 16 March 2020, p. 12.

weaponised as the risk is. I think because there is that independent decision-maker, it makes it more difficult.<sup>101</sup>

4.96 The Australia Institute highlighted its report, *We Can Handle the Truth*, which examined truth in political advertising. Of those polled for the report, the majority were in favour of regulating truth in advertising:

- 84% of Australians support new truth in political advertising laws that would make it illegal for political parties and candidates to publish ads that are inaccurate and misleading
- Most Australians support three potential penalties for misleading advertising: fines and other financial penalties, being forced to publish retractions at own expense and losing some or all public funding
- Those polled were roughly evenly divided between three adjudication options: electoral commissions, magistrates and judges or industry bodies. Other adjudication options included a separate body like an Elections Complaints Authority or a special panel of former politicians.<sup>102</sup>

4.97 The Australia Institute's report also provided some statistics on the number of complaints the South Australian Electoral Commission had received about inaccurate and misleading advertising between 1997 and 2018 (Figure 4.3):

The SA Electoral Commission has received complaints about inaccurate and misleading advertising in each of the last six elections and requested at least one withdrawal or retraction in most elections, but has not taken legal action to achieve withdrawals/retractions.<sup>103</sup>

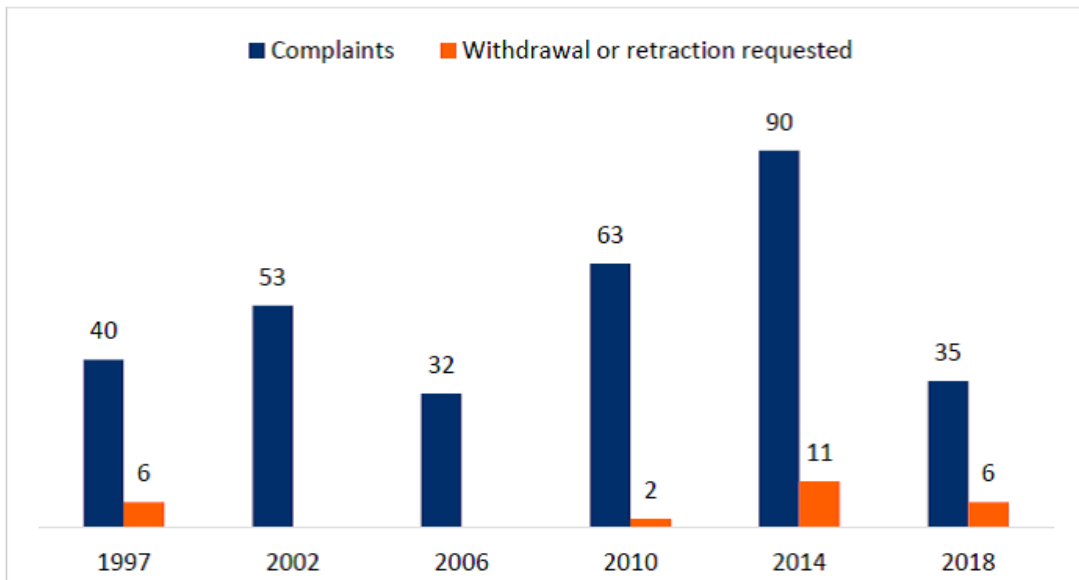
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<sup>101</sup> Ms Hannah Aulby, Executive Director, The Centre for Public Integrity, *Transcript*, 16 March 2020, p. 12.

<sup>102</sup> The Australia Institute, *Submission 54*, p. 3.

<sup>103</sup> The Australia Institute, *We can handle the truth. Opportunities for truth in political advertising*, August 2019, p. 7.

**Figure 4.3 Complaints and withdrawal/retraction requests in each election to South Australian Electoral Commission**



Source *The Australia Institute, We can handle the truth. Opportunities for truth in political advertising, August 2019, p. 8.*

4.98 The Australian Greens were of the view that disinformation campaigns, particularly by third parties, could be quite damaging:

Disinformation can be particularly damaging where the advertisements are presented by third parties, and often not explicitly as an advertisement. Third parties are not currently required to identify themselves or authorise and therefore make known their own political or ideological position.<sup>104</sup>

4.99 The Australian Greens advocated for enacting similar legislation to the South Australian model by amending the *Commonwealth Electoral Act 1918* (Cth) 'making it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent.'<sup>105</sup>

4.100 Associate Professor Luke Beck, private capacity, commented that truth in advertising laws were more focussed on deceptive and misleading advertising rather than deliberating over what political comments were true or false:

<sup>104</sup> The Australian Greens, *Submission 112*, p. 6.

<sup>105</sup> The Australian Greens, *Submission 112*, p. 6.

This is essentially truth in advertising. Truth is contestable, right? So saying 'truth in advertising' is a nice slogan, but it's not particularly meaningful in practice. South Australian laws are about deceptive and misleading, rather than true or false. This is that proposal, essentially, but a better worked up proposal. The standards of 'deceptive and misleading' or 'likely to deceive or mislead' are well established in Australian law. These are not new standards. These have applied in the commercial advertising context for decades. They are well understood by the courts, by lawyers, by everybody. So nothing is new; we're just applying it to another context, where you have to have 'authorised by' and where it's a purported statement of fact. Assertions of opinion are not covered. You can be as deceptive and misleading as you like with regard to your assertions of opinion. But, with regard to assertions of fact, you wouldn't be allowed to deceive or mislead.<sup>106</sup>

- 4.101 Professor Williams argued that there were enough global cases of deliberately untruthful political advertising to advocate for establishing truth in advertising laws at the federal level adding, but cautioned about creating a scheme that captured opinion as well:

If you had a truth-in-political-advertising scheme that applied to all political advertising that sought to capture opinion, I think that would be deeply problematic. In fact, I think it can only be justified on very narrow terms. If it's truly limited to clear statements of fact that are demonstrably false, I think that takes a lot of the heat out of it. If you can't show without doubt that they are false then, simply, the legislation doesn't bite. It's only there for the more extreme cases, but I think there are enough extreme cases out here in the US and elsewhere to suggest that we do now need something like this.<sup>107</sup>

- 4.102 Professor Williams put forward the view that, if truth in advertising laws were to be established, 'it's better to have an independent, non-electoral body overseeing the scheme, because electoral commissions are always going to be wary about intervening, given the capacity to compromise themselves and also given their dependence upon whoever is to form government.'<sup>108</sup>

- 4.103 Professor Williams suggested either forming an independent panel during election periods or letting the courts decide.<sup>109</sup>

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<sup>106</sup> Associate Professor Luke Beck, Private capacity, *Transcript*, 16 March 2020, p. 16.

<sup>107</sup> Professor George Williams, Private capacity, *Transcript*, 7 September 2020, p. 23.

<sup>108</sup> Professor George Williams, Private capacity, *Transcript*, 7 September 2020, p. 23.

<sup>109</sup> Professor George Williams, Private capacity, *Transcript*, 7 September 2020, pp. 25-26.

4.104 Dr Ross Cartmill, private capacity, pointed out that there have been a number of objections to regulating truth in advertising laws including there should be freedom of political communication and parliament is limited in its scope to make laws restricting political communication, adding:

Superficially, that argument does have some benefit in preserving our democracy. We also accept that it's often said that it's too hard to define what truth is. We do find this somewhat frustrating, because truth is defined in the commercial world, but it's not defined in the political world. It's said that it's too hard to define truth.<sup>110</sup>

4.105 Responsible Technology Australia (RTA) stated that 'there is no oversight happening regarding any advertising, let alone political advertising during an election—a time when reliable, accurate information is more critical.'<sup>111</sup>

4.106 RTA highlighted the possible damage disinformation could do by running an experiment. They placed deliberately false advertisements on Facebook targeting young people which remained active for two months:

We ran ads appearing to inform young people not to bother enrolling to vote or that the AEC wouldn't count votes in safe electorates, as well as dangerous COVID misinformation and 5G conspiracy theories. All of these ads were approved by Facebook and served to our targeted lists. What is particularly concerning is that, despite dozens on that list reporting these ads as misleading, false or offensive, Facebook took no action and these ads remained approved and running for two months.<sup>112</sup>

4.107 RTA elaborated on the potential harm false or misleading advertising could have stating 'once a piece of content is out there and reaching people, it doesn't matter if it's taken down—the people who have seen that content have already been harmed by it; it's already been done.'<sup>113</sup>

4.108 RTA held the view that it would be a challenge for the current regulators on commercial or consumer advertising to also regulate political advertising:

The challenge with these problems is that they're much larger than the remit of any single regulator or governing body. When you look at the way that social

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<sup>110</sup> Dr Ross Cartmill, Private capacity, *Transcript*, 9 September 2020, p. 20.

<sup>111</sup> Mr Christopher Cooper, Executive Director, Responsible Technology Australia, *Transcript*, 14 September 2020, p. 50.

<sup>112</sup> Mr Matthew Nguyen, Director of Policy, Responsible Technology Australia, *Transcript*, 14 September 2020, p. 50.

<sup>113</sup> Mr Matthew Nguyen, Director of Policy, Responsible Technology Australia, *Transcript*, 14 September 2020, p. 50.

media platforms enable misinformation and disinformation campaigns to proliferate, the oversight of that kind of problem doesn't squarely fit under the remit of the ACMA, the eSafety Commissioner or the ACCC neatly. So what is needed is either to rethink the remit of some of those regulators or to think about new mechanisms for oversight to ensure that there's the appropriate kind of accountability being applied to the platforms.<sup>114</sup>

4.109 Mr Green commented that he was 'not convinced that truth in advertising laws really work as the facts could be argued':

I think the biggest problem with truth-in-advertising laws is that they become fact checkers. You can argue about the facts, and that's all they can argue on, but, if it's a promise, you can't argue facts with promises. I'm not convinced that truth-in-advertising laws really work. With the examples I've seen where it's been used in South Australia, sometimes what they make a finding on seems almost trivial.<sup>115</sup>

4.110 Dr Cartmill agreed with the view that once an advertisement was published the harm was already done and making a complaint would not rectify the underlying issue that the community had already seen it.<sup>116</sup>

4.111 The Institute of Public Affairs (IPA) believed that the idea of regulating truth in advertising laws was farcical.<sup>117</sup>

4.112 While Free TV agreed that reform was needed to address misinformation and disinformation on social media platforms, they were strongly opposed the introduction of any truth in advertising legislation.<sup>118</sup>

4.113 Commercial Radio Australia's (CRA) perception was that the current advertising rules were simple and well understood and raised concerns if 'any complex regulations were imposed on top of that that may make it difficult for broadcasters to work out whether or not an advertisement should be broadcast.'<sup>119</sup> They added that, in practice:

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<sup>114</sup> Mr Christopher Cooper, Executive Director, Responsible Technology Australia, *Transcript*, 14 September 2020, p. 52.

<sup>115</sup> Mr Antony Green, Private capacity, *Transcript*, 16 September 2020, p. 16.

<sup>116</sup> Dr Ross Cartmill, Private capacity, *Transcript*, 9 September 2020, p. 22.

<sup>117</sup> Mr Gideon Rozner, Director of Policy, Institute of Public Affairs, *Transcript*, 16 March 2020, p. 20.

<sup>118</sup> Free TV, *Submission 93*, pp. 3 and 12.

<sup>119</sup> Mrs Sarah Kruger, Head, Legal and Regulatory Affairs, Commercial Radio Australia, *Transcript*, 7 September 2020, p. 14.

... the lighter the burden on radio stations the better. In other words, they should not necessarily be the decision-makers. They will review ads, of course, but bear in mind that, particularly in regional areas, staff at radio stations are stretched and they're doing several jobs. They will review every ad before putting it to air, but if the regulations are complex that will impose an unreasonable burden on them.<sup>120</sup>

## The arbiter for truth in advertising

4.114 Associate Professor Beck held the view that publishers, such as social media platforms, should be liable for failing to remove fake advertisements as soon as they are made aware of the problem or face civil consequences.<sup>121</sup> He added:

Civil penalties rather than criminal penalties: the prohibition on misleading or deceptive political advertising would be a civil prohibition in the same way that current misleading or deceptive commercial advertising prohibitions are civil prohibitions. There are no criminal penalties like exist under the similar South Australian law.<sup>122</sup>

4.115 Associate Professor Beck suggested that the Australian Competition Consumer Commission (ACCC) were better placed than the AEC to administer any laws on deceptive and misleading political advertising:

The ACCC would be, essentially, being asked to take on a slightly expanded role—and their role expands over time as the economy expands and more businesses et cetera grow. So they have the expertise to do this already. They have the resources to do it. If you gave it to the Electoral Commission, for example, they have no professional experience in dealing with deceptive and misleading advertising.<sup>123</sup>

4.116 The Australian Greens espoused the use of fact check services but acknowledged they had limitations:

Services like the ABC Fact Check (in partnership with RMIT) are invaluable in making an objective analysis of the veracity of claims made by politicians or political parties. However, these services have a limited reach and often

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<sup>120</sup> Mrs Sarah Kruger, Head, Legal and Regulatory Affairs, Commercial Radio Australia, *Transcript*, 7 September 2020, p. 16.

<sup>121</sup> Associate Professor Luke Beck, Private capacity, *Submission 65*, p. 2.

<sup>122</sup> Associate Professor Luke Beck, Private capacity, *Submission 65*, p. 2.

<sup>123</sup> Associate Professor Luke Beck, Private capacity, *Transcript*, 16 March 2020, p. 16.

misleading political statements develop momentum on social media despite any adverse 'Fact Check' result.<sup>124</sup>

4.117 The Australian Greens held the view that the AEC was not the appropriate arbiter of truth in advertising legislation if were ever to be enacted and 'recommended that an independent body be established to implement new 'truth in political advertising' laws.' They also noted that the 'ACCC has expertise in making determinations in relation to misleading statements in commercial advertising.'<sup>125</sup>

4.118 The ACCC stated in no uncertain terms that they were not the appropriate agency to regulate truth in electoral advertising laws:

I will be absolutely blunt and say that the first idea is a terrible idea—if I can put it that way. Our consumer law works in trade or commerce. We are there to make sure the market economy works properly, that there's no anti-competitive behaviour under our competition law and that there's no misleading behaviour under our consumer law. So if somebody wants to sell you a product and they misrepresent what you're getting when you buy that product in ways that get you to pay too much for the product or whatever, that's what we are there to do. We are in no position to deal with political advertising. I think if our law was moved beyond trade and commerce, that would completely alter what the ACCC does and I think, frankly, be the undoing of the ACCC. It would take us where we just should not be. We're a make-the-market economy-work organisation; we're not there to deal with political advertising. I think that should be done by people who are in that sort of arena.<sup>126</sup>

4.119 When asked whether the Special Broadcasting Service (SBS) had refused any political advertising on the basis that it was false, they advised that they had not but noted that their television advertisements go through the same process as the ones on commercial television and Free TV, the commercial advice or ClearAds process, which does not examine misleading and deceptive conduct as one of the elements of assessment but rather on whether the advertisement would be considered defamatory.<sup>127</sup>

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<sup>124</sup> The Australian Greens, *Submission 112*, p. 6.

<sup>125</sup> The Australian Greens, *Submission 112*, p. 7.

<sup>126</sup> Mr Rod Simms, Chair, Australian Competition and Consumer Commission, *Transcript*, 7 September 2020, p. 30.

<sup>127</sup> Ms Clare O'Neil, Director, Corporate Affairs, Special Broadcasting Service, *Transcript*, 7 September 2020, p. 2.



4.120 SBS added that they would not be a suitable arbiter of truth in political advertising as it was a broader issue and that the 'liability and responsibility should not lie with the publishers.'<sup>128</sup>

4.121 Free TV Australia agreed with the SBS view that it was 'not appropriate for publishers to be the arbiter of content of other people's advertising'<sup>129</sup> for the following reasons:

- Firstly, publishers, such as broadcasters, take no part in determining the contents of the advertisement and cannot reasonably be expected to know what amounts to political truth and whether statements made are 'inaccurate and misleading'. Broadcasters are simply not equipped to make such assessments, particularly where they must be made in short time frames.
- Secondly, it is not appropriate for a commercial or industry organisation to take on such a sensitive role in the political process.
- Thirdly, it has long been recognised by Governments and legislators that regulating the truth in political advertising is not only a risk to freedom of speech and freedom of political communication, but also extremely difficult if not impossible to administer and enforce.<sup>130</sup>

4.122 The NMRC held the view that responsibility for truth in advertising lies with the authoriser not the publisher/broadcaster. However, they added that publishers still had a role in enforcing compliance:

Publishers might have ethical responsibilities as well, lest they become complicit in the malign activities of other actors. In legal terms this might include the role of publishers or platforms in enforcing compliance with existing regulations and to take steps to counter malevolent, even if legal, uses of their channels or platforms.<sup>131</sup>

4.123 Dr Cartmill also pointed out the challenges for the AEC if they were task with administering any laws on deceptive and misleading political advertising:

Secondly, who is going to define this truth? If you use the Electoral Commission to define the truth, then you risk politicising the institution that's actually running the election, so the impartiality of the Electoral Commission

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<sup>128</sup> Ms Clare O'Neil, Director, Corporate Affairs, Special Broadcasting Service, *Transcript*, 7 September 2020, p. 3.

<sup>129</sup> Ms Bridget Fair, Chief Executive Officer, Free TV Australia, *Transcript*, 7 September 2020, p. 7.

<sup>130</sup> Free TV, *Submission 93*, p. 13.

<sup>131</sup> News and Media Research Centre, University of Canberra, *Supplementary submission 75.1*, p. 16.

is threatened, and that would be undermining the whole process of the election.<sup>132</sup>

- 4.124 The AEC stated that they had no role in assessing truth in campaign advertising and that if it were to be considered, that they not be the arbiter:

If there is to be a role for truth in advertising at election time, my advice would be that that role not be fulfilled by the Electoral Commission because it will involve us making value judgements about candidates' and parties' material, and it could lead to accusations of bias by the AEC. Truth, particularly at election time, is sometimes in the eye of the beholder. If we're set as a tribunal deciding, 'We like that one, we don't like this one,' it's going to lead us, I think, into a dark place. If there's a role for truth in advertising at election time, I don't think it's for the Electoral Commission. Of course, if parliament passed legislation that way, we would certainly do it.<sup>133</sup>

## Do not call register

- 4.125 A robot-call or robocall is an automated or pre-recorded voice message. During the 2019 Federal election the use of robocalls and text messages to target voters received media coverage. The use of this political campaigning technique by the UAP in particular gained coverage.<sup>134</sup>
- 4.126 The Australian Communications and Media Authority (ACMA), when asked about how many complaints it received about unsolicited text messages and robocalls from the UAP, stated it:

... received 1,338 complaints about texts and emails from the United Australia Party in January. We received just over 350 complaints in February, two complaints in March, one in April and then a further 147 complaints in May—

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<sup>132</sup> Dr Ross Cartmill, Private capacity, *Transcript*, 9 September 2020, p. 20.

<sup>133</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 3.

<sup>134</sup> See for example: ABC News, 'Federal Election 2019: An 'avalanche' of campaign texts and calls are coming, and you can't stop them', viewed on 23 October 2020, <<https://www.abc.net.au/news/2019-05-11/federal-election-2019-unsolicited-political-texts/11100398>>; Sydney Morning Herald, 'From robo calls to spam texts: annoying campaign tricks that are legal', viewed 23 October 2020, <<https://www.smh.com.au/politics/federal/from-robo-calls-to-spam-texts-annoying-campaign-tricks-that-are-legal-20190117-p50rvb.html>>; Sydney Morning Herald, 'There's no limit': Clive Palmer vows to bombard Australians with ads and unsolicited texts', viewed 23 October 2020, <<https://www.smh.com.au/politics/federal/there-s-no-limit-clive-palmer-vows-to-bombard-australians-with-ads-and-unsolicited-texts-20190114-p50r8u.html>>

for a total of just over 1,850 complaints concerning the United Australia Party.<sup>135</sup>

- 4.127 Mr Allan Hird, private capacity, raised concerns about the use of robocalls by organisations not running candidates that were trying to influence voters.<sup>136</sup> Ms Lascaris raised concerns about robocalls disseminating disinformation.<sup>137</sup>
- 4.128 Ms Woodward also raised her concerns about the use of robocalls by individuals not running candidates that also didn't contain the proper authorisation required of campaign material.<sup>138</sup>
- 4.129 Ms Dennes also commented on what she thought was the use of intrusive texts and calls.<sup>139</sup>
- 4.130 A submitter who asked for their name to be withheld believed that political calls were an invasion of privacy and suggested providing voters the option to opt-out:

The claim that it allows politicians to get their message to the electorate is all very well but it runs against privacy principles that are applied in most other contexts. It is another example of politicians seeing themselves as somehow special and different to everyone else (which only feeds the existing cynicism of politicians). It is in fact an intrusive invasion of privacy. Worse, no matter how outrageous or outlandish the claims made in the calls, there is no right of reply. That is profoundly undemocratic. If not outlawed, there should be severe penalties for misleading & deceptive calls and an ability to opt out of robot calling. By all means call to the end of the campaign period, but again the ability to do so should it be determinant of the availability or length of a pre-polling period.<sup>140</sup>

- 4.131 The ACMA noted that while they were responsible for regulating research and telemarketing calls, the current legislation did not cover political calls, emails or SMS:

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<sup>135</sup> Mr Jeremy Fenton, Executive Manager, Consumer, Consent and Numbers Branch, Australian Communications and Media Authority, *Transcript*, 16 September 2020, p. 30.

<sup>136</sup> Mr Allan Hird, Private capacity, *Submission 24*, p. 1.

<sup>137</sup> Ms Daphne Lascaris, Private capacity, *Submission 63*, p. 1.

<sup>138</sup> Ms Sally Woodward, Private capacity, *Submission 77*, p. 1.

<sup>139</sup> Ms Carrie Dennes, Private capacity, *Submission 142*, p. 1.

<sup>140</sup> Name withheld, *Submission 7*, p. 1.

In that area we are responsible for regulating telemarketing and research calls, and commercial electronic messages in Australia under a number of pieces of legislation and associated instruments, including the Do Not Call Register Act, the Spam Act and the Telecommunications (Telemarketing and Research Calls) Industry Standard. Research calls, including political surveys and opinion polling, are bound by rules under the telemarketing industry standard, including prohibited calling times; however, dedicated political calls, emails or SMS are not covered by any of the acts or instruments the ACMA enforces.<sup>141</sup>

4.132 In April 2020, the Senate Environment and Communications Legislation (SECL) Committee tabled its report on the Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019.<sup>142</sup>

4.133 The intention of the Bill was to address concerns raised by some members of the public over unsolicited communications from charities and political parties.<sup>143</sup> The SECL Committee's report on the Bill noted:

Unsolicited electronic communications from political entities have received mainstream attention in recent years. For example, the text messages sent en masse to voters during the same-sex marriage postal survey and the 2019 federal election both received considerable media coverage.<sup>144</sup>

4.134 The submissions received on the Bill 'noted that the bill's proposed amendments to legislation regulating political communication would improve transparency, especially in election campaigns'. The report added that submitters were generally of the view that:

... there already exists an 'abundance of political communication during election campaigns', and that voters who do not wish to receive communication from a certain political party or candidate should have the right to indicate so on a central register.<sup>145</sup>

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<sup>141</sup> Ms Creina Chapman, Deputy Chair, and Chief Executive Officer, Australian Communications and Media Authority, *Transcript*, 16 September 2020, p. 27.

<sup>142</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, p. 1.

<sup>143</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, p. 1.

<sup>144</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, p. 1.

<sup>145</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, p. 6.

4.135 The right to privacy and choice were key themes that were raised by submitters who were supportive of the Bill's intent.<sup>146</sup> However, evidence from submitters argued that the Bill would have a detrimental effect on the conduct and operations of charities to raise money.<sup>147</sup>

4.136 The SECL Committee recommended that the Bill not be passed stating:

While the committee is empathetic with the broad intentions of the bill, it considers that, if enacted, the bill would unduly affect the charity sector. The committee therefore recommends that the bill not be passed.<sup>148</sup>

## Authorisation rules

4.137 As part of its inquiry into the 2016 Federal election, the JSCEM provided an interim report on authorisation of voter communication which it tabled on 7 February 2017.<sup>149</sup>

4.138 The JSCEM's report made six recommendations that specifically addressed the matter of authorisation of electoral materials including that the *Commonwealth Electoral Act 1918* (the Electoral Act) be amended to:

- include a separate part/division addressing authorisations, and that the requirements should be clear, concise and easy to navigate;
- include an objects clause to complement and strengthen existing legislation; and
- ensure consistency between all other relevant legislation and in relation to authorisation of electoral advertising.<sup>150</sup>

4.139 In response to the JSCEM's recommendations, the Government passed the *Electoral and Other Legislation Amendment Act 2017* (the Authorisation Amendment Act) on 11 September 2017<sup>151</sup> which:

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<sup>146</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, pp. 6-7.

<sup>147</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, p. 7.

<sup>148</sup> Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*, April 2020, p. 12.

<sup>149</sup> Joint Standing Committee on Electoral Matters, *First interim report on the inquiry into the conduct of the 2016 Federal Election: Authorisation of voter communication*, December 2016.

<sup>150</sup> Joint Standing Committee on Electoral Matters, *First interim report on the inquiry into the conduct of the 2016 Federal Election: Authorisation of voter communication*, December 2016, pp. xiii-ix.

... amended and broadened the authorisation requirements in the Electoral Act to:

- apply to electoral communications at all times during the year, not just communications made during the election period leading up to polling day; and
- cover all forms of communications including printed material, social media, voice calls (including robocalls) and text messaging (for example, bulk text messaging).<sup>152</sup>

4.140 On 1 January 2019, the Government passed the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018*, which ‘made further amendments to the authorisation requirements to clarify what communications will be electoral matter.’<sup>153</sup>

## Authorisation of political campaign material

4.141 The issue of whether third parties, anonymous individuals or political organisations purporting to represent a political party on campaign material, particularly on social media, was briefly touched on by some submitters.

4.142 Mr Dean Haywood, private capacity, raised a number of concerns about whether some advertising during the 2019 Federal election was properly authorised including:

- Advertisements that did not contain the correct name of a political organisation;
- Advertisements that were not authorised;
- How to Vote cards not showing the name of the printer who printed the card.<sup>154</sup>

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<sup>151</sup> Parliament of Australia, Bills of previous Parliaments, Electoral and Other Legislation Amendment Bill 2017, viewed on 21 October 2020, <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr5858%22>>

<sup>152</sup> Australian Electoral Commission, Electoral Backgrounder: Electoral communications and authorisation requirements, viewed on 21 October 2020, <[https://www.aec.gov.au/about\\_aec/Publications/Backgrounders/authorisation.htm](https://www.aec.gov.au/about_aec/Publications/Backgrounders/authorisation.htm)>

<sup>153</sup> Australian Electoral Commission, Electoral Backgrounder: Electoral communications and authorisation requirements, viewed on 21 October 2020, <[https://www.aec.gov.au/about\\_aec/Publications/Backgrounders/authorisation.htm](https://www.aec.gov.au/about_aec/Publications/Backgrounders/authorisation.htm)>

<sup>154</sup> Mr Dean Haywood, Private capacity, *Submission 56*, p. 1.

- 4.143 Mr Haywood was particularly concerned that third parties could ‘put up unauthorized election advertising and as long as it has a link to a web page with suitable authorisation.’<sup>155</sup> Mr Haywood provided an example of where a political party’s advertisement contained a link to the party’s web page through a ‘Learn More’ hyperlink rather than an authorisation.<sup>156</sup> While superficially the advertisement appears to be on behalf of that political party, Mr Haywood submitted, ‘that there are some grounds for suspecting it was actually provided by a third party.’<sup>157</sup>
- 4.144 The Australian Greens commented that they were ‘made aware of a number of anonymous or inadequately authorised electoral matters published on social media’<sup>158</sup> adding their view that the ‘scope and enforceability of the authorisation rules remains problematic.’<sup>159</sup> They believed that there was a lack of transparency with the current authorisation requirements:
- The focus on direct authorisation of electoral material allows advertising to purport to be from disinterested / non-partisan sources, despite being sponsored by specific interest groups or political organisations. This lack of transparency undermines the purpose of authorisation.<sup>160</sup>
- 4.145 The Australian Greens were also of the view that there was a ‘problem with incorrectly authorised or unauthorised printed materials that are dispersed on election day’<sup>161</sup> which:
- ... leaves officials, Divisional offices and the AEC in a difficult position if such materials are being distributed as there is almost no time for the AEC to mount a formal response.<sup>162</sup>
- 4.146 The AEC highlighted that ‘the authorisation requirements applying to electoral communications were broadened to cover social media’ in 2018.<sup>163</sup>

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<sup>155</sup> Mr Dean Haywood, Private capacity, *Submission 56*, p. 5.

<sup>156</sup> Mr Dean Haywood, Private capacity, *Submission 56*, p. 3.

<sup>157</sup> Mr Dean Haywood, Private capacity, *Submission 56*, p. 3.

<sup>158</sup> Australian Greens, *Submission 112*, p. 7.

<sup>159</sup> Australian Greens, *Submission 112*, p. 7.

<sup>160</sup> Australian Greens, *Submission 112*, p. 8.

<sup>161</sup> Australian Greens, *Supplementary submission 112.2*, p. 1.

<sup>162</sup> Australian Greens, *Supplementary submission 112.2*, p. 1.

<sup>163</sup> Australian Electoral Commission, *Submission 120*, p. 33.

4.147 The AEC commented that while they ‘warned some candidates, parties and third parties about distributing how to vote cards that were not authorised in accordance with the Electoral Act’<sup>164</sup>, ‘the majority of people authorised material correctly.’<sup>165</sup>

4.148 A number of submitters made suggestions for recommendations. Mr Haywood recommended to:

- change the authorisation rules to make it clear that when the advertisement is authorised by a political party, the name of the political party must be one of the parties on the AEC Register of political parties; and
- examine the need for the name of the printer who printed the card to be provided on all How to Vote Cards.<sup>166</sup>

4.149 The Australian Greens commented that the current authorisation requirements should remain in place but recommended investigating:

- options for improving the transparency of authorisations for electoral material sponsored by third parties; and
- a system of pre registration for some printed materials to pre-empt any authorisation issues well in advance of polling day as is required by some State electoral commissions.<sup>167</sup>

4.150 Submitters that asked for their name to be withheld suggested that How to Vote cards be authorised by the candidate and the party and ‘returning officers should be instructed to check that all How to Vote material is legal with the authorisation clearly printed.’<sup>168</sup>

4.151 The Science Party recommended that authorisations require specific font sizes:

Require authorisations for written material to appear in a font size that can be read by a person with 20/20 vision without the use of any visual aid, and no smaller than 10% of the size of the largest text in the design.<sup>169</sup>

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<sup>164</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 9.

<sup>165</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 3.

<sup>166</sup> Mr Dean Haywood, Private capacity, *Submission 56*, pp. 2 and 8.

<sup>167</sup> Australian Greens, *Submission 112*, p. 8.

<sup>168</sup> Name withheld, *Submission 50*, p. 3; Name withheld, *Submission 34*, p. 3.

<sup>169</sup> Science Party, *Submission 101*, p. 1.



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## Committee comment

- 4.152 The JSCEM understands the concerns of some about truth in political election campaigns but believes any proposed solutions, rather than introduce transparency, would make the system more opaque.
- 4.153 The JSCEM believes the best arbiter of truth in election campaigns is an engaged electorate, rather than another well-funded quango.
- 4.154 One of the unintended, or intended, consequences of regulating campaign expenditure through spending caps is that it massively disadvantages parties that do not have historical links to campaign organisations.
- 4.155 Some campaign organisations have significant resources which can be engaged during times of elections. For example, in Queensland there are a significant number of trade unions. If each unions' campaign expenditure is capped at similar amounts to the candidate or political party, they can essentially pool their resources and significantly outspend their opponent. It is essentially structural financial gerrymandering that discriminates against one side of politics over another.
- 4.156 This is the danger when regulating campaign expenditure – that the organised side of politics, which does tend to be the Centre Left, will have a structural advantage over the Right side of politics.
- 4.157 The JSCEM also believes that spending caps are a handbrake on freedom of political expression and does not support the introduction of spending caps.



## 5. Media blackouts

- 5.1 Under the *Broadcasting Services Act 1992* (BSA), no political advertising is allowed on television or radio during the three days prior to an election. This time is described in the legislation as the relevant period, and is commonly referred to as the blackout period.
- 5.2 Since 1992, the rise of new technology has seen communication platforms evolve. This includes websites, social media, streaming services, robocalls and SMS/MMS notifications. Australians now have more options for consuming information and entertainment beyond heritage media – television, print and radio. However, the BSA only limits political advertising on television and radio during the blackout.
- 5.3 This issue has been previously explored by the Joint Standing Committee on Electoral Matters (JSCEM). In the *Report on the conduct of the 2016 federal election and matters related thereto* the Chair’s foreword stated:
- 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.<sup>1</sup>
- 5.4 In the *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election* and matters related thereto the JSCEM recommended that ‘the

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<sup>1</sup> Joint Standing Committee on Electoral Matters, *Report of the conduct of the 2016 federal election and matters related thereto*, Parliament of Australia, 2018, p. x.

Australian Government examine the future viability of the broadcast media blackout.’<sup>2</sup>

- 5.5 In this current inquiry, the JSCEM took evidence further exploring:
- the relevance of blackout rules in the age of digital publishing;
  - whether the rules should be scrapped, or extended;
  - the burden of regulation on traditional media; and
  - the intersection between a rise in pre-poll voting and the relevant period.

## The purpose of the blackout

- 5.6 The blackout period ‘applies to general elections and by-elections for the state, territory and federal Parliaments. It does not apply to local government elections.’<sup>3</sup>

- 5.7 The Australian Electoral Commission (AEC) explain:

Under Schedule 2 to the *Broadcasting Services Act 1992*, there is an election advertising blackout on all electronic media from the end of the Wednesday before polling day to the end of polling on the Saturday. This three-day blackout effectively provides a ‘cooling off’ period in the lead up to polling day, during which political parties, candidates and others are no longer able to purchase time on television and radio to broadcast political advertising.<sup>4</sup>

- 5.8 The ‘cooling off’ function, including comparisons with similar legislation in other jurisdictions, has been discussed in previous JSCEM reports.<sup>5</sup>
- 5.9 The blackout does not apply to online services such as social media platforms or the print media who can still publish election advertising during the blackout period.<sup>6</sup>

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<sup>2</sup> Joint Standing Committee on Electoral Matters, *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto*, Parliament of Australia, recommendation 13, p. xx.

<sup>3</sup> Australian Communications and Media Authority, *Election blackout periods*, viewed on 21 October 2020, <<https://www.acma.gov.au/election-blackout-periods>>

<sup>4</sup> Australian Electoral Commission, *Electoral Backgrounder: Electoral communications and authorisation requirements*, viewed on 21 October 2020, <[https://www.aec.gov.au/about\\_aec/Publications/Backgrounders/authorisation.htm](https://www.aec.gov.au/about_aec/Publications/Backgrounders/authorisation.htm)>

<sup>5</sup> For further discussion, see Joint Standing Committee on Electoral Matters, *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto*, Parliament of Australia, Chapter 4.

- 5.10 The Australian Communications and Media Authority (ACMA) administer the electronic media blackout provisions and other provisions relating to the broadcasting of ‘political matter’.<sup>7</sup>

## Redundant or need to strengthen

- 5.11 The JSCEM took evidence from heritage media organisations – including Commercial Radio Australia and Free TV Australia - government agencies Australian Competition and Consumer Commission (ACCC) and ACMA - and digital platforms including Facebook and Twitter.
- 5.12 There were two clear arguments. That the blackout laws are redundant and need to be done away with. Or, that the threat of disinformation campaigns is now so great blackout laws need to be extended to all types of media.
- 5.13 Commenting on the redundancy of the blackout, Ms Clare O’Neil, Director Corporate Affairs, Special Broadcast Service (SBS) said:
- It no longer seems to be a relevant regulatory intervention, given the proliferation of other forms of advertising in the days leading up to an election. It just doesn't seem to make sense anymore that television and radio are the only ones that are subject to a ban on election advertising, when you could go onto the Sydney Morning Herald website, for example, and get a full-page ad the day before the election.<sup>8</sup>
- 5.14 Ms O’Neil elaborated, saying the official position of the broadcaster was that the blackout lacked significance in the context of digital platforms:
- Our position is that the blackout applying to only some forms of media is no longer a relevant intervention, and the difficulty in regulating digital platforms in advertising would lend itself to a suggestion that the blackout itself is probably no longer a relevant public policy intervention across all media.<sup>9</sup>

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<sup>6</sup> Australian Communications and Media Authority, Election blackout periods, viewed on 21 October 2020, <<https://www.acma.gov.au/election-blackout-periods>>

<sup>7</sup> Australian Electoral Commission, Electoral Backgrounder: Electoral communications and authorisation requirements, viewed on 21 October 2020, <[https://www.aec.gov.au/about\\_aec/Publications/Backgrounders/authorisation.htm](https://www.aec.gov.au/about_aec/Publications/Backgrounders/authorisation.htm)>

<sup>8</sup> Ms Clare O’Neil, Director Corporate Affairs, Special Broadcast Service, *Transcript*, 7 September 2020, p. 2.

<sup>9</sup> Ms Clare O’Neil, Director Corporate Affairs, Special Broadcast Service, *Transcript*, 7 September 2020, p.5.

5.15 The Australian Broadcasting Corporation (ABC) shared this position, saying:

Our view is that we understand the point of the blackout but ... it doesn't reflect the reality of the digital world we all live in now. I would suggest that it should be applied universally.... If it can't be applied universally, I think the position ought to be that a partial blackout—that is, a blackout that currently just impacts radio and TV broadcasts—isn't effective.<sup>10</sup>

5.16 Ms Bridget Fair, CEO, Free TV Australia provided another example of the inconsistency between the blackout affecting television and radio but not other platforms, saying:

The rules were intended to prevent last-minute claims from candidates, with little time for correction or rebuttal. But, as is obvious to anyone accessing a social media account in the lead-up to an election, this rule does not apply to advertising online during the same period or, indeed, to other platforms such as newspapers or outdoor. In fact, political parties now regularly send out fundraising calls, which are expressly stated to cover the cost of digital advertising during the blackout period.<sup>11</sup>

5.17 However, several submitters called for the blackout laws to be extended to include digital platforms and streaming services.

5.18 News and Media Research Centre, University of Canberra submitted:

A social media blackout could mitigate the influence on voting of some of the risk of online 'scare campaigns' and unverified news in the final hours of the campaign, and go some way to protecting more vulnerable members of the community and introduce consistency across all news media platforms.<sup>12</sup>

5.19 Responsible Technology Australia put:

These restrictions are in place on all forms of heritage media (television, radio and print) to give a grace period for Australians to decide how they will cast their vote. These laws however, carry little effect as the digital platforms are exempt, meaning that political advertising continues unabated across all social media channels during elections. By having a cohesive approach to regulation, this will ensure that the original intentions of the advertising ban are upheld.<sup>13</sup>

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<sup>10</sup> Mr Craig McMurtrie, Editorial Director, Australian Broadcasting Corporation, *Transcript*, 16 September 2020, p. 22.

<sup>11</sup> Ms Bridget Fair, CEO, Free TV Australia, *Transcript*, 7 September 2020, p. 6.

<sup>12</sup> News and Media Research Centre, University of Canberra, *Submission 75*, p. 20.

<sup>13</sup> Responsible Technology Australia, *Submission 69*, p. 4.

5.20 Responsible Technology Australia advocated for an extension of the blackout to all platforms, but also noted the nature of advertising on digital platforms was inherently different to television and radio:

... the difference between the political advertising that happens on traditional mediums is significant and shouldn't be underappreciated in that social media targeting is extremely targeted—it's hyper targeted—which means that it's very difficult for any of us to see what someone else has been targeted with, whereas on traditional platforms, traditional advertising and channels there are systems of accountability as well as the public nature of those channels which make it more easy to assess what's being paid and pushed to people. So if you're going to apply those political advertising blackout laws across to social media you probably actually need to think about going further than that because the nature of that advertising is so much more specific and so much more secretive and opaque.<sup>14</sup>

5.21 Commenting on how high social media users are already more informed voters, The Voter Choice Project argued the original intent of the BSA has been lost - as late deciding voters still get their information from commercial broadcasters:

This raises a conundrum: the broadcast blackout, implemented before social media existed, apparently aims to stop overload and give voters a chance to 'cool off'. While many do appreciate the blackout, in the current context, all it does is deny information to those very late deciding voters who are likely to get most of their information from commercial broadcasters, and deny revenue to commercial broadcasters. High social media users are the most informed, so blanket advertising on social media in the last three days is a waste of money; where those ads need to be to inform those who want to be informed is on the one medium they are banned.<sup>15</sup>

5.22 The JSCEM also heard from digital platforms – and the measures they are taking to reduce misinformation and disinformation in both advertising and organic content. This is discussed further in Chapter 4.

5.23 Facebook told the JSCEM that although it is not subject to the blackout period legislation Facebook would support the extension of such rules to online advertising. Policy Manager, Mr Josh Machin said:

... in relation to the Australian regulation about a blackout on electoral advertising, we have taken the position in previous inquiries to indicate that, if Australian policymakers consider that the blackout on electoral advertising

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<sup>14</sup> Christopher Cooper, Responsible Technology Australia, *Transcript*, 14 September 2020, p. 52.

<sup>15</sup> The Voter Choice Project, *Submission 73*, p. 12.

remains the right policy approach, we would be very supportive of extending that to online advertising to ensure parity between those media advertising that are currently captured and those that currently aren't.<sup>16</sup>

- 5.24 Since its initial submission to the inquiry Twitter announced a global ban on political advertising. Coming into effect in late 2019, the ban is on paid advertising not organic content. The Twitter policy website states:

We define political content as content that references a candidate, political party, elected or appointed government official, election, referendum, ballot measure, legislation, regulation, directive, or judicial outcome.

Ads that contain references to political content, including appeals for votes, solicitations of financial support, and advocacy for or against any of the above-listed types of political content, are prohibited under this policy.

We also do not allow ads of any type by candidates, political parties, or elected or appointed government officials.<sup>17</sup>

- 5.25 The reality of trying to extend the blackout provisions to ever-evolving digital platforms was addressed by the News and Media Research Centre, University of Canberra.
- 5.26 Dr Mike Jensen submitted that a blackout on paid advertising may not be enough to create a 'cooling off' period:

5.27 One thing that concerns me is that even in the absence of advertising, malign actors (foreign or domestic) can promote deceptive and manipulative communications during the blackout period. This can be amplified with bots and human "troll" actors. Paid advertisements can be a way to reach a large audience quickly and respond to such manipulation. While politicians can go on television or the radio, many people are not politically interested and will never see that content. Meanwhile, content can be covertly distributed through non-political, "third spaces", and campaigns have little ability to respond and counter this activity.<sup>18</sup>

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<sup>16</sup> Mr Josh Machin, Policy Manager, Facebook, *Transcript*, 16 September 2020, p. 6.

<sup>17</sup> Twitter, 'Political content', viewed 23 October 2020, <<https://business.twitter.com/en/help/ads-policies/ads-content-policies/political-content.html>>

<sup>18</sup> Dr Mike Jensen, News and Media Research Centre, University of Canberra, *Supplementary submission 75.1*, p. 11.



## Regulatory burden

- 5.28 Free TV Australia and Commercial Radio Australia highlighted that the regulatory burden of the blackout laws made advertising on traditional platforms expensive, driving political advertising to other mediums.
- 5.29 Commercial Radio Australia has always held the position that the blackout laws should be removed – as they disadvantage commercial broadcasters.<sup>19</sup> Head of Legal and Regulatory Affairs, Mrs Sarah Kruger told the JSCEM:

The current blackout rules were enacted in 1992, several years before internet access became commonplace. There is no equivalent to the blackout rules in place for media other than commercial television and radio. Political parties are free to advertise in print and online at any time they like. This places commercial broadcasters at a significant disadvantage as advertisers place their content on alternative platforms, particularly online. There is no logical reason for the blackout still to be in place. The discrepancy in the rules applicable to old and new media, or existing and new media, make the blackout rule ineffective. Listeners are inundated with political advertising from other sources, particularly social media throughout the blackout period, and voters are surrounded by readily accessible political advertising on all other platforms.<sup>20</sup>

- 5.30 Television broadcasters said they face the same disadvantage as commercial radio – as neither can benefit from advertising revenue during the blackout. Ms Bridget Fair, CEO of Free TV Australia explained:

... there are rules that prevent people from spending money on television and, therefore, encourage people, to the extent that they are spending money, to spend it on other platforms.<sup>21</sup>

- 5.31 In 2019, the ACCC completed the Digital Platforms Inquiry. The Government response to this has sought to encourage the harmonisation of regulation between different platforms. Where electoral and political advertising sits in this emerging framework is unclear.
- 5.32 When discussing if television or radio had more influence or power compared to digital platforms the ACMA submitted that they had 'not

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<sup>19</sup> Mrs Sarah Kruger, Head, Legal and Regulatory Affairs, Commercial Radio Australia, *Transcript*, 7 September 2020, p. 17.

<sup>20</sup> Mrs Sarah Kruger, Head, Legal and Regulatory Affairs, Commercial Radio Australia, *Transcript*, 7 September 2020, p. 13.

<sup>21</sup> Ms Bridget Fair, CEO, Free TV Australia, *Transcript*, 7 September 2020, p. 9.

undertaken any work, specifically, to examine the relative degree of influence of content platforms in terms of the election blackout laws.’<sup>22</sup>

- 5.33 ACMA Deputy Chair and CEO Ms Creina Chapman told the JSCem ‘It’s certainly safe to say that, under the current framework of only considering some parts of the media, it is not necessarily fit for purpose going forward’.<sup>23</sup>
- 5.34 When discussing the competition comparison between commercial radio and television broadcasters, and digital platforms in relation to the blackout and authorisation of electoral and political advertising, ACCC Chair Mr Rod Sims said:

We certainly felt that there were, in some cases, quite prescriptive regulations on media businesses and, in essence, no real regulation of platforms. In one sense, that’s not surprising. The platforms are very new businesses, and, I guess, regulation probably hasn’t kept up with them. Of course, the platforms don’t want any regulation. But we did have numerous examples given to us by TV companies and radio companies that people would approach them with ads, and they had to go through a whole lot of procedures and potentially disclaimers on ads, even if they weren’t political ads, that the platforms didn’t have to do. The media businesses did give us a number of examples. This is some time ago, but there was an impressive number of examples where they had ads that were going to be shown on TV or radio but that, in the end, went on the platforms because it was much easier – the platforms didn’t have to go through the regulatory hoops that they did. The government certainly picked up our recommendation to equalise that regulation. Whether that means less regulation on TV and radio or, on the other hand, more regulation on platforms, I don’t know. But it does seem anomalous that a TV company can’t show ads on the same basis that, say, Google could take for YouTube, for example. We agree very much that there’s a problem, and the government has a committee working to solve that problem by trying to harmonise the regulations. It’s not easy. It won’t happen quickly. But we certainly think there is a serious problem there, a serious imbalance.<sup>24</sup>

- 5.35 Mr Sims went on to make the connection between the current blackout laws disadvantaging commercial television and radio broadcasters – driving advertisers to digital platforms, where consumers are at greater risk of disinformation and misinformation:

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<sup>22</sup> Australian Communications and Media Authority, *Submission 170*, p. 1.

<sup>23</sup> Ms Creina Chapman, Deputy Chair and CEO, Australian Communications and Media Authority, *Transcript*, 16 September 2020, p. 29.

<sup>24</sup> Mr Rod Sims, Chair, Australian Competition and Consumer Commission, *Transcript*, 7 September 2020, pp. 29-30.

In essence, digital platforms don't face any regulation, whereas media businesses do. The best example of that is TV and radio going into blackout prior to any election. The digital platforms can still take ads, including on their YouTube channels and things of that ilk, and that's quite a profitable time for them. The government's accepted our recommendation to try and harmonise regulations between digital platforms and media companies. The second point is that we found that consumers who are getting their news through digital platforms are at greater risk of exposure to unreliable news, be it deliberately unreliable, which we call disinformation, or not deliberately so but still misleading, and we call that misinformation. There's also the fact that the algorithms that are used by the platforms tend towards feeding you what you want to know. They can become echo chambers rather than giving you a diversity of opinions.<sup>25</sup>

- 5.36 The threat of misinformation and disinformation, and measures to mitigate this risk is discussed further in Chapter 6.

## Blackout period and pre-poll

- 5.37 As discussed in Chapter 3, more Australians are choosing to vote early. In the 2019 election more than 40 per cent of votes cast were pre-poll.
- 5.38 With a nearly three week polling window, the JSCEM received evidence about the effectiveness of a 'cooling off' period when so many have already voted.
- 5.39 Professor George Williams AO put:

Most of the 2019 election campaign overlapped with pre-poll voting. This is unsatisfactory, and the campaign may need to be lengthened to ensure that candidates and parties can explain their policies and make announcements before pre-polling begins. The blackout on election advertising on television and radio immediately before election day should also be re-examined. It makes little sense to impose the blackout after millions of voters have already made their choice.<sup>26</sup>

## Committee comment

- 5.40 It is clear that Australians are not reliant on television and radio for electoral and political information in the same way they were in 1992.

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<sup>25</sup> Mr Rod Sims, Chair, Australian Competition and Consumer Commission, *Transcript*, 7 September 2020, p. 28.

<sup>26</sup> Professor George Williams AO, Private capacity, *Submission 3*, p. 2.

- 5.41 The combination of the rise of smartphone technology, broadband internet and Wi-Fi means Australians are increasingly connected and online. The 24-hour news cycle means audiences expect information around the clock. No longer passive news consumers, audiences can also seek out information through search engines and engage with others in political ideas in online forums.
- 5.42 The blackout provisions in the BSA are clearly no longer fit for purpose. The JSCEM retains its position as per the *Inquiry into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto* where it recommended an examination of the ‘future viability of the broadcast media blackout’.
- 5.43 However, the JSCEM notes the enormous body of work recently undertaken by the government in relation to regulation harmonisation across platforms via the 2019 ACCC Digital Platforms Inquiry and its subsequent government response.
- 5.44 The JSCEM recognises that electoral and political advertising is just one element to be considered in this complex area.
- 5.45 Misinformation and disinformation remain a serious threat that can undermine electoral integrity. The JSCEM notes the intersection between Australian’s growing reliance on digital platforms, the quality of information found on such services and how interference can manipulate voters.
- 5.46 The question is not whether there should more regulation, but rather how regulation can work when digital platforms continue to rapidly evolve.
- 5.47 The JSCEM notes that the ACMA and the ACCC are currently working in this space with broadcasters and digital platforms and plan to have new code of conduct in 2021. However, this code of conduct is unlikely to have the same impact as legislation and the BSA will remain in its current form. This will continue to put Australian companies – commercial television and radio operators – at a disadvantage.
- 5.48 Legislative change will be required to remove the burden on commercial television and radio broadcasters. But any new form of regulation – that includes all broadcasters and platforms – needs to take into account how technology continues to evolve and how audiences consume and engage with information. The JSCEM believes better communication through the key agencies responsible for this space could be an effective way of ensuring

political and electoral advertising is properly addressed in the emerging regulatory framework.

- 5.49 The JSCEM also notes the growing trend in early voting, and with COVID-19 social distancing restrictions in place for the foreseeable future pre-poll may even be encouraged in future elections as a public health measure. In that case, preventing the release of new information may have a minimal impact as most people may have already voted. However, such conditions may not be in place forever, and any legislative change needs to allow for flexibility whilst meeting the original intent of a 'cooling off' period before voting.

### **Recommendation 13**

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- 5.50 **The Committee recommends that the media blackout, known as the relevant period in the *Broadcasting Services Act 1992* be reviewed with a view that the restrictions on commercial radio and television broadcasters be removed.**

### **Recommendation 14**

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- 5.51 **The Committee recommends that the current work of the Australian Competition and Consumer Commission and the Australian Communications and Media Authority to adapt regulation so it can keep pace with technological change, clearly addresses electoral and political advertising. It also recommends these agencies form a working group with the Australian Electoral Commission and other key stakeholders to ensure this important area is addressed as a priority.**



## 6. Third parties and foreign actors

6.1 Over the past few years there has been a significant rise in the proliferation of disinformation and misinformation, particularly on social media and search platforms. The Oxford Internet Institute, Stanford University and Massachusetts Institute of Technology (MIT) have all undertaken studies quantifying the significant rise:

- the Oxford Internet Institute Evidence highlighted that organised social media manipulation campaigns had taken place in 70 countries, up from 48 countries in 2018 and 28 countries in 2017;
- Stanford University identified over 560 deceptive ‘news’ websites identified as sources of false stories receiving over 60 million monthly engagements on Facebook; and
- MIT concluded that false news stories are 70 percent more likely to be shared on Twitter than true stories, and that they reach 1,500 people in a sixth of the time.<sup>1</sup>

6.2 The Department of Home Affairs (Home Affairs), in its submission to the Senate Select Committee on Foreign Interference through Social Media, noted that ‘manipulation by foreign states of social media during Australia’s

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<sup>1</sup>University of Oxford, The Computational Propaganda Project, ‘The Global Disinformation Order: 2019 Global Inventory of Organised Social Media Manipulation’, viewed on 23 September 2020, <<https://comprop.oii.ox.ac.uk/research/cybertroops2019/>>; National Bureau of Economic Management, Stanford Institute for Economic Policy Research, *Trends in the diffusion of misinformation on social media*, January 2019, p. 4; Massachusetts Institute of Technology, ‘Study: On Twitter, false news travels faster than true stories’, viewed on 23 September 2020, <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>>

electoral processes is a realistic prospect for federal, state and territory elections.’<sup>2</sup>

- 6.3 The former Director General of the Australian Security Intelligence Organisation (ASIO), Mr Duncan Lewis, warned that foreign interference was ‘by far and away the most serious issue going forward’.<sup>3</sup>
- 6.4 Electoral and political interference of elections such as the cyber-manipulation of elections, interference of social media bots, foreign interference in electoral events, and the spread of misinformation and disinformation also continued to be an issue of concern raised by a number of submitters.
- 6.5 During the course of the inquiry the Joint Standing Committee on Electoral Matters (JSCEM) considered whether it had any impact on the 2019 Federal election.

## **Electoral interference vs political influence**

- 6.6 Electoral interference and political interference are two distinct concepts. Electoral/foreign interference involves interfering in the process or delivery of an election while political/foreign influence is focused on advancing specific issues.
- 6.7 The Department of Foreign Affairs and Trade (DFAT), in its submission to the Senate Select Committee on Foreign Interference through Social Media, highlighted the difference between foreign interference and foreign influence stating:

The Australian Government has defined foreign interference as activities carried out by, or on behalf of, a foreign actor, which are coercive, covert, deceptive or corrupting, and are contrary to Australia’s sovereignty and national interests. Foreign interference is distinct from foreign influence, which is a normal aspect of open and transparent international relations and diplomacy.<sup>4</sup>

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<sup>2</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Home Affairs, *Submission 16*, p. 5.

<sup>3</sup> ABC News, ‘Foreign interference more of ‘an existential threat’ to Australia than terrorism: ASIO chief’, viewed on 12 October 2020, <<https://www.abc.net.au/news/2019-09-04/asio-chief-foreign-interference-more-of-a-threat-than-terrorism/11479796>>

<sup>4</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Foreign Affairs and Trade, *Submission 10*, p. 3.



6.8 The Attorney General's Department (AGD) also provided an description on the distinction between foreign interference and foreign influence:

All governments, including in Australia, try to influence deliberations on issues of importance to them. These activities, when conducted in an open and transparent manner, are a normal aspect of international relations and diplomacy and can contribute positively to public debate. In contrast, foreign interference refers to activities that are covert, coercive, deceptive or corrupting, and are contrary to Australia's sovereignty, values and national interests. Foreign interference is covered by offences in the Commonwealth Criminal Code and dealt with by ASIO and the AFP [Australian Federal Police], and is not the focus of the scheme.<sup>5</sup>

6.9 The Department of Home Affairs concurred with the view of the AGD and DFAT about the difference between foreign interference and foreign influence:

- *Foreign Interference*: Clandestine activities carried out by, or on behalf of, a foreign actor which seek to interfere in decision-making, political discourse or other societal norms. Foreign interference is coercive, covert, deceptive or corrupting and is contrary to Australia's sovereignty, values and national interests.
- *Foreign Influence*: Overt activities to advocate for particular outcomes or shape consideration of issues important to foreign actors. When conducted in an open and transparent manner, these activities can contribute positively to public debate.<sup>6</sup>

6.10 Some submitters appeared to use the terms foreign interference and influence interchangeably, but were of the view that influence campaigns had been undertaken by state and domestic actors in the 2019 Federal election.

6.11 The Australian Strategic Policy Institute (ASPI) highlighted news reports that foreign actors targeted Australians during the 2019 Federal election:

During the 2019 Australian federal election financially-motivated actors from Kosovo, Albania and the Republic of North Macedonia used nationalistic and Islamophobic content to target and manipulate Australian Facebook users. A combined audience of 130,000 Facebook users across four Facebook pages were steered off the platform towards content farms that generated

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<sup>5</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney General's Department, *Submission 13*, p. 8.

<sup>6</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Home Affairs, *Submission 16*, p. 4.

advertising revenue from each page view. The Guardian uncovered a similar operation run from Israel that used similarly divisive Islamophobic content, again to steer Facebook audiences to revenue-generating content farms. These activities have the potential to skew Australia's political discourse, influence voting behaviour and affect electoral outcomes.<sup>7</sup>

6.12 ASPI stated that it was a national security problem where foreign actors operate over multiple platforms:

Foreign interference is a national security problem where every possible weak point in society, both online and offline, may be attacked to weaken society and liberal democracy. Although social media is an attractive and cost-effective means of achieving influence, foreign actors operate across the entire information environment and will conduct co-ordinated influence operations across many platforms simultaneously.<sup>8</sup>

6.13 The News and Media Research Centre at the University of Canberra (NMRC) posited that foreign influence was a particular threat at the moment due to:

- attackers being able to carry out foreign influence operations from outside the country and hide their origins and activity;
- digital networks facilitating cost-effective access to communities, reducing the resources and time required to execute a sustained influence operation;
- digital networks enable foreign influence operations to scale-up much quicker than in an analogue age of communication; and
- the technological threshold for influence campaigns are quite low only needing a computer screen and an internet connection.<sup>9</sup>

6.14 The NMRC highlighted that influence campaigns were much broader than just online communications:

Social media and other online communications are normally only one part of an influence campaign. Influence campaigns tend to be sustained, with an eye to impacting the course of a country's politics beyond the next election cycle. Information operations supports other activities ... which often include

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<sup>7</sup> Senate Select Committee on Foreign Interference through Social Media, Dr Jake Wallis and Mr Thomas Uren, Australian Strategic Policy Institute, *Submission 2*, p. 1.

<sup>8</sup> Senate Select Committee on Foreign Interference through Social Media, Dr Jake Wallis and Mr Thomas Uren, Australian Strategic Policy Institute, *Submission 2*, p. 6.

<sup>9</sup> News and Media Research Centre at the University of Canberra, *Submission 75*, pp. 12-13.

financing (which may be covert and illicit) and direct contacts with candidates and other party officials.<sup>10</sup>

- 6.15 The NMRC put forward the view that domestic actors were a greater threat than foreign actors:

... domestic actors are often more adept at manipulating Australians than foreign governments as our marketing and campaign firms routinely study how communication campaigns can get different segments of the Australian population to act in a predetermined way or to adopt an attitude. Domestic actors have greater capacity to manipulate an Australian audience, all things equal, than a foreign entity.<sup>11</sup>

- 6.16 The NMRC suggested it was 'important that political parties, even at the local levels, receive training on how to handle approaches by persons acting on behalf of a foreign principal.'<sup>12</sup>

- 6.17 Responsible Technology Australia believed that there was a very high likelihood that foreign interference was happening now and will continue to in the future adding that there was a lack of oversight on social media platforms:

The problem here is that you have platforms which provide access to the hearts and minds of Australians, with zero oversight in terms of what's being pushed, how it's being messaged, how accurate the information is and how harmful it is to the integrity of our elections and the integrity of our democracy. There's a complete lack of oversight, which means that, currently, while we are fairly certain that there is this kind of disinformation campaign happening—there has been some evidence—the problem is very likely much larger than we're what aware of.<sup>13</sup>

- 6.18 DFAT noted the Government had established a pilot strategy to counter foreign interference, the Counter Foreign Interference (CFI) Diplomatic Strategy pilot program, by:

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<sup>10</sup> Senate Select Committee on Foreign Interference through Social Media, News and Media Research Centre at the University of Canberra, *Submission 8*, p. 3.

<sup>11</sup> News and Media Research Centre at the University of Canberra, *Supplementary Submission 75.1*, p. 10.

<sup>12</sup> Senate Select Committee on Foreign Interference through Social Media, News and Media Research Centre at the University of Canberra, *Submission 8*, p. 3.

<sup>13</sup> Mr Christopher Cooper, Executive Director, Responsible Technology Australia, *Transcript*, 14 September 2020, p. 51.

- delivering clear messaging to ensure foreign actors understand what kinds of actions Australia finds unacceptable and that foreign interference is viewed as a core national security concern;
- showing foreign interference actors that their actions can and will be revealed and will generate a meaningful response;
- convincing foreign interference actors that their actions will have costs – and that these costs outweigh the benefits – including through international reputational damage and by underscoring both the strength of Australia’s systems and the sophistication of our detection and enforcement capabilities;
- demonstrating that the opportunities for foreign interference are narrowing in Australia and the region, including by increasing regional awareness, reducing vulnerabilities, strengthening institutions; and
- mobilising international collaboration to counter foreign interference and establish globally accepted norms of behaviour.<sup>14</sup>

## Misinformation and disinformation

6.19 As part of its submission to the Senate Select Committee on Foreign Interference through Social Media, the Department of Home Affairs also provided definitions for disinformation and misinformation:

- *Disinformation*: False information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes. Disinformation can be intended for financial gain (such as clickbait stories), but have an incidental effect on public opinion or debate.
- *Misinformation*: False information that is spread due to ignorance, by error or mistake with good intentions/without the intent to deceive.<sup>15</sup>

6.20 An annual report on social media manipulation campaigns by the University of Oxford, the *2019 Global Inventory of Organised Social Media Manipulation* report, found:

- that prominent platforms for social media manipulation in Australia include Twitter, Facebook;
- evidence of political parties or politicians running for office who have used the tools and techniques of computational propaganda during elections;

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<sup>14</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Foreign Affairs and Trade, *Submission 10*, p. 3.

<sup>15</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Home Affairs, *Submission 16*, p. 4.

- fake accounts used by cyber troops to spread computational propaganda in Australia were either bots<sup>16</sup> or human-run accounts<sup>17</sup>; and
- cyber troops either spread pro-government or pro-party propaganda or use computational propaganda to attack political opposition.<sup>18</sup>

6.21 Many individuals, groups and organisations that provided submissions and appeared at public hearings to this inquiry raised concerns about the prevalence of disinformation, misinformation and ‘fake news’ during the 2019 Federal election.

6.22 Ms Margaret Saita, who provided a submission in a private capacity, believed that ‘fake news’ was ‘one of the biggest threats to both global and domestic democracy and international relations’.<sup>19</sup> She added that the social media platforms use of algorithms was particularly problematic:

The dividing nature of social media platforms due to their user-targeted algorithms is one that:

- Makes it difficult (sometimes near impossible) for potential voters to receive online news from another political perspective; and
- Creates an environment of political encapsulation for voters, facilitating communication with those of their opinion, nursing potential radicalisation and inciting intolerance.<sup>20</sup>

6.23 Ms Lorraine Davies, private capacity, commented that misinformation about the policies of opposing candidates was spread and amplified by the mainstream media and social media platforms.<sup>21</sup>

6.24 The Voter Choice Project (VCP) identified a few areas which they believed involved misinformation such as Vote of No Confidence campaigns, how votes are counted, how to complete a ballot paper, and preferences.<sup>22</sup>

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<sup>16</sup> Bots are highly automated accounts designed to mimic human behaviour online. They are often used to amplify narratives or drown out political dissent.

<sup>17</sup> Human run accounts engage in conversations by posting comments or tweets, or by private messaging individuals via social media platforms.

<sup>18</sup> Samantha Bradshaw and Philip N. Howard, University of Oxford, *The Global Disinformation Order 2019 Global Inventory of Organised Social Media Manipulation*, 2019, pp. 6-13.

<sup>19</sup> Ms Margaret Saita, Private capacity, *Submission 39*, p. 1.

<sup>20</sup> Ms Margaret Saita, Private capacity, *Submission 39*, p. 1.

<sup>21</sup> Ms Lorraine Davies, Private capacity, *Submission 14*, p. 1

<sup>22</sup> Voter Choice Project, *Submission 73*, pp. 10-12.

- 6.25 The VCP recommended that ‘legislation and guidelines around misinformation of voters’ be reviewed and revised ‘to prohibit deliberately providing any misinformation to voters.’<sup>23</sup>
- 6.26 Marque Lawyers also identified a number of areas where they commented could have either been constituting targeted advocacy or misleading to electors including, ‘the ‘mediscare’ campaign, rent increase notices, fake eviction notices and ... the corflutes in Chisholm and Kooyong.’<sup>24</sup>
- 6.27 Marque Lawyers held the view that there were significant limitations in the current electoral laws ‘in stopping the spread of misinformation or misleading material during elections.’<sup>25</sup> They added:
- Section 329 is the only provision of the Act which protects electors from being targeted with misinformation. Unfortunately, s 329’s predecessor was interpreted by the High Court in its narrowest sense. That interpretation remains today, and its practical effect has been to tie the hands of the Australian Electoral Commission (AEC) from taking action (whether threatened or injunctive) in relation to problematic conduct occurring during a campaign.<sup>26</sup>
- 6.28 Marque Lawyers asserted that, due to the High Court’s interpretation, ‘the AEC has confined its remit to taking action to breaches of the authorisation requirement under part 12A of the Act.’<sup>27</sup> They added that this increased the likelihood of the AEC being ‘rendered powerless’ by an authorised, overt lie told during an election campaign.<sup>28</sup>
- 6.29 Activities under the CFI Diplomatic Strategy pilot program also include strategies to strengthen awareness of disinformation and misinformation in Southeast Asia and the Southwest Pacific. In particular, DFAT delivered a workshop on Building Strategic Communications Capability to Counter Disinformation in Singapore which ‘raised awareness and built the

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<sup>23</sup> Voter Choice Project, *Submission 73*, p. 13.

<sup>24</sup> Marque Lawyers, *Submission 74*, p. 2.

<sup>25</sup> Marque Lawyers, *Submission 74*, p. 2.

<sup>26</sup> Marque Lawyers, *Submission 74*, p. 2.

<sup>27</sup> Marque Lawyers, *Submission 74*, p. 2.

<sup>28</sup> Marque Lawyers, *Submission 74*, p. 2.

capability of mid-level officials from the governments of ASEAN nations to better understand and counter hostile disinformation.’<sup>29</sup>

## Protecting electoral integrity in the face of declining trust in public institutions

6.30 Over the past decade there has been a significant decline in the public’s trust in public institutions. Numerous surveys across the globe have identified that support and confidence of our public institutions has been in decline as far back as the 1980s:

... the 1981 World Values Survey, 39 percent of European respondents expressed ‘a lot’ or ‘quite a lot’ of support and confidence for public institutions. By 1990 that had fallen to 25 percent. In 1981, 50 percent of Americans expressed high support for public institutions. This fell to 32 percent by 1990, and 21 percent by 1999. In 1981, 37 percent of Canadians expressed high support for public institutions, a figure which fell to 29 percent by 1990, and to 22 percent by 1998.<sup>30</sup>

6.31 More recently, research undertaken by the Social Research Institute at Ipsos in 2018 on the relationship between trust in the political system and attitudes towards democracy in Australia found:

... compelling evidence of an increasing trust divide between government and citizens. This is reflected in the decline of democratic satisfaction and receding trust in politicians, political parties and other key institutions (especially media). We also found a lack of public confidence in the capacity of government to address public policy concerns.<sup>31</sup>

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<sup>29</sup> Senate Select Committee on Foreign Interference through Social Media, Department of Foreign Affairs and Trade, *Submission 10*, p. 4.

<sup>30</sup> Mr David Zussman, *Confidence in Public Institutions: Restoring Pride to Politics*, paper presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 9 February 2001, viewed on 12 October 2020 <<https://www.aph.gov.au/binaries/senate/pubs/pops/pop38/zussman.pdf>>

<sup>31</sup> The Conversation, ‘Australians’ trust in politicians and democracy hits an all-time low: new research’, viewed 12 October 2020, <<https://theconversation.com/australians-trust-in-politicians-and-democracy-hits-an-all-time-low-new-research-108161>>

- 6.32 The World Values Survey (WVS), an international research program conducted for over 37 years, noted that while Australians trusted some institutions and our election results; trust in political parties, the media, churches, unions, banks and big business was generally low.<sup>32</sup>
- 6.33 RAND Australia, a non-profit global policy think tank, characterised the public declining trust in institutions as ‘Truth Decay’ which it defined as:
- ... a set of four interrelated trends: an increasing disagreement about facts and analytical interpretations of facts and data; a blurring of the line between opinion and fact; an increase in the relative volume, and resulting influence, of opinion and personal experience over fact; and lowered trust in formerly respected sources of factual information.<sup>33</sup>
- 6.34 Since 2018 the Government and the AEC have implemented a number of measures designed to protect Australia’s elections from foreign influence including:
- setting up an Electoral Integrity Assurance Taskforce (EIAT) to provide the AEC with technical advice and expertise in relation to cyber interference with electoral processes;
  - implementing a Foreign Influence Transparency Scheme which requires individuals to register under the scheme where they are undertaking a registrable activity on behalf of a foreign principal for political or government influence purposes;
  - running the Stop and Consider social media campaign to raise public awareness of potential disinformation during the 2019 federal election; and
  - working closely with the Australian Signals Directorate (ASD) and the Australian Cyber Security Centre (ACSC) to ensure the cybersecurity of Australia’s electoral systems including implementing the ASD’s ‘Essential 8’ strategies.<sup>34</sup>

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<sup>32</sup> Australian National University, ‘Don’t blame voters for a lack of trust in institutions’, viewed on 13 October 2020, <<https://www.anu.edu.au/news/all-news/dont-blame-voters-for-a-lack-of-trust-in-institutions>>

<sup>33</sup> Senate Select Committee on Foreign Interference through Social Media, RAND Australia, *Submission 1*, p. 2.

<sup>34</sup> Australian Electoral Commission, *Submission 120*, p. 31; Australian Electoral Commission, ‘Electoral Integrity Assurance Taskforce’, viewed on 13 October 2020, <<https://www.aec.gov.au/elections/electoral-advertising/electoral-integrity.htm>>



## Electoral Integrity Assurance Taskforce

6.35 The EIAT was initially established for the Braddon, Fremantle, Longman, Mayo and Perth by-elections held on 28 July 2018. The EIAT, which included other key agencies across government, was established to ‘safeguard the five by-elections from cyber-attack or interference.’<sup>35</sup>

6.36 Jointly led by the AEC and the Department of Finance, the EIAT is comprised of the following agencies:

- Department of the Prime Minister and Cabinet;
- Department of Communications and the Arts;
- Attorney-General’s Department;
- Department of Home Affairs;
- Australian Federal Police; and
- Australian Signals Directorate.<sup>36</sup>

6.37 The 2019 Federal election was the ‘first full general election where a formalised [EIAT] was operational to address risks to the integrity of the electoral system.’<sup>37</sup>

6.38 The AEC noted that the agencies:

... represented on the Taskforce provided guidance and expertise on a broad range of issues within the Australian electoral environment, including on electoral policy and matters of electoral integrity.<sup>38</sup>

6.39 The AEC pointed out that the EIAT was not involved, or had any role, in:

- the delivery of election activities, such as vote counting or scrutinising, and was not in a position to affect election results; or
- determining whether or not political messages published or broadcast by political parties and candidates in relation to the federal election were true.<sup>39</sup>

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<sup>35</sup> Australian Electoral Commission, *Annual Report 2018-19*, p. 46.

<sup>36</sup> Australian Electoral Commission, *Submission 120*, p. 32.

<sup>37</sup> Senate Select Committee on Foreign Interference through Social Media, Australian Electoral Commission, *Submission 14*, p. 2.

<sup>38</sup> Australian Electoral Commission, *Submission 120*, p. 32.

<sup>39</sup> Australian Electoral Commission, *Submission 120*, p. 32.

6.40 In its 2018-19 Annual Report, the AEC stated that ‘no serious cyber threats were identified’ during any of the by-elections.<sup>40</sup> For the 2019 Federal election, the AEC stated:

The advice from the task force agencies is that they did not identify any foreign interference in the 2019 election, nor did the agencies identify other interference that compromised the delivery of the 2019 federal election and that would undermine the confidence of the Australian people in a result.<sup>41</sup>

6.41 The EIAT also engaged with major online and social media organisations such as Twitter and Facebook.

6.42 Twitter and Facebook advised that they both engaged with the EIAT in the lead up to the 2019 Federal election.<sup>42</sup> Facebook added that ‘agencies on the taskforce (and other government agencies) were able to escalate any concerns with us throughout the election campaign.’<sup>43</sup>

6.43 Facebook elaborated that it had established a formalised and much closer relationship with the AEC:

An even closer working relationship was put in place with the AEC: we agreed in advance a protocol with the AEC that allowed a rapid escalation channel for any concerns throughout the campaign. We worked closely to quickly respond to all issues raised with us by Australian Government agencies.<sup>44</sup>

6.44 In its submission the AEC stated that it had seen a ‘marked improvement in engagement undertaken with major online and social media organisations.’<sup>45</sup>

6.45 In relation to the 2019 Federal election, the AEC advised that it engaged with Facebook, Twitter, Google and WeChat:

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<sup>40</sup> Australian Electoral Commission, *Annual Report 2018-19*, p. 46.

<sup>41</sup> Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 3.

<sup>42</sup> Twitter, *Submission 114*, p. 1; Facebook, *Submission 140*, p. 8.

<sup>43</sup> Facebook, *Submission 140*, p. 8.

<sup>44</sup> Senate Select Committee on Foreign Interference through Social Media, Facebook, *Submission 27*, p. 19.

<sup>45</sup> Australian Electoral Commission, *Submission 120*, p. 32.

... in order to better understand their platforms, any relevant initiatives (e.g. political advertising transparency libraries), their policies and establish procedures to address electoral communications that breached electoral laws (e.g. was not properly authorised).<sup>46</sup>

6.46 The AEC added that it had requested some social media companies remove content:

... there were only eleven items of social media communication that resulted in requests by the AEC to the relevant social media company to remove the illegal communication (all of our requests were promptly responded to). In the vast majority of cases content was either rectified to comply with the Electoral Act or removed by the responsible person or entity.<sup>47</sup>

6.47 The AEC is also working with other electoral administration bodies in Australia to develop a protocol on interacting with social media companies, adding:

We haven't yet spoken to the social media companies about this, but we feel there needs to be more certainty about not only federal elections, but also state elections. What can we expect? What service standards should there be? When we are asking for information to be removed, how quickly should it be removed, and what sort of areas can we cooperate on? It is very early days but the Electoral Council of Australia and New Zealand is very keen on this, to produce a standardised response.<sup>48</sup>

6.48 At the date the report was tabled, the EIAT was no longer in operation. However, the AEC advised that members of the EIAT 'continue to work together on electoral integrity matters as required' and options to extend support to State/Territory electoral commissions were under discussion.<sup>49</sup>

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<sup>46</sup> Senate Select Committee on Foreign Interference through Social Media, Australian Electoral Commission, *Submission 14*, p. 3.

<sup>47</sup> Senate Select Committee on Foreign Interference through Social Media, Australian Electoral Commission, *Submission 14*, p. 3.

<sup>48</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 3.

<sup>49</sup> Australian Electoral Commission, *Submission 120*, p. 32.

## Foreign Influence Transparency Scheme

6.49 Commencing on 10 December 2018, the Foreign Influence Transparency Scheme's (the Scheme) purpose is to 'provide the public and government decision-makers with visibility of the nature, level and extent of foreign influence on Australia's government and political processes.'<sup>50</sup>

6.50 Under the Scheme, persons '(whether individuals or entities) undertaking certain activities on behalf of foreign principals' must register those activities.<sup>51</sup>

6.51 Under the scheme:

... a registrable activity in Australia for the purpose of political or governmental influence on behalf of a foreign principal. A registrable activity can be:

- General political lobbying;
- Parliamentary lobbying;
- Communications activity; or
- Disbursement activity.<sup>52</sup>

6.52 The Scheme is concerned about 'foreign influence rather than foreign interference.' Foreign interference is covered by offences in the Commonwealth Criminal Code and dealt with by the security agencies such as ASIO.<sup>53</sup>

6.53 The submission from the AGD to the Senate Select Committee on Foreign Interference through Social Media provided an overview of the application of the Scheme to social media platforms:

Under the scheme, communications activities need to be registered if they are undertaken in Australia on behalf of a foreign principal for the purpose of political or governmental influence. This includes the production or

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<sup>50</sup> Department of Foreign Affairs, 'Foreign Influence Transparency Scheme', viewed on 13 October 2020, <<https://www.dfat.gov.au/international-relations/Pages/foreign-influence-transparency-scheme>>

<sup>51</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General's Department, *Submission 13*, p. 32, p. 8.

<sup>52</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General's Department, *Submission 13*, p. 32, p. 8.

<sup>53</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General's Department, *Submission 13*, p. 32, p. 8.

publication of graphics, audio, video or written information posted to social media.<sup>54</sup>

- 6.54 The AGD added that, similar to the authorisation requirements on political advertising required under the Electoral Act, communications activities ‘must also contain a disclosure as to the identity of, and relationship with, the foreign principal.’<sup>55</sup>
- 6.55 The Scheme also imposes additional obligations during voting periods which ‘begin on the day that the writs are issued and end when the last polling stations close on voting day.’<sup>56</sup> These obligations include:
- registered activities must be lodged with the department within seven rather than 14 days;
  - the AGD must publish those activities to the public register within 48 hours rather than four weeks.<sup>57</sup>
- 6.56 During the 2019 Federal election, the AGD was ‘asked to consider whether any registrable activities were being undertaken, and whether the posts on social media needed to be registered and contain the appropriate disclosures.’<sup>58</sup> In those instances the AGD found that ‘the number of social media posts and different platforms used in the federal election to share information and opinions on candidates was significant and it was often not clear whether the posts were on behalf of a foreign actor.’<sup>59</sup>
- 6.57 In circumstances where the AGD was able to identify material that may not have complied with the *Foreign Influence Transparency Act 2018* or the Scheme, the AGD ‘engaged with their government counterparts and where

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<sup>54</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, p. 8.

<sup>55</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, p. 9.

<sup>56</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, p. 9.

<sup>57</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, p. 9.

<sup>58</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, p. 9.

<sup>59</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, p. 9.

appropriate, social media companies to work cooperatively to assess whether the obligations under scheme applied to the material.’<sup>60</sup>

6.58 The Law Council of Australia raised concerns about the effectiveness of the Scheme, stating:

... the [*Foreign Influence Transparency Scheme Act 2018*] only addresses foreign influence relating to certain activities undertaken in Australia on behalf of a foreign principal. The use of social media to publish misinformation directly targeting the Australian public without the use of an intermediary in Australia places significant limitations on the effectiveness of the FITS Act in responding to these threats.<sup>61</sup>

## **Stop and Consider social media campaign**

6.59 In the lead up to the 2019 Federal election, the AEC undertook a social media advertising campaign: *Stop and consider*. The campaign ran from 15 April to 18 May 2019 on social media platforms Facebook, Twitter and Instagram and ‘encouraged voters to check the source of electoral communications to avoid being misled by disinformation.’<sup>62</sup>

6.60 The advertisements on the social media platforms were:

... supported by online search advertising, dedicated content on the AEC website, proactive mainstream and ethnic media activities, and stakeholder engagement to promote information (fact sheets and media releases) available in 29 languages.<sup>63</sup>

6.61 The AEC pointed out that the campaign resulted in:

- the delivery of more than 56 million social media impressions and more than 100,000 clicks through to AEC website material;

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<sup>60</sup> Senate Select Committee on Foreign Interference through Social Media, Attorney-General’s Department, *Submission 13*, p. 32, pp. 9-10.

<sup>61</sup> Senate Select Committee on Foreign Interference through Social Media, Law Council of Australia, *Submission 18*, p. 32, p. 15.

<sup>62</sup> Australian Electoral Commission, *Annual Report 2018-19*, p. 42; ‘AEC ‘Stop and Consider’ campaign’, viewed 13 October 2020, <<https://www.aec.gov.au/elections/electoral-advertising/files/stop-and-consider-external-flyer.pdf>>

<sup>63</sup> Australian Electoral Commission, *Annual Report 2018-19*, p. 42; ‘AEC ‘Stop and Consider’ campaign’, viewed 13 October 2020, <<https://www.aec.gov.au/elections/electoral-advertising/files/stop-and-consider-external-flyer.pdf>>

- more than 1,700 downloads of translated fact sheets.<sup>64</sup>

6.62 The AEC undertook an evaluation survey and independent market research which found that:

- one in nine respondents (11 %) indicated that they recognised the campaign;
- two in five (40%) of those recognising the campaign claimed that they would take action on account of seeing it;
- 52% of respondents said they would take action to check facts relating to social media content.<sup>65</sup>

## Cyber security

6.63 As noted above, the AEC worked closely with the ASD and the ACSC in order to ensure the cybersecurity of Australia's electoral systems including implementing the ASD's 'Essential 8' strategies. The AEC advised that this heightened focus was a result of what had occurred internationally between 2016 and 2019 on this issue.<sup>66</sup>

6.64 While acknowledging that 'no single mitigation strategy is guaranteed to prevent cyber security incidents',<sup>67</sup> the ASD recommends that organisations implement the eight strategies:

- Mitigation Strategies to Prevent Malware Delivery and Execution:
  - Application control to prevent execution of unapproved/malicious programs;
  - Patch applications;
  - Configure Microsoft Office macro settings to block macros from the internet;
  - Configure web browsers to block Flash (ideally uninstall it), ads and Java on the internet;
- Mitigation Strategies to Limit the Extent of Cyber Security Incidents;
  - Restrict administrative privileges;
  - Patch operating systems;

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<sup>64</sup> Australian Electoral Commission, *Annual Report 2018-19*, p. 42; 'AEC 'Stop and Consider' campaign', viewed 13 October 2020, <<https://www.aec.gov.au/elections/electoral-advertising/files/stop-and-consider-external-flyer.pdf>>

<sup>65</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 1.

<sup>66</sup> Mr Rogers, Electoral Commissioner, *Transcript*, 6 December 2019, p. 4.

<sup>67</sup> Australian Signals Directorate, 'Essential Eight Explained', viewed 13 October 2020, <<https://www.cyber.gov.au/acsc/view-all-content/essential-eight/essential-eight-explained>>

- Multi-factor authentication; and
  - Mitigation Strategies to Recover Data and System Availability;
  - Daily backups of important new/changed data, software and configuration settings.<sup>68</sup>
- 6.65 The AEC has also ‘certified and accredited each of its key election systems in line with Information Security Manual (ISM) requirements.’<sup>69</sup>
- 6.66 For the 2019 federal election, the AEC also ‘engaged specialist cyber security monitoring services, ensuring the AEC’s IT Security team would be able to respond effectively to potential cyber attacks against voting infrastructure and the general AEC network.’<sup>70</sup>
- 6.67 The NMRC advocated for Australia’s political parties to receive regular training on counterintelligence and cyber threats at the national and state level.<sup>71</sup>
- 6.68 As noted above, the EIAT advised that ‘no foreign interference, malicious cyber-activity or security matters were identified that undermined the integrity of the federal election.’<sup>72</sup>

## Committee comment

- 6.69 Based on the expert advice from members of the EIAT, the JSCEM has found that there was no foreign interference, malicious cyber-activity or security matters that affected the integrity of the 2019 Federal election.
- 6.70 The JSCEM also found limited evidence of social media manipulation within Australia, including minimal use of bots. However, given the significant rise in organised social media manipulation campaigns, we must remain vigilant.

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<sup>68</sup> Australian Signals Directorate, ‘Essential Eight Explained’, viewed 13 October 2020, <<https://www.cyber.gov.au/acsc/view-all-content/essential-eight/essential-eight-explained>>

<sup>69</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 11; The Australian Government Information Security Manual outlines a cyber security framework that organisations can apply, using their risk management framework, to protect their systems and information from cyber threats.

<sup>70</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 11.

<sup>71</sup> News and Media Research Centre at the University of Canberra, *Submission 75*, p. 20.

<sup>72</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Transcript, 6 December 2019, p. 2.



- 6.71 As part of the inquiry into the 2016 Federal election the JSCEM made a number of recommendations focussed on addressing issues on disinformation; preventing and combating cyber manipulation; providing greater clarity to the legal framework surrounding social media services and their designation as 'platform' or 'publisher'; and enhancing media literacy and education.
- 6.72 To date, the Government has yet to provide a response to those recommendations. The JSCEM urges the Government to respond to those recommendations as a matter of urgency.
- 6.73 The JSCEM acknowledges the excellent work undertaken by EIAT to ensure the integrity of Australia's electoral system.
- 6.74 The JSCEM notes that the EIAT is no longer in operation but currently works together on electoral integrity matters as required. The JSCEM is of the view that EIAT should be engaged permanently and given appropriate resources to prevent and combat cyber manipulation and electoral/foreign interference in Australia's democratic processes.

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## Recommendation 15

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- 6.75 The Committee recommends that the Electoral Integrity Assurance Taskforce be engaged permanently to prevent and combat cyber manipulation and electoral/foreign interference in Australia's democratic process and to provide post-election findings regarding any pertinent incidents to the Joint Standing Committee on Electoral Matters, including through in camera and open briefing.**

## Political campaigners

- 6.76 Political campaigners play an ever increasing role in electoral discourse especially during election times. GetUp is one such campaigner that was engaged in the 2019 Federal election. The JSCEM raised concerns about a misleading submission made by GetUp to the JSCEM, which GetUp has declined two opportunities to correct.
- 6.77 Page three of Getup's submission to this Committee , states that:
- We're fiercely independent and proud of it, but don't just take it from us - the AEC has investigated GetUp three times and every single time confirmed our independence and that we not (sic) associated with any political party.

The AEC ruled in GetUp's favour as recently as February this year, specifically finding: GetUp campaigns are 100% issues based: Whether we're demanding action on climate change, standing up for Medevac laws or protecting the ABC, we empower everyday people to participate in politics. GetUp plays an important role on election day: We provide people with multiple, meaningful options to vote on the issues they care about.

GetUp does not receive funding from political parties: GetUp has not, and never will receive funding from political parties. We've never given it either!

GetUp is nonpartisan. The fact that an organisation advocates an agenda on one side of the political spectrum does not mean it is operating for the benefit of any or all registered political parties on that side of the spectrum.<sup>73</sup>

- 6.78 Notwithstanding the fact that these assertions about AEC findings are inherently implausible, they have been explicitly rejected by the AEC at Senate Estimates on two occasions.
- 6.79 Firstly at the Finance and Public Administration Estimates on 22 October 2019, the Electoral Commissioner, Tom Rogers and the AEC gave the following evidence, specifically repudiating these claims in GetUp's submission to JSCEM:

Senator ABETZ: Thank you. I add my personal congratulations. I sent them in a letter, but personally as well, congratulations on your reappointment. On 4 April 2019 on page 164 of the Hansard of these estimates, we had the following exchange:

Senator ABETZ: Therefore, it is in fact false for anybody to assert that the AEC has declared them independent, because you don't have the power to do it and you don't do it.

Mr Rogers : That's correct.

Senator ABETZ: Therefore, anybody that makes such an assertion must be making that assertion based on a falsehood.

Mr Rogers : If we're talking generically –

Senator ABETZ: Yes.

Mr Rogers : absolutely.

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<sup>73</sup> GetUp, *Submission 83*, p. 3.

Senator ABETZ: You said some other bits and pieces, then you said: ... because I have no power to do so it would certainly be a false piece of information. Do you stand by that evidence?

Mr Rogers: That's correct, Senator.

Senator ABETZ: Can I ask you then, whether at any stage you have ever ruled to say that GetUp! is independent?

Mr Rogers: I have not, and to the best of my knowledge, no-one in the AEC has done that; it's not a power we have to declare—

Senator A BETZ: Therefore you can't do it and you wouldn't do it.

Mr Rogers: We would not declare someone either not independent or independent, because it's not a power I have.

Senator ABETZ: So if it were to be said, 'The AEC has investigated GetUp! three times and every single time confirmed our independence,' that would not be correct, would it? You investigated them, yes, but the last bit about 'and every single time confirmed our independence', that is incorrect?

Mr Rogers: That is not language that the AEC would use.

Senator ABETZ: And therefore it is incorrect?

Mr Rogers: That's correct, Senator.

Senator ABETZ: Are you aware of the submission that GetUp has put to the Joint Standing Committee on Electoral Matters?

Mr Rogers: I'm aware they have put a submission in, but I haven't yet read it; I will do so eventually, but I haven't read it yet.

Senator ABETZ: If I could draw your attention to it because, in that submission to a parliamentary inquiry, they are falsely asserting and trying to put words into the AEC's mouth in relation to them allegedly being independent. Can I ask you: as an independent statutory authority, is it important for you to at all times have the public record absolutely clear as to what your determinations may or may not be, as to what your powers may be, and, as a result, have no ambiguity about your position?

Mr Rogers: That is correct, Senator, and I also try to be fairly precise in my language about that particular issue because it is always in the public domain.

Senator ABETZ: And so, to confirm: you have never confirmed GetUp's independence or, for that matter, any other organisation's independence because that's not your business?

Mr Rogers: No organisation either way: either independent or not independent.

Senator ABETZ: Have you found that GetUp's campaigns are 100 per cent issues based?

Mr Rogers: Look, that's a different question, Senator. If I reflect on what I think we said last time—and Mr Pirani might join me here—the language we use is that there was insufficient material and evidence to show that GetUp was an associated entity at the relevant time. That's the sum total of our language at that point. So we looked at a whole range of material that had been presented to us. I'm going to go back, I think, a bit to the definition that's contained in the Electoral Act and, as we've said to this committee and other committees previously, the threshold test that is there—Mr Pirani, you might—

Senator ABETZ: With respect, time is of the essence, I think, and that is not in play or an issue, but have you ever declared about any political party, or indeed any organisation, that their campaigns are 100 per cent issues based?

Mr Rogers: We have not declared that.

Senator ABETZ: Right, because they assert that:

The AEC ruled in GetUp's favour as recently as February this year, specifically finding:

GetUp campaigns are 100 per cent issues based.

Mr Rogers: That is not something we would have said in any way shape or form.

Senator ABETZ: So that is another falsehood because I would have thought an advertisement falsely making claims against the Treasurer would not be an issues based campaign. Also, the misadventure they undertook with the advertisement against Mr Abbott, the former member for Warringah, would hardly be seen as issues based, but thank you for clearing that up. Do you make any specific findings that an organisation is nonpartisan?

Mr Rogers: No, we do not.

Senator ABETZ: And then do you make any finding that any organisation plays an important role on election day?

Mr Rogers: No, we do not.

Senator ABETZ: So we now have GetUp's false claim about independence; GetUp's false claim that you have specifically found they're 100 per cent issues based; and the claim that GetUp is nonpartisan—all these claims are false, aren't they?

Mr Rogers: Again, I haven't read their submission but, based on what you've said this evening, Senator, they are not findings that we have found or language that we have used.

Senator ABETZ: See, because GetUp! says:

... specifically finding:—no ambiguity in that term—GetUp campaigns are 100 per cent issues based.

... ..

GetUp is nonpartisan.

You've confirmed their independence, or false assertions, by an organisation that has put a submission to the important Joint Standing Committee on Electoral Matters. So, having drawn your attention to these matters, could I invite the Australian Electoral Commission to put in a submission to that committee dealing with these false assertions which, are not normal with respect to argy-bargy of politics of one party making a claim against the other. This is falsely asserting that an independent statutory authority has made 'specific findings' which you are saying here under oath is in fact false.

Mr Rogers: That is correct.

Senator ABETZ: Right. Thank you very much.

Mr Rogers: I'm just going to check with Mr Pirani that I haven't said anything there that's incorrect.

Senator ABETZ: You've checked with Mr Pirani?

Mr Rogers: I stand by—everything I've said is correct.

Senator ABETZ: So, for the record, you agree with the evidence of the commissioner.

Mr Pirani: That is correct.<sup>74</sup>

6.80 Secondly, at the Finance and Public Administration Estimates on 22 October 2020, the Electoral Commissioner, Tom Rogers gave the following evidence:

Senator ABETZ: Thank you. If I recall correctly, I put four propositions to you at the last Senate estimates as to what GetUp were asserting the AEC had determined about them, such as that they were non-partisan, that they were of value to the electoral system et cetera, and you indicated very strongly at the time that they were things that the Australian Electoral Commission would not find, let alone say.

Mr Rogers: That's correct.

... ..

Senator ABETZ: But is it a gross misrepresentation—sorry, that's my language. It does not faithfully represent that which is the AEC has said about GetUp?

Mr Rogers: That's correct.<sup>75</sup>

6.81 When Senator Abetz pursued this issue at some length at JSCEM's hearing on 14 September 2020, Mr Zaahir Edries, GetUp's Legal Counsel, defended the claims in GetUp's submission, arguing that they rendered the AEC's decision in a 'digestible' form. Notwithstanding his defence of the claims in GetUp's submission to JSCEM, Mr Edries said he would make contact with the AEC about this issue, to maintain a 'good relationship with the AEC'.<sup>76</sup>

6.82 When Senator Abetz again raised this issue with GetUp's National Director, Mr Paul Oosting, at JSCEM's hearing on 11 November 2020, Mr Oosting failed to correct the statements in GetUp's submission. Instead Mr Oosting repeatedly suggested that these erroneous claims were somehow justified because they were in response to claims Senator Abetz had made in Parliament about GetUp:

Senator ABETZ: But you would be aware of the Australian Electoral Commissioner's evidence to the Senate completely countering the false submission that you've made to this committee: The AEC ruled in GetUp's

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<sup>74</sup> Finance and Public Administration Legislation Committee, *Senate Estimates Hansard*, 22 October 2019, pp. 142-145.

<sup>75</sup> Finance and Public Administration Legislation Committee, *Senate Estimates Hansard*, 22 October 2020, pp. 101-102.

<sup>76</sup> Mr Zaahir Edries, General Counsel, GetUp, Transcript, 14 September 2020, p. 12.

favour as recently as February this year, specifically finding: 'GetUp campaigns are 100% issues based- The Electoral Commission never found that, did it?

Mr Oosting: GetUp's reputation and our independence, the way that we engage in campaigns, has been misrepresented by yourself to the AEC. I did a quick google yesterday afternoon before appearing-

Senator ABETZ: Can you please answer the question? Sorry to interrupt. This is not about you making assertions. This is about you putting, in effect on oath, to this committee that the AEC specifically found: GetUp campaigns are 100% issues based ... GetUp plays an important role on election day GetUp is nonpartisan. All these matters have been specifically refuted by the Australian Electoral Commissioner, not once but twice. What have you done to correct the record to this committee, to your membership and to the public at large?

Mr Oosting: I think it is relevant actually, because on Hansard you have continued on a number of occasions that we're somehow-

Senator ABETZ: No, no, don't worry about my misrepresentations.

Mr Oosting: And—

Senator ABETZ: No, sorry. Sorry, Mr Oosting—

Mr Oosting: It's directly relevant to the question.

Senator ABETZ: You have to answer the question.

Mr Oosting: I'd love to.

Senator ABETZ: It is not about me.

Senator ABETZ: The question is about your misrepresentation of the Australian Electoral Commission, which is an independent statutory authority, and you seek to clothe your organisation with credibility, putting words into the Electoral Commission's mouth, which they specifically refuted not once but twice. What have you done to correct the public record?<sup>77</sup>

6.83 Even though the AEC has twice refuted the claims in GetUp's submission to JSCEM, Mr Oosting placed great reliance on the letter GetUp wrote to the Electoral Commission in September, following Mr Edries' offer at JSCEM's hearing on 14 September:

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<sup>77</sup> Joint Standing Committee on Electoral Matters, *Transcript*, 11 November 2020, pp. 9-10.

Mr Oosting: Following a number of misrepresentations made by yourself, Senator Abetz, we have written to the AEC, Tom Rogers, in September 2020. I'm happy to read that in here.

Senator ABETZ: Or can you table that for the committee and present that to the committee?

Mr Oosting: Yes, I'll read it in now: 'GetUp representatives were questioned about GetUp's use of wording in a submission to the committee of Senator Abetz, including: "the AEC has investigated GetUp three times and every single time confirmed our independence" As mentioned in the email of 25 October 2019, GetUp agrees that this is technically not correct but rather the Electoral Commission was unable to find on most occasions that GetUp is an associated entity of those parties.' So, in our submission, we have sought to make sure that the public are aware that the statements that you've made in parliament claiming that GetUp is not independent or is somehow partisan and that we should be found to be an associated entity are untrue. The Electoral Commission looked into the matter of whether or not we're an associated entity, which—

... ..

Senator ABETZ: But where's the evidence for your statements? Where's the evidence?

Mr Oosting: [inaudible] and we're happy to table that with the committee following this hearing today. I've read in that letter. As I say, we said to them that we would endeavour to ensure that we were very clear with the definition of the 'associated entity' test. We are confident—100 per cent confident—in GetUp's independence. It has been found by the AEC that GetUp is not an associated entity or affiliated with any political party [inaudible] independence—

Senator ABETZ: How does that in any way, shape or form answer my questions as to your egregious misrepresentation of the Australian Electoral Commission, which it has specifically refuted not once but twice? Where is the evidence?

Mr Oosting: In terms of evidence, as I said, we're happy to provide our letter to the AEC—

Senator ABETZ: No, that's not evidence. Your letter cannot be evidence as to what you assert the AEC has said about you. It must be statements made by the AEC about you and on which you rely in this false document, I suggest. I want to know where you got that evidence from. I think it was out of thin air.



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It's been fabricated. It's been refuted by the Electoral Commission. That is why you ought to do the decent thing and correct the public record.<sup>78</sup>

- 6.84 The JSCEM submits that GetUp has been given ample opportunity to amend its submission but has steadfastly refused to do so.
- 6.85 Instead GetUp has sought to justify falsehoods about supposed specific findings by the AEC on the spurious grounds that they respond to previous statements by Senator Abetz. This would be no justification for verballing the AEC, but in any event GetUp's submission made no reference to Senator Abetz.
- 6.86 As the above transcript shows, at JSCEM's hearing on 11 November 2020 Mr Oosting read into Hansard the letter GetUp sent to the AEC in September.
- 6.87 Referring to the claim in GetUp's submission that the AEC has investigated GetUp three times and every single time confirmed its independence, GetUp's letter to the AEC apparently says. 'As mentioned in the email of 25 October 2019, GetUp agrees that this is technically not correct'.
- 6.88 GetUp has conceded to the AEC that one of the several claims in its submission to JSCEM is 'technically not correct', but Mr Oosting in evidence still sought to justify the false statements in GetUp's submission on the basis that past claims made elsewhere by Senator Abetz were untrue.
- 6.89 GetUp has not conceded to JSCEM that the claim in its submission about the AEC finding them to be independent is 'technically not correct', nor has GetUp corrected the other statements in its submission, falsely attributed to the AEC. Also, at JSCEM's 11 November 2020 hearing, Mr Oosting offered to table GetUp's letter to the AEC following that hearing but has so far failed to do so.

## **Committee comment**

- 6.90 The JSCEM reiterates that the Electoral Commissioner has given evidence in relation to GetUp's claim that the AEC specifically found its campaigns are 100% issues based, that the AEC would not have said this 'in any way shape or form.'
- 6.91 The JSCEM believes that GetUp's submission to this inquiry is misleading, remains misleading and, that GetUp has failed to correct it, despite being provided ample opportunity.

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<sup>78</sup> Joint Standing Committee on Electoral Matters, *Transcript*, 11 November 2020, pp. 10-11.

- 6.92 Evidence to this JSCEM is on oath and GetUp's misrepresentation of the AEC a serious matter. However the JSCEM does not allege that GetUp's provision of false and misleading information substantially obstructed the JSCEM in the performance of its functions in relation to the inquiry.
- 6.93 Consequently the JSCEM finds that page three of GetUp's submission, dealing with purported specific findings made by the AEC, is misleading and note that, despite repeated opportunity and invitation, GetUp has failed to correct the record.
- 6.94 GetUp belatedly supplied a revised submission to the JSCEM which corrects the false statements attributed to the AEC in its initial submission. The JSCEM notes that this is in effect an admission by GetUp that its initial submission and the evidence of its officers at two Committee hearings was misleading. The JSCEM notes this is the second occasion that GetUp has misled it.
- 6.95 Political debate has always been robust and it is common for people from opposing sides to argue in public over the merits of policy. But the JSCEM heard evidence of candidates who had been followed through the day by opponents outside of public events and appearances, intruding during their travel, non-campaign work, or private life.
- 6.96 Evidence was received about how some political activists were trained by GetUp to engage in text book American 'bird dogging' and pursue opposing candidates to badger them repeatedly with questions in public forums.
- 6.97 One of their individual supporters conducted himself in a manner that objectively amounted to a concerted campaign of harassment.
- 6.98 When activists are encouraged to 'hunt' their opponents, some can break the lead and engage in aberrant behaviour. These aggressive practices have nothing to do with winning votes and everything to do with psychological warfare. In the worst instance, one politically active individual was stabbed by another with a corkscrew.
- 6.99 These ugly behaviours are unacceptable and should have no part in Australian political life.
- 6.100 The Electoral Act includes an offence for interference with political liberty (section 327) but it is narrowly constructed based on old-fashioned concepts about political mischief. The Act does not include appropriate remedies to ensure that perpetrators of thuggery are deterred, or held accountable when they cross the line of civility and decency.

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- 6.101 The JSCEM has no objection to GetUp or any other organisation exercising their democratic rights but finds GetUp's approach to the JSCEM to be tricky and misleading. For an organisation who campaigns on openness, honesty and accountability it is the JSCEM's view that GetUp's appearances before it are anything but open and honest.
- 6.102 The JSCEM also notes that for an organisation that campaigns on corporate and political accountability its own accountability is opaque and shadowy. This is disappointing.
- 6.103 The JSCEM is of the view that while GetUp claims to campaign for progressive issues it continually and consistently campaigns against centre right politicians.

## **Recommendation 16**

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- 6.104 The Committee recommends that new offence of 'electoral violence' be added to the Electoral Act to address behaviour arising in an election such as violence, obscene or discriminatory abuse, property damage, and stalking candidates or their supporters to intimidate them or make them feel unsafe.**

## **Recommendation 17**

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- 6.105 The Committee recommends that the Electoral Act be amended so the test for affiliated organisations be broadened.**
- 6.106 It should also be recognised that an increasing number of actors have been active in the electoral space in the lead up to and throughout election campaigns, often of a smaller and more targeted nature. This has resulted in the current thresholds for political campaigners no longer being suitable to achieve transparency in the involvement of third parties who seek to influence election outcomes.
- 6.107 The increasing volume of smaller actors developing electoral materials seeking to influence elections was evident in the 2019 election, where targeted groups were established for the purpose of campaigning against a number of sitting parliamentarians. These organisations, given their localised campaigns, currently do not meet the thresholds for disclosure as a political campaigner, yet are evidently established with the purpose of influencing an election outcome by circumventing the existing threshold requirements of political campaigners

## **Recommendation 18**

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- 6.108 The Committee recommends that the threshold for political campaigners be reduced to \$100,000 or, circumstances where an entity's expenditure on electoral matter exceeds one third of its annual income, whichever is lower.**
- 6.109 Committee members received anecdotal evidence that voters are increasingly frustrated by the actions of third party groups handing out information at polling places. The congestion at the six metre mark is exacerbated when those handing out information include players who are not representing those running for election, for example interest groups and single-issue causes. Since real estate near the six metre mark is finite, priority must go to volunteers who are helping candidates who seek election.
- 6.110 In addition, feedback from volunteers for Parties and candidates also received by Committee members raised concerns about inconsistencies in determining the entrances to polling booths and consequently the application of what is known as the six metre rule.

## **Recommendation 19**

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- 6.111 The Committee recommends that persons who do not represent a candidate and hand out vote-influencing material or are attempting to influence voters in any other manner, whether individually or for a third party or group, are to be restricted to not being within 100 metres of a polling booth entrance; and**
- 6.112 that persons handing out vote-influencing material or attempting to influence voters in any other manner for an endorsed candidate, whether running for a Party or as an independent are restricted to not being within 6m of a polling booth entrance; and**
- 6.113 that the AEC encourage consistency in determination of polling booth entrances and application of the six metre rule.**

## 7. Access to the polls

- 7.1 The 2019 election ‘was conducted against what was probably the most complete roll since Federation’<sup>1</sup> with a record enrolment of 97 per cent of the population and an increase in turnout against previous elections.<sup>2</sup>
- 7.2 The Australian Electoral Commission (AEC) has sought to improve access to the polls to ensure all eligible Australians can make their vote count. The Committee received evidence regarding programs that help increase voter accessibility such as:
- Indigenous Electoral Participation Program;
  - Remote Area Mobile Polling (RAMP);
  - iVote and other vision impaired services;
  - Mobile Polling for hospital patients and nursing home residents;
  - Antarctic and ADF voter programs;
  - Producing election materials in languages other than English.
- 7.3 Pre-poll and postal voting are also regarded as options that help promote access to the polls. These issues are discussed in Chapter 3.
- 7.4 The Committee also received evidence relating the appropriateness of pre-poll voting centres and election day polling booth venues and calls for the introduction of voter ID to mitigate voter fraud.

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<sup>1</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 2.

<sup>2</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 1.

## Indigenous participation in the electoral process

7.5 The engagement of First Nations people in the electoral process was previously explored by JSCEM in 2018 in the *Report on the conduct of the 2016 election and matters related thereto*. Recommendation 13 stated:

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.

7.6 The participation of Aboriginal and Torres Strait Islander people in elections continued to be of interest to the Committee during this inquiry. The Committee took evidence from the AEC regarding its work in this space and from Indigenous advocacy groups.

7.7 The AEC collaborated with a number of government and non-government stakeholders to develop initiatives to strengthen Indigenous participation in the 2019 election. Notable amongst these were partnerships with:

- The Brisbane Broncos and the West Coast Fever, to increase enrolment and awareness among students aged 16 and up through the 'Your Vote is Your Future' program;
- The AFL, to distribute educational videos in remote communities in the Northern Territory via their Facebook page, electronic newsletter and AFLX tournament; and
- The Department of Human Services, to disseminate educative materials and participation messaging through their social media and digital platforms, in their Remote service Centres and scripts for clients enquiring about Indigenous specific payments such as ABSTUDY.<sup>3</sup>

7.8 The AEC maintained a number of channels dedicated to Indigenous communications, including a separate Facebook page, videos produced in 11 languages and radio broadcasts in 18 languages.<sup>4</sup>

7.9 The precise impact of these programs on Indigenous participation in the 2019 election is difficult to quantify as the AEC does not collect data on

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<sup>3</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 5.

<sup>4</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 13.

individual voters,<sup>5</sup> however, the estimated Indigenous enrolment rate has modestly improved from 2018 to 2020.<sup>6</sup>

## Indigenous Electoral Participation Program

7.10 The Indigenous Electoral Participation Program (IEPP) has been administered by the AEC since 2010, with the goal of increasing enrolment, voter turnout and formality of Indigenous people in Australian elections.

7.11 The IEPP continues to evolve. Prior to the 2019 election period, the AEC conducted a new pilot activity as part of the program in a number of remote Indigenous communities, such as Galiwin'ku and Milingimbi, which was aimed at increasing electoral awareness and enrolment.<sup>7</sup>

7.12 The pilot utilised and trained local community members to deliver information on enrolment, formality and appropriate participation in elections. Local engagement was complemented with the provision of digital resources and translated material provided in the lead up to election day. Some successful outcomes were indicated by the AEC:

...very early analysis of the election outcomes confirmed a measurable increase in turnout in Galiwinku ...(and) an overall decrease in informality across the three communities where we did that project.<sup>8</sup>

7.13 However, the AEC did comment that the program is expensive to run and relies on the continuation of funding:

...we find the money internally, but that is an expensive program...There are other programs we want to trial as well, and we are working with government to make sure we've got sufficient funding to be able to deliver those.<sup>9</sup>

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<sup>5</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 6.

<sup>6</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 1.

<sup>7</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 14.

<sup>8</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 14.

<sup>9</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 14

## Remote area mobile polling

- 7.14 Indigenous Australians in remote areas were serviced by the AEC's remote area mobile polling teams, which travelled a total of 3.4 million km during the 2019 election.<sup>10</sup> These services operated over a two week period from Monday 6 May, visiting 207 locations, of which 169 were Indigenous communities.<sup>11</sup>
- 7.15 Communication efforts targeted to Indigenous people often contained information on the scheduling of these remote services.<sup>12</sup>
- 7.16 The AEC told the Committee that 42 mobile polling teams were sent out to remote communities, whose purpose was 'to ensure that Indigenous Australians in remote communities were enabled to vote.' This was roughly on par with remote mobile polling provisions for the 2016 election.<sup>13</sup>
- 7.17 Some inquiry participants felt that additionally resourcing for this program – among others – was needed to improve outcomes for Indigenous voters. Mrs Bess Price offered the following perspective to the Committee on some of the core challenges to be overcome:

Most of my people don't speak English as their first language and they don't quite understand why they have to vote every four years. We have to explain to them the reasons why we need their votes and they need to be enrolled. That's the problem. There are not enough resources to get Electoral Commission people out on communities to spend weeks at time just talking to people about how important it is. Education is really important.<sup>14</sup>

- 7.18 Aboriginal Peak Organisations Northern Territory elaborated on the challenging conditions faced in Milingimbi, NT:

The lines with that long that people were lining up on a dusty road, and they were people in wheelchairs and elderly people. You can imagine the heat and the conditions in the Territory. Elderly and sick people wanted to vote but could not access the polling centres. The polling teams are not allowed to visit

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<sup>10</sup> Australian Electoral Commission, *Submission 120*, p. 19.

<sup>11</sup> Mr Thomas Ryan, Assistant Commissioner, Australian Electoral Commission, *Transcript*, 9 September 2020, p. 12.

<sup>12</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 6.

<sup>13</sup> Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 14.

<sup>14</sup> Mrs Bess Nungarrayi Price, Private capacity, *Transcript*, 9 September 2020, p. 1.



the aged-care centres or homes, and therefore those people were denied an opportunity to cast their vote.<sup>15</sup>

## Voter accessibility

7.19 The logistical challenge of organising a federal election is a considerable one. The AEC have, on average, four weeks' notice to roll out around 7,000 polling places and to train, engage and employ around 100,000 staff.<sup>16</sup>

## Mobile polling

7.20 Mobile polling offers the ability for remote and vulnerable Australians to access the polls. For the 2019 election, the AEC provided '557 mobile polling teams that went to over 3,000 locations.'<sup>17</sup>

7.21 The AEC conceded that, despite online and face-to-face training for staff and host facilities, inconsistency of service at mobile polling stations does sometimes occur.<sup>18</sup>

7.22 Examples heard by the Committee tended to occur in facilities for vulnerable people, including hospitals and nursing homes, where high levels of cooperation with facility staff were required to assist electors with the process of voting.

7.23 Improvements to mobile polling were previously suggested by JSCEM in 2018 as part of its *Report into the conduct of the 2016 election and matters related thereto*. Recommendation 23 stated:

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.

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<sup>15</sup> Ms Theresa Roe, Network Coordinator, Aboriginal Peak Organisations Northern Territory, *Transcript*, 9 September 2020, p. 6.

<sup>16</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 4.; and Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 7.

<sup>17</sup> Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 8.

<sup>18</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 7.; and Mr Jeff Pope, Deputy Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, pp. 7-8.

## Australian Defence Force personnel

7.24 Evidence provided by the AEC stated that it continues to deliver services to enable Australian Defence Force (ADF) personnel to vote, including those that are deployed. This is managed in conjunction with the Department of Defence and achieves a high level of success.<sup>19</sup>

7.25 The AEC provided an overview of standard arrangements:

The ADF Personnel Administration Manual recommends... [that] ADF personnel apply to become General Postal Voters, or otherwise, apply for a postal vote online... Where practical, access to early voting services is also offered through Overseas Voting centres operated at approved Department of Foreign Affairs and Trade/Austrade overseas posts.<sup>20</sup>

7.26 Postal voting – the method utilised by deployed ADF personnel – is explored further in Chapter 3. The AEC notes that:

The timely delivery and return of postal votes remains an ongoing challenge that is outside the AEC's control.<sup>21</sup>

7.27 Meeting the needs of ADF voters was previously explored by JSCEM in 2018 as part of the *Report on the conduct of the 2016 election and matters related thereto*. Recommendation 22 stated:

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.

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<sup>19</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 14.

<sup>20</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 12.

<sup>21</sup> Australian Electoral Commission, *Supplementary submission 120.2*, p. 12.

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## Recommendation 20

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**7.28 The Committee notes the importance of Australian Defence Force personnel being able to vote, and recommends, in addition to the 2016 report, that the Australian Electoral Commission ensures that postal votes for Australian Defence Force personnel are dispatched at the earliest possible time, with consideration given to premium or priority mail services, to allow the Australian Defence Force time to forward those to its personnel for completion and return to Australia.**

### Language accessibility

7.29 The AEC publishes information on enrolment, voting and formality on their website in 29 languages (not including Indigenous languages), and offers an interpreter service with 18 dedicated language lines. Easy read guides in plain English and detailed graphics are also available. These materials are distributed to non-English speaking communities during the election period.<sup>22</sup>

7.30 Notwithstanding the significant efforts deployed by the AEC and noted earlier in this report, language accessibility is an ongoing issue for Indigenous communities.

7.31 Aboriginal Peak Organisations Northern Territory commented that, as a result of limited English language knowledge and literacy problems, some Indigenous voters require additional support at the polling venue. It was suggested that the AEC could contract with existing interpreter services in the Northern Territory to train local staff in electoral protocols.<sup>23</sup>

7.32 The AEC has expressed an interest in further exploring the use of local staff who can deliver information in-language, but also recognised that:

...we need to look at how we can deliver sustained value and sustained engagement in this space given the sorts of budget constraints that everyone is under as well.<sup>24</sup>

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<sup>22</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 4.

<sup>23</sup> Ms Theresa Roe, Network Coordinator, Aboriginal Peak Organisations Northern Territory, *Transcript*, 9 September 2020, p. 8.

<sup>24</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 9 September 2020, p. 12.

## Voter identification and multiple voting

- 7.33 Some inquiry participants supported the introduction of voter identification requirements. Mrs Robyn Nolan maintained that this is a ‘common-sense approach’, consistent with the fact that ‘in today’s society, people accept that there is a need for identification’ to participate in many everyday activities.<sup>25</sup>
- 7.34 In response to the suggestion that voter identification could disenfranchise voters, the Institute of Public Affairs pointed out that when voter identification rules were introduced for the 2015 Queensland state election:
- Turnout was slightly higher than it had been at the previous election, and less than one per cent of voters cast declaration votes for uncertain identity... In other words, the effect of voter ID requirements on voter participation was negligible.<sup>26</sup>
- 7.35 Voter identification requirements have been proposed as a solution to electors voting multiple times. The AEC gave evidence to the committee that the level of apparent multiple voting for the House of Representatives was just 0.03%, reflecting that multiple voting is:
- ... by and large a very small problem... where there are individuals with multiple, multiple marks—more than one—quite often there are other factors at play, including mental health issues, that make it very difficult to move forward with a prosecution in any case.<sup>27</sup>
- 7.36 Nonetheless, the AEC acknowledged that:
- ... multiple voting is frequently the subject of media commentary and social media speculation. Such a degree of focus is entirely understandable: there can hardly be a more emblematic component of trust in electoral results than ensuring eligible voters only exercise the franchise wants.<sup>28</sup>
- 7.37 The AEC supports the introduction of a new control over electors who are identified – based on data and investigations from previous electoral events – as a person who had intentionally voted multiple times. These electors

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<sup>25</sup> Mrs Robyn Nolan, Private capacity, *Transcript*, 14 September, p. 45.

<sup>26</sup> Mr Gideon Rozner, Director of Policy, Institute of Public Affairs, *Transcript*, 16 March 2020, p. 20.

<sup>27</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2020, p. 15.

<sup>28</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 20.

would be required to vote only by declaration vote, allowing the AEC to disregard any additional votes cast by this elector.<sup>29</sup>

- 7.38 JSCEM previously explored and recommended the introduction of voters being required to show identification in the *Report on the conduct of the 2016 election and matters related thereto*.

## **Recommendation 21**

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- 7.39 **The Committee recommends that, as per its recommendation in the 2016 report, 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 or 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**
  - **where voters cannot provide acceptable identification they must be issued with a declaration vote.**
  - **with exceptions included for itinerant, remote Indigenous voters, and other disadvantaged persons, for instance enabling a local Health or Welfare service to vouch for the identity of a person.**

## **Recommendation 22**

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- 7.40 **The Committee recommends that the electoral roll be strengthened to ensure only those with photo ID or other forms of suitable ID can enrol or change enrolment.**

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<sup>29</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 20.

## Distinguishing party name registrations

- 7.41 Analysis of election results frequently includes commentary about how the Labor vote is impaired in some seats where the Democratic Labor Party is listed higher on the ballot paper, while the Liberal vote can be similarly depressed where the Liberal Democratic Party is listed higher.
- 7.42 Accordingly, the random draw of candidate name order for a ballot paper can make a few percentage points difference to the result in a seat, because voters have been misled.
- 7.43 The Committee considers that voter choices and election outcomes should not be distorted by duplicative names appearing on the register of political parties. Indeed the two instances referred above involve minor parties copying names of major parties, presumably for purposes of appealing to part of the same voter base.
- 7.44 There is enough variety in the English language, to warrant party name registrations being distinguishable. It can be misleading and – some would even argue a form of ‘freeloading’ – for a party to replicate the public branding of another party rather than seek to build recognition and credibility in its own right.

## Recommendation 23

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- 7.45 The Committee recommends that section 129 of the *Commonwealth Electoral Act 1918* should be amended to permit the Electoral Commissioner to remove a name or a part of a name from an existing or proposed party that replicates a key word or words in the name of another recognised party that was first established at an earlier time.**

## People with disabilities

- 7.46 As part of its commitment to the full inclusion of eligible voters in the electoral process, the AEC operated with a Disability Inclusions Strategy (2012-2020)<sup>30</sup> for the duration of the 2019 election. Since then, a new strategy (2020-2030) has been established to ‘increase physical accessibility to polling places, provide alternative and assisted voting options and to ensure that voting materials are accessible for all voters.’<sup>31</sup>

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<sup>30</sup> Australian Electoral Commission, *Disability Inclusion Strategy, 2012-20*, February 2013.

<sup>31</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 16.

7.47 The AEC maintains a Disability Advisory Committee (DAC) to assist with identification and management of accessibility issues, and to monitor solutions being developed in other sectors. This committee comprises of key stakeholders from Australia's peak disabilities organisations and meets three times a year.<sup>32</sup>

## Physical accessibility

7.48 The AEC identified significant logistical challenges that surround identifying and preparing polling places for polling day. These challenges impact on the AEC's ability to provide polling places that are accessible to voters with physical limitations.

7.49 In 2018, the JSCEM made several recommendations in relation to improving access for disabled or vulnerable voters as part of the *Report on the conduct of the 2016 election and matters related thereto*.

### Recommendation 15

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

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

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

### Recommendation 20

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.

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<sup>32</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 16.

- 7.50 The physical accessibility of polling places is considered by the AEC, who assigns an accessibility rating to each polling place. This rating will consider features such as doorway width, accessible parking and ramp availability.<sup>33</sup>
- 7.51 Work is ongoing to harmonise differing accessibility standards between federal, state and territory electoral commissions.<sup>34</sup>
- 7.52 During the 2019 federal election a 'Fully Accessible Polling Place' pilot program was conducted, which involved venues with additional accessibility features such as hearing loops, adjustable lighting, larger floor space, varied physical layouts and the ability to skype an AUSLAN interpreter.<sup>35</sup>
- 7.53 Numerous federal MPs provided submissions to the Inquiry which raised issues regarding the physical suitability of polling places. The submissions noted instances of limited and unsuitable parking,<sup>36</sup> lack of toilet facilities,<sup>37</sup> misleading location names,<sup>38</sup> lack of space for volunteers,<sup>39</sup> significant slopes leading to entrances<sup>40</sup> and lack of public transport to pre-poll locations.<sup>41</sup>
- 7.54 The AEC acknowledged the ongoing challenges of ensuring that all polling locations are physically suitable, but noted that many factors (particularly parking) were largely 'out of [their] control'. Video material was available to outline the procedure for fast-tracking those with disabilities through voting queues, or to be serviced in the car park by a polling official.<sup>42</sup>
- 7.55 The AEC noted that, as it currently stands, the *Commonwealth Electoral Act 1918* (the Electoral Act) does not contain explicit provisions for people with

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<sup>33</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 6.

<sup>34</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, p.38.

<sup>35</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 6.

<sup>36</sup> Mr Bob Katter MP, *Submission 85*, p. 2.

<sup>37</sup> Mr Keith Pitt MP, *Submission 21*, p. 2.

<sup>38</sup> The Hon Paul Fletcher MP, *Submission 44*, p. 2.

<sup>39</sup> Mr Julian Simmonds MP, *Submission 59*, p. 1.

<sup>40</sup> Mr Matt Keogh MP, *Submission 149*, p. 2.

<sup>41</sup> Mr Michael McCormack MP, *Submission 155*, p. 3.

<sup>42</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 16 September 2020, p. 39.



disabilities to become General Postal Voters (GPV), which may serve as an appropriate solution for those who cannot physically access polling places.

- 7.56 The AEC supports further consideration of options to either expand the current criteria to become a GPV, or broaden the circumstances the current criteria apply to.<sup>43</sup>

## Vision impaired

- 7.57 The AEC provides telephone voting services to blind and low-vision Australians,<sup>44</sup> and notes that there is potential for these services to be 'extended to other groups that could equally benefit from such a service, particularly electors with a disability or mobility restriction or impairment.'<sup>45</sup>

- 7.58 Some inquiry participants offered views on the effectiveness of these services. Blind Citizens Australia expressed concerns that this service was:

... not anonymous and not completely independent... We would like it refined to such a degree where no-one except for the person who is voting, and possibly their assistant if required, knows how the vote was cast.<sup>46</sup>

- 7.59 The iVote online system is currently available for state elections in NSW, and was identified as a more suitable model, though one which would also benefit from further refinement if adopted at a federal level.<sup>47</sup>

- 7.60 Dr Vanessa Teague was not supportive of further implementation of the iVote system, putting forward that:

... it's really not accurate to describe it as independent. In fact, it's really entirely dependent on the security and accuracy and honesty of a whole lot of corporations, people, software programs and human processes that might function correctly and properly and input the vote the person wanted into the count or that might malfunction either accidentally or deliberately and alter that vote in progress. So I don't think it's a good solution.<sup>48</sup>

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<sup>43</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 19.

<sup>44</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 14.

<sup>45</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 19.

<sup>46</sup> Mr Martin Stewart, National Advocacy Officer, Blind Citizens Australia, *Transcript*, 16 March 2020, p. 2.

<sup>47</sup> Mr Martin Stewart, National Advocacy Officer, Blind Citizens Australia, *Transcript*, 16 March 2020, p. 2

<sup>48</sup> Dr Vanessa Teague, Private capacity, *Transcript*, 16 March 2020, p. 5.

7.61 The Voter Choice Project highlighted that online voting has a rapidly growing social license, and that:

There will always be a group of voters who will never trust online voting or anything other than a pen on paper, but the vast majority of people would, particularly now we've moved so much of our lives online.<sup>49</sup>

7.62 The Western Australian Electoral Commission trialled the iVote system for the 2017 state election and considered it to be a success, offering the following evidence:

In our post-election survey, we had 94 per cent satisfaction with it, 92 per cent said it was easy to use and 96 per cent replied that they would use the iVote system again if it were made available.<sup>50</sup>

7.63 The AEC recognised that there is an evolving expectation within the community that elections will be held using more digital technology, for a higher level of accuracy and for speedier results.<sup>51</sup> However, the AEC's ability to embrace technology is strictly limited by legislative and financial impediments.<sup>52</sup>

7.64 Extending the iVote system was previously addressed by JSCEM in 2018 as part of the *Report on the conduct of the 2016 election and matters related thereto*:

Recommendation 24

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.

## Intellectual disability

7.65 Section 93(8)(a) of the Electoral Act states that 'A person who by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting, is not entitled to have his or her name placed or retained on any Roll or to vote at any Senate election or House of Representatives election.'

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<sup>49</sup> Ms Raphaella Kathryn Crosby, Director, Voter Choice Project, *Transcript*, 9 September 2020, p. 27.

<sup>50</sup> Mr Christopher Norman Avent, Deputy Electoral Commissioner, Western Australian Electoral Commission, *Transcript*, 14 September 2020, p. 47.

<sup>51</sup> Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Transcript*, 6 December 2019, p. 1.

<sup>52</sup> Australian Electoral Commission, *Supplementary submission 120.6*, p. 8.

7.66 This provision has been criticised, including in previous inquiries, as being exclusionary in nature. The phrase ‘unsound mind’, in particular, has been identified as ‘outdated and pejorative’.<sup>53</sup>

7.67 The AEC notes these concerns, however, maintains that there must be:

... a mechanism for dealing with those electors who ... [are] incapable of understanding the nature and significance of enrolment and voting... in order to protect the integrity of the electoral system, as well as to allow those who are in some way mentally incapable of casting a vote not to be penalised for not voting.<sup>54</sup>

7.68 The AEC agreed with the view that ‘the ‘unsound mind’ terminology need[ed] to be substituted and modernised’, suggesting ‘cognitive impairment’ as an alternative.<sup>55</sup>

7.69 It was put forward that increased resourcing and support could provide a more equitable solution than exclusion from the electoral roll. Inclusion Melbourne noted that this provision is often invoked by:

... families and guardians who feel they do not have the skills to support their loved ones through the voting process and therefore resort to removing them from the roll in order to protect them from the burden of having to pay a fine.<sup>56</sup>

## Committee comment

7.70 The Committee affirms the importance of the accessibility of the electoral system to all Australians who are eligible to vote. As a liberal democracy with mandatory voting, it is important that our high level of electoral participation is, at a minimum, maintained; and preferably improved.

7.71 The AEC has provided evidence of its efforts to increase accessibility to historically marginalised groups, including Indigenous Australians, people with disabilities and those from non-English speaking backgrounds. These efforts are commendable and in most cases have returned positive results in terms of voter enrolment, turnout and formality.

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<sup>53</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 17.

<sup>54</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 18.

<sup>55</sup> Australian Electoral Commission, *Supplementary submission 120.7*, p. 18.

<sup>56</sup> Ms Clare Hambly, Policy Intern, Inclusion Melbourne, *Transcript*, 9 September 2020, p. 36.

7.72 Given the vastness of the Australian continent and the diversity of its electorate, it will be challenging to achieve full accessibility in our electoral system without significant investment of resources. The Committee is confident in the ability of the AEC to prioritise its resources towards programs which boost accessibility in an efficient manner.

# 8. Senate change - divisional representation

## Overview

- 8.1 The Australian Senate comprises 76 Senators. Twelve Senators are elected by each of the six original States, with two elected from the both the Australian Capital Territory and the Northern Territory.
- 8.2 Section 7 of the *Constitution* states that:
- The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.<sup>1</sup>
- 8.3 The Joint Standing Committee on Electoral Matters (JSCEM) received proposals to alter the method of electing Senators, aimed at addressing a perception that Senators are largely based in state capitals, to the detriment of electors living in regional, rural and remote areas of the State.
- 8.4 This chapter looks at those proposals, and considers the number of Senators and Members of the House of Representatives and whether this impacts on representation.

## The election of Senators

- 8.5 Each original State elects 12 Senators, regardless of geographic size or population. In addition, the Northern Territory and the Australian Capital Territory (ACT) each elect two Senators.

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<sup>1</sup>*Constitution*, s. 7.

- 8.6 In contrast, the electorates of Members of the House of Representatives are based on the number of electors. Electorate boundaries are redistributed to ensure that, as far as practicable, the number of electors in each electorate remains within 96.5% to 103.5% of the average divisional enrolment in that State or Territory.<sup>2</sup>
- 8.7 The equal representation from the original states reinforces the role of Senate as a 'States House' and 'is vital to the architecture of Australian federalism.'<sup>3</sup>
- 8.8 Senators serve for a term of six years, with half the number of Senators, and those elected in the Territories, retiring and standing for election every three years.

### **Proportional representation**

- 8.9 Since 1949, Senators have been elected using proportional representation, which 'is designed to ensure that representatives are elected in proportion to their support among the electors'.<sup>4</sup>
- 8.10 Proportional representation:  
... provides parliamentary representation for individuals and parties with significant voter support, which would be otherwise unrecognised in parliamentary terms except where such support is geographically concentrated.<sup>5</sup>
- 8.11 Due to proportional representation, there is a closer relationship to the number of seats won to votes cast in Senate elections than the House of Representatives.<sup>6</sup>
- 8.12 Although in some cases Senators may be elected on small primary votes, 'it is usually the case that the share of places secured by minor parties is less than their share of the vote'.<sup>7</sup>

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<sup>2</sup> House of Representatives Practice, 7th Edition, 2018, p. 91.

<sup>3</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, p. 114.

<sup>4</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, p. 10.

<sup>5</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, p. 11.

<sup>6</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, p. 11.

<sup>7</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, p. 12.

## Each state votes as one electorate

8.13 Section 7 of the *Constitution* made provision for Queensland to divide the state into divisions for the elections of their Senators:

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.<sup>8</sup>

8.14 Odgers' Australian Senate Practice states that 'the principle of each state voting as one electorate is now essential to the Senate's, and the Parliament's, effectiveness and should be retained:

This principle is a protection against "localism" in the election of senators. It also strengthens the bicameral quality of the Commonwealth Parliament by giving each House a distinctive system of election. The representational value of the Senate would be diminished not only if the representative base were to be subject to artificial manipulation, but, even more so, if single-member electorates were to be introduced, for it is in addressing the inadequacies of an electoral system on the single-member basis as used for the House of Representatives that the Senate is able to strengthen the representativeness of the Parliament as a whole.<sup>9</sup>

8.15 The ability of the Queensland Parliament to divide the state into divisions was removed in 1983 with the addition of Section 39 of the *Commonwealth Electoral Act 1918*. Odgers' states that this decision by the Parliament affirmed 'state-wide electorates for the purpose of electing the Senate'.<sup>10</sup>

## Location of Senators' offices

8.16 The Hon Barnaby Joyce MP was critical of the number of Senators based in State capitals:

A small geographical area, which is a capital city, is graced with both the House of Representatives Members and nearly all the Senators to lobby on its behalf.<sup>11</sup>

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<sup>8</sup>*Constitution*, s. 7.

<sup>9</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, pp. 21-22.

<sup>10</sup> Odgers' Australian Senate Practice, 14th Edition, 2016, p. 116.

<sup>11</sup> Hon. Barnaby Joyce MP, *Submission 35*, p. 2.

8.17 Mr Mark Yore referred to the distribution of Senators as:

... a symptom of Australia's growth – the underlying cause is the expansion of existing cities, lack of opportunity given to regional centres and the inability to create new cities.<sup>12</sup>

8.18 The JSCEM analysed the locations of offices of all 76 Senators<sup>13</sup>, categorised according to the AEC's demographic classification of electoral divisions. Under this classification, electorates are described as being either inner metropolitan, outer metropolitan, provincial or rural.

8.19 The AEC's demographic classifications of divisions is based on the following criteria:

- Inner Metropolitan – situated in capital cities and consisting of well-established built-up suburbs.
- Outer Metropolitan – situated in capital cities and containing large areas of recent suburban expansion.
- Provincial – outside capital cities, but with a majority of enrolment in major provincial cities.
- Rural – outside capital cities and without majority of enrolment in major provincial cities.<sup>14</sup>

8.20 The JSCEM found that the listed office of 55 Senators (72.4%) were in State capital cities, compared to 21 (27.6%) in provincial or rural areas outside the State capitals.

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<sup>12</sup> Mr Mark Yore, Private capacity, *Submission 86*, p. 3.

<sup>13</sup> Parliament of Australia, 'List of Senators as at 5 October 2020', viewed 14 October 2020, <[https://www.aph.gov.au/Senators\\_and\\_Members/Guidelines\\_for\\_Contacting\\_Senators\\_and\\_Members/los](https://www.aph.gov.au/Senators_and_Members/Guidelines_for_Contacting_Senators_and_Members/los)>

<sup>14</sup> Australian Electoral Commission, 'Political party name abbreviations & codes, demographic ratings and seat status', viewed 14 October 2020, <<https://www.aec.gov.au/Electorates/party-codes.htm>>



**Table 8.1 Location of Senator's Offices**

	Inner Metro	Outer Metro	Provincial	Rural
ACT	2	-	-	-
NSW	8	-	2	2
NT	2	-	-	-
Queensland	5	1	4	2
SA	11	-	-	1
Tasmania	4	1	3	4
Victoria	10	-	1	1
WA	11	-	-	1
<b>TOTAL</b>	<b>53</b>	<b>2</b>	<b>10</b>	<b>11</b>

Sources: Parliament of Australia, 'List of Senators as at 5 October 2020', viewed 14 October 2020, <[https://www.aph.gov.au/Senators\\_and\\_Members/Guidelines\\_for\\_Contacting\\_Senators\\_and\\_Member\\_s/los](https://www.aph.gov.au/Senators_and_Members/Guidelines_for_Contacting_Senators_and_Member_s/los)>; Australian Electoral Commission, 'Australia – demographic classification of electoral divisions', viewed 14 October 2020, <<https://www.aec.gov.au/Electorates/files/demographic-classification-as-at-1-january-2019.xlsx>>

- 8.21 It should be noted that the location of a Senator's office does not prevent that Senator from engaging with, and advocating for, constituents throughout the State.
- 8.22 Mr Yore proposed the establishment of Senate offices across a State which would be allocated to Senators in order of election. The Senator elected first would receive first choice of location.<sup>15</sup>

<sup>15</sup> Mr Mark Yore, Private capacity, *Submission 86*, p. 3.

## Alternative methods for electing Senators

### Division of States into electorates

- 8.23 The Hon Mr Joyce MP proposed an alternate method to elect Senators to be directly representative of specific geographical areas within a State rather than the State as a whole. This proposal involves dividing States into six regions, with each electing two Senators. The regions would be no larger than 30% of a State and a capital city would be a single region.<sup>16</sup>
- 8.24 Under this proposal, three regions would elect their two Senators every three years to maintain the rotation of Senators. Senators elected in these regions would 'have to transition to a concentration on direct constituent advocacy'<sup>17</sup> to attract the number of votes to be elected.
- 8.25 The Hon Mr Joyce MP manifested his proposal in legislative form, introducing a private Members' bill into the House of Representatives on 24 February 2020. The Representation Amendment (6 Regions per State, 2 Senators per Region) Bill 2020 was intended to 'provide greater representation of the geographical diversity of Australia'.<sup>18</sup>
- 8.26 In his second reading speech to the House, the Hon Mr Joyce MP reiterated his concern at the lack of Senators' offices located in regional areas and his belief that competent candidates could secure a quota with effective representation of a geographic area.<sup>19</sup>
- 8.27 The bill was not further proceeded with and lapsed on 10 November 2020.
- 8.28 This idea, and others of a similar nature, have been contemplated previously. During a 1999 debate on an urgency motion in the Senate, then Senator Faulkner referred to a quote by then federal Director of the Liberal Party, Mr Andrew Robb in an article printed in the *Financial Review* on 12 June 1997:

A simple act of parliament altering the system of voting for senators would allow anyone of three options: a Labor majority, a coalition majority or a minor party controlled Senate. This could be achieved by splitting each state

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<sup>16</sup> Hon Barnaby Joyce MP, *Submission 35*, p. 1.

<sup>17</sup> Hon Barnaby Joyce MP, *Submission 35*, p. 5.

<sup>18</sup> Explanatory memorandum, Representation Amendment (6 Regions Per State, 2 Senators Per Region) Bill 2020, p. 2.

<sup>19</sup> The Hon Barnaby Joyce MP, *House of Representatives Hansard*, 24 February 2020, pp. 1343-1344.

into six regions with each region electing two senators, one senator elected at each election.<sup>20</sup>

- 8.29 The urgency motion debated at that time, which expressed ‘opposition to any attempt to manipulate the Senate voting system in order to advantage the government of the day’, was agreed to by the Senate.<sup>21</sup>
- 8.30 In an address to the Sydney Institute in 1999, then Senator Helen Coonan suggested an arrangement, with three regions electing four Senators each, two of whom would retire every three years.<sup>22</sup>
- 8.31 Analysis of Senator Coonan’s proposal by the Parliamentary Library concluded that the:

... arrangement would virtually guarantee that the seats would be shared by the major players, to the exclusion of all other parties and candidates.<sup>23</sup>

- 8.32 The proposal by the Hon Mr Joyce MP to divide states into Senate electorates was referred to by few submitters and only obliquely during public hearings.<sup>24</sup> Philip and Kay Campbell supported the dispersion of Senators office locations throughout the states,<sup>25</sup> however most other inquiry participants who referred to this proposal did so to express their opposition.
- 8.33 Mr Chris Curtis stated that dividing states into six electorates ‘would distort people’s votes by weighting a country vote at several times more than a city vote and make the Senate highly unrepresentative’.<sup>26</sup>
- 8.34 Mr Yore stated that the workload of Senators is generally ‘dependent on the population within their geographic region’:<sup>27</sup>

The proposal to split states into six regions would produce precisely the result found when applied to the Territory seats – one Coalition Senator and one ALP Senator from each region. Not only would it create a marked voter

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<sup>20</sup> Senator John Faulkner, *Senate Hansard*, 15 February 1999, p. 1876.

<sup>21</sup> Journals of the Senate, No. 16, Monday 15 February 1999, pp. 428-429.

<sup>22</sup> Coonan, Helen, ‘The Senate, Safeguard or Handbrake on Democracy’, address to Sydney Institute, February 1999, p. 23.

<sup>23</sup> Parliamentary Library, Current Issues Brief No. 10 1998-99, p. 5.

<sup>24</sup> Mr Mark Yore, private capacity, *Transcript*, 9 September 2020, p. 24.

<sup>25</sup> Philip and Kay Campbell, Private capacity, *Submission 107*, p. 1.

<sup>26</sup> Mr Chris Curtis, Private capacity, *Submission 62*, p. 13.

<sup>27</sup> Mr Mark Yore, Private capacity, *Submission 86*, p. 3.

imbalance between states, but it would produce a substantial imbalance within states.<sup>28</sup>

8.35 Mr Malcolm Baalman was critical of electoral regions as it 'would fundamentally reduce the representational quality of the Senate'<sup>29</sup> and resemble 'the pre-2003 Victorian Legislative Council, wisely reformed to improve its very poor representational outcomes'.<sup>30</sup>

8.36 Mr Jack Jacovou was concerned about the effect the proposal would have on the representation of urban voters, the principle of one-vote-one-value and parliamentary democracy.<sup>31</sup>

### **Seats apportioned to urban and rural areas**

8.37 Mr Jacovou cited a 2016 report commissioned by the British Columbia electoral reform referendum that suggested multiple forms of proportional representation. This includes urban areas elected by single transferable vote and rural areas by mixed-member proportional (MMP).<sup>32</sup>

8.38 Under this proposal, a number of Senators would be elected by rural electors, in proportion to the population of rural areas. In NSW the 28% of electors in designated rural lower house seats would equate to 3-4 Senators.<sup>33</sup>

8.39 Options for the method of election for these rural Senators included awarding two seats 'as if they were lower house seats' and the other 2 would be normal Senate seats', or electing all 4 under the current method using single transferable vote. Mr Jacovou was hesitant to recommend this option, as it would result in different quota for the election of urban and rural Senators.<sup>34</sup>

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<sup>28</sup> Mr Mark Yore, Private capacity, *Submission 86*, p. 3.

<sup>29</sup> Mr Malcolm Baalman, Private capacity, *Submission 113*, p. 11.

<sup>30</sup> Mr Malcolm Baalman, Private capacity, *Submission 113*, p. 11.

<sup>31</sup> Mr Jack Jacovou, Private capacity, *Submission 29*, p. 1.

<sup>32</sup> Mr Jack Jacovou, Private capacity, *Submission 29*, p. 1.

<sup>33</sup> Mr Jack Jacovou, Private capacity, *Submission 29*, p. 1.

<sup>34</sup> Mr Jack Jacovou, Private capacity, *Submission 29*, p. 1.

## Number of Senators and Members

- 8.40 The number of Senators and Members of the House of Representatives are linked, due to s.24 of the *Constitution*. This nexus states that the number of members of the House ‘shall be, as nearly as practicable, twice the number of senators’.<sup>35</sup>
- 8.41 The nexus between the size of each house:
- ... not only ensures an appropriate balance between the Houses in terms of their representational roles; it also places limits on the extent to which the House of Representatives can prevail over the Senate in the event of a joint sitting following a simultaneous dissolution: essentially, a proposed law must be supported by something more than a bare majority in the House if it is to have a prospect of securing a majority in a joint sitting.<sup>36</sup>
- 8.42 A proposal to alter the *Constitution* to break this nexus, i.e. allow the House to expand without increasing the size of the Senate, was rejected by electors in 1967.
- 8.43 The number of Senators, and subsequently the number of Members, has been increased twice since Federation. In 1949, the number of Senators from each original State was increased from six to ten<sup>37</sup>, and from ten to twelve in 1984.<sup>38</sup> These changes resulted in the number of Members of the House of Representatives increasing from 75 to 123 in 1949, and to 148 in 1984. The current Membership of the House is 151; there are 76 Senators.
- 8.44 Mr Geoffrey Robin referred to the increase in voters between 1984 and 2019 without a commensurate increase in the number of Members,<sup>39</sup> and was concerned that this was having a detrimental effect on the work of Members:
- ... as Australia’s population grows, the work-load on conscientious Members of Parliament can only increase, matched by a distancing of constituents and further decline of the respect and trust which should be due to the people’s representatives.<sup>40</sup>

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<sup>35</sup>*Constitution*, s.24.

<sup>36</sup> Odgers’ *Australian Senate Practice*, 14th Edition, 2016, p. 36.

<sup>37</sup>*Representation Act 1948*.

<sup>38</sup>*Representation Act 1983*.

<sup>39</sup> Mr Geoffrey Robin, Private capacity, *Submission 15*, p. 1.

<sup>40</sup> Mr Geoffrey Robin, Private capacity, *Submission 15*, p. 2.

- 8.45 Table 8.2 displays the average number of electors per Member of the House of Representatives for the 1984 and 2019 federal elections, as well as comparisons between other Westminster parliaments at recent elections.

**Table 8.2 Ratio of electors to Members**

Country	Election year	Electors	Members	Average no. of electors per Member
Australia	1984	9,866,266	148	66,664
Australia	2019	16,424,248	151	108,770
United Kingdom	2019	47,074,800	650	72,423
Canada	2015	25,939,742	338	76,745
New Zealand	2020	3,549,564	120	29,580

Sources: Australian Electoral Commission, '2019 federal election enrolment statistics', viewed 18 November 2020, <[https://www.aec.gov.au/Elections/federal\\_elections/2019/enrolment-statistics.htm](https://www.aec.gov.au/Elections/federal_elections/2019/enrolment-statistics.htm)>; Office for National Statistics [United Kingdom], 'Electoral statistics, UK: 2019', viewed 18 November 2020, <<https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/bulletins/electoralstatisticsforuk/2019>>; Elections Canada, 'Voter Turnout at Federal Elections and Referendums', viewed 18 November 2020, <<https://www.elections.ca/content.aspx?section=ele&dir=turn&document=index&lang=e>>

- 8.46 The above table demonstrates that the number of electors per Member has increased by approximately 50% since 1984.
- 8.47 Mr Robin was concerned that continued population increases, without an increase in the number of Members, would lead to a doubling of the average number of electors per Member by 2066:

It should be self-evident that, while the deterioration of trust in our political system may not be solely due to the nexus, acquiescing to the whittling of constituents' power while ignoring the impact of a bloating electorate on MPs is damaging our democracy.<sup>41</sup>

<sup>41</sup> Mr Geoffrey Robin, Private capacity, *Submission 15*, p. 2.

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## Committee comment

### Location of Senator's offices

- 8.48 The JSCEM notes that the location of a Senators' office is the prerogative of each individual Senator. The decision to place an office in a particular location is based on a number of factors. The necessity to be as near to as many constituents as possible would no doubt be a factor in this decision.
- 8.49 The JSCEM is hesitant to compel Senators to relocate their offices out of capital cities and is well aware of the service city-based Senators give to regions within their State. Those Senators who do base themselves outside of State capitals, however, should not be expected to carry the weight of regional representation themselves.
- 8.50 It is inconceivable that an individual Senator would restrict themselves to only representing their State capital, however the JSCEM acknowledges that covering the width and breadth of the larger States would be time-consuming and at times logistically difficult.
- 8.51 Some additional support for Senators would assist them in consulting and representing their State. This could include increasing the electorate allowance and the communication budgets of Senators.
- 8.52 Some temporary support for Senators is available through the Commonwealth Parliament Offices (CPO). These are available for the use of Parliamentarians on a short-term basis and are located in the capital city of each State and the Northern Territory.<sup>42</sup> Some Senators have their own offices at these locations.

### Senate electorates

- 8.53 Due to the limited evidence to hand, the JSCEM would need further information on the proposals to divide States into electorates or divisions before it would make an informed comment on the proposal.

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<sup>42</sup> Department of Finance, 'Commonwealth Parliament Offices (CPO) visiting suites', viewed 13 November 2020, <<https://maps.finance.gov.au/guidance/office-accommodation-and-resources/office-accommodation/commonwealth-parliament-offices-cpo-visiting-suites>>

## Number of Parliamentarians

- 8.54 The JSCEM acknowledges the rising number of electors and the increasing workload of Members and Senators alike to service their electorates. This, in part, is the basis for the above proposal to secure regional representation from Senators.
- 8.55 An increase in the number of Senators may increase the availability of Senators to electors outside the capital cities.
- 8.56 The JSCEM is also aware of community sentiment that, in some quarters, would be resistant to increasing the number of parliamentarians without adequate justification.
- 8.57 This increase in the number of Senators would no doubt have an effect on the number of Senators based outside the State capitals. It would also substantially reduce the quota needed to gain election to the Senate. This would provide an opportunity for candidates from minor parties to gain election to the Senate.
- 8.58 As Australia's population increases, the number of electors represented by each Member and the demands placed on Members and Senators alike will also continue to increase.
- 8.59 The JSCEM is not prepared to make any recommendations on the size of the Houses at this time, however a conversation to determine the appropriate number of Members and Senators to sufficiently satisfy the representational demands of the electorate would be welcome.
- 8.60 The number of voters per Member of Parliament is growing to an extent where it is challenging for members to service constituent workloads. Accordingly, at an appropriate time, there will need to be an increase in the number of members of the House of Representatives.
- 8.61 The number of office suites in the Parliamentary building and the space for seating on the floor of the House Chamber are suitable for accommodating future growth in the number of MPs.
- 8.62 However, there is no equivalent case to expand the number of Senators, as their primary duties pertain to legislative work rather than constituent work. Australia's population has now reached the juncture where the House needs to grow further it keep pace. But the Senate does not to enlarge, and doing so could make it more fragmented and thereby complicate the ability to achieve compromise in the chamber on legislation.



- 8.63 The nexus between the number of MPs and Senators is a consequence of wording in the *Australian Constitution*; accordingly a referendum will be required to allow the two chambers to move to separate arrangements, that better suit their respective optimal working sizes.

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### **Recommendation 24**

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- 8.64 **The Committee recommends that consideration be given to a future constitutional referendum to break the nexus between the number of Senators for the States and the number of Members of the House of Representatives.**

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### **Recommendation 25**

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- 8.65 **The Committee recommends that the Government consider asking the Committee to inquire into the size of the House of Representatives, with consideration to the growing average size of electorates and growing demands of the electorate.**

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### **Recommendation 26**

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- 8.66 **The Committee recommends that the Government consider asking the Committee to inquire into the length of Parliamentary terms with a view to introducing non-fixed four year terms for the House of Representatives (and consequently eight year terms for the Senate) to bring the Commonwealth Parliament into line with State Parliaments.**

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### **Recommendation 27**

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- 8.67 **The Committee recommends that the Government consider asking the Committee to inquire into:**
- **The viability of replacing by-elections for the House of Representatives with alternative methods of selecting the replacement MP; and**
  - **The viability and ramification of determining a seat to be declared vacant when the sitting MP resigns from or leaves the Party under which they were elected.**

**Senator the Hon James McGrath  
Chair**

# A. Submissions

- 1 *Name Withheld*
- 2 Mr Peter Bayley
- 3 Professor George Williams AO
- 4 Dr Bede Harris
- 5 Ms Catherine Sullivan
- 6 Mr Malcolm Mackerras AO
- 7 *Name Withheld*
- 8 Mr Sylvain Garcia
- 9 *Name Withheld*
- 10 Mr Ian Brightwell
- 11 Mr Bill Tait Jr Esq
- 12 Mr Thomas Smith
- 13 Ms Sharyn Glen
- 14 Mr James L Carter
- 15 Geoffrey Robin
- 16 Australian Charities and Not-for-profits Commission
- 17 Professor Joo-Cheong Tham
- 18 Mr Tim Wilson MP
- 19 Lelene and John Schwerdt
- 20 David and Robyn Kemp

- 21 Mr Keith Pitt MP
- 22 Mr Pourus Bharucha
- 23 Dr Ross Cartmill
- 24 Mr Allan Hird
- 25 *Name Withheld*
- 26 *Name Withheld*
- 27 Mr Martin Wellington
- 28 Mr Anthony Koch
- 29 *Name Withheld*
- 30 Ms Sue Strodl
- 31 Ms Rosemary Cutrone
- 32 Mr Terrance Roux
- 33 Mr Brian Sawyer
- 34 *Name Withheld*
- 35 The Hon Barnaby Joyce MP
- 36 Mr Oliver Yates
- 37 Mr Allen Hampton
- 38 *Name Withheld*
- 39 *Name Withheld*
- 40 Dr Stephen English
- 41 Ms Lorraine Davies
- 42 Ms Rita Spencer, Mr Michael Lyons, Mr Gary Dowling, Mr Kevin Turnbull
- 43 Ms Sandra Barlow
- 44 The Hon Paul Fletcher MP
- 45 Ms Trisha Lincoln
- 46 Blind Citizens Australia
- 47 Mr John Mattes
- 48 Dr Kevin Bonham
- 49 Vote Australia, Inc

- 
- 50 *Name Withheld*
- 51 Ms Carolyn Jurgens
- 52 Ms Barbara Lohman
- 53 Mr James Bell
- 54 The Australia Institute
- 55 *Confidential*
- 56 Mr Dean Haywood
- 57 Ms Robyn Nolan
- 58 Electoral Reform Society of South Australia
- 59 Mr Julian Simmonds MP
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- 60 Mr Guy Ousey
- 61 Mr Gay Thew
- 62 Mr Chris Curtis
- 63 Daphne Lascaris
- 64 Mr Peter Fairall
- 65 Associate Professor Luke Beck
- 66 Mr Sean Carmichael
- 67 Democratic Audit of Australia
- 68 *Name Withheld*
- 69 Responsible Technology Australia
- 70 Greenpeace Australia Pacific
- 71 ScytI Australia Pty. Ltd.
- 72 Mr John Morris
- 73 The Voter Choice Project
- 74 Marque Lawyers
- 75 News and Media Research Centre, University of Canberra
- 75.1 Supplementary to submission 75
- 76 Temora Shire Council

- 77 Ms Sally Woodward
- 78 *Name Withheld*
- 79 The Centre for Public Integrity
- 80 A/Prof Vanessa Teague, Dr Blom, Dr Culnane, Dr Vukcevic, Dr Conway,  
Prof Gore, Prof Stuckey
- 81 National Party of Australia - N.S.W.
- 82 *Name Withheld*
- 83 GetUp
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- 84 Human Rights Law Centre, Australian Conservation Foundation and  
Uniting Church of Australia Synod of Victoria and Tasmania
- 85 Hon Bob Katter MP
- 86 Mr Mark Yore
- 87 Ms Talya Finberg
- 88 *Name Withheld*
- 89 *Name Withheld*
- 90 *Name Withheld*
- 91 Mrs Bess Price
- 92 *Name Withheld*
- 93 Free TV
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- 94 Mr Antony Green
- 95 *Name Withheld*
- 96 Ms Tina Jackson
- 97 Ms Ursula Hogben
- 98 Mr Anthony Pesec

- 
- 99 Ms Jennifer Jacomb, Mr Rohan Collins-Roe
- 100 Mr Ken Betts
- 101 Science Party
- 102 Mr Osmond Chiu
- 103 Mr Julian Hill MP
- 104 Mr Gary Coble
- 105 *Confidential*
- 106 Mr Kevin Andrews MP
- 107 Phillip and Kay Campbell
- 108 Ms Denise Shrivell
- 109 Mr Sebastian Saunders
- 110 Hon Mr Christian Porter MP
- 111 Reproductive Choice Australia, South Australian Abortion Action Coalition,  
Children By Choice and Marie Stopes Australia
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121 Mr James Goodman

122 Mr Jason Falinski MP

123 Mr Jason Falinski MP and Ms Zali Steggall OAM MP

124 Mr Robert Middendorp

125 Commercial Radio Australia

- 125.1 Supplementary to submission 125

126 Mr Peter Rawlings

127 Ms Anthea Mollison

128 Ms Jackie Hammill

129 Liberal Party of Australia

130 *Name Withheld*

131 Mr Warwick Lorenz

132 Mr Matthew Potocnik, NDIS Consumer Watch

- 132.1 Supplementary to submission 132

133 Centre for International Corporate Tax Accountability and Research

134 Mr Thor Prohaska

135 Mr Peter Ramshaw

136 Mr Toby Sterling

137 Professor Lyria Bennett Moses, Professor George Williams AO and Dr  
Monika Zalnieriute

138 Ms Nicolle Flint MP

139 Dr Danny Wotherspoon

140 Facebook

- 140.1 Supplementary to submission 140

141 *Name Withheld*

142 Ms Carrie Dennes

143 Mr Stephen Jones MP

144 Ms Robyn Wunder



- 
- 145 *Name Withheld*
- 146 Mr Michael Doyle
- 147 Mr Benedict Coyne
- 148 Mr Krystian Seibert
- 149 Mr Matt Keogh MP
- 150 Australian Labor Kyneton Branch
- 151 Ms Alison Anderson
- 152 Mr Gary MacDonald
- 153 Mr Thor Prohaska, Ms Maureen Brohman and Ms Carrol Halliwell
- 154 Australian Taxpayers' Alliance
- 155 The Hon Michael McCormack MP
- 156 Mr Clive Palmer
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- 157 Mr Alex Stewart
- 158 Mr Ian Watson
- 159 Ms Rachel Cockrell
- 160 Mr J Ryan
- 161 Australian Broadcasting Corporation
- 162 Delegate Progress Association Inc.
- 163 Mr Mike Barclay
- 164 Right On!
- 165 Dr Marilyn Moore
- 166 Inclusion Melbourne
- 167 Special Broadcasting Services (SBS)
- 168 Western Australian Electoral Commission
- 169 Mr Michael Maley
- 170 Australian Communications and Media Authority
- 171 People with Disabilities Western Australia

**172** Department of Communications and the Arts

- 172.1 Supplementary to submission 172

## **B. Public hearings**

### **Friday, 6 December 2019**

Parliament House

Committee Room 2S3

Canberra

*Australian Electoral Commission*

### **Wednesday, 26 February 2020**

Committee Room 1R2

Canberra

*News and Media Research Centre, University of Canberra*

### **Monday, 16 March 2020**

Cliftons venues

Level 2, 440 Collins Street

Melbourne

*Blind Citizens Australia*

*NDIS Consumer Watch*

*A/Prof Vanessa Teague*

*Professor Joo-Cheong Tham, Private capacity*

*Dr Colleen Lewis, Private capacity*

*The Centre for Public Integrity*

*Associate Professor Luke Beck, Private capacity*

*Institute of Public Affairs*

*Human Rights Law Centre, Australian Conservation Foundation and Uniting Church of Australia Synod of Victoria and Tasmania*

*Menzies Research Centre*

### **Wednesday, 17 June 2020**

Parliament House, Committee Room 1R2

Canberra

*The Australia Institute*

*Close*

### **Monday, 7 September 2020**

via teleconference

*Special Broadcasting Service*

*Free TV*

*Commercial Radio Australia*

*University of New South Wales*

*Australian Competition and Consumer Commission*

### **Wednesday, 9 September 2020**

via teleconference

*Mrs Bess Price, Private capacity*

*Aboriginal Peak Organisation of the NT*

*Australian Electoral Commission*

*Dr Ross Cartmill, Private capacity*

*Mr Mark Yore, Private capacity*

*The Voter Choice Project*

*Mr Thor Prohaska, Private capacity*

*Inclusion Melbourne*

*Australian Charities and Not-for-profits Commission*

### **Monday, 14 September 2020**

via teleconference

*GetUp*

*Dr Stephen English, Private capacity*

*Electoral Reform Society of South Australia*

*Dr Kevin Bonham, Private capacity*

*Mrs Lelene and Mr John Schwerdt, Private capacity*

*Ms Nicolle Flint, Private capacity*

*Ms Robyn Nolan, Private capacity*

*Western Australian Electoral Commission*

*Responsible Technology Australia*

*People with disabilities WA*

### **Wednesday, 16 September 2020**

via teleconference

*Facebook*

*Mr Antony Green, Private capacity*

*Australian Broadcasting Corporation*

*Australian Communications Media Authority*

*Australian Electoral Commission*

### **Wednesday, 11 November 2020**

via videconference

*GetUp*



## C. Australia - demographic classification of electoral divisions

<b>Demographic classification</b>	<b>Electoral division</b>	<b>State or territory</b>
Inner Metropolitan	Adelaide	South Australia
	Banks	New South Wales
	Barton	New South Wales
	Bean	ACT
	Bennelong	New South Wales
	Blaxland	New South Wales
	Bradfield	New South Wales
	Brisbane	Queensland
	Canberra	ACT
	Chisholm	Victoria
	Clark	Tasmania

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Cook	New South Wales
Cooper	Victoria
Curtin	Western Australia
Fenner	ACT
Fremantle	Western Australia
Gellibrand	Victoria
Goldstein	Victoria
Grayndler	New South Wales
Griffith	Queensland
Higgins	Victoria
Hindmarsh	South Australia
Hotham	Victoria
Jagajaga	Victoria
Kingsford Smith	New South Wales
Kooyong	Victoria
Lilley	Queensland
Macnamara	Victoria
Maribyrnong	Victoria
Melbourne	Victoria
Moreton	Queensland
North Sydney	New South Wales
Parramatta	New South Wales

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	Perth	Western Australia
	Reid	New South Wales
	Stirling	Western Australia
	Sturt	South Australia
	Swan	Western Australia
	Sydney	New South Wales
	Tangney	Western Australia
	Warringah	New South Wales
	Watson	New South Wales
	Wentworth	New South Wales
	Wills	Victoria
Outer Metropolitan	Aston	Victoria
	Berowra	New South Wales
	Bonner	Queensland
	Boothby	South Australia
	Bowman	Queensland
	Brand	Western Australia
	Bruce	Victoria
	Burt	Western Australia
	Calwell	Victoria
	Canning	Western Australia
	Chifley	New South Wales

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Cowan	Western Australia
Deakin	Victoria
Dickson	Queensland
Dunkley	Victoria
Fadden	Queensland
Forde	Queensland
Fowler	New South Wales
Franklin	Tasmania
Fraser	Victoria
Gorton	Victoria
Greenway	New South Wales
Hasluck	Western Australia
Holt	Victoria
Hughes	New South Wales
Isaacs	Victoria
Kingston	South Australia
La Trobe	Victoria
Lalor	Victoria
Lindsay	New South Wales
Macarthur	New South Wales
Mackellar	New South Wales
Makin	South Australia

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	McMahon	New South Wales
	Menzies	Victoria
	Mitchell	New South Wales
	Moore	Western Australia
	Oxley	Queensland
	Pearce	Western Australia
	Petrie	Queensland
	Rankin	Queensland
	Ryan	Queensland
	Scullin	Victoria
	Spence	South Australia
	Werriwa	New South Wales
Provincial	Ballarat	Victoria
	Bass	Tasmania
	Bendigo	Victoria
	Blair	Queensland
	Capricornia	Queensland
	Corangamite	Victoria
	Corio	Victoria
	Cowper	New South Wales
	Cunningham	New South Wales
	Dobell	New South Wales

	Groom	Queensland
	Herbert	Queensland
	Hinkler	Queensland
	Hume	New South Wales
	Longman	Queensland
	Macquarie	New South Wales
	McPherson	Queensland
	Moncrieff	Queensland
	Newcastle	New South Wales
	Northern Territory	NT
	Paterson	New South Wales
	Robertson	New South Wales
	Shortland	New South Wales
	Whitlam	New South Wales
Rural	Barker	South Australia
	Braddon	Tasmania
	Calare	New South Wales
	Casey	Victoria
	Dawson	Queensland
	Durack	Western Australia
	Eden-Monaro	New South Wales
	Fairfax	Queensland

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Farrer	New South Wales
Fisher	Queensland
Flinders	Victoria
Flynn	Queensland
Forrest	Western Australia
Gilmore	New South Wales
Gippsland	Victoria
Grey	South Australia
Hunter	New South Wales
Indi	Victoria
Kennedy	Queensland
Leichhardt	Queensland
Lyne	New South Wales
Lyons	Tasmania
Mallee	Victoria
Maranoa	Queensland
Mayo	South Australia
McEwen	Victoria
Monash	Victoria
New England	New South Wales
Nicholls	Victoria
O'Connor	Western Australia

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Page	New South Wales
Parkes	New South Wales
Richmond	New South Wales
Riverina	New South Wales
Wannon	Victoria
Wide Bay	Queensland
Wright	Queensland

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*Source: Australian Electoral Commission, 'Australia – demographic classification of electoral divisions – as at 3 July 2020', viewed on 2 December 2020, <<https://www.aec.gov.au/electorates/maps.htm>>*

# Dissenting report - Australian Greens

The Australian Greens believe that our democracy is richer, more inclusive and more meaningful when a diversity of voices is able to participate in election campaigns and be heard. For democracy to function effectively, it is also critical that policy positions are well articulated and subject to rigorous and informed debate throughout election campaigns (and beyond).

The 2019 election highlighted a number of key issues that continue to undermine this ideal. In particular, the election demonstrated the threats to the integrity of elections posed by unrestricted campaign spending and false or misleading advertising.

This inquiry presented an opportunity to seriously examine those issues, and to discuss ways to reform the electoral system to increase fairness, equity, transparency and accountability.

Instead, the majority report presents a vitriolic attack on democracy, and on those voices that the government perceives as threatening their business model. It ignores the numerous submissions calling for campaign finance reform and misses the opportunity to promote more rigour in claims made in political advertising.

The Chair's anti-democratic, ideological frolic is entirely unsupported by the evidence presented at hearings to the inquiry.

## 1. Preferential Voting

- 1.1. The Greens strongly oppose the Committee's Recommendation 2 to replace compulsory preferential voting with optional preferential voting. Compulsory preferential voting is a cornerstone of Australian democracy and helps to promote greater diversity in the MPs and Senators elected to our parliaments.
- 1.2. The Greens believe that efforts should be directed at improving voter literacy regarding how the preferential voting system works and why a vote can never be 'wasted' by choosing one candidate or party over another more established party. The persistence of the 'wasted vote' myth inhibits many voters from expressing their true political intention as they cast their vote. Many voters are under a misguided impression that to 'make their vote count', they have to vote for a party that will form government in order to 'stop the other side from getting in'.

## Recommendations

- 1.3. **That the AEC develop a campaign to improve voter literacy regarding the operation of the preferential voting system to dispel the "wasted vote" myth.**
- 1.4. **That the AEC review its training materials for polling booth officials and issue clear talking points to all its polling booth staff about how the Senate voting system works and that these talking points are also conveyed verbally to booth workers when they are briefed by the senior AEC worker at their centre.**
- 1.5. **That the government and the AEC review savings provisions to maximise the votes that are able to be counted when a voter's intention is sufficiently clear.**

## 2. Tax-Deductibility

- 2.1. The Greens oppose Recommendation 4 that the question of increasing the threshold for tax-deductibility of donations to political parties be considered by a further inquiry.
- 2.2. Donations from corporations and influential individuals have a corrupting effect on Australian democracy. We oppose increasing the amount of money people can donate to political parties, let alone encouraging greater tax-deductibility. As outlined in our additional comments below, we



believe that we need to get the influence of big money out of politics, not encourage it.

### **3. Voter ID**

- 3.1. The Greens oppose Recommendation 21, which proposes that voters be required to provide identification at polling places.
- 3.2. In response to recent amendments to the *Commonwealth Electoral Act 1918* to allow some flexibility in the way in which voters are asked questions to determine their eligibility, the Greens noted concerns that this would be a slippery slope to Voter ID.
- 3.3. We were assured it would not, yet this recommendation confirms our concern.
- 3.4. As noted in our dissenting comments to the 2016 election review report, voter identification requirements have serious implications for voter engagement for many groups of disadvantaged voters, including itinerant and indigenous voters as well as those escaping domestic violence. There is no evidence to suggest that voter fraud is a significant issue that warrants the risk of disenfranchising these voters.

### **4. Media Blackout**

- 4.1. The Greens support the continuation of the media blackout, currently administered under the *Broadcasting Services Act 1992*.
- 4.2. We acknowledge that the provisions do not apply to digital media and no longer provide a complete “blackout”. However, the blackout remains an important mechanism to moderate the impacts of last-minute advertising blitzes by the most well-resourced parties.
- 4.3. We recommend that the media blackout be reviewed with a view to extending restrictions on commercial radio and television broadcasters to include social media.

### **5. By-Elections**

- 5.1. The Greens oppose the suggestion in Recommendation 27 for by-elections to be replaced by an alternative method of selecting a replacement MP. By-elections provide an important opportunity for the community to democratically determine who they want to represent them in the event that their elected representative steps down.

## 6. Participation in Campaigns

- 6.1. The Greens oppose Recommendations 17 and 18.
- 6.2. The *Commonwealth Electoral Act 1918* already imposes significant restrictions on the participation of organisations in electoral activities. The upcoming review of the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* may provide further insight into the operation of current rules but, in the absence of a detailed and specific assessment, there is no evidence to support the view that more draconian restrictions should be applied.

## Additional Comments

### 7. Election Timing

#### Fixed terms

- 7.1. Recommendation 26 proposes non-fixed four year terms for the House of Representatives.
- 7.2. Fixed terms elections remove the strategic advantage afforded to the incumbent government in exercising their discretion as to election dates. Currently, the government can call an election when public opinion is most favourable to the government. They can ride out scandals. They can strategically ramp up advertising on key issues ahead of a public announcement of the election date.
- 7.3. Minor parties, new parties and independents with less capacity to plan, prepare and fund election campaigns are significantly disadvantaged by the ad hoc nature of election dates.
- 7.4. Fixed term elections would remove this advantage and level the electoral playing field. Fixed term electoral cycles will also facilitate public electoral funding and spending caps, provide clearer timelines for authorisation of materials, and allow the AEC to plan more efficiently for polling places and the necessary intake of temporary employees to assist with elections.

#### Pre-poll period

- 7.5. The Australian Greens support Recommendation 8 that the pre-poll period be limited to two weeks prior to election.

- 7.6. Longer pre-poll periods place significant strain on volunteer resources, compress the time available for finalising electoral materials, and encourage parties to delay the announcement of key policies until late in the campaign.
- 7.7. We also note Recommendation 12 regarding measures to facilitate earlier counting of pre-poll votes. As the number of votes cast during the pre-poll period continues to grow, we support consideration of ways to speed up the counting of votes and availability of results from pre-poll centres.
- 7.8. It is important that the AEC continues to ensure that pre-poll voting centres are inclusive and accessible, and staffed by well-trained officials.

## **8. Election Funding**

- 8.1. Unchecked private funding of election campaigns leads to undue influence and corruption, and the sidelining of less well-resourced voices.
- 8.2. The 2019 election saw ad space monopolised by unprecedented investment by Clive Palmer. The advertising expense for the United Australia Party was estimated to exceed that of the ALP and the Coalition combined. While his extensive ad campaign did not win him a seat, his blanket exposure across key seats drowned out more diverse voices. There is credible analysis that his misleading attack ads on opposition parties influenced the outcome of the election.
- 8.3. Spending caps, a ban on corporate donations, and public funding for political parties would go a long way toward levelling the playing field and facilitating broader participation and debate.
- 8.4. The majority of submitters to this inquiry who addressed election funding advocated for caps on campaign spending, subject to protections to ensure third parties were not gagged from engaging in legitimate advocacy activities.

### **Spending**

- 8.5. In line with the majority of submitters, the Greens support measures to cap spending for Federal elections, with the amount of the cap to be informed by spending data and consultation with affected parties.
- 8.6. The Greens have previously recommended that Australia consider electoral funding rules similar to those applying in Canada prior to 2011. In addition to banning corporate donations and strong caps on individual donations, that model provides standardised public funding for political parties. The

public funding amount includes party administration and broadcasting time in federal elections, reducing the need for reliance on donations from vested interests.

- 8.7. Campaign spending was also capped for both political parties and third parties, thereby avoiding the constitutional difficulties arising from differential limits, such as those imposed under NSW legislation and overturned by the High Court (see *Unions NSW v New South Wales* [2019] HCA 1).

## Recommendations

- 8.8. **That the government introduce reasonable caps on campaign expenditure by political parties, candidates, and registered third parties.**
- 8.9. **That the government introduce a system of public electoral funding for election campaigns and administration of political parties, with funding set at a reasonable level that reduces corporate influence on political decisions, while ensuring political parties are able to participate effectively in the democratic process.**

## Siphoning funds

- 8.10. Committee Recommendation 3 proposes amending the *Commonwealth Electoral Act 1918* to 'include new offences for siphoning money through intermediaries... to avoid transparency'.
- 8.11. While we support the recommendation, this is rich coming from a government that very recently amended the *Commonwealth Electoral Act 1918* to allow donors and political parties to dodge strong disclosure rules, banning and capping donations at the State level. As outlined in the Greens dissenting report on that Bill,<sup>1</sup> the amendments effectively allow donations to be siphoned through Federal parties to avoid more rigorous State laws.

## Recommendation

- 8.12. **That ss.302CA and 314B of the *Commonwealth Electoral Act 1918* be repealed.**

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<sup>1</sup> JSCEM Inquiry into the Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020, Dissenting Report – Australian Greens.

## Government pre-election spending

- 8.13. The Australia National Audit Office has confirmed a long-term trend of increased campaign expenditure before elections.<sup>2</sup> This was evident again in advance of the 2019 election when millions of taxpayer dollars were spent on ads promoting government initiatives just prior to the Federal election being called. This is in addition to the flagrant pork barrelling and use of grant funds to sure up electoral support.
- 8.14. The Australian government's Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth entities (Department of Finance, December 2014) and the Independent Communications Committee that oversees compliance with the guidelines, is intended to provide confidence that taxpayer-funded campaigns are rigorous, targeted and non-political. But successive reviews by the National Audit Office have criticised the broad discretions given to government and the lack of compliance options. The most recent review concludes:
- The persistence of debate over the use of public resources for certain government campaigns indicates that the framework has not achieved its primary purpose of building confidence and is therefore ineffective in respect to this outcome. In these circumstances, there would be merit in the Parliament and Australian Government revisiting the framework.
- 8.15. The ANAO recommends making all information and advertising campaign principles in the Guidelines mandatory, strengthening compliance, and certifying media releases associated with government campaigns to ensure they remain non-political.
- 8.16. We also note that there have been seven instances of the individual members being granted additional resources under the 'exceptional circumstances' provisions of the *Parliamentary Business Resources Act 2017*<sup>3</sup> prior to the 2019 election. For example, Senator Ian Macdonald was authorised to spend \$25,000 on printing and advertising within 2 months of the election additional to his general office expenditure. While the ads

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<sup>2</sup> Australian National Audit Office. 2019. Performance Audit Report: Government Advertising: June 2015 to April 2019. Available at <https://www.anao.gov.au/work/performance-audit/government-advertising-june-2015-to-april-2019>.

<sup>3</sup> Answers to Question on Notice 332, delivered 12 September 2019.

promoted a government flood relief program, they were heavily branded with Senator Macdonald's name and photograph.<sup>4</sup>

## Recommendations

- 8.17. **That the government implement the recommendations of the Australian National Audit Office, Performance Audit Report: Government Advertising: June 2015 to April 2019, regarding strengthening the guidelines for government advertising campaigns.**
- 8.18. **That the government strengthen oversight of the 'exceptional circumstances' provisions under the *Parliamentary Business Resources Act 2017* to ensure expenditure is limited to genuine parliamentary business and not used for political campaigning purposes.**

## Donations

- 8.19. The influence of corporate donors on policy outcomes is plain for all to see. We need a rigorous regime for limiting and disclosure of donations, and electoral funding to ensure accountability and transparency.
- 8.20. The current disclosure threshold under the *Commonwealth Electoral Act 1918* is too high and does not include fundraising dinners, attendance at events, membership fees, investments and loans. This permits significant private financing of political parties and candidates to avoid proper scrutiny and is out of step with much lower thresholds applying in all Australian jurisdictions other than Tasmania.
- 8.21. Even if caught by the threshold, disclosures are only made public many months after the election. As a result, the public are not informed at the time of casting their vote who is funding campaigns and influencing policy positions.
- 8.22. This inquiry has missed an opportunity to strengthen transparency and integrity in relation to political donations and campaign financing. Much of the commentary on donation reform in this committee's report into the 2016 election (see Chapter 6 in particular) remains relevant and should be revisited.

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<sup>4</sup> See <https://www.abc.net.au/news/2019-06-20/lnp-senator-ian-macdonald-pre-election-ad-spending/11223804>.

- 8.23. The Greens continue to call for a range of reforms to provide a more rigorous and transparent political donation disclosure regime, including:
- including membership fees and pay-for-access events in the definition of 'gift';
  - disclosure of all donations over \$1,000 on an easy to search, public website in close to real time;
  - an aggregated cap on donations from one donor of \$3,000 per parliamentary term;
  - a complete ban on donations from developers, banks, mining companies and the tobacco, liquor, gambling, defence and pharmaceutical industries to political parties, candidates and associated entities.
- 8.24. Any reforms to donations and election spending must be supported by the introduction of a strong federal integrity commission to investigate and act on any non-compliance. Greater transparency and enforcement will be critical to rebuilding public confidence in political parties.

## Recommendations

- 8.25. **That the government implement the recommendations made by the Senate Select Committee Inquiry into the Political Influence of Donations.**
- 8.26. **That the government adopt the Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2020.**
- 8.27. **That the government establish a strong, independent and accountable national integrity commission, ideally by passing the National Integrity Commission (No 2) Bill 2019 that passed the Senate in September 2019.**
- 8.28. **That the government initiate discussions through National Cabinet regarding the development of harmonised political donations laws.**

## Encouraging diversity in Parliament

- 8.29. Section 44 of the *Constitution* disqualifies certain classes of people from being eligible for election, including persons who hold any office of profit under the Crown, or those who hold dual citizenship.
- 8.30. This provision compels public servants to resign their employment for the duration of the election campaign, which can have significant professional consequences. This is discriminatory and impedes the democratic right of many Australian citizens to participate in the election process.

- 8.31. The exclusion of dual citizens is equally discriminatory. A significant proportion of Australian citizens were born overseas and are eligible to hold dual citizenship – our parliament would be greatly enriched by their experience.
- 8.32. The Australian Greens support previous recommendations of this Committee that s.44 be amended to ensure that suitable persons are not prevented or discouraged from nominating as candidates.

## Recommendations

- 8.33. That the government initiate a referendum to amend section 44 of the *Constitution* to allow public servants and dual citizens to stand for election to federal parliament.**
- 8.34. In the interim, the government introduce legislation to guarantee public servants who stand down from their role to run for election a right to return to work if they are not elected.**

## Truth in political advertising

- 8.35. Elections are an opportunity for political accountability. Broadcasting false and misleading information during a campaign undermines the capacity for an informed electorate to debate and vote on key policy issues.
- 8.36. Many submissions to this inquiry raised concerns that misleading campaign slogans in the 2019 election were able to influence the outcome of the election, such as the ‘death tax’ and ‘retiree tax’. The Australia Institute report, *We Can Handle the Truth*,<sup>5</sup> found that 84% of Australians favour legislation to regulate political advertising.
- 8.37. Given the electoral advantage gained by the government from these slogans, it is not surprising that the Committee makes no recommendations on this issue.
- 8.38. The Australia Institute and other submitters proposed models to regulate misleading campaign material, including the approach adopted in South Australia. Both the ACCC and the AEC made clear in submissions and evidence to the Committee that they did not consider themselves the appropriate authority to intervene.

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<sup>5</sup> The Australia Institute. 2019. *We Can Handle the Truth*. Available at <https://www.tai.org.au/content/we-can-handle-truth-proven-and-popular-political-advertising-laws-required>.



- 8.39. The Greens recognise the difficulty in arbitrating on ‘truth’, balancing robust debate and the implied constitutional freedom of political communication, and the need to ensure that any system is fair and accountable. However, we also recognise that, without some legislative response, the integrity of election campaigns and public faith in political parties will continue to be eroded.

## Recommendations

- 8.40. **That the government specifically refer to this Committee an inquiry into appropriate legislative responses to truth in political advertising.**

### Other matters

- 8.41. The Greens maintain our support for extending the opportunity to vote to minors aged 16 and 17, but not making voting mandatory for any person under 18.
- 8.42. The Australian Greens’ supplementary submission to this inquiry made a number of recommendations regarding scrutineering practices and procedures. We maintain that those recommendations should be considered.
- 8.43. In addition to the recommendations outlined in 1.1 – 1.5 regarding preferential voting, the Greens recommend the following measures to strengthen the voting system and facilitate a more diverse and representative parliament:
- Introducing proportional representation in the House of Representatives;
  - Reducing nomination fees to encourage more people to put their hand up for election; and
  - Revising the leaders’ debate format to include the Australian Greens, reflecting the role of parties offering a genuine alternative and the prospect of a working minority government.



# Dissenting report - Labor members

## Optional Preferential Voting & Robson Rotation

### Method

Labor is a strong defender of Australia's compulsory voting system and we oppose the removal of compulsory preferential voting. Compulsory voting is the cornerstone of Australian democracy and is known to improve satisfaction with democracy. The Chair's recommendation for optional preferential voting is a clear attack on compulsory voting at a time when we need it the most.

Optional preferential voting, where only one box on a ballot paper needs to be numbered, results in a significant number of votes being wasted if a voter's single preference isn't elected. Instead of the full preferential voting system where the voter's second and subsequent preferences are allocated, their vote is simply discarded after their first preference is exhausted. It has been shown that, where given the option, only the most engaged voters distribute all their preferences which results in the disenfranchisement of a significant number of voters and undermines our compulsory system of voting. In his foreword, the Chair states that this will maximise voter choice — in actual fact it does the opposite.

Labor members of the Committee note that the close proximity of the New South Wales state election (which allowed optional preferential voting) to the federal election may have resulted in some confusion amongst voters. However, New South Wales is one of only two Australian jurisdictions which does not have full preferential voting. If there was confusion, it is New South Wales which should be changing its system of voting to bring it into line with the rest of the country.

Labor members of the Committee oppose the introduction of the Robson Rotation method of ordering candidates on ballot papers. This will only cause further misunderstanding amongst voters and is a further attack on what is an established, easy to understand system where voters can follow How to Vote cards. Many voters rely on and seek out parties' How to Vote cards and having this feature removed may mean that a voter does not vote as they intended. Labor believes that the current system of a draw to determine the order of names on a ballot paper is the fairest method of allocating the order of candidates.

## **Sorting and counting of pre-poll votes**

Labor members of the Committee recognise that a result as early as possible after the close of polls enhances the confidence that citizens have in our electoral system. With the increase in early voting, Labor notes the corresponding increase in workload for officers of the AEC and the increased potential for a delayed result. Labor members therefore agree with the Committee's recommendation that the unfolding and sorting of pre-poll ordinary votes be permitted from 4pm, with the count to commence from 6pm. Labor members also agree that postal votes and other declaration votes may be opened and sorted, but that no vote should be viewed prior to counting commencing at 6pm on election day.

Labor members do not agree with the recommendation that counting of pre-poll ordinary votes commence from 4pm on election day. Effective scrutiny of vote counting cannot be undertaken if scrutineers are not permitted to communicate with candidates or parties. In addition, even with a prohibition on communication, any early vote counting leaves open the risk that results will be disclosed which could affect the outcome of the election.

## **Regulation of Associated Entities, Third Parties and Political Campaigners**

It is unclear what the Chair is recommending regarding affiliated organisations and Labor members of the Committee believe that the status quo should be maintained.

There is a clear definition of 'associated entity' contained in the Commonwealth Electoral Act and the AEC has been clear in its interpretation of that definition. Broadening this definition further would amount to an attack on working peoples' rights to join unions and campaign on issues that are important to them. It would be an attempt at silencing the Government's critics and suppressing political communication.

Lowering the threshold for political campaigners would unduly increase the administrative burden on grassroots campaigners and preventing union members or volunteers for specific causes engaging with voters at polling places is an undermining of our democracy.

Suppressing legitimate third party campaigners is a clear attack on democracy and should sound alarm bells for anyone who believes that every citizen should have the right to be involved in our political processes.

## **Voter ID Laws**

The Liberal members of the JSCEM have recommended Voter ID laws in the 2013, 2016 and now the 2019 federal election inquiry report. These recommendations have consistently been rejected by Labor.

There is no justification in the Australian context to require voters to present identification. The Electoral Commissioner gave evidence to the Inquiry that multiple votes represented just 0.03% of total votes in the House of Representatives and the majority of those were by people experiencing mental health issues. Requiring people to provide identification may have the effect of discouraging some people from voting, and in turn, undermining our system of compulsory voting. This is particularly the case for people experiencing homelessness and domestic violence, and Indigenous voters. While the recommendation includes an allowance for people without access to identification to vote if a health or welfare officer vouches for them, this still provides an additional barrier to voting.

Much effort has been made in recent years to increase voter participation among these groups and requiring people to provide identification may erode the gains that have been made.

In addition, a Voter ID system risks increasing the administrative burden on the Australian Electoral Commission when its resources are already stretched.

Requiring identification merely complicates the voting process and is a clear attempt by the Liberals at suppressing the vote.

## **By-elections**

In the Chair's foreword he suggests that by-elections be abolished and that the party of the departing member choose the replacement.

Labor does not support a reduction in the democratic rights of Australians to choose their lower house representatives.

## **Additional Comments**

### **Candidate Qualification Checklist**

Labor is and has been supportive of the candidate qualification checklist since the issues arose with candidates' eligibility under section 44 of the Constitution. Labor supports further reform to ensure that members of parliament are not in breach of the Constitution.

### **Political Donations**

The Committee heard from a large number of submitters who believe that the electoral funding and disclosure system requires reform to improve transparency of political donations and guard against undue influence of our elections. Labor members of the Committee agree with this proposition.

It is disappointing, but not surprising, that Government members have not taken the opportunity to recommend large-scale reform.

Labor is proud to have continuously fought for greater transparency of political donations. It was Labor, under Bob Hawke, that was first to introduce a donations disclosure regime back in 1983. The disclosure threshold was set at a fixed \$1,000 but in 2006 the Liberal Government, under John Howard, increased the threshold to \$10,000 and linked it to CPI — because it wanted to hide the donations it was receiving. Indexation has caused the threshold to blowout to a staggering \$14,300. Any donations received below that amount do not have to be disclosed. This is unacceptable in the modern era and something that Labor is committed to changing.

Labor has two private senator's bills before the parliament — one to lower the disclosure threshold to a fixed \$1,000 and the other to introduce a real time disclosure system. At present, it can be up to 19 months before electors find out who has made a political donation — and who might be seeking to influence a political campaign. Technological advances mean that we now have the ability to report in real time. It is something that can and should be done to give voters as much information as possible prior to an election. To that end, the Australian Electoral Commission needs to be appropriately funded so that it can implement a fit for purpose, user-friendly funding and disclosure portal to increase the transparency of political donations.

The above reforms will build on those Labor has already achieved including:

- banning foreign donations and protecting our political system from foreign interference;
- linking public funding to campaign expenditure, preventing parties from profiting from the electoral system;
- increasing funding for political parties to improve cyber-security; and
- establishing new offences and increased penalties for abuses of the political donation disclosure regime.

In addition, Labor believes that donations and expenditure caps are necessary to increase transparency, level the playing field, and reduce parties' reliance on political fundraising—and the risk of corruption. Many states and territories have already implemented donations and expenditure caps.

Currently there is no limit to how much a person or entity can donate to a political party or candidate. In 2016/17 Malcolm Turnbull donated \$1.75 million to the Liberal Party — the largest political donation that year. But this was eclipsed by Clive Palmer's record-breaking donation to the United Australia Party leading up to the 2019 election—an eye-watering \$83 million. New South Wales, Victoria and Queensland all have caps on political donations and the Commonwealth is lagging behind.

Donations caps should work hand in hand with expenditure caps. Expenditure caps would level the playing field for candidates and parties and ensure that election debate is not dominated by the party with the biggest bank balance.

To support these measures, and to reduce parties' reliance on fundraising, the rate of public election funding should be increased, and parties and elected independents should be provided with administrative funding to help cover the increased cost of compliance.

## **Reform of the Commonwealth Electoral Act**

The Commonwealth Electoral Act 1918 is one of Australia's oldest pieces of legislation. It is long, confusing and highly prescriptive and has been amended over the years in a piecemeal fashion.

There is clearly room for simplification and reform yet this must be done in a bipartisan manner and with appropriate consultation.

## **Management of the Electoral Roll**

Labor supports initiatives to aid in the technological advancement of the Australian Electoral Commission's systems. However, this requires not only sufficient resourcing of the AEC to maintain its rigour and independence but also, in the event of a single electronic certified role, appropriate cyber security protections.

## **Pre-poll Voting Period**

Labor members of the Committee are generally supportive of the idea of statutorily limiting the pre-poll period. However, the current pandemic environment needs to be taken into account as the AEC may need the ability to extend the period of pre-polling in the interests of public health. This flexibility may also be required in other times of emergency. The JSCEM is currently inquiring into this issue in its separate inquiry on conducting elections during emergencies and it may be more appropriate to wait for the outcome of that inquiry before legislative change is made.

## **Election Blackout Period**

With the increase in and advancement of technology there is a clear need for reform of our political blackout laws. The blackout period which applies to TV and radio advertising is ineffectual if it doesn't also apply to newspaper advertising and online platforms. Labor members of the Committee believe that more consideration needs to be given to whether the restrictions on radio and television broadcasts be removed, or whether other forms of advertising and broadcasting also be subjected to the blackout period. Extending the blackout to social media platforms could reduce the risk of misinformation or disinformation being disseminated in the last few days of a campaign. Whatever the outcome, there must be consistency in treatment of the various platforms and media outlets.

## **Truth in Political Advertising**

The Chair's approach to this issue is a start, but it is disappointing that the sole recommendation dealing with misleading political advertising is so limited. A large number of submissions received by the Committee focused on the need for truth in political advertising laws and research by the Australia Institute shows that 84% of Australians support such laws.



Labor believes that to protect our electoral system and democratic institutions, there needs to be legislation for truth in political advertising, not simply the adaptation of existing regulation or voluntary codes of conduct. Such laws have existed successfully in South Australia for several years and the ACT has just introduced its own truth in political advertising laws.

In his evidence to the Committee, ACCC Chair Rod Sims clearly stated it should not be that agency's role, which is specifically focused on trade and commerce, to regulate political advertising. Labor members of the Committee also note the AEC's concerns regarding a potential erosion of its independence if it were to be the regulator. More consideration needs to be given as to which body should be tasked with regulating truth in political advertising and whether a new, independent, election-focused body should be established.

### **Electoral Integrity Assurance Taskforce**

Labor believes that the Electoral Integrity Assurance Taskforce is an important initiative which is vital as we face increased threats of interference from both domestic and foreign sources. The Taskforce must be appropriately funded so it can meet these threats.

### **Conduct at elections**

Labor deplores and condemns any act of violence, abuse or intimidation whose purpose is to influence or disrupt those exercising their democratic freedoms. However, the offences listed in the recommendation are already captured by both state and federal criminal codes and it is questionable as to whether the Commonwealth Electoral Act is the most appropriate legislation to deal with this issue. The creation of a new, separate offence also risks having a chilling effect on legitimate political communication.

### **Size of the Parliament and Length of Parliamentary Terms**

Labor believes that significant democratic reform is required, including four year fixed terms for the House of Representatives. This, and the issues of increasing the size of the Parliament and the nexus between the two houses should be canvassed in a separate, dedicated inquiry prior to being put to the Australian people.

## Unsound mind provisions

Section 93(8)(a) of the Commonwealth Electoral Act states that:

A person who:

(a) by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting;

...

is not entitled to have his or her name placed or retained on any Roll or to vote at any Senate election or House of Representatives election.

It is considered that the phrase 'unsound mind' is outdated and offensive, and that people with disabilities should be provided with the necessary supports to vote rather than not encouraged to enrol in the first place, or removed from the roll.

In 2012 JSCEM considered whether the provision should be removed in its entirety. JSCEM, however, decided not to make that recommendation, concluding that given Australia's system of compulsory enrolment and voting, it provides a useful mechanism 'to protect the integrity of elections and assist those who might otherwise have to deal repeatedly with the AEC as to why they are not complying with their enrolment and voting obligations'.<sup>[1]</sup>

In 2014 the Australian Law Reform Commission recommended that the provision be repealed in its entirety.

In 2017 New South Wales repealed the unsound mind provisions from its Electoral Act.

Labor members of the Committee note the AEC's comments in a supplementary submission to this inquiry and its preference, based on consultation, that the provision remain but that the phrase 'unsound mind' be substituted with 'lacking the cognitive ability'. Labor supports a solution which would address the concerns of people living with disabilities and their advocates and recommends that the AEC consult with the NSW Electoral Commission regarding its methods for dealing with voters lacking the cognitive ability to vote.

## **Improving access to voting and enrolment for Indigenous Australians**

As at 30 June 2020 only 78% of First Nations Australians were enrolled to vote compared to 96.6% of the broader population. The statistics are worse in states and territories with large numbers of remote communities such as the Northern Territory and Western Australia. While Labor recognises the gains that have been made by the AEC in improving Indigenous enrolment, there is more that can be done.

To ensure that everyone has the maximum opportunity to participate in our democracy, we must facilitate easy access to enrolment. Strengthening automatic enrolment provisions contained in the Commonwealth Electoral Act would allow the same processes used for updating the roll for people living in metropolitan areas to be used for people living in remote communities.

In addition, the Committee heard from several witnesses that enrolment and turnout in remote communities could be improved by having more First Nations people employed by the AEC in these areas. This is an important initiative and Labor members of the Committee call on the AEC to listen to the feedback of stakeholders. The AEC also needs to be adequately funded to address the challenges of enrolment in remote communities.

## **Registration of Political Parties**

Under the Commonwealth Electoral Act a political party is required to show it has 500 members before it may be registered. There is an exemption in the Act which allows sitting members of the Federal Parliament to establish a party without having the minimum number of members. This loophole allows minor parties with little community support to undermine the integrity of our democracy and create instability. It is how Clive Palmer and Brian Burston were able to form the United Australia Party. No state except South Australia has this exemption.

The minimum requirement of 500 members for parties to be registered in other circumstances is a relatively low number in comparison to the various states taking into account their populations. New South Wales requires 750 members, Victoria, Queensland and Western Australia all require 500 members, South Australia requires 350 members and 100 members are required in Tasmania.

Increasing the minimum number of members required to 1000 and removing the loophole for sitting parliamentarians would ensure that a political party has an appropriate level of community support and prevent existing members from leaving one party and starting their own, and increasing instability in the Parliament.

Senator Carol Brown  
Deputy Chair

Senator Anthony Chisholm  
Member

Mr Milton Dick MP  
Member

Ms Kate Thwaites MP  
Member