



SENATOR SCOTT LUDLAM
AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

2 October 2013

Australian Electoral Officer
Peter Kramer
200 St Georges Terrace
Perth

Dear Mr Kramer,

With regards to the outcome of the WA senate election I request a recount of the following batches for the following reasons.

At count #138 there is a difference of only 14 votes between the candidate J. van BURGEL of the Australian Christians and the candidate M.BOW of the Shooters and Fishers. This led to J van Burgel being excluded instead of M Bow with a flow-on impact on preferences. With a difference like this any human error in the counting of the votes becomes crucial.

While my scrutineers witnessed the professional way of counting the below the line votes, a human error cannot be excluded in either above or below the line counting of votes. A House of Representative recount is mandated if a margin is less than 100 votes. The difference in votes which led to the exclusion of J van Burgel was much less than this (14 votes). On this basis, we would argue that the possibility of human error influencing the outcome in a much more complicated counting process cannot be discounted. Human error has to be excluded in such a marginal decision with such important consequences. Only a recount can ensure that the above the line votes receive the scrutiny needed to exclude human error.

It has come to my knowledge that the votes for the Shooters and Fishers in O'Connor jumped by 400 from one day to the next without explanation. On 11/09/2013 S&F were on 0.92%, on 23/09/2013 S&F were on 1.04%, on 02/10/2013 S&F were on 1.03%. This adds to our concern about irregularities in the counting of the Shooters and Fishers votes in O'Connor.

Further, there were numerous instances where the totals of votes attributed to candidates of those parties mentioned above appeared to drop at certain times with no explanation of

the reason for these votes dropping. In my view, this may be indicative of errors having been made and corrected at various stages during the count. In these circumstances, the prospect that some errors were made and went undiscovered is a live possibility.

I appreciate that there is no "automatic trigger" for a senate recount, but the facts found in the recent Fairfax recount should be considered:

- 89173 votes were cast in Fairfax, and after a recount the margin changed from 36 to 7 - 29 votes out of 89173 (0.032%).

- The margin in WA is substantially closer than this with 14 votes out of 1,349,635 (0.001014%).

- The number of votes cast in WA is 15 times the number of votes in Fairfax. If proportionality held then the WA margin at the critical count would be equivalent to less than a single vote in Fairfax, two orders of magnitude less than what would trigger an automatic recount in a House of Reps seat. Given this proportionality it seems completely reasonable to request that the count be checked. A re-count will reduce or even exclude the possibility of human error determining the outcome.

We believe this count to be critical to the election of not one but two candidates based on information, tools and commentary made available to the public by a respected election analyst (Antony Green, ABC)

- In particular the bundles contributing to the contest between candidates of the Australian Christians and Shooters and Fishers should be examined (i.e. including No Carbon Tax Climate Sceptics, Australian Fishing & Lifestyle, Australian Independents and Australian Voice whose preferences are directed via the GVTs in addition to the Australia Christians and Shooters and Fishers votes).

I therefore request a recount of all the batches contributing to the contest between the candidates of the Australian Christians and Shooters and Fishers. These include votes for candidates of the No Carbon Tax Climate Sceptics, Australian Fishing & Lifestyle, Australian Independents Australian voice whose preferences are directed via the GVTs.

Yours sincerely

A handwritten signature in black ink, appearing to be 'SL', with a long horizontal flourish extending to the left.

Scott Ludlam



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AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

3 October 2013

Australian Electoral Officer
Peter Kramer
200 St Georges Terrace
Perth

Dear Mr Kramer,

Further information in support of a request for recount

I refer to your correspondence of 2 October 2013 requesting further information in relation to my request for a recount.

1. Shifting tallies for Shooters and Fishers lead

Our scrutineers identified that there were shifts in the tallies for Shooters and Fishers and the Australian Christians, which were not consistent with the trends from the divisions.

There appears to be a large jump in the lead for the Shooters and Fishers party over the Australian Christians (including parties that preference both via the GVT, i.e. No Carbon Tax Climate Sceptics for the Australian Christians, Australian Independents and Australian Fishing & Lifestyle for the Shooters and Fishers) visible on the 23rd of September, with bundles from five divisions added (Forrest, Brand, Canning, Curtin and Tangney). Analysis of the total votes for the above five parties in each of these five divisions suggests that the expected trend should favour the Australian Christians, such a large jump towards the Shooters and Fishers on this date seems to be out of trend with the division averages. The attached spreadsheet ("AnalysisToSupportRecount_SR_V2") demonstrates the expected trend from those 5 divisions, showing net movement towards the Australian Christians total.

2. Potential for human error to impact the outcome

Given that the critical point determining the outcome of the election of the last two senators in Western Australia is only 14 votes, the result could have been impacted by

human error in counting. In my earlier letter of request I highlighted the issue of the potential for error in below the line tallies. There is however a greater potential for human error in tallying the above the line votes (given that below the line votes are double entered, whereas the above the line votes are counted by hand in bundles). We therefore request a recount of the relevant above the line votes as well as the below the line votes. I am unsure of the rationale for an automatic recount of a House seat on a margin finer than 100 votes, but no automatic provisions for a recount of a much larger Senate ballot that hinges on a much finer margin.

3. Difference between Senate and House of Repts tallies

There is a considerable difference in the number of votes cast in the House of Representatives and the Senate in each division. The total difference is 11,044 votes. The cause of the difference in total votes for each house is unclear - but we hold some concern that this results from errors in counting or bundling. In a count where the outcome turns on 14 votes, this reflects a very substantial prospect for error. In these unusual circumstances I therefore request a total recount of the senate ballots.

4. Multiple non-standard ballots; analysed and sorted by type

<https://dl.dropboxusercontent.com/u/10671102/senatecount/report.html>

These are critical ballots that appear to be non-standard in one way or another. We have sorted them by the types of issues we've detected (for example multiple duplicate below the line preferences; blank or illegible papers; see link above) which we strongly propose should be analysed by the AEC and scrutineers.

Thankyou for your attention to this matter. I am available on 0417 123 774 or by senator.ludlam@aph.gov.au if you require any further information.

sincerely,

A handwritten signature in black ink, appearing to be 'SL', with a long horizontal flourish extending to the right.

Scott Ludlam

Patricia Georgee

From: Wayne Dropulich <wdrop26@gmail.com>
Sent: Wednesday, 2 October 2013 4:36 PM
To: Peter Kramer
Subject: WA Senate

Hi Peter,

I wish to formally request a recount for the 2013 Federal Election for the WA Senate.

I give the following valid and specific grounds for the need for a recount of the WA Senate voting which could change the result of the election in the WA Senate.

1. During the counting process over the last three and a half weeks the progressive vote tally for the WA Senate was updated on the AEC website. The number of votes counted at several times went backwards indicating that errors were made in the counting process and when found taken off the totals and recounted. If errors were made, found and corrected then there is a potential that errors were made and not found which could change the result of the election.
2. When the breakdown of votes for the Shooters and Fishers and Australian Fishing and Lifestyle Party are examined there is a large discrepancy between the percentage of Ordinary votes and the percentage of Absent, Provisional and Early Votes. This could simply be an anomaly, but it could also be an indication that potentially errors could have been made.
3. At count number 140 in the exclusion process the excluded candidate was 14 votes behind the next lowest candidate. At this point there were 152 exhausted votes and a gain/loss of 109. It is understood that this is basically accounting for the rounding error, however with the exhausted votes being nearly 11 times the difference between the two candidates a rounding error of this magnitude could change the result of the election and could be addressed with fractional votes during the exclusion process.

I hope that you consider these ground for the need of a recount to be valid and specific enough to warrant a recount of the WA Senate.

Regards,
Wayne Dropulich
Secretary
Australian Sports Party

Paper 1 – Process for Investigating Discrepancies in Senate and HoR Ballot Paper Numbers

Response to Request for Verification.

Based on available comparative reporting, WA is typical in terms of the various reconciliations which take place in order to assure the election process. Of the various anomalies which came to our attention as a result of both our internal checks and as a result of scrutinies of our data by external parties, I am satisfied that we are able to account for some but not all of them. I would therefore hold by a derived accuracy rate of over 99.97%. Across the number of votes taken according to the most current scrutiny in WA, this amounts to a possible error of 405 votes. (.03% of 1349635 rounded up to the nearest vote.) However, it should be noted that there is no way to relate this possibility of error to a likelihood of altered outcome.

The reasoning behind the above statement along with framework issues is outlined below.

Introduction

There are two issues to be considered in looking at election reconciliations. The first is the accuracy of the count itself, which can only be evaluated in the light of subsequent counts (Noting Antony Greens comments on 4 Oct that *"If you count 1.3 million ballot papers twice there is reasonable chance you will get a different result, but you can never know whether the error is in the first or the second count."*)

The second is the discrepancy margin which is effectively an accounting measure looking for a balance between ballot papers issued and ballot papers received and relate to internal measures, by vote type, for each category (House and Senate) and comparative measures between the two categories.

Differences between the number of votes recorded for HoR and Senate scrutinies at a 'count' level are not uncommon. Operations Managers (DROs and NO elections branch staff) evaluate the differences identified to ensure they are within an acceptable tolerance. Any difference outside the normal range must be investigated. (Operations Manager election systems guide). The RCOM report lists a comparison of House of Representatives scrutiny totals with Senate scrutiny totals.

Background for Discrepancies

Variations can occur as a result of mis-sorts and miscounting, partially admitted votes, discarded papers, spoilt papers or papers not found. A common problem with the ballot paper reconciliation may be that the wrong number of ballot papers have been issued or handed out in addition to the original ballot paper allocation. Ballot Paper Printers are asked to bundle ballot papers in packs of 100 for HoR and Senate. The House Ordinary Papers are stubbed and numbered. However in the case of the Senate there are variations. Small discrepancies (99, 101, 102) occur and can impact on Polling Place balances if OICs do not accurately attend to this aspect of their role.

Election night figures are overtyped with fresh scrutiny figures after the actual scrutiny has been performed. This is why the figures change with the latest figure always being the more accurate.

Variations can also occur because of voter behaviour, either deliberate or inadvertent, that is not able to be picked up by polling place staff. For example, discrepancies can occur when an elector deliberately fails to place a ballot paper in the correct ballot box or declaration envelope. Or an elector may place their Senate Ballot Paper outside of the envelope provided for postal vote or inadvertently substitute a how to vote card for a valid completed ballot paper and then deposit the vote. Supporting this, the closer the control of the deposit process (eg bed to bed voting in hospitals) the lower the discrepancy rate.

Some difference is explained by partially admitted votes. i.e. admitted for the Senate only, because the voter has claimed entitlement for the incorrect division but for the correct State or Territory. This can occur for a number of reasons including for example; if an elector attends a polling place and is not found on the roll at an ordinary issuing point they will be referred to the declaration vote issuing point. Here they will be provided with a ballot paper for the House of Representatives division in which they claim to be enrolled. However when the envelope is processed through preliminary scrutiny to ensure the voters entitlement, they are found not to be enrolled at their claimed address and are enrolled for another division. In these cases the House of Representatives vote is rejected and the Senate included, (Senate only are to be counted).

It is important to note that we are legislatively compelled to maximise the electors franchise by admitting the Senate ballot paper to scrutiny if the elector is entitled to vote in the state in which they are enrolled. This results in many variations where the difference between the House of Representatives and Senate ballot paper numbers are not the same by division, but are not a result of errors in counting or bundling.

In its efforts to obtain a verifiable and accurate outcome, the AEC also looks to resolve a range of anomalies which may not even lead to ballot paper discrepancies. For example, prior to commencing further scrutiny, all declaration votes must undergo a preliminary scrutiny and a balance of admitted and partial admitted certificates must be achieved. Occasionally a declaration certificate or postal vote application will be mis sorted and sent to the wrong division. Shortages of declaration envelopes in other divisions may have resulted in absent/provisional certificates being used for pre-poll voting and vice-versa. Shortages of declaration envelopes in other divisions may also have resulted in certificates being photocopied.

Investigating Discrepancies

The DRO must ensure that these variations are within acceptable tolerances or that there is an explanation for the variance. The stated level of acceptable tolerance within the AEC is +/- 10.

If the total number of ballot papers for a polling place differs from the total at the previous count (including informal figures), the ballot papers are counted again, in order to establish a balance with the fresh scrutiny figures. If a balance still cannot be obtained (after rechecking the figures), the DRO will accept the fresh scrutiny figure and record details in the election diary, and the new figures in ELMS-Election Processing system. (EPM DO Pt 13 sub part 4)

Senate results are entered using an entry / verification process conducted by two staff from senate fresh scrutiny result slip. This data is then amalgamated with BTL data (which is also

double entered) to appear on the VTR. For batches of papers transferred to CSS for BTL input, the CSS manager is the only officer who can adjust the batches. (ie: The DRO cannot).

Where a parcel of Declaration & Postal votes despatched in the declaration vote exchange was not received, the DRO undertook follow-up action. If the declaration certificates and/or applications could not be located after investigations, the details were recorded in the Election Diary. The total number of declaration certificates received must be able to be reconciled with the total number of declaration certificates (admitted, partly admitted and rejected) although; in rare cases parcels were not received or received too late.

WA RCOM Report

In the case of the WA RCOM report, 11049 was the publicly visible website difference between HoR and Senate ballot papers. The actual reconciled difference was 454. This represents a discrepancy margin of 0.03% or a reliability of 99.97%.

In the Canning Oakford polling place for example, there were 1022 and 1036 HoR votes, resulting in 14 more Senate than HoR votes. In the Division of Swan Pre Poll Count Five, there were 961 HoR votes and 1 missing against 974 Senate accounted for, with 4 missing resulting in a difference of 16 more Senate than HoR accounted for.

There have also been instances of where the HoR vote is higher than the Senate vote. Pearce Yanchep is an example of this where 2072 HoR votes were counted against 2058 Senate (a 14 difference). However the VTR is not transparent in that it only shows formal and informal votes, not spoilt (5 & 3) and discarded (17 & 19). This discrepancy is not explained to the viewer, but a difference of 14 is visible.

At a polling place level the average discrepancy margin of 0.03% or a reliability of 99.97% ranges from 0 votes to 51 votes (setting aside the 2 matched dual PPVC mix ups in Greenfields and Joondalup). The 51 votes is at O'Connor (Kambalda West) and was a difference between the OIC return and fresh scrutiny results. As previously noted, if a balance still cannot be obtained (after rechecking the figures), the DRO will accept the fresh scrutiny figure and record details in the election diary, and the new figures in ELMS - Election Processing system. The most likely explanation for this particular discrepancy (Kambalda West) is that on polling night, the numbers called in by the Polling Place were incorrectly attributed. Whilst this does not affect the number of votes attributed to each candidate/party, it will show as an anomaly in the VTR. This was diarised by the DRO.

Of the 1806 counts undertaken, 24 were outside the acceptable tolerance, representing 1.41%. That is 98.59% of counts were within the acceptable tolerance level. Those 24 counts identified (of 45498 ballot papers) a reconciled difference of 93 ballot papers, or 0.2% of the (45498) count, but 0.01% of the total count. The VTR website difference was 59 ballot papers. In this case the VTR may appear incorrectly.

In summary, we are somewhere between 99.97% and 99.99% accurate. In terms of reconciling House and Senate ballot papers, WA were comparatively successful in 2013 with 62% of polling places having 99.9% concordance. However, as explained above it is not possible to warrant a precise measure of accuracy as the remaining .03% may be due to voter behaviour or a range of other factors.

Paper 2 – Analysis of issues raised by Senator Ludlam in supplementary letter to the Electoral Commissioner on 4 October

Introduction

Attached are results of feedback and analysis of the Issues raised by Mr Ludlam in his supplementary letter dated 4 October to the Electoral Commissioner seeking a recount of the WA Senate Election results.

By way of general comment, we are unable to provide meaningful analysis where the points being raised are credibly the result of voter behaviour or demographics. We are also unable to replicate the situations noted by Senator Ludlam where the Senators staff have taken time specific snapshots of the VTR throughout the election process as we do not have sufficient information to duplicate these snapshots.

Issue

Pre Poll Discrepancy on 16 September

Analysis

Unfortunately from the information provided by Mr Ludlam AEC WA is unable to replicate the counts data as indicated in his correspondence. Mr Ludlam indicated that one pre poll voting centres had 0.61% of the count allocated to the Australian Christians. Mr Ludlam then also indicated that there appeared to be a second pre poll count also conducted on that day with the Australian Christians receiving 0.64% of the vote. The two counts totalled 3,222 votes.

Using these three pieces of data WA AEC were able to identify potentially that the Perth PPVC which took 1,471 senate votes had an allocation of 0.61% of the vote allocated to the Australian Christians.

No other pre poll voting centre has allocated 0.64% to the Australian Christians however 4 other static polling places have 0.64% allocated to the Australian Christian. These are South Perth North, Perth (Curtin), Melville (Tangney), Guilderton and Hamilton Hill South. Regrettably no combination of these static polling places and Perth PPVC then meet the 3,222 vote statement in Mr Ludham's letter.

It is also unclear whether Mr Ludlam has also then compared pre poll voting trend based on envelop/declaration votes to pre poll voting based on ordinary votes. In the first instance pre poll declaration votes are conducted in early voting centres located outside of the home division before polling day whilst the ordinary pre poll vote is undertaken in an early voting centre located within the division on polling day.

If the key volume of data is based on the Perth PPVC, Perth division as a whole has less percentage of the total Australian Christians votes (1.27%) as compared to the state (1.5%).

Without more specific data we are unable to evaluate the issues raised by the Senator.

Issue

Analysis of the AEC time series data

Analysis

Divisional Returning Officers are required to review data management reports which compare House of Representative count ballot papers to Senate ballot paper counts. Where discrepancies exist they are required to investigate and rectify them. This activity is undertaken prior to the Senate count of votes being finalised.

These investigations include checking OIC returns, data input scrutiny sheets and ballot papers (counted, unused, spoilt and discarded) to determine whether the data entry reflects the count data.

A number of accounting corrections were made with regard to the Division of O'Connor on 1/10/13. The DRO identified that the data entry for a number of polling places did not physically match the OIC returns or data scrutiny input sheets to the actual physical number of votes counted through the scrutiny process.

As a result the Divisional Returning Officer made a number of data entry adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected. However the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

These adjustments were recorded in the election diary by the Divisional Returning Officer and were a result of the completion of validation exercises in the data entry aspect of the election.

Issue

Analysis of the Durack Geraldton Waggrakine Booth

Analysis

The Geraldton – Waggrakine booth in the Division of Durack has identified on the VTR that only 1 BTL vote was attributed to it. The polling place took 1,929 votes.

It would appear that during the fresh scrutiny at the divisional off site premises 79 ballot papers were identified to be sent to the CSS for processing. This was recorded in the relevant ELMS screens and CSS then confirmed receipt of the ballot papers for processing.

When the CSS processed these ballot papers one was a non- standard BTL ballot paper and the remainder were blank informal ballot papers. This data was uplifted to the relevant screens in ELMS and everything was considered to have been processed correctly.

A further review of ELMS data indicates that there were also 32 informal votes retained by the division and 13 spoilt and discarded ballot papers for the polling place. With a net ballot paper discrepancy of 4 senate papers over for ballot paper reconciliation purposes and in comparison to House volumes 5 under. (Acceptable ranges).

There are a number of possibilities here. The informal votes may have inadvertently been bundled incorrectly in that they should have been referred to CSS as BTL papers and the materials sent to CSS should have been retained in Durack as informal. ie: there are potentially 32 votes in question here. Without a further examination of the ballot papers it is difficult to conclusively resolve this issue.

In passing, it is worth noting that if assuming that the % trend for the division was constant in this polling place then there would be no more than 1 vote granted to the Shooters and Fishers and zero votes to the Australian Christians (0.71 vote: 0.36 vote).

Issue

Identification of unusual booth trends

- Division of Perth – Bassendean Shooters and Fishers Vote was almost double then the rest of the division.
- Division of Swan – Cannington East Shooters and Fishers vote was more than double than other booths in Swan.
- Division of Tangney – Canning Vale North was also double than other booths in the division of Tangney.

Analysis

Without counting ballot papers there is nothing to indicate anything amiss with any of these results. The voting trends in each booth are quite credibly a result of localized demographic data. For example, in Ashfield Polling Place there are double the percentage of and quantum of voters who are more supportive of the HEMP party than the Shooters and Fishers Party.

Additionally, in some cases the numbers being referred to are small. For example, 'statistically double the percentage vote for the Canning Vale North vote' equates to 3 voters.

Issue

Unusual total vote count for booths in Durack and Brand

Analysis

Senator Ludlam indicates that there are unusual high proportions of the polling places counts that end with a 10 and are therefore a bundling error.

For the Division of Brand there are 3 polling places out of 41 and the Division of Durack 12 out of 123 polling places. This is respectively 7.32% and 9.76%. In comparison the Division of Canning has 5 out of 54 polling places and the Division of O'Connor 13 out of 133 polling places. Respectively these are 9.26% and 9.78%. The distribution of counts ending in 10 is not abnormal.

Issue

Significant discrepancies between Australian Christians HOR and Senate at particular booths and in comparison to total votes overall.

The following booths show large differences between Australian Christians HOR and Senate vote (while most booths are fairly consistent within 2- 3 votes) and also have significant discrepancies between HOR and Senate votes cast (greater than 10):

- Canning - Oakford - HOR 49, Senate 40
- Moore - Heathridge - HOR 46, Senate 32
- Pearce - Yanchep - HOR 38, Senate 19
- Perth - Inglewood North - HOR 44, Senate 25
- Swan - Langford - HOR 59, Senate 44
- Tangney - Bull Creek East - HOR 48, Senate 37
- Tangney - Canning Vale Central - HOR 93, Senate 67

Analysis

There is not a compelling argument that voters will as a matter of course align house and senate votes. Discrepancies such as these are arguably equally likely to be the result of voter decisions. In addition there are order and layout issues on the ballot paper that tempt electors to vote differently for house to senate.

Issue

Demonstrated problems in vote counting in previous elections

Analysis

There is no relevance to these statements as they allegedly relate to the 2007 election. However there is no documentation of these concerns within this office. I would note that attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Issue

A prior Senate Recount in 1980, produced a different total count of ballot papers and this is argued to be indicative.

Analysis

Firstly it should be noted that the result did not change. However, more importantly this recount occurred prior to 1984 when group voting tickets and ATL voting was introduced. These changes together with the introduction of the easycount system and larger ballot papers substantially changed processes and assurance processes.

Excerpt from AEO WA response to Senator Ludlam's Recount Request of 2nd Oct including Additional Information provided on October 3rd**The difference of only 14 votes at Count 138**

During numerous counts candidates are excluded by small differences. The point worth noting is that where the AEC does have a numerical trigger as part of its recount policy, in the House of Representatives, differences of less than 100 are measured at the end of the distribution of preferences not in the middle of this process (as outlined in p60 of the Candidates Handbook). By way of reference, there were a number of points throughout the 2013 WA Senate count where exclusions occurred based on small differences and Senate Counts have a history of small vote margins at various exclusion points which then impacts on complex transfer values as defined in the Act.

Variations in the vote on the Virtual Tally Room on the AEC website and particularly that of the Shooters And Fishers Party in O'Connor

Variations in progressive results updated through the VTR on the AEC Website are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. Scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking correct attribution to a candidate. The VTR figures on the AEC Website are indicative only and are not final. They are displayed in the interests of transparency.

The closeness of the margin of the vote in comparison to the Division Fairfax in the House of Representatives

With regard to the closeness of the count in comparison to Fairfax in the House of Representatives, the Electoral Act does not specifically reference closeness other than to give instructions regarding the management of ties in the Senate Count process. However, it is worth noting that the Recount policy refers to a margin of less than 100 votes **at the end of the distribution of preferences** for the House of Representatives. At the end of the distribution of preferences in the Senate count, the difference in votes between yourself and the sixth elected candidate, Louise Pratt, is considerable.

Examination of bundles of votes of a number of parties (Australian Christians, Shooters and Fishers, No Carbon Tax Climate Sceptics, Australian Fishing & Lifestyle, Australian Independents and Australian Voice).

In regards to the examination of a number of bundles of votes of specified parties, I do not see any clear issue being raised here with regard to processes or events which may otherwise have led to a different result. Group Voting Tickets of all Parties are publicly available for perusal and is a transparent element of our electoral process.

Non standard ballots

Referencing the additional information you provided today, firstly with reference to the nonstandard ballot papers with multiple duplicate numberings, the examples you provided all fall within the scope of Section 270 (1) (a)(b)(i)(ii) which describes formality savings measures and are not irregularities

Variation in votes between the Senate and the House of Representatives.

With reference to the variation in the number of votes cast in the House of Representatives and the Senate, the difference is largely accounted for by what we call partially admitted votes; ie: cases where the elector is issued with a declaration vote which is then found to be for the wrong division as they are enrolled for an address other than the one claimed, but is still in the right state. These can, for example be provisional or absent votes. This results in many variations where the difference between the House of Representatives and Senate Ballot paper numbers are not the same by division but are also not a result of errors in counting or bundling.



3 October 2013

Australian Electoral Commission statement WA Senate Recount Requests Declined

The Australian Electoral Commission (AEC) has released its decisions today on the WA Senate recount requests submitted by the Australian Sports Party candidate, Wayne Dropulich and the Greens (WA) candidate, Scott Ludlam.

The AEC received the two requests prior to the formal declaration originally scheduled for 3.00pm (WST) on Wednesday 2 October 2013.

The requests for a recount did not identify any specific issues, which would have warranted the conduct of a recount and as a result the requests have been denied.

Mr Dropulich and Senator Ludlam have the option of appealing the decision to the AEC Electoral Commissioner under Section 278(2) of the *Commonwealth Electoral Act 1918* before the declaration of the poll.

The formal declaration of the poll for the WA Senate election has been rescheduled for 11.30am on Friday, 4 October 2013 at Level 13, 200 St Georges Tce Perth. All candidates, media and the public are invited to attend.

All 2013 federal election results are available in the Virtual Tally Room on the AEC website at www.aec.gov.au.

WESTERN AUSTRALIA MEDIA CONTACT
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**ELECTION
2013**

Tim O'Shaughnessy

From: Peter Kramer
Sent: Thursday, 3 October 2013 3:05 PM
To: Ludlam, Scott (Senator) (Senator.Ludlam@aph.gov.au)
Subject: FW: Final - Ludlam [DLM=For-Official-Use-Only]

AECStatus: process

For-Official-Use-Only

Senator Ludlam

I refer to your request for a recount of votes in the 2013 Senate Election for WA. I note your concerns with regard to a number of risks you identify in the election process and your concern at the closeness of the candidates at various parts of the count.

Your request of October 2nd referred to the difference of only 14 votes at Count 138, variations in the vote on the Virtual Tally Room on the AEC website and particularly that of the Shooters And Fishers Party in O'Connor, the closeness of the margin of the vote in comparison to the Division Fairfax in the House of Representatives and examination of bundles of votes of a number of parties (Australian Christians, Shooters and Fishers, No Carbon Tax Climate Sceptics, Australian Fishing & Lifestyle, Australian Independents and Australian Voice). Your additional information provided on October 3rd raised issues in relation to non standard ballots and variation in votes between the Senate and the House of Representatives.

I have considered your request for a recount of the Senate. This request has been declined for the following reasons:

- During numerous counts candidates are excluded by small differences. The point worth noting is that where the AEC does have a numerical trigger as part of its recount policy, in the House of Representatives, differences of less than 100 are measured at the end of the distribution of preferences not in the middle of this process (as outlined in p60 of the Candidates Handbook). By way of reference, there were a number of points throughout the 2013 WA Senate count where exclusions occurred based on small differences and Senate Counts have a history of small vote margins at various exclusion points which then impacts on complex transfer values as defined in the Act.
- Variations in progressive results updated through the VTR on the AEC Website are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. Scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking correct attribution to a candidate. The VTR figures on the AEC Website are indicative only and are not final. They are displayed in the interests of transparency.
- With regard to the closeness of the count in comparison to Fairfax in the House of Representatives, the Electoral Act does not specifically reference closeness other than to give instructions regarding the management of ties in the Senate Count process. However, it is worth noting that the Recount policy refers to a margin of less than 100 votes **at the end of the distribution of preferences** for the House of Representatives At the end of the distribution of

preferences in the Senate count, the difference in votes between yourself and the sixth elected candidate, Louise Pratt, is considerable.

- In regards to the examination of a number of bundles of votes of specified parties, I do not see any clear issue being raised here with regard to processes or events which may otherwise have led to a different result. Group Voting Tickets of all Parties are publicly available for perusal and is a transparent element of our electoral process.
- Referencing the additional information you provided today, firstly with reference to the nonstandard ballot papers with multiple duplicate numberings, the examples you provided all fall within the scope of Section 270 (1) (a)(b)(i)(ii) which describes formality savings measures and are not irregularities.

Secondly, with reference to the variation in the number of votes cast in the House of Representatives and the Senate, the difference is largely accounted for by what we call partially admitted votes; ie: cases where the elector is issued with a declaration vote which is then found to be for the wrong division as they are enrolled for an address other than the one claimed, but is still in the right state. These can, for example be provisional or absent votes. This results in many variations where the difference between the House of Representatives and Senate Ballot paper numbers are not the same by division but are also not a result of errors in counting or bundling.

I am satisfied that valid and specific grounds have been not provided as evidence that a recount for the Senate in WA could change the result of the Senate election. Accordingly I have determined that a recount will not proceed. This is in accordance with the AEC's published policy on recounts (as outlined in the AEC Candidate's Handbook, p62) which states that a request for a recount which does not plead any valid and sufficient grounds must be refused.

If you wish to appeal my decision you may write to the Electoral Commissioner, Mr Ed Killesteyn, at Ed.Killesteyn@aec.gov.au

Peter KRAMER | Australian Electoral Officer & State Manager
Western Australia
Australian Electoral Commission
T: 08 63638020 | M: 0434326305 | F: 08 63638017



For-Official-Use-Only

Tim O'Shaughnessy

From: Peter Kramer
Sent: Thursday, 3 October 2013 3:06 PM
To: Wayne Dropulich (wdrop26@gmail.com)
Subject: FW: Final - Dropulich [DLM=For-Official-Use-Only]

AECStatus: process

For-Official-Use-Only

Mr Dropulich

I have considered your request for a recount of the Senate.

Your request referred to variation in the vote tally for the WA Senate on the AEC website, discrepancies between percentages of vote types for the Shooters and Fishers Party and the Australian Fishing and Lifestyle Party and the Exclusion process.

This request has been declined for the following reasons:

- Variations in progressive results updated through the VTR on the AEC Website are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. Scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The progressive VTR figures on the AEC Website are indicative only and are not final until the completion of the full distribution of preferences. They are displayed in the interests of transparency.
- The percentage of votes taken is representative of percent of the total vote. For example, the Shooters & Fishers Party received 0.92% of the total ordinary vote and the Australian Fishing & Lifestyle Party received 0.39% of the total ordinary vote. There is a difference in vote type depending on how people voted i.e. ordinary at a polling place, early if not able to vote on polling day, absent if not in the electorate on polling day, and provisional if not found on the roll on polling day. There is no conclusion or inference to be drawn on differing percentages of vote types which are a common feature of the results across all electorates and state/territory Senate elections.
- The Senate Easycount system used to undertake computerised counting has been accredited to National Association of Testing Authorities standards and certified as accurately reflecting the Senate counting and distribution of preferences law. The other point worth noting is that during numerous counts candidates are excluded by small differences. This is not a material issue. Where the AEC does have a numerical trigger as part of its recount policy, in the House of Representatives, differences of less than 100 are measured at the end of the distribution of preferences not in the middle of this process. At the end of the distribution of preferences in the Senate count, the difference in votes between yourself and the sixth elected candidate, Louise Pratt, is considerable.

I am satisfied that valid and specific grounds have been not provided to justify a recount for the Senate in WA. Accordingly I have determined that a recount will not proceed. This is in accordance with the AEC's published policy on recounts (as outlined in the AEC Candidate's Handbook, p62) which states that a request for a recount which does not plead any valid and sufficient grounds must be refused.

If you wish to appeal my decision you may write to the Electoral Commissioner, Mr Ed Killesteyn, at Ed.Killesteyn@aec.gov.au

Peter KRAMER | Australian Electoral Officer & State Manager
Western Australia
Australian Electoral Commission
T: 08 63638020 | M: 0434326305 | F: 08 63638017



For-Official-Use-Only



SENATOR SCOTT LUDLAM
AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

Thursday, 3 October 2013

Mr Ed Killesteyn PSM,
Electoral Commissioner
Australian Electoral Commission
PO Box 6172
Kingston ACT 2604

Dear Sir,

Result of the 2013 election of Senators for Western Australia

Yesterday I wrote to the Australian Electoral Officer seeking a re-count of ballot papers for the election of Senators for Western Australia.

I set forth reasons for the request.

I attach a copy of the letters sent.

Today the Australian Electoral Officer has advised that my request has been refused.

Pursuant to s 278(2) of the *Commonwealth Electoral Act 1918*, I now appeal to you in writing to direct a re-count of the ballot papers to which the request relates.

In making this appeal, I note the following:

1. The result of the election for the final places turned on the relative positions of the Shooters and Fishers Party and the Australian Christians. The difference between the respective parties at this point of the count was just 14 votes.
2. Whilst considerations are in some respects different between counts for the election of Senators and counts for the election of members of the House of Representatives, I note that the AEC has a policy of automatically recounting in House of Representatives seats where the margin is less than 100 votes. Here the margin is considerably less, both in absolute terms and as a proportion of voters.

3. There has been a Senate recount before, following the 1980 election in Western Australia. At that election, Mr Noel Crichton-Browne was found to have been elected, on the initial count, by 214 votes. Following the recount, the margin was 560 votes. The difference of 346 votes was considerably greater than the 14 votes in contention at the critical point of this count.
4. There have been three recounts for the Victorian Legislative Council since it adopted proportional representation. In two of those recounts the result changed following the recount. In none of those cases was the critical margin as small as the 14 votes in this case. In at least one of these recounts (that for the Western Metropolitan Region in 2006), the critical margin was close at mid count, and the result overturned a very substantial final margin. One particular factor in these recounts was a common misclassification of votes which recorded the voters' intentions both above and below the line – something only picked up on the recounts.
5. None of the elected senators will be required to take their seats in the Senate before 1 July 2014, so there is no particular urgency to declare the result of the election.
6. I rely on the matters raised in my correspondence to the Australian Electoral Officer.

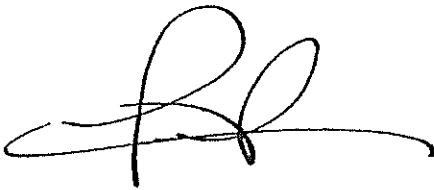
In respect of the reasons provided by the Electoral Officer, I note:

- (a) It is incorrect to approach the question of a recount based only on the relative margins at the end of the distribution of preferences. There is no reason in principle for such an approach, which ignores the reality that margins at the points of exclusion in a senate count are more likely to affect the outcome.
- (b) It is true that margins may be small at the point of exclusion in the Senate, but most of these do not matter. This one does.
- (c) It is, with respect, unhelpful to point out that the 100 vote trigger in the House of Representatives only applies at the end of the count after distribution of preferences. In the House, in the overwhelming majority of cases, this is the only point where it does matter. To apply that to the Senate, where the margin at a particular exclusion point matters in a way quite different from the House of Representatives, is erroneous.
- (d) It is true that variations were subject to scrutiny. However, they have occurred and this suggests that some errors were picked up during the initial count – others may not have been. The count occurred in various places across Western Australia and scrutineers were not present at all times and all places.

- (e) The *Commonwealth Electoral Act* does not provide any express criteria for a recount either in the House of Representatives or the Senate. However, the test must be that a recount is warranted wherever there is a reasonable prospect that a further scrutiny of the votes would yield a different result. Indeed, the AEC policy for a 100 vote 'trigger' for the House of Representatives recount is in accordance with such a test.

- (f) The very small margin at the critical exclusion point leaves open a real prospect of human error, and is apt to leave the community dissatisfied with a result where the option of a recount has not been taken.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'SL', with a long horizontal flourish extending to the right.

Scott Ludlam

Candidate

cc. Peter Kramer, Australian Electoral Officer, 200 St Georges Terrace, Perth



SENATOR SCOTT LUDLAM
AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

Friday 4 October 2013

Mr Ed Killesteyn PSM,
Electoral Commissioner
Australian Electoral Commission
PO Box 6172
Kingston ACT 2604

Dear Sir,

Supplementary information; result of the 2013 election of Senators for Western Australia

I acknowledge receipt of correspondence from your colleague Brendon Barlow this morning that "... the declaration scheduled for 11.30am Friday 4 October 2013 has been postponed until further notice."

Further to the appeal I lodged yesterday, I submit below seven additional concerns for your consideration which I strongly believe buttress the view that a recount of relevant cohorts of the WA Senate vote is called for.

I am also seeking clarification of process you intend to follow from here.

Please acknowledge receipt of this document.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'SL', written in a cursive style.

Scott Ludlam
Candidate

1) Prepoll discrepancy on the 16th of September

We are particularly concerned about two parcels of prepoll votes that were added on September 16. These have the Australian Christians getting 0.61% and 0.64% respectively. These figures are below the proportion of votes for the Christians in any electorate other than Curtin, and well below their vote for most. The parcels are large enough (both with over 1500 votes) that anomalies of this size are surprising.

It appears unlikely that either of these parcels is from Curtin, as both parcels have unusually strong votes for the ASP and the Fishing and Lifestyle Party 2.4% and 1.1% respectively for the first and 2.0% and 1.0% for the second. The Curtin Prepoll vote was particularly low for both these parties.

Moreover, the size of the two parcels, with 3222 votes between them is not consistent with them coming from the same electorate. Those electorates where the vote for the ASP was highest had fewer than this number of prepoll votes (counting only the prepolls recorded as such by vote type, rather than those counted with the ordinary votes). If the parcels were from two different electorates it would be even more surprising for both to run so out of kilter with the trend from any electorate.

2) Analysis of the AEC time series data

Our analysis of the time series data identified several points (most notably 15:18:37WST to 17:46:13WST on 01/10/2013) at which the Australian Christians, and ASP, vote decreased before rising again. This clearly demonstrates that the AEC identified errors in counting. Whether all errors were correctly identified is uncertain, and the fact that errors do occur suggests that a recount should be undertaken to resolve this issue, particularly when the determination of the Senate result hinges on such a small margin.

3) Analysis of Durack Geraldton Waggrakine Booth

The Geraldton Waggrakine booth contains twice as many informals as elsewhere in the electorate, and no below the line votes at all. This seems to suggest that an error in counting occurred. Based on previous trends and the current statewide trend, the anticipated below the line total should be around 50. A scatter plot and more information regarding this anomaly can be found about half way down the page here:
<http://originaltruthseeker.blogspot.com.au/2013/10/wa-polling-booths-discrepancies.html>

4) Identification of unusual booth trends

We identified two booths at which the ASP, and one booth at which the Australian Lifestyle and Fishing, vote was significantly above trend when compared to the rest of the booths within the electorate.

In Perth, the Bassendean booth count for the Shooters and Fishers was almost double that of other booths within Perth. In Swan, the Cannington East booth count for the ASP was more than double that of other booths within Swan. In Tangney, the Canning Vale North booth count for the Australian Fishing and Lifestyle party was almost double that of other booths within Tangney.

Considered together, these three above trend booth counts for the ASP/Australian Fishing and Lifestyle party may have resulted in 61 votes erroneously allocated to these two parties. If these votes were incorrectly allocated, then this would have affected the WA senate determination.

5) Unusual total vote count for booths in Durack and Brand

In the undeclared divisions of Booth and Brand, an unusually high proportion of polling booths total vote counts end in a multiple of ten (ie 10, 20, 30...and so on). This suggests that for these booths at least one "bundling error" remains unresolved.

6) Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths

The following booths show large differences between Australian Christians HOR and Senate vote (while most booths are fairly consistent within 2- 3 votes) and also have significant discrepancies between HOR and Senate votes cast (greater than 10):

- Canning - Oakford - HOR 49, Senate 40
- Moore - Heathridge - HOR 46, Senate 32
- Pearce - Yanchep - HOR 38, Senate 19
- Perth - Inglewood North - HOR 44, Senate 25
- Swan - Langford - HOR 59, Senate 44
- Tangney - Bull Creek East - HOR 48, Senate 37
- Tangney - Canning Vale Central - HOR 93, Senate 67

In total, the discrepancy between the HOR and Senate was 101 votes, whereas based on the State wide average we would have expected a discrepancy of 21 votes.

7) Demonstrated problems in vote counting in previous elections

It seems very likely that some of the votes for the independents in particular were formal both above and below the line, but were wrongly counted, thus altering the outcome. In previous elections, some of the people rechecking the Senate votes were unaware of the rule that where a vote was formal both above and below the line, the below the line takes precedence. Moreover, an even more common problem in 2007 were counters (and in some cases Returning Officers) who were unfamiliar with the rule that below the line votes were allowed up to 10% errors while still being formal (ie 6 errors when there were 60-70 candidates) up to the first error.

Some electorates, while unaware of this rule were following the instructions that any vote that looked close to formal should be sent to the central data entry place for checking, where the rule was well understood. However, in some electorates votes with a two blank boxes, or with a repeated number were being discarded as informal (or counted above the line if that was formal) and our scrutineers had to be issued with copies of the electoral act to point out to the counters that this was the case. We have not examined such issues in this election in WA, but believe we should be provided with the opportunity to recount the votes to if any errors in counting formal votes occurred.



From: Wayne Dropulich [<mailto:wdrop26@gmail.com>]
Sent: Friday, 4 October 2013 10:13 AM
To: Ed Killesteyn
Subject: WA Senate

Dear Mr Killesteyn,

I wish to formally appeal the decision by the WA Electoral Commission and request a recount for the 2013 Federal Election for the WA Senate.

I give the following valid and specific grounds for the need for a recount of the WA Senate voting which could change the result of the election in the WA Senate.

1. During the counting process over the last three and a half weeks the progressive vote tally for the WA Senate was updated on the AEC website. The number of votes counted at several times went backwards indicating that errors were made in the counting process and when found taken off the totals and recounted. If errors were made, found and corrected then there is a potential that errors were made and not found which could change the result of the election.
2. When the breakdown of votes for the Shooters and Fishers and Australian Fishing and Lifestyle Party are examined there is a large discrepancy between the percentage of Ordinary votes and the percentage of Absent, Provisional and Early Votes. This could simply be an anomaly, but it could also be an indication that potentially errors could have been made when counting these votes.
3. At count number 140 in the exclusion process the excluded candidate was 14 votes behind the next lowest candidate. At this point there were 152 exhausted votes and a gain/loss of 109. It is understood that this is basically accounting for the rounding error, however with the exhausted votes being nearly 11 times the difference between the two candidates a rounding error of this magnitude could change the result of the election and could be addressed with fractional votes during the exclusion process.

I hope that you consider these ground for the need of a recount to be valid and specific enough to warrant a recount of the WA Senate.

Regards,
Wayne Dropulich
Secretary
Australian Sports Party



Electoral Commissioner

Our Ref: LS 4848

Senator Louise Pratt

By email: Senator.Pratt@aph.gov.au

Dear Senator Pratt

Re: Senate Election Western Australia

I am writing with respect to the 2013 WA Senate election. The results for that election have not yet been declared. There have been applications made by certain candidates to the Australian Electoral Officer ("AEO") for Western Australia to conduct a re-count of the Senate vote. After considering the matter, the AEO refused these requests on 3 October 2013. Under subsection 278(2) of the *Commonwealth Electoral Act 1918* ("the Electoral Act") candidates may appeal to the Electoral Commissioner to direct a re-count and I have received appeals from certain candidates. Before I decide whether to direct a re-count you may also wish to make submissions with respect to whether I should or should not direct that a re-count be conducted.

If you wish to make a written submission on this matter I would ask that it be sent by email to me at ed.killesteyn@aec.gov.au and received no later than **5PM Eastern Daylight Savings Time on Wednesday 9 October 2013**.

I will advise you of the result of your submission when I have made my decision.

Yours sincerely

Yours sincerely

Ed Killesteyn

October 2013



HopgoodGanim

8 October 2013

URGENT

Mr Ed Killesteyn PSM
Electoral Commissioner
Australian Electoral Commission
By email: ed.killesteyn@aec.gov.au

Copy to:
Paul Pirani
Chief Legal officer
Australian Electoral Commission
By email: paul.pirani@aec.gov.au

BRISBANE

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Our ref: 1238086 - Peter Burge/Julia O'Connor

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Dear Mr Killesteyn

Submissions on behalf of the Palmer United Party, Mr Zhenya Wang and Ms Chamonix Terblanche regarding appeal from the decision of the Australian Electoral Officer (WA) not to conduct a recount of the ballot papers cast for the election of Senators for the State of Western Australia

We refer to:

1. the request for a recount by Senator Ludlam dated 2 October 2013 (**Ludlam Request**);
2. the additional material submitted to the Australian Electoral Officer (WA) by Senator Ludlam dated 3 October 2013 (**Additional Ludlam Recount Material**);
3. the request for a recount by Mr Dropulich dated 2 October 2013 (**Dropulich Request**);
4. the decision of the Australian Electoral Officer (WA) refusing the Ludlam Request dated 3 October 2013 (**Ludlam Decision**);
5. the decision of the Australian Electoral Officer (WA) refusing the Dropulich Request dated 3 October 2013 (**Dropulich Decision**);
6. the appeal to the Electoral Commissioner by Senator Ludlam dated 3 October 2013 (**Ludlam Appeal**);
7. the additional material submitted to the Electoral Commissioner by Senator

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8 October 2013



Ludlam dated 4 October 2013 (**Additional Ludlam Appeal Material**); and

8. the appeal to the Electoral Commissioner by Mr. Dropulich dated 4 October 2013 (**Dropulich Appeal**),

and our client thanks you for the opportunity to be heard on the Ludlam and Dropulich Appeals.

In this submission, references to:

1. the "AEC" is a reference to the Australian Electoral Commission;
2. the "AEC's Recount Policy" is a reference to the policy set out under the heading "Evaluating a request for a recount" on page 64 of the Candidates Handbook as currently published on the AEC's website at www.aec.gov.au;
3. the "AEO" is a reference to the Australian Electoral Officer for Western Australia, Mr Peter Kramer;
4. to the "Appeals" is a collective reference to both the Ludlam Appeal and the Dropulich Appeal;
5. the "CEA" is a reference to the *Commonwealth Electoral Act 1918* (Cth);
6. the "Election" is a reference to the election of Senators for the State of Western Australia;
7. the "Recount" is a reference to a recount of ballot papers cast in the Election pursuant to section 278 of the CEA, whether conducted as a general recount or of any particular parcels or categories of ballot papers cast in the Election; and
8. "our client" is a reference to each of the Palmer United Party, Mr Zhenya Wang and Ms Chamonix Terblanche.

Submissions

In our client's respectful submission you should exercise your discretion under section 278 (2) of the CEA to *refuse* both of the Appeals.

Further, our client submits that it is appropriate that the AEO declare the results of the Election as soon as is convenient. As you would be aware, the AEO has a statutory duty to do so under Section 283 of the CEA, "*as soon as conveniently may be after the result of the election has been ascertained... declare the result of the election and the names of the candidates elected.*" In our client's respectful submission, Wednesday 9 October 2013 would be a time that is "*as soon as [is] convenient ... after the result of the election has been ascertained*".

Reasons

Our client submits that you should refuse the Appeals for the following reasons.

Reliance upon previous decisions by the AEO

1. Our client agrees with and adopts the reasoning set out in each of the Ludlam and Dropulich Decisions, and respectfully submits that nothing contained in any of:
 - (a) the Ludlam and Dropulich Requests;



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- (b) the Additional Ludlam Recount Material;
- (c) the Ludlam and Dropulich Appeals; or
- (d) the Additional Ludlam Appeal Material,

advances any compelling reasons why you should exercise your discretion to allow the Appeals and interfere with the decision of the AEO to not conduct a Recount.

Considerations that you should take into account in deciding the Appeals

2. While requests for recounts and appeals against decisions not to recount are made pursuant to section 278 of the CEA, section 278 does not set out the relevant considerations that either the AEO or you must take into account when considering a request for a recount.
3. In our client's submission, you should consider any appeal under section 278 (2) of the CEA from a decision to refuse a request for a Recount under section 278 (1) of the CEA, primarily against the bullet points set out in the AEC's Recount Policy. Candidates and the electorate are entitled to rely on the assumption that the AEC will act in accordance with its own stated policy.
4. The first and second bullet points of the AEC Recount Policy are that:
 - "A recount may take place where there are *valid and specific grounds* for supposing that it could change the result of the election in the division or where there are *specific grounds* for determining the need for a recount of *specific ballot papers* (such as in response to specific allegations or incidents).
 - A request for a recount which does not plead any *valid and specific grounds* must be refused. A request for a recount needs to identify *specific ballot papers* and associated *significant* counting process errors or irregularities that could change the result of an election within a division." (emphasis added).
5. As applied to the Appeals, the AEC's Recount Policy would require each of the Appellants to plead valid and *specific* grounds in relation to *specific* ballot papers that are affected by either associated significant:
 - (a) counting process errors; or
 - (b) irregularities,that could change the result of an election within a division.
6. As to what would constitute *specific* ballot papers that are affected by significant *irregularities*, our client submits that these would be ballot papers that fail to comply with the requirements of sections 268 to 270 of the CEA.

The Ludlam Appeal

7. Considering the Ludlam Appeal, in essence Senator Ludlam argues that:
 - (a) "The result of the election for the final places turned on...just 14 votes", and that given how small this margin is, there should be an automatic recount because the "AEC has a policy of automatically recounting in House of Representatives seats where the margin is less than 100 votes".

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- (b) There has been one recount in a Senate election previously and three recounts for elections to the upper house in Victoria. Having said that, Senator Ludlam does concede that there is no AEC policy as to automatic recounts in the Senate, but essentially argues that the same policy should apply to recounts in respect of elections to both Houses of Parliament. In this case, the margin is, he believes, significantly smaller than the margin that has prompted recounts in previous cases.
- (c) Given that none of the Senators elected will take their seats until July 2014, there is no urgency to declare the result now.
- (d) As regards the reasoning in the Ludlam Decision, the principle consideration for "a matter of course" recount in the House of Representatives is apparently where there is a relative margin between the winner and the runner-up of less than 100 votes at the end of the distribution of preferences (as explained by the AEO in the Ludlam Decision). In Senator Ludlam's view that should not be the principle consideration as regards a recount for a Senate election; in respect of a Senate election, margins at the points of exclusion in a Senate count are more likely to affect the outcome than a small relative margin at the end of the distribution of preferences.
- (e) In the Senator's opinion, the test of whether or not a recount is warranted:
- "must be... wherever there is a reasonable prospect that a further scrutiny of the votes would yield a different result. Indeed, the AEC policy for a 100 vote 'trigger' for the House of Representatives recount is in accordance with such a test.... The very small margin at the critical exclusion point leaves open a real prospect of human error, and is apt to leave the community dissatisfied with a result where the option of a recount has not been taken." (See paragraph (d) of the Ludlam Appeal)
- Presumably, Senator Ludlam relies on the matters raised in Ludlam Request and the Additional Ludlam Recount Material to support his view that there is a "reasonable prospect that a further scrutiny of the votes would yield a different result" – see paragraph 6 of the Ludlam Appeal.
- (f) Finally, as there were "some errors picked up during the initial count – other [errors] may not have been [picked up]."
8. In our client's submission, the reasons set out in the Ludlam Appeal fail to address those matters that a request for a Recount must address under the AEC's Recount Policy in order to be granted, in addition to failing the very test proposed by Senator Ludlam himself and quoted in paragraph 7 (e) above.
9. In particular, the Ludlam Appeal fails to meet the test set out in the AEC Recount Policy as it fails to identify *specific ballot papers* that are tainted by *significant counting process errors or irregularities*. To the extent that the Ludlam Appeal does identify *any* counting process errors or irregularities (which our client does not accept), they are not of such a nature that they could change the result of the Election. In this respect, we note that:
- (a) The specific "evidence" of errors or irregularities upon which Senator Ludlam relies are set out in the Ludlam Request, the Additional Ludlam Recount Material, and the Additional Ludlam Appeal Material. In these documents, the Senator makes no reference to "*specific ballot papers*" that are affected by these so called errors or irregularities. Rather, those documents simply refer to curious "jumps in votes" for minor party candidates, voting "trends", the "potential" for the result to "have been impacted by human error in counting", "considerable difference[s] in the number of votes cast in the House of Representatives and the Senate in each division" and

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"non-standard ballots". None of these refers to "specific ballot papers and associated significant counting process errors or irregularities". Again, they are simply a collection of broad allegations without evidence of substance.

- (b) Senator Ludlam does refer to a number of "errors" which he acknowledges were "corrected at various stages during the count". He then goes on to state that given that these errors occurred (albeit that they were picked up by the AEC's counting processes and corrected), "the prospect that some errors were made and went undiscovered is a live possibility". This is notwithstanding that the Senator has expressly acknowledged that his "scrutineers witnessed the professional way of counting the below the line votes".
- (c) In summary, Senator Ludlam:
- (1) acknowledges that errors were made and that the system picked up those errors and corrected them;
 - (2) acknowledges that the counting and scrutiny was undertaken in a professional fashion; but
 - (3) supposes that there *may* have been other errors that were not picked up.

The Senator does not state what must be the inevitable conclusion to draw from his submissions: errors occur, but the 3 scrutiny system works to pick them up, and the very fact that in this case those errors were picked up, makes it less likely than not that no other significant errors went undetected and corrected.

- (d) To the extent that Senator Ludlam identifies unusual voting trends in particular booths, no conclusions as to the reasons for those voting trends can be drawn without significant, rigorous and detailed analysis as to the reasons why. Differences in apparent "elector behaviour" from one polling place to another may arise for any number of reasons, none of which would justify a Recount. For example, the fact that "voting trends" at one polling booth may be "significantly different" from trends at another polling booth, may simply reflect different demographics or socio-economic circumstances at each locality. Until such time as a more thorough and significant investigation is undertaken, our client submits that Senator Ludlam's explanation for those voting trends amounts to no more than mere speculation. In this regard we refer to the issues raised under the headings "Shifting tallies for Shooters and Fishers lead" and the "Difference between Senate and House of Reps tallies" in the Additional Ludlam Recount Material, and the issues raised under each of the headings "Prepoll discrepancy on the 16th of September", the "Unusual total vote count for booths in Durack and Brand", "Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths" in the Additional Ludlam Appeal Material.
- (e) The Senator specifically refers to demonstrated problems in vote counting in previous elections. He does not provide any evidence to suggest that those problems were replicated in this Election. It is instructive that the Senator simply states "We have not examined such issues in this election in WA..." With respect, and given the Senator's concession that he has not "examined such issues", nothing the Senator says in this regard has any probative weight and is utterly irrelevant to the threshold requirements that must be met before a Recount should be conducted.

10. Further, as to the Senator's own test (as stated above), none of the issues raised in Senator Ludlam's material would satisfy his test for determining whether or not a Recount should be



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conducted. That is, in none of the material that Senator Ludlam has submitted, has he identified any issue which would indicate that there is "a *reasonable prospect* that a further scrutiny of the votes would yield a *different result*". In particular as the AEO indicated in the Ludlam Decision "At the end of the distribution of preferences in the Senate count, the difference in votes between [Senator Ludlam] and the sixth elected candidate, Louise Pratt, is considerable."

11. Finally, even if the errors that Senator Ludlam had identified were sufficient to meet the requirements of the AEC Recount Policy or his own test (which we deny), the evidence upon which he relies amounts to no more than mere assertions by his scrutineers and unqualified "bloggers" who claim to have conducted statistical analysis on the data reported on the AEC virtual tally room. In our client's view, such evidence is unsatisfactory, unreliable and does not of itself justify a Recount being conducted, particularly given the enormity of the work and the cost associated with that task. A decision of such significance should only be taken on the basis of highly credible, fully substantiated and attributed evidence from both experts and scrutineers as necessary. In this regard we refer to the issues raised under the heading "Analysis of Durack Geraldton Waggrakine Booth" in the Additional Ludlam Appeal Material. For this reason alone, the Ludlam Appeal should be refused.

The Dropulich Appeal

12. As to the Dropulich Appeal, our client notes that it does not advance any additional reasons to those set out in the Dropulich Request and nor does it attempt to respond to the reasons given in the Dropulich Decision for refusing the request for a Recount. For this reason alone, the Dropulich Appeal should be refused.
13. In any event, we note that the reasons set out in the Dropulich Appeal are substantially the same as some of those raised by Senator Ludlam and in our submission, our comments above apply with equal force to the reasons given by Mr Dropulich to support his appeal.

Other relevant matters

14. In addition to the reasons set out above, our client submits that in making your decision you should have regard to:
 - (a) the number of votes that will need to be recounted – over 1.5 million votes if the Dropulich Appeal is allowed and an unknown but significant number if the Ludlam Appeal is allowed;
 - (b) the significant work that will need to be undertaken by AEC staff for the conduct of the Recount;
 - (c) the inordinate expense that will be incurred by taxpayers arising from the work referred to in (b) above; and
 - (d) the fact that three rigorous counts of ballot papers cast in the Election, have been undertaken in the presence of many scrutineers, and there is no guarantee or indeed likelihood that a fourth count will be any more likely to uncover errors significant enough to change the outcome of the Election.
15. Further, we note that section 353(1) of the CEA states:

"The validity of any election or return may be disputed by petition addressed to the Court of Disputed Returns *and not otherwise*". (emphasis added)



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On any view, each of the matters raised by Senator Ludlam and Mr Dropulich are concerns in relation to the validity of the Election as opposed to reasons in support of a request for a Recount. This is evident from the fact that neither Senator Ludlam nor Mr Dropulich has met the requirements for a recount under the AEC's Recount Policy. As section 353(1) of the CEA makes clear, the **only** avenue which can address the legitimacy of those concerns or otherwise is the Court of Disputed Returns. In these circumstances, our client submits that each of the Appeals should be denied because they are without legal basis and are improperly made.

16. Finally, we note that Senator Ludlam has not requested a Recount of *all* ballot papers, but merely "a recount of all the batches contributing to the contest between the candidates of the Australian Christians and Shooters and Fishers. These include votes for candidates of the No Carbon Tax Climate Sceptics, Australian Fishing & Lifestyle, Australian Independents Australian voice whose preferences are directed via the GVTs" (the Relevant Ballot Papers).
17. While our client maintains its position that you should *not* direct that *any* Recount take place, our client submits that if you are minded to direct that a Recount should be conducted, then you should direct a Recount of *all* ballot papers cast in the Election, and *not* merely a Recount of the Relevant Ballot Papers as requested by Senator Ludlam.
18. As our client has submitted above, Senator Ludlam has produced no compelling evidence that *any specific ballot papers* or indeed *any* particular parcel or category of ballot papers were the subject of "associated *significant* counting process errors or irregularities that could change the result of an election within a division". Our client notes again that the following statement is telling of the Senator's motives:

"We have not examined such issues in this election in WA, but believe we should be provided with the opportunity to recount the votes to [see] if any errors in counting formal votes occurred." See last sentence on page 3 of the Additional Ludlam Appeal Material. (emphasis added).
19. In other words the Senator is simply "fishing". He has no evidence whatsoever that the initial counts of the Relevant Ballot papers were in error. However the Senator has theorised that if a Recount of that particular category of ballot papers were to change "the relative positions of the Shooters and Fishers Party and the Australian Christians", it may result in the Senator being re-elected.
20. In our client's submission such a blatant attempt by the Senator to "game" the result in this fashion without any evidence of wrongdoing with respect to the Relevant Ballot Papers, would be highly prejudicial to and discriminatory against all other candidates whose "relative positions" may be different were there to be a Recount of another *different* category or categories of ballot papers.
21. If in the final analysis, the only substantive ground that the Senator can advance to justify a Recount is that "[t]he difference between [the Shooters and Fishers Party and the Australian Christians] at [one] point of the count was just 14 votes", then the request for the Recount should be denied. However if you are mindful to direct a Recount on this basis alone, then without any justifiable reason to distinguish this category of ballot papers from any other category of ballot papers cast in the Election, fairness dictates that you should direct a Recount of *all* ballot papers cast in the Election so as not to prejudice one candidate over another.

Mr Ed Killesteyn PSM
Electoral Commissioner
Australian Electoral Commission

8 October 2013



In conclusion, our client submits that you should exercise your discretion to refuse the Appeals for the reasons stated above.

We look forward to your confirmation that this is the case and your notice regarding when the AEO's declaration will be made.

Please do not hesitate to contact us should you require any further information.

Yours faithfully

HopgoodGanim

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9 October 2013

Mr Ed Killesteyn PSM
Electoral Commissioner
Australian Electoral Commission
PO Box 6172
KINGSTON ACT 2604

ed.killesteyn@aec.gov.au

Dear Mr Killesteyn

Senate Election Western Australia

We act for Senator Louise Pratt, who has referred to us your letter yesterday.

Our client makes the following submissions in relation to the appeals for a recount that have been received by you under section 278(2) of the *Commonwealth Electoral Act 1918*.

The AEC's Recount Policy relevantly provides:

3. Evaluating a request for a recount

3.1 The following guidelines must be observed in evaluating requests for a recount:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division or State/Territory or where there are specific grounds for determining the need for a recount of specific ballot papers (eg. in response to specific allegations/incidents).
- A request for a recount which does not plead any valid and specific grounds should be refused. A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division.

...

3.5 As a general rule, the decision maker (EC, AEO or DRO as relevant) should not agree to any recount, the purpose of which was only ... because the candidate did not have scrutineers in attendance at a particular scrutiny.

In the present case, none of the other candidates has identified any "valid and specific grounds" for supposing that a recount could change the result of the election. More particularly, none of the other candidates has identified either:

- any "specific allegations/incidents", or

- any "specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election",

as required by clause 3.1 of the Recount Policy.

It appears from the letter to you from Senator Scott Ludlam dated 3 October 2013 that the reason he has requested a recount is because he did not have scrutineers present at the initial count.

Again, under clause 3.5 of the Recount Policy this is not a valid reason for agreeing to a recount.

In the absence of valid and specific grounds for requesting a recount, our client submits that you must reject the appeals.

Yours faithfully



Simon Millman
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9 October 2013

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Dear Electoral Commissioner

Senate Election Western Australia

We refer to the above and to your letter to Senator Louise Pratt of 8 October 2013. We act for Senator Pratt in this matter.

In the interests of procedural fairness, we request a copy of all submissions made to you by other parties in this matter.

Can you please also provide a copy of any relevant policy that may be applied?

We will provide written submissions on behalf of Senator Pratt once we have had the opportunity to review the submissions and policies currently before you.

Yours sincerely

Simon Millman
Practice Group Leader
Industrial & Employment Law
SLATER & GORDON





Electoral Commissioner

Our Ref: 13/946

Mr Wayne Dropulich
Secretary
Australian Sports Party

Dear Mr Dropulich

I refer to your request dated 4 October 2013 for a re-count of ballot papers for the Senate for Western Australia. This request followed your initial application to the Australian Electoral Officer (AEO) for Western Australia, Mr Peter Kramer. On 3 October 2013 Mr Kramer refused your application for a recount. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on your request.

Decision

I have considered the matter in the light of your submissions and submissions made by Senator Ludlam of the Australian Greens Party, and submissions made on behalf of Senator Louise Pratt and Mr Zhenya Wang and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the *Commonwealth Electoral Act 1918* (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails submitted by you and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election. Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.


I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS).

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in your emails and letters to me requesting that a re-count take place.

Yours sincerely



Ed Killesteyn

15 October 2013

Statement of Reasons

I have considered the matter on its merits and in the context of the AEC's published recount policy.

The AEC's published recount policy provides that:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division [*or state or territory for Senate*] or where there are specific grounds for determining the need for a recount of specific ballot papers (such as in response to specific allegations or incidents).
- A request for a recount which does not plead any valid and specific grounds must be refused. A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division [*or state or territory for Senate*].
- Wherever possible, the grounds pleaded by the candidate requesting the recount will be used to narrow down to as small a category as possible the ballot papers that need to be re-examined.
- [*applies to House of Representatives recount requests only*].
- Only one recount of any (set of) ballot papers will occur.
- Requests for recounts will only be considered, and actioned, in the period after the completion of all scrutinies and before the declaration of the poll in the division (for House of Representatives ballot papers) or state or territory (for Senate ballot papers).

To assist my decision I have sought an explanation of each of the matters raised in other parties' letters to the AEO for Western Australia and other matters raised directly with me.

1. Shifting tallies for the Shooters and Fishers lead

One party raised a matter as follows: "Our scrutineers identified that there were shifts in the tallies for Shooters and Fishers and the Australian Christians, which were not consistent with trends from the divisions".

That is referring to information derived from viewing the Virtual Tally Room (VTR) figures. The VTR figures are made available at various intervals while the scrutiny is still being conducted and are therefore indicative only and are not final. They are displayed in the interests of transparency. Variations in progressive results

are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. The scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking that votes have been correctly attributed to each candidate.

2. Potential for human error to impact the outcome

One party raised a matter referring to the possibility of “human error in counting”. Whilst I have a high degree of confidence in our overall election systems and checking process, it cannot be argued that human error could not occur in the manual processing of over 1.3 million ballot papers. In the absence of a recount, there is no way to relate this possibility of error to a likelihood of altered outcome.

3. Differences between Senate and House of Representatives tallies

One party raised a matter referring to: “There is a considerable difference in the number of votes cast in the House of Representatives and the Senate in each division.”

Yes, there is a difference in the number of votes counted in the House of Representatives and the Senate. The main reason for that is that some electors do not update their addresses promptly with the AEC. Subsection 99(1) of the Electoral Act entitles a person who is otherwise eligible to vote to be enrolled “In respect of residence at an address”. Therefore a person is entitled to vote for the House of Representatives Division where they live. If an elector seeks to vote but cannot be found on the roll for the Division in which they live the AEC practice is to offer these electors a declaration vote, which comprises a ballot for the House of Representatives Division where they say they are enrolled and a Senate ballot paper for that State or Territory. During the scrutiny the House of Representatives ballot may not be able to be counted because the elector is enrolled in a different House of Representatives Division, but the Senate ballot may be able to be counted. This is because a person is voting for Senators for a State or Territory and their address falls within that State or Territory. In this case the AEC refers to this situation as being a 'partially admitted' vote.

The difference in the number of votes counted for the House of Representatives and the Senate is largely accounted for by 'partially admitted' votes. 11,159 partially admitted votes were included in the Senate count for Western Australia and this accounts for the greater part of the discrepancy, which is not a result of errors in counting or bundling.

Apart from ballots being 'partially admitted' it is also the case that electors can sometimes deposit one or the other, but not both of their ballot papers in a ballot box, or not return both ballot papers in a postal vote certificate envelope.

4. Non-standard ballots

One party referred to there being multiple non-standard ballots. The information you provided has been examined and all examples fall within the scope of s.270 which describes formality savings measures and are not irregularities.

5. Pre-poll discrepancy on 16 September

One party refers to two parcels of pre-poll votes that were added on 16 September:

From the information provided the AEC is unable to replicate these particular results.

In addition to the Perth Pre Poll Voting Centre, 4 other static polling places have 0.64% allocated to the Australian Christians. These are South Perth North, Melville (Tangney), Guilderton and Hamilton Hill South. However no combination of these static polling places and Perth PPVC tally to the quoted 3,222 votes. The absence of specific data means we have been unable to evaluate the issues raised. In any event we have concluded that this issue is not material to the question of a recount.

6. Analysis of AEC time series data

One party referred to several points in time at which the Australian Christians and Australian Sports Party votes decreased.

Divisional Returning Officers (DROs) review data management reports which compare House of Representatives ballot papers counted with Senate ballot paper counts. Discrepancies are investigated and rectified. This activity is undertaken prior to the Senate distribution of preferences being finalised.

Investigations include checking polling place returns, scrutiny input sheets and ballot papers (counted, unused, spoilt and discarded) to determine whether the data entry reasonably reflects expected numbers.

A number of accounting corrections were made with regard to the Division of O'Connor on 1 October. The DRO identified that the data entry for a number of polling places did not physically match the polling place returns or scrutiny input sheets to the actual physical number of votes counted.

As a result the DRO made a number of adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected, however the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

These adjustments were recorded in the election diary by the Divisional Returning Officer and were a result of the completion of standard validation exercises in the data entry aspect of the election.

7. Analysis of Durack Geraldton – Waggrakine Booth

One party also referred to this booth as containing twice as many informals.

Without a physical examination of the ballot papers we have been unable to conclusively address this issue.

8. Identification of unusual booth trends

One party also described unusual booth trends.

There is nothing to indicate anything irregular about any of these results. The voting trends in each booth are quite credibly a result of localised demographic data. For example, in Ashfield Polling Place there are double the percentage of and quantum of voters who are more supportive of the HEMP party than the Shooters and Fishers Party. Additionally, in some cases the numbers being referred to are small. For example, 'statistically double the percentage vote for the Canning Vale North vote' equates to 3 votes.

9. Unusual total vote count for booths in Durack and Brand

One party also referred to an unusually high proportion of polling booth totals which end in 10.

For the Division of Brand there are 3 polling places out of 41 that tally to a multiple of 10 and for the Division of Durack 12 out of 123 polling places. This is respectively 7.32% and 9.76% of all polling places for those divisions. In comparison the Division of Canning has 5 out of 54 polling places and the Division of O'Connor 13 out of 133 polling places. Respectively these are 9.26% and 9.78%. The distribution of counts ending in 10 is not abnormal.

10. Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths

One party referred to significant discrepancies.

There is not a compelling argument that voters will as a matter of course align their House and Senate votes. Discrepancies such as these are equally likely to be the result of conscious voter choices.

11. Demonstrated problems in vote counting in previous elections

One party also referred to demonstrated problems in previous elections.

While I note these concerns, they are not relevant to the conduct of this election. Attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the AEC's 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Conclusions

In the light of the above analysis of the concerns raised, I agree with the AEO for Western Australia that such a request fails to identify specific instances of ballot paper counting or irregularities that could change the outcome of the election. Hence I would be minded to this application for a re-count for those reasons.

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Having regard to the additional matters raised in letters and emails, in particular the criticality of the particular Senate candidate exclusion of concern and the small margin involved, I am of the view that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of the above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the CSS. Those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above-the-line Senate ballot papers in accordance with section 278 as soon as possible.

Andrew Kristjanson

From: Patricia Georgee
Sent: Thursday, 10 October 2013 11:49 AM
To: wdrop26@gmail.com
Cc: Peter Kramer
Subject: Correspondence from the Electoral Commissioner [DLM=For-Official-Use-Only]
Attachments: PDF Dropulich final.pdf

For-Official-Use-Only

Dear Mr Dropulich

Please find attached correspondence on the matter of a request for a re-count in the WA Senate elections.

The Electoral Commissioner also expects to provide a media release on this matter shortly.

Ms. Patricia Georgee | Senior Lawyer
Legal Services Section | Legal & Compliance Branch
Australian Electoral Commission
T: (02) 6271 4511 | M: 0406 379 258 | F:



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**ELECTION
2013**

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Electoral Commissioner

Our Ref: 13/946

Mr Wayne Dropulich
Secretary
Australian Sports Party

Dear Mr Dropulich

I refer to your request dated 4 October 2013 for a re-count of ballot papers for the Senate for Western Australia. This request followed your initial application to the Australian Electoral Officer (AEO) for Western Australia, Mr Peter Kramer. On 3 October 2013 Mr Kramer refused your application for a recount. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on your request.

Decision

I have considered the matter in the light of your submissions and submissions made by Senator Ludlam of the Australian Greens Party, and submissions made on behalf of Senator Louise Pratt and Mr Zhenya Wang and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the *Commonwealth Electoral Act 1918* (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails submitted by you and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election. Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS).

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in your emails and letters to me requesting that a re-count take place.

Yours sincerely



Ed Killesteyn

16 October 2013

Statement of Reasons

I have considered the matter on its merits and in the context of the AEC's published recount policy.

The AEC's published recount policy provides that:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division [*or state or territory for Senate*] or where there are specific grounds for determining the need for a recount of specific ballot papers (such as in response to specific allegations or incidents).
- A request for a recount which does not plead any valid and specific grounds must be refused. A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division [*or state or territory for Senate*].
- Wherever possible, the grounds pleaded by the candidate requesting the recount will be used to narrow down to as small a category as possible the ballot papers that need to be re-examined.
- [*applies to House of Representatives recount requests only*].
- Only one recount of any (set of) ballot papers will occur.
- Requests for recounts will only be considered, and actioned, in the period after the completion of all scrutines and before the declaration of the poll in the division (for House of Representatives ballot papers) or state or territory (for Senate ballot papers).

To assist my decision I have sought an explanation of each of the matters raised in other parties' letters to the AEO for Western Australia and other matters raised directly with me.

1. Shifting tallies for the Shooters and Fishers lead

One party raised a matter as follows: "Our scrutineers identified that there were shifts in the tallies for Shooters and Fishers and the Australian Christians, which were not consistent with trends from the divisions".

That is referring to information derived from viewing the Virtual Tally Room (VTR) figures. The VTR figures are made available at various intervals while the scrutiny is still being conducted and are therefore indicative only and are not final. They are displayed in the interests of transparency. Variations in progressive results

are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. The scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking that votes have been correctly attributed to each candidate.

2. Potential for human error to impact the outcome

One party raised a matter referring to the possibility of “human error in counting”. Whilst I have a high degree of confidence in our overall election systems and checking process, it cannot be argued that human error could not occur in the manual processing of over 1.3 million ballot papers. In the absence of a recount, there is no way to relate this possibility of error to a likelihood of altered outcome.

3. Differences between Senate and House of Representatives tallies

One party raised a matter referring to: “There is a considerable difference in the number of votes cast in the House of Representatives and the Senate in each division.”

Yes, there is a difference in the number of votes counted in the House of Representatives and the Senate. The main reason for that is that some electors do not update their addresses promptly with the AEC. Subsection 99(1) of the Electoral Act entitles a person who is otherwise eligible to vote to be enrolled “In respect of residence at an address”. Therefore a person is entitled to vote for the House of Representatives Division where they live. If an elector seeks to vote but cannot be found on the roll for the Division in which they live the AEC practice is to offer these electors a declaration vote, which comprises a ballot for the House of Representatives Division where they say they are enrolled and a Senate ballot paper for that State or Territory. During the scrutiny the House of Representatives ballot may not be able to be counted because the elector is enrolled in a different House of Representatives Division, but the Senate ballot may be able to be counted. This is because a person is voting for Senators for a State or Territory and their address falls within that State or Territory. In this case the AEC refers to this situation as being a 'partially admitted' vote.

The difference in the number of votes counted for the House of Representatives and the Senate is largely accounted for by 'partially admitted' votes. 11,159 partially admitted votes were included in the Senate count for Western Australia and this accounts for the greater part of the discrepancy, which is not a result of errors in counting or bundling.

Apart from ballots being 'partially admitted' it is also the case that electors can sometimes deposit one or the other, but not both of their ballot papers in a ballot box, or not return both ballot papers in a postal vote certificate envelope.

4. Non-standard ballots

One party referred to there being multiple non-standard ballots. The information you provided has been examined and all examples fall within the scope of s.270 which describes formality savings measures and are not irregularities.

5. Pre-poll discrepancy on 16 September

One party refers to two parcels of pre-poll votes that were added on 16 September:

From the information provided the AEC is unable to replicate these particular results.

In addition to the Perth Pre Poll Voting Centre, 4 other static polling places have 0.64% allocated to the Australian Christians. These are South Perth North, Melville (Tangney), Guilderton and Hamilton Hill South. However no combination of these static polling places and Perth PPVC tally to the quoted 3,222 votes. The absence of specific data means we have been unable to evaluate the issues raised. In any event we have concluded that this issue is not material to the question of a recount.

6. Analysis of AEC time series data

One party referred to several points in time at which the Australian Christians and Australian Sports Party votes decreased.

Divisional Returning Officers (DROs) review data management reports which compare House of Representatives ballot papers counted with Senate ballot paper counts. Discrepancies are investigated and rectified. This activity is undertaken prior to the Senate distribution of preferences being finalised.

Investigations include checking polling place returns, scrutiny input sheets and ballot papers (counted, unused, spoilt and discarded) to determine whether the data entry reasonably reflects expected numbers.

A number of accounting corrections were made with regard to the Division of O'Connor on 1 October. The DRO identified that the data entry for a number of polling places did not physically match the polling place returns or scrutiny input sheets to the actual physical number of votes counted.

As a result the DRO made a number of adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected, however the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

These adjustments were recorded in the election diary by the Divisional Returning Officer and were a result of the completion of standard validation exercises in the data entry aspect of the election.

7. Analysis of Durack Geraldton – Waggrakine Booth

One party also referred to this booth as containing twice as many informals.

Without a physical examination of the ballot papers we have been unable to conclusively address this issue.

8. Identification of unusual booth trends

One party also described unusual booth trends.

There is nothing to indicate anything irregular about any of these results. The voting trends in each booth are quite credibly a result of localised demographic data. For example, in Ashfield Polling Place there are double the percentage of and quantum of voters who are more supportive of the HEMP party than the Shooters and Fishers Party. Additionally, in some cases the numbers being referred to are small. For example, 'statistically double the percentage vote for the Canning Vale North vote' equates to 3 votes.

9. Unusual total vote count for booths in Durack and Brand

One party also referred to an unusually high proportion of polling booth totals which end in 10.

For the Division of Brand there are 3 polling places out of 41 that tally to a multiple of 10 and for the Division of Durack 12 out of 123 polling places. This is respectively 7.32% and 9.76% of all polling places for those divisions. In comparison the Division of Canning has 5 out of 54 polling places and the Division of O'Connor 13 out of 133 polling places. Respectively these are 9.26% and 9.78%. The distribution of counts ending in 10 is not abnormal.

10. Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths

One party referred to significant discrepancies.

There is not a compelling argument that voters will as a matter of course align their House and Senate votes. Discrepancies such as these are equally likely to be the result of conscious voter choices.

11. Demonstrated problems in vote counting in previous elections

One party also referred to demonstrated problems in previous elections.

While I note these concerns, they are not relevant to the conduct of this election. Attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the AEC's 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Conclusions

In the light of the above analysis of the concerns raised, I agree with the AEO for Western Australia that such a request fails to identify specific instances of ballot paper counting or irregularities that could change the outcome of the election. Hence I would be minded to this application for a re-count for those reasons.

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Having regard to the additional matters raised in letters and emails, in particular the criticality of the particular Senate candidate exclusion of concern and the small margin involved, I am of the view that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of the above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the CSS. Those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above-the-line Senate ballot papers in accordance with section 278 as soon as possible.



Electoral Commissioner

Our Ref: 13/946

Senator Scott Ludlam
8 Cantonment St
FREMANTLE WA 6160

Dear Senator Ludlam

I refer to your request dated 3 October 2013 for a re-count of ballot papers for the Senate for Western Australia. This request followed your initial application to the Australian Electoral Officer (AEO) for Western Australia, Mr Peter Kramer. On 3 October 2013 Mr Kramer refused your application for a recount. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on your request.

Decision

I have considered the matter in the light of your submissions and submissions made by Mr Wayne Dropulich of the Australian Sports Party, and submissions made on behalf of Senator Louise Pratt and Mr Zhenya Wang and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the *Commonwealth Electoral Act 1918* (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails submitted by you and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election.

Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below-the-line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS). As you have pointed out in your correspondence to me, and to the AEO for Western Australia, those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions. I note that your request for a recount does not point to any particular issues of concern during the data entry and verification process for CSS ballots.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above-the-line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in your emails and letters to me requesting that a re-count take place.

Yours sincerely



Ed Killesteyn

20 October 2013

Statement of Reasons

I have considered the matter on its merits and in the context of the AEC's published recount policy.

The AEC's published recount policy provides that:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division [*or state or territory for Senate*] or where there are specific grounds for determining the need for a recount of specific ballot papers (such as in response to specific allegations or incidents).
- A request for a recount which does not plead any valid and specific grounds must be refused. A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division [*or state or territory for Senate*].
- Wherever possible, the grounds pleaded by the candidate requesting the recount will be used to narrow down to as small a category as possible the ballot papers that need to be re-examined.
- [*applies to House of Representatives recount requests only*].
- Only one recount of any (set of) ballot papers will occur.
- Requests for recounts will only be considered, and actioned, in the period after the completion of all scrutinies and before the declaration of the poll in the division (for House of Representatives ballot papers) or state or territory (for Senate ballot papers).

To assist my decision I have sought an explanation of each of the matters raised in your letters dated 2 and 3 October to the AEO for Western Australia and copied with your letter to me, and subsequent matters raised directly with me.

1. Shifting tallies for the Shooters and Fishers lead

In your letter dated 3 October you say: "Our scrutineers identified that there were shifts in the tallies for Shooters and Fishers and the Australian Christians, which were not consistent with trends from the divisions".

You are referring to information derived from viewing the Virtual Tally Room (VTR) figures. The VTR figures are made available at various intervals while the scrutiny is still being conducted and are therefore indicative only and are not final. They are displayed in the interests of transparency. Variations in progressive results are not unusual and reflect the stages of fresh and further scrutiny of ordinary and

declaration votes. The scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking that votes have been correctly attributed to each candidate.

2. Potential for human error to impact the outcome

In your letter dated 3 October you refer to the possibility of “human error in counting”. Whilst I have a high degree of confidence in our overall election systems and checking process, it cannot be argued that human error could not occur in the manual processing of over 1.3 million ballot papers. In the absence of a recount, there is no way to relate this possibility of error to a likelihood of altered outcome.

3. Differences between Senate and House of Representatives tallies

In your letter dated 3 October you say: “There is a considerable difference in the number of votes cast in the House of Representatives and the Senate in each division.”

Yes, there is a difference in the number of votes counted in the House of Representatives and the Senate. The main reason for that is that some electors do not update their addresses promptly with the AEC. Subsection 99(1) of the Electoral Act entitles a person who is otherwise eligible to vote to be enrolled “In respect of residence at an address”. Therefore a person is entitled to vote for the House of Representatives Division where they live. If an elector seeks to vote but cannot be found on the roll for the Division in which they live the AEC practice is to offer these electors a declaration vote, which comprises a ballot for the House of Representatives Division where they say they are enrolled and a Senate ballot paper for that State or Territory. During the scrutiny the House of Representatives ballot may not be able to be counted because the elector is enrolled in a different House of Representatives Division, but the Senate ballot may be able to be counted. This is because a person is voting for Senators for a State or Territory and their address falls within that State or Territory. In this case the AEC refers to this situation as being a 'partially admitted' vote.

The difference in the number of votes counted for the House of Representatives and the Senate is largely accounted for by 'partially admitted' votes. 11,159 partially admitted votes were included in the Senate count for Western Australia and this accounts for the greater part of the discrepancy, which is not a result of errors in counting or bundling.

Apart from ballots being 'partially admitted' it is also the case that electors can sometimes deposit one or the other, but not both of their ballot papers in a ballot box, or not return both ballot papers in a postal vote certificate envelope.

4. Non-standard ballots

In your letter dated 3 October you refer to there being multiple non-standard ballots. The information you provided has been examined and all examples fall within the scope of s.270 which describes formality savings measures and are not irregularities.

5. Pre-poll discrepancy on 16 September

In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you say refer to two parcels of pre-poll votes that were added on 16 September:

From the information provided the AEC is unable to replicate these particular results.

In addition to the Perth Pre Poll Voting Centre, 4 other static polling places have 0.64% allocated to the Australian Christians. These are South Perth North, Melville (Tangney), Guilderton and Hamilton Hill South. However no combination of these static polling places and Perth PPVC tally to the quoted 3,222 votes. The absence of specific data means we have been unable to evaluate the issues raised. In any event we have concluded that this issue is not material to the question of a recount.

6. Analysis of AEC time series data

In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you refer to several points in time at which the Australian Christians and Australian Sports Party votes decreased.

Divisional Returning Officers (DROs) review data management reports which compare House of Representatives ballot papers counted with Senate ballot paper counts. Discrepancies are investigated and rectified. This activity is undertaken prior to the Senate distribution of preferences being finalised.

Investigations include checking polling place returns, scrutiny input sheets and ballot papers (counted, unused, spoiled and discarded) to determine whether the data entry reasonably reflects expected numbers.

A number of accounting corrections were made with regard to the Division of O'Connor on 1 October. The DRO identified that the data entry for a number of polling places did not physically match the polling place returns or scrutiny input sheets to the actual physical number of votes counted.

As a result the DRO made a number of adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected, however the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the

total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

These adjustments were recorded in the election diary by the Divisional Returning Officer and were a result of the completion of standard validation exercises in the data entry aspect of the election.

7. Analysis of Durack Geraldton – Waggrakine Booth

In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you refer to this booth as containing twice as many informals.

Without a physical examination of the ballot papers we have been unable to conclusively address this issue.

8. Identification of unusual booth trends

In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you describe unusual booth trends.

There is nothing to indicate anything irregular about any of these results. The voting trends in each booth are quite credibly a result of localised demographic data. For example, in Ashfield Polling Place there are double the percentage of and quantum of voters who are more supportive of the HEMP party than the Shooters and Fishers Party. Additionally, in some cases the numbers being referred to are small. For example, 'statistically double the percentage vote for the Canning Vale North vote' equates to 3 votes.

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In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you refer to an unusually high proportion of polling booth totals which end in 10.

For the Division of Brand there are 3 polling places out of 41 that tally to a multiple of 10 and for the Division of Durack 12 out of 123 polling places. This is respectively 7.32% and 9.76% of all polling places for those divisions. In comparison the Division of Canning has 5 out of 54 polling places and the Division of O'Connor 13 out of 133 polling places. Respectively these are 9.26% and 9.78%. The distribution of counts ending in 10 is not abnormal.

10. Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths

In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you refer to significant discrepancies.

There is not a compelling argument that voters will as a matter of course align their House and Senate votes. Discrepancies such as these are equally likely to be the result of conscious voter choices.

11. Demonstrated problems in vote counting in previous elections

In your supplementary letter to the Electoral Commissioner dated 4 October 2013 you refer to demonstrated problems in previous elections.

I note you refer to issues relating to re-counts in other elections. While I note these concerns, they are not relevant to the conduct of this election. Attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the AEC's 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Conclusions

In the light of the above analysis of the concerns raised by you, I agree with the AEO for Western Australia that your request fails to identify specific instances of ballot paper counting or irregularities that could change the outcome of the election. Hence I would be minded to refuse your application for a re-count for those reasons.

Having regard to the additional matters raised in your letters and emails to me, in particular the criticality of the particular Senate candidate exclusion of concern and the small margin involved, I am of the view that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of the above the line ballot papers are also in the interests of all candidates in the election.

This recount will not include below-the-line ballots, or above the line and informal ballots that have been classified as such at the CSS. As you have pointed out in your correspondence to me and to the AEO for Western Australia, Mr Peter Kramer, those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions. I note that your request for a recount does not point to any particular issues of concern during the data entry process for CSS ballots.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the

AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers in accordance with section 278 as soon as possible.

Andrew Kristjanson

From: Mark Cox <MarkCox@mdclegal.com.au>
Sent: Thursday, 10 October 2013 9:51 PM
To: Patricia Georgee; Ed Killesteyn
Cc: Peter Kramer; Senator.Ludlam@aph.gov.au
Subject: RE: Correspondence from the Electoral Commissioner to Senator Scott Ludlam [DLM=For-Official-Use-Only]
Attachments: 20131010-LT AEC-LUD013137.pdf

Dear Ms Georgee

Please see the **attached** letter addressed to the Commissioner and kindly confirm receipt.

Yours faithfully

Mark Cox | Director

E: markcox@mdclegal.com.au | M: 0409 086 742 | T: (08) 6263 4433 | F: (08) 6263 4444
A: 44 Kings Park Road, West Perth, WA 6005 | W: www.mdclegal.com.au



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From: Patricia Georgee [<mailto:Patricia.Georgee@aec.gov.au>]
Sent: Thursday, 10 October 2013 8:44 AM
To: Mark Cox; Senator.Ludlam@aph.gov.au
Cc: Peter Kramer
Subject: Correspondence from the Electoral Commissioner to Senator Scott Ludlam [DLM=For-Official-Use-Only]

For-Official-Use-Only

Dear Mr Cox,

Please find attached correspondence on the matter of a request for a re-count in the WA Senate elections.

As you mentioned in your correspondence to Mr Kramer and Mr Killesteyn yesterday there is media interest in this matter. Consequently the Electoral Commissioner expects to provide a media release on this matter shortly.

As I am aware of the time difference between WA and the eastern States I have taken the liberty of also sending this correspondence directly to Senator Ludlam's office.

Ms. Patricia Georgee | Senior Lawyer
Legal Services Section | Legal & Compliance Branch
Australian Electoral Commission
T: (02) 6271 4511 | M: 0406 379 258 | F:



AEC

Australian Electoral Commission

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**ELECTION
2013**

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West Perth WA 6005
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West Perth WA 6872
ABN 55 490 628 126

Ref: MC:JH:LUD013137

10 October 2013

Mr Ed Killesteyn
Electoral Commissioner
Australian Electoral Commission
PO Box 6172
KINGSTON ACT 2604

Per email: Ed.Killesteyn@aec.gov.au

Dear Sir

Senator Scott Ludlam; Result of the 2013 election of Senators for Western Australia

Thank you for your letter of today's date and Statement of Reasons.

In relation to the refusal to order a recount of the below-the-line ballots, our client reserves his rights.

Yours faithfully
MDC Legal



MARK COX
M: +61 409 086 742
E: markcox@mdclegal.com.au



Electoral Commissioner

Our Ref: 13/946

Senator Louise Pratt
Senator for Western Australia

By email to Katherine.lamont@slatergordon.com.au

Dear Senator Pratt

I refer to the matter of a request for a re-count made to me by Senator Scott Ludlam and Mr Wayne Dropulich of the Senate Election in Western Australia. I note that Hopgood Ganim provided me with submissions on this matter on behalf of Mr Zhenya Wang and Slater and Gordon provided me with submissions on your behalf dated 9 October 2013. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on this matter.

Decision

I have considered the matter in the light of your submissions and submissions made by Senator Ludlam of the Australian Greens Party, and submissions made on behalf of Mr Zhenya Wang and Mr Wayne Dropulich and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the *Commonwealth Electoral Act 1918* (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election. Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS).

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in emails and letters to me requesting that a re-count take place.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ed Killesteyn', with a long horizontal flourish extending to the right.

Ed Killesteyn

October 2013

Statement of Reasons

I have considered the matter on its merits and in the context of the AEC's published recount policy.

The AEC's published recount policy provides that:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division [*or state or territory for Senate*] or where there are specific grounds for determining the need for a recount of specific ballot papers (such as in response to specific allegations or incidents).
- A request for a recount which does not plead any valid and specific grounds must be refused. A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division [*or state or territory for Senate*].
- Wherever possible, the grounds pleaded by the candidate requesting the recount will be used to narrow down to as small a category as possible the ballot papers that need to be re-examined.
- [*applies to House of Representatives recount requests only*].
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- Requests for recounts will only be considered, and actioned, in the period after the completion of all scrutines and before the declaration of the poll in the division (for House of Representatives ballot papers) or state or territory (for Senate ballot papers).

To assist my decision I have sought an explanation of each of the matters raised in other parties' letters to the AEO for Western Australia and other matters raised directly with me.

1. Shifting tallies for the Shooters and Fishers lead

One party raised a matter as follows: "Our scrutineers identified that there were shifts in the tallies for Shooters and Fishers and the Australian Christians, which were not consistent with trends from the divisions".

That is referring to information derived from viewing the Virtual Tally Room (VTR) figures. The VTR figures are made available at various intervals while the scrutiny is still being conducted and are therefore indicative only and are not final. They are displayed in the interests of transparency. Variations in progressive results

are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. The scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking that votes have been correctly attributed to each candidate.

2. Potential for human error to impact the outcome

One party raised a matter referring to the possibility of “human error in counting”. Whilst I have a high degree of confidence in our overall election systems and checking process, it cannot be argued that human error could not occur in the manual processing of over 1.3 million ballot papers. In the absence of a recount, there is no way to relate this possibility of error to a likelihood of altered outcome.

3. Differences between Senate and House of Representatives tallies

One party raised a matter referring to: “There is a considerable difference in the number of votes cast in the House of Representatives and the Senate in each division.”

Yes, there is a difference in the number of votes counted in the House of Representatives and the Senate. The main reason for that is that some electors do not update their addresses promptly with the AEC. Subsection 99(1) of the Electoral Act entitles a person who is otherwise eligible to vote to be enrolled “In respect of residence at an address”. Therefore a person is entitled to vote for the House of Representatives Division where they live. If an elector seeks to vote but cannot be found on the roll for the Division in which they live the AEC practice is to offer these electors a declaration vote, which comprises a ballot for the House of Representatives Division where they say they are enrolled and a Senate ballot paper for that State or Territory. During the scrutiny the House of Representatives ballot may not be able to be counted because the elector is enrolled in a different House of Representatives Division, but the Senate ballot may be able to be counted. This is because a person is voting for Senators for a State or Territory and their address falls within that State or Territory. In this case the AEC refers to this situation as being a 'partially admitted' vote.

The difference in the number of votes counted for the House of Representatives and the Senate is largely accounted for by 'partially admitted' votes. 11,159 partially admitted votes were included in the Senate count for Western Australia and this accounts for the greater part of the discrepancy, which is not a result of errors in counting or bundling.

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4. Non-standard ballots

One party referred to there being multiple non-standard ballots. The information you provided has been examined and all examples fall within the scope of s.270 which describes formality savings measures and are not irregularities.

5. Pre-poll discrepancy on 16 September

One party refers to two parcels of pre-poll votes that were added on 16 September:

From the information provided the AEC is unable to replicate these particular results.

In addition to the Perth Pre Poll Voting Centre, 4 other static polling places have 0.64% allocated to the Australian Christians. These are South Perth North, Melville (Tangney), Guilderton and Hamilton Hill South. However no combination of these static polling places and Perth PPVC tally to the quoted 3,222 votes. The absence of specific data means we have been unable to evaluate the issues raised. In any event we have concluded that this issue is not material to the question of a recount.

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Divisional Returning Officers (DROs) review data management reports which compare House of Representatives ballot papers counted with Senate ballot paper counts. Discrepancies are investigated and rectified. This activity is undertaken prior to the Senate distribution of preferences being finalised.

Investigations include checking polling place returns, scrutiny input sheets and ballot papers (counted, unused, spoilt and discarded) to determine whether the data entry reasonably reflects expected numbers.

A number of accounting corrections were made with regard to the Division of O'Connor on 1 October. The DRO identified that the data entry for a number of polling places did not physically match the polling place returns or scrutiny input sheets to the actual physical number of votes counted.

As a result the DRO made a number of adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected, however the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

These adjustments were recorded in the election diary by the Divisional Returning Officer and were a result of the completion of standard validation exercises in the data entry aspect of the election.

7. Analysis of Durack Geraldton – Waggrakine Booth

One party also referred to this booth as containing twice as many informals.

Without a physical examination of the ballot papers we have been unable to conclusively address this issue.

8. Identification of unusual booth trends

One party also described unusual booth trends.

There is nothing to indicate anything irregular about any of these results. The voting trends in each booth are quite credibly a result of localised demographic data. For example, in Ashfield Polling Place there are double the percentage of and quantum of voters who are more supportive of the HEMP party than the Shooters and Fishers Party. Additionally, in some cases the numbers being referred to are small. For example, 'statistically double the percentage vote for the Canning Vale North vote' equates to 3 votes.

9. Unusual total vote count for booths in Durack and Brand

One party also referred to an unusually high proportion of polling booth totals which end in 10.

For the Division of Brand there are 3 polling places out of 41 that tally to a multiple of 10 and for the Division of Durack 12 out of 123 polling places. This is respectively 7.32% and 9.76% of all polling places for those divisions. In comparison the Division of Canning has 5 out of 54 polling places and the Division of O'Connor 13 out of 133 polling places. Respectively these are 9.26% and 9.78%. The distribution of counts ending in 10 is not abnormal.

10. Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths

One party referred to significant discrepancies.

There is not a compelling argument that voters will as a matter of course align their House and Senate votes. Discrepancies such as these are equally likely to be the result of conscious voter choices.

11. Demonstrated problems in vote counting in previous elections

One party also referred to demonstrated problems in previous elections.

While I note these concerns, they are not relevant to the conduct of this election. Attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the AEC's 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Conclusions

In the light of the above analysis of the concerns raised, I agree with the AEO for Western Australia that such a request fails to identify specific instances of ballot paper counting or irregularities that could change the outcome of the election. Hence I would be minded to this application for a re-count for those reasons.

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Having regard to the additional matters raised in letters and emails, in particular the criticality of the particular Senate candidate exclusion of concern and the small margin involved, I am of the view that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of the above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the CSS. Those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above-the-line Senate ballot papers in accordance with section 278 as soon as possible.

Andrew Kristjanson

From: Patricia Georgee
Sent: Thursday, 10 October 2013 11:52 AM
To: katherine.lamont@slatergordon.com.au
Cc: Peter Kramer
Subject: Correspondence from the Electoral Commissioner [DLM=For-Official-Use-Only]
Attachments: PDF Pratt final.pdf

For-Official-Use-Only

Dear Mr Millman

Please find attached correspondence on the matter of a request for a re-count in the WA Senate elections.

The Electoral Commissioner also expects to provide a media release on this matter shortly.

Ms.Patricia Georgee | Senior Lawyer
Legal Services Section | Legal & Compliance Branch
Australian Electoral Commission
T: (02) 6271 4511 | M: 0406 379 258 | F:



AEC

Australian Electoral Commission

Your vote is a valuable thing.
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**ELECTION
2013**

For-Official-Use-Only



Electoral Commissioner

Our Ref: 13/946

Senator Louise Pratt
Senator for Western Australia

By email to Katherine.lamont@slatergordon.com.au

Dear Senator Pratt

I refer to the matter of a request for a re-count made to me by Senator Scott Ludlam and Mr Wayne Dropulich of the Senate Election in Western Australia. I note that Hopgood Ganim provided me with submissions on this matter on behalf of Mr Zhenya Wang and Slater and Gordon provided me with submissions on your behalf dated 9 October 2013. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on this matter.

Decision

I have considered the matter in the light of your submissions and submissions made by Senator Ludlam of the Australian Greens Party, and submissions made on behalf of Mr Zhenya Wang and Mr Wayne Dropulich and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the *Commonwealth Electoral Act 1918* (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election. Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

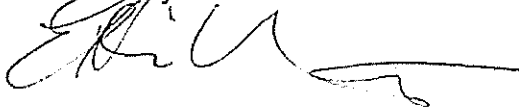
I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS).

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in emails and letters to me requesting that a re-count take place.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ed Killesteyn', with a long horizontal flourish extending to the right.

Ed Killesteyn

October 2013

Statement of Reasons

I have considered the matter on its merits and in the context of the AEC's published recount policy.

The AEC's published recount policy provides that:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division [*or state or territory for Senate*] or where there are specific grounds for determining the need for a recount of specific ballot papers (such as in response to specific allegations or incidents).
- A request for a recount which does not plead any valid and specific grounds must be refused. A request for a recount needs to identify specific ballot-papers and associated significant counting process errors or irregularities that could change the result of an election within a division [*or state or territory for Senate*].
- Wherever possible, the grounds pleaded by the candidate requesting the recount will be used to narrow down to as small a category as possible the ballot papers that need to be re-examined.
- [*applies to House of Representatives recount requests only*].
- Only one recount of any (set of) ballot papers will occur.
- Requests for recounts will only be considered, and actioned, in the period after the completion of all scrutines and before the declaration of the poll in the division (for House of Representatives ballot papers) or state or territory (for Senate ballot papers).

To assist my decision I have sought an explanation of each of the matters raised in other parties' letters to the AEO for Western Australia and other matters raised directly with me.

1. Shifting tallies for the Shooters and Fishers lead

One party raised a matter as follows: "Our scrutineers identified that there were shifts in the tallies for Shooters and Fishers and the Australian Christians, which were not consistent with trends from the divisions".

That is referring to information derived from viewing the Virtual Tally Room (VTR) figures. The VTR figures are made available at various intervals while the scrutiny is still being conducted and are therefore indicative only and are not final. They are displayed in the interests of transparency. Variations in progressive results

are not unusual and reflect the stages of fresh and further scrutiny of ordinary and declaration votes. The scrutiny is further subject to a final validation exercise to reconcile ballot papers counted. The checks conducted to validate and confirm the accuracy of the vote include verification of formality and checking that votes have been correctly attributed to each candidate.

2. Potential for human error to impact the outcome

One party raised a matter referring to the possibility of “human error in counting”. Whilst I have a high degree of confidence in our overall election systems and checking process, it cannot be argued that human error could not occur in the manual processing of over 1.3 million ballot papers. In the absence of a recount, there is no way to relate this possibility of error to a likelihood of altered outcome.

3. Differences between Senate and House of Representatives tallies

One party raised a matter referring to: “There is a considerable difference in the number of votes cast in the House of Representatives and the Senate in each division.”

Yes, there is a difference in the number of votes counted in the House of Representatives and the Senate. The main reason for that is that some electors do not update their addresses promptly with the AEC. Subsection 99(1) of the Electoral Act entitles a person who is otherwise eligible to vote to be enrolled “In respect of residence at an address”. Therefore a person is entitled to vote for the House of Representatives Division where they live. If an elector seeks to vote but cannot be found on the roll for the Division in which they live the AEC practice is to offer these electors a declaration vote, which comprises a ballot for the House of Representatives Division where they say they are enrolled and a Senate ballot paper for that State or Territory. During the scrutiny the House of Representatives ballot may not be able to be counted because the elector is enrolled in a different House of Representatives Division, but the Senate ballot may be able to be counted. This is because a person is voting for Senators for a State or Territory and their address falls within that State or Territory. In this case the AEC refers to this situation as being a 'partially admitted' vote.

The difference in the number of votes counted for the House of Representatives and the Senate is largely accounted for by 'partially admitted' votes. 11,159 partially admitted votes were included in the Senate count for Western Australia and this accounts for the greater part of the discrepancy, which is not a result of errors in counting or bundling.

Apart from ballots being 'partially admitted' it is also the case that electors can sometimes deposit one or the other, but not both of their ballot papers in a ballot box, or not return both ballot papers in a postal vote certificate envelope.

4. Non-standard ballots

One party referred to there being multiple non-standard ballots. The information you provided has been examined and all examples fall within the scope of s.270 which describes formality savings measures and are not irregularities.

5. Pre-poll discrepancy on 16 September

One party refers to two parcels of pre-poll votes that were added on 16 September:

From the information provided the AEC is unable to replicate these particular results.

In addition to the Perth Pre Poll Voting Centre, 4 other static polling places have 0.64% allocated to the Australian Christians. These are South Perth North, Melville (Tangney), Guilderton and Hamilton Hill South. However no combination of these static polling places and Perth PPVC tally to the quoted 3,222 votes. The absence of specific data means we have been unable to evaluate the issues raised. In any event we have concluded that this issue is not material to the question of a recount.

6. Analysis of AEC time series data

One party referred to several points in time at which the Australian Christians and Australian Sports Party votes decreased.

Divisional Returning Officers (DROs) review data management reports which compare House of Representatives ballot papers counted with Senate ballot paper counts. Discrepancies are investigated and rectified. This activity is undertaken prior to the Senate distribution of preferences being finalised.

Investigations include checking polling place returns, scrutiny input sheets and ballot papers (counted, unused, spoilt and discarded) to determine whether the data entry reasonably reflects expected numbers.

A number of accounting corrections were made with regard to the Division of O'Connor on 1 October. The DRO identified that the data entry for a number of polling places did not physically match the polling place returns or scrutiny input sheets to the actual physical number of votes counted.

As a result the DRO made a number of adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected, however the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

These adjustments were recorded in the election diary by the Divisional Returning Officer and were a result of the completion of standard validation exercises in the data entry aspect of the election.

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One party also referred to this booth as containing twice as many informals.

Without a physical examination of the ballot papers we have been unable to conclusively address this issue.

8. Identification of unusual booth trends

One party also described unusual booth trends.

There is nothing to indicate anything irregular about any of these results. The voting trends in each booth are quite credibly a result of localised demographic data. For example, in Ashfield Polling Place there are double the percentage of and quantum of voters who are more supportive of the HEMP party than the Shooters and Fishers Party. Additionally, in some cases the numbers being referred to are small. For example, 'statistically double the percentage vote for the Canning Vale North vote' equates to 3 votes.

9. Unusual total vote count for booths in Durack and Brand

One party also referred to an unusually high proportion of polling booth totals which end in 10.

For the Division of Brand there are 3 polling places out of 41 that tally to a multiple of 10 and for the Division of Durack 12 out of 123 polling places. This is respectively 7.32% and 9.76% of all polling places for those divisions. In comparison the Division of Canning has 5 out of 54 polling places and the Division of O'Connor 13 out of 133 polling places. Respectively these are 9.26% and 9.78%. The distribution of counts ending in 10 is not abnormal.

10. Significant discrepancies between the Australian Christians HOR and Senate vote at particular booths

One party referred to significant discrepancies.

There is not a compelling argument that voters will as a matter of course align their House and Senate votes. Discrepancies such as these are equally likely to be the result of conscious voter choices.

11. Demonstrated problems in vote counting in previous elections

One party also referred to demonstrated problems in previous elections.

While I note these concerns, they are not relevant to the conduct of this election. Attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the AEC's 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Conclusions

In the light of the above analysis of the concerns raised, I agree with the AEO for Western Australia that such a request fails to identify specific instances of ballot paper counting or irregularities that could change the outcome of the election. Hence I would be minded to this application for a re-count for those reasons.

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Having regard to the additional matters raised in letters and emails, in particular the criticality of the particular Senate candidate exclusion of concern and the small margin involved, I am of the view that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of the above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the CSS. Those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above-the-line Senate ballot papers in accordance with section 278 as soon as possible.



Electoral Commissioner

Our Ref: 13/946

Mr Zhenya Wang
Palmer United Party

By email to p.burge@hopgoodganim.com.au

Dear Mr Wang

I refer to the matter of a request for a re-count made to me by Senator Scott Ludlam and Mr Wayne Dropulich of the Senate Election in Western Australia. I note that Hopgood Ganim provided me with submissions on this matter on your behalf dated 8 October 2013. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on this matter.

Decision

I have considered the matter in the light of your submissions and submissions made by Senator Ludlam of the Australian Greens Party, and submissions made on behalf of Senator Louise Pratt and Mr Wayne Dropulich and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the *Commonwealth Electoral Act 1918* (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election. Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

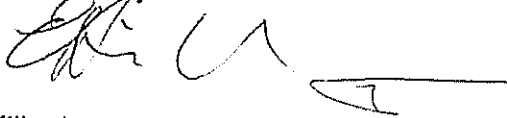
I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS).

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in emails and letters to me requesting that a re-count take place.

Yours sincerely



Ed Killesteyn

10 October 2013

Statement of Reasons

I have considered the matter on its merits and in the context of the AEC's published recount policy.

The AEC's published recount policy provides that:

- A recount may take place where there are valid and specific grounds for supposing that it could change the result of the election in the division [*or state or territory for Senate*] or where there are specific grounds for determining the need for a recount of specific ballot papers (such as in response to specific allegations or incidents).
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To assist my decision I have sought an explanation of each of the matters raised in other parties' letters to the AEO for Western Australia and other matters raised directly with me.

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One party referred to there being multiple non-standard ballots. The information you provided has been examined and all examples fall within the scope of s.270 which describes formality savings measures and are not irregularities.

5. Pre-poll discrepancy on 16 September

One party refers to two parcels of pre-poll votes that were added on 16 September:

From the information provided the AEC is unable to replicate these particular results.

In addition to the Perth Pre Poll Voting Centre, 4 other static polling places have 0.64% allocated to the Australian Christians. These are South Perth North, Melville (Tangney), Guilderton and Hamilton Hill South. However no combination of these static polling places and Perth PPVC tally to the quoted 3,222 votes. The absence of specific data means we have been unable to evaluate the issues raised. In any event we have concluded that this issue is not material to the question of a recount.

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As a result the DRO made a number of adjustments to correct obvious data entry errors. These may have changed the percentage quantum of votes as the errors were corrected, however the actual quantum of votes was the same. Depending on timing, the adjustments may have appeared on the VTR as a reduction in the total quantum of votes for some of the parties and then as an additional increase as the VTR was updated.

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One party referred to significant discrepancies.

There is not a compelling argument that voters will as a matter of course align their House and Senate votes. Discrepancies such as these are equally likely to be the result of conscious voter choices.

11. Demonstrated problems in vote counting in previous elections

One party also referred to demonstrated problems in previous elections.

While I note these concerns, they are not relevant to the conduct of this election. Attention is paid to the correct counting of ballot papers in staff training materials. For example, an exercise specifically designed to reinforce correct counting of Senate ballot papers was included in the AEC's 2012 'simulated election' exercise. Issues arising from that exercise were raised with all offices.

Conclusions

In the light of the above analysis of the concerns raised, I agree with the AEO for Western Australia that such a request fails to identify specific instances of ballot paper counting or irregularities that could change the outcome of the election. Hence I would be minded to this application for a re-count for those reasons.

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Having regard to the additional matters raised in letters and emails, in particular the criticality of the particular Senate candidate exclusion of concern and the small margin involved, I am of the view that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of the above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the CSS. Those ballot papers are entered into our computer system twice, and any anomalies are physically checked and adjudicated by CSS staff, discounting significantly the possibility of error being introduced at this stage of the determination of the final Senate positions.

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above-the-line Senate ballot papers in accordance with section 278 as soon as possible.



Electoral Commissioner

DIRECTION PURSUANT TO SECTION 278(2) OF THE *COMMONWEALTH ELECTORAL ACT 1918* - 2013 ELECTION OF SENATORS FOR WESTERN AUSTRALIA

To the Australian Electoral Officer for Western Australia

Pursuant to section 278(2) of the *Commonwealth Electoral Act 1918* (Electoral Act 1918) you are hereby directed to conduct a re-count of the following category of ballot papers cast by voters in the election of Senators for Western Australia:

All the Senate ballot papers marked above the line together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A(3) of the Electoral Act.

To be clear, the above category of Senate ballot papers excludes those ballot papers that proceeded to the Centralised Senate Scrutiny and which were previously considered by you under section 273A(4) of the Electoral Act.

Dated this 15th day of October 2013

Ed Killesteyn
Electoral Commissioner

DIVISION OF FORREST SENATE RECOUNT PROCESS

Neville White (Forrest APS3) and 4 temporary staff (who were senate fresh scrutiny checkers) commenced packing Forrest senate ballot papers on Monday 14 October 2013.

The packing process took place in one room of the Forrest offsite premises with the parcels of ballot papers retrieved from their allocated polling place station to the central packing area.

Packing was conducted on a polling place by polling place basis in alphabetical name order.

Ballot papers were extracted from their original labelled plastic bag parcel and packed into senate ballot paper cartons with cover cards intact. Cartons were then sealed with AEC security tape with the polling place name handwritten onto the carton along with the number of cartons for the polling place (where multiple cartons were required). A label describing the name and contents was then affixed to the carton.

The empty original plastic bag packaging was retained in a separate area of the same room.

Once the cartons were packed and completed they were stored against the wall of the packaging room.

Once all polling places had been packed and the total number of cartons established (180), the cartons were then transferred through a connecting door to the building foyer area and placed on two separate pallets and shrink wrapped by Toll Ipec staff. When this task was completed the pallets were loaded onto the truck on Wednesday 16 October 2013 for delivery to the AEC warehouse.

After collection by the courier there were no live senate ballot paper cartons remaining in the central packing area or the building foyer area.

The two shrink wrapped pallets were collected from the AEC warehouse on 24 October 2013 and delivered to the recount centre where they were stored in the receiving bay of the building.

The actual recount of the Forrest senate ballot papers commenced on Saturday 26 October 2013. Shortly after the commencement of the recount a discrepancy was identified in regard to the Bunbury East polling place wherein boxes marked 2 of 7, 3 of 7, 4 of 7, 5 of 7, 6 of 7 and 7 of 7 were located but 1 of 7 appeared to be missing. As a result ballot papers for groups H (0), J (1), K (3), L (6), M (2), N (11), O (1), P (0), Q (3), S (112), T (12) and Informal (80) were not accounted for.

It was decided to progress with the recount and continue to monitor that the polling place recount figure balanced with the anticipated vote figure stated on the tally sheet for each polling place. At the completion of the recount all polling place anticipated and recount figures were reported to have balanced out indicating that there had been no extra ballot papers inadvertently amalgamated with another polling place to warrant a sizable discrepancy.

On Sunday 27 October 2013 Ian Butcher (DRO Forrest) conducted a comprehensive search of the Forrest offsite premises building but found neither the missing 1 of 7 carton nor any individual / group senate ballot papers that may have been inadvertently left behind.

It should be noted that all empty original packaging plastic bags, rubbish and waste accumulated throughout the packing process has not been removed from the building so the notion of the missing carton and/or ballot papers being accidentally placed into a skip bin and taken away is not feasible. Indeed the DRO search on Sunday included going through every empty plastic bag, box and bin in the building.

DRO has also been advised that a search of Forrest's unused senate ballot papers and their HofR's ballot papers stored at the AEC warehouse has been undertaken and given the all clear.

In summary, my view is that there is little evidence to suggest that the missing 1 of 7 carton was not included with the 180 cartons collected by Toll Ipec. The question of how or why the carton was missing at the recount centre remains unanswered.

Ian Butcher

DRO Forrest

29 October 2013