Submission re Commonwealth Electoral Amendment (Integrity of Elections) Bill 2021

Dr Kevin Bonham 20 Sep 2021

I am just writing to provide a very quick submission (for reason of limited time) concerning this Bill. I would be available to discuss further if needed.

Voter identification

On the matter of voter identification I agree with the submissions of Prof Graeme Orr (submission 1), Dr Bruce Baer Arnold (submission 5) and Prof Anne Twomey (submission 6). Voter identification in the Australian context is not only a solution looking for a problem, but it is also a troubling solution because of the potential for a politically skewed impact on turnout and because it will not be effective against a voter who is determined to cast multiple votes.

The Parliament has just passed the Electoral Legislation Amendment (Electoral Offences and Preventing Multiple Voting) Act 2021. This contains a constructive measure to address voters who, for whatever reason, appear prone to voting more than once, without creating potential deterrents to participation on any meaningful scale.

The Australian Electoral Commission has a stated position of intent to petition against seat outcomes if it is shown that multiple voting could have resulted in an incorrect winner. There is some potential that there will at some time be a voided result and a by-election in an extremely close seat because of this, but that risk does not justify measures that could introduce systematic biases and that do not necessarily remove the risk anyway.

Election auditing

In general on the matter of election auditing I endorse the submission of A/Prof Vanessa Teague (submission 2), including regarding matters that would need to be attended to to make the best possible use of election auditing. I have some additional comments.

The scale of modern Senate counting is such that fully effective scrutiny by scrutineers is no longer possible because there are often not enough volunteers available – in part because there is such a high level of trust that the AEC will get it right. I scrutineered at the 2016 Tasmanian Senate count, a count at which the final positions were in considerable doubt. The final seat was ultimately won by Nick McKim (Greens) by 141 votes (0.04% of all formal votes cast). In the over 15 hours I spent sampling preference flows as a scrutineer there were generally not more than a few other scrutineers present for all parties combined – at times there were no others at all.

Given this, there is a need for auditing to verify what the actual error rate in the Senate counting process is. In the case of a very close contest such as the 2016 Tasmanian final seat, it is in principle possible for a general error in the scanning and ballot entry process to alter the final result. For instance, one candidate in a two-way battle for a position may be more dependent on preferences than another. If there is a certain rate of error in the

scanning and data entry process, it may disadvantage that candidate because more votes that would otherwise reach them are incorrectly being treated as containing duplicate or omitted numbers, and are hence more likely to exhaust. That said it would surprise me considerably if the error rate was high enough and broke unevenly enough to overturn a margin of even this small size.

I suspect that errors in the scanning and vote capture process are occurring. I was able to locate my own easily recognisable 2019 vote in the ballot data entry files and determine to my surprise that it had been coded as containing one duplicate and one omitted number (which caused it to exhaust prematurely at a point in the actual count). I believe that a number was miscoded and that it was a number that I had actually erased and then rewritten to make it clearer. A previous submission by Associate Professor Teague to JSCEM reported a similar experiment among her colleagues in which several of them reported that their ballot had been apparently mis-scanned.

In addition to general random sampling of ballot papers to check for errors, I suggest that there be an audit of error rates in specific types of ballot papers that are more susceptible to data entry errors. These could include, for instance:

- Ballots where all or nearly all boxes (either above or below, but especially below) were filled. If there are errors in the digitisation process, they are more likely to occur the more numbers are filled.

- Ballots that would have six preferences above the line or twelve below, except that a single number has apparently been omitted. In these cases it may be that a number has been left out because it wrongly appeared to be illegible, or it may be that a few voters (for instance) might genuinely take a how-to-vote card and copy most of its recommendations while leaving out one party.

- Non-blank votes that were recorded as informal, especially below the line.

It would be valuable to have clear evidence available to the public concerning how reliable the Senate data capture process is.