



Electoral Commissioner

Our Ref: 13/997

Ms Siobhan Leyne
Inquiry Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
PARLIAMENT HOUSE ACT 2600

Dear Ms Leyne,

Inquiry into the 2013 federal election – Responses to Questions taken on Notice at the Public Hearing on 31 July 2014

At the 31 July 2014 hearing of the Committee, I emphasised the significant commitment the Australian Electoral Commission (AEC) maintains to rebuilding our reputation with the community and our stakeholders, supported by our work to ensure the fundamental principles of integrity, quality and transparency are integrated throughout all aspects of the AEC's operations.

This submission provides, at **Attachment A**, the AEC's response to questions taken on notice on 31 July 2014 addressing the AEC's policy on the employment of polling officials under the age of 18. This submission also responds to questions tabled by Senator Lee Rhiannon about the AEC's Easy Count software.

The AEC continues to focus on a number of extensive and long term initiatives in response to issues that were articulated in the Keelty report, ANAO reports and at the 31 July hearing. More specifically, we are:

- conducting a broad-scale examination of our policies and procedures to identify areas that may be vulnerable to operational strain;
- considering advice provided by external logistics experts to improve the transportation and storage of election materials with a specific focus on sensitive materials such as ballot papers;
- investigating the feasibility of how we publicise ballot paper anomalies and election incidents at future elections;
- reviewing polling official training and implementing a new learning and development system; and exploring opportunities to integrate new technologies into election operations. In particular, the use of scanning technology at future electoral events is under examination, with a view to using the technology to assist in reducing human errors and creating operational efficiencies.

All initiatives are ongoing as the AEC works to rebuild the agency's capacity to deliver an accurate and reliable election result.

As always, I am happy to respond to additional questions the Committee may have, or provide information that would be useful to the Committee in its inquiry.

Yours sincerely,

Tom Rogers

Acting Electoral Commissioner

22 September 2014

Attachment A – Responses to Questions on Notice from the JSCEM Public Hearing on 31 July 2014

1. A clarification of the AEC's policy with regard to the engagement of individuals under the age of 18 at electoral events

- 1.1 On pages five and six of the Hansard transcript, the Chair noted that there were two issues about the employment of individuals under the age of 18 that required clarity:

CHAIR: ... There are two issues: first, what the act says, and the act of course, without going into all the detail, is a minimum standard and then, second, what the AEC's policy is and how that is communicated nationally at the next polling event.

AEC Response

- 1.2 The employment of persons under the age of 18 years by the AEC to assist with the conduct of electoral events is consistent with the terms of the *Commonwealth Electoral Act 1918* (the Act).
- 1.3 Section 203 of the Act states that “no person under the age of 18 years shall be appointed to be a presiding officer, deputy presiding officer or assistant presiding officer”. However, the Act does not prohibit the employment of minors to conduct other roles during an electoral event.
- 1.4 The AEC's approach to the employment of minors to assist in the conduct of electoral events is identified in the AEC's public website. It states that persons under the age of 18 years can undertake roles such as scrutiny assistants and temporary assistants, and their duties are also set out in the website. The duties of a scrutiny assistant expressly include unfolding ballot papers, which is intended to prepare the ballot papers for scrutiny in accordance with Part XVIII of the Act. Temporary assistants are employed on a needs basis to assist with specific tasks related to a specific event, such as a federal election, and they can conduct a wide range of tasks. However, in accordance with the Act, the AEC does not employ minors to perform the roles expressly excluded by the Act, which are the presiding officer, deputy presiding officer or assistant presiding officer.
- 1.5 Any engagement of a minor must comply with relevant State or Territory legislation regarding minimum age requirements for employment.

2. Questions tabled by Senator Lee Rhiannon about the AEC's Easy Count software

2.1 Correspondence tabled by Senator Lee Rhiannon included seven questions about the AEC's Easy Count software, listed verbatim in italics below and followed with the AEC's response.

2.2 **Question 1:** *Are you aware that the software for counting the ACT Assembly elections is open source software and that Elections ACT Commissioner Phil Greens has stated that open source software has been used rather than proprietary software so the public can have confidence in the counting system?*

2.3 The AEC is aware of the comments made by Mr Green at the JSCEM hearing on 29 July 2014, and also believes in the fundamental importance of public confidence in the electoral system.

2.4 **Question 2:** *Why did the AEC decide to go with proprietary software to develop the source code for counting the Senate vote and not open source software? Did you investigate if public source software could meet the AEC requirements for counting the Senate vote? If not why did you not consider public source software?*

2.5 In 1995-1996 the AEC developed the EasyCount software used for Senate vote counting as in-house software. This had been precipitated by the JSCEM's Report of the Inquiry into the Conduct of the 1993 Election which recommended that the Electoral Act be amended to permit the Senate scrutiny to be performed either by the existing manual processes or by computerisation.¹ At the time the software was developed, the AEC was unaware of any open source options for a computerised scrutiny process.

2.6 **Question 3:** *When the AEC decided not to release the source code following a recent FOI request why was that decision made?*

2.7 EasyCount was originally developed for use in the AEC's industrial elections and was adapted for use in other fee-for-service elections and the Senate count. EasyCount is used to conduct the count and distribution of preferences electronically by entering ballot paper data into the system.

2.8 The EasyCount Software has a common code-base to support all the voting methods used in Senate, industrial and fee-for-service elections. This means

¹ Recommendation 17 of JSCEM's *Report of the Inquiry into the Conduct of the 1993 Federal Election and Matters Related Thereto*; also recommendation 35 of JSCEM's *Report of the Inquiry into the Conduct of the 1996 Federal Election and Matters Related Thereto*

that a member of the public could gain access to, and leverage, AEC intellectual property stored in the source code-base for any EasyCount version. When the AEC is in commercial competition for some elections, it is not appropriate that this software is made available.

2.9 Question 4: *Was the source code for counting the Senate vote developed by a private company?*

2.10 No. The EasyCount Senate software was developed by the AEC in 1995-1996.

2.11 Question 5: *If so is this a factor in the decision of the AEC not to publicly release the source code?*

2.12 Not applicable.

2.13 Question 6: *Is the AEC under a legal obligation that prevents it from publicly releasing the source code? If so who is that legal obligation with? If a private company was involved in developing the source code do they still have ownership rights over this source code; how long do those ownership rights last for?*

2.14 The EasyCount software was developed in house and as such the AEC owns the intellectual property. However it should be noted that the software is designed to operate on the Windows operating system which is a trademark of the Microsoft Corporation. The software also incorporates a number of open source libraries and utilises compiled third party software components from Infragistics and Xceed.

2.15 Question 7: *What is the name of the private company that developed this source code?*

2.16 The AEC developed the software.