

## Introduction

### Background to the review

- 1.1 On 22 June 2009 the committee tabled its report on the conduct of the 2007 federal election.<sup>1</sup> The report provides a comprehensive examination of the administration of the election and, among other issues, proposes reforms to enhance the franchise, improve management of the electoral roll, and proposes measures to address demand for early voting.
- 1.2 In relation to the administration of the election, feedback received from inquiry participants recognised the professional work of the Australian Electoral Commission (AEC) in administering a reliable and effective election.
- 1.3 The 2007 federal election, however, was tarnished by the events in the division of Lindsay. On 20 November 2007 then members of the Liberal Party were involved in the distribution of unauthorised election material. The unauthorised election pamphlet stated that the fictitious Islamic Australian Federation ‘strongly support the ALP as our preferred party to govern this country and urge all other Muslims to do the same.’ The pamphlet further stated that ‘we gratefully acknowledge Labors [sic] support to forgive our Muslim brothers who have been unjustly sentenced to death for the Bali bombings.’ A copy of the offending pamphlet is reproduced at **Appendix C**.

---

1 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009.

- 1.4 While the pamphlet was unauthorised, it was also the content matter that caused concern. The Lindsay Federal Electorate Council Australian Labor Party stated:

Our concern is that the pamphlet was a fraudulent pamphlet, indicating that it was from another political party, and it was malicious and it vilified people. I think it was meant to incite racial tensions as well. What we are concerned about is the actual content of the pamphlet.<sup>2</sup>

- 1.5 During the 2007 Federal Election the then Prime Minister the Hon John Howard, MP, was asked questions about the events in the division of Lindsay. The question and the Prime Minister's answer are reproduced in full below:

JOURNALIST:

Jim Middleton, ABC Television. Good afternoon Prime Minister. I wonder whether, can you guarantee that no taxpayers' funds or public resources were used in the production or distribution of the leaflet in Lindsay that you have yourself described as offensive. Secondly, are you sure that there are no other instances of this type of thing happening in any other electorate and thirdly, given, why wouldn't the perpetrators of this think this is standard operating procedure given than when a similar incident occurred in Greenway in the last election, as far as I can recall no one got expelled from the Liberal Party, there was no investigation and no apology.

PRIME MINISTER:

Well Jim, I do not believe, and I would be perfectly astonished, if any public funds had been used. I condemn what happened. It was an unauthorised document, it does not represent my views, it was tasteless and offensive. There are many, there are myriad legitimate criticisms that can be made of the Australian Labor Party, but I do not believe that the Australian Labor Party has ever had any sympathy for the Bali bombers and I thought it was an outrageous thing to say. That's my view, I think the party organisation has dealt with it with lightning speed and great effectiveness.<sup>3</sup>

---

2 Mr John Thain, President, Lindsay, Federal Electorate Council, Australian Labor Party, *Transcript T1*, p. 10.

3 Prime Minister – *Transcript of the Prime Minister the Hon John Howard MP Address to the National Press Club, Barton, Canberra, 22 November 2007*, p. 6.

- 1.6 The events in the division of Lindsay were examined briefly by the committee in its report on the 2007 federal election. The committee noted public facts about the incident but concluded that it ‘intends to examine in detail the events in the division of Lindsay once court proceedings are concluded’. This report fulfils the committee’s commitment to reviewing in detail the matters that occurred in the division of Lindsay.

## Events in the Division of Lindsay

- 1.7 The events that occurred on the evening of 20 November 2007 led to five people being charged. The events are documented in the Court judgments relating to Mr Gary Clark and Mr Jeff Egan. Mr Clark was the husband of the then sitting member for Lindsay, Ms Jackie Kelly, and Mr Egan was a member of the New South Wales State Executive of the Liberal Party. Mr Clark was found guilty while Mr Egan was found not guilty. Mr Clark’s judgment is reproduced in full at **Appendix D**. Mr Egan’s judgment is reproduced in full at **Appendix E**.
- 1.8 The Egan judgment states that ‘persons connected with the Australian Labor Party became aware of the possibility that certain persons connected with the Liberal Party were going to distribute unauthorised electoral matter within the Federal Electorate of Lindsay.’<sup>4</sup> The relevant members of the ALP went to an area of Penrith where they witnessed and took photos of then members of the Liberal Party distributing the unauthorised pamphlets. Senator Steve Hutchins, in evidence to the committee, advised that ‘it was a Liberal Party member who tipped us off on the Lindsay incident.’<sup>5</sup>
- 1.9 The Clark judgment reports that Mr Jaeschke, the State Director of the Liberal Party for New South Wales received a letter of apology from Mr Clark. A similar letter of apology from Mr Greg Chijoff, the then husband of the Liberal candidate for Lindsay, Ms Karen Chijoff, was also sent to Mr Jaeschke. Mr Clark’s letter of apology is reproduced in full at **Appendix F**. Mr Chijoff’s letter of apology is reproduced in full at **Appendix G**.
- 1.10 Mr Clark in his letter of apology states that ‘I can confirm that neither the candidate for Lindsay nor Jackie, nor you had any advance knowledge of

---

4 Local Court, New South Wales, *Commonwealth Director of Public Prosecutions V Egan*, para. 4, p. 2.

5 Senator Steve Hutchins, *Transcript T1*, p. 22.

this matter.’ Mr Clark further stated that ‘I also take this opportunity to apologise to other members of the community, particularly the Muslim community to whom I bear no malice, for the offence caused by my actions and authorise you to make this letter public.’ Mr Chijoff in his letter of apology indicated that he had resigned his membership of the Liberal Party.

- 1.11 Media reporting of the event, and subsequent court proceedings are set out in Table 1.1.

Table 1.1 Media reporting and the events in the division of Lindsay

Date	Media comments
20 November 2007	Pamphlet claiming to be from ‘The Islamic Australia Federation’ and carrying the ALP logo are alleged to have been distributed in the division of Lindsay.
22 November 2007	Australian Electoral Commission refers complaints by the Australian Labor Party and the State Director of the NSW Liberal Party of Australia to the Australian Federal Police.
22 March 2008	NSW police confirm that they had commenced legal proceedings over the incident against five men. After consulting the Commonwealth Director of Public Prosecutions, the NSW Police charged the men under Section 328 of the Commonwealth Electoral Act, which deals with the printing and publication of election material.
29 April 2008	Mr Troy Craig pleads guilty to one count of distributing unauthorised electoral material. The magistrate agreed with Mr Craig's barrister that his client's prior good character and minor role in the incident made it appropriate for the charge to be dismissed.
7 May 2008	Mr Greg Chijoff is convicted and fined \$750 for distributing unauthorised electoral material.
20 May 2008	Mr Mathew Holstein pleads guilty to distributing unauthorised election material and is fined \$500.
29 April 2009	Mr Gary Clark is convicted of distributing unauthorised electoral material. Mr Jeff Egan is acquitted of distributing unauthorised electoral material. The court found that he did not know the leaflet failed to contain the necessary authorisation and printing details.
19 May 2009	Mr Gary Clark is fined \$1,100 and was ordered to pay court costs of more than \$2,000.

Source *Joint Standing Committee on Electoral Matters, Report on the conduct of the 2007 federal election and matters related thereto, June 2009, p. 291.*

## The adequacy of penalty provisions

- 1.12 The distribution of unauthorised election material is a breach of provisions in the *Commonwealth Electoral Act 1918* (CEA). Section 328 of the CEA provides that the maximum penalty for printing and publication of electoral advertisements or notices that do not include the name and address of the person who authorised it and the name and place of

business of the printer, is \$1 000 if the offender is a natural person and \$5 000 if the offender is a body corporate. Under the Crimes Act, dollar amounts are converted to penalty units which adds about 10 per cent.<sup>6</sup> This explains why Mr Gary Clark, for example, was fined \$1 100 for breaching this provision.

- 1.13 The events in the division of Lindsay gave rise to some comment from inquiry participants about the appropriateness of penalties and other provisions of the CEA regarding misleading statements. The ALP National Secretariat told the committee that:

The ALP remains concerned about the events which occurred in the final week of the election campaign in Lindsay. The Committee will be familiar with these events, which do not need to be recounted here.

The ALP does, however, believe that the events, the investigation process and the penalties finally issued fall well below a standard that would be acceptable to the general community.

We believe that JSCEM should now review the provisions of the Commonwealth Electoral Act 1918 relating to misleading statements, specifically s.329, with a view to providing further legislative definition to an offence under this part of the Act, and with a view to strengthening the penalties.<sup>7</sup>

- 1.14 The committee in its report on the 2007 federal election concluded that 'the court judgments in several of the cases relating to the events in the division Lindsay, where fines of less than \$1 000 were imposed, have clearly demonstrated that the penalties imposed under the CEA for the distribution of unauthorised material are inadequate.'<sup>8</sup> Table 1.1 indicates that Mr Chijoff and Mr Holstein were fined \$750 and \$500 respectively.

## Committee objectives and scope

- 1.15 In this chapter, the committee has provided an overview of the key issues surrounding the events in the division of Lindsay. This background information is necessary to understand the serious nature of the activities

---

6 Ms Sarah Chidgey, Attorney-General's Department, *Transcript T2*, p. 7.

7 Australian Labor Party National Secretariat, submission 159, p 4.

8 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, p. 291.

that occurred. In addition, the appendices help to complete the picture by providing key documents relating to the incident.

- 1.16 The committee noted the Clark and Egan judgments and accepted the facts, and consequently did not examine the events in further detail. The purpose is to review the adequacy of the penalties relating to the distribution of unauthorised election material and determine whether the current penalty framework provides sufficient deterrence to prevent these types of activities in the future.
- 1.17 Second, the examination of the penalties under section 328 of the CEA have brought attention to the adequacy of penalties in the Act more generally. For example, the committee was advised that penalties in the CEA have not been updated since 1983.
- 1.18 Third, the committee examined the current operation of polling booth offences as set in the CEA.

## **Conduct of the inquiry**

- 1.19 On 27 February 2008 the then Special Minister of State, Senator the Hon John Faulkner, wrote to the committee requesting it to conduct an inquiry into the 2007 federal election and matters related thereto. This reference was later supplemented by two Senate resolutions.<sup>9</sup>
- 1.20 The committee's report on the 2007 federal election was tabled on 22 June 2009. As part of that report, the committee gave a commitment to review the events in the division of Lindsay when court processes have been finalised.<sup>10</sup> This review of penalty provisions arises from the committee's original reference that it received from the Minister on 27 February 2008.
- 1.21 The committee received evidence on the events in the division of Lindsay through its first request for submissions beginning in April 2008. In September 2009 the committee wrote to registered major political parties seeking any further information on the issue. In addition, the committee wrote to those persons involved in the incident but there was no response from this group.

---

<sup>9</sup> Senate, Journals of the Senate, No 12, 14 May 2008, p. 390; and No 5, 12 March 2008, pp. 210-211.

<sup>10</sup> Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, p. 2 and p. 291.

- 1.22 Submissions received as part of this review are listed at **Appendix A**. Those persons and organisations appearing at public hearings are listed at **Appendix B**.
- 1.23 Public hearings were conducted in Sydney on 14 October 2009 and in Canberra on 17 November 2009. In the footnotes, T1 and T2 refer to the transcripts of evidence taken on 14 October 2009 and 17 November 2009 respectively. The submissions and transcripts of evidence from these public hearings are available from the committee's website at [www.aph.gov.au/house/committee/em/index.htm](http://www.aph.gov.au/house/committee/em/index.htm)

## Structure of the report

- 1.24 Chapter two examines the adequacy of penalty provisions under section 328 of the CEA. At the same time, the committee makes some observations about the adequacy of the penalty framework in the CEA because it has not been updated since 1983.
- 1.25 The final chapter of the report examines polling booth offences and considers the application of an infringement notice scheme. This type of approach could help to enhance administrative processes and improve deterrence.