

## Redistribution of electoral boundaries

- 8.1 As part of its inquiry into the conduct of the 2010 federal election, the Committee received submissions and heard evidence that the recent redistribution in Victoria caused some confusion for political parties and electors. The Committee therefore decided to examine the factors that led to the redistribution being necessary at that time and problems which resulted, with a view to identifying possible solutions.

### Background

- 8.2 The timing of redistributions is provided for in section 59 of the *Commonwealth Electoral Act 1918*. In general terms, there are three triggers which may prompt the need for a redistribution of electoral boundaries in a state or territory.
- 8.3 A redistribution of electoral boundaries must occur in a state or territory when the number of members of the House of Representatives that the state is entitled to changes. Such redistributions are commonly referred to as 'entitlement redistributions'. Entitlement redistributions must commence forthwith after the making of a determination that the entitlement has changed and will generally commence in the 13<sup>th</sup> month following the first sitting of a House of Representatives.
- 8.4 A redistribution must commence when at least one third of the divisions in a state have deviated from the average enrolment for the state by 10 per cent or more for longer than two months. This type of redistribution is commonly referred to as a 'malapportionment redistribution'. There has not yet been a need to conduct such a redistribution.

- 8.5 A redistribution must commence if a period of seven years has elapsed since the last redistribution of the state was determined. These are commonly referred to as 'seven-year redistributions' and along with entitlement redistributions occur on a regular basis.
- 8.6 Neither a malapportionment redistribution nor a seven-year redistribution can commence if a redistribution is already underway in the respective state, or within one year before the date of expiry of a House of Representatives by effluxion of time.<sup>1</sup>
- 8.7 Once commenced, redistribution may take up to between 10 and 14 months to complete, although there is no set length of time prescribed in Part IV of the Commonwealth Electoral Act.

## **The 2010 redistribution of Victoria**

- 8.8 The 2010 redistribution of Victoria commenced on 1 February 2010. In an Australian Electoral Commission (AEC) media release, the Electoral Commissioner indicated that this redistribution, caused by the seven-year distribution requirement, was expected to be completed by 17 December 2010. However, in the event that an election was called prior to its completion then the electoral boundaries for Victoria in place at the 2007 federal election would apply.<sup>2</sup>
- 8.9 The AEC and others were aware of how close the commencement was to the date, 12 months prior to the effluxion of the House of Representatives. It was foreseeable that if an election was called during 2010, the redistribution would be an added complication for some stakeholders and electors.
- 8.10 As the AEC noted on its website at the time of the announcement of the redistribution, there was little time to spare:

The *Commonwealth Electoral Act 1918* (the Electoral Act) provides that the Electoral Commission shall commence a redistribution of a State if a period of seven years has elapsed since the State was last distributed into Electoral Divisions (paragraph 59(2)). That paragraph of the Electoral Act also provides that the redistribution must be commenced within 30 days after the expiration of that

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1 *Commonwealth Electoral Act 1918*, s. 59 (3).

2 AEC website, [http://www.aec.gov.au/About\\_AEC/Media\\_releases/2010/2-01b.htm](http://www.aec.gov.au/About_AEC/Media_releases/2010/2-01b.htm), viewed 18 June 2011.

seven year period. The last redistribution of Victoria was determined on 29 January 2003. Therefore the redistribution of Victoria must be commenced during a period starting 29 January 2010.<sup>3</sup>

- 8.11 The AEC was aware that an election announcement could possibly occur while the redistribution was underway, but had no actual indication of when any election announcement might be made.
- 8.12 The AEC released an indicative timetable for the redistribution which set out the dates of significant milestones as well as the predicted finalisation date. This was later updated on 21 October 2010, after the federal election had occurred.

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3 AEC website,  
<http://www.aec.gov.au/Electorates/Redistributions/2010/vic/announcement.htm>, viewed 19 June 2011.

Table 8.1 Indicative redistribution timetable – 2010 redistribution of Victoria

<b>Milestone</b>	<b>Indicative Date</b>
	Updated: 21 October 2010
Direction to commence redistribution	1 February 2010
Enrolment statistics available on AEC website	9 March 2010
Government Gazette call for public suggestions	10 March 2010
Newspaper call for public suggestions	13 March 2010
Suggestions close	9 April 2010
Suggestions available for public perusal	12 April 2010
Comments on suggestions open	12 April 2010
Comments on suggestions close	23 April 2010
Comments on suggestions available for public perusal	27 April 2010
Proposed Redistribution Report released	30 July 2010
Objections invited by Gazette notice	30 July 2010
Newspaper invitation for objections	31 July 2010
Objections close	27 August 2010
Objections available for public perusal	30 August 2010
Comments on objections close	10 September 2010
Comments on objections available for public perusal	13 September 2010
Augmented Electoral Commission commences considerations	11 September 2010
Public inquiry (if required)	14 – 15 October 2010
Augmented Electoral Commission makes public announcement	21 October 2010
Further objection period	21 October – 1 November 2010
Further public inquiry	8 November 2010
Augmented Electoral Commission must finish considerations	9 November 2010
Augmented Electoral Commission makes final determination by Gazette notice	24 December 2010
Augmented Electoral Commission's report is tabled in Parliament	After 24 December 2010
Augmented Electoral Commission's report publicly available	After Tabling

Source AEC website, [http://www.aec.gov.au/Electorates/Redistributions/2010/vic/indicative\\_timetable.htm](http://www.aec.gov.au/Electorates/Redistributions/2010/vic/indicative_timetable.htm), viewed 19 June 2011.

- 8.13 As shown in Table 8.1, the Redistribution Committee released its proposed redistribution on 30 July 2010, with objections to the proposed redistribution to be submitted by 27 August 2011.
- 8.14 As noted in Chapter 2, the election was announced on 17 July 2011 with nominations closing on 29 July, nominations declared on 30 July, and pre-poll voting commencing on 2 August 2011.
- 8.15 It is reasonable to assume that those with a vested interest in the outcome of the redistribution, including candidates and political parties who wished to contest the election in Victoria, had pressing election business

on their minds and would have had to concentrate their efforts on both events in order to comply with the redistribution timetable.

- 8.16 The Liberal Party of Australia certainly found that having the redistribution and election occurring simultaneously was challenging. It submitted that:

The timing of the 2010 redistribution of Federal boundaries in Victoria meant parties and the AEC were forced to dedicate considerable time and effort to the redistribution process in what was almost certain to be an election year. This in our view was highly undesirable...

In the event, the first draft of new boundaries was published in the middle of the 2010 campaign, which was of course being held on a different set of boundaries. The risk of confusion for the voting public, as well as the distraction and unnecessary diversion of resources this process required for the Commission and the parties in an election year, was considerable and unnecessary. It is difficult to understand what public interest was served by the redistribution taking place in 2010 rather than 2011.

While there is a provision in the Act that intends to prevent a redistribution occurring close to a forthcoming Federal election, this provision is clearly inadequate as it stands. We ask JSCEM to consider this matter as part of its current inquiry.<sup>4</sup>

- 8.17 The Liberal Party argued that this problem could be addressed by amending the Commonwealth Electoral Act to extend the period during which the direction to commence a redistribution cannot be given, from within one year to within one year and 11 months before the date of expiration of a House of Representatives by effluxion of time.<sup>5</sup>

- 8.18 The Nationals were similarly concerned about the timing of the Victorian redistribution, and argued that:

The result was widespread confusion and unnecessary angst for all involved, particularly for the candidates, their parties and the communities that were adversely affected by the release of the draft boundaries on 30 July. These proposed abolishing the regional electorate of Murray in favour of the creation of a new electorate in the suburban north of Melbourne. The scheduling of the redistribution in conjunction with an election also created a

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4 Liberal Party of Australia, Submission 94, p. 4.

5 Liberal Party of Australia, Submission 94, p. 4.

significant additional workload on political parties and others involved in the election who also wished to participate effectively in the redistribution process.<sup>6</sup>

- 8.19 Elections analyst, Mr Antony Green, noted that the seven-year period following the previous redistribution of Victoria expired on 29 January 2010 and that twelve months prior to the effluxion of the House of Representatives was 11 February 2011. He argued that:

The rigid rules in the Commonwealth Electoral Act that initiated the Victorian redistribution at such a ridiculous time should be varied to give the Electoral Commissioner greater authority to defer a redistribution.<sup>7</sup>

- 8.20 However, the AEC submitted that providing it with the discretion to defer a redistribution was not an appropriate solution. It argued that:

The redistribution timing provisions are fundamentally intended first to ensure that redistributions will be conducted with sufficient frequency to limit malapportionment and secondly, to ensure that the timing of redistributions cannot be, or perceived to be, manipulated for political advantage. The legislative provisions associated with the timing of redistributions, introduced during the 1984 legislative electoral reforms, operate to ensure that there is a clear and distinct separation between the decision makers' discretion and the determinations of the redistribution process. Ultimately, they constitute an integral element of a neutral and apolitical redistribution process.<sup>8</sup>

- 8.21 In response to the Liberal Party suggestion to increase the deferral period, the AEC cautioned that alterations to timing provisions for the redistribution process required careful consideration. The AEC commented that:

Extensions to the deferral period for redistribution boundary processes are likely to diminish the capacity for redistributions to be accurately assessed in relation to such factors as population changes. With considerations such as an increasingly mobile population emerging in Australia, a decision to extend substantially the deferral date for the redistribution process would

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6 The Nationals, Submission 93, p. 10.

7 Mr Antony Green, Submission 88, p. 4.

8 Australian Electoral Commission, Submission 87.5, p. 13.

be considered to be a set-back to an exemplary redistribution standard.<sup>9</sup>

- 8.22 The AEC also noted the difficulties encountered delivering a redistribution according to the timetable specified in the Commonwealth Electoral Act, in situations where the proposed redistribution formed by the augmented Electoral Commission differs significantly from that proposed by the Redistribution Committee.<sup>10</sup>
- 8.23 The AEC submitted that the period during which the augmented Electoral Commission is required to consider objections to the Redistribution Committee's proposed redistribution, hold an inquiry into the objections, form its own proposed redistribution and call for further objections, then hold a further inquiry into the further objections and make a final decision, was not sufficient.<sup>11</sup>
- 8.24 The AEC recommended that an increase of 42 days was required in order to allow the augmented Electoral Commission to adequately discharge its duties.<sup>12</sup>

## Committee conclusion

- 8.25 The Committee understands that there are problems experienced by election participants when a redistribution is in progress and an election is announced.
- 8.26 The Committee notes that section 76 of the Commonwealth Electoral Act provides a solution to this situation when an entitlement redistribution is in progress. It sees that no similar provision exists to provide a remedy in circumstances as experienced in the 2010 redistribution of Victoria.
- 8.27 The Committee agrees with submitters that action should be taken to help address the issues arising from the Victorian redistribution in 2010. The Committee was swayed by the AEC's arguments against the suggestions made by Mr Antony Green to provide the AEC with greater discretion in relation to redistributions, and the Liberal Party proposal to extend the period in which a redistribution cannot be commenced from within one year to within one year and 11 months of the effluxion of the House of Representatives.

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9 Australian Electoral Commission, Submission 87.5, p. 13.

10 Australian Electoral Commission, Submission 87.5, p. 15.

11 Australian Electoral Commission, Submission 87.5, p. 15.

12 Australian Electoral Commission, Submission 87.5, p. 16.

- 8.28 The Committee believes that the redistribution processes as now provided for in the Commonwealth Electoral Act are amongst the best and most apolitical redistribution processes in the world. However, while it is rare that a seven-year redistribution will be in progress when an election is announced, the events in 2010 show that it can occur.
- 8.29 The Committee does not favour extending the deferral period and has searched to find the most appropriate remedy should the same situation occur into the future.
- 8.30 The Committee has therefore opted to recommend that in such situations (except in the case of an entitlement redistribution which is already provided for), it would be appropriate for the redistribution process to be suspended on election announcement, with it being recommenced once all election processes have been finalised.

#### **Recommendation 27**

- 8.31 **The Committee recommends that Part IV of the *Commonwealth Electoral Act 1918* be amended to provide that, where a redistribution has commenced, because of the operation of subsections 59(2)(b) or 59(2)(c), and a Senate election, or an election of members of the House of Representatives, or a Senate election and an election of members of the House of Representatives conducted concurrently, is announced before that redistribution is completed, proceedings in the redistribution are to be suspended until the date specified in the writ or writs as the date for the return of the writ.**

#### **Recommendation 28**

- 8.32 **The Committee recommends that should the Government agree to recommendation 27 above, that Part IV of the *Commonwealth Electoral Act 1918* also be amended to allow the Redistribution Committee or the augmented Electoral Commission (as the case may be) to recommence the redistribution at the step which would, if the redistribution had not been suspended, follow the step last completed in that redistribution. The redistribution timetable, and, if necessary, the projection time for the redistribution should be adjusted accordingly.**



- 8.33 In respect of an increased timeframe for an augmented Electoral Commission to discharge its duties when it forms an opinion that its proposed redistribution is significantly different to that proposed by the Redistribution Committee, the Committee agrees with the AEC that the timetable should be varied according to the circumstances.
- 8.34 However, the Committee has not formed a firm view about how many days should be provided additional to the sixty day period already specified following the end of the comments period on objections.
- 8.35 The Committee therefore does not seek to specify the number of days, preferring that the additional period be the subject of further discussion between the AEC and the responsible Minister.

### **Recommendation 29**

- 8.36 **The Committee recommends that section 72, and any other relevant sections, of the *Commonwealth Electoral Act 1918* be amended to provide that, where an augmented Electoral Commission has formed an opinion that its proposed redistribution is significantly different to the Redistribution Committee proposal, a further fixed period be provided during which the actions required by subsection 72(13) of the Act are to be undertaken.**

### **Recommendation 30**

- 8.37 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that, where a further fixed period is provided during which the actions required by subsection 72(13) of the Act are to be undertaken, the number of days specified in subsection 72(2) of the Act also be increased by the same number of days provided for in the further fixed period.**