



Our Ref: 07/1174



Mr Daryl Melham MP
Chairman
Joint Standing Committee on Electoral Matters
PO BOX 6021
Parliament House
Canberra ACT 2600

Dear Mr Melham

Thank you for your letter of 27 October requesting further information to assist the Committee in its inquiry into the conduct of the 2007 federal election and matters related thereto. You refer specifically to two matters raised by Mr Mark Dreyfus MP at the Committee's Melbourne Hearing on 11 August 2008.

The first matter relates to Australian Electoral Commission (AEC) policy on the timing of the declaration of the poll. The AEC is subject to the requirements of the *Commonwealth Electoral Act 1918* (the Electoral Act) in relation to the process for the declaration of the poll. Section 283 of the Electoral Act deals with the requirements for the declaration of the result of elections for the Senate. Subsection 283(1) requires the Australian Electoral Officer to declare the result "as soon as conveniently may be after the result of the election has been ascertained". Section 284 of the Electoral Act deals with the requirements for the declaration of the poll and the return of the writs for House of Representatives elections. Subsection 284(1) requires the Divisional Returning Officer to publicly declare the name of the successful candidate "as soon as practicable" after the result is known. Subsections 284(2) and (2A) sets out the processes that must be followed before a declaration of the poll is able to take place.

In accordance with the above statutory requirements, the AEC seeks to have the polls declared as soon as possible after all necessary checks and re-checks have been undertaken. The declaration of the poll is an important step in the election process and, given the potential consequences of there were to be any error, the relevant AEC officials must be sure that the process is correct. To ensure the integrity of the result, all fresh scrutinies of the polling day ballot papers and those resulting from declaration vote scrutinies must also be completed. For declaration votes, the divisions must first receive those cast for their division (absent and pre-poll votes) in other divisions across Australia, and

this "exchange" process is usually not completed until the end of the first week after polling day, given the need for reconciliation at a divisional level, transfer to the state central exchange to gather material for like divisions, transfer to the owning State and ultimate distribution to the owning division. Only then can the preliminary scrutiny, further scrutiny and recheck of these declaration votes commence. A related factor here is the ever increasing number of declaration votes that are being cast, which are much more resource intensive to process. As you are aware, at the 2007 election declaration votes comprised 22.9% of all votes cast, an increase of 27% since the 2004 election.

I note that Mr Dreyfus in his evidence raises the possibility of the Senate count being delayed to allow speedier counting where there is no sitting member. The requirements of the Electoral Act do not reflect the possibility for such a process to be adopted. The Electoral Act itself views the Senate count and result as importantly as the count for the House of Representatives. The AEC is charged with returning the writs for an election as soon as possible after election day and so aims to have all counts completed as close as possible to the deadline for the receipt of postal votes 13 days after polling day. In some divisions, particularly those with high declaration vote counts; this may extend the count into the third week after polling day. The AEC also treats all election results even-handedly, and does not therefore accord priorities to those divisions where "there is no sitting member", as from the proroguing of the parliament there are no sitting members in any seat.

As an aside, the AEC has independently considered the merit of having all declarations of the poll occurring simultaneously; however this has not been supported as it would unduly delay the majority of all declarations. The AEC believes that given the variations in circumstances that affect the ability to declare the poll, that the determination of timing must be a division by division decision, but that the AEC 's aim continues to be to declare each poll as soon as practicably possible.

The second matter relates to the provision of copies of election procedures manuals. At page EM 94 of the Melbourne hearing transcript Mr Dreyfus refers to several procedure manuals mentioned in an affidavit to the *Mitchell v Bailey* [2008] FCA 692 case. The manuals mentioned in the affidavit were the Elections Procedures Manual (Policies), the Scrutineers Handbook, and 2 Polling Place Procedures Manuals.

Copies of the manuals you have requested, except for the Polling Place Procedures Manual for Ordinary Issuing Officers, are on the attached CD, and also attached in hard copy form. (The Polling Place Procedures Manual for Officers in Charge incorporates the Ordinary Issuing Officer Manual content).

Also included is a copy of the Elections Procedures Manual (Divisional Office) (EPM(DO)), which may be of interest. Please note that Part 17 of EPM(DO), and some Election Policies have been omitted as they contain

information that has been held to be exempt from disclosure under the *Freedom of Information Act 1982*. Part 16 of this manual, Subpart 1, deals with the Declaration of the poll.

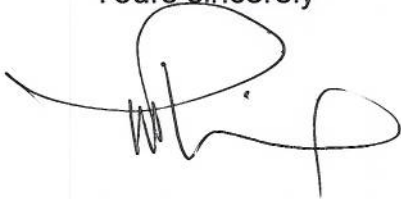
These manuals are updated regularly, and they will all be amended prior to the next election. The Polling Place Procedures Manuals are those that were current for the 2007 federal election. New versions will be produced for the next federal election.

You have also sought AEC views on the desirability of making these manuals, or portions thereof, publicly available. The manuals used by polling day staff are already publicly available in the sense they are provided to all polling officials, and in the past copies have been provided to political parties on request. The AEC sees no difficulty in making these manuals available on the internet after they have been finalised.

In relation to making the EPM(DO) and Policies manuals publicly available, it is important to note that these documents are "living" documents and are updated and clarified throughout the election period, for example to reflect legal advising. Also many of the chapters relate to the internal administration of the AEC, for example election planning, and no merit is seen in their publication. Similarly, the policy documents inform the procedural manuals, and it would appear that the provision of the relevant procedural instructions would best serve the purposes of providing insights into the actual processing of various election specific tasks.

In summary, the AEC is prepared to make those EPM(DO) chapters that relate to specific election period processes, (from announcement until declaration of the poll) available publicly at a point in time in advance of election announcement, but will not update these documents "on the run" through the election period.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Tim Pickering', written over a horizontal line.

Tim Pickering
Acting Electoral Commissioner

11 November 2008