



Mark Dreyfus MP

FEDERAL MEMBER FOR ISAACS



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Joint Standing Committee on Electoral Matters
Submission No. 132
Date Received 16/5/08
Secretary

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The Secretary
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Sir,

1. I ask that the Committee examine the operation of the poll provision, section 284 of the *Commonwealth Electoral Act 1918* (the Act), which provides:

(a) As soon as practicable after it has been ascertained that a candidate in a House of Representatives election has been elected, the divisional Returning Officer shall, at the place of nomination or another place determined by the Australian Electoral Officer for the State or Territory concerned, publicly declare the name of the candidate,

with particular reference to the application of this provision in the Division of Isaacs in the 2007 Election.

2. **The importance of section 284:** A declaration of the poll 'as soon as practicable' allows the elected member to quickly assume their duties of providing the electorate with representation and implementing the policies on which they were elected. This is of particular significance in electorates that are without a sitting member to represent them. A speedy declaration does however require that the result be speedily 'ascertained'. The Act provisions should be directed to ensuring this.
3. **The poll in Isaacs:** A prompt declaration of the poll in Isaacs was of particular urgency as the sitting member had retired, leaving the electorate unrepresented between the prorogation of Parliament on 15 October 2007 and the declaration of the Isaacs poll on 6 December 2007. A number of issues arose:
 - (a) **Decelerating the count:** In the week following the election on 24 November 2007, I was advised that the State Returning Officer had directed the count of House of Representative ballot papers in Isaacs to be slowed. The guidelines outlining the Australian Electoral Commission (AEC) policy on the discretion of the State Returning Officer to slow or accelerate the count are not publicly available. As a result of this lack of transparency regarding the internal, unpublished guidelines of the AEC, I was unable to determine reasons for slowing the count or if the State Returning Officer had acted within his authority in so directing.



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- (b) **Simultaneous counting of House and Senate:** I was also informed that one of the reasons for the delay in declaring the result was the need for simultaneous counting of Senate and House of Representative ballots. Because of the complexity of Senate ballots, the AEC devoted considerable resources to the Senate count which apparently delayed the count of the House of Representatives ballots. As the House ballots potentially have the immediate effect of determining the Government, there would be a basis for giving priority to finalising the count of House ballots.
- (c) **Unrepresented Electorates:** Despite the fact that Isaacs had no sitting member, it appears that the AEC did not allocate additional resources in order to minimise the period in which the people of Isaacs went unrepresented.
- (d) **Lack of urgency in the declaration of the poll:** I include an extract from an email exchange I had with the State Returning Officer, Daryl Wight, which evidences the apparent lack of urgency in the approach of the AEC to the declaration of the poll:

Wednesday December 5 2007 9:56 AM:

'Dear Mr. Wight,
I would like to speak to you about the slow progress in Isaacs... apparently you directed the Divisional Returning Officer to count only 1,000 (ballots) yesterday and not more than 3,000 today. This seems to me to be inappropriate...'

Wednesday December 5 2007 10:32 AM

Dear Mr. Dreyfus,
I have little to add to our earlier (Monday) conversation about the progress of the count in Isaacs. I understand that a parcel of 1,900 absentee votes are being counted at the moment.... and a similar amount will be counted tomorrow...I expect the DRO might be in a position to recommend declaring the poll by Friday...suggesting a Monday or Tuesday declaration.

4. Proposals

- (a) **The Committee could consider an amendment of section 284 of the *Commonwealth Electoral Act*:**

The Act could expressly provide for the declaration of the poll as a matter of urgency. It could include a specific stipulation that House of Representative ballots be counted before Senate ballots, perhaps particularly in the electorates that are without a sitting member and could also make provision for additional



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resources for the prioritisation of the count in electorates that are without a sitting member. Alternatively it could be recommended that these measures be implemented administratively by the AEC.

(b) Make the basis for declaring the poll explicit in the Act or make internal guidelines public:

The Committee in its report on the 1996 Federal Election recommended (Recommendation 36, page 64) that the *Commonwealth Electoral Act* be amended to allow the use of the two candidate preferred count as the basis for the declaration of the poll, but the recommendation has not been taken up. I understand that the AEC has unpublished internal guidelines which refer to the two candidate preferred count, but it would be preferable for the basis for declaration to be set out in the Act. At the very least any guidelines or internal policies of the AEC, in particular those relating to powers of the Divisional Returning Officers when exercising their statutory obligations under section 284, and those relating to the role of the State Returning Officer, should be made publicly available.

5. While aspects of these issues relate only to the Division of Isaacs, they have national application. I would be happy to appear before the Committee to discuss these issues in detail.

Yours sincerely,

Mark Dreyfus QC MP
Federal Member for Isaacs