



Appendix C – Report on irregularities relating to the opening of ballot boxes at certain Pre-poll Voting Offices in the Divisions of Boothby and Flynn

Background

On 2 September, 2010, I was formally requested by the Electoral Commissioner, Mr Ed Killesteyn, to undertake an urgent examination into the circumstances that led to the exclusion of pre-poll ordinary votes taken at Pre-Poll Voting Offices (PPVOs) at Oaklands Park in the Division of Boothby in South Australia and at Blackwater in the Division of Flynn in Queensland. The PPVO located at Emerald, also in the Division of Flynn, was added to the list on 6 September, 2010.

I was asked to report to the Electoral Commissioner on three specific matters:

1. To make findings on what factors may have contributed to the handling of the ballot papers and ballot boxes that contained pre-poll ordinary votes;
2. To recommend what changes could be made in the future to reduce the risk of similar incidents occurring in future elections; and
3. To recommend any other actions that I might regard as being necessary or prudent.

Methodology

I interviewed, on a face to face basis, the Officer in Charge (OIC) of the Oaklands Park PPVO and his staff on Monday 6 September in Adelaide. I also interviewed the Divisional Returning Officer (DRO) for Boothby and other Divisional Office staff, in addition to the Australian Electoral Officer, South Australia and relevant Australian Electoral Commission (AEC) State Office personnel.

I also conducted separate phone interviews with the scrutineers representing the Australian Labor Party (ALP) candidate and the Liberal Party of Australia

(Liberal) candidate who had been present at the Boothby scrutiny centre and observed the count of the House of Representatives ballot papers from the Oaklands Park PPVO.

I interviewed the Australian Electoral Officer, Queensland and relevant staff of the AEC State Office in Brisbane on 9 September.

I interviewed the DRO Flynn along with a temporary officer from the Flynn Divisional Office in Rockhampton on 9 September.

I interviewed on a face to face basis, the OIC of the Emerald PPVO at the Court House in Emerald on Friday 10 September.

I also interviewed on a face to face basis, the OIC of the Blackwater PPVO on Friday 10 September at the Blackwater Court House.

Legislative Changes

Division 3 of Part XVA of the *Commonwealth Electoral Act 1918* (the Electoral Act) commenced operation on 14 July, 2010 and was inserted by Schedule 1 to the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010*. These provisions enabled a voter who qualified for a pre-poll vote under Schedule 2 to the Electoral Act, to cast their ballot papers as ordinary votes in their home Division. Ordinary votes are the same as those taken at a static polling place on Polling Day. They are distinct from declaration votes where once the voter has filled out a ballot paper it is inserted into an envelope and the closed envelope is placed in a sealed ballot box. Prior to the amendments, declaration votes were the only votes that could be taken at a PPVO.

The 2010 election was the first time that ordinary votes were taken at PPVOs and the requirements of the Electoral Act in relation to the security and management of the ordinary ballot papers and of the ballot boxes were different to those that applied in relation to PPVOs at previous elections.

Ballot Boxes containing Ordinary votes

Subdivision C of Division 3 of Part XVA of the Electoral Act sets out the requirements that must be complied with in relation to each ballot box used for pre-poll ordinary voting (pre-poll ordinary ballot boxes).

Section 200DO of the Electoral Act provides for a ballot box used for the first time to be exhibited empty by a voting officer, in the presence of scrutineers, and then for its cover to be securely fastened.

Subsection 200DP(1) requires a ballot box to be closed, fastened and sealed at the close of polling each night.

Importantly, subsection 200DP(2) states that once a ballot box has been closed, fastened and sealed it '**must on no account be opened except as allowed by this Act**'.

Section 200DQ of the Electoral Act provides for a pre-poll ordinary ballot box that is not full to be used on a subsequent day of polling. The ballot box may be made ready to receive ballot papers in the presence of any scrutineers. This provision does not, however, provide an authority for the voting officer to open the ballot box, but only the flap necessary to allow the ballot papers to be inserted in the ballot box.

Section 200DR provides that at the close of the poll, or before on the instruction of the DRO, each sealed pre-poll ordinary ballot box must be forwarded for the purposes of scrutiny.

In summary, while a pre-poll ordinary ballot box that is not full may be used on a subsequent day of polling, the ballot box is only made ready to receive additional votes by the opening of the flap through which ballots can be inserted. There is no provision under the Electoral Act which would authorise the opening of a pre-poll ordinary ballot box at a PPVO before the close of the poll. The wording of subsection 200DP(2) and in particular the words 'on no account' is a strong indication that the Parliament considered compliance with this requirement to be crucial and one that must be observed.

Oaklands Park PPVO

The Oaklands Park PPVO was open to the public from 2-6 August, 9-14 August and from 16-20 August 2010.

The OIC was an experienced temporary polling official who had participated in a variety of elections at a federal and state level dating back to before 1998.

The OIC stated that two small plastic ballot boxes (one for House of Representatives and one for the Senate) had been provided for the public to use to deposit their ordinary votes on a daily basis at the PPVO.

The OIC confirmed that after the close of polling each day and after all public access was locked at the Marion Council Chambers, he opened the small ballot boxes containing ordinary ballot papers in the presence of at least one of the Oaklands Park pre-poll voting officers. Once the seals were broken and the details recorded and witnessed in the OIC return, the contents of the two smaller ballot boxes containing the House of Representative and Senate ballot papers were amalgamated into two larger plastic ballot boxes, one for the House of Representatives ballot papers and the other for the Senate ballot papers. These larger ballot boxes were located in a secure room within the PPVO. After the

“amalgamation of papers” had taken place, seals were replaced on all the ballot boxes containing ordinary ballot papers and recorded on the OIC return.

The Oaklands Park PPVO *Record of Ballot boxes and security seals* records that the ballot boxes containing ordinary votes for both the House of Representatives and the Senate were opened at the conclusion of each day. The reason given on the Record sheet was “End of day amalgamation of papers”.

On 21 August, 2010, the two large plastic ballot boxes were brought to the Boothby scrutiny centre at the Mitsubishi Canteen in Clovelly Park. These boxes contained all the ordinary ballot papers received at the Oaklands Park PPVO up to 6.00pm on 20 August 2010. One box contained 2,977 House of Representatives ballot papers and the other contained 2,980 Senate ballot papers.

At around 8.15pm on Saturday 21 August, the seals of the large ballot box containing the House of Representatives ballot papers were broken so that the scrutiny of the House Representatives ballot papers could commence. The ballot papers were emptied onto a table, sorted and the House of Representatives count for the Oaklands Park PPVO conducted. This process was observed by at least two scrutineers, one representing the ALP candidate and the other, the Liberal candidate

According to the duly appointed Scrutineer for the ALP candidate, he observed that the House of Representatives ballot papers contained in the large plastic ballot box, which was semi-transparent, were all stacked and flat unlike other ballot boxes where the contents were very disordered and jumbled. He claims to have raised this with the other scrutineer, who was appointed by the Liberal candidate. Both scrutineers were unsure of the import of what they had observed and the matter was not taken any further. They did not challenge the validity of the votes being counted.

According to the ALP scrutineer, he continued to worry about the votes received from the Oaklands Park PPVO and raised the matter with ALP personnel on Monday 23 August, following the count. This in turn led to a representation being made on the same day by the State Secretary of the ALP, to the Australian Electoral Officer (AEO), South Australia, , seeking an explanation.

The AEO sought a report from the DRO Boothby on 24 August which led to the discovery of the irregular opening of the ballot boxes by the OIC of the Oaklands Park PPVO.

The AEO then notified the Electoral Commissioner, who requested urgent legal advising from the Australian Government Solicitor on 25 August, 2010. Based on the legal advice he received, the Electoral Commissioner made a public statement on 31 August indicating that the pre-poll ordinary votes cast for the House of Representatives at the Oaklands Park PPVO would not be included in the count.

In his statement, the Electoral Commissioner confirmed that the exclusion of the votes “does not change the candidate who is currently leading the Two Candidate Preferred (TCP) vote count in Boothby, but serves to reduce his lead by 339 votes.” The statement also indicated that the exclusion of these votes would not affect the progress, or finalisation, of the count in Boothby.

Contributing factors

The OIC of the Oaklands Park PPVO confirmed that he had initiated the practice of opening the ballot boxes to permit the transfer of ballot papers from the small ballot boxes used by the public and which were full after each day, to the larger ballot boxes stored in a secure room located at the back of the PPVO. The small ballot boxes, once emptied, were then used the following day.

He also indicated that he used the opening of the ballot boxes to conduct a daily reconciliation of ballot papers against the stubs of the ballot papers issued. The OIC maintained a detailed spread sheet of his own design which he said enabled him to provide an ongoing detailed record of the number of ordinary ballot papers and the various categories of declaration votes issued at his PPVO. He described himself as an obsessive compulsive when it came to the reconciliation of ballot papers and prided himself on the systems he had developed to enable detailed reconciliation of all relevant materials, including ballot papers that were under his care.

The OIC claimed to have been unaware that the opening of the pre-poll ordinary vote ballot boxes at a PPVO prior to the close of the poll was prohibited by the Electoral Act. He also claimed to have no recollection of the changes to procedures relating to the taking of ordinary votes at a PPVO which were canvassed in the AEC training materials issued prior to the election. The record held by the DRO Boothby shows that the OIC received the hard copy version of the AEC assessment workbook on Friday 30 July, at a training session he attended. The AEC Checkpoint on line training facility shows that the OIC did not complete all the training modules until 5 August, 3 days after the opening of the PPVO. The record does show, however, that he obtained a rating of 95% on the pre-poll ordinary vote module which he completed on 29 July, 4 days prior to the opening of the PPVO.

The OIC said that he had been shocked when he learnt that the ordinary votes taken at the Oaklands Park PPVO had been excluded from the count. He was remorseful and embarrassed by the outcome and could give no clear explanation for his actions and said he had no excuses. He did suggest, however, that he had been acting on the basis of his understanding of previous practice which he had followed as the OIC of a PPVO during the 2007 election where only declaration votes had been taken.

He also indicated that he had been under some pressure leading into the opening of the PPVO at Oaklands Park and may have been pre-occupied with what he saw to be the inappropriate location of the PPVO in the foyer of the Marion Council Chambers. He was agitated and unhappy with the inadequate size and location of the PPVO and had serious concerns relating to the logistical and administrative difficulties with which he would have to contend.

The OIC also indicated that his pre-occupation with setting up the PPVO had resulted in him missing a portion of a face to face briefing (at which Election 2007 overheads were used) on Friday 30 July, 2010, given by a member of the Kingston Divisional Office for the OICs of PPVOs in the divisions of Hindmarsh, Kingston and Boothby. The Oaklands Park OIC had excused himself from the briefing after about an hour and a half to return to Oaklands Park and thereby missed the discussion on ordinary voting at a PPVO.

The OIC rejected any notion that he or any of his staff had tampered with the ballot papers and no evidence was tendered that tampering had occurred.

Conclusion

The ballot boxes containing ordinary ballot papers received at the Oaklands Park PPVO were opened in breach of Subsection 200DP(2) of the Electoral Act.

The OIC can give no clear explanation for his actions other than he was following similar practices that he had undertaken when operating a PPVO in the 2007 election. He also cited pressure arising from his concerns with the administration of the Oaklands Park PPVO which he considered to be badly located and caused ongoing difficulties for him and his staff.

Although the opening of the ballot boxes was in breach of the Electoral Act, the OIC diligently recorded the breaking of the seals and opening of the ballot boxes on the *Record of Ballot boxes and security seals*. There was no attempt to cover up the daily practice of opening the boxes and no evidence was tendered that the votes had been tampered with. Other polling officials interviewed from the Oaklands Park PPVO confirmed the OIC version of events. The OIC expressed genuine remorse and regret that his failure to implement proper process had resulted in the disenfranchisement of those electors who cast pre-poll ordinary votes at the Oaklands Park PPVO.

Blackwater PPVO

The OIC of the Blackwater PPVO was an officer of the Queensland Department of Justice and the Attorney-General. The PPVO was located at the Blackwater Court House.

The OIC was an experienced polling official having participated in 4 previous federal elections, including the 2007 event.

Based on the OIC's statement and the OIC returns, there is no evidence that the ballot boxes containing the ordinary ballot papers were improperly opened on any day prior to the close of the PPVO at 6.00pm on 20 August, 2010.

On Friday, 20 August, following the close of the PPVO, The OIC, in the absence of any instructions dealing with the closing of the PPVO on 20 August, proceeded on the basis of materials found in the materials package forwarded to him by the Divisional Office Flynn. The package contained 4 items relating to the conduct of a count.

1. A notice that read:

ATTENTION

OICS PHONE IN RESULTS ON

1300 750 306

Call1 - House of Reprs

Call2 - TCP

Call 3 -Senate.

2. Result sheets for the House of Representative count.

3. Result sheets for the Senate count.

4. An envelope containing TCP count details.

As the materials package was addressed to the OIC of the PPVO, the OIC took the notice to apply to him and that he should conduct a count of ballot papers that night (20 August) and commenced to do so forthwith. He broke open the seals and opened the ballot boxes to gain access to the ballot papers. In doing so he unwittingly breached subsection 200DP(2) of the Electoral Act.

Regrettably, the notice, which had been prepared by the DRO Flynn, should only have been sent to Assistant Returning Officers at Counting Centres within the Division. Instead the notice and results sheets had been included in the package of materials sent to all OICs including those at PPVOs.

Once the OIC had completed the count at around 9.40pm, he rang the 1300 number mentioned in the notice above, which put him in contact with the Temporary Assistant at the Flynn Divisional Office. She transferred him to the DRO Flynn, who immediately registered that the count was not something that should have been undertaken at the PPVO. She asked the OIC about the TCP count and he advised that it had not been done but that he was just phoning in the first count as instructed. While it had been the intention of the OIC to conduct a TCP count he

had noted the direction on the envelope that it should not be opened before 6.00pm on polling night. That, along with the reaction of the DRO, made it apparent that the TCP should not be undertaken. The OIC did not proceed with the TCP count.

The DRO stated that she did not take any figures from the OIC but directed him to place all the ballot papers in the ballot box, seal the ballot box, make a note in the OIC return and take the ballot box to the Blackwater static polling place where he was going to be the OIC on polling day.

At 9.50pm, the DRO phoned the AEC Operations Manager in Brisbane, to report the incident. The Operations Manager reported the incident to the Director Operations Queensland, at around 10.00pm and he confirmed that quarantining and forwarding the ballot box to the DRO was the appropriate course of action. The Operations Manager confirmed the events which had transpired to the Australian Electoral Officer, Queensland, and other members of the State Management Team early on Saturday morning 21 August. The Australian Electoral Officer (AEO), Queensland then notified the Electoral Commissioner of the incident.

The ballot box was returned from Blackwater to the Flynn Divisional Office on Sunday 22 August. The DRO indicated that on inspection of the ballot box, which was semi transparent, she saw that the declaration envelopes had also been placed in the ballot box.

The following day, Monday 23 August, the DRO broke the seals and opened the ballot box to withdraw the envelopes for declaration exchange purposes and then resealed the ballot box which was witnessed by three Divisional staff. The ballot box remained quarantined pending legal advice from the AEC National Office.

Following receipt of legal advice, the Electoral Commissioner made a public statement on 31 August 2010 indicating that 452 early votes cast for the Division of Flynn had been quarantined and would not be included in the count.

Contributing factors

The OIC of the Blackwater PPVO conducted pre-poll voting in strict compliance with the requirements of the Electoral Act.

It was not until after the close of pre-poll voting at 6.00pm on Friday 20 August that he undertook a count of the ordinary ballot papers that had been taken at the PPVO. In doing so, he breached the provisions of the Electoral Act. The OIC made it clear that he thought he was following the instructions of the DRO Flynn, in that he was given a notice requesting OICs to phone through results to the Divisional Office. The notice made no mention of when the results were to be phoned through and there was no distinction made between the OICs of static polling

places and PPVOs. The DRO Flynn acknowledged that the notice should not have been included in material sent to the OIC of a PPVO and that the notice, along with the result sheets for the House of Representatives and Senate counts, could well have misled the OIC into believing he should undertake a count.

It is also unfortunate that an email sent at 3.34pm on Friday 20 August outlining the protocols for the closing of the PPVOs that day was not seen by the OIC until the following Monday. The email was sent by the Branch Manager of the Magistrates Courts Branch of the Queensland Department of Justice and Attorney-General which contained advice provided by the AEC on what was expected of the OICs of PPVOs operating out of court houses across the state. This advice was in response to a query received by the Branch Manager.

The OIC stated that he was extremely busy in the latter half of Friday afternoon with a bus load of miners wanting to cast pre-poll votes and that, as a consequence, he did not read any emails on Friday afternoon. Had he been able to see the advice contained in the email, the OIC stated that the mishandling of the votes could have been avoided.

Conclusion

The evidence would indicate that the OIC did everything required of him in the operation of the PPVO at Blackwater.

The OIC was misled by the notice that had been forwarded in error by the Flynn Divisional Office to conduct a count and phone through the results to the Divisional Office. He did not see an email sent on the Friday afternoon, 20 August, sent by his own department, which contained advice from the AEC setting out the steps to be taken in closing the PPVO that night. Had he seen that advice or been given similar advice at an earlier time, the count of the ballot papers at the PPVO could have been avoided.

Emerald PPVO

The OIC of the PPVO at Emerald was an officer employed by the Queensland Department of Justice and Attorney-General. His experience spanned the previous Federal election in 2007 as a 2IC and the State election as an OIC of a PPVO in 2008. The 2010 election was his first experience as an OIC of a Federal PPVO.

The PPVO was located in the Emerald Court House.

The OIC confirmed that he had on a number of occasions opened the ballot box containing ordinary ballot papers to rearrange the papers and create more space. The *Record of ballot boxes and seals* shows that the ballot boxes containing ordinary votes were opened on 11, 13, and 19 August. The reason given on each instance was "opened to rearrange and fit more votes in."

The OIC said that he did not realise that the opening of the ballot boxes containing pre-poll ordinary ballot papers was in breach of the Electoral Act.

He said that he was surprised that the ballot boxes could not be opened from time to time because he had requested the Flynn Divisional Office to send more security seals in addition to those that he had received in the materials package prior to the opening of the PPVO.

The OIC stated that he had counted some 30 seals in the package that he had received from the DRO Flynn prior to the opening of the PPVO and had calculated that with three ballot boxes being used, there would be a requirement for more seals than had been provided.

His calculation assumed the opening of the ballot boxes from time to time to make more room for ballot papers. The Divisional Office responded by delivering another 25-30 seals, which reinforced the view held by the OIC that the ballot boxes could be opened as circumstances required.

Following the conclusion of voting at the PPVO on 20 August, the ballot box containing House of Representatives and Senate ballot papers was forwarded to the counting centre at the Star of the Sea Parish Hall in Gladstone.

On Monday 23 August at the counting centre in Gladstone, the Emerald PPVO ballot box was opened by the DRO Flynn in the presence of scrutineers.

On opening the ballot box, the DRO noticed that the third seal – the one securing the flap of the box – had not been recorded on the *Record of ballot boxes and security seals*. The DRO drew this to the attention of all present, including the scrutineers, and amended the Record by including the number of the seal on the Record. This was witnessed by an ALP scrutineer who signed the Record.

On completion of the count, both the House of Representatives and Senate ballot papers were placed in the ballot box and kept securely at the Flynn Divisional Office Store Room.

On 3 September 2010, the ALP candidate for Flynn wrote to the DRO Flynn, suggesting that “pre-polling votes from the Emerald Booth may have been mishandled (the seal number on the top of the box had not been recorded) giving rise to the potential of someone being able to access the votes.” He also acknowledged that “this will not ultimately affect the outcome of the result in Flynn but requires further investigation as to whether in all the circumstances the votes should be excluded from the count.” The letter was delivered to the Divisional Office on that same day.

On receiving the letter, the DRO contacted the AEC State Office and faxed the *Record of ballot boxes and security seals* form to the Operations Manager. On her examination of the form, the Operations Manager saw the notations on the Record that indicated that the ballot boxes had been improperly opened for the purposes

of creating more room and asked the DRO Flynn whether she realised that the seals and boxes had been opened as per the Record. The DRO responded by saying that until then, she had not been aware of the opening of the boxes as shown on the Record form.

Shortly after being advised of this incident, the AEO Queensland informed the Electoral Commissioner of the apparent mishandling of ordinary pre-poll votes at the Emerald PPVO and sought advice on action to be taken.

On Monday 6 September, advice was received by the AEO that the 854 ordinary pre-poll votes cast at the Emerald PPVO were to be excluded from the count

On Friday 10 September, the DRO was directed by the AEO, Queensland, to remove the results for the Emerald PPVO from the ELMS system. On that same day, the Electoral Commissioner released a statement indicating that the ordinary votes cast at the Emerald PPVO had been excluded from the count and that this further incident would be included in the examination underway to establish the circumstances surrounding the mishandling of some votes in Flynn.

Contributing factors

Contributing factors in the mishandling of the ballot papers were the lack of understanding on the part of the OIC as to the way in which ballot boxes containing ordinary ballot papers should be managed and the limited preparation he was given for his task. Training material was not received in a timely way sufficient for the OIC to absorb the important changes regarding the management of the ordinary ballot papers and the ballot box security requirements. The material that was sent arrived at the Emerald PPVO at 12.30pm on 10 August, the day before the PPVO opened and was of a kind that did not clearly highlight the necessity to avoid opening the ballot boxes containing ordinary ballot papers. The OIC did not have the benefit of any face to face training with AEC staff and was not visited by AEC personnel during the time the PPVO was in operation.

The fact that some 55-60 security seals were forwarded by the Flynn Divisional Office to a PPVO operating only 3 ballot boxes, compounded the misunderstanding under which the OIC was operating. If proper procedures were being followed, a maximum of 9 seals would have been required on the first day and 3 seals per operating day thereafter. It begs the question as to why such a quantity of seals was sent to the PPVO by the Divisional Office without inquiry as to why they were needed.

Conclusion

The OIC operated the PPVO at Emerald with insufficient understanding of the procedures necessary to properly manage the ordinary ballot papers and ballot boxes. This was compounded by the lack of any face to face contact with AEC staff

and the limited time he had to study the content of the training material provided. The training material and procedural manuals did not highlight the new procedures in a way that would have alerted the OIC not to open the ballot boxes containing ordinary votes.

The OIC's misunderstanding regarding the security and management of ballot boxes containing pre-poll ordinary votes was further compounded by the issuing of up to 60 security seals by the Flynn Divisional Office for a 3 ballot box operation at the Emerald PPVO, reinforcing the OIC's view that ballot boxes could be opened as circumstances required.

Recommended changes to minimise future mistakes at a PPVO

Training material

There was a general view that the training materials were not received by the relevant staff of PPVOs in sufficient time for the significant amount of information and procedures to be absorbed and understood. There should also be some attempt to précis the voluminous content of the materials and manuals issued to PPVO staff to highlight and give prominence to the fundamental and most important elements that the OIC of a PPVO must absorb and get right. This would include an emphasis on the necessity to maintain the integrity of the ballot boxes and that the provisions of the Electoral Act are always met.

It would also be useful to highlight the protocols to be followed by the OIC when closing the PPVO on the day immediately before Polling Day.

Recommendation 1.

That the training materials and working manuals for the OIC of a PPVO be reviewed with a view to highlighting the necessity to ensure that all procedures and practices are consistent with the requirements of the Electoral Act. In particular, the need to ensure the integrity of the ballot papers and ballot boxes should be given special prominence in training materials and in working manuals used at a PPVO.

Sealing of Ballot Boxes

There appeared to be a view amongst some of the PPVO staff and within some parts of the AEC, that the ballot boxes could be opened under certain circumstances, so long as this was witnessed by other polling staff and in a secure location. This understanding may have evolved over time as a consequence of managing declaration votes at a PPVO, which were the only kind of votes cast at a PPVO prior to the 2010 event.

Even so, the Electoral Act makes no provision for the opening of ballot boxes containing declaration votes at a PPVO. The DRO can direct the OIC to forward declaration votes in accordance with the Electoral Act. There is no authority within the Electoral Act to open a ballot box to create more space or to facilitate the reconciliation of ballot papers.

This is an area of practice that should be revisited in the light of the incidents that are the subject of this report. There needs to be a clear understanding that whatever procedures and practices are employed by polling staff, the requirements of the Electoral Act must always take precedence over administrative convenience.

In this regard there needs to be a very clear message on each ballot box used in a PPVO that once sealed, the box is not to be opened on any account, other than in accordance with the Electoral Act.

Recommendation 2.

That a highly visible stick-on label be attached to each ballot box used in a PPVO at the time it is first sealed (perhaps adjacent to each side seal), that makes clear that the ballot box is not, **on any account**, to be opened.

Record of ballot boxes and security seals.

The incidents in relation to Oaklands Park and Emerald might well have been minimised had a Divisional office staff member read the *Record of ballot boxes and security seals* form during the operation of the PPVO. In both cases, the OIC diligently and accurately recorded the breaking of the seals and the opening of the ballot boxes on an ongoing basis. Unfortunately, that Record is not read or examined by anyone at a Divisional level until well after the close of polling. It would seem more appropriate and effective if the Record form was periodically checked by a Divisional level staff member as the polling proceeds. This could be done during visits to the PPVO in urban locations or by way of faxing the Report form to the DRO on a regular basis from country locations.

Recommendation 3.

That the *Record of ballot boxes and security seals* form be routinely examined by Divisional staff either when visiting a PPVO or by means of a fax or scanned copy in relation to PPVOs located in country regions. This practice should be included in the operating manuals for DROs and their staff.

Conclusion

On the basis of my inquiry, I am of the view that the OICs at the Oaklands Park, and Emerald PPVOs both made honest mistakes and did not in any way

deliberately seek to disenfranchise those electors who cast early votes at their respective PPVOs. The OIC, Blackwater, was misled by the mistaken delivery of counting instructions by the Flynn Divisional Office to the Blackwater PPVO. No evidence was tendered of any tampering with ballot papers at any of the three PPVOs.

All three OICs recognise the seriousness of the outcome and in particular, regret the disenfranchisement of the 4,283 voters who cast ordinary votes at their respective PPVOs.

In light of these incidents, it would be prudent to again emphasise to all polling officials the fundamental tenet that all administrative practices adopted by polling staff and Divisional staff in the conduct of an election, must be in strict compliance with the provisions of the Electoral Act. This will require a review of current practices and procedures to ensure they are in compliance with the Electoral Act.

It will also require improvements in the training of relevant staff of the AEC and of temporary polling officials employed during the course of an election. Such training will need to highlight the primacy of the Electoral Act and the imperative to secure the integrity of all ballot boxes and ballot papers, along with the need to ensure transparency of all processes, throughout the electoral cycle.

I believe that if the recommendations contained in this report are implemented, the potential for a repeat of these incidents will be minimised.

Bill Gray AM

22 September, 2010