



Our Ref: WA Senate recount

Mr Mick Keelty AO APM

Dear Mr Keelty

The purpose of this letter is to set out the terms and conditions of your engagement as an independent contractor to the Australian Electoral Commission (AEC) to undertake an urgent examination into the circumstances that led to the exclusion of votes in the Western Australia (WA) Senate recount. The terms of reference can be found attached to this letter.

It is understood that you will be performing the services personally and will not be using any subcontractors. As you are entering into this agreement as an independent contractor, you are not entitled to claim any employment entitlements from the AEC such as any type of leave, workers' compensation, superannuation or pension benefits. Indeed, you should give careful consideration to obtaining appropriate levels of private workers compensation insurance and professional indemnity insurance to ensure that your interests are adequately protected in performing the examination. However, the AEC will not insist on you possessing such insurance.

The intellectual property in all of the material created in the course of the examination and the report shall vest with the Commonwealth. However, to the extent that the report includes some methodology that attracts a claim for intellectual property, the AEC will agree to grant you a non-exclusive license for the further use of that methodology.

It is essential that the examination be conducted in a manner that is, and is seen to be, independent, impartial and objective. In agreeing to the terms and conditions in this letter, you are taken to warrant that there is no conflict of interest on your part and that you are not aware of any lawful impediment to your undertaking the examination. If you do become aware of any material change to your circumstances during the course of the review, you are requested to notify me as soon as possible to enable me to decide what appropriate action should be taken, including the possible termination of this agreement. If any issue arises that might impact on the successful planning and implementation of the review, I would appreciate your advising me immediately of the details and providing your advice on contingency plans.

Any requests for the expenditure of public monies that may arise during the conduct of the review will need to be formally directed to me to ensure compliance with the *Financial Management and Accountability Act 1997*. To the extent that it is necessary for you to engage in interstate travel to undertake the review, any such travel will be arranged through the AEC with the class of travel and other expenses paid at the rate that applies to officers in the Senior Executive Service.

The AEC agrees that payments of \$ 2,500 (excl. of GST) per working day will be made on the satisfactory completion of the review and the provision of the report. Payments will be made within 30 days of a correctly rendered tax invoice. I understand that you have an ABN and that details of this will need to be provided to the AEC to ensure the issuing of any invoice by you meets ATO requirements and enables the AEC to make payments exclusive of GST. To the extent that this agreement may be argued to give rise to any liability under the *Superannuation (Productivity Benefit) Act 1988* the above payments include an amount for this liability.

You are responsible for ensuring that you conduct the review in accordance with the attached terms of reference and in accordance with all relevant Commonwealth legislation and the APS Code of Conduct. You are also responsible for ensuring that the required report meets appropriate standards. You are required to assist the AEC with responding to any statutory inquiries that may result from the examination (e.g. the Auditor-General, the Ombudsman, the Privacy Commissioner, the Parliament, etc).

Thank you for agreeing to undertake this review and to provide the required report. I trust that the terms and conditions of engagement as set out in this letter are clear and acceptable to you. If this is the case, please signify this by signing the Acceptance of Offer section below and returning this letter with the signed Acceptance of Offer to me as soon as possible. I will arrange for a copy to be made available to you for your records.

Yours sincerely
[Signature redacted.]

Ed Killesteyn
Electoral Commissioner

5 November 2013

Acceptance of Offer

I agree to the terms and condition of engagement set out in this letter.

[Signature redacted.]

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Mick Keerly AO APM

Dated this



day of November 2013.

TERMS OF REFERENCE FOR AN INQUIRY INTO MISSING BALLOT PAPERS RELATED TO THE 2013 WA SENATE ELECTION

The commencement date with the AEC will be 5 November 2013 with the draft written report to be provided within 15 working days from commencement (or such later time as is agreed by the parties). The final of the report is to be provided to the AEC by the end November 2013.

Specifically, in reporting to the Electoral Commission I would like you to:

1. Make findings on what factors may have contributed to the misplacing of the ballot papers
2. Recommend what changes could be made in the future to reduce the risk of similar incidents occurring in future elections
3. Recommend any other actions that might be regarded as necessary or prudent.

Issue

The need for this review arises from the fact that, despite extensive searching, the Australian Electoral Officer (AEO) for WA was unable to find 1,370 Senate ballot papers during the recent WA Senate recount. These votes were cast by electors enrolled in the Divisions of Forrest and Pearce at the 2013 federal election. They are votes which were recorded as being formal above-the-line votes or obviously informal votes.

The ballot papers identified as missing are:

Polling Place/Count	Number of Ballot Papers	For Whom Votes Cast
Division of Pearce Henley Brook	350	350 x Group AA (Liberal)
Division of Pearce Mt Helena	393	14 x Group G (ASP), 9 x Group T (AJP) 370 x Group AA (Lib)
Division of Pearce Wundowie	385	8 x Group A (SMK) 3 x Group C (AUC) 7 x Group D (HMP) 1 x Group K (AIN) 5 x Group L (WKP) 1 x Group M (KAP) 1 x Group O (TCS) 164 x Group Z (ALP) 166 x Group AA (Lib) 29 x Informal
Division of Pearce Provisional 1	11	11 x Informal ballot papers
Division of Forrest Bunbury East	231	1 x Group J (SPA) 3 x Group K (AIN) 6 x Group L (WKP) 2 x Group M (KAP) 11 x Group N (FFP) 1 x Group O (TCS) 3 x Group Q (ODR) 112 x Group S (GRN) 12 x Group T (AJP) 80 x Informal

Administrative arrangements

I have instructed the Australian Electoral Officer for Western Australia to prepare a package of relevant documents and other information that will assist with undertaking this task.

To assist with undertaking the review and preparing the required report, the AEC will provide access to any AEC facilities and such other assistance that is reasonably necessary to prepare the required report. The AEC will also be providing assistance from a Senior Legal Officer and other administrative support staff not involved with the circumstances involving the misplaced ballots.