

Ms Bev Forbes
Secretary
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Ms Forbes

I refer to your letter of 11 October requesting advice on submission No 228 of 6 September 1999 from Mr David Willis and Mr David Marshall, and a copy of the questionnaire and/or forms used to collect information from potential AEC staff being considered for temporary employment for polling work.

Enclosed you will find copies of various forms that are relevant to the appointment of AEC casual staff at electoral and referendum events.

In relation to submission No 228, Messrs Willis and Marshall refer to submission No 187 from C V Turner, to which the AEC responded at part 23 of submission No 210. They state that they developed the arguments presented by C V Turner in submission No 187, and now dispute the response provided by the AEC in submission No 210.

The AEC rejects the misguided arguments presented by Messrs Willis and Marshall in their correspondence, and stands by the response provided to submission No 187 from C V Turner, at paragraph 23.1 of submission No 210:

In his submission, Mr Turner alleges that the counts in the Divisions of Blair and Bennelong were conducted in breach of the law. This allegation is based on a misreading of the Electoral Act, specifically a belief that the test set out in section 274(7AA)(b)(ii) has to be applied after every count. It does not. The Electoral Act requires it to be applied only after the count of first preferences; and, in fact, to apply it at any other stage of the scrutiny would be inconsistent with the Act.

To assist the JSCEM, the legislative scheme for the counting of House of Representatives votes, as set out in section 274 of the Electoral Act, is detailed below.

- If, after the count of first preference votes, one candidate has an absolute majority of votes, that candidate is elected [s.274(7)(ca)(ii)]
- If, after the count of first preference votes, no candidate has an absolute majority of votes, the candidates must be ranked according to their standing on the poll [s.274(7AA)(a)], and it must be determined whether they are to be excluded one by one, or whether a bulk exclusion of all but the two leading candidates will take place. [s.274(7AA)(b)].
- A bulk exclusion of all but the two leading candidates will take place if the number of first preference votes possessed by all of the other candidates is less than the number of first preference votes possessed by the second placed candidate [s.274(7AA)(b)(ii)]; in other words, if it is mathematically impossible for any candidate to overtake the second placed candidate.
- If the calculations made immediately after the count of first preferences indicate that a bulk exclusion is not possible, there will be no bulk exclusion, either then or at any other stage. Instead, candidates are excluded one by one [s.274(7)(d)(i) and (ii)]. Paragraph 274(7)(d)(ii) states explicitly that:

the process of excluding the candidate who has the fewest votes, and counting each of his or her ballot papers to the unexcluded candidate next in the order of the voter's preference, shall be repeated until only 2 candidates remain in the count.

In the example given by Messrs Willis and Marshall, the first preference votes of the candidates were 2478, 6989, 199, 17239, 1230, 24516, 14787, 556 and 170. As the first ranked candidate had 24516, the second ranked candidate 17239, and the third and lower ranked candidates had a total of 26409, a bulk exclusion was not possible, and the recursive process of excluding the candidate with the fewest votes proceeded in accordance with paragraph 274(7)(d)(ii).

Yours sincerely

Paul Dacey
Assistant Commissioner
Elections and Enrolment

12 October 1999