## LS4856 Released Document No. 35.pdf





## **Electoral Commissioner**

Our Ref: 13/946

Mr Zhenya Wang Palmer United Party

By email to p.burge@hopgoodganim.com.au

Dear Mr Wang

I refer to the matter of a request for a re-count made to me by Senator Scott Ludlam and Mr Wayne Dropulich of the Senate Election in Western Australia. I note that Hopgood Ganim provided me with submissions on this matter on your behalf dated 8 October 2013. I note that the declaration of the Senate poll that was scheduled for Friday 4 October has been deferred pending my decision on this matter.

## Decision

I have considered the matter in the light of your submissions and submissions made by Senator Ludlam of the Australian Greens Party, and submissions made on behalf of Senator Louise Pratt and Mr Wayne Dropulich and have decided to direct a recount of certain Western Australian Senate ballot papers in the manner set out below. I am making this decision under subsection 278(2) of the Commonwealth Electoral Act 1918 (the Electoral Act). Subsection 278(2) provides:

"If the Australian Electoral Officer refuses a request of a candidate under subsection (1), the candidate may, in writing, appeal to the Electoral Commissioner to direct a re-count of the ballot papers to which the request relates, and the Electoral Commissioner has a discretion either to direct a re-count of the ballot papers or refuse to direct a re-count."

I have carefully examined the reasons for the recount request contained in the various letters and emails and others whose interests are affected and have formed the view that the matters raised do not refer to any specific grounds, errors, incidents or irregularities that would fall within the published recount policy of the Australian Electoral Commission (AEC).

However, I have also considered whether there may be some special circumstances that exist in this particular election of Senators in Western Australia that would lead me to not applying the published policy in this instance.

Given the small margin involved for the critical exclusion, I have caused further evaluations to be undertaken by the AEC on two areas. First, in relation to the verification that AEC policies and practices have been adhered to in this election. Second, that the critical margin after count 139 that impacted on the final election result has not been affected by any error or irregularity.

In considering this matter I note that small margins between various candidates at exclusion points in a Senate distribution of preferences are not unusual. The combination of a close margin and the fact that the exclusion after count 139 was directly critical to the outcome in this Senate election is far more unusual.

While I have no direct evidence in my possession of any error or irregularity that may have materially affected the election results, the criticality of the particular Senate candidate exclusion together with the small margin leads me to conclude that it is prudent to confirm the result in the interests of the electorate's confidence in the outcome.

I have therefore decided that there should be a recount of all the above the line Senate ballot papers together with those informal ballot papers that have been determined as obviously informal by Divisional Returning Officers in accordance with section 273A of the Electoral Act. A recount of all above the line ballot papers is also in the interests of all candidates in the election.

This recount will not include below the line ballots, or above the line and informal ballots that have been classified as such at the Centralised Senate Scrutiny (CSS).

I am of the view that above the line ballots are likely in the circumstances to be the most influential in determining the final outcome. For this reason, I will direct the AEO for Western Australia to conduct a full recount of all above the line Senate ballot papers as outlined above in accordance with section 278 as soon as possible. Mr Kramer will advise you and other candidates of arrangements for the recount shortly.

Please find attached a statement of reasons which addresses each of the matters raised in emails and letters to me requesting that a re-count take place.

Yours sincerely

[Signature redacted.]

Ea Killesteyn

( October 2013