



SENATOR SCOTT LUDLAM
AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

Thursday, 3 October 2013

Mr Ed Killesteyn PSM,
Electoral Commissioner
Australian Electoral Commission
PO Box 6172
Kingston ACT 2604

Dear Sir,

Result of the 2013 election of Senators for Western Australia

Yesterday I wrote to the Australian Electoral Officer seeking a re-count of ballot papers for the election of Senators for Western Australia.

I set forth reasons for the request.

I attach a copy of the letters sent.

Today the Australian Electoral Officer has advised that my request has been refused.

Pursuant to s 278(2) of the *Commonwealth Electoral Act* 1918, I now appeal to you in writing to direct a re-count of the ballot papers to which the request relates.

In making this appeal, I note the following:

1. The result of the election for the final places turned on the relative positions of the Shooters and Fishers Party and the Australian Christians. The difference between the respective parties at this point of the count was just 14 votes.
2. Whilst considerations are in some respects different between counts for the election of Senators and counts for the election of members of the House of Representatives, I note that the AEC has a policy of automatically recounting in House of Representatives seats where the margin is less than 100 votes. Here the margin is considerably less, both in absolute terms and as a proportion of voters.

3. There has been a Senate recount before, following the 1980 election in Western Australia. At that election, Mr Noel Crichton-Browne was found to have been elected, on the initial count, by 214 votes. Following the recount, the margin was 560 votes. The difference of 346 votes was considerably greater than the 14 votes in contention at the critical point of this count.
4. There have been three recounts for the Victorian Legislative Council since it adopted proportional representation. In two of those recounts the result changed following the recount. In none of those cases was the critical margin as small as the 14 votes in this case. In at least one of these recounts (that for the Western Metropolitan Region in 2006), the critical margin was close at mid count, and the result overturned a very substantial final margin. One particular factor in these recounts was a common misclassification of votes which recorded the voters' intentions both above and below the line – something only picked up on the recounts.
5. None of the elected senators will be required to take their seats in the Senate before 1 July 2014, so there is no particular urgency to declare the result of the election.
6. I rely on the matters raised in my correspondence to the Australian Electoral Officer.

In respect of the reasons provided by the Electoral Officer, I note:

- (a) It is incorrect to approach the question of a recount based only on the relative margins at the end of the distribution of preferences. There is no reason in principle for such an approach, which ignores the reality that margins at the points of exclusion in a senate count are more likely to affect the outcome.
- (b) It is true that margins may be small at the point of exclusion in the Senate, but most of these do not matter. This one does.
- (c) It is, with respect, unhelpful to point out that the 100 vote trigger in the House of Representatives only applies at the end of the count after distribution of preferences. In the House, in the overwhelming majority of cases, this is the only point where it does matter. To apply that to the Senate, where the margin at a particular exclusion point matters in a way quite different from the House of Representatives, is erroneous.
- (d) It is true that variations were subject to scrutiny. However, they have occurred and this suggests that some errors were picked up during the initial count – others may not have been. The count occurred in various places across Western Australia and scrutineers were not present at all times and all places.

- (e) The *Commonwealth Electoral Act* does not provide any express criteria for a recount either in the House of Representatives or the Senate. However, the test must be that a recount is warranted wherever there is a reasonable prospect that a further scrutiny of the votes would yield a different result. Indeed, the AEC policy for a 100 vote 'trigger' for the House of Representatives recount is in accordance with such a test.
- (f) The very small margin at the critical exclusion point leaves open a real prospect of human error, and is apt to leave the community dissatisfied with a result where the option of a recount has not been taken.

Yours faithfully,

[Signature redacted.]

Scott Ludlam

Candidate

cc. Peter Kramer, Australian Electoral Officer, 200 St Georges Terrace, Perth