



**Community Development and Justice Standing Committee**

# **2017 WA State Election**

Maintaining confidence in our electoral process

**Report No. 2**  
**February 2018**

Legislative Assembly  
Parliament of Western Australia

## Committee Members

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Chairman	Mr P. Katsambanis, MLA Member for Hillarys
Deputy Chair	Mr M.J. Folkard, MLA Member for Burns Beach
Members	Mr A. Krsticevic, MLA Member for Carine
	Mr Z.R.F. Kirkup, MLA Member for Dawesville
	Mr D.T. Punch, MLA Member for Bunbury

## Committee Staff

---

Principal Research Officer Ms Franchesca Walker

Research Officer Dr Amy Lampard  
(from 6 November 2017)  
Ms Michele Chiasson  
(until 16 October 2017)

Legislative Assembly  
Parliament House  
Harvest Terrace  
PERTH WA 6000

Tel: (08) 9222 7494  
Fax: (08) 9222 7804  
Email: [lacdjsc@parliament.wa.gov.au](mailto:lacdjsc@parliament.wa.gov.au)  
Website: [www.parliament.wa.gov.au/cdjsc](http://www.parliament.wa.gov.au/cdjsc)

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# **Community Development and Justice Standing Committee**

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## **2017 WA State Election**

### **Maintaining confidence in our electoral process**

Report No. 2

Presented by

**Mr P.A. Katsambanis, MLA**

Laid on the Table of the Legislative Assembly on 15 February 2018



## Chairman's Foreword

**T**he inquiry into the administration and management of the 2017 State General Election did not arise from allegations of mismanagement or misconduct, but rather from a gap that the Community Development and Justice Standing Committee recognised in the oversight of the Western Australian election process. To date, responsibility for reviewing the performance of the Western Australian Electoral Commission has largely fallen to this Committee. However, the Committee has had some 20 portfolios in addition to electoral affairs, which has placed it in an unenviable position; conducting a full-blown inquiry into every state election risked inadequate oversight of other equally important areas.

While our inquiry did not uncover anything that invalidates the 2017 election results, it nevertheless brought to light issues that could erode the confidence of voters, political parties, and Members of Parliament over time if they are not addressed. Issues ran the full gamut of the electoral system—from a shortage of ballot papers at some polling places to the disenfranchisement of voters due to (in part) declining postal services; from an insufficient number of early voting centres to a political finance regime that limits the extent of transparency; and from inadequate community education and engagement by the Western Australian Electoral Commission to concerns about the security of internet voting.

Resourcing constraints beyond the electoral commission's control caused some of the issues. Perhaps most significantly, the commission had a smaller budget (in real terms) than at previous elections but was tasked with providing more services to more people because of 2016 amendments to the *Electoral Act 1907*. Direct enrolment brought more people onto the state electoral roll than ever before. For the first time in Western Australia, internet voting allowed people with sight impairment, insufficient literacy skills, or other incapacity to vote without assistance. And unlike past elections, electors were able to vote before election day without providing a reason. The fact that the commission actually stayed within its budget when faced with these conditions is commendable.

The outdated Electoral Act contributed to other issues. At 111 years old, it is a hodgepodge of contradictory provisions that often make no sense. The wording of the legislation actually prevents the use of generally accepted modern technology, such as the electronic transfer of candidate deposits. The Electoral Commissioner told us of one section that defied precise interpretation by even the State Solicitor.

Historically, Western Australia has always been one of the pioneers in electoral matters. We were just the second Australian jurisdiction to extend voting to women and, along with the Northern Territory, the first to use mobile polling for a federal election. Our elected representatives include Edith Cowan, the first woman to be voted

into any Australian parliament and Hon Ken Wyatt MP, the first Indigenous member of the House of Representatives.

This inquiry has shown, however, that our electoral process is becoming stuck in the past. Subjected to insufficient resourcing and outdated legislation, the Western Australian Electoral Commission appears to have fallen back on a 'same old, same old' approach. We were fortunate to hear from the New South Wales (NSW) Electoral Commission and were struck by the contrast that it provided with the Western Australian commission. NSW has a drive, a clear culture of continuous improvement and an eye to innovation—all of which we feel are lacking in some of the operations of the Western Australian Electoral Commission.

In both the lead up to, and aftermath of, the most recent election, there was considerable debate within Parliament about the necessity of establishing a parliamentary committee with a distinct role in inquiring into electoral systems and the conduct of elections. There is considerable merit in this suggestion. A joint standing committee into electoral matters would be able to develop the expertise and knowledge of best practice that is needed to guide the legislative reform that Western Australia requires. It can also lend support to valid requests from the Western Australian Electoral Commission for increased resourcing.

Let me stress the point: trust and confidence in the commission is fundamental to the legitimacy of our electoral system and our positions as Members of Parliament. To ensure that this trust and confidence remains as strong as possible, legislative reform must be urgently undertaken and the Western Australian Electoral Commission appropriately resourced in the future.

I thank my fellow Committee members Deputy Chair Mr Mark Folkard MLA, the Member for Burns Beach, Mr Zak Kirkup MLA, the Member for Dawesville, Mr Tony Krsticevic MLA, the Member for Carine, and Mr Don Punch MLA, the Member for Bunbury. They approached this inquiry with the bipartisan spirit that Parliament will need to adopt if it is to pass the legislation necessary to make our electoral system fit for purpose in the twenty-first century.

I also thank the Committee staff for their assistance throughout the inquiry, namely Ms Franchesca Walker, Ms Michele Chiasson and Dr Amy Lampard.



Mr P.A. Katsambanis, MLA  
CHAIRMAN

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## Executive Summary

The administration and management of Western Australian general elections receives little scrutiny. Western Australia (WA) largely relies on the Community Development and Justice Standing Committee to review the performance of the Western Australian Electoral Commission (WAEC) during elections. Yet with around 20 diverse portfolios to review and report on, inquiring into every state election risks inadequate oversight of other important areas.

This inquiry aimed to rectify the lack of external oversight by assessing the adequacy of the WAEC's administration and management of the 2017 State General Election (2017 election). It was particularly important given the clear election result. A closer result would have increased scrutiny by the public and media; without this, the WAEC risked complacency when reviewing its election performance.

Outlined below are the key findings of the inquiry, noting that the election overall was run professionally but there are areas of improvement which, unless addressed, have the potential to undermine future confidence.

### **More services were provided to more people with less funding**

The 2017 election was an election of firsts. Amendments to the *Electoral Act 1907* in August 2016 saw limited internet voting offered for the first time, eligibility requirements for early voting removed, and direct enrolment introduced. As a result, the election had a record number of electors enrolled at the close of the roll (nearly 1.6 million), a record number of votes cast (over 1.3 million), and a record percentage of early votes cast (23.6 per cent). Many people with disability or insufficient literacy skills cast a secret vote for the first time, courtesy of internet voting.

Additional funding did not accompany the amendments. The WAEC received around \$18.5 million to conduct the 2017 election—the same budget allocation received for the 2013 election. Without adjustment for inflation, it was a reduction of approximately \$1 million in real terms.

### **The WAEC was very selective about where it directed its resources**

It appears the WAEC responded to its reduced budget by focusing on areas providing the best 'bang for its buck'. This approach resulted in not only the unequal provision of services to some WA electors but programs that were less effective than they would have been with additional resources.

As an example, the ambassador program was implemented to address unintentional informality in culturally and linguistically diverse (CaLD) communities. The program

trained around 30 people from CaLD backgrounds to serve as a point of contact for their communities for the election. Twenty-two ambassadors were then employed at polling places as electoral information officers (EIOs) to assist electors with limited English language skills. In contrast, almost no resources were directed towards improving Aboriginal participation. Remote Aboriginal communities actually had fewer opportunities to vote than the previous election, with 15 fewer remote polling stations.

The implementation of internet and automated telephone voting was not complemented by adequate promotion, which left potential users ignorant of the service. A survey of 1,200 electors found 84 per cent did not know about iVote.

The WAEC also failed to evaluate some of its programs, which led to claims of success that cannot be substantiated. Elector feedback about the ambassador program was not sought; nevertheless, the WAEC said it had a positive impact because informality rates fell where EIOs were based (Mirrabooka had five EIOs, for example, and its informality rate for the Legislative Assembly decreased by 1.42 percentage points). However, a closer examination of the evidence shows Mirrabooka's informality rate was part of a state-wide decline in unintentional informality.

The WAEC also said the Dark Lord advertising campaign, which sought to motivate electors aged 18–35 years to vote, was a success. It appears advertising analytics and measures (such as clicks and impressions) were used to reach this conclusion rather than qualitative feedback from younger electors. Youth participation remained low. Surveys and feedback indicated few saw the campaign and, of those who did, many regarded it as a joke.

### **Security and scrutiny concerns were raised about iVote**

With neither the time nor resources to develop its own system, the WAEC adopted a customised version of the iVote system used by the New South Wales Electoral Commission to implement internet and automated telephone voting. Inquiry participants raised security concerns about iVote along with questions about whether the system and its associated processes enabled adequate, external scrutiny. Although the WAEC supports the extension of internet voting at future elections to voters in remote WA, overseas or interstate, issues of security and appropriate external scrutiny are sufficient to dissuade expansion until further risk assessment is conducted.

### **Change is needed to adjust to the modern electoral environment**

The electoral environment in which the 2017 election took place was vastly different from those of previous elections. Electors' changing lifestyles and the 2016 legislative amendments contributed to a move away from attendance voting. A well-resourced campaign by the Chamber of Minerals and Energy of Western Australia (CME) drew attention to the electoral involvement of third parties. These developments

emphasised the need for legislative change in some cases and adjustments to operational procedures in others. Some of the areas for which change should be considered are identified below.

### *Early voting centres*

There were 42 early voting centres (EVCs) in WA during the election. While most regional districts had at least one EVC, only 13 of the 43 metropolitan districts had an EVC. The EVCs were therefore difficult to find and subject to long queues.

The opening hours of EVCs were not consistent across the state; while some were open from 9am to 5pm every weekday, others varied their hours. No EVCs were open outside of business hours, which limited their usefulness for electors who could not vote during those times.

Political parties struggled to campaign at all EVCs. Not only did the three week early voting period stretch their ability to staff EVCs, but the owners or managers of some commercial premises (hired by the WAEC as EVCs because many of the locations used in the past were no longer available) prevented party workers from distributing materials. In these instances, the WAEC provided a table on which political parties could place their how-to-vote cards. The decision to provide the tables was reactive rather than proactive; it seemed to be made 'on the run' and was neither substantiated by any legislative requirement nor supported by clear guidelines explaining the practice to political parties and candidates. The WAEC will provide a table for how-to-vote cards at all EVCs at the next state election.

### *Postal voting*

Some political parties sent unsolicited postal vote applications to electors but failed to forward the completed applications to the WAEC immediately, which delayed the distribution of postal ballots. Electors could cast a declaration vote if they had not received their postal voting material by election day, but disenfranchisement would have occurred had they not been able to access a polling place.

The reliability of postal services continued to decline, which disenfranchised some electors who relied on postal voting. Of the 2,450 postal votes sent to overseas electors, for example, only 10.8 per cent were returned before the deadline.

### *Ballot papers*

Several polling places and EVCs ran out of ballot papers. An internal, WAEC-commissioned review found that this was the result of 'bad planning' by the WAEC.

A new ballot paper design joined Legislative Assembly and Legislative Council ballot papers by a perforated edge and coloured them by electoral region. A significant

reduction in ballot papers submitted for the incorrect district resulted; however, the changes had at least one unintended consequence: some electors casting postal votes did not realise two ballot papers were provided and only completed one.

### *Political finance regime*

WA relies on a disclosure scheme to provide transparency to the electoral process. Yet certain aspects of the scheme limit the extent of transparency:

- Political parties registered at state and federal levels can use their federal returns to fulfil their state obligations. As the current federal disclosure threshold for donations is over five times that of the WA threshold, state-only registered parties are required to disclose considerably more than parties with dual registration.
- In the 2017 election, the disclosure period began on the day that election writs were issued (1 February), but campaigning began at least two months earlier. This means significant electoral expenditure might not have been disclosed.
- Donors who make several donations that are less than one-third of the specified amount (\$2,300 for the 2017 election) do not have to be disclosed, even if the total amount of the donations is more than the specified amount.
- The deadline for election-related returns is 15 weeks after polling day, which does not assist electors when casting their votes.

Following the election, the CME failed to lodge a return within the 15-week deadline. This highlighted the WAEC's limited ability to monitor disclosures and enforce compliance within current resourcing and legislative constraints. Penalties for late lodgement are only \$1,500 for third parties and must be pursued through court action. Such action is expensive and the WAEC considers public interest is better served by taking an educative approach to late or incorrect disclosure. The WAEC has previously sought changes to the Electoral Act to allow it to impose administrative penalties.

### *Electoral advertising*

WA campaigning laws have not kept pace with recent campaign methods. WA relies on authorisation requirements to regulate campaigning, but there are inconsistencies. While printed materials, websites, and Facebook sites must be authorised, individual comments on social media and robocalls do not. This can obscure who is responsible for the material.

On election day, incorrectly authorised materials remained on display, possibly due to the inexperience of polling place managers and returning officers. Legislative amendments requiring the registration of electoral matter could assist the WAEC to remove incorrectly authorised or unauthorised materials.

### *Outdated Electoral Act*

The *Electoral Act 1907* no longer adheres to the precision and clarity standards that mark good legislation. The meaning and application of at least one section defied precise interpretation by even the State Solicitor. Further, the wording of the legislation prevents the use of generally accepted modern technology, such as the electronic transfer of candidate deposits.

### **The WAEC must develop a culture of continuous improvement**

Given its budgetary constraints, the WAEC should be fostering a culture of continuous improvement to ensure it provides efficient, effective, quality services to all stakeholders. Yet the post-election review process risks becoming a ‘tick the box’ exercise:

- Although the number of election-specific performance targets achieved increased in the 2017 election, the introduction of direct enrolment was largely responsible for this increase. Performance actually decreased in three measured areas.
- The introduction of direct enrolment decreased the relevance of one audited performance measure (the percentage of eligible WA electors on the state electoral roll).
- There was no post-election review process through which political parties could raise specific concerns with the WAEC and receive timely and well-considered feedback.
- Key performance areas were not formally evaluated. Instead, the WAEC often relied on unsolicited feedback from stakeholders.
- Basic information was not collected and/or centrally collated.

### **Conclusion**

None of the issues relating to the 2017 election undermined the electoral process or validity of the results. Overall, the WAEC conducted the election professionally, efficiently, and impartially. However, the issues uncovered by the inquiry have the capacity over time to erode public and political confidence in both the WAEC and the electoral system if they go unchecked.





## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Community Development and Justice Standing Committee directs that the Premier and the Minister for Electoral Affairs report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



# Recommendations

## Recommendation 1

Page 4

That a joint standing committee into electoral matters is established to inquire into, consider, and report to Parliament on any proposal, matter, or thing concerned with the:

- Conduct of parliamentary elections and referendums in Western Australia.
- Conduct of elections under the *Local Government Act 1995*.
- Administration of, or practices associated with, the *Electoral Act 1907* and any other law relating to electoral matters.

## Recommendation 2

Page 22

That prior to the next state general election the Western Australian Electoral Commission establishes community reference groups to develop action plans that guide the commission's electoral services to their respective communities. The following four reference groups should be established as a priority:

- Aboriginal reference group
- Culturally and linguistically diverse reference group
- Disability reference group
- Young people reference group

## Recommendation 3

Page 23

That prior to the next state general election the Western Australian Electoral Commission and disability reference group conducts research into, and implements, effective advertising methods to increase awareness of internet voting amongst people with disability.

## Recommendation 4

Page 24

That the Western Australian Electoral Commission reviews its processes for the recruitment of casual staff for state general elections, with a view to increasing diversity.

## Recommendation 5

Page 24

That the Western Australian Electoral Commission begins collecting, collating, and reporting demographic data relating to its casual employees. The ethnicity or cultural background, gender and age of casual staff, as well as languages spoken, should be recorded.

<b>Recommendation 6</b>	<b>Page 28</b>
That the Western Australian Electoral Commission provides at least one early voting centre per electoral district for the next state general election.	
<b>Recommendation 7</b>	<b>Page 30</b>
That the Western Australian Electoral Commission attempts to reach an agreement with political parties to ensure consistency of campaigning across all early voting centres.	
<b>Recommendation 8</b>	<b>Page 30</b>
That the Western Australian Electoral Commission issues clear guidelines prior to the next state general election implementing a consistent process by which how-to-vote cards will be made available at early voting centres.	
<b>Recommendation 9</b>	<b>Page 32</b>
That the Western Australian Electoral Commission extends the opening hours of early voting centres to provide electors with opportunities to vote after business hours and on weekends.	
<b>Recommendation 10</b>	<b>Page 32</b>
That the Western Australian Electoral Commission reduces the period for early voting in person to two weeks.	
<b>Recommendation 11</b>	<b>Page 33</b>
That the Western Australian Electoral Commission reviews its planning processes for the distribution of ballot papers to early voting centres and polling places with a view to eliminating ballot paper shortages.	
<b>Recommendation 12</b>	<b>Page 43</b>
That the Western Australian Electoral Commission identifies opportunities for improving the external scrutiny of the iVote system, including the presence of external scrutineers during the setup of iVote systems.	
<b>Recommendation 13</b>	<b>Page 43</b>
That the Western Australian Electoral Commission releases data on the performance of the iVote system to facilitate external scrutiny, including vote data and the outcomes of the telephone verification service.	
<b>Recommendation 14</b>	<b>Page 48</b>
That the Western Australian Electoral Commission considers additional independent auditing of the security of the iVote system.	

**Recommendation 15** **Page 48**

That the Western Australian Electoral Commission reviews the accuracy of their public communications regarding the security risks associated with the iVote system.

**Recommendation 16** **Page 48**

That the Western Australian Electoral Commission reviews and improves security procedures for the iVote decryption ceremony.

**Recommendation 17** **Page 53**

That the Western Australian Electoral Commission establishes an advisory body of independent experts to conduct a full review of the iVote internet and telephone voting system and to consider security, auditing, and scrutineering issues well before the next state election. This advisory body should:

- Contain members with expertise in internet voting, privacy, security, and cybercrime.
- Release a report prior to the next election detailing its consideration of the security, auditing, and scrutiny of iVote.

**Recommendation 18** **Page 53**

That internet voting eligibility is expanded only when the advisory body of independent experts is satisfied that all security, auditing, and scrutineering issues have been adequately addressed.

**Recommendation 19** **Page 53**

That the Western Australian Electoral Commission ensures the source code of any future internet voting system is publicly available.

**Recommendation 20** **Page 54**

That the Western Australian Electoral Commission provides political parties with training and detailed procedure documents to support their scrutiny of the iVote system.

**Recommendation 21** **Page 61**

That the Premier seeks to put the issue of a nationally consistent system of election funding and disclosure laws on the Council of Australian Governments' agenda.

**Recommendation 22** **Page 72**

That the Western Australian Electoral Commission develop, publish, and report against performance indicators that relate to enrolment processing quality and timelines, and the accuracy and completeness of the electoral roll.

**Recommendation 23****Page 76**

That the Western Australian Electoral Commission conduct a comprehensive review of its processes for gaining feedback from political parties and responding to their concerns.

**Recommendation 24****Page 81**

That the Western Australian Electoral Commission conduct rigorous evaluations of all future electoral programs to demonstrate outcomes before they are further implemented.

**Recommendation 25****Page 83**

That following each electoral event the Western Australian Electoral Commission and, once established, the four community reference groups, review the provision of electoral services to their respective communities.

**Recommendation 26****Page 87**

That the Western Australian Electoral Commission budget allocation for the next state general election is adjusted for inflation and is sufficient to support the good conduct of the election, the effective implementation of the recommendations made in this report, and any subsequent legislative changes.

**Recommendation 27****Page 89**

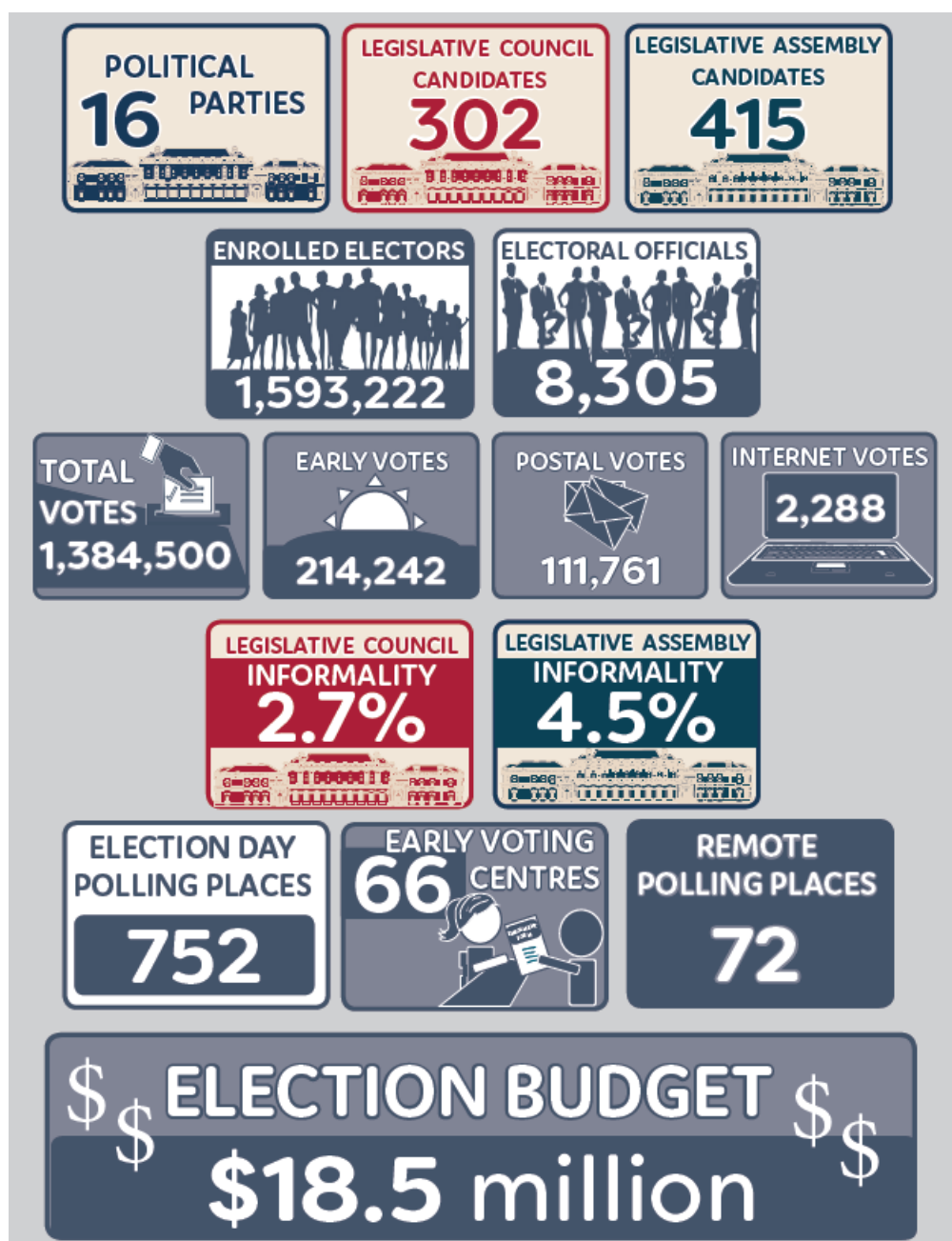
That the *Electoral Act 1907* is reviewed and amended as a matter of urgency. Particular consideration should be given to:

- The political finance regime, including the introduction of administrative penalties for breaches of the disclosure scheme; limits to expenditure by third-party campaigners; more timely disclosure; and a longer disclosure period.
- Political advertising laws, including the registration of electoral material with the Western Australian Electoral Commission; and disallowance of the distribution or display of non-registered materials on election day.
- The ability of political parties to distribute postal vote applications.
- Extending the deadline for receipt of postal votes to account for increasing delays in postal services.

The review should include input from all stakeholders in the electoral system. To maintain public confidence, it is critical that this review is conducted prior to next state general election.

# 2017 WA State General Election Snapshot and Timeline

## 2017 State General Election Snapshot



Unless otherwise stated, voting statistics relate to the Legislative Assembly. Graphic credit: Sarah Smith.

## 2017 State General Election Timeline

	FEBRUARY		MARCH	
MON				
TUE				
WED	1	Issue of the writs	1	
THU	2	Postal vote applications open	2	
FRI	3		3	
SAT	4		4	
SUN	5		5	
MON	6		6	
TUE	7		7	
WED	8		8	Postal vote applications close (6pm)
THU	9	Electoral roll closes	9	
FRI	10		10	iVote registration closes Early voting in person closes (6pm)
SAT	11		11	<b>ELECTION DAY</b>
SUN	12		12	
MON	13	iVote registration opens (8am)	13	
TUE	14		14	
WED	15		15	
THU	16		16	Close of receipt of postal votes (9am)
FRI	17		17	
SAT	18		18	
SUN	19		19	
MON	20	iVote voting begins Early voting in person begins Postal voting begins	20	
TUE	21		21	
WED	22		22	
THU	23		23	
FRI	24		24	
SAT	25	Remote polling	25	
SUN	26		26	
MON	27		27	
TUE	28		28	
WED			29	
THU			30	
FRI			31	



# Chapter 1

## Western Australian parliamentary elections lack external oversight

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Western Australia (WA) does not have a body exclusively tasked with reviewing the administration and management of state elections. Bodies that could consider aspects of the conduct of the Western Australian Electoral Commission (WAEC), such as the Auditor General and the Legislative Assembly's Public Accounts Committee, have not conducted standalone investigations into its performance for at least ten years.<sup>1</sup>

The Community Development and Justice Standing Committee has electoral matters as part of its remit, but the absence of significant electoral issues in the past and the committee's considerable portfolio responsibilities has meant that the conduct of elections has not received the attention it deserves. With around 20 diverse portfolios to review and report on, conducting a full inquiry into every state election risks inadequate oversight of equally important areas like police, child protection, environment, and emergency services.

No Western Australian electoral commissioner appeared before a parliamentary committee to discuss the conduct of an election prior to 2012.<sup>2</sup> Even then, Community Development and Justice Standing Committees of previous parliaments simply held one-off hearings with the WAEC to determine its preparedness for an upcoming election or 'lessons learned' in the aftermath.<sup>3</sup> This situation led one inquiry participant to describe the scrutiny of electoral matters in WA as 'laughable at best'.<sup>4</sup>

This inquiry aimed to address the lack of external oversight by assessing the adequacy of the WAEC's administration and management of the 2017 State General Election (2017 election). We believed it was especially necessary following an election in which

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- 1 The Western Australian Electoral Commission (WAEC) was included in an across government benchmarking audit on controls over purchasing cards (2014), but has not been the subject of any standalone performance audits. Ms Sandra Labuschagne, Acting Deputy Auditor General, Office of the Auditor General for Western Australia, Electronic Mail, 30 November 2017.
  - 2 Mr Warwick Gately, Electoral Commissioner, WAEC, *Transcript of Evidence*, 26 September 2012, p1.
  - 3 See *ibid.*; Mr Chris Avent, Acting Electoral Commissioner, and Mr David Payne, Project Manager, State Elections, WAEC, *Transcript of Evidence*, 22 May 2013; Mr David Kerslake, Electoral Commissioner, and Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016.
  - 4 Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p5.

the result was clear. As WAEC staff commented as part of an internal election review commissioned by the WAEC, ‘a closer election result would have brought with it a great deal more scrutiny from the voting public, candidates and the media’. Without such scrutiny, there was a risk that the WAEC would become complacent when assessing its performance.<sup>5</sup>

At the core of our inquiry was the understanding that trust and confidence in the WAEC is fundamental to the legitimacy of our electoral system. This is because the WAEC not only administers and manages state elections, but also conducts all local government postal elections and can conduct local government voting-in-person elections (if requested). In 2017, for example, the WAEC ran elections for 89 of the state’s 138 local councils.<sup>6</sup> The important role of the WAEC means it must maintain extremely high standards and levels of public confidence: an electorate is more like to accept election results if an electoral authority is seen to be professional, efficient, and impartial.

Too many changes to electoral laws in Australian history have been introduced without subsequent review of how they worked. It is interesting, for the last Senate election, the Electoral Commission has published some detailed information on how voters reacted to the new ballot papers. That is what commissions or committees should do: when you make a change to the act, you should be finding out the reaction to the act. I think an electoral matters committee is a useful opportunity for that.

- Mr Antony Green, election analyst

As the inquiry progressed, we were struck by the lack of rigour with which the WAEC approached the critical analysis and review of its performance. There was little indication the WAEC was driven to continually assess and improve how it administered and managed elections. We received cursory responses to some of our questions. We were repeatedly advised that the WAEC could not provide us with data that we had requested because it was not collected or collated (see chapter 6). Particular areas of concern are discussed throughout this report.

This apparent lack of rigour confirmed the need for a parliamentary standing committee whose only responsibility is for electoral matters. Although we did not uncover any issues undermining the validity of the 2017 election (see chapter 7), some matters were brought to our attention that have the capacity, over time, to

erode public and political confidence in the electoral system if left unchecked. Given a culture of continuous improvement is not embedded in the WAEC, we are not confident these matters will be addressed adequately without additional oversight.

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5 WAEC, ‘SGE2017 – WAEC Election Review Report’ from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C, p18.

6 WAEC, *Annual Report 2016–2017*, WAEC, Perth, 2017, p5.

New South Wales (NSW), Victoria, and Commonwealth parliaments have joint standing committees on electoral matters.<sup>7</sup> In recent years, the joint standing committees have investigated a range of topics, including internet voting, informal voting, political donations, and their respective state general elections. Some have also investigated local government election issues, as provided for under their terms of reference. These inquiries provide additional transparency and scrutiny of issues facing the electoral system that may otherwise remain unexamined. The committees not only offer a public forum for debate on electoral matters but provide ‘a conduit through which electoral commissions and citizens can reach the electoral lawmakers’.<sup>8</sup>

NSW Electoral Commissioner John Schmidt said having an electoral matters committee was a ‘useful arrangement’:

*We have built up over the years—my predecessors, and I hope that is continuing under myself—a very constructive level of engagement with that committee. There is full and frank exchange of views before the committee if issues arise, but I think there is mutual respect for the roles which we take, and we certainly respect the input from the committee. But it provides in that, because it is a narrower focus, an opportunity for a specialised and in-depth consideration of electoral matters.*<sup>9</sup>

A number of contributors to our inquiry supported increased oversight of the WAEC, particularly through the development of a joint standing committee on electoral matters.<sup>10</sup> They cited several benefits to a specific-purpose parliamentary committee, including the ability to:

- Consider evidence and arguments about proposed amendments to electoral legislation.
- Review the implementation of amendments to electoral legislation.
- Provide a process for due diligence in electoral matters, which assists in increasing the confidence of candidates, Members of Parliament, and the community in the electoral system.

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7 The Victorian Electoral Matters Committee is technically an investigatory committee, but under the WA parliamentary committee system would also be classed as a joint standing committee.

8 N. Kelly, *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management*, ANU E Press, Canberra, 2012, p23.

9 Mr John Schmidt, Electoral Commissioner, New South Wales Electoral Commission, *Transcript of Evidence*, 18 October 2017, p2.

10 Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September 2017, p8; Submission No. 10 from The Greens (WA), 7 August 2017, p1; Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p5; Submission No. 6 from The Nationals WA, 4 August 2017, p3.

- Regularly review elections, including assessing the electoral commission's administration and management.<sup>11</sup>

Election analyst Antony Green emphasised the need for electoral matters committees to work in a non-partisan manner to be effective. He pointed to an existing electoral matters committee where 'obvious errors in the electoral act' were not fixed because its members were 'too busy arguing over some political point between them'.<sup>12</sup>

#### **Recommendation 1**

That a joint standing committee into electoral matters is established to inquire into, consider, and report to Parliament on any proposal, matter, or thing concerned with the:

- Conduct of parliamentary elections and referendums in Western Australia.
- Conduct of elections under the *Local Government Act 1995*.
- Administration of, or practices associated with, the *Electoral Act 1907* and any other law relating to electoral matters.

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11 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p9; Submission No. 6 from The Nationals WA, 4 August 2017, p3; Ms Lenda Oshalem, Assistant State Secretary, and Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p5.

12 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p9.

## Chapter 2

# Insufficient resources were directed to community education and engagement for the 2017 election

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Community education and engagement is a key responsibility of the Western Australian Electoral Commission (WAEC). The *Electoral Act 1907* tasks the commissioner with promoting ‘public awareness of electoral and parliamentary matters by means of the conduct of education and information programmes and by other means’.<sup>13</sup> Increasing community awareness of electoral services and promoting active participation in state elections is also a strategic objective of the WAEC.<sup>14</sup> Such emphasis on education correctly highlights the need for people to understand the mechanisms through which they can participate in order to become ‘active citizens’.

Electoral education was especially necessary in the lead-up to the 2017 State General Election (2017 election). Nation-wide studies indicated the continuing disillusionment of Australian voters towards politics and their withdrawal from active participation in formal politics.<sup>15</sup> Western Australians had to navigate an electoral system that required adherence to different rules for local, state, and federal elections. Deputy Electoral Commissioner Chris Avent described the problem facing voters in the lead-up to the 2017 election:

*We have a local government system where you vote first past the post. In one election, we are telling people to put a tick on a ballot paper and then they get to a state election and we are telling them to just put one number above the line or all numbers below the line on the upper house; and on the lower house, you have to fill in the whole lot otherwise it is informal.*<sup>16</sup>

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13 *Electoral Act 1907* (Western Australia), s5(F)(1)(d).

14 Western Australian Electoral Commission (WAEC), *Strategic Plan 2015–2018*, WAEC, Perth, 2015, p3.

15 Sarah M. Cameron and Ian McAllister, *Trends in Australian Political Opinion: Results from the Australian Election Study, 1987–2016*, Australian National University, Canberra, 2016; Roy Morgan, ‘Roy Morgan Image of Professions Survey 2016’. Available at: <http://www.roymorgan.com/findings/6797-image-of-professions-2016-201605110031>. Accessed on 3 October 2017; Max Evans, Max Halupka and Gerry Stoker, *How Australians Imagine Their Democracy: The “Power of Us”*, IGPA, Canberra, 2017.

16 Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p18.

### Box 2.1: How does direct enrolment work?

The Australian Electoral Commission (AEC) receives information supplied by individuals to government agencies such as Centrelink, the National Exchange of Vehicle and Driver Information Service, and the Australian Taxation Office. If the AEC determines that a person is not currently enrolled, a notification letter is sent stating he or she will be enrolled unless the AEC is advised within 28 days of a legitimate reason why it should not proceed. Each week, the WAEC receives the data gathered from this process and adds it to the WA electoral roll. As a result of this process, the WA electoral roll grew by approximately 12.8 per cent (or approximately 200,000 electors) compared to 2013—almost double the usual growth rate of 6 per cent.

Sources: Mr David Kerslake, WAEC, Letter, 17 July 2017, p3; Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p10; WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p7; Submission No. 12 from Dr Martin Drum, 8 August 2017, pp2–3.

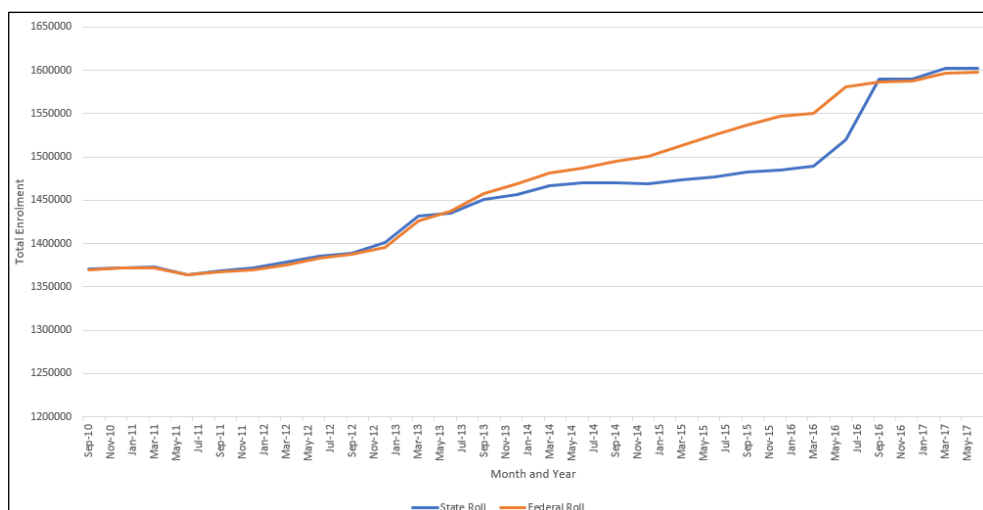
The introduction of direct enrolment in 2016 also placed many people on the Western Australian (WA) electoral roll, despite never having filled out an enrolment form. Direct enrolment was a much-needed step to reduce the gap between the commonwealth and state rolls (see figure 2.1), but it increased the need for electoral education by the WAEC. The letter sent by the Australian Electoral Commission (AEC) did not guarantee that Western Australians were notified of their new status as enrolled electors as it relied on them receiving and reading the letter. Voters who moved frequently or registered with government agencies using a different address than their place of residence might not have received the letter.<sup>17</sup> Even if new electors received the notification, they might not have known how or where to vote.

In this environment, the WAEC needed to ensure electors had the knowledge necessary to participate in the 2017 election. The WAEC implemented programs with some culturally and linguistically diverse (CaLD) communities and oversaw the introduction of limited internet voting, which ensured greater accessibility for people with disability. The WAEC Electoral Education Centre was also said to increase its interactions by almost 20 per cent over the previous year.<sup>18</sup> However, almost no resources were directed towards improving Aboriginal electoral participation and the campaign to engage younger electors was seen to be ineffective by inquiry participants.

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17 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p11; Hon. Robin Chapple, WA, Legislative Council, Parliamentary Debates (Hansard), 6 April 2016, p2176.

18 WAEC, *Annual Report 2016–2017*, WAEC, Perth, 2017, p23.

**Figure 2.1: WA state and federal roll variation, 2010–17**

Source: Mr Antony Green, *The 2017 Western Australian Election*, Speech to WA Australasian Study of Parliament Group dinner, 14 September 2017.

## The EasyVote card was discontinued

The WAEC sent an EasyVote card to every registered elector prior to the 2013 State General Election (2013 election). In addition to an explanation about how to fill out ballot papers, it provided:

- The election date and polling times.
- The recipient's enrolment details.
- Polling places in the recipient's district.
- Early voting options.
- A reminder of the compulsory nature of the election.<sup>19</sup>

The card reportedly improved voter turnout and assisted the efficient processing of electors at polling places. Electors simply handed over the card rather than spelling out complex names or addresses to be marked off the electoral roll.<sup>20</sup> A post-2013 election survey of voters found that 40.6 per cent of respondents took the card with them to a polling place. Of those voters, only 1 per cent considered it was 'not at all useful'.<sup>21</sup>

19 WAEC, *Election 2013: Election Report*, WAEC, Perth, 2013, p28.

20 Mr Chris Avent, Acting Electoral Commissioner, WAEC, *Transcript of Evidence*, 22 May 2013, p3.

21 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2013*, report prepared by Asset Research, WAEC, Mt Lawley, 2013, pp11, 53, 55.

However, it failed to reduce informality rates, which was one of the reasons the card was introduced.<sup>22</sup>

The WAEC did not distribute EasyVote cards for the 2017 election due to high costs, the declining reliability of postal services, and increased early voting. According to Electoral Commissioner David Kerslake, the mail-out would have cost almost twice as much as the 2013 cards. Australia Post did not have the capacity to distribute the cards all at once, so the mail-out would have proceeded in 'waves'. Given eligibility requirements for early voting were abolished for the 2017 election, the WAEC predicted many electors would have voted before their EasyVote card arrived.<sup>23</sup>

The WAEC did not assess what impact the discontinuation of the EasyVote card had on the 2017 election, stating it was 'impossible to measure in any meaningful way'.<sup>24</sup> One witness suggested voters might not have known the election timeframes as a result of the card's discontinuation.<sup>25</sup> Another said its absence might have impacted on the low turnout of young voters.<sup>26</sup>

Dr Martin Drum, an associate professor of politics and international relations at the University of Notre Dame, said the combination of the discontinued card and significant electoral boundary changes could have resulted in many electors casting absent votes. This, in turn, caused some polling places to run out of ballot papers for certain districts (see chapter 3).<sup>27</sup>

## **There were a suite of initiatives aimed at CaLD communities**

Following the 2013 election, the WAEC identified that particular districts with large communities from CaLD backgrounds had higher informality rates than the state average. For example, the district of Mirrabooka had an informality rate of 9.96 per cent in the 2013 election, compared to the state-wide rate of 5.99 per cent.<sup>28</sup> Unlike other districts where many informal votes appeared to be deliberate, a proportion of

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22 Mr Chris Avent, Acting Electoral Commissioner, WAEC, *Transcript of Evidence*, 22 May 2013, p3.

23 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, pp3, 19; Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p4.

24 Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p4.

25 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p10.

26 Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, pp3–4.

27 Submission No. 12 from Dr Martin Drum, 8 August 2017, p3.

28 Unless otherwise stated, all election statistics relate to the Legislative Assembly. WAEC, *Election 2013: Election Report*, WAEC, Perth, 2013, p58; WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013, p31.



informal votes in districts with large CaLD communities were considered unintentional.<sup>29</sup>

The WAEC partnered with the Office of Multicultural Interests (OMI) to increase the electoral participation of people from CaLD backgrounds. A CaLD electors consultative forum was held in May 2015, which identified barriers to electoral engagement. Almost all of the initiatives implemented in the election appear to have arisen from this forum.<sup>30</sup>

The forum led to the main initiative for CaLD voters in the 2017 election: the ambassador program and employment of electoral information officers. The ambassador program engaged around 30 community members from different backgrounds in two days of paid training about the electoral system. These ambassadors then served as a point of contact for their communities in relation to the election.

Ballot papers that are blank, do not show preferences in accordance with instructions and/ or legislative requirements, or do not make the voter's intention clear, are classified as informal. A ballot paper is also regarded as informal if the voter can be identified through a marking on it. Informal ballot papers do not contribute to the election of a candidate and are not included in calculating the quota or absolute majority required for election.

- WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p24.

On election day, 22 ambassadors were employed as electoral information officers at polling places with traditionally high informality rates or that served CaLD communities (see appendix six). They were able to explain voting instructions to community members with limited English language skills.<sup>31</sup>

The WAEC also produced materials written in 'easy English' and translated into the 25 most commonly spoken, non-English languages in WA. This included a multi-lingual guide with 'basic voting instructions', which was distributed to every polling place and uploaded onto tablets for use by queue controllers, electoral information officers, and polling place managers.<sup>32</sup> Infographic posters with an explanation of the voting process were also developed and displayed in polling places (see appendix seven).

29 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p25. The WAEC considers ballot papers that are blank or only contain a scribble are deliberately informal. Unintentionally informal ballots are marked with a number 1 only or ticks or crosses; or have no first preference, more than one box left blank, or information that identifies the elector. See Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p5.

30 WAEC, 'CaLD Electors—Strategies and Initiatives' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix A.

31 Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p3; Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p10.

32 WAEC, *Returning Officer Manual: 2017 State General Election—Legislative Assembly*, WAEC, Perth, 2016, p110; WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p12.

To alert CaLD communities to the upcoming election, a booklet outlining the importance of enrolling and voting was posted to households in areas with large CaLD populations. Additional advertising was conducted through digital mediums and community media at a cost of nearly \$33,500.<sup>33</sup>

Leading up to the election, OMI and staff from the Electoral Education Centre also conducted civics and citizenship workshops with CaLD voters about the parliamentary system, constitution, and enrolment and voting processes.<sup>34</sup>

### **But these initiatives were not as successful as suggested**

According to the WAEC, feedback from ambassadors and electoral information officers was ‘overwhelmingly positive’.<sup>35</sup> Edmund Rice Centre Deputy Director Christina Ward concurred—ambassadors with whom she spoke found the training informative and she witnessed the positive impact of electoral information officers on election day. The officers not only increased electors’ confidence by supporting them to speak their own language, but because ‘there was someone from their community who was actually working there and they could see that they were part of it’.<sup>36</sup>

Mr Avent said it was difficult to determine the impact of each initiative but that the WAEC believed the ambassador program ‘helped’ because informality rates fell in the polling places where electoral information officers were based.<sup>37</sup> Mirrabooka’s informality rate fell to 8.54 per cent in the 2017 election, which the WAEC said indicated its initiatives ‘had a positive impact’.<sup>38</sup> Five electoral information officers worked at Mirrabooka polling places.

However, it appears the decreased informality rate in Mirrabooka was part of a general decline in unintentional informal voting. Of the nine districts that retained their 2013 electoral boundaries in the 2017 election, five recorded a greater decrease in the rate of unintentional informality than Mirrabooka and four of these (Geraldton, Murray-Wellington, Dawesville, Kimberley) did not have any electoral information officers (see table 2.1).

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33 Mr W.J. Johnston, Minister for Electoral Affairs, WA, Legislative Assembly Estimates Committee A, Parliamentary Debates (Hansard), 21 September 2017, pE454; WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p12.

34 Submission no. 14 from the Office of Multicultural Interests (OMI), 11 August 2017, p1.

35 Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p3.

36 Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September, p2.

37 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p25.

38 Submission No. 15 from Mr David Kerslake, Electoral Commissioner, WAEC, 14 August 2017, p3.

**Table 2.1: Unintentional informality, 2013 and 2017**

District	Unintentionally informal votes (2013) %	Unintentionally informal votes (2017) %	Percentage change of unintentionally informal votes 2013–17 %
Geraldton	3.23	1.58	-50.94
Morley	5.35	2.70	-49.50
Murray-Wellington	4.02	2.15	-46.63
Dawesville	3.51	2.40	-31.39
Kimberley	3.20	2.25	-29.74
Mirrabooka	6.79	5.14	-24.27
Moore	2.87	2.28	-20.69
Pilbara	3.34	2.83	-15.17
Mandurah	2.20	2.74	24.24

Source: Data for table sourced from WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013; and WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017.

That is not to say that there was no benefit in the CaLD-specific initiatives. But we encourage the WAEC to conduct a formal review of initiatives before stating (as it did in its election report) that the decrease in informality was:

*... the product of dedicated efforts to reduce informality through better-focused community education, improved instructions on ballot papers and voting screens **and the development of a CALD Ambassador program focused on supporting electors in communities from different cultural backgrounds where English was often not the first language** [emphasis added].<sup>39</sup>*

Mrs Ward also questioned the efficacy of the civics and citizenship workshops after OMI conducted a workshop with Edmund Rice clients. Although interpreters translated workshop content, attendees struggled to understand some of the concepts underpinning the workshop:

*I think it was reasonably simple if English is your first language and you have come from a country where voting is something that is familiar to you. Of course for a lot of our people living in refugee camps for so many years—the Burmese, the Burundi, South Sudanese—there is absolutely no understanding about the three levels of government.<sup>40</sup>*

39 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p24.

40 Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September, pp2-3.

Mrs Ward noted that many refugee communities are illiterate in their first language.<sup>41</sup> For these communities, the materials translated by the WAEC would have been largely ineffective.

Mrs Ward suggested that rather than stand-alone workshops, people from refugee and migrant backgrounds be taught through adult migrant English and settlement programs. She said teachers are ‘aware of the level of each of their groups’ and can therefore develop lessons ‘they believe that their students could understand’.<sup>42</sup>

Basing electoral education in settlement programs may also allow people from refugee backgrounds to develop a gradual understanding of the system, rather than the ‘one-off’ exposure offered by the workshops.<sup>43</sup> Several respondents to OMI surveys also recognised the need for earlier provision of voting material.<sup>44</sup>

### **Almost no resources were directed towards improving Aboriginal participation**

Evidence indicates that Aboriginal communities in WA are underrepresented in enrolment and turnout rates.<sup>45</sup> Yet the WAEC had very few strategies to increase Aboriginal participation in the 2017 election. Some election advertising in Kriol and workshops at the Wadjak resource centre in Balga were the only Aboriginal-specific initiatives brought to our attention.<sup>46</sup> No educational materials in Indigenous languages were produced.<sup>47</sup>

Returning officers with remote polling responsibilities could appoint interpreters or use the telephone interpreter service in some remote communities.<sup>48</sup> However, the telephone service was used by polling place officials only 19 times.<sup>49</sup> The Kimberley returning officer never accessed the interpreter service because he said most people knew how they wanted to vote.<sup>50</sup>

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41 Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September, p4.

42 *ibid.*, p3.

43 *ibid.*, p6.

44 Submission No. 14 from OMI, 11 August 2017, p3.

45 Joint Standing Committee on Electoral Matters (41st Parliament), *Civics and Electoral Education*, Parliament of the Commonwealth of Australia, Canberra, May 2007, pp86–87; Submission No. 15 from WAEC, 14 August 2017, p3.

46 Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p9; Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September, p9.

47 Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 17 July 2017, pp5–6.

48 WAEC, *Returning Officer Manual: 2017 State General Election—Legislative Assembly*, WAEC, Perth, 2016, p69.

49 Mr David Kerslake, WAEC, Letter, 20 October 2017, p2.

50 Mr Chris Avent, Deputy Commissioner, and Mr Garry Waldron, Kimberley Returning Officer, WAEC, *Transcript of Evidence*, 21 August 2017, p10.

The WAEC largely relied on the AEC's Indigenous Elector Participation Program (IEPP) to maintain enrolment initiatives and education programs in Aboriginal communities. Occasionally the WAEC community education officer accompanied an IEPP officer to remote communities, but funding cuts limited the contact of IEPP officers with remote communities. Mr Avent told us the IEPP officer responsible for the Kimberley was 'not up there that often. We are talking months'.<sup>51</sup>

### **Remote Aboriginal communities had fewer opportunities to vote**

The WAEC provided remote polling services to 72 communities in the Mining and Pastoral Region during the 2017 election, which included four Legislative Assembly districts: Kalgoorlie, Kimberley, North West Central, and Pilbara.<sup>52</sup> This was 15 fewer remote polling stations than in the 2013 election, despite Mr Kerslake's assurances prior to the election that the WAEC did not intend to reduce services to remote communities.<sup>53</sup>

If all remote polling locations had been visited as scheduled, the average amount of time given to each location in the 2017 election would have been just under two and a half hours, and 18 communities would have had only an hour in which to vote (see appendix eight).<sup>54</sup>

The small voting window closed completely for people who may have been outside their communities when the remote poll visited. This is not uncommon in northern WA due to the timing of the election. Cyclones and flooding force people out of their communities.<sup>55</sup> Many communities also operate in accordance with the school year and Mr Garry Waldron, Kimberley Returning Officer for the 2017 election, said it was difficult to notify people of the upcoming election.<sup>56</sup> A death of a relative may result in electors travelling to a neighbouring community and away from the visiting polling booth at short notice.<sup>57</sup>

The ability to cast a postal vote from remote communities also declined due to the unreliability of postal services (see chapter 3). The deadline for receipt of a postal vote

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51 Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, pp8, 9.

52 WAEC, *Returning Officer Manual: 2017 State General Election—Legislative Assembly*, WAEC, Perth, 2016, p68.

53 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p5; Mr David Kerslake, Electoral Commissioner, WAEC, *Briefing Note: Western Australian Electoral Commission Preparations for the 2017 State General Election*, 2 September 2016, p4.

54 The schedule of all remote polling services provided by the WAEC differs from the Kimberley remote polling schedule, although the reason for the discrepancy is unclear. See Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 17 July 2017, pp10–11; Mr David Kerslake, WAEC, Letter, 6 September 2017, pp3–6.

55 Mr Garry Waldron, Kimberley Returning Officer, WAEC, *Transcript of Evidence*, 21 August 2017, p1.

56 *ibid.*, p2.

57 Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p4.

was 9am on the Thursday following election day (16 March 2017). Mr Kerslake noted there were WA locations where electors had to post their vote well before election day to ensure it was received before this deadline.<sup>58</sup>

The WAEC adapted to this rapidly-changing environment. For example, Mr Waldron consulted several communities and changed the time of polling services at one location after the death of a senior community member.<sup>59</sup> Helicopters were used to fly remote polling teams to some locations isolated by flooding.<sup>60</sup>

Nevertheless, voters living in remote communities were more likely to experience disenfranchisement than those living in metropolitan WA. Mr Kerslake acknowledged this issue when advocating for the extension of internet voting to people living in remote areas:

*... in some cases it might boil down to you only have one choice, because if you are not in the community at the time when they turn up, your only choice is to vote online, but at least you still have that option available to you and you are not disenfranchised ...*<sup>61</sup>

We are particularly concerned that flooding prevented the remote polling team from visiting a community in WA's north-east. Although electors were given the opportunity to use iVote, it was unclear whether they accessed it.<sup>62</sup>

### **Aboriginal participation remained low**

While it is impossible to determine Aboriginal participation rates in the 2017 election as this information is not collected in enrolment information, WA districts with arguably the largest Aboriginal populations also had the lowest turnout in the 2017 election (see table 2.2).<sup>63</sup> No other WA district had a turnout of less than 82 per cent.<sup>64</sup>

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58 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p4.

59 Mr Garry Waldron, Kimberley Returning Officer, WAEC, *Transcript of Evidence*, 21 August 2017, p5.

60 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p32.

61 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p13.

62 Mr Garry Waldron, Kimberley Returning Officer, WAEC, *Transcript of Evidence*, 21 August 2017, p14; Mr David Kerslake, WAEC, Letter, 6 September 2017, pp2–3.

63 Around 40 per cent of the total Aboriginal and Torres Strait Islander population in WA live in remote or very remote areas and the vast majority of remote communities are in Kalgoorlie, Kimberley, North West Central, and Pilbara. See Australian Bureau of Statistics, '4714.0 – National Aboriginal and Torres Strait Islander Social Survey, 2014–15'. Available at: <http://www.abs.gov.au/Ausstats/abs@.nsf/0/ad174bbf36ba93a2ca256ebb007981ba>. Accessed on 6 October 2017; Department of Aboriginal Affairs, 'Western Australia Aboriginal Communities: Map 1 of 2'. Available at: [https://www.daa.wa.gov.au/globalassets/pdf-files/maps/state/wacoms\\_daa.pdf](https://www.daa.wa.gov.au/globalassets/pdf-files/maps/state/wacoms_daa.pdf). Accessed on 6 October 2017; Department of Aboriginal Affairs, 'Kimberley Region Aboriginal Communities: Map 2 of 2'. Available at: [https://www.daa.wa.gov.au/globalassets/pdf-files/maps/state/kimberleycoms\\_daa.pdf](https://www.daa.wa.gov.au/globalassets/pdf-files/maps/state/kimberleycoms_daa.pdf). Accessed on 6 October 2017.

64 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, pp21–22.

**Table 2.2: Mining and Pastoral Region voter turnout**

District	2017 voter turnout (%)
Kalgoorlie	79.14
Kimberley	72.53
North West Central	73.24
Pilbara	69.98

Source: WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p22.

Neither people aged 70 years or over nor people living in remote locations were issued with non-voter notices.<sup>65</sup> Although this risks encouraging non-compliance, we believe it acknowledges the legitimate difficulties these electors can experience in casting their ballot. Even then, electors living in remote WA might still have received non-voter infringement notices and fines if they were registered with government agencies using an address that was not their primary place of residence and was in an area not treated as remote by the WAEC.

The WAEC submitted it would like to conduct more Indigenous engagement activities, but lacks resources.<sup>66</sup> It is apparent that the WAEC worked under tight budgetary constraints prior to, and during, the 2017 election (see chapter 7). Where resources were directed, however, was a matter of priorities. Why was the ambassador program not developed concurrently with an equivalent program for Aboriginal communities in metropolitan and remote WA?

It appears that the WAEC focused on areas providing the best ‘bang for its buck’. Whereas the causes of unintentional informality are generally known and able to be addressed, Aboriginal participation is influenced by complex factors that are largely beyond the WAEC’s control (such as literacy and numeracy levels, some communities’ remoteness and transient nature, and a distrust of mainstream democratic processes).<sup>67</sup>

Such barriers should not be seen as absolving the WAEC of responsibility for educating and engaging Aboriginal communities. Submissions to the inquiry suggested ways the WAEC could further assist participation. The Goldfields Land and Sea Council pointed to the outreach undertaken by Aboriginal electoral liaison officers as part of the former Aboriginal and Torres Strait Islander Commission elections, although it acknowledged that turnout generally remained low:

*These individuals were generally recruited from the areas they were to service, and worked for a period leading up to each election. These*

65 Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p10.

66 Submission No. 15 from WAEC, 14 August 2017, p3.

67 Joint Standing Committee on Electoral Matters (41st Parliament), *Civics and Electoral Education*, Parliament of the Commonwealth of Australia, Canberra, May 2007, p88.

*positions allowed for ATSI [Aboriginal and Torres Strait Islander] people to speak to their own people and make them aware of the importance to vote, the importance of enrolling and the importance of filling the paper out correctly.*<sup>68</sup>

Former returning officer Brian Moore submitted that responsibility for remote polling should be removed from returning officers and undertaken by specialist teams willing to simultaneously educate. Based on his past experience conducting remote polling, he said that many people in remote communities ‘had little or no idea what was involved in the voting process’ and needed to be taught how to cast their ballot.<sup>69</sup>

### **The Dark Lord advertising campaign was neither appealing nor widely-known**

Despite assertions from the WAEC and Minister for Electoral Affairs that the advertising campaign aimed at young voters was a success,<sup>70</sup> almost all evidence we received suggested it was ineffective.

A survey of people aged 17 to 25 years conducted by the Youth Affairs Council of Western Australia (YACWA) found 73 per cent of respondents did not see the campaign. Of those who did see it, most said that it had no effect on their actions. Two respondents said it actually discouraged them from voting.<sup>71</sup>

The YACWA survey reflected the findings of the WAEC’s own post-election survey of voters. WAEC survey respondents aged 18 to 24 years were more likely unaware of WAEC advertising than almost any other age group. This is concerning given that this age group accounts for more than a third of the cohort targeted by the Dark Lord campaign.<sup>72</sup>

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68 Submission No. 1 from Goldfields Land and Sea Council, 20 July 2017, p2.

69 Submission No. 11 from Mr Brian Moore, 8 August 2017, pp1–4.

70 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p13; Mr W.J. Johnston, Minister for Electoral Affairs, WA, Legislative Assembly Estimates Committee A, Parliamentary Debates (Hansard), 21 September 2017, pE457; Mr David Kerslake, WAEC, Letter, 23 January 2018, pp5–6.

71 Submission No. 17 from Youth Affairs Council of Western Australia (YACWA), 10 October 2017, p4; Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p2.

72 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, p61.  
Note: The number of youth respondents to the YACWA and WAEC surveys was relatively small (YACWA survey: 41 respondents; WAEC survey: 180 respondents aged 18 to 24 years and 124 respondents aged 25 to 29 years), which increases the potential sampling error. The similarity of findings across the two surveys, however, suggests that in this case any sampling error is limited.



## Dark Lord advertising campaign



Source: WAEC, 2017 *State Election Post Campaign Report*, report prepared by Marketforce, WAEC, Perth, 2017, p22.

Target audience: First time voters aged 18 to 35 years (potentially 673,000 people).

Strategy:

- Engage youth on their terms, in their channels.
- Ensure young people discover and share content in unexpected environments.
- Harness youth cynicism with a creative hook that makes them feel empowered, engaged and wanting to make their mark.<sup>73</sup>

Core message: Vote or don't complain about who gets in.<sup>74</sup>

**Table 2.3: Dark Lord campaign costs**

Media channel	Media spend
Cinema	\$104,905
Out of home (i.e. posters, bike billboards, human billboards)	\$106,395
Television	\$5,614
Radio	\$2,997
Digital	\$102,345
<b>Total</b>	<b>\$322,256</b>

Source: WAEC, WAEC 2017 *State Election Post Campaign Report*, report prepared by OMD, WAEC, Perth, 2017, p32.

<sup>73</sup> WAEC, 2017 *State Election Post Campaign Report*, report prepared by Marketforce, WAEC, Perth, 2017, p5.

<sup>74</sup> *ibid.*

A key criticism of the campaign was that social media was not used effectively. The WAEC correctly recognised younger audiences were light consumers of traditional media and reportedly emphasised social media advertising.<sup>75</sup> Yet YACWA representatives said a heavier social presence was required. YACWA Policy and Advocacy Officer Stefaan Bruce-Truglio said the only Dark Lord advertising he saw on social media was a ‘couple of YouTube videos’.<sup>76</sup>

The WAEC survey also showed the campaign did not achieve its main objectives, such as providing information of voting options and timeframes and invigorating young people to vote.<sup>77</sup> People aged 18 to 24 years were less likely to be aware that electors could vote anywhere in the state, interstate, or overseas, or that they could vote before election day. Across all ages, 97 per cent of those respondents who were aware of WAEC advertising indicated that it did not influence them to vote, while 0.4 per cent said that it actually put them off voting.<sup>78</sup>

The percentage of enrolled electors aged 18 to 34 years who voted decreased when compared to the 2013 election (see table 6.3). Although this could be partly attributed to the introduction of direct enrolment, analysis of voter participation shows that people aged 20 to 34 years also had the lowest voter turnouts of all ages in the 2017 election.<sup>79</sup> This suggests the campaign did not motivate younger electors to vote.

Witnesses called the campaign a ‘disgrace’ and ‘a bit of a dad joke’.<sup>80</sup> Mr Bruce-Truglio explained the disconnect:

*... from the people I have spoken to and also from the results of the survey, it is not something that young people would take particularly seriously, in terms of actually going out to engage them to actually vote. They will just see it and go “huh!” and just move on, because it is basically treating the campaign and engaging with the Electoral Commission kind of like a joke itself, so then why should young people treat it seriously?<sup>81</sup>*

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75 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p13.

76 Mr Stefaan Bruce-Truglio, Policy and Advocacy Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p4.

77 WAEC, *2017 State Election Post Campaign Report*, report prepared by Marketforce, WAEC, Perth, 2017, pp3, 16.

78 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, pp25, 27, 30, 68.

79 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p6; WAEC, *2013 State General Election: Results and Statistics*, WAEC, Perth, 2013, p8.

80 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p14; Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p4.

81 Mr Stefaan Bruce-Truglio, Policy and Advocacy Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p4.

### **Widespread consultation with younger electors did not seem to occur**

We received no evidence that the WAEC consulted young people when developing its brief for the media agency or reviewing the content produced.<sup>82</sup> Had younger electors participated in the development of the campaign, its impact might have increased.

There are significant benefits to including young people from diverse backgrounds in the development of youth engagement strategies, including the ability of young people to:

- Engage their peers.
- Identify groups overlooked by existing engagement processes (i.e. young people in regional areas or engaged in apprenticeships who are not captured through traditional forums like university open days).
- Identify priority areas.
- Understand barriers to political participation.
- Ensure information is relevant and accessible.<sup>83</sup>

YACWA recommended the development of a council or committee of young people to help guide the delivery of future engagement strategies, including advertising campaigns.<sup>84</sup>

The New South Wales (NSW) Electoral Commission offers a community reference group model that the WAEC should consider. Approximately 18 months before state elections, the commission establishes an Aboriginal and Torres Strait Islander reference group, CaLD reference group, and disability reference group. Made up of peak bodies from each of the respective communities, these groups develop action plans to ensure equal participation for all members of the community. Past initiatives have included the production of educational materials using paper, audio, video, digital, and Auslan mediums.<sup>85</sup> With the addition of a youth reference group, a similar model may benefit WA.

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82 Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p3.

83 Submission No. 10A from The Greens (WA), 21 September 2017, p6; Ms Sara Shengeb, Project Support Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p5; Mr Lachlan Hunter, Former Young Nationals President, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p11; Submission No. 17 from YACWA, 10 October 2017, p3.

84 Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p11.

85 Mr Simon Kwok, Executive Director, Elections, New South Wales Electoral Commission (NSWEC), *Transcript of Evidence*, 18 October 2017, p13; NSWEC 'Community Reference Groups', Available at: [http://www.votensw.info/voting/communities/community\\_reference\\_groups](http://www.votensw.info/voting/communities/community_reference_groups). Accessed on 12 December 2017.

### **However, the WAEC is not solely responsible for engaging younger electors**

While the WAEC plays an important role in ensuring eligible electors are aware of how to exercise their right to vote, responsibility for increasing youth participation in formal politics does not only rest with the WAEC. Political parties, candidates, and Members of Parliament also have a key role in engaging young people. Evidence indicates that younger electors are disengaging from formal politics because they feel it does not address matters in which they are interested.<sup>86</sup> As one person surveyed by YACWA said, 'if political parties actually had policies that young people agree with, they would vote more'.<sup>87</sup>

YACWA Chief Executive Officer Ross Wortham argued low youth participation in the 2017 election was not due to apathy or a disinclination to be active citizens. He pointed to recent matters, such as the marriage equality survey, in which young people actively participated because they were areas 'of very particular interest to a younger generation'.

*[T]he issue is simple, and that is about connection between young people, their current experience of the world, their desires and their views and the systems and processes that we use in our political system in our electoral system. There is a very strong disconnect there, and that is not one of lack of desire for young people to be active citizens; it is a disconnect of interest and relevance.*<sup>88</sup>

There were suggestions that overly vigorous campaigning by political parties outside polling places may also dissuade electors, and younger electors in particular, from voting.<sup>89</sup>

Contributors to the inquiry, most notably younger electors, said electoral education needed to be prioritised in schools. The suggested form of this education varied; while Mr Kerslake said civics education should be expanded in the curriculum, other witnesses seemed to suggest that it be provided through one-off workshops from the WAEC or politicians. Information about the mechanics of voting (such as where you go to cast a vote) in addition to the importance of voting were identified as necessary

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86 Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p2; Submission No. 17 from YACWA, 10 October 2017, p2.

87 Submission No. 17 from YACWA, 10 October 2017, p5.

88 Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p10.

89 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p5; Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p5.

areas of education. The increased use of voting systems within schools, presumably through school councils and other nomination processes, was also recommended.<sup>90</sup>

### **Internet voting increased voting accessibility but more can be done**

During the inquiry, the WAEC was commended for implementing the internet and automated telephone voting system known as iVote (see chapter 4).<sup>91</sup> More can be done, however, to ensure that people with disability can participate in state elections in a manner comparable to people without disability. iVote should complement, rather than replace, attendance voting. Vision Australia pointed out that, at past elections, some clients took their children when attendance voting to discuss the election process as a family and show that disability does not preclude community participation.<sup>92</sup>

The accessibility of polling places remains an issue. The WAEC had a range of initiatives to assist electors, including five drive-in polling places on election day, a policy to establish at least one accessible polling place in each district, and the ability of polling place staff to take ballot papers out to electors' cars. Nevertheless, 36.6 per cent of respondents who had a disability and participated in the WAEC's post-election voters' survey did not find polling locations easy to access and use.<sup>93</sup> Concerns were raised about parking and disability access at some polling centres.<sup>94</sup>

One submission recommended the WAEC consider features specific to people who are blind or have low vision when considering polling place accessibility, such as whether they are within easy walking distance from public transport and there is an accessible path from transport to the voting centre (including adequate street crossing mechanisms).<sup>95</sup> The early voting centre in Geraldton purportedly would not fit this description, with a report of several 'pedestrian and motor vehicle near misses'.<sup>96</sup>

Contributors also recommended the WAEC consider implementing a human-assisted call centre voting option to complement the existing automated telephone voting system. While they acknowledged the automated system maintained the secrecy of ballots, a human-assisted call centre would cater for those with disability who cannot

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90 Submission No. 15 from WAEC, 14 August 2017, p4; Submission No. 17 from YACWA, 10 October 2017, p4; Mr Stefaan Bruce-Truglio, Policy and Advocacy Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p4; Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p7; Miss Tamkin Essa, Project Support Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p8.

91 Submission No. 13 from Blind Citizens Australia (BCA), 9 August 2017, pp1–2; Submission No. 4 from Vision Australia, 4 August 2017, p2.

92 Submission No. 4 from Vision Australia, 4 August 2017, p5.

93 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, p105.

94 Submission No. 6 from The Nationals WA, 4 August 2017, p6.

95 Submission No. 4 from Vision Australia, 4 August 2017, p6.

96 Submission No. 6 from The Nationals WA, 4 August 2017, p6.

use the internet and are not comfortable using an automated telephone system. The NSW Electoral Commission offered this service during the previous NSW election.<sup>97</sup>

Awareness of iVote was low among eligible electors. According to the WAEC's external communications strategy, the availability of iVote was promoted on the WAEC website, WAEC signage and publications, WAEC media releases and alerts, and via 'liaison with target groups'.<sup>98</sup> Prior to the election, Mr Kerslake said the WAEC was 'very much trying to promote' iVote.<sup>99</sup>

However, several electors said they would not have known of iVote without information provided by Blind Citizens WA.<sup>100</sup> Over 84 per cent of respondents to the WAEC survey of voters said they were unaware of iVote. Of the 15 respondents with disability who reported that the polling locations were not easy to access and use, eight (53.3 per cent) were not aware of the availability of alternative voting methods.<sup>101</sup>

A separate WAEC survey of iVote registered electors found that only 31 per cent had heard about the service through the WAEC. Word of mouth was the most common way registered electors had become aware of iVote followed by a web search engine.<sup>102</sup> Suggested improvements arising from the survey included increased advertising about the service.<sup>103</sup>

## Recommendation 2

That prior to the next state general election the Western Australian Electoral Commission establishes community reference groups to develop action plans that guide the commission's electoral services to their respective communities. The following four reference groups should be established as a priority:

- Aboriginal reference group
- Culturally and linguistically diverse reference group
- Disability reference group
- Young people reference group

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97 Submission No. 4 from Vision Australia, 4 August 2017, p3; Submission No. 13 from BCA, 9 August 2017, p4; NSWEC, *iVote Strategy for the NSW State General Election 2015: Key Issues, Guidelines, Application Architecture and Voting Protocol*, NSWEC, Sydney, 2015, p24.

98 Mr David Kerslake, WAEC, Letter, 20 October 2017.

99 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p16.

100 Submission No. 13 from BCA, 9 August 2017, p3.

101 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, pp100, 106.

102 WAEC, '2017 State Election iVote Users Survey' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 22 December 2017, appendix A.

103 *ibid.*, p5.

**Recommendation 3**

That prior to the next state general election the Western Australian Electoral Commission and disability reference group conducts research into, and implements, effective advertising methods to increase awareness of internet voting amongst people with disability.

**Recruitment processes for casual staff may hinder diversity**

The WAEC recruitment processes may hinder staff diversity as it centres around the past experience of applicants. Before the election, the WAEC sent an expression of interest letter or email to all people who worked at the previous election. BigRedSky, the recruitment database used by returning officers, highlighted people with past election experience; it included a free text field where past returning officers commented on the performance of previous staff and, when registering, applicants specified their past electoral experience.<sup>104</sup>

It is likely that this process results in the employment of largely the same individuals at consecutive elections. This is understandable. During elections, the number of WAEC employees increases by almost 8,300.<sup>105</sup> To ensure that things run as smoothly as possible in the face of this rapid increase, experience is important.

Yet because the WAEC does not set mandatory targets for its returning officers or polling place managers, there is a possibility that as time goes on the officials at a polling place will no longer reflect the communities that they serve. Communities with traditionally low electoral participation, such as people from CaLD and Aboriginal backgrounds, young people, and people with disability, may become increasingly underrepresented.

We do not know the extent of the problem because the WAEC does not collect the necessary data. It is not known how many polling officials were of Aboriginal descent nor how many polling officials were multi-lingual, despite the WAEC encouraging applicants to include languages that they speak in addition to English in their application and issuing polling place managers with “I Speak. . .” stickers for use by multi-lingual polling staff.<sup>106</sup>

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104 WAEC, *Returning Officer Manual: 2017 State General Election—Legislative Assembly*, WAEC, Perth, 2016, p71.

105 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p29.

106 Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 17 July 2017, p5; Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p31; Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p4.

### Box 2.2: Why staff diversity matters

On election day, a client of the Edmund Rice Centre attempted to cast an absent vote. She provided her name to a polling place official, but was informed that her name was not on the electoral roll. Because she had very little English, she was unable to advise the official that she was enrolled in a different district. She tried to show the officials her Centrelink card but said they would not look at it.

It seems that she was not directed to the line for absent voters, and her details were not checked against the state electoral roll. Consequently, she did not vote and received a failure to vote notice, which could have led to a fine had the Edmund Rice Centre not written a letter on her behalf.

The likelihood of such an occurrence decreases with greater diversity amongst polling place staff. As Mrs Ward said, 'Even if it is a different language, it is that understanding of "we can't speak the same language but I know where you're coming from so I can guide you"'.<sup>107</sup>

Source: Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September, pp6, 7, 8, 3.

The returning officer manual for the 2017 election encouraged remote polling teams to 'employ a suitable local community member as a Community Voting Assistant ... at locations where a lack of local knowledge and language can hinder the effectiveness of visit'.<sup>107</sup> When we asked how many community voting assistants were employed, however, the WAEC said not only that the position of community voting assistants no longer existed but also that it had 'not captured the information necessary to answer this question in any detail'.<sup>108</sup>

### Recommendation 4

That the Western Australian Electoral Commission reviews its processes for the recruitment of casual staff for state general elections, with a view to increasing diversity.

### Recommendation 5

That the Western Australian Electoral Commission begins collecting, collating, and reporting demographic data relating to its casual employees. The ethnicity or cultural background, gender and age of casual staff, as well as languages spoken, should be recorded.

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<sup>107</sup> WAEC, *Returning Officer Manual: 2017 State General Election—Legislative Assembly*, WAEC, Perth, 2016, p69.

<sup>108</sup> Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, p2.



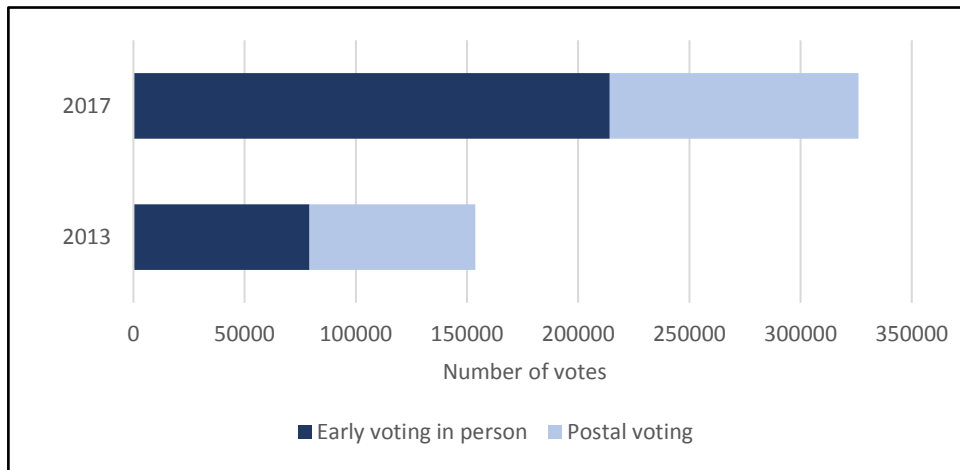
## Chapter 3

### Change is needed to respond to the modern electoral environment

The 2017 State General Election (2017 election) saw increased early and postal voting. This was due, in part, to the changing lifestyles of electors and amendments to the *Electoral Act 1907*, which enabled all electors to cast an early vote without providing a reason.

Early voting in person increased by 166 per cent at the 2017 election at 66 early voting centres (42 in Western Australia (WA), nine interstate, and 15 overseas).<sup>109</sup> Postal voting also increased; 111,761 postal votes were admitted to the count, representing a 50 per cent increase from the 2013 State General Election (2013 election).<sup>110</sup>

**Figure 3.1: Number of early votes admitted to the count in 2013 and 2017**



Source: Data for chart refers to formal Legislative Assembly votes and is sourced from WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013, p27; WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p20.

109 Mr Chris Avent, Deputy Electoral Commissioner, Western Australian Electoral Commission (WAEC), *Transcript of Evidence*, 21 June 2017, p14; WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p20.

110 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p19. The figure 111,761 refers to the number of formal Legislative Assembly postal vote ballot papers admitted to the count. See Mr David Kerslake, WAEC, Letter, 23 January 2018, p3.

Combined, early voting in person and postal voting contributed approximately 23.6 per cent of votes cast at the 2017 election.<sup>111</sup> In 2013, the voting options only accounted for around 12 per cent of votes cast.<sup>112</sup> The move away from attendance voting shed light on several inadequacies in the current electoral system and processes.

### **Some early voting centres had accessibility issues**

The Western Australian Electoral Commission (WAEC) found it difficult to identify locations for early voting centres. Locations that had been used in the past, including Australian Electoral Commission offices and some courthouses, were no longer available or suitable.<sup>113</sup> Some local government premises were not available due to ongoing community activities.<sup>114</sup> This led the WAEC to pursue commercial premises, but it experienced difficulties securing these premises in advance:

*We want it for three weeks. So, if we went to them, as we did, six months out, because we booked a leasing agent to do it, and said, "We'd like that premises there for three weeks in February/March next year", they will say, "Well, come back at the beginning of February and, hopefully, it won't be available. We will have rented it."*<sup>115</sup>

These difficulties presumably contributed to those accessibility issues brought to our attention.

### **Early voting centres were not well-located**

Multiple inquiry participants were concerned about the location of some early voting centres.<sup>116</sup> Some locations were 'out of the way' or 'hard to find'.<sup>117</sup> One political party was concerned that electors were confused by changes in early voting centre locations from the 2013 election to the 2017 election.<sup>118</sup>

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111 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p29. This statistic relates to Legislative Assembly votes.

112 WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013, p36.

113 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, WA, Legislative Assembly Estimates Committee A, Parliamentary Debates (Hansard), 21 September 2017, p453.

114 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p17.

115 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p12.

116 Submission No. 12 from Dr Martin Drum, 8 August 2017, p1; Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2; Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p10; Submission No. 10 from The Greens (WA), 7 August 2017, p5.

117 Submission No. 10 from The Greens (WA), 7 August 2017, p5; Submission No. 12 from Dr Martin Drum, 8 August 2017, p1.

118 Submission No. 10 from The Greens (WA), 7 August 2017, p5.

There were fewer early voting centres at the 2017 election than there were in 2013 (79 in 2013; 66 in 2017).<sup>119</sup> Inquiry participants (including the WAEC) broadly agreed there were not enough early voting centres in some areas, particularly the western suburbs in metropolitan Perth and some remote and regional areas.<sup>120</sup> The Liberal Party of Western Australia reported long queues at some early voting centres in metropolitan areas.<sup>121</sup>

The WAEC provided at least one early voting centre in most regional districts (14 of the 16 regional districts).<sup>122</sup> Kimberley Returning Officer Garry Waldron said the WAEC should additionally provide early voting centres in Halls Creek and Fitzroy Crossing, as this would provide another opportunity for electors in remote locations to vote. This is particularly important given the WAEC's difficulty in reaching some remote locations due to problems such as weather events.<sup>123</sup>

However, the WAEC only provided early voting centres in 13 of the 43 metropolitan districts (see box 3.1). One of these districts only had early voting centres at airports and two of these districts only had short-term early voting centres at universities.<sup>124</sup> In contrast, the New South Wales (NSW) Electoral Commission provides at least one early

### Box 3.1: Electoral districts with early voting centres in 2017

#### East Metropolitan region

Armadale; Belmont (airports); Midland; Mt Lawley  
Four of 14 districts

#### North Metropolitan region

Balcatta; Joondalup; Nedlands (University of WA); Perth  
Four of 14 districts

#### South Metropolitan region

Cannington; Cockburn; Fremantle; Rockingham; Willagee (Murdoch University)  
Five of 15 districts

#### Agricultural region

All districts

#### Mining and Pastoral region

All districts

#### South West region

Albany; Bunbury; Collie-Preston; Mandurah; Vasse; Warren-Blackwood  
Six of eight districts

Source: Data sourced from Mr David Kerslake, WAEC, Letter, 17 July 2017, pp7–8.

119 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p11; WAEC, *Election 2013: Election Report*, WAEC, Perth, 2013, p38.

120 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, WA, Legislative Assembly Estimates Committee A, Parliamentary Debates (Hansard), 21 September 2017, p453; Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p17; Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p10; Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2; Submission No. 10 from The Greens (WA), 7 August 2017, p5.

121 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2.

122 Mr David Kerslake, WAEC, Letter, 17 July 2017, pp7–8.

123 Mr Garry Waldron, Kimberley Returning Officer, WAEC, *Transcript of Evidence*, 21 August 2017, p16.

124 Mr David Kerslake, WAEC, Letter, 17 July 2017, pp7–8.

voting centre per electoral district, despite having restrictions on early voting eligibility.<sup>125</sup>

The WAEC plans to increase the number of early voting centres at the next election.<sup>126</sup>

### **Recommendation 6**

That the Western Australian Electoral Commission provides at least one early voting centre per electoral district for the next state general election.

### **Political party access to early voting centres was not consistent**

Political parties were unable to store materials in some early voting centres.<sup>127</sup> This is despite the Community Development and Justice Standing Committee of the 39th Parliament raising the issue of inconsistent storage practices with Electoral Commissioner David Kerslake prior to the 2017 election.<sup>128</sup>

Perhaps the key issue to emerge in relation to early voting centres, however, was the inability of party workers to distribute campaign materials. Some multi-use premises did not allow party workers to distribute how-to-vote materials near to, or within, their premises due to potential disruption to customers or other users.<sup>129</sup> As WAEC jurisdiction over early voting centres ends six metres from the polling place entrance, venue owners or managers determine the level of party worker access to early voting centres. WA Labor placed the responsibility for access on the WAEC, requesting that the WAEC ensure party worker access to all early voting centres by selecting appropriate venues.<sup>130</sup>

The WAEC determined that where parties were not provided access to an early voting centre, the WAEC would provide a table where political parties could place their how-to-vote cards. Although the WAEC was well aware that campaigning at multi-use venues had been an issue at the 2013 election,<sup>131</sup> the decision to provide tables for how-to-vote material appears to have been made 'on the run'. No guidelines about the provision and use of tables were issued by the WAEC, which meant it was left to individual early voting centre managers to interpret and implement the practice; there

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125 Mr Simon Kwok, Executive Director, Elections, New South Wales Electoral Commission (NSWEC), *Transcript of Evidence*, 18 October 2017, p12.

126 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, WA, Legislative Assembly Estimates Committee A, Parliamentary Debates (Hansard), 21 September 2017, p453.

127 Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p5.

128 Dr Tony Buti, Deputy Chair, Community Development and Justice Standing Committee (39<sup>th</sup> Parliament), *Transcript of Evidence*, 14 September 2016, p7.

129 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p18.

130 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p11.

131 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, Community Development and Justice Standing Committee (39<sup>th</sup> Parliament), *Transcript of Evidence*, 14 September 2016, p13.

were no standards by which political parties could assess the tables. The Greens (WA) suggested that procedures for how-to-vote tables be formalised in legislation, having received ‘positive feedback’ about their use.<sup>132</sup>

Deputy Electoral Commissioner Chris Avent anticipates that party workers will continue to face difficulties accessing some early voting centres, presumably due to the aforementioned difficulties in securing locations.<sup>133</sup> The WAEC therefore plans to provide a table with how-to-vote cards at all early voting centres at the next election.<sup>134</sup> The WAEC will accept how-to-vote materials at a central location and distribute materials to early voting centres.<sup>135</sup> This policy will reduce the burden on political parties to staff centres with party workers, particularly in regional areas.

However, consistency of access is also key to enable fair practice across all early voting centres. Labor State Secretary Patrick Gorman explained that some premises provided inconsistent access for political parties:

*... we have seen examples where those who seek to assert their right or ownership of a particular piece of land say, “Well, that political party is okay, but they were here first and I am only allowing one for the day so you can come back tomorrow”.*<sup>136</sup>

Political parties therefore asked for consistent regulation across all early voting centres, which makes it easier for political parties to instruct their workers and reduces confusion for polling place staff.<sup>137</sup>

*If you have a set of rules for a particular booth, every booth should follow those rules regardless of where they are. Either you have people handing material out at every booth, or you have how-to-vote cards laid out at a table at every booth.*<sup>138</sup>

Political parties differed, however, on their preferred regulations. The Liberal Party and the Greens supported the preclusion of party workers if how-to-vote tables were provided at every early voting centre.<sup>139</sup> In contrast, Labor wanted the WAEC to ensure

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132 Submission No. 10 from The Greens (WA), 7 August 2017, p5.

133 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p18.

134 *ibid.*

135 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p20.

136 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, pp11–12.

137 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2; Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p11.

138 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p5.

139 *ibid.*; Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p5.

that all leases allow for the presence of party workers.<sup>140</sup> This later proposal seems unlikely given the WAEC's existing difficulty in identifying appropriate locations.

#### **Recommendation 7**

That the Western Australian Electoral Commission attempts to reach an agreement with political parties to ensure consistency of campaigning across all early voting centres.

#### **Recommendation 8**

That the Western Australian Electoral Commission issues clear guidelines prior to the next state general election implementing a consistent process by which how-to-vote cards will be made available at early voting centres.

### **The opening hours of early voting centres were restricted to business hours and varied between locations**

Some early voting centres were not consistently open across the early voting period. While some were reportedly open from 9am to 5pm every weekday, others varied their opening hours or days.<sup>141</sup> The result, as Liberal Party Interim State Director Samuel Calabrese said, was that 'you were never guaranteed that if you rocked up at a pre-poll booth that it was going to be open'.<sup>142</sup>

Not only did this cause significant frustration, but political parties found it difficult to organise party workers or volunteers to attend early voting centres for the three-week early voting period, especially in regional areas.<sup>143</sup> Minor parties found it particularly difficult, leading to inequalities in political party representation at early voting centres.<sup>144</sup>

A number of political parties supported a reduction in the early voting period.<sup>145</sup> The majority of electors using early voting centres voted in the third week (61.3 per cent); only 13.6 per cent voted in the first week.<sup>146</sup> Labor Assistant State Secretary Lenda

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140 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p11.

141 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2; Submission No. 6 from The Nationals WA, 4 August 2017, p6.

142 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2.

143 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p3.

144 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p20; Submission No. 2 from Shooters, Fishers and Farmers Party (WA), 25 July 2017, p1.

145 Submission No. 6 from The Nationals WA, 4 August 2017, p6; Ms Anne Fergusson-Stewart, State Secretary, Shooters, Fishers and Farmers Party (WA), *Transcript of Evidence*, 6 September 2017, p2; Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p2; Submission No. 10A from The Greens (WA), 21 September 2017, p5.

146 Mr David Kerslake, WAEC, Letter, 17 July 2017, p4.

Oshalem, however, highlighted that the three-week period will become increasingly needed at future elections, given that early voting is increasing over time.<sup>147</sup>

### Box 3.2: Early voting

Week (2017)*	Number of ballots cast <sup>^</sup>	Percentage of ballots cast (%)
20–25 February	30,480	13.6
26 February–4 March	56,293	25.1
5–10 March	137,447	61.3

\* Polling places were not open every day during this period.

<sup>^</sup> Information provided by the WAEC on the number of early ballots cast per voting week is inconsistent with the total number of early ballots, as provided by the WAEC. See Mr David Kerslake, WAEC, Letter, 23 January 2018, p3.

Source: Data for table sourced from Mr David Kerslake, WAEC, Letter, 17 July 2017, p4.

Political parties also supported an extension to the opening hours of early voting centres, which were limited to business hours.<sup>148</sup> Mr Calabrese described the rationale for expanding opening hours:

*The purpose of pre-poll to me is for those people who cannot vote nine to five on polling day. So allowing them to vote later in the evening, or whenever it may be, over the weekend, and being a bit more flexible helps them ...*<sup>149</sup>

The NSW Electoral Commission provides early voting in person for two weeks prior to election day and provides some opening hours outside of business hours.<sup>150</sup> This includes a Saturday and the Thursday evening prior to election day.<sup>151</sup>

If a similar model was adopted in WA, the WAEC could redirect resources to increase opening hours to include evenings or weekends. In addition, concentrating staffing resources over a two-week period could reduce voting queues and improve staff resources for helping early voters with special needs.<sup>152</sup>

147 Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p12.

148 Submission No. 10 from The Greens (WA), 7 August 2017, p5; Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p4; Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p12; Ms Anne Fergusson-Stewart, State Secretary, Shooters, Fishers and Farmers Party (WA), *Transcript of Evidence*, 6 September 2017, p3.

149 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p5.

150 Mr Simon Kwok, Executive Director, Elections, NSWEC, *Transcript of Evidence*, 18 October 2017, p11.

151 *ibid.*, pp11, 12.

152 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p6.

### Recommendation 9

That the Western Australian Electoral Commission extends the opening hours of early voting centres to provide electors with opportunities to vote after business hours and on weekends.

### Recommendation 10

That the Western Australian Electoral Commission reduces the period for early voting in person to two weeks.

## There were avoidable ballot paper shortages

Some early voting centres and polling places on election day experienced ballot paper shortages. While these shortages did not prevent people from voting, electors who used blank ballot papers might have questioned the validity of their vote.<sup>153</sup> The WAEC has acknowledged the issue of ballot paper shortages at the 2017 election:

*Overall, the total number of ballot papers produced was high enough to service the number of electors, the challenge was the distribution of those ballot papers across locations. Ensuring more ballot papers are issued for various districts in quantities anticipated to meet local needs for early and absent voting will be a focus for the next election.*<sup>154</sup>

The significant electoral boundary changes implemented prior to the election arguably contributed to the shortages, with more electors casting absent votes for the Legislative Assembly than at previous elections.<sup>155</sup>

However, the WAEC should have anticipated the issue and planned accordingly. It is not new; past elections have also had problems with ballot paper distribution.<sup>156</sup> When the Community Development and Justice Standing Committee of the 39th Parliament raised ballot paper shortages prior to the election, Mr Kerslake described how the WAEC would prevent such shortages.<sup>157</sup> These measures included reviewing past voting patterns, examining demographic changes, and ‘well and truly’ distributing an excess of

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153 The WAEC provided polling places with ‘blank’ ballot papers in case of ballot shortages. Polling place staff were required to handwrite candidate names onto the Legislative Assembly portion of the ballot paper in the same order as the original ballot paper. The Legislative Council portion of the ballot paper was pre-populated with candidate names for each region. See WAEC, *Polling Place Manager Manual*, WAEC, Perth, 2017, p49.

154 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p18.

155 Submission No. 12 from Dr Martin Drum, 8 August 2017, p3. See also the ‘Legislative Assembly Types of Votes by District’ tables in the WAEC results and statistics reports for the 2001, 2005, 2008, 2013 and 2017 elections.

156 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p18.

157 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p15.



ballot papers.<sup>158</sup> Ross Mackay, who the WAEC commissioned to review its election performance, had a different view of WAEC preparations. He concluded that the cause of ballot paper shortages at the 2017 election was simply ‘bad planning’.<sup>159</sup>

### Recommendation 11

That the Western Australian Electoral Commission reviews its planning processes for the distribution of ballot papers to early voting centres and polling places with a view to eliminating ballot paper shortages.

### A new ballot paper design solved some issues, but created others

The WAEC changed the design of ballot papers at the 2017 election to reduce the issuance of incorrect ballot papers.<sup>160</sup> Legislative Assembly and Legislative Council ballot papers were conjoined by a perforated edge to ensure that district ballots were issued with the corresponding region ballot. Ballot papers were also colour coded according to electoral region. The WAEC described the design changes as ‘well received’,<sup>161</sup> stating that the changes were:

*... strongly supported in feedback obtained from returning officers and polling officials. They identified benefits such as reduced opportunity for polling official error; more efficient packaging and handling; easier training; and easier vote issuing. Anecdotal feedback from candidates and scrutineers was also strongly positive.*<sup>162</sup>

The design changes appeared to have the intended impact on informal voting. In 2013, 1,286 Legislative Assembly ballot papers were submitted for the incorrect district.<sup>163</sup> In 2017, this was down to 621 (a reduction of 51.7 per cent).<sup>164</sup> The WAEC achieved an even greater reduction for the Legislative Council, indicating the particular success of

158 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p15.

159 WAEC, ‘SGE2017 – WAEC Election Review Report’ from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C, p19.

160 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p18. The format of the Legislative Council ballot paper was also changed by regulation from ‘side to side’ to ‘above and below the line’ to mirror the Senate ballot paper. See Mr David Kerslake, Electoral Commissioner, WAEC, *Briefing Note: Western Australian Electoral Commission Preparations for the 2017 State General Election*, 2 September 2016, p2.

161 Mr David Kerslake, Electoral Commissioner, WAEC, *Briefing Note: State General Election Overview*, 12 June 2017, p3.

162 Mr David Kerslake, WAEC, Letter, 20 October 2017, p5.

163 WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013, p30.

164 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p23.

the region-based colour coding. In 2013, 2,070 ballots papers were submitted for the incorrect region.<sup>165</sup> This reduced to only 57 in 2017 (a reduction of 97.2 per cent).<sup>166</sup>

While the design changes appeared to reduce informal voting, additional issues were created. Electors using postal voting received the Legislative Assembly and Legislative Council ballot papers as a conjoined ballot. As a result, some electors did not realise two ballot papers had been provided, and might have only completed one. Mr Avent stated the WAEC took action to avoid this:

*... we did a fair bit of work there in terms of making the perforations clear, making the Legislative Assembly ballot paper white with a coloured logo; whereas the Legislative Council ballot papers were coloured, with a greyed-out logo. So there are a number of things like that to help make it very evident.*<sup>167</sup>

But he acknowledged ‘you will always get some people who will not fill in both’.<sup>168</sup> The WAEC could address this issue by separating the ballot papers along the perforated edge prior to posting. However, this would raise another issue. Mr Avent explained that when separate ballots were distributed to postal voters in previous elections, the number of envelopes returned with only one ballot paper was ‘a problem’.<sup>169</sup>

### Figure 3.2: 2017 colour coded ballot papers



Source: WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p18.

The WAEC did not tell political parties the colour of the ballot papers for each region until five days into the early voting period.<sup>170</sup> The WAEC apparently withheld this information to maintain ballot security and avoid the replication or duplication of ballot papers.<sup>171</sup> Labor found that this made it harder to prepare how-to-vote materials and to inform voters about the correct ballot papers for their district and region.<sup>172</sup>

165 WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013, p173.

166 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017, p17.

167 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p26.

168 *ibid.*

169 *ibid.*

170 Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p6.

171 *ibid.*, pp6–7.

172 *ibid.*

## Political parties could distribute their own postal vote applications

As is allowed under the legislation, some political parties mailed unsolicited postal vote application forms to electors, accompanied by a return paid envelope addressed to the political party.<sup>173</sup> When received, political parties then forwarded these postal vote applications to the WAEC. ‘Large numbers’ of electors used this service.<sup>174</sup>

Both the WAEC and the Greens were concerned electors did not realise the postal vote applications were often returned to the political party, rather than directly to the WAEC.<sup>175</sup> This was particularly the case when the return paid envelope was addressed to a ‘returning officer’ or ‘electoral officer’.<sup>176</sup> A representative from one political party raised concerns that electors could be misled, and political parties would have had access to electors’ information without their knowledge.<sup>177</sup>

When political parties returned postal vote applications to the WAEC in bulk, the WAEC postal vote centre experienced processing delays.<sup>178</sup> There was a resulting delay in the postage of ballot materials to some electors.<sup>179</sup> The WAEC received complaints from electors, as described by Mr Kerslake:

*They have not got their ballot material yet and they are ringing our call centre and saying, “Where the hell is it?”, and we are saying, “We have no record of you ever lodging an application”.*<sup>180</sup>

The Electoral Commissioner ‘wrote to all political parties reminding them of their statutory obligation to forward any applications immediately’, but political parties did not always comply.<sup>181</sup> The WAEC received 31 complaints about the handling of postal vote applications by political parties.<sup>182</sup> Dr Martin Drum from the University of Notre Dame, who conducted a study on alternative methods of voting at the 2017 election, observed:

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173 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p19.

174 WAEC, ‘SGE2017 – WAEC Election Review Report’ from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C, p20.

175 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p27; Submission No. 10 from The Greens (WA), 7 August 2017, p4.

176 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p27; Submission No. 10 from The Greens (WA), 7 August 2017, p4.

177 Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p7.

178 WAEC, ‘SGE2017 – WAEC Election Review Report’ from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C, p20.

179 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p19.

180 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p27.

181 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p19.

182 Mr David Kerslake, WAEC, Letter, 17 July 2017, p4.

*WAEC officials regarded the postal voting process as the single largest cause of complaints made by voters ... For WAEC officials, this is some source of frustration since this is the only part of the voting process which they don't completely control.*<sup>183</sup>

One political party said its distribution of postal vote applications assisted the WAEC by increasing the number of postal votes and advising electors about the upcoming election. It also said that, given the discontinuation of the EasyVote card (see chapter 2), it ensured electors received a service that the WAEC no longer provided.<sup>184</sup>

Electors did have the option to vote in person on election day if they had not received their postal voting material but were required to sign a declaration prior to voting.<sup>185</sup> Nevertheless, we are concerned that some electors were disenfranchised by delays, particularly those living in remote areas or those unable to attend a polling place in person.

## **Postal services are becoming less reliable**

Electoral commissions across Australia are concerned about the impact of postal service standards on postal voting.<sup>186</sup> Due to delays with the postal service, some electors at the 2017 election might not have received their postal voting ballot materials in time to vote.<sup>187</sup>

The impact is particularly worrying in remote locations as it may disenfranchise some voters. According to NSW Electoral Commissioner John Schmidt, postal voting is 'failing' people who live in remote locations.<sup>188</sup> Mr Avent highlighted the challenges for postal voting in remote WA:

*Towns like Broome, Roebourne and Kununurra do not have mail delivery to households. Unless you have a PO box, your mail goes into a bucket and if you call in to pick it up, you get it; and, if you do not, it eventually comes back to us as return to sender mail.*<sup>189</sup>

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183 Submission No. 12 from Dr Martin Drum, 8 August 2017, p3.

184 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p10.

185 WAEC, *Polling Place Manager Manual*, WAEC, Perth, 2017, p41.

186 Electoral Matters Committee, *Inquiry into Electronic Voting*, Parliament of Victoria, Melbourne, May 2017, p38; Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p3.

187 Mr David Kerslake, WAEC, Letter, 17 July 2017, p2.

188 Mr John Schmidt, Electoral Commissioner, NSWEC, *Transcript of Evidence*, 18 October 2017, p5.

189 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p4.

In addition:

*... if you are in the north west and you post it on the Friday before election day, the chance of it getting to us by Thursday [the deadline for receipt] is slender.*<sup>190</sup>

Postal voting processes contributed to the disenfranchisement of a significant number of electors at the 2017 election. The WAEC received 1,980 postal votes after the deadline for receipt.<sup>191</sup> Further, of the 2,450 postal votes that were sent to overseas electors, only 265 (10.8 per cent) were returned before the deadline.<sup>192</sup> These figures do not include those electors in WA who received their postal voting ballot materials too late and could not attend a polling place to vote in person (number unknown).

To account for postal service limitations, the WAEC suggested the deadline for the receipt of postal votes could be extended (it is currently 9am on the Thursday following election day).<sup>193</sup> The concerns about the postal voting deadline and the distribution of postal vote applications by political parties feed into our final recommendation in chapter 7.

The WAEC also recommended that Parliament expand eligibility for internet voting to include electors located in remote areas.<sup>194</sup> We consider the issue of internet voting in chapter 4.

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190 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p4.

191 Mr David Kerslake, WAEC, Letter, 20 October 2017, p4.

192 Mr David Kerslake, WAEC, Letter, 20 November 2017, p1.

193 Submission No. 15 from WAEC, 14 August 2017, p5.

194 *ibid*.



## Chapter 4

# Internet voting benefits must be balanced against security concerns

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Internet voting was implemented for the first time in the 2017 State General Election (2017 election), following amendment to the *Electoral Act 1907* in mid-2016. Only electors who could not vote without assistance due to sight impairment, insufficient literacy skills, or other incapacity were eligible for internet voting.<sup>195</sup>

Possessing ‘neither the time nor resources’ to develop their own internet voting system, the Western Australian Electoral Commission (WAEC) adopted a customised version of the iVote system used by the New South Wales (NSW) Electoral Commission at the 2011 and 2015 NSW general elections.<sup>196</sup> The independent auditor, appointed by the WAEC to assess the security, accuracy, and secrecy of the system, indicated the NSW Electoral Commission therefore completed ‘a significant proportion of the development, testing and troubleshooting work’.<sup>197</sup>

### Concerns were raised about iVote

Inquiry participants raised concerns regarding the scrutiny and security of the iVote system. In accordance with the *Electoral Act 1907*, the Electoral Commissioner must approve procedures in relation to technology assisted voting that enable secrecy of the ballot, secure transmission of the vote to the Electoral Commissioner, secure storage of the vote by the Electoral Commissioner, and scrutiny of votes.<sup>198</sup> But evidence we received suggests key stakeholders—most notably political parties—were not satisfied with the manner in which the commissioner fulfilled these responsibilities.

### External scrutiny of iVote was limited

The day after the election, iVote votes were decrypted, compared across systems, and recorded at a WAEC iVote decryption ceremony. Political parties and independent candidates were sent a written invitation to the ceremony just three days prior.<sup>199</sup> If this was the only notification provided, political parties and candidates were left with

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195 *Electoral Act 1907* (Western Australia), s99(C).

196 Western Australian Electoral Commission (WAEC), *2017 State General Election: Election Report*, WAEC, Perth, 2017, p9.

197 WAEC, *IT External Audit Report*, report prepared by Dr Richard Adams, WAEC, Perth, June 2017, p3.

198 *Electoral Act 1907* (Western Australia), s99(D)(2).

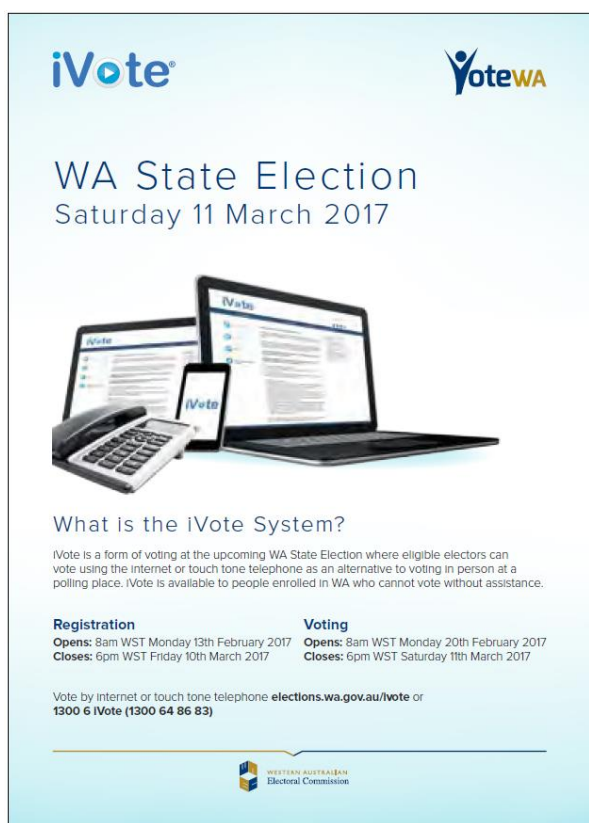
199 Mr David Kerslake, WAEC, Letter, 20 October 2017, p7.

little time to organise attendance by a qualified scrutineer. Of all the registered political parties or independent candidates, only one external scrutineer (from The Greens (WA)) attended the decryption ceremony.

The Greens noted weaknesses in the scrutiny procedures at the iVote decryption ceremony. According to the Greens, procedures for the printing of iVote vote records failed to allow time for external scrutiny.<sup>200</sup> The party also noted that:

*It was not clear that the official comparator, or any other person who had access to the data as it had been verified, was involved in confirming that the physical ballots as printed matched the data as verified.*<sup>201</sup>

**Figure 4.1: WAEC iVote poster**



Source: WAEC, 2017 State General Election: Election Report, WAEC, Perth, 2017, p21.

In addition, while the scrutineer in attendance at the iVote decryption ceremony was provided with a flowchart depicting the iVote decryption process, the scrutineer was reportedly denied access to a more detailed process document when requested.<sup>202</sup> Without this information, the scrutineer felt unable to determine whether the decryption ceremony followed approved procedures.<sup>203</sup>

Core processes, such as the setup and sealing of iVote computer systems and the lock down of servers, were completed in the presence of an independent auditor but without any external scrutineers in attendance.<sup>204</sup> This contrasts with procedures for paper

200 Submission No. 10 from The Greens (WA), 7 August 2017, p13.

201 *ibid.*

202 *ibid.*, p12.

203 *ibid.*

204 *ibid.*; Mr David Kerslake, WAEC, Letter, 20 October 2017, p7.



ballots, where scrutineers are invited to observe the setup of physical ballot boxes. As one political party noted:

*That a computer has been placed in a box, and the box securely sealed, provides no security guarantees if scrutineers have not been invited to witness the commissioning of the computer system, and the sealing of it in the ballot box.*<sup>205</sup>

Electoral Commissioner David Kerslake has acknowledged the need for skilled external scrutineers to witness the ‘set up to tear down’ of the iVote system in future.<sup>206</sup>

The iVote source code was not publicly available for independent expert scrutiny, which prevented external parties scrutinising the internal processes of the iVote system.<sup>207</sup> Under the Electoral Act, the source code used for technology assisted voting can only be disclosed by the arrangement of the Electoral Commissioner.<sup>208</sup> The proprietary nature of some software can be a barrier to the release of source code.<sup>209</sup>

The NSW Joint Standing Committee on Electoral Matters recently recommended that iVote source code be made publicly available to promote transparency of the iVote system.<sup>210</sup> The NSW Electoral Commission has restrictions under their current iVote vendor contract that limits the release of the source code, but are seeking to enable more transparency through their next vendor contract.<sup>211</sup> In contrast, the Australian Capital Territory Electoral Commission uses open source code;<sup>212</sup> it publishes extracts of source code for its version of electronic voting on its website, and researchers may apply for further access to the source code.<sup>213</sup>

A number of inquiry participants called on the WAEC to release further information about the performance of the iVote system to assist external scrutiny. Some requested data comparing votes submitted via internet and paper modes.<sup>214</sup> As stated by

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205 Submission No. 10 from The Greens (WA), 7 August 2017, p12.

206 Mr David Kerslake, WAEC, Letter, 20 October 2017, p7.

207 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p3; Submission No. 10 from The Greens (WA), 7 August 2017, p7.

208 *Electoral Act 1907* (Western Australia), s99(1)(2).

209 Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, Parliament of the Commonwealth of Australia, Canberra, November 2014, p57.

210 Joint Standing Committee on Electoral Matters, *Administration of the 2015 NSW Election and Related Matters*, Report no.2/56, Parliament of New South Wales, Sydney, November 2016, p14.

211 Mr Mark Radcliffe, Director, Election Innovation, New South Wales Electoral Commission (NSWEC), *Transcript of Evidence*, 18 October 2017, p3.

212 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p7.

213 Australian Capital Territory Electoral Commission, ‘Electronic Voting and Counting’. Available at: [https://www.elections.act.gov.au/elections\\_and\\_voting/electronic\\_voting\\_and\\_counting](https://www.elections.act.gov.au/elections_and_voting/electronic_voting_and_counting). Accessed on 16 November 2017.

214 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p2; Submission No. 10A from The Greens (WA), 21 September 2017, p3.

academics Dr Chris Culnane and Dr Vanessa Teague, failure to release this information:

*... prevents scrutineers and the public from making the most basic assessment of whether iVote's outputs seem plausibly similar to the votes cast on paper.*<sup>215</sup>

The NSW Electoral Commission published this data following the 2015 NSW election and it was used to identify a discrepancy between Legislative Council votes recorded in the iVote system and those recorded by paper ballot.<sup>216</sup> This was interpreted to represent a bias towards those candidates listed on the left side of the electronic viewing window and this information has informed a change to the display of the iVote system for future NSW elections.<sup>217</sup>

Inquiry participants also requested information about the outcomes of the telephone verification service, including failure and success statistics, which were not released post-election.<sup>218</sup> Data from the 2015 NSW election highlighted that approximately 10 per cent of phone calls to the telephone verification service failed.<sup>219</sup>

We are of the opinion that the WAEC's failure to provide scrutineers with similar data from the 2017 election may impede scrutiny and prevent opportunities for system improvement in Western Australia (WA). Procedures for the scrutiny of voting systems provide confidence in the recording, storage, and counting of votes. The iVote system must be open to sufficient scrutiny to enable public trust in election results.

#### **Box 4.1: How does the telephone verification system work?**

After casting their vote, iVote users were issued with a 12 digit receipt number. Electors could provide the automated telephone verification service with their receipt number, PIN, and iVote number to hear their stored vote. If concerned about the accuracy of their stored vote, an elector could contact the help desk.

Source: WAEC, *2017 Western Australian State General Election: Procedures for technology assisted voting*, WAEC, Perth, 2017, p13.

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215 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p2.

216 Mr Simon Kwok, Executive Director, Elections, NSWEC, *Transcript of Evidence*, 18 October 2017, p6; NSWEC, *Response by the NSW Electoral Commission to Observations of Bias in iVote Results*, NSWEC, Sydney, p1.

217 NSWEC, *Response by the NSW Electoral Commission to Observations of Bias in iVote Results*, NSWEC, Sydney, pp1–2; Mr Mark Radcliffe, Director, Election Innovation, NSWEC, *Transcript of Evidence*, 18 October 2017, p6.

218 Submission No. 10A from The Greens (WA), 21 September 2017, p3; Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p2.

219 Joint Standing Committee on Electoral Matters, *Administration of the 2015 NSW Election and Related Matters*, Report no.2/56, Parliament of New South Wales, Sydney, November 2016, p11.

**Recommendation 12**

That the Western Australian Electoral Commission identifies opportunities for improving the external scrutiny of the iVote system, including the presence of external scrutineers during the setup of iVote systems.

**Recommendation 13**

That the Western Australian Electoral Commission releases data on the performance of the iVote system to facilitate external scrutiny, including vote data and the outcomes of the telephone verification service.

**Questions were raised about the security of ballots**

Mr Kerslake described the likelihood of undetected iVote tampering as ‘extremely low’, citing a range of iVote design features that offered protection to electronic votes cast in the 2017 election.<sup>220</sup> Yet Dr Culnane and Dr Teague argued that many of these features had significant weaknesses.

While Mr Kerslake described the telephone verification service as a ‘key’ security feature, Dr Culnane and Dr Teague said there was no way to confirm that votes verified through the telephone verification service were included in the final count.<sup>221</sup> Both the core voting system and verification service were also hosted by a single third party (the NSW Electoral Commission), which:

*... fundamentally undermines what little protection the verification service might have offered. Even in the NSW state election, the verification service was hosted by a third party. To have both systems hosted by NSWEC risks one successful attack or corrupt insider being able to alter both lists of votes, rendering the decryption-reconciliation ceremony completely meaningless.<sup>222</sup>*

Only 54 of the 2,288 electors who voted using iVote verified their vote through the telephone verification service. Any protection that it may have provided was therefore reduced by the low up-take by electors.<sup>223</sup>

Additional security concerns were raised regarding the use of a Transport Layer Security (TLS) Proxy to provide protection against a denial of service attack. A US-based company provided the TLS Proxy, which acted as an intermediary between the voter and the iVote server. By using a global network to provide TLS Proxy services, data

220 Mr David Kerslake, WAEC, Letter, 20 October 2017, p8.

221 *ibid.*; Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p2.

222 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p6.

223 Mr David Kerslake, WAEC, Letter, 20 October 2017; WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p21.

might have been sent across international servers.<sup>224</sup> According to Dr Culnane and Dr Teague, the use of the TLS Proxy introduced an ‘unacceptable risk’:

*The TLS Proxy occupies a privileged position in that it stands as a man-in-the-middle of the connection. It can see and modify both what is sent by the voter, and what is sent by the iVote system. As such, a malicious TLS Proxy could modify the iVote scripts and pages to inject vulnerabilities, or to leak voter data.*<sup>225</sup>

In a paper expanding on the use of the TLS Proxy at the 2017 election, Dr Culnane and colleagues outlined two scenarios whereby a man-in-the-middle attack could ‘recover

credentials necessary to be able to cast a valid ballot on a voter’s behalf’.<sup>226</sup>

TLS Proxies are used to protect against security threats and Denial of Service attacks. They operate by inspecting the incoming traffic and blocking malicious connections.

- Dr Chris Culnane and Dr Vanessa Teague

The authors also stated that the iVote system was vulnerable to a distributed denial of service attack during the first days of voting as protections were not correctly in place.<sup>227</sup> The authors reportedly notified the WAEC of this problem and it was subsequently resolved.<sup>228</sup>

Concerns were also raised regarding the secrecy of votes cast using the iVote system. Dr Culnane

and Dr Teague argued that due to a number of system features related to the use of the TLS Proxy, it might be possible to discover how an individual had voted.<sup>229</sup>

*The design of the iVote voting portion of the system is such that Voter ID and PIN are never transmitted to the server ... However, the deployment of the same TLS proxy service for both registration and voting nullifies this protection, since the TLS Proxy service has seen the PIN. Furthermore, due to the way in which the TLS Proxy service worked, in that it set a persistent cookie on the voters [sic] machine, it would have been possible to identify the same voter between registration and voting, if they used the same computer ... it would have been possible for a malicious TLS Proxy to recover a voter’s Voter ID by performing an*

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224 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p5.

225 *ibid.*

226 Chris Culnane, Mark Eldridge, Aleksander Essex, and Vanessa Teague, 'Trust implications of DDoS protection in online elections'. In: Krimmer R., Volkamer M., Braun Binder N., Kersting N., Pereira O., Schürmann C. (eds) *Electronic Voting. E-Vote-ID 2017. Lecture Notes in Computer Science*, vol 10615. Springer, Cham, p139.

227 *ibid.*, p143.

228 *ibid.*

229 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, pp4–5.

*exhaustive search of all possible Voter IDs. Possession of both the Voter ID and PIN would have allowed a malicious entity to learn the Receipt Number then discover how a voter had voted by calling the verification service.*<sup>230</sup>

Notably, we received limited independent assurance of the security of the iVote system during our inquiry. As required under the Electoral Act,<sup>231</sup> the WAEC did appoint an independent auditor to audit the use of the iVote system. The independent auditor witnessed various activities, including testing, decryption, ballot printing, and the reconciliation of votes, and concluded that ‘information contained within the iVote system remains secure at all times’.<sup>232</sup> However, WA Labor State Secretary Patrick Gorman expressed concern about a ‘lack of comprehensive auditing’ of the iVote system, including regular audits.<sup>233</sup> Further, as noted by the independent auditor, an examination of cryptography and system architecture was outside the scope of his assessment of the iVote system.<sup>234</sup>

As already noted, the iVote source code is not available for external review, which prevents independent experts from fully assessing the security of the iVote system. Dr Culnane and Dr Teague argued that:

*... no source code is available for the internal processing of iVote, including the verification service, the decryption, or the reconciliation of verified votes with those being entered into the count. This does nothing for security but makes external scrutiny prohibitively difficult. If there was a security problem or a software error in that part of the process, how would anyone be able to detect it?*<sup>235</sup>

Some submissions therefore questioned the accuracy of the WAEC’s description of security risks associated with the iVote system.<sup>236</sup> On its website, the WAEC describes iVote as ‘extremely safe and secure’, further stating that:

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230 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, pp4–5.

231 *Electoral Act 1907* (Western Australia), s99(F).

232 WAEC, *IT External Audit Report*, report prepared by Dr Richard Adams, WAEC, Perth, June 2017, p3.

233 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p3.

234 WAEC, *IT External Audit Report*, report prepared by Dr Richard Adams, WAEC, Perth, June 2017, p3.

235 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p3.

236 *ibid.*, p6; Submission No. 8 from Cassandra Taylor, 4 August 2017, p3.

*Your online vote is fully encrypted and safeguarded. Your electronic vote will arrive at the WA Electoral Commission encrypted and cannot be tampered with or changed ... Your vote is completely secret ...*<sup>237</sup>

This description is contradicted by the Commonwealth Joint Standing Committee on Electoral Matters, which stated '[t]he only way to guarantee a secret electronic vote is through the use of isolated static electronic voting machines' (i.e. voting machines that are not connected to the internet).<sup>238</sup> The Electoral Council of Australia and New Zealand (ECANZ) suggests the obligation to provide a clear description of risks inherent in voting systems needs to be considered by electoral management boards, such as the WAEC.<sup>239</sup>

Recently, the Australian National Audit Office (ANAO) found that even the Australian Electoral Commission struggled to ensure that appropriate levels of cyber-security were implemented in relation to its Senate scanning system for the 2016 federal election. Yet it did not publicise the security risks; the ANAO report concluded that the 'wording used in some of the internal records and published materials would generate confidence in the security of the system whereas the underlying assessments indicated significant risk'.<sup>240</sup>

Concerns regarding the security of iVote are reflected in voter opinion. The 2017 WAEC voters' survey indicated that while 40.7 per cent of those surveyed would have felt secure using internet voting, 38.2 per cent would have felt insecure.<sup>241</sup> This represents a decrease in perceived security from the 2013 State General Election (2013 election), where 48.8 per cent of those surveyed would have felt secure using internet voting.<sup>242</sup> Among people with disability surveyed by the WAEC, only 36.6 per cent reported that they would have felt secure using internet voting, while 48.8 per cent would have felt insecure.<sup>243</sup> However, of the 140 registered iVote users who were surveyed by the

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237 WAEC, 'iVote'. Available at: <https://www.elections.wa.gov.au/ivote>. Accessed on 15 November 2017.

238 Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, Parliament of the Commonwealth of Australia, Canberra, November 2014, p61.

239 Electoral Council of Australia and New Zealand, *Internet Voting in Australian Election Systems*, 10 September 2013, p69.

240 Australian National Audit Office (ANAO), *Australian Electoral Commission's Procurement of Services for the Conduct of the 2016 Federal Election*, ANAO audit report no. 25, 2017–18, Commonwealth of Australia, Barton, 2018, p45.

241 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, p93. While the report states '42.7 per cent' of respondents would feel secure, text on p93 and graph 4.6.2a indicate this was a typographical error and that the correct statistic is 40.7 per cent.

242 *ibid.*

243 *ibid.*, p107.

WAEC, 94.1 per cent felt very satisfied or fairly satisfied with the security of the iVote system.<sup>244</sup>

Ultimately, security concerns regarding the iVote system must be weighed against the right for people with disability to cast a secret ballot. Vision Australia, which supports and represents people who are blind or have low vision, said security concerns should not prevent blind and low vision electors having access to the ability to cast an independent vote.<sup>245</sup> Limited voting options in the past meant electors who were blind or had low vision often relied on the assistance of family, friends, or polling place officials to attendance or postal vote. In the 2017 election, iVote supported them to cast a secret, independent, and verifiable vote. As one elector who is blind said:

*This time I was not dependent on someone else for assistance, which not only made me independent, but meant I did not have to fit in with someone else's time schedule and I could take as long as I needed and not feel rushed.*<sup>246</sup>

There is considerable support for the continuation of the iVote system at subsequent elections amongst iVote users.<sup>247</sup> The WAEC survey of registered iVote electors found that 96.3 per cent of respondents were very satisfied or fairly satisfied with the iVote service and 92.6 per cent were very likely to use it again in the future.<sup>248</sup>

We support the use of internet voting by people who cannot vote without assistance due to sight impairment, insufficient literacy skills, or other incapacity. However, the security issues raised are of sufficient concern to justify further investigation by experts qualified to assess the risks, to ensure iVote is implemented with maximum security and to provide an independent assurance of such security.

In addition to the security of the iVote system, the Greens were concerned about a range of security-related procedures at the iVote decryption ceremony:

- A 'large' number of non-WAEC staff, including officials from other electoral commissions in Australia, attended the decryption ceremony but were not clearly identified.<sup>249</sup> In contrast, scrutineers were required to wear high-visibility vests.

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244 WAEC, '2017 State Election iVote Users Survey' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 22 December 2017, appendix A, p3.

245 Submission No. 4 from Vision Australia, 4 August 2017, p3.

246 Submission No. 13 from Blind Citizens Australia (BCA), 9 August 2017, p3.

247 *ibid.*, p2; Submission No. 4 from Vision Australia, 4 August 2017, p5.

248 WAEC, '2017 State Election iVote Users Survey' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 22 December 2017, appendix A, pp3, 4.

249 Submission No. 10 from The Greens (WA), 7 August 2017, p12.

- Photographs were taken by ‘a number of persons’ during vote record printing, which is not permitted in the Count Centre for paper ballots.<sup>250</sup>
- ScytI, the company who provided the iVote system, distributed marketing material (i.e. branded pens) at the decryption ceremony.<sup>251</sup>
- The WAEC comparator used a laptop computer that was not clearly identified as WAEC property, leading the Greens to doubt its origin.<sup>252</sup>
- Some computer systems owned by the NSW Electoral Commission were used during the iVote decryption ceremony.<sup>253</sup>

To enable public trust and confidence in election results, the security of the iVote system and iVote procedures must be assured. While all forms of voting are associated with some level of security risk, we must ensure that the introduction of internet voting does not introduce additional risk to the security of WA elections. The issue of security for internet voting significantly differs from paper ballots, especially as the use of internet voting increases, because tampering in online systems has the potential to have systematic and widespread effects on election results.

#### **Recommendation 14**

That the Western Australian Electoral Commission considers additional independent auditing of the security of the iVote system.

#### **Recommendation 15**

That the Western Australian Electoral Commission reviews the accuracy of their public communications regarding the security risks associated with the iVote system.

#### **Recommendation 16**

That the Western Australian Electoral Commission reviews and improves security procedures for the iVote decryption ceremony.

### **Before internet voting is expanded, the risks and concerns must be addressed**

The WAEC has recommended internet voting eligibility be expanded at future WA elections to include voters located in remote areas of WA, overseas, or interstate on election day.<sup>254</sup> Mr Kerslake argued this would guard against potential voter disenfranchisement due to postal service limitations or WAEC difficulties in accessing

250 Submission No. 10 from The Greens (WA), 7 August 2017, p13.

251 *ibid.*, p12.

252 *ibid.*, p13.

253 *ibid.*

254 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p32.



remote locations.<sup>255</sup> Blind Citizens Australia and Vision Australia made similar recommendations to expand eligibility for internet voting.<sup>256</sup>

Jurisdictions across Australia have considered the security of internet voting in recent years.<sup>257</sup> Notably, the Chair of the Commonwealth Joint Standing Committee on Electoral Matters concluded in 2014 that 'Australia is not in a position to introduce any large-scale system of electronic voting in the near future without catastrophically compromising our electoral integrity'.<sup>258</sup>

As the number of electors using internet voting increases, so too does the threat to security:

- Election analyst Mr Antony Green said the opportunity to influence an election result via tampering increases with the expansion of internet voting.<sup>259</sup> Given the argument that the security of internet voting cannot be guaranteed,<sup>260</sup> increasing incentives to tampering should be avoided.
- The design of internet voting systems, unlike attendance voting, does not protect the user from undue influence by family, peers, or others.<sup>261</sup> The potential for large-scale coercion increases with the expansion of internet voting.<sup>262</sup>
- Internet voting systems that allow users to verify cast votes are also vulnerable to vote-buying, as vote-buyers have a mechanism to confirm that votes were cast as

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255 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, pp4, 13.

256 Submission No. 4 from Vision Australia, 4 August 2017, p3; Submission No. 13 from BCA, 9 August 2017, p4.

257 Joint Standing Committee on Electoral Matters, *Administration of the 2015 NSW Election and Related Matters*, Report no.2/56, Parliament of New South Wales, Sydney, November 2016, p12; Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, Parliament of the Commonwealth of Australia, Canberra, November 2014, pvi; Electoral Matters Committee, *Inquiry into Electronic Voting*, Parliament of Victoria, Melbourne, May 2017.

258 Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, Parliament of the Commonwealth of Australia, Canberra, November 2014, pv.

259 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p1.

260 J. Alex Halderman and Vanessa Teague, 'The New South Wales iVote system: Security failures and verification flaws in a live online election', in R. Haenni, R. Koenig, & D. Wikstrom, (eds.), *E-Voting and Identity. VoteID 2015. Lecture Notes in Computer Science*, vol. 9269. Springer, Cham, 2015, p36.

261 Submission No. 10 from The Greens (WA), 7 August 2017, p7; Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, Parliament of the Commonwealth of Australia, Canberra, November 2014, p59.

262 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p1.

instructed. The expansion of internet voting could create a market for verified votes.<sup>263</sup>

- Given a reasonable proportion of Western Australians have concerns regarding the security of internet voting,<sup>264</sup> the expansion of internet voting has the potential to reduce public trust and confidence in election results. Allegations of tampering could be particularly damaging to public trust.

Before internet voting can be expanded, procedures for the adequate scrutiny of internet voting systems must be identified. As ECANZ noted:

*The need for new transparency mechanisms to replace those associated with the paper ballot remains a matter of fundamental importance, and one which will rise in significance in direct proportion to the number of people actually using internet voting.*<sup>265</sup>

Dr Culnane and Dr Teague argued that a system such as iVote is not open to 'meaningful scrutiny'; some processes can only be subjected to a process audit, as physical evidence is not produced by the iVote system.<sup>266</sup> If internet voting systems are not amenable to complete scrutiny, this may be a limiting factor on the expansion of internet voting.

### **An independent advisory body is needed**

Internet voting systems require considerable expertise to implement and maintain. The Victorian Electoral Commission has noted that Australian electoral commissions are:

*... reliant on a very small Australian pool of technology specialists who truly understand what is required to deliver such projects. Retaining this talent within a commission between electoral events is not a sustainable way of ensuring the successful delivery of electronic voting projects. This poses an enormous risk, especially given the complexity of the technology and its infrequent use over a four year election cycle. Any*

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263 Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, Parliament of the Commonwealth of Australia, Canberra, November 2014, pvi.

264 38.2 per cent of respondents to the 2017 WAEC voters survey reported that they would feel insecure or very insecure voting via the internet. See WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, p93.

265 Electoral Council of Australia and New Zealand, *Internet Voting in Australian Election Systems*, 10 September 2013, p68.

266 Submission No. 9 from Dr Chris Culnane and Dr Vanessa Teague, 7 August 2017, p2.

*long term future for electronic voting needs to address this issue in order to be sustainable.*<sup>267</sup>

Mr Gorman expressed concern with local expertise in the iVote system:

*I think that the professionalism of that service lies with the New South Wales Electoral Commission, not with the Western Australian Electoral Commission and, therefore, there needs to be some local capacity to actually know what every single element of what the commission is running if they are going to implement it in our state elections.*<sup>268</sup>

In line with this concern, the independent auditor relied on work completed for the NSW Electoral Commission in auditing iVote at the 2017 WA election:

*A key consideration has been whether the work undertaken by the auditors for the NSWEC [NSW Electoral Commission] on their system needed to be repeated. On reviewing the documentation produced by PwC [PricewaterhouseCoopers] I decided that there was no need to re-visit the key elements of the system covered by their reports but to note the exceptions and comments in their final report.*<sup>269</sup>

It is unclear to what extent the WAEC reviewed iVote procedures before and after the election. The WAEC did monitor the implementation of iVote during the 2017 election; Mr Kerslake stated that '[o]ngoing monitoring of IT systems, firewalls and network traffic' was completed 'by a number of internal and external parties to check for anomalous system access'.<sup>270</sup> Mr Kerslake concluded that there were no issues with security or attacks during the 2017 election.<sup>271</sup>

However, we do not know whether the WAEC completed a comprehensive risk assessment before implementing iVote at the 2017 election, or conducted a comprehensive investigation of the implementation post-election. The WAEC has published only two documents regarding iVote on their website (the Procedures for Technology Assisted Voting and the independent auditor's report), and both of these documents were required under the *Electoral Act 1907*.<sup>272</sup> When we asked Mr Kerslake if he identified anything in the implementation of iVote that required addressing, he

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267 Victorian Electoral Commission, *Submission to the Electoral Matters Committee Inquiry into Electronic Voting*, 1 July 2016, p7.

268 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p3.

269 WAEC, *IT External Audit Report*, report prepared by Dr Richard Adams, WAEC, Perth, June 2017, p3.

270 Mr David Kerslake, WAEC, Letter, 20 October 2017, p8.

271 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p5.

272 *Electoral Act 1907* (Western Australia).

stated ‘no, nothing particularly’.<sup>273</sup> However, Mr Kerslake did acknowledge the ongoing issue of ‘remaining abreast of the latest technology and security features’.<sup>274</sup>

The NSW Electoral Commission conducts ongoing reviews of the iVote system. Prior to implementing iVote for the first time, the NSW Electoral Commission published a review of electronic voting and a report on the feasibility of iVote.<sup>275</sup> For the 2011 election, the commission published a pre-implementation report, post-implementation report, and an iVote evaluation report.<sup>276</sup> For the 2015 election, the commission published an iVote system security implementation statement, an iVote strategy report, and a post-implementation review.<sup>277</sup>

In addition, the NSW Electoral Commission has developed advisory groups to examine the iVote system, including:

- A technical advisory group of international and Australian experts that reviewed the ‘technical design, tender documentation, technical attachments to the contract and certain software source code’.
- An ongoing, four-member advisory group consisting of academic computer scientists.<sup>278</sup>

The University of NSW also ran a cyber security course, which focused on hacking iVote, but ‘did not find anything of significance’.<sup>279</sup>

The WAEC has not described any such ongoing advisory bodies for the iVote system in WA.

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273 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p5.

274 *ibid*.

275 NSWEC, *International Experiences of Electronic Voting and their Implications for New South Wales*, report prepared by Associate Professor Rodney Smith, University of Sydney, 2009; NSWEC, *Report on the Feasibility of Providing “iVote” Remote Electronic Voting System*, NSWEC, Sydney, 2010.

276 NSWEC, *Technology Assisted Voting Audit: iVote Pre Implementation Report*, report prepared by PricewaterhouseCoopers, NSWEC, Sydney, 2011; NSWEC, *Technology Assisted Voting Audit, iVote Post Implementation Report*, report prepared by PricewaterhouseCoopers, NSWEC, Sydney, 2011; NSWEC, *Evaluation of Technology Assisted Voting Provided at the New South Wales State General Election March 2011*, report prepared by The Allen Consulting Group, NSWEC, Sydney, 2011.

277 NSWEC, *iVote Strategy for the NSW State General Election 2015: Key Issues, Guidelines, Application Architecture and Voting Protocol*, NSWEC, Sydney, 2015; NSWEC, *iVote Project: iVote System Security Implementation Statement*, NSWEC, Sydney, 2014; NSWEC, *Post Implementation Review of the iVote Project*, report prepared by PricewaterhouseCoopers, NSWEC, Sydney, 2015.

278 Joint Standing Committee on Electoral Matters, *Administration of the 2015 NSW Election and Related Matters*, Report no.2/56, Parliament of New South Wales, Sydney, November 2016, p14.

279 *ibid*.

ECANZ suggests that a 'robust risk assessment' is needed to inform decisions on the use of internet voting, and that this assessment should consider:

- 'The nature of vulnerabilities'.
- 'The probability that they will be exploited'.
- 'The impacts which any such exploitation could have'.
- 'Strategies which could be put in place to mitigate any such impacts'.<sup>280</sup>

This risk assessment requires considerable technological expertise that is likely not available within Australian electoral commissions.

#### **Recommendation 17**

That the Western Australian Electoral Commission establishes an advisory body of independent experts to conduct a full review of the iVote internet and telephone voting system and to consider security, auditing, and scrutineering issues well before the next state election. This advisory body should:

- Contain members with expertise in internet voting, privacy, security, and cybercrime.
- Release a report prior to the next election detailing its consideration of the security, auditing, and scrutiny of iVote.

#### **Recommendation 18**

That internet voting eligibility is expanded only when the advisory body of independent experts is satisfied that all security, auditing, and scrutineering issues have been adequately addressed.

#### **Recommendation 19**

That the Western Australian Electoral Commission ensures the source code of any future internet voting system is publicly available.

### **Political parties require greater support to scrutinise**

In contrast to traditional paper ballot systems, scrutineers for electronic systems require substantial technical knowledge. The WAEC said it advised political parties 'how technology-assisted voting could be scrutinised' during briefing sessions.<sup>281</sup> This obviously did not include actual training for scrutineers to assist in their scrutiny of the iVote system; in its submission to this inquiry, the Greens recommended the WAEC

<sup>280</sup> Electoral Council of Australia and New Zealand, *Internet Voting in Australian Election Systems*, 10 September 2013, p10.

<sup>281</sup> Mr David Kerslake, WAEC, Letter, 20 October 2017, p7.

provide such training, as well as detailed documentation to assist scrutineers to understand the iVote system and the approved procedures.<sup>282</sup> The NSW Electoral Commission has identified that making the scrutiny of iVote more meaningful and easy to understand is a priority.<sup>283</sup>

#### **Recommendation 20**

That the Western Australian Electoral Commission provides political parties with training and detailed procedure documents to support their scrutiny of the iVote system.

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282 Submission No. 10 from The Greens (WA), 7 August 2017, p14.

283 Mr Mark Radcliffe, Director, Election Innovation, NSWEC, *Transcript of Evidence*, 18 October 2017, p5.

## Chapter 5

### Western Australia has few political finance or election advertising laws

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Most political finance regimes function to protect the integrity of representative government; promote fairness in politics; support parties in performing their functions; and respect political freedoms. These aims are achieved through transparency measures (such as disclosure schemes), supply-side measures (including restrictions on who can make financial contributions and how much can be given); and demand-side measures (such as campaign expenditure limits).<sup>284</sup>

Election advertising laws, meanwhile, determine the content and distribution of materials during an election period. Authorisation is the primary regulatory measure in Australia, providing context for the message conveyed in electoral material and ensuring the person or organisation responsible is accountable for the information.<sup>285</sup> Canvassing and the distribution of election advertising is also widely regulated, with restrictions on where and when political literature can be broadcast, displayed, or handed out.

Political finance and election advertising laws and regulations are a key part of any Western Australian (WA) election. Their purpose is to provide participants with a fair playing field on which to make their case to electors.

#### **Unlike some Australian jurisdictions, WA restricts neither the source nor amount of political funding**

WA's political finance regime places few restrictions on election participants. There are no supply-side measures regulating the flow of money into politics nor demand-side measures to drive down the need for political fundraising.

Much of the evidence we received on the subject of WA's political finance regime centred on the absence of regulations for third-party campaigners (labelled 'other persons' under the *Electoral Act 1907*). This was the result of a well-resourced campaign run by the Chamber of Minerals and Energy of Western Australia (CME), a

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284 Joo-Cheong Tham, *Money and Politics: The Democracy We Can't Afford*, UNSW Press, Sydney, 2010, pp20, 21–22.

285 Joint Standing Committee on Electoral Matters, *The 2016 Federal Election: Interim Report on the Authorisation of Voter Communication*, Parliament of the Commonwealth of Australia, Canberra, 2016, pp2–3.

resources sector representative body, during the 2017 State General Election (2017 election) (see box 5.1). Although it is difficult to determine whether the campaign contributed to the loss of the seat of Pilbara by the then leader of The Nationals WA, the degree of third-party involvement in the election nevertheless concerned some inquiry participants.

#### **Box 5.1: The Chamber of Minerals and Energy in the 2017 election**

In the lead-up to the 2017 election the Chamber of Minerals and Energy of Western Australia (CME) campaigned strongly against a proposal from the then Nationals WA leader Brendon Grylls to increase the special lease rental on iron ore from 25 cents per tonne to \$5 per tonne. Over \$4.3 million was spent on the campaign with the production of television, radio, print, and digital advertisements. Approximately 50 per cent of the total expenditure was donated by BHP Billiton Iron Ore and approximately 50 per cent donated by Rio Tinto Limited. The CME spent almost as much as the two major political parties. Mr Grylls subsequently lost his seat of Pilbara.

Source: The Chamber of Minerals and Energy disclosure, received by WAEC on 22 September 2017. Available at: <https://www.elections.wa.gov.au/candidates-and-parties/funding-and-disclosure/elections-returns>. Accessed on 4 January 2018.

The Nationals and The Greens (WA) said the involvement of third-party campaigners had significant implications for the integrity of our representative democracy. Both were concerned corporate interests could use well-financed advertising campaigns to potentially undermine policy proposals and stifle debate. The Greens said it was ‘highly troubling as to the state of our democracy’.<sup>286</sup> The Nationals said it created an environment in which parliamentarians and political parties are ‘reluctant to put forward policy ideas in fear of retribution’.<sup>287</sup>

There was division about how to address what some perceived to be the disproportionate influence wielded by third parties. One inquiry participant, for example, suggested alternative regulations could be explored while another suggested Parliament conduct further work to reform the political finance regime.<sup>288</sup>

The introduction of expenditure caps was also raised. The Nationals focused on the application of expenditure caps to third parties.<sup>289</sup> Election analyst Antony Green indicated caps should be introduced for political parties and third-party campaigners. Not only would they help to ‘get rid of some of the mutually assured destruction in the amount of money parties spend on the campaigns’ but would assist WA to avoid ‘the

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286 Submission No. 10A from The Greens (WA), 21 September 2017, p6.

287 Submission No. 6 from The Nationals WA, 4 August 2017, p8.

288 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, pp7–8; Submission No. 10A from The Greens (WA), 21 September 2017, p6.

289 Mr Simon Glossop, State Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p2.



American path' where 'the money is incalculable that gets spent on election campaigns'.<sup>290</sup>

It was suggested WA adopt funding and expenditure legislation similar to that in New South Wales (NSW) to both limit the influence of third parties in state elections and increase transparency in the electoral process.<sup>291</sup> NSW has perhaps the most stringent political finance regime in Australia. Political donations to or for the benefit of a registered political party or group, elected member, candidate, unregistered party, or third-party campaigner are capped.

NSW also limits electoral communication expenditure (money spent on advertising, and the production and distribution of election materials). In the 2015 NSW general election, for example, registered third-party campaigners were only able to spend \$1.05 million during the capped expenditure period.<sup>292</sup>

While less extensive than the NSW model, the Australian Capital Territory (ACT) also caps the electoral expenditure of candidates, associated entities, and third-party campaigners. For the most recent ACT general election, third parties were only able to spend \$40,000. Non-adherence to the limits meant the entity or individual was liable for penalties equal to twice the amount by which the cap was exceeded.<sup>293</sup>

## **WA relies on a disclosure scheme**

In the absence of supply-side or demand-side measures, WA relies heavily on its disclosure scheme to provide transparency to the electoral process.

### **There are two disclosure regimes: annual returns and election-related returns**

In WA, political parties and associated entities must lodge annual returns disclosing:

- The total value of all gifts received in a financial year (1 July to 30 June).
- The details of each gift whose value is greater than or equal to the specified amount.
- The details of donors who make donations which, when totalled, is greater than or equal to the specified amount.

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290 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p13.

291 Mr Simon Glossop, State Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p2.

292 New South Wales Electoral Commission (NSWEC), 'Caps on Electoral Expenditure'. Available at: [http://www.elections.nsw.gov.au/fd/electoral\\_expenditure/caps\\_on\\_electoral\\_expenditure](http://www.elections.nsw.gov.au/fd/electoral_expenditure/caps_on_electoral_expenditure). Accessed on 5 December 2017.

293 Elections ACT, 'Electoral Expenditure Cap'. Available at: [https://www.elections.act.gov.au/\\_data/assets/pdf\\_file/0009/839070/ExpenditureCap.pdf](https://www.elections.act.gov.au/_data/assets/pdf_file/0009/839070/ExpenditureCap.pdf). Accessed on 7 December 2017.

- An amount of any other income.

For the 2016–17 financial year, the specified amount was set at \$2,300 although it has since increased to \$2,500 to reflect the increase in the Consumer Price Index.<sup>294</sup>

Election-related returns contain the expenditure incurred by political parties, candidates, groups of candidates, and third parties during the election period. In 2017, the election period ran from Wednesday, 1 February to 6pm, Saturday, 11 March.<sup>295</sup>

Election-related advertising makes up the bulk of electoral expenditure. Costs incurred to broadcast, publish, display, or produce materials used during the election period (including mail-outs and letterbox drops; television, radio, and cinema advertisements; and opinion polls) must be disclosed. Fees for consultants or advertising agents who provided services during the election period or assisted in the production of material for use during the period must also be disclosed.<sup>296</sup>

Candidates, groups of candidates, and third parties must disclose gifts in their election-related returns, although each group has different disclosure requirements depending on the period in which gifts were received and the purpose for which they were used. Associated entities are not required to lodge election-related returns.<sup>297</sup>

## **The disclosure scheme lacks robustness**

### ***Two-tiered system***

Although the *Electoral Act 1907* requires political parties to disclose all donations of the specified amount, any party registered at state and federal levels can use their federal disclosure return to fulfil their state disclosure obligations. The current federal disclosure threshold for donations is \$13,500—over five times that of the state threshold.

The Western Australian Electoral Commission (WAEC) explained the result of this two-tiered system:

*... whereas a donor of \$2500 to a State-only registered party must be publicly disclosed, another person or body could donate the much larger*

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294 See *Electoral (Political Finance) Regulations*, r3; *Electoral Act 1907* (Western Australia), s175, s175(A)(6); Western Australia, *Western Australian Government Gazette*, No. 93, 12 May 2017, p2473.

295 The election period runs from the day of the issue of the writ for the election to the latest time on polling day an elector in the State can enter a polling booth for the purpose of casting a vote in the election. See Western Australian Electoral Commission (WAEC), *Funding and Disclosure in Western Australia: Guidelines*, WAEC, Perth, 2016, p21.

296 WAEC, *Funding and Disclosure in Western Australia: Guidelines*, WAEC, Perth, 2016, p21.

297 *ibid.*, pp9–10, 6–7.

*amount of \$13,499 to a party with dual Federal-State registration and not be disclosed.*<sup>298</sup>

The result was an ‘un-level playing field which should be remedied’.<sup>299</sup>

WA is not the only jurisdiction to feel the absence of coordinated election funding and disclosure laws across Australia. In its 2014 report, the Panel of Experts on Political Donations in NSW noted the federal structure of some political parties enabled them to circumvent some NSW electoral laws. It supported a coordinated national reform of election funding laws, with ‘consistent disclosure obligations’ regarded as the necessary starting point.<sup>300</sup>

### ***Timeliness of disclosure***

Under the current regime, disclosure occurs long after polling day. The deadline for election-related returns is 15 weeks after polling day. The deadline for annual returns is 30 November.<sup>301</sup> While the regime provides the transparency necessary to prevent graft and donors from gaining undue influence, it does not assist electors when casting their votes. The annual return deadline in particular reduces the timeliness of disclosure. Theoretically, if a party received a donation on 1 July 2016, disclosure might not have occurred until 30 November 2017, almost 17 months later.<sup>302</sup>

In contrast, Queensland introduced near real-time disclosure in early 2017. Political donations over \$1,000 to state government candidates and political parties are now declared within seven days. Disclosures are available via the Electronic Disclosure System on the Electoral Commission Queensland website and can be searched according to party, electorate, donor, election, or date.<sup>303</sup> Although some disclosure avoidance possibilities have been identified, supporters of the system argue it still increases transparency and accountability and reduces the potential for corruption.<sup>304</sup>

Mr Green described the benefit of the Queensland disclosure scheme:

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298 Submission No. 15 from WAEC, 14 August 2017, pp5–6.

299 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p33.

300 Panel of Experts, *Political Donations: Final Report—Volume 1*, NSW Department of Premier and Cabinet, Sydney, 2014, pp1, 31.

301 WAEC, *Funding and Disclosure in Western Australia: Guidelines*, WAEC, Perth, 2016, pp8, 10, 12.

302 Ms Margaret Quirk, Chair, Community Development and Justice Standing Committee (39th Parliament) and Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p21.

303 See Electronic Disclosure System at <https://disclosures.ecq.qld.gov.au/>. Accessed on 5 December 2017.

304 Felicity Caldwell, ‘Real time’ political donations reports to have seven-day delay’, *Brisbane Times*, 23 February 2017. Available at: <https://www.brisbanetimes.com.au/national/queensland/real-time-political-donations-reports-to-have-sevenday-delay-20170223-guicom.html>. Accessed on 5 December 2017.

*All donations have to go into a particular account, and that account is linked so the material can be published to the commission's website so you know, as it is going on, what is occurring. To me it is actually the exposure of the donation when it is occurring which is more important than getting a document six months after the event saying what the donations were.*<sup>305</sup>

Electoral Commissioner David Kerslake has previously said that if real-time disclosure was introduced the WAEC has the capacity to publish returns 'within a relatively short time' of receiving them.<sup>306</sup> This would, however, require legislative change.

### ***Disclosure period***

The Nationals noted that, under the current framework, disclosure is only required from the day the writs are issued, which creates a 'significantly distorted view of electoral expenditure by third-party campaigners'.<sup>307</sup> The CME began its campaign as early as November 2016—at least two months before the disclosure period—and the advertising costs from this period did not have to be disclosed.<sup>308</sup>

The NSW disclosure scheme offers an alternative model. There, the capped expenditure period for a state general election starts on 1 October in the year before the election and ends on election day (the fourth Saturday in March).<sup>309</sup> One inquiry participant submitted this period provided 'greater transparency'.<sup>310</sup>

### ***Non-disclosure of some donors***

When calculating whether a gift is equal to or greater than the specified amount, the *Electoral Act 1907* stipulates that two or more gifts made by the same person to a political party or associated entity shall be regarded as one gift. However, in calculating that sum, an amount or value that is less than one-third of the specified amount does not need to be counted.<sup>311</sup>

As a result, if a person made several gifts of \$750 during the 2017 election (less than one-third of \$2,300), the name and address of that individual donor would not be disclosed. The donations would instead be included in the total amount of gifts

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305 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p15.

306 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p22.

307 Submission No. 6 from The Nationals WA, 4 August 2017, p7.

308 Sam Tomlin, 'WA Nationals' row with iron ore giants, mining lobby spreads into gold industry', *ABC Online*, 30 November 2016.

309 NSWEC, 'Caps on Electoral Expenditure'. Available at: [http://www.elections.nsw.gov.au/fd/electoral\\_expenditure/caps\\_on\\_electoral\\_expenditure](http://www.elections.nsw.gov.au/fd/electoral_expenditure/caps_on_electoral_expenditure). Accessed on 5 December 2017.

310 Submission No. 6 from The Nationals WA, 4 August 2017, p7.

311 *Electoral Act 1907* (Western Australia), s175(N).

disclosed in the annual return.<sup>312</sup> This limits the level of transparency offered by the disclosure scheme.

### Recommendation 21

That the Premier seeks to put the issue of a nationally consistent system of election funding and disclosure laws on the Council of Australian Governments' agenda.

## The WAEC did not adequately monitor the disclosure scheme

Given WA's reliance on disclosure, we would expect that the WAEC would have ensured participants fulfilled their obligations under the disclosure scheme and lodged their returns within the required timeframe. One witness said the WAEC had an obligation, in light of the increasing electoral involvement of third parties, to monitor adherence to reporting requirements to 'ensure that the election campaign is being run outside of undue influence'.<sup>313</sup>

However, the CME did not lodge its return until 22 September 2017 (around three months after the 15-week deadline). By that time, the Nationals had sought clarification from the WAEC about the CME's failure to disclose and several newspaper articles had noted the absence of the return. This was said to highlight how flawed self-declaration was, with the onus of responsibility for identifying failures to disclose resting with the public.<sup>314</sup>

To the Greens and Nationals, the late CME disclosure resulted from inadequate resourcing.<sup>315</sup> Increase resourcing to the WAEC, the Greens argued, and the WAEC 'would then be in a position to correspond with such organisations, and ensure that they meet their disclosure obligations'. A mechanism through which registered political parties and candidates could bring non-compliant third parties to the attention of the WAEC was also recommended.<sup>316</sup>

We note that, as at September 2016, the WAEC only had one employee 'looking after' funding and disclosure.<sup>317</sup> In comparison, the equivalent section of the NSW Electoral Commission fluctuates from 30 to 50 employees (depending on the project and time of the year).<sup>318</sup>

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312 Mr David Kerslake, WAEC, Letter, 20 October 2017, p6.

313 Hon Jacqui Boydell, Campaign Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p8.

314 Submission No. 6 from The Nationals WA, 4 August 2017, p7.

315 Mr Simon Glossop, State Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p1.

316 Submission No. 10A from The Greens (WA), 21 September 2017, p5.

317 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p22.

318 Ms Alison Byrne, Executive Director, Funding, Disclosure and Compliance, NSWEC, *Transcript of Evidence*, 18 October 2017, p13.

What has become apparent during and in the aftermath of this year's state election is that the commission is drastically under-resourced when an organisation such as the Chamber of Minerals and Energy can publicly state prior to the election that they are an active participant in the election process and have spent many millions on campaigning, yet not be followed up on by the commission before the deadline for reporting, or indeed to be proactively contacted prior to the election to ensure that they were aware of advertising requirements around the Electoral Act.

- Mr Simon Glossop, State Director, The Nationals WA

Although failure to lodge a return by the due date can result in a fine of \$7,500 (for political parties) or \$1,500 (for all other participants), the WAEC has traditionally chosen an educative approach above punitive action because 'public interest is better served by an educative approach'.<sup>319</sup> The WAEC said it would not be taking punitive action following the 2017 election due to 'the low maximum penalties that apply and the cost of any necessary court action'. The WAEC has previously recommended changes to the *Electoral Act 1907* that would allow it to impose administrative penalties and avoid the disproportionate court costs.<sup>320</sup>

A fine of \$1,500 is insufficient when one considers that the expenditure disclosed by the CME was \$4.3 million. The gulf between the two figures highlights the inadequacy of the protections provided in the Act and supports the need for a review of WA's political finance regime.

These issues are not unique to the WAEC. The NSW Electoral Commission told us that its legislation also only enabled it to 'issue warnings or prosecute—there is nothing in between'. Considering that one case where it did pursue prosecution was unsuccessful, we can appreciate why both it and the WAEC may be reluctant to take punitive action.<sup>321</sup>

## **WA relies on authorisations to campaign materials, but there are gaps**

The authorisation of campaign materials is based on transparency and accountability principles. Authorisation requirements protect the freedom of speech of individuals

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319 WAEC, *Political Finance Annual Report: Report on the Operation of Part VI of the Electoral Act 1907 for the Period Ended 30 June 2013*, WAEC, Perth, 2013, p3. See also WAEC, *Political Finance Annual Report: Report on the Operation of Part VI of the Electoral Act 1907 for the Period Ended 30 June 2015*, WAEC, Perth, 2015.

320 Mr David Kerslake, WAEC, Letter, 20 October 2017, p6; WAEC, *Political Finance Annual Report 2011–2012*, WAEC, Perth, 2012, p6.

321 Ms Alison Byrne, Executive Director, Funding, Disclosure and Compliance, NSWEC, *Transcript of Evidence*, 18 October 2017, p7.

and organisations while ensuring voters know whose view is being expressed in the material and that the person or organisation producing the information is accountable.

In WA, electronic and printed material must include the name and physical street address of the person authorising. Hard copies of material must include the name and place of the printer in the footer, although newspaper advertisements are exempt because the printer is obvious. Promotional material such as t-shirts, lapel buttons and badges, pens, pencils, balloons, and business cards are exempt from authorisation requirements.

A street address is required in authorisations to facilitate, as the Australian Electoral Commission stated bluntly, ‘the taking of legal action and the serving of legal documents where a person believes they have been defamed or otherwise have some legal cause of action arising from the publication of the material’.<sup>322</sup>

For some inquiry participants, authorisation requirements do not go far enough. Authorisations do not need to be proportional to the size of the authorised material, which means they can be obscured on larger printed materials. Only people’s names (and not their political or organisational affiliations) are required, which has the potential to mislead electors.<sup>323</sup>

Authorisation rules have also not kept up with recent campaign methods. Robocalls do not require authorisation.<sup>324</sup> The WAEC website states that online advertising, including websites or Facebook sites for electioneering purposes, need authorisation but individual comments do not.<sup>325</sup> There is inconsistency as a result, as Liberal Party Interim State Director Samuel Calabrese explained:

I do not think it is for us to suggest people should not be able to express their views, no matter what they may be, but correct authorisation and having an understanding of where they may be providing assistance and support and to whom so that a person can make up their own mind as to whether they are providing a political message or communicating their view on it.

- Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia

322 Australian Electoral Commission, ‘Electoral Backgrounder: Electoral Advertising’, 9 June 2016. Available at: [http://www.aec.gov.au/About\\_AEC/Publications/backgrounders/electoral-advertising.htm](http://www.aec.gov.au/About_AEC/Publications/backgrounders/electoral-advertising.htm). Accessed on 6 December 2017.

323 Hon Jacqui Boydell, Campaign Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p5; Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p15.

324 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p6; Mr David Kerslake, WAEC, Letter, 23 January 2018, p5.

325 WAEC, ‘Election Rules’. Available at: <https://www.elections.wa.gov.au/candidates-and-parties/election-rules>. Accessed on 6 December 2017.

*... each Facebook page is authorised but the material that is published by that page does not necessarily need an authorisation on it. So if you are putting out a political message, the equivalent of a postcard, or whatever it may be, you do not need to authorise that individual message, which you can then pay to promote to people, and they may not be able to tell immediately who has paid to put that material in there.*<sup>326</sup>

The Greens recommended the WAEC develop ‘strong and enforceable rules which determine how digitally distributed materials must be authorised’.<sup>327</sup>

### **WA legislation allows for a ‘bunting race’ to occur every election day**

All Australian jurisdictions regulate campaigning on polling day. Tasmania, Northern Territory, and ACT do not allow canvassing for votes within 100 metres of a polling place, although Tasmania further prohibits the distribution of any electoral materials (including how-to-vote cards) anywhere on polling day.<sup>328</sup> In Victoria, canvassing can occur up to three metres from a polling place but only registered how-to-vote cards can be distributed—the distribution of all other materials is banned within a 400-metre radius of a polling place, although the display of bunting and posters is not restricted.<sup>329</sup>

These limits aim to reduce the hassling of electors as they cast their votes. In those jurisdictions that prevent canvassing in close proximity to a polling place, the regulations may also limit the use of how-to-vote cards, encouraging electors to select their own second and later preferences.<sup>330</sup> Mr Green noted, however, that reducing the distribution of how-to-vote cards in this way requires a move away from full preferential voting (like Tasmania, ACT, and the Northern Territory):

*If you have got full preferential voting, I think voters still need assistance. They know the candidate they want to vote for, but they*

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326 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, pp6–7.

327 Submission No. 10 from The Greens (WA), 7 August 2017, p9.

328 Tasmanian Electoral Commission, *Information for Candidates: House of Assembly Elections*, Tasmanian Electoral Commission, Hobart, 2017, pp13–14; Northern Territory Electoral Commission, ‘Information Sheet’, Northern Territory Electoral Commission, 2016; Australian Capital Territory Electoral Commission, ‘Restrictions on Political Canvassing 2017 ATSIEB Election’, 27 June 2017. Available at: [https://www.elections.act.gov.au/elections\\_and\\_voting/atsieb\\_elections/2017-atsieb-election/2017-atsieb-election-polling-places/atsieb-2017-restriction-on-political-canvassing](https://www.elections.act.gov.au/elections_and_voting/atsieb_elections/2017-atsieb-election/2017-atsieb-election-polling-places/atsieb-2017-restriction-on-political-canvassing). Accessed on 7 December 2017.

329 Victorian Electoral Commission, *Candidate Handbook: District By-Election Legislative Assembly*, VEC, Melbourne, 2017, p18.

330 Graeme Orr, *The Law of Politics: Elections, Parties and Money in Australia*, The Federation Press, Sydney, 2010, p164.



*have not got the faintest idea about who the rest of the candidates are.  
Full preferential voting and how-to-vote cards go hand-in-hand.*<sup>331</sup>

How-to-vote cards were used widely in the 2017 election. According to the WAEC post-election survey of voters, 43.6 per cent of respondents used a how-to-vote card when voting at a polling place or early voting centre.<sup>332</sup>

Like Queensland, NSW, and South Australia, WA bans canvassing within six metres of a polling place entrance. The relatively limited exclusion zone can lead to a ‘bunting race’ around a polling place, in which political party workers cover walkways in posters and ephemera, preventing others from displaying their material. The WAEC tends to receive complaints about groups who ‘got there at such and such a time in the morning and put their material all over the fence’.<sup>333</sup> In the 2017 election, the WAEC received 35 complaints about electoral signage placed in inappropriate places.<sup>334</sup>

Opinion was divided as to whether the ‘bunting race’ had a positive or negative impact on election day. On the one hand, some witnesses said it was overwhelming and could act as a disincentive to voting, with a report of voters ‘almost leaping the fence’ to avoid workers.<sup>335</sup> At least three political parties supported the WAEC providing materials on behalf of all political parties, thus doing away with the need for campaign workers.<sup>336</sup> On the other hand, it was suggested that it created an exciting environment and was a marker of a ‘robust democracy’.<sup>337</sup> One party said ‘there is an expectation that there is a right to engage to [sic] the voter as they go to make their vote’.<sup>338</sup>

Provided their materials are correctly authorised and they are outside the six-metre radius, the WAEC has no jurisdiction over the activities of campaign workers. Unlike

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331 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p6.

332 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, p44.

333 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p19.

334 Mr David Kerslake, WAEC, Letter, 17 July 2017, pp4–5.

335 Ms Anne Fergusson-Stewart, State Secretary, Shooters, Fishers and Farmers Party (WA), *Transcript of Evidence*, 6 September 2017, p2; Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p5; Miss Tamkin Essa, Project Support Officer, and Mr Stefaan Bruce-Truglio, Policy and Advocacy Officer, Youth Affairs Council of Western Australia (YACWA), *Transcript of Evidence*, 11 October 2017, p13.

336 Ms Anne Fergusson-Stewart, State Secretary, Shooters, Fishers and Farmers Party (WA), *Transcript of Evidence*, 6 September 2017, p2; Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p5. The Western Australia Party recommended future elections be conducted by post only, with public funding only provided for a ‘250 word information brief on each candidate mailed out with ballot papers’. See Submission No. 5 from the Western Australia Party, 4 August 2017.

337 Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September 2017, p7; Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p19.

338 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p11.

NSW, which limits posters displayed within the grounds of a polling place or on the boundary of the grounds to 8,000 square centimetres, WA legislation does not have provisions that would prevent an enthusiastic party dominating the space outside a polling place.<sup>339</sup>

## **Incorrectly authorised materials remained on display on election day**

During the election, the WAEC received 47 complaints about incorrectly authorised electoral material.<sup>340</sup> The adequacy of the WAEC response to such complaints on election day was questioned by some inquiry participants.

One political party told us of incorrectly authorised material ‘quite clearly produced by someone at home’, which the WAEC failed to address for ‘a number of hours’.<sup>341</sup> Another raised concerns about a corflute that lacked the name of the individual authorising the material. When brought to its attention, the WAEC directed its officials (via text message) to remove the corflutes. But the party contended that although they were removed from the Newman polling place, they continued to be displayed throughout election day at the 11 other polling places in the Pilbara district.<sup>342</sup>

The National Party suggested insufficient resourcing of the WAEC led to unauthorised materials remaining in circulation. Others said that there was a lack of clarity about who was responsible for resolving such issues—did the returning officer decide, or should candidates and parties have resolved issues outside polling places?<sup>343</sup> The manuals provided to returning officers and polling place managers by the WAEC do not directly address what to do if material is incorrectly authorised.<sup>344</sup> Many of the returning officers for the 2017 election were ‘first timers’.<sup>345</sup> Mr Green pointed out that unless one is an experienced returning officer, it can be difficult to police material that ‘one mob finds completely offensive, and the other one thinks is perfectly valid’. Further, it is challenging for a polling place official ‘who only does elections once every blue moon to really understand what their powers are under the act, and their ability to act or not’.<sup>346</sup>

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339 Mr Simon Kwok, Executive Director, Elections, NSWEC, *Transcript of Evidence*, 18 October 2017, p9; Ms Lucinda Cheshire, Executive Assistant, NSWEC, Electronic Mail, 1 November 2017, p1.

340 Mr David Kerslake, WAEC, Letter, 17 July 2017, p5.

341 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p7.

342 Hon Jacqui Boydell, Campaign Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p7.

343 Submission No. 10 from The Greens (WA), 7 August 2017, p9; Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p14.

344 WAEC, *Returning Officer Manual: 2017 State General Election—Legislative Assembly*, WAEC, Perth, 2016; WAEC, *Polling Place Manager Manual*, WAEC, Perth, 2017.

345 WAEC, ‘SGE2017 – WAEC Election Review Report’ from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C, p19.

346 Mr Antony Green, election analyst, *Transcript of Evidence*, 13 September 2017, p14.

Legislative amendments requiring the registration of electoral matter could assist the WAEC to remove incorrectly authorised materials. If a model similar to Victoria or NSW was adopted, for example, questions around enforcement responsibility may no longer be an issue. Polling place managers would be provided with copies of registered materials and could confidently determine whether particular publications were permitted for distribution.

Although the scope of this inquiry has somewhat limited our ability to evaluate best practice in all areas of electoral processes and operational practices, some evidence from other Australian jurisdictions has indicated what well-resourced electoral commissions, working within a system that requires the registration of electoral materials, are able to implement. In NSW, for example, all materials distributed on election day must be registered with the electoral commission. At recent by-elections, the electoral commission trialled the use of inspectors who, armed with copies of all registered materials, visited areas considered to be at risk of unregistered or unauthorised materials. Alison Byrne, Funding, Disclosure, and Compliance Executive Director with the NSW Electoral Commission, explained:

*The guys have copies of all the registered materials. They introduce themselves to workers on the day—the ROs, polling place managers, local area commanders, with the police—so there is an awareness that they are there and around, and they receive allegations on the day around electoral material either being unregistered or unauthorised, and they are able to respond on the spot, and in doing so either the material is not distributed further or a miscommunication or a misunderstanding is clarified on the spot.*<sup>347</sup>

NSW Electoral Commissioner John Schmidt said the use of inspectors also enabled returning officers and polling place officials to focus on their main role—running the poll.<sup>348</sup>

Mr Kerslake did not believe that registration would make any difference, however:

*For every problem it solves, it can create another problem. To have a heap of how-to-vote cards being given out that have not been registered but look just the same as all the others, you are faced with having to round them up and get them taken away because they have not been officially approved. There are swings and roundabouts.*<sup>349</sup>

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347 Ms Alison Byrne, Executive Director, Funding, Disclosure and Compliance, NSWEC, *Transcript of Evidence*, 18 October 2017, p8.

348 Mr John Schmidt, NSW Electoral Commissioner, NSWEC, *Transcript of Evidence*, 18 October 2017, p8.

349 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p19.

Some inquiry participants expressed concern about the possible impact on freedom of speech caused by registration requirements. The practice of producing material at the last minute would stop, potentially curtailing the activities of participants who are 'quite flexible and nimble' in how they deliver their campaign messages.<sup>350</sup>

The issues discussed in this chapter necessitate the development of political finance and election advertising laws in WA that are 'fit for purpose' in the twenty-first century. Any changes to the existing regime require broad consultation with, and consideration of, all stakeholders. Consideration of best practice both within Australia and internationally is also needed. This is why it is imperative that the joint standing committee into electoral matters, which we recommended in chapter 1, is established. It would be able to assist with the detailed review of legislation and electoral practices, and stakeholder engagement that is beyond the scope of this inquiry.

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350 Mr Samuel Calabrese, Interim State Director, Liberal Party of Western Australia, *Transcript of Evidence*, 9 August 2017, p7; Hon Jacqui Boyde, Campaign Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p3.

## Chapter 6

# The post-election review process does not support continuous improvement

### The WAEC review process appears robust

The Western Australian Electoral Commission (WAEC), like all Western Australian (WA) public sector organisations, measures and reports its performance by employing key performance indicators (KPIs). These are audited by the Auditor General and published in the WAEC annual report. The aim of the framework is to provide Parliament and the public with information to assess whether the agency is ‘achieving government desired outcomes and obtaining value for public funds from services delivered’.<sup>351</sup> Of the 11 audited KPIs captured in the 2016–17 annual report, five related to the 2017 State General Election (2017 election) (see table 6.1).

**Table 6.1: Audited key performance indicators**

Key effectiveness indicators		2016–17 Target	2016–17 Actual
The number of relevant breaches of “Declaration by Officer” (Form 1) upheld by a Court of Disputed Returns*		Nil	Nil
Percentage eligible electors on the state electoral roll*		91.00%	92.72%
Percentage of enrolled electors voting in state elections (or by-elections) or referenda	State general election*	91.00%	86.60%
	By-election	n/a	n/a
	Referenda	n/a	n/a
Average percentage of enrolled electors voting in local government ordinary postal election or referenda conducted by the commission		n/a	30.69%
Key efficiency indicators		2016–17 Target	2016–17 Actual
Average cost per elector of providing electoral services (enrolment and election management)*		\$5.08	\$5.76
Average cost per elector of conducting state general elections (or by-elections) or referenda events	State election*	\$11.74	\$11.01
	By-election	n/a	n/a
	Referenda	n/a	n/a
Average cost per elector of conducting local government ordinary (or/and extraordinary) elections conducted by the commission		n/a	\$3.82

\* Indicates an election-related KPI.

Source: WAEC, *Annual Report 2016–2017*, WAEC, Perth, 2017, pp37–38.

351 Department of Treasury, *Financial Administration Bookcase, update no. 78*, Government of Western Australia, Perth, 2017.

Prior to the election, the WAEC also produced the *2017 State General Election Strategy and Commitments Charter* (the Charter). This not only articulated the WAEC's service commitments to electors, candidates and political parties, media, and electoral staff, but also contained the WAEC's specific objectives in relation to the election.<sup>352</sup> Fifteen KPIs specific to election operations were included. These were largely the same as those used to evaluate the WAEC's management and administration of the 2013 State General Election (2013 election) (see appendix nine).

The *2017 State General Election Results and Statistics* report, which served as a statistical overview, was released following the election. A comprehensive report almost 270 pages in length, it included detailed information about first preference votes at each polling place (arranged by Legislative Assembly district and Legislative Council region) and voter participation by age and gender.<sup>353</sup>

The WAEC also used a range of methods to gather feedback from key stakeholders. Those brought to our attention were:

- A review of WAEC performance, conducted by a former senior electoral official. This review involved polling place visits on election day and gathering feedback from WAEC staff.<sup>354</sup>
- A commissioned survey of a representative sample of 1,200 electors.<sup>355</sup>
- A survey of 140 registered iVote electors.<sup>356</sup>
- Surveys of polling officials, candidates, polling place managers, and declaration issuing officers, conducted using online survey development platform SurveyMonkey. At least 200 candidates reportedly responded to the survey.<sup>357</sup>

Other review methods may have been used but these were neither publicly available nor brought to our attention during the inquiry. If additional reviews or surveys have been conducted, the WAEC should release them in the interests of transparency and accountability.

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352 Western Australian Electoral Commission (WAEC), *2017 State General Election: Strategy and Commitments Charter*, WAEC, Perth, 2016, pp6–7, 8–9, 12.

353 WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017.

354 WAEC, 'SGE2017 – WAEC Election Review Report' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C.

355 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017.

356 WAEC, '2017 State Election iVote Users Survey' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 22 December 2017.

357 Mr David Kerslake, WAEC, Letter, 17 July 2017, p11; Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p17.

## **The review process risks becoming a ‘tick the box’ exercise**

### **There was no significant improvement in measured performance between 2013 and 2017 elections**

The WAEC used the same 15 indicators (with minor amendments) to measure its performance in the 2013 and 2017 elections (see appendix nine). Although the number of achieved targets increased from six in 2013 to eight in 2017, the introduction of direct enrolment was largely responsible for the achievement of two of the targets in 2017 (the average state-wide elector participation rate; and elector participation rate for 18–24 year olds equal or better than the national target of 80 per cent).

Performance actually decreased in some of the identified areas, including:

- Percentage of Legislative Assembly first preference count results received from ordinary polling places by 8.00pm on polling day.
- All complaints received and formal election enquiries are responded to or acknowledged within 24 hours or by the next business day.
- Average state-wide voter turnout—i.e. percentage of those on the roll who vote.

Factors beyond the control of the WAEC contributed to some of these decreases. The large number of parties and candidates on ballot papers in 2017, for example, contributed to slower counts than in 2013. The decline in the average state-wide voter turnout was influenced by the introduction of direct enrolment, potentially bringing onto the roll electors without the knowledge or inclination to vote. As we stated in chapter 2, however, this increased the need for electoral education by the WAEC and therefore remains a relevant measure.

### **The introduction of direct enrolment reduced the relevance of one audited performance indicator**

It is questionable whether the percentage of eligible WA electors on the state electoral roll is still an accurate measurement of the WAEC’s performance. Unless Western Australians are actively avoiding engagement with government agencies, it is likely that most eligible electors will be captured by the direct enrolment process in the future. We assume there has been a related reduction in activities previously undertaken by the WAEC to encourage enrolment, such as the large-scale commissioning of advertising as part of an enrolment drive.<sup>358</sup>

Given direct enrolment only came into operation in August 2016, it is understandable that this measurement remained an audited KPI during 2016–17. The measure was

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358 Mr Warwick Gately, Electoral Commission, WAEC, *Transcript of Evidence*, 26 September 2012, p2.

adopted as part of the budget process over three months before direct enrolment was introduced.<sup>359</sup> However, we are not sure why it has remained as the only enrolment-related measure for 2017–18.<sup>360</sup> It no longer seems to meet the standards set by the Treasurer’s Instruction 904 (Key Performance Indicators) because it is not necessarily tied to services provided by the WAEC.<sup>361</sup>

We note that the WAEC does provide additional enrolment information through its electoral enrolment statistics reports, which are published quarterly. Nevertheless, these only detail WA enrolment numbers for all electoral districts and regions and the percentage change in total enrolment for each electoral district and region since March 2015; they do not measure WAEC performance.<sup>362</sup>

The introduction of additional, enrolment-related indicators may provide the transparency and accountability required. If the WAEC has not done so already, indicators and targets similar to those of the Australian Electoral Commission’s (AEC) enrolment program should be adopted. These nine performance indicators, which were developed by the AEC following an Australian National Audit Office audit, measure the completeness and accuracy of the roll as well as enrolment processing quality and timelines (see appendix ten).<sup>363</sup>

If the WAEC already internally tracks its performance in these areas, we strongly encourage it to publish this information. We note that the AEC reports against these targets quarterly or annually.

## **Recommendation 22**

That the Western Australian Electoral Commission develop, publish, and report against performance indicators that relate to enrolment processing quality and timelines, and the accuracy and completeness of the electoral roll.

### **The online surveys did not identify all issues**

The use of online surveys for candidates and electoral officials failed to capture adequately the concerns of key stakeholders. The surveys measured the strength of agreement or level of satisfaction with a range of statements (such as the public information campaign for candidates or provision of training for polling place officials),

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359 *Western Australian Government Gazette*, no. 148, 16 August 2016, p3469.

360 Government of Western Australia, *Western Australian State Budget 2017–18: Budget Paper No. 2*, vol. 2, Government of Western Australia, Perth, 2017, p590.

361 Department of Treasury, *Financial Administration Bookcase, update no. 78*, Government of Western Australia, Perth, 2017.

362 WAEC, ‘State Enrolment Reports’. Available at: <https://www.elections.wa.gov.au/enrol/enrolment-statistics/state-enrolment-reports>. Accessed on 21 December 2017.

363 Australian National Audit Office, *Third Follow-up Audit into the Australian Electoral Commission’s Preparation for and Conduct of Federal Elections*, Commonwealth of Australia, Barton, 2015, p29.



rather than explicitly encouraging respondents to identify areas for improvement. Comment sections were included, but the sample of surveys we received from the WAEC suggested most respondents did not take advantage of them.<sup>364</sup> Without this information, it is difficult for survey results to inform improvements at subsequent elections.

The need for the WAEC to maintain its impartiality places the onus on candidates to provide feedback, according to the Electoral Commissioner David Kerslake:

*We are in a bit of a bind there, because we have to be careful, with no disrespect to people around the table, because when you get into the next state election, you are all candidates from our perspective, as opposed to members of Parliament, and need to be treated the same as all other candidates. We have to be a little careful in terms of going out and soliciting advice or feedback, because other candidates may take a dim view of that down the track.*<sup>365</sup>

Mr Kerslake said candidates wrote to the WAEC if they had particular concerns, but the evidence we received suggested this was not the case. It was telling that the electoral and deputy electoral commissioners were not aware of at least one serious issue—ballot papers being left unattended at one early voting centre—until we brought it to their attention.<sup>366</sup>

### **There were gaps in data collection**

Throughout the inquiry, we requested information from the WAEC to assist us in assessing its administration and management of the 2017 election. Yet many of our requests were declined on the basis that the data was either not collected or not centrally collated. Information that we did not receive included the:

- Number of multi-lingual officials employed during the 2017 election and where they were located.
- Languages spoken by multi-lingual officials.
- Number of Aboriginal polling place officials employed.
- Informality rate for postal voting compared to ordinary voting in the Legislative Assembly.

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364 Mr David Kerslake, WAEC, Letter, 17 July 2017, attachment 9.

365 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 12 July 2017, p17.

366 Mr David Kerslake, Electoral Commissioner, and Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 12 July 2017, p21.

- Informality rates of each remote polling location.

In accordance with the Public Sector Commissioner's Instruction No. 6: Workforce data reporting obligations, the WAEC is required to collect and provide demographic information about its workforce to the Public Sector Commission. The data includes an employee's date of birth, gender, county of birth, primary language spoken at home, and whether he or she identifies as Aboriginal or is a person with disability. This information is included in the Public Sector Commission's annual state of the sectors report, which includes the diversity profile of the WA public sector.<sup>367</sup>

Although the WAEC is not required to provide demographic data for its casual employees, this process provides a data collection framework that could be extended to election staff. Data is the starting point for a comprehensive review or assessment of performance. How can the WAEC determine whether returning officers are following its directions and hiring polling place officials that reflect their communities if they do not know the ethnicities or languages of their casual staff?

### **There is a need for more positive engagement between the WAEC and political parties during a post-election review**

Those parties that raised concerns directly with the WAEC indicated they received inadequate responses. The Nationals WA, for example, approached the WAEC about an anomalous increase in elector enrolment in the Pilbara district. The WAEC reportedly agreed to meet with the Nationals to discuss the matter, but later refused.<sup>368</sup> The Nationals State President James Hayward described the commissioner's initial responses as 'quite dismissive'.<sup>369</sup>

Mr Kerslake took the stance that an investigation should only be conducted if someone raises 'something more specific that can be investigated':

*I have had a request to investigate the figures in the Pilbara but the request has been based simply on the fact, "How could this be?" There has been no reference to "on this occasion" or "in this instance somebody was doing whatever and I do not think that that was right." There has been nothing like that. It has just been, "Look at those figures." I look at that and say there is nothing untoward about those*

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367 Mr Alan Lee, Strategic Engagement and Coordination, Public Sector Commission, Electronic Mail, 17 January 2018.

368 Mr James Hayward, State President, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p8.

369 *ibid.*, p10.

*figures on the face of it and nothing therefore that would lead me to go and conduct an investigation.*<sup>370</sup>

The Nationals, by contrast, wanted a more proactive response from the WAEC:

*... I think it was a little bit disappointing that we as a registered political party were not able to sit down with the commissioner and have a bit of a discussion around the table about what the issues were and about what our concerns were ... the theme of the letters that were sent back to us was, "Well, if you go out and find the information, then we're happy to have another look." Again, I make the point that we do not believe, as a political party, it is our role to investigate the integrity of those rolls. We feel very strongly that that is the WAEC's role.*<sup>371</sup>

The WAEC appeared to conduct only a surface examination of the enrolment issue. Mr Kerslake maintained the spike in enrolments was due to the automatic reconciliation of the federal and state electoral rolls, not self-initiated changes.<sup>372</sup> However, when we asked Mr Kerslake for the number of electors who had self-initiated a change in their electoral enrolment in the Pilbara, the commissioner responded 'I honestly do not know whether it is possible to trawl down into the data and obtain that'.<sup>373</sup> Mr Kerslake subsequently supplied the data, which suggested the WAEC could have conducted the analysis when the Nationals first raised the issue, and thereby promptly allayed concerns.<sup>374</sup>

We note that, following further examination, the Nationals were satisfied the integrity of the electoral roll was not compromised. But the party remained dissatisfied with what it perceived as an initial brush-off by the WAEC:

*... we did not have the opportunity to meet and discuss our concerns initially, and I am not sure that we really got the real clarity until probably the last correspondence we got. So initially we felt that the commission's responses to us were quite dismissive.*<sup>375</sup>

The Greens (WA) appreciated the availability of 'a particular contact person that the parties could contact' when communicating with the WAEC.<sup>376</sup> Yet it also experienced

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370 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 12 July 2017, pp6–7.

371 Mr James Hayward, State President, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p9.

372 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 12 July 2017, p10.

373 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p9.

374 Mr David Kerslake, WAEC, Letter, 17 July 2017, p3.

375 Mr James Hayward, State President, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p10.

376 Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, p1.

delays when seeking information. Post-election, the Greens requested a full dataset of Legislative Council votes from the WAEC to independently verify the results for one region in particular.<sup>377</sup> Despite having made the request ‘immediately after the result was declared’, the WAEC had not provided the data some four months later.<sup>378</sup> To our knowledge, there is nothing preventing the WAEC from releasing this information.

WA Labor Assistant State Secretary Lenda Oshalem was also critical of the WAEC’s post-election review process with political parties when compared to the AEC:

*... the AEC has a rigorous process and it invites almost soon after—within a month, I think, we got an invite to go to the AEC here at WA head office to talk to them about the issues we had, no matter how big or small they were. They took it on board. They even gave us feedback. I got an email almost straightaway from the WA manager that had some follow-up dot points of things that we asked about that we were unsure about. The process post-state election seemed rather informal and not too common at all. They are hardworking individuals at the WAEC, but we just got by chance an email and someone thought it would be a good idea to come and check with us how we thought the process worked.<sup>379</sup>*

Political parties’ interactions with the WAEC were not uniformly bad. The Shooters, Fishers and Farmers Party (WA) said it had only positive interactions with the WAEC.<sup>380</sup> Other political parties recognised the professionalism, impartiality, and efficiency of WAEC staff (see chapter 7). Nevertheless, the examples outlined here build a picture of an electoral commission with an unsystematic approach to review and the assessment of performance. While we appreciate the WAEC cannot be seen to respond to the concerns of one political party above another, the evidence suggests the WAEC chose to avoid any accusation of partiality at the expense of effective stakeholder engagement.

### **Recommendation 23**

That the Western Australian Electoral Commission conduct a comprehensive review of its processes for gaining feedback from political parties and responding to their concerns.

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377 Submission No. 10 from The Greens (WA), 7 August 2017, p17; Mr Ozzie Coghlan, Scrutineering Coordinator, The Greens (WA), *Transcript of Evidence*, 16 August 2017, pp7–8.

378 Submission No. 10 from The Greens (WA), 7 August 2017, p17.

379 Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p5.

380 Ms Anne Fergusson-Stewart, State Secretary, Shooters, Fishers and Farmers Party (WA), *Transcript of Evidence*, 6 September 2017, p5.

## Some key performance areas were not formally assessed and there was an over-reliance on unsolicited feedback

In the lead up to the 2017 election, the WAEC briefed the Community Development and Justice Standing Committee of the 39th Parliament on its preparations. The WAEC identified several key activities, including preparations for increased early voting in person, remote polling, and public awareness campaigns for younger electors and people from culturally and linguistically diverse (CaLD) backgrounds.<sup>381</sup>

However, the WAEC did not formally evaluate its performance in these areas during or after the election and instead relied largely on unsolicited feedback to measure its success. To our knowledge, the only methods to obtain feedback from electors following the 2017 election was a survey of a representative sample of 1,200 electors and a survey of registered iVote electors.<sup>382</sup> Separate surveys or consultation processes were not conducted with communities with traditionally low electoral participation, such as younger electors and people from CaLD or Aboriginal backgrounds. While the responses of young people were analysed as part of the broader electors' survey, the sample group was small, potentially reducing the reliability of findings.<sup>383</sup>

### Early voting

The WAEC did not review the performance of early voting centres at the 2017 election, despite predictions that demand for early voting will continue to increase at future elections.<sup>384</sup> The WAEC survey of electors assessed knowledge of early voting options, but did not specifically assess early voters' experiences or the opening hours they preferred.<sup>385</sup> As a result, it is unclear whether early voting centres met electors' needs.

When questioned about opening hours at early voting centres, Deputy Electoral Commissioner Chris Avent described an approach to performance review that relied on unsolicited feedback:

*We certainly did not get feedback: "Why aren't you available at seven o'clock at night?" We have not had that feedback. I am not saying that some people might say that that would be a great idea and we should be open until nine o'clock when the shops close, but we certainly have*

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381 Mr David Kerslake, Electoral Commissioner, WAEC, *Briefing Note: Western Australian Electoral Commission Preparations for the 2017 State General Election*, 2 September 2016.

382 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p31.

383 A +/-5 per cent sampling error is a market research industry standard for surveys requiring satisfactory levels of reliability.

384 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 12 July 2017, p16; Ms Lenda Oshalem, Assistant State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p12.

385 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017.

*not had a groundswell of feedback saying, “The early voting centres were not sufficiently open and available for me to cast my early vote.”*<sup>386</sup>

Our inquiry uncovered a range of opinions regarding opening hours (see chapter 3). Without a formal process by which to gather this feedback, however, the WAEC might remain ignorant of possible areas for improvement.

The WAEC did not appear to periodically monitor the number of electors who were voting at each centre during the early voting period. This is particularly concerning in light of Mr Kerslake’s comments, prior to the election, that a key strain on the election budget was the inability to predict the impact of early voting on attendance voting on election day. The WAEC did not know the electorates in which voters would cast their ballots early, and therefore had to staff all polling places to the same level as the 2013 election.<sup>387</sup>

Three months post-election, it seemed the WAEC had still not collated information about electors’ use of early voting centres. Although it was subsequently provided (see box 3.2), neither Mr Kerslake nor Mr Avent were aware of the number of people who had voted each week during the early voting period when they appeared before us.<sup>388</sup> Labor indicated that the WAEC should provide periodic data on the number of electors using early voting centres, both to improve stakeholder understanding of the process and to provide the WAEC with information about ‘whether their system is working’.<sup>389</sup>

Other Australian electoral commissions take a more proactive approach to evaluate early voting centre services. During the 2015 New South Wales (NSW) election, for example, the NSW Electoral Commission conducted face-to-face interviews at four early voting centres over the pre-polling period.<sup>390</sup> As part of the AEC’s 2016 voter survey, those who cast an early vote were asked if they had a reason for early voting.<sup>391</sup>

## **Remote polling**

The WAEC also did not seek feedback from people living in remote communities, despite WA districts with remote polling consistently experiencing the lowest turnout

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386 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p16.

387 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p20.

388 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p14; Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p14.

389 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, pp13–14.

390 New South Wales Electoral Commission (NSWEC), *Report on the Conduct of the 2015 State General Election*, NSWEC, Sydney, 2015, p25.

391 Ms Fleur Hill, State Manager and Australian Electoral Officer for WA, Australian Electoral Commission, Electronic Mail, 21 December 2017.

rates.<sup>392</sup> This reduced discussions about why voter turnout was so low and what the WAEC might do to address the issue to speculation. For example, the WAEC grossly over-predicted the number of electors that would use remote polling (see table 6.2).<sup>393</sup> When questioned about the discrepancy, Mr Kerslake identified factors that ‘can’ influence voter turnout, including ‘the transient nature of the electorate’, weather events, and ‘reduced access to voting services as a result of remoteness’.<sup>394</sup>

**Table 6.2: Predicted and actual use of remote polling**

District	Remote polling venues	Predicted number of electors	Total formal votes*	Total informal votes*
Kalgoorlie	6	136	195	7
Kimberley	44	3,328	1,619	78
North-West Central	13	1,320	195	17
Pilbara	9	847	352	23

\* Includes special institutions.

Source: Data for table sourced from Mr David Kerslake, WAEC, Letter, 20 October 2017, p3.

Due to difficulties it experienced in accessing some remote communities during the election, the WAEC recommended iVote eligibility be expanded to include voters located in remote areas.<sup>395</sup> However, Mr Kerslake stated the WAEC had ‘not surveyed Indigenous communities directly on that issue’, and therefore had no information about the acceptability of internet voting for the target group.<sup>396</sup>

Part of the problem in measuring WAEC performance in relation to remote polling is determining the standard by which performance should be measured. As Mr Avent asked:

*... what is success? Clearly the turnout in the Kimberley is lower than the turnout in Nedlands, but what is success? Is a 75 per cent turnout in the Kimberley satisfactory or not, whereas is a 95 per cent turnout in Nedlands satisfactory or not?*<sup>397</sup>

In the 2013 election, the WAEC included the lowest electoral district voter turnout figure as an election-specific indicator. This measure was originally adopted because the WAEC ‘was conscious of the exceedingly low turnout in some Mining and Pastoral districts at the 2008 election’.<sup>398</sup> It enabled (or, at least, contributed to) an evaluation

392 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p11.

393 Mr David Kerslake, WAEC, Letter, 20 October 2017, p3.

394 Mr David Kerslake, WAEC, Letter, 20 November 2017, p1.

395 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p32.

396 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p13.

397 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p11.

398 Mr David Kerslake, WAEC, Letter, 23 January 2018, p4.

of the WAEC's performance in relation to the electoral participation of remote communities. However, the WAEC did not adopt the measure for the 2017 election because it 'considered a State-wide or average target to be a more valid indicator of performance and to provide a more meaningful comparison of our overall performance over the longer term'.<sup>399</sup>

In 2017, Pilbara had the lowest turnout rate at 69.98 per cent—2.97 percentage points less than the lowest electoral district voter turnout in the 2013 election.<sup>400</sup> Yet because the indicator was not included in the 2017 Charter, the decline was somewhat hidden.

### **Ambassador program and electoral information officers**

The WAEC did not conduct a rigorous evaluation of the ambassador program and the use of electoral information officers, despite stating prior to the election that they were trials.<sup>401</sup> This lack of evaluation was not a post-election oversight—neither of the WAEC strategy documents for engaging CaLD communities mention evaluation or participant feedback at all.<sup>402</sup> The WAEC performance review, which was conducted by a former senior electoral official, also found that the WAEC needed to make significant improvements in its development of projects.<sup>403</sup>

Mr Kerslake stated the WAEC obtained feedback from ambassadors and electoral information officers through 'follow-up phone calls by the WAEC project officer, plus some unsolicited emails'.<sup>404</sup> This method lacks rigour and a systematic approach to performance review. It is unclear if these follow-up calls resulted in a report with recommended alterations or expansions to the program, for example.

The WAEC did not seek direct elector feedback on the ambassador program or the use of electoral information officers. As a result, the WAEC has no reliable information about how the program was received by targeted electors, nor how the program influenced elector knowledge of voting or elector experiences at polling places (see chapter 2). Edmund Rice Centre WA Deputy Director Christina Ward suggested that a 'survey or feedback from people in local areas' would be appropriate, particularly if

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399 Mr David Kerslake, WAEC, Letter, 23 January 2018, p4.

400 WAEC, *Election 2013: Election Report*, WAEC, Perth, 2013, p58.

401 Mr Chris Avent, Deputy Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p10.

402 WAEC, 'CaLD Electors—Strategies and Initiatives' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix A; WAEC, 'CaLD Elector Services Project Overview' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix B.

403 WAEC, 'SGE2017 – WAEC Election Review Report' from Mr David Kerslake, Electoral Commissioner, WAEC, Letter, 20 October 2017, appendix C, p20.

404 Mr David Kerslake, WAEC, Letter, 20 October 2017, p4.



such a survey were administered by a local agency or adult migrant English program to provide support.<sup>405</sup>

The WAEC's failure to conduct a systematic evaluation of the ambassador program makes it difficult to evaluate the effectiveness of the program and determine whether (or how) the program should be implemented at the next election. It is concerning the WAEC plans to continue the ambassador program and electoral information officers at the 2021 election without this evaluation.<sup>406</sup>

#### **Recommendation 24**

That the Western Australian Electoral Commission conduct rigorous evaluations of all future electoral programs to demonstrate outcomes before they are further implemented.

#### **Younger voters**

The WAEC claimed that the Dark Lord media campaign aimed at younger voters was highly successful. As we discussed in chapter 2, almost all the evidence we received about the Dark Lord campaign contradicted the WAEC's conclusion.

The success claimed by the WAEC may be attributed to how it measured the campaign. Standard advertising analytics was the primary form of measurement used, which largely determine the efficiency of the campaign rather than its effectiveness. As an example, digital advertising was measured by impressions (or the number of users who loaded a page on which a Dark Lord ad was displayed), clicks (the number of users who actually clicked on the advertisement), cost per 1,000 impressions, and cost per click.<sup>407</sup>

The WAEC also drew our attention to the numerous awards the campaign had received locally, and said that it had reached the final round of judging in international advertising awards.<sup>408</sup>

The WAEC's survey of electors assessed 'advertising effectiveness', but did not specifically analyse young people's response to the Dark Lord media campaign.<sup>409</sup> Nor did the WAEC consult WA's peak non-government youth organisation in WA, the Youth Affairs Council of Western Australia (YACWA), in order to gain feedback directly from

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405 Mrs Christina Ward, Deputy Director, Edmund Rice Centre WA, *Transcript of Evidence*, 13 September 2017, p9.

406 Mr David Kerslake, WAEC, Letter, 20 October 2017, p3.

407 WAEC, *WAEC 2017 State Election Post Campaign Report*, report prepared by OMD, WAEC, Perth, 2017, p20.

408 Mr David Kerslake, WAEC, Letter, 23 January 2018, pp5–6.

409 WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017.

young people. Had the WAEC consulted young people and sourced qualitative as well as quantitative feedback, it might have reached a different conclusion.<sup>410</sup>

One of the WAEC's election-specific KPIs relates to young people: elector participation rate for 18–24 year olds equals or better the national target of 80 per cent (see appendix nine). Despite the confusing use of 'participation', however, this indicator only measures the number of eligible electors on the electoral roll and not their actual turnout.

The WAEC does capture the turnout of young people after every election in its results and statistics report. These reports include the number and proportion of electors, by age, who attempted to vote, regardless of whether their ballots were subsequently found to be informal or non-compliant with electoral legislation. Yet the WAEC evidently does not use these statistics to measure WAEC performance or inform service provision because it still claimed the Dark Lord campaign was a success even though participation by electors aged 18 to 34 declined when compared to the previous election (see table 6.3).

**Table 6.3: Younger voter participation in 2013 and 2017 elections**

Age	2013			2017		
	Enrolled	Voted	% Voted	Enrolled	Voted	% Voted
18–19	33,305	31,070	93.29%	39,474	34,698	87.90%
20–24	110,354	93,750	84.95%	126,049	100,395	79.65%
25–29	117,134	95,807	81.79%	134,644	104,683	77.75%
30–34	114,756	97,489	84.95%	143,047	116,649	81.55%
<b>Total</b>	<b>375,549</b>	<b>318,116</b>	<b>84.71%</b>	<b>443,214</b>	<b>356,425</b>	<b>80.42%</b>

Source: Data for table sourced from WAEC, *Election 2013: Results and Statistics*, WAEC, Perth, 2013; and WAEC, *2017 State General Election: Results and Statistics*, WAEC, Perth, 2017.

We acknowledge that the campaign has been successful in advertising and design awards; however, the Committee believes that these are not relevant to measuring the actual effectiveness of the objectives of the campaign, which was to engage young voters.

### Alternative approaches

How could the WAEC better evaluate its performance in these areas? The NSW Electoral Commission's community reference groups offer one solution (see chapter 2). Following an election, the reference groups review how well the commission implemented action plans developed to increase the participation of their

410 Mr Ross Wortham, Chief Executive Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p6; Submission No. 17 from YACWA, 10 October 2017, p4; Mr Stefaan Bruce-Truglio, Policy and Advocacy Officer, YACWA, *Transcript of Evidence*, 11 October 2017, p4.

communities. These reviews then inform future action plans, thereby providing continuous improvement opportunities.<sup>411</sup>

Other methods to gather in-depth qualitative information with priority communities include interviews or focus groups. At the very least, the WAEC should be communicating with peak bodies such as YACWA when reviewing its election programs and services.

#### **Recommendation 25**

That following each electoral event the Western Australian Electoral Commission and, once established, the four community reference groups, review the provision of electoral services to their respective communities.

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411 Mr Simon Kwok, Executive Director, Elections, NSWEC, *Transcript of Evidence*, 18 October 2017, p13; NSWEC, 'Community Reference Groups'. Available at: [http://www.votensw.info/voting/communities/community\\_reference\\_groups](http://www.votensw.info/voting/communities/community_reference_groups). Accessed on 12 December 2017.



## Chapter 7

# Constraints beyond WAEC control caused many of the 2017 election issues

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### The WAEC had a smaller budget than in previous elections but provided more services to more people

The Western Australian Electoral Commission (WAEC) received around \$18.5 million to conduct the 2017 State General Election (2017 election). Although this was the same budget allocation it received to conduct the 2013 State General Election (2013 election), it was a 'reduction in real terms'.<sup>412</sup> The Consumer Price Index increased between 2013 and 2017, and the introduction of direct enrolment and its associated expansion of the electoral roll, internet voting, and the removal of eligibility requirements for early voting meant the WAEC was required to provide more services to more Western Australians.

Using the inflation figures provided by the Reserve Bank of Australia, The Greens (WA) argued the WAEC should have been allocated around \$19.5 million to simply account for inflation. It continued that if the same amount on a per elector basis was provided in 2017 as 2013, the budget allocation should have been almost \$22 million.<sup>413</sup>

The introduction of additional services (which the WAEC was required to provide as a result of 2016 amendments to the *Electoral Act 1907*) was not accompanied by additional funding. The WAEC was therefore required to find funds from elsewhere. For example, \$673,000 was redirected from its recurrent budget to develop the internet voting system.<sup>414</sup> Cost-saving initiatives were also implemented, including:

- Limiting the increase in the salary of polling place staff and count centre casuals.
- Reducing the campaign advertising budget by around \$200,000.

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412 Western Australian Electoral Commission (WAEC), *2017 State General Election: Election Report*, WAEC, Perth, 2017, p3.

413 Submission No. 10A from The Greens (WA), 21 September 2017, p4.

414 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p29; Mr David Kerslake, Electoral Commissioner, WAEC, *Briefing Note: Western Australian Electoral Commission Preparations for the 2017 State General Election*, 2 September 2016, p1.

- Continuing the ‘just-in-time’ training of polling place staff, with most receiving face-to-face training from polling place managers before their polling place opened on election day.
- Discontinuing the EasyVote card, thereby reducing printing and postage costs (see chapter 2).
- Greater use of electronic systems in human resources business processes.<sup>415</sup>

The fact that the WAEC managed to stay within its 2017 budget was a considerable achievement. However, it came at a cost to quality service provision. As we have discussed throughout this report, the WAEC was selective about where it directed its resources. Initiatives addressing the participation of culturally and linguistically diverse (CaLD) communities were developed, but initiatives for Aboriginal communities were not. Structured evaluations of performance were neglected. Media advertising was targeted at young people, but (as indicated by the negative feedback) apparently minimal funding was directed towards consulting the target audience to ensure effectiveness.

Witnesses and submissions also suggested that many of the issues identified in the inquiry were the result of insufficient resourcing, including:

- The inadequate monitoring of third-party compliance with the disclosure regime (see chapter 5).<sup>416</sup>
- Electoral education of young people (see chapter 2).<sup>417</sup>
- Ballot shortages at some early voting centres (see chapter 3).<sup>418</sup>
- The limited number of early voting centres (see chapter 3).<sup>419</sup>
- The failure to remove incorrectly authorised corflutes (see chapter 5).<sup>420</sup>

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415 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, p29; Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p12; Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, pp14–15; Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p3.

416 Submission No. 10A from The Greens (WA), 21 September 2017, p5; Mr Simon Glossop, State Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, pp1, 2.

417 Submission No. 10A from The Greens (WA), 21 September 2017, p6.

418 Submission No. 6 from The Nationals WA, 4 August 2017, p5.

419 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p10.

420 Hon Jacqui Boydell, Campaign Director, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p3.

- The perceived dismissive attitude towards concerns raised by political parties after the election (see chapter 6).<sup>421</sup>

#### Box 7.1: Main WAEC expenses during the 2017 election

Resource area	Expense
Staffing (including contract staff)	\$11,180,401
Communication	\$1,328,854
Advertising	\$1,313,422
Travel and accommodation	\$1,261,952
Contracts and consumables	\$2,272,613
Other expenses	\$1,142,758
<b>TOTAL</b>	<b>\$15,500,000</b>

Source: WAEC, 2017 State General Election: Election Report, WAEC, Perth, 2017, p28.

We note that, at the end of the 2016–17 financial year, the WAEC carried over a surplus of around \$1.5 million, which the WAEC said was ‘to fund the salaries and wages involved with the follow-up of the non-voters and things of that nature’.<sup>422</sup> This appears to be a large quantum when considered against the overall budget and some of the resourcing issues the WAEC brought to our attention throughout the inquiry. The Committee questions whether this money could have been better spent earlier in the process.

#### Recommendation 26

That the Western Australian Electoral Commission budget allocation for the next state general election is adjusted for inflation and is sufficient to support the good conduct of the election, the effective implementation of the recommendations made in this report, and any subsequent legislative changes.

### The Electoral Act is outdated and inflexible

The *Electoral Act 1907* (the Act) is over 110 years old. Amended numerous times, it has morphed into a statute with outdated, sometimes contradictory provisions that limit the flexibility of the WAEC to respond to the rapidly changing electoral environment. Electoral Commissioner David Kerslake, whose day-to-day activities are often dictated by the Act, called it simply ‘a dog’s breakfast’.<sup>423</sup>

The WAEC provided multiple examples illustrating the need for modernisation. Although publication on the WAEC website would be the most expedient method, the legislation requires that the details of the writ and names of nominated candidates be

421 Mr James Hayward, State President, The Nationals WA, *Transcript of Evidence*, 16 August 2017, p9.

422 Mr P.J. Shimmings, Director, Business Services, WAEC, Legislative Assembly Estimates Committee A, Parliamentary Debates (Hansard), 21 September 2017, pE452.

423 Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p3.

published in newspapers circulated in relevant districts or regions. The writ can also be published 'by placards or otherwise'.<sup>424</sup> The Act states explicitly that candidate deposits must be lodged by bank cheque or cash, which increases the administrative burden on the WAEC, political parties, and candidates more than if electronic transfer was allowed.<sup>425</sup>

During 2017 election, the WAEC sought legal advice from the State Solicitor due to confusion about the application of a particular section that prohibits candidates from 'attending a committee meeting held on a premises that sells liquor'. The WAEC explained candidates 'proposed to attend electoral events held at licensed premises'. Although the State Solicitor advised the provision was inserted to prevent 'bribery featuring alcohol' (which sometimes occurred in the nineteenth century), the 'decisive meaning and application' of the section was unclear. As a result, Mr Kerslake could only respond to candidates' queries 'that he did not have a concluded view on this matter'.<sup>426</sup>

The introduction of new provisions without amendments to others might also have increased the WAEC's administrative burden. The extension of early voting eligibility without removing the ability of electors to cast an early vote at any courthouse in the network of Magistrates Courts, for example, meant the WAEC had to consult the Department of the Attorney General to limit the possible impact on normal court operations. It reached an agreement with the Courts Directorate not to use specific courthouses (such as those in Armadale, Midland, Rockingham, Broome, and Bunbury) for early voting. This, in turn, required the WAEC to locate alternative early voting centres to service those areas.<sup>427</sup>

We heard from Deputy Electoral Commissioner Chris Avent that the Act also reduces the WAEC's ability to respond to issues as they unfold. He said flexibility is especially required in remote WA, where 'the rules change or the ground shifts fairly late in the piece, so you have to be responsive'. Yet when interpreted strictly, the legislation does not provide this flexibility. He explained how the WAEC works within the tight legislative parameters set by the Act:

*At the moment, we bounce around it a little bit in order to try and make sure that we provide a service as opposed to being fully compliant with*

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424 *Electoral Act 1907* (Western Australia), s75(4).

425 WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, pp32, 33.

426 Mr David Kerslake, WAEC, Letter, 17 July 2017, p1; Mr David Kerslake, Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 June 2017, p3. See *Electoral Act 1907* (Western Australia), s187(1).

427 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 14 September 2016, p12; Mr David Kerslake, WAEC, Letter, 17 July 2017, p4.



*the letter of the law. That might not sound right, but that is what I think we need to do.*<sup>428</sup>

Precision and clarity are key markers of good legislation. The Panel of Experts on Political Donations in New South Wales (NSW) also noted that ‘people must understand their obligations under legislation if they are to comply with them in practice. Candidates and party head offices also need to understand why the rules are there and what purpose they are meant to serve.’<sup>429</sup> The Electoral Act does not adhere to these standards and therefore needs to be reviewed.

### Recommendation 27

That the *Electoral Act 1907* is reviewed and amended as a matter of urgency. Particular consideration should be given to:

- The political finance regime, including the introduction of administrative penalties for breaches of the disclosure scheme; limits to expenditure by third-party campaigners; more timely disclosure; and a longer disclosure period.
- Political advertising laws, including the registration of electoral material with the Western Australian Electoral Commission; and disallowance of the distribution or display of non-registered materials on election day.
- The ability of political parties to distribute postal vote applications.
- Extending the deadline for receipt of postal votes to account for increasing delays in postal services.

The review should include input from all stakeholders in the electoral system. To maintain public confidence, it is critical that this review is conducted prior to next state general election.

### **Nevertheless, the election was conducted with professionalism, impartiality, and efficiency**

The professional conduct of WAEC staff was recognised throughout the inquiry. Political parties said they were courteous, gracious, patient, supportive, and efficient when responding to elector or scrutineer queries at polling places or the count centre.<sup>430</sup> The impartiality with which the WAEC managed the election was also

428 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p8.

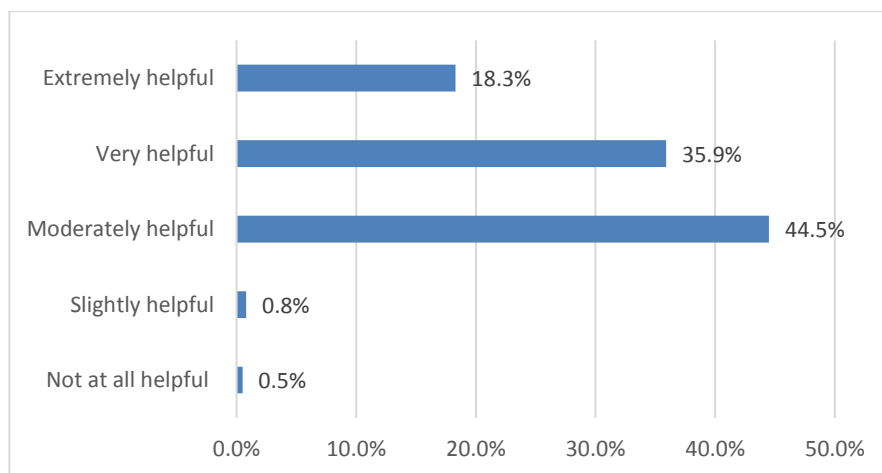
429 Panel of Experts, *Political Donations: Final Report—Volume 1*, NSW Department of Premier and Cabinet, Sydney, 2014, p31.

430 Submission No. 2 from Shooters, Fishers and Farmers Party (WA), 25 July 2017, p2; Submission No.10 from The Greens (WA), 7 August 2017, pp8, 9; Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, pp1, 2; Ms Anne Fergusson-Stewart, State

acknowledged.<sup>431</sup> As one witness said, the absence of any major complaints about the WAEC’s conduct after the election testified to the professionalism of WAEC staff.<sup>432</sup>

Electors also found polling place officials helpful. Only 0.5 per cent of respondents in the WAEC survey of voters who used polling places said officials were not at all helpful (see figure 7.1). Of the 93 respondents who used the WAEC call centre, only one person was not at all satisfied with the service received.<sup>433</sup>

**Figure 7.1: Helpfulness of polling place officials**



Source: WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, p41.

Each state general election, the WAEC faces an unparalleled challenge. As voting is compulsory, it must ensure all electors have adequate opportunity to cast their ballots. It must do so in the largest state in Australia, where (except for the Perth metropolitan area and south-west region) the majority of the landmass is considered remote or very remote. The WAEC took this responsibility seriously during the 2017 election, hiring helicopters to fly remote polling teams to locations isolated by floodwaters and successfully implementing internet voting less than seven months after it had been introduced into law.<sup>434</sup>

Secretary, Shooters, Fishers and Farmers Party (WA), *Transcript of Evidence*, 6 September 2017, p5.

431 Submission No. 2 from Shooters, Fishers and Farmers Party (WA), 25 July 2017, p2; Submission No.10 from The Greens (WA), 7 August 2017, pp1, 8.

432 Mr Patrick Gorman, State Secretary, WA Labor, *Transcript of Evidence*, 9 August 2017, p2.

433 A total of 1,059 respondents used polling places or early voting centres during the 2017 election. See WAEC, *Report on the Western Australian Electoral Commission Survey of Voters – State General Election 2017*, report prepared by Perth Market Research, WAEC, Perth, 2017, pp41, 77.

434 Mr Chris Avent, Deputy Electoral Commissioner, WAEC, *Transcript of Evidence*, 21 August 2017, p2.

None of the issues uncovered in the course of our inquiry threatened the validity of the 2017 election results. They do, however, have the capacity over time to erode confidence in the electoral system if they are not addressed. The WAEC can—and must—do more to ensure all political participants have a level playing field in state general elections and eligible electors have adequate opportunity to have their voices heard. Legislative reform and appropriate resourcing is required to ensure ongoing confidence in the electoral process.

A handwritten signature in blue ink, appearing to be 'P.A. Katsambanis', with a large, sweeping initial 'P'.

MR P.A. KATSAMBANIS, MLA  
CHAIRMAN



# Appendix One

## Inquiry terms of reference

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The Community Development and Justice Standing Committee will inquire into and report on the Western Australian Electoral Commission's administration and management of the 2017 State General Election. In particular, the Committee will assess the adequacy of the Commission's procedures in relation to:

- Ballot security, including paper ballots and electronic ballots;
- The participation of communities with traditionally low levels of enrolment or turnout, and/or high levels of informality;
- Remote polling services; and
- The operation of polling places, including early voting centres, campaign advertising and the distribution of campaign material.

In doing so, the Committee will consider the responsiveness of the *Electoral Act 1907* to the electoral needs of Western Australia.



## Appendix Two

### Committee's functions and powers

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The functions of the Committee are to review and report to the Assembly on:

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.





## Appendix Three

### Submissions received

No.	Name	Position	Organisation
1	Mr Hans Bokelund	Chief Executive Officer	Goldfields Land and Sea Council
2	Ms Anne Fergusson-Stewart	State Secretary	Shooters, Fishers and Farmers Party (WA)
3	Closed submission		
4	Ms Karen Knight	General Manager, Advocacy and Engagement	Vision Australia
5	Ms Julie Matheson	Party Convenor	Western Australia Party
6	Mr Simon Glossop	State Director	The Nationals WA
7	Mr David Burch	Polling place official	
8	Ms Cassandra Taylor	WA elector	
9	Dr Chris Culnane	Research Fellow	
	Dr Vanessa Teague	Cryptographer	
10	Mr Grahame Bowland	Co-Convenor	The Greens (WA)
10A	Mr Grahame Bowland	Co-Convenor	The Greens (WA)
	Mr Ozzie Coghlan	Scrutineering Coordinator	
11	Mr Brian Moore	Former returning officer	
12	Dr Martin Drum	Associate Professor	University of Notre Dame Australia
13	Ms Emma Bennison	Executive Officer	Blind Citizens Australia
14	Ms Helen Maddocks	Manager, Strategy and Planning	Office of Multicultural Interests
14A	Ms Helen Maddocks	Manager, Strategy and Planning	Office of Multicultural Interests
15	Mr David Kerslake	Electoral Commissioner	Western Australian Electoral Commission
16	Mr Antony Green	Election analyst	
17	Mr Ross Wortham	Chief Executive Officer	Youth Affairs Council of Western Australia



## Appendix Four

### Hearings

Date	Name	Position	Organisation
21 June 2017	Mr David Kerslake	Electoral Commissioner	Western Australian Electoral Commission
	Mr Chris Avent	Deputy Electoral Commissioner	
	Mr Louis Gargan	Senior Policy Officer	
9 August 2017	Mr Samuel Calabrese	Interim State Director	Liberal Party of Western Australia
	Mr Patrick Gorman	State Secretary	WA Labor
	Ms Lenda Oshalem	Assistant State Secretary	
16 August 2017	Hon Jacqui Boydell	Campaign Director	The Nationals WA
	Mr James Hayward	State President	
	Mr Simon Glossop	State Director	
	Mr Lachlan Hunter	Former Young Nationals President	
	Mr Ozzie Coghlan	Scrutineering Coordinator	The Greens (WA)
21 August 2017	Mr Chris Avent	Deputy Electoral Commissioner	Western Australian Electoral Commission
	Mr Garry Waldron	Kimberley Returning Officer	
6 September 2017	Ms Anne Fergusson-Stewart	State Secretary	Shooters, Fishers and Famers Party (WA)
13 September 2017	Mr Antony Green	Election analyst	
	Mrs Christina Ward	Deputy Director	Edmund Rice Centre WA
11 October 2017	Mr Ross Wortham	Chief Executive Officer	Youth Affairs Council of Western Australia
	Mr Stefaan Bruce-Truglio	Policy and Advocacy Officer	
	Miss Tamkin Essa	Project Support Officer	
	Ms Sara Shengeb	Project Support Officer	

## Appendix Four

18 October 2017	Mr John Schmidt	Electoral Commissioner	New South Wales Electoral Commission
	Mr Simon Kwok	Executive Director, Elections	
	Mr Mark Radcliffe	Director, Election Innovation	
	Ms Alison Byrne	Executive Director, Funding, Disclosure and Compliance	

## Briefings

Date	Name	Position	Organisation
14 June 2017	Dr Harry Phillips	Parliamentary Fellow (Education)	Parliament of Western Australia

## Appendix Five

### Acronyms

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ACT	Australian Capital Territory
AEC	Australian Electoral Commission
ANAO	Australian National Audit Office
BCA	Blind Citizens Australia
CaLD	Culturally and linguistically diverse
CME	Chamber of Minerals and Energy of Western Australia
ECANZ	Electoral Council of Australia and New Zealand
EIOs	Electoral information officers
EVC	Early voting centre
IEPP	Indigenous Elector Participation Program
KPIs	Key performance indicators
NSW	New South Wales
NSWEC	New South Wales Electoral Commission
OMI	Office of Multicultural Interests
TLS	Transport Layer Security
WA	Western Australia
WAEC	Western Australian Electoral Commission
YACWA	Youth Affairs Council of Western Australia



## Appendix Six

### Polling places with electoral information officers

District	Polling place
Balcatta	Balcatta Senior High School
Baldivis	Makybe Rise Primary School
Baldivis	Waikiki Primary School
Cannington	Brookman Primary School
Cannington	Parkwood Primary School
Cockburn	Coogee Primary School
Fremantle	Fremantle Town Hall
Fremantle	Phoenix Primary School
Girrawheen	Hudson Park Primary School
Girrawheen	Landsdale Primary School
Girrawheen	Marangaroo Family Centre
Girrawheen	Rawlinson Primary School
Girrawheen	Roseworth Primary School
Mirrabooka	Balga Primary School
Mirrabooka	Boyare Primary School
Mirrabooka	Koondoola Primary School
Mirrabooka	Dryandra Primary School
Mirrabooka	Westminster Primary School
Morley	Dianella Secondary College
Thornlie	Addie Mills Centre
Victoria Park	East Victoria Park Primary School
Victoria Park	Wilson Primary School

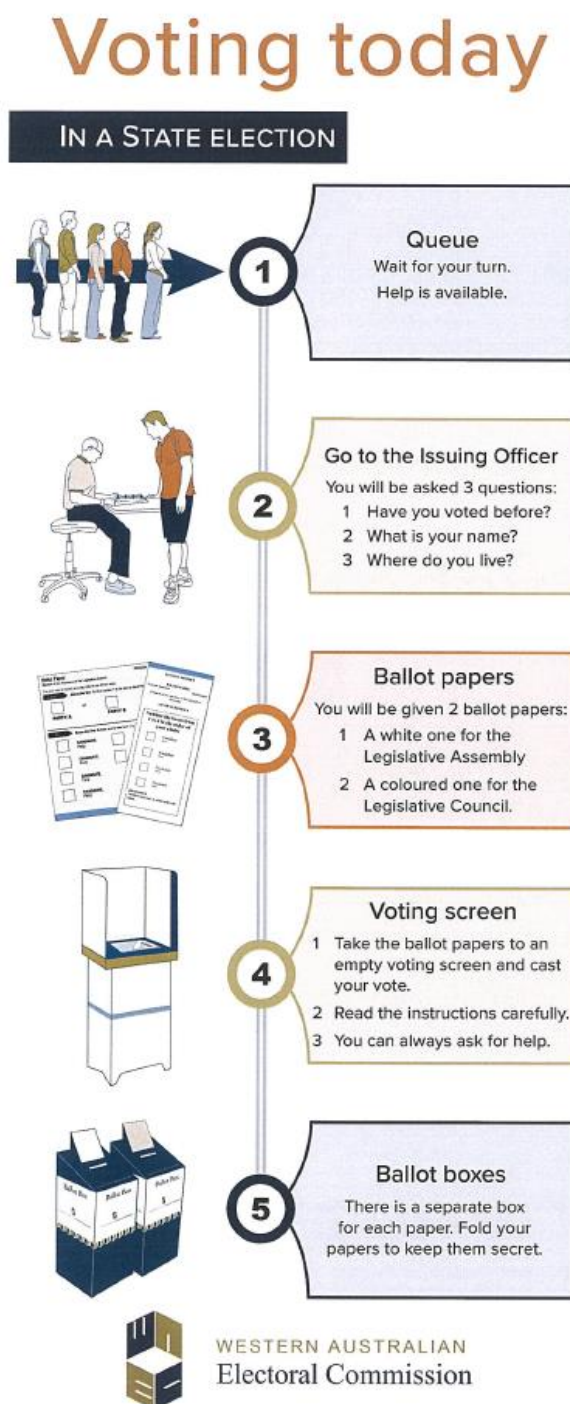
Source: Data for table sourced from Mr David Kerslake, WAEC, Letter, 20 October 2017, p3.





## Appendix Seven

Example of WAEC infographic posters displayed at polling places





## Appendix Eight

### Remote polling schedule

Date of visit (2017)	Community	Total polling time
25 February	Kalumburu	4 hours
27 February	Kanpa Community	1 hour
27 February	Kiwirrkurra Community	5 hours
27 February	Punmu Community	3 hours
27 February	Strelley Station	2 hours
27 February	Tjirrkarli Community	1 hour
27 February	Warralong Community	2 hours
28 February	Balgo (Wirrimanu Community)	5 hours
28 February	Blackstone Community	2 hours
28 February	Jameson Community	1 hour 30 minutes
28 February	Kunawarriji (Well 33)	3 hours
28 February	Parngurr (Cotton Creek)	3 hours
28 February	Ringers Soak (Kundat Djaru)	2 hours
28 February	Wingellina Community	2 hours
1 March	Billilluna Community	3 hours 30 minutes
1 March	Camballin	1 hour
1 March	Jarlmadangah	1 hour 30 minutes
1 March	Jigalong Community	4 hours
1 March	Jimbalakudunj	1 hour
1 March	Mulan (Lake Gregory)	2 hours 30 minutes
1 March	Ngalingkadji Community	2 hours
1 March	Noonkanbah	5 hours
1 March	Parnpajinya Community	2 hours
1 March	Patjarr Community	1 hour
1 March	Tjukurla Community	1 hour
1 March	Wanarn Community	1 hour
2 March	Dodnun (Mt Elizabeth)	1 hour
2 March	Gibb River Station (Ngallagunda)	1 hour 30 minutes
2 March	Kupartiya	2 hours
2 March	Kupungarri Community (Mt Barnett)	1 hour 30 minutes
2 March	Mingalkala	1 hour 30 minutes
2 March	Mt Elizabeth	1 hour
2 March	Warakurna Community	2 hours
2 March	Warburton Community	4 hours 40 minutes
2 March	Yandeyarra Community	2 hours
3 March	Djugarri Community	2 hours
3 March	Imintji Community	1 hour*
3 March	Mt House	1 hour
3 March	Pia Wadjari Community	1 hour

## Appendix Eight

Date of visit (2017)	Community	Total polling time
3 March	Yakanarra Community	2 hours
4 March	Eighty Mile Beach Caravan Park	2 hours 30 minutes
4 March	Pandanus Park	3 hours 30 minutes
6 March	Beagle Bay Community	5 hours
6 March	Djarindjin Community	5 hours
6 March	Lombadina	5 hours
6 March	One Arm Point (Bardi)	5 hours
7 March	Burringurrah Community Aboriginal Corporation	2 hours
7 March	Eucla Community	2 hours
7 March	Glen Hill Community	2 hours*
7 March	Wakathuni Community	1 hours 30 minutes
7 March	Wuggabun	1 hour 30 minutes
8 March	Bow River Community	1 hour
8 March	Doon Doon (Dunham River)	3 hours
8 March	Kurrawang Community	2 hours
8 March	Mimbi Community	1 hour*
8 March	Mt Pierre (Galeru Gorge)	1 hour
8 March	Ngumpan (Pinnacles)	1 hour 30 minutes
8 March	Tjuntjuntjara Community	2 hours
9 March	Cosmo Newberry Community	2 hours
9 March	Ganinyi Community	1 hour
9 March	Moongardi Community	1 hour
9 March	Pullout Springs	1 hour
9 March	Yiyili Community	3 hours
10 March	Bayulu	5 hours
10 March	Koongie Park	2 hours 30 minutes
10 March	Morapoi Station	2 hours
10 March	Mt Margaret Community	2 hours
10 March	Mungullah	2 hours 30 minutes
11 March	Bidyadanga Community	5 hours
11 March	Looma	5 hours
11 March	Mowanjum Community	5 hours
11 March	Wangkatjunka	5 hours

\* Visits not undertaken due to extreme weather conditions.

Source: Mr David Kerslake, WAEC, Letter, 17 July 2017, pp10–11.

## Appendix Nine

### *2017 State General Election Strategy and Commitments Charter* performance indicators

Indicator	Measure	2013 Target	2013 Actual	2017 Target	2017 Actual
<b>Election preparations</b>					
Every Returning Officer completes online training and attends face to face training	% of the total number	100%	100%	100%	100%
Every Polling Place Manager completes online training	% of the total number	100%	Est. 87%	100%	Est. 97%
Polling places and early voting centres receive their full allocation of election materials on time	% of the total number	100%	Est. 99%	100%	Est. 99%
Every electoral district roll is produced and available for distribution to Returning Officers within 10 days of roll close	100% by specific date	100% by 24 February 2013	100%	100% by 19 February 2017	100%
All early voting centres are open and ready to operate from specific date	100% by specific date	100% by 20 February 2013	91%	100% by 20 February 2017	100%
<b>Election conduct</b>					
Percentage of Legislative Assembly first preference count results received from ordinary polling places by 8.00pm on polling day	% of the total number	60%	77%	70%	54.5%
All complaints received or formal election enquiries are responded to or acknowledged within 24 hours or by the next business day	% of the total number	100%	99%	100%	98.4%

## Appendix Nine

Indicator	Measure	2013 Target	2013 Actual	2017 Target	2017 Actual
All advertised polling places are open and ready for polling at 8.00am and remain open until 6.00pm on polling day	% of the total number	100%	100%	100%	100%
Return of the Writs	Returned by due date specified	By date on the Writ 6 May 2013	Yes	By date on the Writ 2 May 2017	Yes
<b>Election outcomes</b>					
Average state-wide elector participation rate—i.e. % of eligible electors on the roll	% of the total eligible	91%	Est. 88.8%	91%	Est. 92.6%
Elector participation rate for 18–24 year olds equals or betters the national target of 80%	% of the total eligible	80%	Est. 74%	80%	83.5%
Average state-wide voter turnout—i.e. % of those on the roll who vote	% of the total enrolled	91%	89.2%	91%	86.9%
Informality rate—Legislative Assembly	% of votes cast	4%	5.99%	4%	4.5%
Informality rate—Legislative Council	% of votes cast	2%	2.83%	2%	2.74%
The number of invalidity complaints stemming from WAEC processes that are upheld by a Court of Disputed Returns	Number of successful complaints	0	0	0	0

The wording of some indicators changed between 2013 and 2017 (i.e. in 2013, the second election preparation indicator was 'Polling Place Managers complete both online training *and attend face to face training* [emphasis added]').

Source: WAEC, *2017 State General Election: Election Report*, WAEC, Perth, 2017, pp30–31; WAEC, *Election 2013: Election Report*, WAEC, Perth, 2013, pp57–58.

## Appendix Ten

### Australian Electoral Commission enrolment program performance indicators and targets

Activity	Performance Indicator	Definition	Target	Reporting frequency
Enrolment	Enrolment rate	The percentage of eligible electors currently enrolled compared to the total number estimated to be eligible to enrol	95%	Quarterly
	Division accuracy rate	The percentage of electors who are enrolled in the correct division, but not necessarily at the correct address within the division	95%	Annual
	Address accuracy rate	The percentage of electors who are enrolled for the address at which they are living	90%	Annual
	Youth enrolment rate	The percentage of eligible electors between 18 and 24 years old currently enrolled compared to the total number estimated to be eligible to enrol	80%	Quarterly
	New citizen enrolment rate	The percentage of new citizens enrolled within three months of attendance at a citizenship ceremony compared to the total number estimated to be eligible to enrol	95%	Quarterly
Enrolment processing quality	Accuracy of essential fields	The Enrolment Quality Assurance Program (EQAP) aims to improve the integrity of the electoral roll through ongoing assessment of AEC enrolment processing. Each month, a sample of enrolment transactions from every division is checked to measure the accuracy of processing.	100%	Annual
	Accuracy of supporting fields		99.5%	Annual

## Appendix Ten

Activity	Performance Indicator	Definition	Target	Reporting frequency
Enrolment processing timelines	Enrolment applications processed in 5 days	Processing time for enrolment applications	95%	Annual
	Enrolment applications processed in 30 days	Processing time for enrolment applications	99.5%	Annual

Source: Australian Electoral Commission, 'Enrolment Program Performance Indicators and Targets', 1 May 2017. Available at: [http://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/index.htm](http://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/index.htm). Accessed on 12 December 2017.