

# Electoral Backgrounder

ELECTORAL FRAUD AND MULTIPLE VOTING

April 2010

## Introduction

1. *Electoral Backgrounders* are published by the Australian Electoral Commission (AEC) to provide a basic introduction to electoral law, policy and procedures for the information and guidance of all interested parties.
2. This *Backgrounder* focuses on fraudulent behaviour in relation to compulsory enrolment and compulsory voting that may result in a person casting more than one vote in an election.
3. Individual matters are assessed on a case-by-case basis and ultimately it is for the courts to decide upon the interpretation of the law in any particular case. Accordingly, if you are in doubt about the interpretation of the law in particular circumstances you should seek your own independent legal advice.
4. The *Commonwealth Electoral Act 1918* (the Act) is available on the Attorney-General's Commonwealth Law website [www.comlaw.gov.au](http://www.comlaw.gov.au). Unless otherwise specified, all references to sections are to sections of the Act. Also please note, the words 'voter' and 'elector' are used interchangeably throughout this publication.
5. Under ss. 101 and 245 of the Act, enrolment and voting for federal elections are compulsory. Compulsory enrolment means that all eligible persons must lodge an enrolment form and provide evidence of identity to the AEC to be entered onto

the electoral roll. Voting during an election period requires every elector to be marked off the certified list of voters for his or her enrolled division, to be provided with ballot papers, to cast a vote in secret, and to place the ballot papers in the ballot box in the polling place or in a relevant postal or declaration envelope provided by the AEC.

6. This *Backgrounder* discusses:
  - Enrolment fraud
  - What is enrolment fraud?
  - Detecting enrolment fraud
  - Multiple voting
  - What is multiple voting?
  - Detecting multiple voting
  - How is multiple voting detected?
  - Avenues available
  - Political neutrality of the AEC
  - Suggestions for further reading.

## Enrolment fraud

### What is enrolment fraud?

7. Electors cannot enrol more than once. Enrolment fraud occurs if an elector makes a false claim for enrolment, for example using a false name or address.

Please note this update replaces *Electoral Backgrounder No 14* published October 2007.

*Electoral Backgrounders* are published for the general information of AEC staff and people interested in electoral issues. *Electoral Backgrounders* present and analyse the issues on various topics, but do not promote a particular position or represent legal advice, and should not be relied upon as such. Anyone requiring legal advice should consult their own legal advisers.



**AEC**

Australian Electoral Commission

8. Under s. 101 of the Act, all people who are entitled to enrol to vote are required to apply for inclusion on the electoral roll.
9. The offence provisions relevant to this activity are found in the *Criminal Code Act 1995* (the Criminal Code). In particular, ss. 136 and 137 provide that it is an offence to give false or misleading documents or information to a Commonwealth Officer in purported compliance with a Commonwealth law. The penalty specified in the Criminal Code for these offences is 12 months imprisonment.

### Detecting enrolment fraud

10. Amendments to the Act, which came into force in 2007, provide for greater evidence of identification requirements for people applying for or varying their enrolment.
11. The integrity, accuracy and completeness of the electoral roll is a key priority for the AEC and comprehensive procedures have been established to pursue and maintain these standards. The procedures identify enrolment discrepancies that arise from people attempting to enrol fraudulently.
12. The key processes through which the integrity of the roll is facilitated are the administrative procedures undertaken by a Divisional Returning Officer (DRO) upon receipt of an application for enrolment or change of enrolment details, and the supplementary Continuous Roll Update (CRU) process.
13. Where fraudulent enrolment is detected, the AEC will refer the matter to the Australian Federal Police (AFP) for investigation and consideration of prosecution by the Commonwealth Director of Public Prosecutions (DPP).

### Administrative assessments by a DRO

14. When a DRO receives an application for enrolment or variation of enrolment details, the DRO will check the enrolment form for accuracy and completeness. The DRO must enter the applicant onto the roll for that division if the DRO is satisfied that the applicant is entitled to be enrolled.
15. Under the Act, the DRO is entitled to make any inquiries the DRO thinks necessary in order to ascertain whether the applicant is entitled to be enrolled. Aside from ensuring that all details required are provided on the enrolment form, the DRO will pay close attention to whether there is more than one enrolment form filled in using similar

names, similar signatures, or the same handwriting, and instigate inquiries to ascertain the accuracy or otherwise of the enrolment information. Additionally, a high number of enrolments at the same address will trigger further inquiries on the part of the DRO before entering the electors on the roll.

### Continuous Roll Update process

16. The CRU process was introduced in 1999. CRU supplements the administrative assessment of enrolment accuracy and incorporates:
  - matching of AEC information against data from external agencies to identify:
    - electors who change address
    - new electors (youths turning 18 and new citizens)
    - people to be removed from the roll (e.g. deceased electors)
    - data-mining conducted on the AEC's computerised roll management system and its inbuilt 'address register', which identifies addresses where enrolment may need updating
    - targeted door knocks where there has been no response to mail-outs generated by CRU data-matching and data-mining.
17. The data-matching and data-mining processes enable the identification of electors who have moved without re-enrolling, addresses that have no enrolments, and addresses that have a high number of enrolments. This allows the AEC to contact these electors to ascertain correct enrolment, and to send enrolment forms to addresses with no electors enrolled.

### Multiple voting

#### What is multiple voting?

18. The offence of multiple voting is a type of electoral fraud set out in s. 339 of the Act. The relevant text of that section, in force as at 1 July 2007, is as follows:
  - s. 339 Other offences relating to ballot-papers etc.
    - (1) A person shall not:
      - (a) impersonate any person with the intention of securing a ballot paper to which the impersonator is not entitled; or
      - (b) impersonate any person with the intention of voting in that other person's name; or

- (c) fraudulently do an act that results in the destruction or defacement of any nomination or ballot paper; or
- (d) fraudulently put any ballot paper or other paper into the ballot box; or
- (e) fraudulently take any ballot paper out of any polling place or counting centre; or
- (f) supply ballot papers without authority; or
- (g) do an act that results in the unlawful destruction of, taking of, opening of, or interference with, ballot boxes or ballot papers.

Penalty: Imprisonment for 6 months.

- (1A) A person is guilty of an offence if the person votes more than once in the same election.

Penalty: 10 penalty units.

- (1B) An offence against subsection (1A) is an offence of strict liability.

- (1C) A person is guilty of an offence if the person intentionally votes more than once in the same election.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

- (1D) If a person votes more than once in the same election, the number of offences the person is guilty of under subsection (1A) or (1C) because of that voting, is the number of times the person voted in that election, less one.

Note: This subsection means that each act of voting (other than the first act of voting that would be legitimate) gives rise to a separate offence but it is not necessary to know which act of voting was the first one and therefore legitimate.

19. Multiple voting under s. 339 may take the form of a person voting more than once under their own name. For example, where a person attends more than one polling place on election day or votes more than once using early or postal voting.
20. Multiple voting may also be voting more than once by both voting in their own name, and also voting in the name of another person or persons. For example, in addition to casting their own vote, a person may go to a polling place, claim to be another person whom they know is on the roll for that division, have that person's name marked off the certified list, and cast another vote.

## Detecting multiple voting

### How is multiple voting detected?

#### Administrative identification mechanisms

21. The AEC has developed comprehensive administrative mechanisms for identifying multiple votes.
22. During the election period identical certified lists of voters for a division are issued by the AEC to each DRO, who in turn supplies these lists to every issuing point at every polling place for the division and for use in the divisional office when marking off declaration voters. The certified lists contain the name, address, gender and date of birth (just the name in the case of a silent elector) of every enrolled elector in the division. When electors are issued with a set of ballot papers, their names are marked off the certified list held at that issuing point. The marking-off process involves drawing a short line between two arrow marks, called 'clock marks', against the name of an elector, to signify that that person has been issued with ballot papers.
23. If that elector then goes to another issuing point to cast another ordinary vote, either at the same polling place later in the day or at a different polling place, or casts a declaration vote, the result will be that another copy of the certified list for that division will be marked to signify that that person has been issued with ballot papers.
24. Immediately following election day, each identical certified list for each division is scanned by computer to read the marks against the names on the certified lists. The scanning enables divisional scanning reports to be produced, showing instances of multiple marks against names, and the issuing location of the certified lists.
25. After the scanning reports are produced, divisional staff manually check the scanning reports for their divisions against the certified lists to eliminate apparent cases of multiple voting in the scanned reports that are in fact caused by accidental contamination of the lists or scanning process - such as dust specks or a mark pressed too hard from the previous page. These marks are then eliminated from further investigation.
26. Divisional staff then check the remaining multiple marks on the scanning reports against the certified lists and other documents to identify polling official error and other official errors, such as reports by officers-in-charge of a polling place that a mistake

was made in marking off a certified list. In cases where a declaration vote is involved, checking may reveal that the wrong name has been marked off on the declaration voter certified list. This stage results in more eliminations of multiple marks from further investigation.

27. The DRO then examines the apparent cases of multiple voting that remain after the administrative eliminations. The DRO writes to each elector against whose name more than one mark is shown, or no mark at all is shown, to seek details from the elector of whether, when and where they voted.
28. This correspondence will often provide information that will lead to the elimination of more multiple marks from further investigation, on the basis of polling official error. For example, a match may be discovered between an elector with more than one mark against his or her name, and an elector with a similar name on the line above or below on the certified list, with no mark against his or her name. A large number of multiple marks are eliminated from further investigation by this process of matching apparent dual voters with apparent non-voters.
29. Some electors, or their close friends or family, write back to the DRO providing a reason for casting more than one vote, such as language or literacy difficulties or, in some cases, that the elector is elderly and confused and voted more than once due to forgetting they had already cast a vote. In such situations the DRO generally writes to these electors, informs them of the correct procedures and the penalties for voting more than once, and the matter is taken no further.
30. The cases that remain after these elimination processes are referred by the DROs to the AEC's National Office through the Australian Electoral Officer (AEO) for the state or territory. Those instances that evidence apparent multiple voting are then referred to the AFP for consideration. The AFP may then refer the matter to the Commonwealth DPP for possible prosecution of the individual under s. 339 (1), (1A) or (1C) in accordance with the Commonwealth Prosecution Policy.
31. In addition to identifying cases for possible prosecution, the AEC examines all detected cases of multiple voting in each division after the election to determine whether the level of multiple voting possibly exceeded the margin by which the candidate was elected. If this is the case, the AEC

will consider disputing the election result by petition to the Court of Disputed Returns under s. 357 of the Act as outlined below.

32. It is not possible, or necessary, to remove multiple ordinary votes cast at the polling place from the count of votes, because they cannot be identified under the secret ballot system. The AEC is able to determine whether the number of multiple votes detected would have affected the margin by which the candidate was elected in the division.
33. Since the major reforms instituted by Parliament in 1983 to amend the Act, the Court of Disputed Returns has not voided any election on the grounds that fraudulent voting affected the result of the election.

#### **Other identification mechanisms**

34. The AEC may refer to the AFP for investigation, other cases of possible multiple voting or other electoral fraud that come to the AEC's attention through the media, notification by members of the public, or inquiries of the Federal Parliament.

#### **What avenues are available to a person who suspects another person or persons of multiple voting?**

35. If someone suspects another person or persons of multiple voting, there are a number of avenues available. These vary depending on whether or not the poll has taken place, and whether or not the person who knows of, or suspects the case of, multiple voting is a candidate in the election.

#### **Before or during the polling**

- *Notify the AEC*

Anyone who is aware of multiple voting, and in particular intentional multiple voting, is encouraged to notify the AEC National Office on (02) 6271 4411. The AEC will then determine whether it is appropriate to apply to the Federal Court for an injunction to stop the behaviour (see below) or whether the matter should be dealt with after the cessation of polling.

- *Injunction*

Section 383 of the Act provides that the Federal Court may grant an injunction against a person who has engaged, is engaging or is proposing to engage in any activity that contravenes the Act (or other Commonwealth law as it relates to elections) to restrain them from engaging in the conduct. Section 383 specifies that either a candidate in the election or the AEC may apply to the Federal Court for an

injunction. Electors who are not candidates are not able to independently apply to the Federal Court for an injunction and should instead notify the AEC.

### After the polling

- *Election petition*

The High Court of Australia, sitting as the Court of Disputed Returns, is empowered under Part XXII of the Act to inquire into the conduct of federal elections, including any allegations of illegal conduct.

To bring an allegation of multiple voting (or other electoral fraud or illegal conduct) before the Court, it is necessary for an elector to file a petition with the High Court Registry within 40 days of the return of the writ for the election. An elector can only dispute the election in which he or she was enrolled to vote, that is, a petitioner cannot dispute the entire federal election but just the particular House of Representatives division or Senate state or territory election allegedly affected by multiple voting. The petition must set out the facts relied on to dispute the election, provide the particulars of any allegations made, and be signed by witnesses. The requirements in the Act for what information must be set out in a petition are stringent and potential petitioners are advised to seek legal advice before lodging a petition. There are statutory fees and charges involved in petition proceedings, however these charges, and any costs orders, may be waived in certain circumstances in the public interest.

The Court of Disputed Returns is empowered to, amongst other things, declare that a person who was returned as elected is not duly elected, declare any election absolutely void, and to dismiss or uphold the petition in whole or in part.

Under the Act the AEC is itself entitled to file a petition disputing an election. This may occur in circumstances where official error or electoral fraud sufficient to affect the result of an election has been discovered, or where a tied vote in a House of Representatives election cannot be resolved on the recount provided for in the Act.

An election can only be voided if it is found that a disqualification, or an illegality or an error, was sufficient to have affected the result of an election. For example, if the margin by which a candidate was elected in a House of Representatives election was 400 votes, then it would be necessary to establish a level of fraudulent enrolment or voting sufficient to have negated that margin.

In circumstances where multiple voting is established but the result of the election would not have been affected, the AEC would not dispute the validity of the election by petition to the Court of Disputed Returns. The AEC would not petition the election but would instead pursue prosecution of offences in cooperation with the AFP and the DPP.

The Court of Disputed Returns has a number of specific powers that allow it to open the electoral process to a considerable degree of scrutiny. However the Court cannot inquire into the correctness of the electoral roll. The absence of a power for the Court to inquire into the correctness of the Roll reflects that the roll will necessarily contain minor inaccuracies at any given time due to the continuous process of updating elector details.

- *Parliamentary scrutiny – Submissions to the JSCEM*

It has been customary after a federal election for the JSCEM to conduct an inquiry into the conduct of the election. The JSCEM includes representatives from all major political parties in the Parliament, and is chaired by a member of the governing political party or coalition of parties.

Each JSCEM inquiry into a federal election invites public submissions, holds public hearings across the nation for a period of about a year, and, amongst other things, investigates any allegations of electoral fraud. The AEC makes submissions to each JSCEM inquiry on all aspects of the conduct of the election. After they are released for publication by the JSCEM, AEC submissions are made available to the public in hard copy through the JSCEM Secretariat, or on the AEC website at [www.aec.gov.au](http://www.aec.gov.au) under the heading 'parliamentary submissions'. A list of recent submissions relevant to this topic is provided below under 'Suggestions for Further Reading'.

Each inquiry results in a JSCEM Report, which analyses and comments on all public submissions, and contains recommendations for changes to electoral legislation and procedures. The JSCEM Report is tabled in Parliament and copies are made publicly available on the Australian Parliament House website [www.aph.gov.au](http://www.aph.gov.au). The Government of the day responds to the JSCEM recommendations by tabling a formal response in the Parliament and where necessary proposing legislation to amend the Act.

## Political neutrality of the AEC

36. The AEC is not aware of any case of bias or other unlawful conduct in relation to an election having been successfully brought against an AEC employee. The AEC places special emphasis on political neutrality because it is responsible for providing the Australian people with an independent electoral service. It is essential that all AEC employees are, and are seen to be, politically neutral.
37. If anyone wishes to pursue allegations against the AEC, then there are a number of avenues for complaint, inquiry and resolution. These may include:
- administrative complaints or inquiries, under the provisions of the *Ombudsman Act 1976*, the *Freedom of Information Act 1982*, the *Administrative Decisions (Judicial Review) Act 1977*
  - direct complaints to Government Ministers and the broader Parliament. For example, outside an election period, a complaint can be made to the Special Minister of State who has portfolio responsibility for electoral matters
  - petition of an election in the Court of Disputed Returns for remedy within 40 days after the return of writ for the election for which he or she was entitled to vote, as set out above, and
  - submissions to the JSCEM after the election.

## Suggestions for further reading

38. Anyone with an interest in the interpretation of the laws on fraudulent enrolment and voting in particular circumstances should consult the exact provisions of the Act and should seek their own legal advice.
39. The *Commonwealth Electoral Act 1918*, AEC parliamentary submissions and JSCEM Reports can be accessed through the AEC website at [www.aec.gov.au](http://www.aec.gov.au) and the Australian Parliament House website at [www.aph.gov.au](http://www.aph.gov.au)
40. The following submissions are particularly relevant to the topics addressed in this *Backgrounder*:
- Multiple voters and other matters (submission No. 203 of 2 June 2003)
  - Report on incidents of possible enrolment fraud during the 29th Parliament (submission No. 165 of 6 August 2002)

- The integrity of the electoral roll (submissions No. 26 of 17 October 2000, No. 66 of 9 February 2001, No. 76 of 28 February 2001, No. 81 of 27 March 2001, and No. 86 of 20 April 2001)
  - Dual and multiple voting (submission No. 239 of 15 October 1999)
  - The conduct of the 1998 federal election
  - Dual and multiple voting (submission No. 129 of 7 February 1997) and submission No. 98 of 23 October 1996)
  - Enrolment and voter identification (submission No. 98 of 23 October 1996)
  - Allegations of electoral fraud (submission No. 97 of 23 October 1996)
41. Anyone who believes that the law governing fraudulent enrolment and voting should be changed is entitled to file a submission with the Joint Standing Committee on Electoral Matters at Parliament House.

## AEC Publications

The AEC has available a number of publications for people interested in the electoral process including:

- *Electoral Pocketbook*: a concise hand book of electoral facts and statistics
- *Electoral Boundaries Maps*: maps showing the geographic boundaries of the 150 electoral divisions
- *Nominations pamphlet*: key facts for people considering standing for election
- *Electoral Newsfile series*: editions are produced on various electoral events
- *Candidates Handbook*: a handbook to assist candidates standing for election to the Senate and House of Representatives
- *Scrutineers Handbook*: an information handbook for scrutineers at federal elections and referendums
- *Election Funding and Financial Disclosure Handbook*: a handbook of funding and disclosure requirements of candidates and political parties.

Copies of these and other publications are available from the AEC website [www.aec.gov.au](http://www.aec.gov.au), phoning 13 23 26 or at national, state, territory and divisional offices.

## **Media Liaison**

Members of the media are asked to use the Media Liaison contact numbers listed here rather than the general enquiry number.

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[www.aec.gov.au](http://www.aec.gov.au)

National Enquiry Service 13 23 26