

# Electoral Backgrounder

## POLLING PLACE OFFENCES

April 2010

The Act, when describing offences uses different terms in different sections. In this Backgrounder definitions for these various terms are:

- (a) A 'polling booth' and a 'polling place' are both terms used to describe a location where polling takes place on election day.
- (b) The 'person in charge', 'person in charge of premises', 'officer in charge' and 'presiding officer' are all terms used to describe the AEC official responsible for electoral activities in particular locations.
- (c) The 'officer-in-charge' of each polling place is called the 'presiding officer' during polling, from 8 am to 6 pm on election day. From 6 pm, however, during the counting of the votes (the scrutiny), this officer is called the 'assistant returning officer'.

### 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. The AEC administers the conduct of federal elections under the provisions of the *Commonwealth Electoral Act 1918* (the Act).
3. This *Backgrounder* provides introductory information in relation to offences under the Act relevant to polling. More information on some of the offences discussed below, or on those not directly relevant to polling activities, is contained in other *Electoral Backgrounders* available from the AEC website [www.aec.gov.au](http://www.aec.gov.au).
4. Readers should not rely on the information in this document as a statement of how the law will apply 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.
5. The information in this *Backgrounder* is set out under the following headings
  - Compulsory voting
  - Influencing the votes of hospital patients or residents of nursing homes
  - Bribery
  - Interference with political liberty
  - Printing and publication of electoral handbills, pamphlets or posters
  - Misleading or deceptive publications
  - Depiction of certain electoral matter
  - General offences in relation to ballot papers
  - Canvassing near polling booths
  - Displaying badges or emblems of candidates in polling booths

Please note this update replaces *Electoral Backgrounder No 20* 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

- Leaving how-to-vote cards in polling booths
- Making false statements to voters about enrolment
- Unlawfully marking ballot papers
- Disobeying lawful directions of the person in charge of the premises
- Officers and scrutineers to observe secrecy
- Scrutineers influencing or communicating with voters in polling booths
- Possible repercussions for persons who commit offences:
  - Removal from the premises
  - Injunctions
  - Prosecutions
- Conclusion

6. The Act is available on the Attorney General's Commonwealth Law website at [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.

### **Compulsory voting s. 245**

7. An elector is guilty of an offence if the elector fails to vote at an election unless they have a valid and sufficient reason. For more information on compulsory voting see *Electoral Backgrounder No. 17, 'Compulsory Voting'*.
8. A person found guilty of this offence may be fined up to \$50.

### **Influencing the votes of hospital patients or residents of nursing homes s. 325A**

9. A person who is the proprietor of, or an employee of the proprietor of, a hospital or nursing home must not do anything with the intention of influencing the vote of a patient in, or resident at, the hospital or nursing home.
10. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

### **Bribery s. 326**

11. A person must not ask for, receive or obtain any property or benefit of any kind for themselves or any other person on an understanding that any vote of the person will be influenced or affected.

12. A person found guilty of this offence may be fined up to \$5000 or imprisoned for two years, or both.

### **Interference with political liberty s. 327**

13. A person must not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under the Act.
14. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

### **Printing and publication of electoral handbills, pamphlets or posters s. 328**

15. A person must not print, publish or distribute a handbill, pamphlet or poster unless the name and address of the person who authorised the publication and the name and place of business of the printer appears at the end.
16. These requirements do not apply in relation to T-shirts, lapel buttons, lapel badges, pens, pencils or balloons, and some types of cards.
17. A person found guilty of this offence may be fined up to \$1000. A body corporate found guilty of this offence may be fined up to \$5000.

### **Misleading or deceptive publications s. 329**

18. A person must not print, publish or distribute any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote in an election under the Act.
19. A person found guilty of this offence may be fined up to \$1000 or imprisoned for up to six months, or both. A body corporate found guilty of this offence may be fined up to \$5000.

### **Depiction of certain electoral matter s. 334**

20. A person must not write, draw or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place.
21. A person found guilty of this offence may be fined up to \$1000.

### **General offences in relation to ballot papers s. 339**

22. Subsection 339(1) of the Act provides for a number of offences in relation to ballot papers. These offences include impersonating any person with the intention of securing a ballot paper to which

the impersonator is not entitled; and impersonating any person with the intention of voting in that person's name.

23. A person found guilty of one of these offences may be imprisoned for six months.
24. A person who votes more than once in the same election is guilty of an offence which carries a current penalty of \$1100, while a person who intentionally votes more than once in the same election is guilty of an offence which carries a current penalty of \$6600 or imprisonment for 12 months, or both.
25. A person is guilty of an offence if the person defaces, mutilates, destroys or removes any notice, list or other document affixed by, or by the authority of, any Divisional Returning Officer.
26. A person found guilty of this offence may be fined up to \$500.

#### **Canvassing near polling booths s. 340**

Note: That where a building used as a polling booth is situated in grounds within an enclosure, those grounds (by notice) may be deemed by the DRO to be part of the polling booth.

27. If a person engages in any of the following activities within a polling booth, or within six metres of the entrance to a polling booth on election day, the person is guilty of an offence:
  - Canvassing for votes
  - Soliciting the vote of any elector
  - Inducing any elector not to vote for any particular candidate
  - Inducing any elector not to vote at the election
  - Exhibiting any notice or sign (other than an official notice) relating to an election.
28. A person found guilty of these offences can be fined up to \$500.
29. If a person is engaging in any of the activities listed above and is using a loudspeaker, broadcasting equipment or other sound amplifier-type equipment, then if the activity is audible within a polling booth or within six metres from the entrance to the polling booth, the person is guilty of an offence.
30. A person found guilty of this offence currently can be fined up to \$550.

#### **Displaying badges or emblems of candidates in polling booths s. 341**

31. On election day, no officer or scrutineer is allowed to wear or display a badge or emblem of a candidate or political party in a polling booth.
32. A person found guilty of this offence can be fined up to \$1000.

#### **Leaving how-to-vote cards in polling booths s. 335**

33. Any person who exhibits or leaves a card or paper in a polling booth that has any direction or instruction about how an elector should vote, or about the method of casting a vote, will be committing an offence.
34. A person found guilty of this offence can be fined up to \$500.
35. This prohibition does not apply to:
  - Official instructions, for example posters put up by the AEC to assist voters in voting formally (so that the vote is counted); and
  - Cases where a person is appointed by an elector to assist that elector to vote under the provisions in s. 234. Section 234 provides that in cases where a person has low vision, physical disability or literacy issues such that he or she is unable to vote without assistance, the elector may appoint another person to assist them in marking their ballot paper. If the elector does not appoint a person to assist them, the presiding officer of the polling place may do so. The elector may indicate how the ballot paper is to be marked by presenting a how-to-vote card to the presiding officer. This presentation of a how-to-vote card does not contravene s. 335.

#### **Making false statements to voters about enrolment s. 330**

36. A person commits an offence if, on election day, they knowingly make a statement to a voter, either orally or in writing, with respect to a voter's enrolment and that statement is false or misleading in a material respect.
37. A person found guilty of this offence can be fined up to \$1000 or imprisoned for six months, or both.

#### **Unlawfully marking ballot papers s. 338**

38. If a person makes a mark or writes on a ballot paper of another elector (unless the person is expressly

authorised by the Act), the person will be guilty of an offence.

39. A person found guilty of this offence can be fined up to \$1000 or six months imprisonment, or both.

### **Disobeying lawful direction of the person in charge of polling premises s. 348**

40. The person in charge of a polling booth is the presiding officer or the substitute presiding officer. A person in charge of an early voting centre is the Divisional Returning Officer or early voting officer
41. In a polling booth or early voting centre, a person must not commit misconduct or disobey a lawful direction given by the person in charge of the premises.
42. If a person is prosecuted and found guilty of one of these offences, they may be fined up to \$500.
43. A person must not enter or remain in a polling booth or early voting centre without the permission of the person in charge of the premises, with the exception of polling officials, scrutineers or electors who enter the polling booth for the purpose of voting, and should remain no longer than is reasonably necessary to do so.
44. A person who does any of these things at a polling booth may be lawfully removed from the polling booth by a police officer or a person authorised by the person in charge of the premises.
45. If a person is prosecuted and found guilty of this offence, they may be fined up to \$500.

### **Officers and scrutineers to observe secrecy s. 323**

46. Except in relation to Antarctic voting arrangements, an officer or scrutineer must not divulge or communicate any information with respect to the vote of an elector (acquired by him or her in the performance of functions under the Act) that is likely to enable the identification of the elector.
47. A person found guilty of this offence may be fined up to \$1000 or imprisoned for six months, or both.

### **Scrutineers influencing or communicating with voters in polling booths s. 218**

48. A scrutineer must not interfere with or attempt to influence any voter within the polling booth, or communicate with any person in the polling booth except so far as it is necessary in the discharge of the scrutineer's functions.

49. The penalty prescribed for breaching this provision can be a fine of up to \$1000 or imprisonment for six months, or both.
50. The Act requires all scrutineers to wear a badge identifying them as a scrutiner whilst in the polling booth. The badges are supplied by the AEC.
51. A scrutineer who breaches these requirements, commits misconduct or fails to obey the lawful directions of the presiding officer, may be removed from the polling booth by a member of the Australian Federal Police, the state or territory police force, or another person authorised by the presiding officer.

### **Possible repercussions for persons who commit offences**

52. If the AEC becomes aware that a person is breaching the provisions of the Act during polling, any or all of the following actions may be taken.

### **Removal from the premises**

53. Section 348 provides that where a person commits misconduct in a polling booth, counting centre or a early voting centre, the person in charge of the premises may direct that person to leave the premises or have the person removed from the premises.

### **Injunctions**

54. Section 383 of the Act provides that the Federal Court may grant an injunction to (amongst other things) prohibit a person from engaging in conduct that constitutes a contravention of the law in relation to elections.
55. The AEC and candidates in the election may make an application for an injunction to the Federal Court. If the AEC is informed or becomes aware that a person may have committed an offence, the AEC determines whether it is appropriate in the circumstances to apply for an injunction. The Federal Court is able to order injunctions at short notice on election day.
56. If an injunction is granted against a person, failure to comply with the injunction order may constitute contempt of court, for which the Federal Court can order arrest and detention.

### **Prosecutions**

57. When the AEC becomes aware of a person engaging in activity that may constitute a breach of an

offence provision, the AEC may refer the matter to the AFP for investigation. The AFP may then refer the matter to the Commonwealth Director of Public Prosecutions for consideration, in accordance with the Commonwealth Prosecution Policy, as to whether a prosecution is initiated.

## **Conclusion**

58. Anyone with an interest in the laws on offences relating to polling, or their application in particular circumstances, should consult the exact provisions of the Act and seek their own legal advice.
59. The Commonwealth Electoral Act 1918 is available on the Attorney-General's Commonwealth Law website at [www.comlaw.gov.au](http://www.comlaw.gov.au). AEC parliamentary submissions relating to electoral law can be accessed through the AEC website at [www.aec.gov.au](http://www.aec.gov.au).
60. Anyone who believes that the law governing polling place offences should be changed may make a submission to the Joint Standing Committee on Electoral Matters at Parliament House.

### **Endnotes**

The Commonwealth Electoral Act 1918 can be purchased over the counter in major cities, or accessed through any major public library, or the ComLaw website [www.comlaw.gov.au](http://www.comlaw.gov.au). For information about over the counter or mail order sales, ring CanPrint Information Services 1300 889 873.

Further information in relation to compliance with the Act is set out in the AEC's Electoral Backgrounder publications which can be found on the AEC's website at: [http://www.aec.gov.au/About\\_AEC/Publications/Backgrounders/index.htm](http://www.aec.gov.au/About_AEC/Publications/Backgrounders/index.htm).

## **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 Newsfle 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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