6

Counting the votes

6.1   This chapter first outlines the vote counting process, and then examines some of the concerns and issues arising from it.

Scrutiny

6.2   The scrutiny process outlined below is set out in Part XVIII of the CEA, which deals with the provisions for the counting of the vote.[1]

Election night

6.3   When House of Representatives and Senate elections are held concurrently, the House of Representatives ballot papers are counted first. The sequence of events is:

- Polling officials empty the House of Representatives ballot boxes and unfold the papers.

- The ballots are sorted into first preference votes for each candidate.

- Informal ballots are set aside.

- First preference votes are counted and results rung through to the DRO, along with the number of informal ballot papers. The DRO enters the results onto the AEC's computerised tally system, and

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1   Description of the scrutiny process adapted from: JSCEM, *The 2001 Federal Election*, June 2003, pp. 198–200.

they are transmitted to the National Tally Room and the Virtual Tally Room.

■ Polling officials then conduct a two-candidate preferred (TCP) count. This is an indicative distribution of preferences to the two candidates identified by the AEC as being most likely to win each Division (based on historical voting patterns for each seat). The TCP count gives an early indication of who is most likely to win each seat, which is not always clear from first preferences. The TCP candidates are most often – but not always – from the three major parties (the Australian Labor Party, the Liberal Party of Australia or The Nationals).

■ The results of the TCP are tabulated and rung through to the DRO, for input to the AEC computer network.[2]

6.4   Once the counting of House of Representatives votes on election night is completed, polling officials open the Senate ballot boxes.

■ All the 'above the line' group ticket votes, and the first preference of 'below the line' voters, are counted and rung through to the DRO. This is the only Senate counting that takes place on election night because Senate results cannot be calculated until the quota for election is known.

■ Declaration vote envelopes containing ballot papers are sorted and counted, but are not opened.

6.5   Once this preliminary counting for the House of Representatives and the Senate is complete, all the ballot papers and declaration vote envelopes are placed into sealed parcels and delivered to the DRO for further scrutiny.[3]

Further scrutiny

6.6   The initial counting of votes on election night is followed by a *fresh scrutiny*, conducted by DROs at Divisional Offices, beginning on the Monday following the election. The *fresh scrutiny* involves:

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2   Section 284 of the Electoral Act provides, in effect, that election results may be declared on the basis of the TCP where the two candidates with the highest number of first preference votes could not be displaced from those positions after a full distribution of preferences.

3   AEC, *Behind the Scenes: the 2001 Federal Election Report: Election Night,* 2001.: www.aec.gov.au/_content/when/past/2001/bts/08night.pdf

- *Fresh scrutiny* of ordinary House of Representatives votes – the DRO examines all ordinary votes, including those deemed to be informal (which may be admitted to the count on the decision of the DRO), and counts the votes.

- *Preliminary scrutiny* of declaration votes[4] – the DRO conducts a preliminary scrutiny of all declaration vote envelopes to determine whether each vote should be admitted for further scrutiny.

  ⇒ A postal vote will be accepted for further scrutiny if the DRO is satisfied that:

    o   the elector is enrolled (or entitled to be enrolled) for the Division;

    o   the signature on the postal vote envelope is genuine and properly witnessed; and

    o   the vote was recorded prior to the close of polls.

  ⇒ Postal votes received up to 13 days after the close of polls will be accepted.

  ⇒ A pre-poll, absent or provisional vote will be accepted for further scrutiny if the DRO is satisfied that the elector is enrolled (or entitled to be enrolled) for the Division, and that the envelope has been properly signed and witnessed.

- Declaration vote envelopes admitted to the further scrutiny are opened as part of that scrutiny, the ballot papers are taken out, unfolded, and the House of Representatives ballot papers are counted in the same way as ordinary ballot papers.

6.7   Senate ballot papers marked 'above the line' are manually counted in the Divisional Office.[5]

6.8   The first preference votes of Senate ballot papers marked 'below the line' are counted. Those ballot papers are then sent to the head office for each State and Territory, where they are entered into the Computerised Senate Scrutiny System (CSSS). This process usually begins late in the week after the poll, and continues until every Senate ballot paper has been entered.[6]

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4   The preliminary scrutiny of postal and pre-poll votes begins on the Monday before polling day. The preliminary scrutiny of absent and provisional votes begins on the Monday after polling day.

5   AEC, *Behind the Scenes: the 2001 Federal Election Report: Scrutiny after Election Night,* 2001; www.aec.gov.au/_content/when/past/2001/bts/09scrut.pdf

6   Submission No 182, (AEC), p. 28.

Concerns about the scrutiny

Calwell

6.9   A significant problem occurred with the counting of absent votes in the Calwell electorate. There were 5,426 absent envelopes in the count concerned. At the initial preliminary scrutiny, 4,273 envelopes were determined to be admissible and 1,153 were classed as inadmissible at that point.[7]

6.10   The AEC described the issue, saying that:

> at the counting centre, all 5,426 declaration envelopes were inadvertently opened and processed as if they had been determined to be admissible. Consequently, all the absent ballot papers for the House of Representatives and the Senate were placed in ballot boxes, with the result that the Divisional Returning Officer (DRO) was unable to determine which ballot papers relate to the admissible envelopes, and which relate to the inadmissible envelopes.[8]

6.11   On further inspection, the DRO determined a maximum of 893 House of Representatives ballot papers and a maximum of 681 Senate ballot papers should not have been included in the count.[9]

6.12   In the end, it was apparent that the number of votes admitted in error in the counts was not large enough to affect the outcome of the elections.[10]

The Committee's view

6.13   While the result was evidently unaffected, the Committee remains extremely concerned about the events that took place in Calwell.

6.14   Clearly, if this had occurred in a more marginal electorate, the result could have been altered.

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7   Submission No 221, (AEC), p. 6.
8   Submission No 221, (AEC), p. 6.
9   Submission No 221, (AEC), p. 6. The term "maximum" is used here to account for the fact that in some cases the envelope may have contained either no ballot paper or only one ballot paper.
10 Submission No 221, (AEC), p. 7.

6.15   The Committee regards such a mistake as unacceptable, and urges the
        AEC to put appropriate safeguards in place to ensure it does not
        occur again.

Other concerns

6.16   Several submissions raised other concerns about the scrutiny process.
        Senator Ruth Webber, who was a scrutineer in the electorate of Swan,
        was concerned that some staff did not understand the role of
        scrutineers, and were also overwhelmed by the pressure of the tight
        count.[11]

6.17   Her submission therefore recommends that:

> the committee should look at the level of funding provided to
> the AEC for staffing and the AEC's current ability to train and
> retain experienced staff.[12]

6.18   Mr Peter Brun, who attended the further scrutiny for the Division of
        Banks, was concerned that many ballot papers had been incorrectly
        sorted at the polling booths on election night, including obviously
        informal votes being included in the polling booth counts.

6.19   Mr Brun asserts and questions:

> the job was clearly not done properly in the polling booths.
> Was this because political and media pressure to get results
> out quickly caused counting to be done too quickly or
> sloppily?

6.20   The Committee also received advice of two separate incidents in
        which declaration votes were not counted. In the first instance,
        93 absent votes were allegedly lost, an event attributed to short
        staffing in the division.[13] In the second, a submission asserts that 30
        unchecked postal votes were discovered after a seat had been
        declared, and were therefore unable to be included in the count.[14]

6.21   In regard to the Senate scrutiny, one submission contends that the
        way in which the AEC conducted and reported the Senate count in

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11   Submission No 49, (Senator R. Webber), p. 2.
12   Submission No 49, (Senator R. Webber), p. 2.
13   Submission No 134, (Mr I. Freys).
14   Submission No 176, (Mr S Luntz).

the 2 – 3 week period following Election Day was puzzling, because ungrouped candidates seemed not to exist.[15]

6.22 The AEC notes that for the 2004 election, the Senate count was updated on its website on a daily basis for the first time, whereas in previous elections almost no information had been available until the scrutiny was completed.[16]

The Committee's view

6.23 In regard to comments about lack of staff training, the Committee notes that, in Chapter 5, *Election Day*, it recommends that the AEC conduct a review of the proportion of its budget allocated to staff training.

6.24 While recognising the concerns of several submissions, the Committee noted that no candidates requested a recount of the ballots in their Division or State,[17] as they are entitled to do under Sections 278 (Senate) and 279 (House of Representatives)of the CEA.[18]

6.25 This was despite the fact that six House of Representatives seats were won by 1,000 votes or less.[19]

6.26 The Committee is therefore of the view that the scrutiny process for the 2004 election was generally efficient and accurate, although the errors show there is still room for improvement.

Issues arising from the scrutiny

6.27 The key issue the Committee considered was the prevalence of informal voting.

Informal voting

6.28 Informal ballot papers are ballot papers that cannot be included in the count because they have not been completed in accordance with the

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15 Submission No 115, (Mr J Pyke).

16 Submission No 182, (AEC), p. 27.

17 Submission No 205, (AEC), p. 15.

18 CEA, sections 278 & 279. Candidates must also supply satisfactory reasons when requesting a recount, which can be rejected by the Electoral Commissioner or an Australian Electoral Officer.

19 AEC, 2005, *Electoral Pocketbook*, pp. 129-206. The seats were Swan (104), Hindmarsh (108), Kingston (119), Richmond (301), Bonner (795), and Greenway (883).

requirements of the Electoral Act for a valid vote. Generally, a ballot paper will be informal if:

- it is not completed correctly (for example, if an elector simply ticks one of the boxes on a House of Representatives ballot paper rather than numbering all of the boxes); or

- it has not been completed at all (that is, the ballot paper is blank); or

- it does not have an official mark or an initial from the issuing presiding officer, and the Divisional Returning Officer responsible for considering the formality of the ballot paper is not satisfied that it is an authentic ballot paper; or

- it contains some mark that may identify the voter who marked it.[20]

6.29   The most common type of informality is where ballot papers do not have all preferences marked or are incorrectly numbered.[21]

Table 6.1   Informal voting at House of Representatives Elections since 1993

	1993	1996	1998	2001	2004
	%	%	%	%	%
NSW	3.1	3.6	4.0	5.4	6.1
VIC	2.8	2.9	3.5	4.0	4.1
QLD	2.6	2.6	3.3	4.8	5.2
WA	2.5	3.2	4.2	4.9	5.3
SA	4.1	4.1	4.5	5.5	5.6
TAS	2.7	2.4	3.1	3.4	3.6
ACT	3.4	2.8	2.9	3.5	3.4
NT	3.1	3.4	4.2	4.6	4.5
AUS	3.0	3.2	3.8	4.8	5.2

Source   AEC, *Electoral Pocketbook, p. 71*

6.30   At the 2004 election, 639,851 ballot papers were identified as informal, representing 5.2% of the vote and an increase of 0.4 percentage points from the 2001 election.[22] The above table shows the concerning trend of informal voting increasing at every Federal Election since 1993.

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20   Submission No 165, (AEC), p. 33.
21   Submission No 165, (AEC), p. 33.
22   Submission No 165, (AEC), p. 33.

Causes of Informal Voting

6.31   Numerous submissions addressed the causes of informal voting,[23] and the Committee has identified several significant potential causes of informal voting namely:

- number of candidates on the ballot paper;

- differences in voting systems between the Commonwealth, the States and the Territories;

- visual impairment;

- proficiency in English;

- age and education; and

- political disengagement.

6.32   The Committee noted that the relative importance of specific causes of informal voting will vary between electorates and over time.

NUMBER OF CANDIDATES ON THE BALLOT PAPER

6.33   The AEC asserts that informality increases when there is an increase in the number of candidates on the ballot, and that this explains approximately 46% of the overall increase in formality.[24]

6.34   Furthering this point, Professor Colin Hughes highlights the number of candidates on the ballot paper as a potential cause of informal voting. He explains that:

> filling in a ballot for two candidates is very easy indeed, but it never happens anymore. Filling in a ballot paper for 10 or 15 candidates, which is an increasingly common phenomenon, is a much more taxing experience for people who are not accustomed to filling in forms and numbering things.[25]

6.35   Other submissions also emphasise that the number of candidates has a definite influence on the level of informal voting.[26]

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23   See Submission Nos 9, 18, 22, 40, 42, 52, 54, 66, 68, 69, 73, 80, 84, 86, 89, 90, 97, 100, 103, 107, 115, 118, 127, 136, 144, 145, 159, 181, 184, 194.

24   Submission No 165, (AEC), pp. 33-34.

25   Professor C Hughes, *Evidence*, Wednesday, 6 July 2005, pp. 1-2.

26   Submission No 97, (Democratic Audit of Australia), p. 10; and Submission No. 145, (Dr S. Young), p. 9.

6.36   Despite these concerns, Professor Hughes acknowledges that:

> controlling the number of candidates is a very tricky business
> and, by and large, nothing works.[27]

The Committee's view

6.37   While acknowledging that the number of candidates on ballot papers
        may be increasing, and may also play some role in levels of informal
        voting, the Committee does not view an attempt to reduce the
        number of candidates as a viable or democratic means to reducing the
        informal vote.

DIFFERENCES IN VOTING SYSTEMS BETWEEN THE COMMONWEALTH, THE STATES AND THE TERRITORIES

6.38   The difference in voting systems and how informal votes are
        determined across the States and Territories continues to have an
        impact on informality as electors apply ballot marking practices
        acceptable in State and Territory elections to Federal elections where
        they are invalid.[28]

6.39   Moreover, ballots informal due to the practice of using "number '1'
        only" continue to represent the highest percent of informality across
        all States and Territories, even though the national percentage
        dropped slightly in 2004.[29]

The Committee's view

6.40   This issue will be discussed in detail in Chapter 9, *Voting Systems*.

VISUAL IMPAIRMENT

6.41   Vision Australia reports anecdotal evidence of people who are blind
        or visually impaired intentionally voting informally through a
        frustration of being unable to cast a secret ballot.[30]

The Committee's view

6.42   As the Committee commented in Chapter 5, *Election Day*, the specific
        difficulties facing the blind should be addressed for the next Federal

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27   Professor C Hughes, *Evidence,* Wednesday, 6 July 2005, p. 3.
28   Submission No 165, (AEC), pp. 33-34.
29   Submission No 165, (AEC), pp. 33-34.
30   Submission No 54, (Vision Australia), p. 2.

Election. The outcome, the Committee believes is that this type of informal vote would be greatly reduced.

6.43   In Chapter 11, *Technology and the Electoral System*, the Committee recommends the implementation of a trial of electronic voting, which would allow some blind and visually impaired voters to vote independently.

PROFICIENCY IN ENGLISH

6.44   Several submissions highlight a lack of proficiency in English as a potential cause of informal voting.[31]

6.45   The Democratic Audit of Australia asserts there is a definite correlation between high numbers of informal voting and electorates with high numbers of people from non-English speaking backgrounds (NESB).[32]

6.46   In his submission, Professor Colin Hughes, using State and Federal Elections in NSW as his base, provides empirical evidence to highlight that electorates with higher percentages of constituents "not fluent in English", consistently have higher percentages of informal votes.[33]

6.47   Similarly, Mr Laurie Ferguson MP stated:

> if you look at the five seats with the highest number of informal votes in Sydney, with one exception they have the five highest proportions of non-English-speaking background populations. [34]

31   See Submissions 52, 73, 89, 97, 144, 145.
32   Submission No. 97, (Democratic Audit of Australia), p. 11.
33   Submission No. 69, (Professor C Hughes), pp 6-8.
34   Mr L Ferguson MP, Evidence, Monday, 8 August 2005, p. 97.

Table 6.2   Informal voting in Sydney electorates with the highest non-English speaking background (NESB) population

Electorate	NESB Population	Informal 2001 Election	Informal 2004 Election
	%	%	%
Fowler	65.0	12.8	9.1
Watson	60.7	7.5	9.1
Blaxland	58.0	9.8	10.7
Reid	57.0	11.1	11.7
Prospect	47.7	9.0	9.2

Source   NESB data from 2001 census. Informality data: AEC, Electoral pocketbook, 2005.

6.48   Mr Ferguson also noted that:

> in the electorate of Fowler there was a decline in the informal vote there of some significance in this election. I think that might be related to a campaign by the AEC in the Vietnamese community. I would like to see a broadening of that kind of activity through a number of these seats.[35]

6.49   The improvement in Fowler may be explained by the specific campaign run by the AEC, as asserted by Mr Ferguson. However, the AEC also notes that it ran similar campaigns in Reid and Blaxland, where informal votes increased.[36]

6.50   In regard to its strategy for informing electors from non-English speaking backgrounds about the election, the AEC said that:

> in addition to the placement of election advertising in ethnic media, the AEC provided a national telephone interpreting service in 15 languages and key election information was sent to ethnic media and community organisations throughout the election period. Election and voting information was translated into 18 community languages and available from the AEC website or by calling the AEC's national enquiry service. Selected polling places located in divisions with large numbers of electors from non-English speaking backgrounds and past high informal voting rates also displayed translated how to vote messages in key community languages and in English, and translated how to vote posters were available for issuing to electors on Election Day. In the lead up to the federal election, the AEC in conjunction with Migrant

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35 Mr L Ferguson MP, *Evidence,* Monday, 8 August 2005, p. 97.
36 Submission No 205, (AEC), p. 11.

Resource Centres conducted election information sessions in NSW electorates which had a high level of informal voting at the previous election. The sessions were designed to provide enrolment and 'how to vote' information and educate key ethnic community leaders who could assist their communities to fully participate in the election process in a meaningful and correct way.[37]

6.51   Offering a different perspective, Sir David Smith, when speaking about voters of non-english speaking backgrounds, said:

how on earth, in an ordinary election, do [people from NESB] understand the mass of material that comes in through their letter boxes, newspapers and television sets? Our whole democracy is based on having an informed electorate, and the Australian Electoral Commission does us no credit when it makes it possible for votes to be given to people who simply do not know what they are doing.[38]

The Committee's view

6.52   The Committee acknowledges that the evidence points to a lack of proficiency in English as a definite cause of informal voting. Self evidently, this is a cause for concern.

6.53   The Committee is keen to see the level of informal vote reduce significantly, particularly in electorates currently experiencing the highest levels.

6.54   The Committee recognises the efforts of the AEC to target electorates with high percentages of constituents from non-English speaking backgrounds. However, it is evident that, by and large, the programs such as those in the ethnic media and the election information sessions did not have a significant effect on informal voting figures.

6.55   The Committee also believes that confusion caused by the difference between State and Federal electoral systems (particularly in Queensland and NSW), is amplified in electorates with large NESB populations. This is discussed in detail in Chapter 9, *Voting systems.*

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37   Submission No 165, (AEC), p. 38.

38   Sir D Smith, *Evidence,* 8 August 2005, p. 16.

Recommendation 31

6.56   The Committee recommends that the AEC increase its efforts to improve understanding of the voting system and reduce the informal vote in electorates with a high percentage of constituents from non-English speaking backgrounds, including by development of new and innovative strategies.

AGE AND EDUCATIONAL ATTAINMENT

6.57   In its 2001 survey of informal voting, the AEC highlights the age and educational attainment of a voter as important predictors of informal voting.[39]

6.58   Naturally, those people who are illiterate have extreme trouble casting a formal vote. Educational attainment is also an important factor in determining whether a person will in fact vote, as well as deciding whether they will involve themselves in the political process.[40]

6.59   It also appears that older people are more likely to have knowledge of parties and candidates, as well as hold opinions on political issues. Furthermore, they are likely to be patient and spend more time checking their ballot paper for mistakes.[41]

6.60   In summary, it appears that in terms of age and education, younger people with lower levels of education are at the most risk of casting an informal vote.

The Committee's view

6.61   The Committee believes that the key to reducing this type of informal vote is education about the Parliament and the system of government from a young age. These issues will be discussed more fully in Chapter 14, *Looking to the future – education as the key to a healthy democracy.*

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39   Submission No 165, (AEC), Attachment A, pp. 15-16.
40   Elkins in Submission No 165, (AEC), Attachment A, p. 16.
41   Submission No 165, (AEC), Attachment A, p. 16.

POLITICAL DISENGAGEMENT

6.62   The AEC contends the increase in the percentage of informal ballots with marks and slogans may represent an increased level of political abstention, apathy or protest among Australian electors. [42]

The Committee's view

6.63   The Committee acknowledges evidence of this concerning trend towards increased informal voting. Once again, the Committee believes that one of the keys to reducing this type of informal vote is education about the Parliament and the system of government from a young age. As mentioned, this will be more fully discussed in Chapter 14: *Looking to the future – education as the key to a healthy democracy.*

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[42]   Submission No 165, (AEC), pp. 33-34.