

**AUSTRALIAN ELECTORAL COMMISSION**

**REPORT TO THE JOINT STANDING COMMITTEE  
ON ELECTORAL MATTERS**

**STATISTICS ON NON-VOTING AND MULTIPLE VOTING  
AT THE 2004 FEDERAL ELECTION**

**Canberra**

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## **1. Introduction**

1.1 In submission number 165 to the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the 2004 Election, the Australian Electoral Commission (AEC) undertook to provide statistics on non-voting and multiple voting at the 2004 election.

1.2 This submission provides those statistics as well as background information on the processes used to produce the statistics.

## **2. Non-voting**

2.1 Subsection 245(1) of the *Commonwealth Electoral Act* 1918 (Electoral Act) requires every elector to vote at each election and provides for the AEC to follow-up cases of non-voting.

### ***Identification of non-voters***

2.2 Non-voters are identified using the certified lists of voters prepared for every election which contain information from the electoral roll on who is entitled to vote at an election. During the election period, identical copies of the certified lists of voters for a division are issued to every issuing point at every polling booth for the division. When an elector is issued with a set of ballot papers, his or her name is 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 the elector, to signify that that person has been issued with ballot papers.

2.3 Electors who cast a postal vote, a pre-poll vote, an absent vote or a provisional vote are called declaration voters. Declaration voters complete a declaration certificate which the AEC uses to undertake entitlement and enrolment checks before the vote can be considered for inclusion in the count. By joining all the lists used for declaration voters and the lists used for those who voted at a polling place, a complete record is obtained of those who have voted and those who have not voted.

2.4 After polling day, every certified list used at every polling place throughout Australia, together with certified lists used to mark off the names of declaration voters, are optically scanned. This scanning process produces a report on apparent non-voters (and a report also on apparent multiple voters). The initial sort only produces a list of 'apparent' non-voters because mechanical or human errors distort the true figures.

2.5 For the 2004 election more than 26,000 certified lists, each on average containing 80,000 names were scanned. The overall scanning process involved 2 billion records on more than 10 million scanned pages.

### ***Penalty notice***

2.6 Within three months after polling day, each Divisional Returning Officer (DRO) must send by post a penalty notice to every elector whose name and address appears on a list of apparent non-voters. A minimum of 21 days is allowed for voters to reply. The DRO is not required to send a penalty notice to electors who have died,

were absent from Australia on polling day, were ineligible to vote at the election, or who have already provided a valid and sufficient reason for not voting.

2.7 The penalty notice posted to an elector advises that he or she appears to have failed to vote at the election and that it is an offence to fail to vote at an election without a valid and sufficient reason. The elector is further advised that if he or she does not wish to have the matter dealt with by a court, the elector may, within a specified period of time either: advise the DRO of the circumstances in which they did in fact vote; advise the DRO of the valid and sufficient reason why they did not vote; or pay to the DRO a penalty of \$20.

### ***Valid and Sufficient***

2.8 Each divisional office processes any reply to the penalty notice. If a reason is provided as to why the elector did not vote, the DRO determines whether or not the reason provided is 'valid and sufficient'. If the DRO is not satisfied that the reason provided is valid and sufficient, then the DRO writes again to the elector advising that the reason provided is not a valid and sufficient reason for not voting. The elector is also informed that if the elector does not wish to have the matter dealt with by a court, the elector may, within a specified time period, pay to the DRO a penalty of \$20.

2.9 If payment is received with no offer of a reason for not voting, it is accepted, banked and receipted according to financial directions and the matter ends there. Most payments from non-voters at the 2004 election were received electronically, through Australia Post or the Reserve Bank facilities.

2.10 Some non-voters pay the \$20 penalty in response to the first notice, and some also offer a 'valid and sufficient' reason as well as paying. In these cases, the money is banked, receipted and then listed for refund.

2.11 If the reason is not 'valid and sufficient' and the \$20 penalty has not been paid, then a Fine Notice is produced and sent to the non-voter explaining that the reason is not acceptable and allowing 14 days for payment.

2.12 In some cases, extenuating circumstances allow for a warning letter to be issued rather than a penalty notice. Examples could include: first-time offenders; those with an insufficient reason but who might reasonably have thought their reason sufficient; or aged non-voters.

2.13 Where an elector claims to have voted, it is investigated in divisional offices by checking relevant on-line images of certified list pages. Some responses require further investigation or information.

2.14 If an elector is unable to respond to correspondence from the DRO because of absence from his or her residential address or because of physical incapacity, then another elector who has personal knowledge of the facts may respond on behalf of the elector who appears to have failed to vote.

2.15 The fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for not voting, see subsection 245(14) of the Electoral Act.

### **No Reply**

2.16 If no reply is received to the first penalty notice, a second penalty notice must be sent by the DRO. Deceased or otherwise deleted electors are automatically excluded by the system during the extract process for second notices. A similar process to that adopted for responses to first notices is adopted for second notices.

### **Prosecution**

2.17 An elector may be prosecuted pursuant to subsection 245(15) of the Electoral Act for failing to vote at an election without a valid and sufficient reason, or for making a statement in response to the penalty notice, or to the further notice by the DRO, that is, to his or her knowledge, false or misleading in a material particular. The court may impose a maximum penalty of \$50 plus costs.

2.18 Before a summons is issued, each non-voter listed for prosecution must be reviewed to determine that they are residing at their enrolled address. This activity is undertaken either by telephone or doorknock, in the form of 'household reviews'. This activity can result in significant reductions in potential prosecution action when it is found that the non-voter has left their enrolled address. All non-respondents receive Continuous Roll Update letters in due course to determine if they have left their enrolled address.

2.19 The AEC refers prosecution matters to the Commonwealth Director of Public Prosecutions (DPP). Penalties imposed by the Court are enforced by the Court. The Court may order the non-voter to also pay the costs associated with the prosecution. These costs may be awarded to the AEC and are generally received from the Court with the penalty payment.

## **3. Non-voting at 2004 federal election**

3.1 The AEC has not previously reported to the JSCEM on the statistics regarding non-voters at the 2004 election. The non-voter process takes one to two years to get close to a conclusion where there are very few outstanding matters and any prosecutions have been resolved. Within the timeframe of a JSCEM inquiry, the statistics available are not sufficiently concluded to be useful.

3.2 Analysis by the AEC shows that 458 952 people were issued with a notice of apparent failure to vote seeking an explanation. Of this total: replies were received from 296 805 electors; 54 223 notices were returned undelivered; and 107 924 notices did not generate a reply from the elector. Both notices returned undelivered and those from which there were no reply become a source for investigation through the Continuous Roll Update process.

3.3 Of the 296 805 replies received, the reasons given were accepted in 209 871 cases. This indicates that for some 46% of the original cases in which a notice of apparent failure to vote was issued, no offence had in fact taken place

because the voter had a valid and sufficient reason. In 52 900 cases, non-voters forwarded the penalty payment of \$20 with their reply. Warnings were issued to 8 251 non-voters and a further 1 092 non-voters were issued with penalty notices. In 24 691 cases the AEC accepted that the issue of non-voter notices had not been appropriate.

3.4 Of the 1 092 cases in which penalty notices were issued: 847 payments of \$20 were received (in addition to the 52 900 payments mentioned in paragraph 3.2) and 31 prosecutions were initiated. Of those 31 prosecutions: 26 cases had convictions recorded; 2 cases had the matter proven but no conviction recorded; and 3 cases were dismissed as not proven. The balance of 214 penalty notices issued resulted in the matter not proceeding for a variety of reasons such as fuller explanations for the failure to vote being provided.

#### **4. Multiple voting**

4.1 Subsection 339(1A) of the Electoral Act provides that it is an offence if a person votes more than once in an election. The same procedure of marking certified lists, scanning and producing a consolidated list used to detect apparent non-voters, is also used to detect apparent multiple voters. To increase public awareness, the procedures in place for the detection and prosecution of multiple voters are described in detail in the AEC Electoral Backgrounder No 14, entitled *Electoral Fraud and Multiple Voting*<sup>1</sup>.

##### ***Identification of multiple voters***

4.2 If, after being marked off the certified list at an issuing point when being issued with ballot papers, an elector then goes to another issuing point to cast another ordinary vote, either at the same polling booth later in the day or at a different polling booth, then another copy of the certified list for that Division will be marked to signify that that person has been issued with ballot papers. If they cast a declaration vote, their name will be marked on a certified list during the preliminary scrutiny. In the case of postal and provisional votes, an electronic version of the certified list is used for preliminary scrutiny.

4.3 After polling day, every certified list used at every polling place throughout Australia, together with certified lists used to mark off the names of declaration voters, are optically scanned. This scanning process produces a report on apparent multiple voters (and a report also on apparent non-voters). The initial sort only produces a list of 'apparent' non-voters or multiple voters because mechanical or human error distorts the true figures.

4.4 An output from the scanning process is a report of all names on the roll for the electoral division which have been marked more than once. Images of the relevant certified list pages are attached to the report. Divisional staff undertake a manual check of the scanning reports for their electoral divisions in order to identify and eliminate multiple marks that are the result of accidental marks on the original certified lists that do not relate to official or voter error, or deliberate multiple voting.

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<sup>1</sup> The Backgrounder is available in electronic format on the AEC Internet site at [www.aec.gov.au](http://www.aec.gov.au).

These marks may turn out to be the result of dust specks, stains, or a mark pressed too hard from the previous page.

4.5 Once this step has been completed, divisional staff proceed to manually check the remaining multiple marks on the scanning reports against the original certified lists and other documents, for reported polling official error and other official errors. The Officer in Charge of a polling booth may have reported in his or her return that a mistake in marking off a certified list was made, or there may be notations in the margins of lists indicating an error in marking off a name. 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.

4.6 The apparent multiple marks removed from further investigation by these steps eliminate a large number of apparent dual and multiple voters.

### ***Investigation by the DRO and AEO***

4.7 The DRO investigates the multiple marks that remain after the first two levels of manual checking have been completed by divisional staff.

4.8 As a result of this process, 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 their name. A large number of multiple marks are eliminated from further investigation by this process of matching responses from apparent dual and multiple voters with those from apparent non-voters.

4.9 Some electors, or their close friends or family, provide a reason for casting more than one vote that does not indicate any deliberate attempt to defraud the system. Such explanations might include elderly and confused electors who had forgotten that they had already voted by post and subsequently voted again at a polling booth on polling day. Other reasons may include language or literacy difficulties for those whose first language is not English.

4.10 Where there is no reasonable explanation for an elector casting more than one vote, the cases are referred by the DROs to the Australian Electoral Officer (AEO) for the State or Territory for further consideration. At this stage, a warning letter may be sent to some electors, informing them of the correct procedures and the penalties for voting more than once, if so the matter is taken no further.

### ***Investigation by the AFP***

4.11 Other cases are referred by the AEO to AEC National Office. Senior staff at the AEC then determine whether the cases should be referred to the Australian Federal Police (AFP) for investigation. It is these final cases that remain after the elimination of accidental marking of the certified lists, polling official error in marking the certified lists, and instances where warning letters have been issued, that are of primary interest when examining the possibility of electoral fraud.

4.13 In February 2002, the AFP and the AEC signed a service agreement covering a range of matters including the referral of potential multiple voters. This agreement formalised the process for referring potential multiple voters by the AEC to the AFP. In relation to multiple voting, the agreement states:

In instances of apparent dual or multiple voting, the AEC will undertake administrative investigations before forwarding them to the AFP for possible investigation. In these instances, the AEC will provide the AFP with any documentary or other relevant evidence to assist in the investigation. Administrative investigations by the AEC may include checks on the electoral roll and of any related documents, and initial contact with alleged offenders by telephone or by letter. In seeking to maintain the integrity of the electoral roll, and to assist the AFP in identifying recidivist offenders, where appropriate, the AEC will provide the AFP with an individual's recorded voting history.<sup>2</sup>

## **5. Multiple Voting at the 2004 Election**

5.1 During the 2004 federal election, 6 472 possible dual voters were eliminated from further investigation as a result of DRO's matching responses from apparent multiple voters with those from apparent non-voters. The comparable figure in 2001 was 9 123.

5.2 During the 2004 federal election, 741 electors indicated that they may have dual or multiple voted as a result of being confused or having language difficulties. A further 27 electors indicated that a relative had voted for them. For the 2001 federal election, 739 electors indicated that they may have dual or multiple voted as a result of being confused or having language difficulties, and a further 23 indicated that a relative had voted for them.

5.3 At the 2004 federal election 401 electors were issued warning notices for apparent dual or multiple voting, compared with 867 in 2001.

5.4 The AEC referred 64 cases of apparent multiple voting to the AFP following the 2004 federal election and the Werriwa by-election. These 64 cases involved two generic types of multiple voting: firstly, those instances involving a significant number of multiple marks on a certified list (up to 13 in one instance); and secondly, those where there was clear documentary evidence (in the form of signatures on declaration votes) indicating an intention to vote more than once.

5.5 The 64 cases referred to the AFP were spread among 40 electoral divisions as shown in the following table.

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<sup>2</sup> Australian Electoral Commission. Supplementary Submission to the Joint Standing Committee on Electoral Matters' Inquiry into the 2004 Federal Election. Multiple Voters and Other Matters, 2 June 2003.



Divisional spread of cases of apparent multiple voting at the 2004 election referred to the AFP

<b>NSW</b>	<b>22</b>	<b>Victoria</b>	<b>22</b>	<b>Queensland</b>	<b>16</b>
Banks	1	Ballarat	1	Brisbane	1
Bennelong	2	Casey	1	Fairfax	2
Calare	1	Corangamite	1	Griffith	3
Cowper	1	Deakin	4	Leichhardt	1
Eden-Monaro	2	Gellibrand	1	Maranoa	2
Lindsay	5	Gorton	2	McPherson	1
Lyne	1	Higgins	1	Moncrieff	4
Macarthur	1	Hotham	3	Rankin	1
Newcastle	1	Jagajaga	1	Ryan	1
Reid	2	Malley	1		
Richmond	1	McEwen	4	<b>Western Australia</b>	<b>1</b>
Robertson	1	Melbourne	1	Tangney	1
Shortland	1	Scullin	1		
Sydney	1	<b>Tasmania</b>	<b>2</b>	<b>South Australia</b>	<b>1</b>
Werriwa	1	Denison	1	Kingston	1
		Franklin	1		

5.6 The 25 cases selected for investigation were chosen from a combination of evidentiary criteria (documentary material in the form of declaration votes), whether the elector was locatable (that is, the elector was still on the roll or could be located at a different address) and resource allocation (AFP concentrated their resources on metropolitan areas).

5.7 Following discussions between the AEC and the AFP, the AFP suggested a 'day of action' to investigate a discreet number of cases that it had previously rejected on the grounds of resource constraints and pursue these by conducting formal interviews with the alleged offenders. The day of action occurred on 28 September 2005.

5.8 AEC and AFP personnel met on Friday 30 September 2005 to discuss the outcomes of the 'day of action'. The AFP advised that in most cases there was insufficient evidence available to proceed to prosecution. While the AEC continued liaison with the AFP in the light of evidence obtained and advice from the DPP, no further prosecutions resulted.

5.9 In cases of possible multiple voting, the evidence obtainable as to the identity of the person who voted on each occasion was not thought sufficient to overcome the 'beyond reasonable doubt' rule for a successful criminal prosecution. With several thousand people attending most polling venues, it is not possible for polling staff many months later to relate a particular face to a particular name crossed off the certified list as having voted. In cases where signatures of the same apparent voter on two different declaration votes were available, those cases tended to be ones involving elderly and confused voters, or voters with difficulty understanding the forms they were completing. Such cases are unlikely to proceed to prosecution when measured against the criteria laid down in the Commonwealth's prosecution policy.

## **6. Conclusion**

6.1 The follow-up of possible non-voters at the 2004 election resulted in 53,747 non-voters paying a \$20 administrative penalty, 31 prosecutions being made and 8 251 warning letters being issued. The AEC believes that the way it conducts this process disseminates to a wide range of Australians the fact that the AEC implements compulsory voting effectively and thereby encourages electors to make the effort to attend and vote as required by law.

6.2 The follow-up of possible multiple voters after the 2004 election saw an AFP 'day of action' come into operation for the first time regarding voting at federal elections. The AEC expects that this style of AFP input to the process will increase the effectiveness of the multiple voter follow-up at future elections as both organisations learn how to maximise its effect. There is no obvious solution to the difficulty of proving the identity of an apparent multiple voter beyond reasonable doubt in the face of contrary evidence made in declarations by the voter.