



OFFICE OF DEPUTY COMMISSIONER

GPO Box 401 Canberra City ACT 2601
Telephone 02 6131 5610 Facsimile 02 6131 6341www.afp.gov.au
ABN 17 864 931 14327th June 2011

Mr Daryl Melham MP
Chair
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Mr Melham MP

I refer to your letter dated 4 May 2011 to Commissioner Negas requesting further evidence specific to the conduct of the 2010 federal election matters relating to multiple voting offences.

Specifically, you sought a response to:

1. how the AFP deals with some cases;
2. what level of priority the AFP is able to give to cases of alleged electoral fraud (multiple voting and impersonation) or non-voting offences under the *Commonwealth Electoral Act 1918*;
3. whether there are problems with investigating and prosecuting these offences under the current law;
4. whether the complexity of gathering evidence is a disincentive to prosecution; and
5. whether you have any views on the feasibility of alternative methods for dealing with these matters, for example, automatic fines that could then be contested in court.

For ease of reference I provide my responses via the following attachment for your perusal.

I do hope that this information assists the Committee in concluding its current inquiry.

Yours sincerely

Ramzi Jabbour
Acting Deputy Commissioner Operations

1. How the AFP deals with such cases of electoral fraud.

Since the Federal Election on 21 August 2010, the AFP has received 19 separate referrals from the Australian Electoral Commission (AEC) in relation to multiple voting.

As of 9 February 2011, the majority of multiple voting referrals received from the AEC by the AFP had been rejected due to the relative 'low' priority against other operational priorities.

As a result of the varied response of the AFP in relation to its acceptance of multiple voting referrals, Mr Ed Killestyen, AEC Commissioner, contacted the Deputy Commissioner Operations expressing his concerns.

On 29 April 2011, a decision was made by the National Manager Crime Operations that the 19 referrals by the AEC would be investigated by way of a National Day of Action.

Prior to the National Day of Action three referrals were finalised by Adelaide, Perth and Hobart Offices.

2. What level of priority the AFP is able to give to cases of alleged electoral fraud (multiple voting and impersonation) or non-voting offences under the *Commonwealth Electoral Act 1918*.

The AFP has traditionally provided investigative services to the AEC. The AFP, like the AEC, is limited by available resources and relies on determining whether a matter is serious or complex by evaluating all referrals against the Case Categorisation and Prioritisation Model (CCPM).

Serious or complex matters which the AEC may refer to the AFP for consideration of possible investigation include:

- instances of apparent dual or multiple voting, where a voter has been marked off the certified list of voters twice (dual) or three or more times (multiple);
- possible electoral fraud offences such as those relating to enrolment claims and party registration; and
- other electoral offences under the four Acts under which the AEC conducts elections and serious internal fraud.

The AFP will, subject to operational priorities, undertake an investigation of cases of apparent multiple voting and dual voting after a general election, given the seriousness of this offence and the infrequent nature of general elections.

Under the AFP CCPM, multiple voting offences are rated with a 'Routine' Priority, 'Low' Impact, 'Significant' Impact to Client and 'Low' Value to the AFP.

Under the AFP CCPM, all other electoral related offences are rated with 'Routine' Priority, 'Medium' Impact, Significant' Impact to Client and 'Low' Value to the AFP.

When assessing referrals, the AFP also considers the *Prosecution Policy of the Commonwealth (Policy)*. The Policy is a public document which sets out guidelines for the making of decisions in the prosecution process. The Policy recognises that there is no requirement that every offence which comes to the attention of the authorities must be prosecuted. The Policy provides that as a general rule, the more serious an alleged offence, the more likely it will be prosecuted, rather than dealt with by some other process.

The penalty for casting more than once in the same election contrary to section 339 1(A) of the Commonwealth Electoral Act 1918, is 10 penalty units (\$1100). Whereas, the penalty for a person found guilty of intentionally voting more than once in the same election contrary to section 339 1(C) of the Commonwealth Electoral Act 1918, is 60 penalty units (\$6600) or imprisonment for 12 months, or both.

3. How the AFP refers cases to the DPP.

Where the AFP believes there is sufficient evidence to proceed to charge and it is in the public interest to do so, the AFP may refer a brief of evidence to the Commonwealth Director of Public Prosecution (CDPP), as the decision to prosecute is a matter for the CDPP.

4. Whether there are problems with investigation and prosecuting these offences under the current law.

Investigations into multiple voting offences are notoriously unsuccessful unless the alleged offender makes full and frank admissions to the offence. This is due to the absence of any corroborative evidence to support the offence given that the manner in which a vote is cast is largely dedicated to protecting an individual's identity. The principle of protecting a constituent's identity with respect to their actual vote, as against their attendance at a polling station, is not contested by the AFP.

It is also an impossibility to prove the time of the offence as no records are kept or available (say through CCTV) regarding the time of the constituents attendance at the polling station. Obviously this would be of significant evidentiary value where multiple votes are cast. The lack of this type of information prevents both exculpatory and inculpatory evidence being assessed by the investigator.

Proving the identity of the constituent casting the vote is also a significant issue when investigating multiple voting offences. Presently, there is no robust mechanism to trace or identify the constituent presenting at the polling station as no formal identification is required to be presented to the officials managing the electoral roll register. While there is a very remote possibility of obtaining witness identification from employees working at polling stations, it is highly unlikely to be of value due to the

volume of voters presenting at polling stations. The value of witness identification evidence is further reduced as referrals of multiple voting are often received several months after the day of the election.

In postal votes, there is little scope to prove or disprove that the person casting the vote is the person named on the voting documentation. Obtaining evidence forensically is also problematic as shown in the Powell matter, where handwriting samples provided in voting paperwork was not sufficient to conduct a handwriting comparison examination.

In addition, as voting documentation is handled by an unknown number of persons before it is identified as being of evidential value, there is little possibility of obtaining uncontaminated biological or fingerprint evidence.

There is also the possibility of human error when marking names off the 'Tick off' list, in that the wrong person may be marked as voting when in fact they cast their vote at a different location.

In order to address the evidential gaps in future elections, the following recommendations are forwarded for your consideration as potential opportunities to bridge evidential gaps but more importantly, to deter persons from intentionally denigrating the integrity of the electoral process:

- Re-evaluate an e-voting system to the general populace, as trialled in the 2007 Federal Election for people who were blind or vision impaired.
- Following an extensive marketing campaign, request photographic identification be provided by the constituent to confirm their identification prior to them casting a vote. If the constituent does not have any form of photographic identification then they sign a pro-forma Statutory Declaration attesting to their identification.
- Implement an identification verification solution at the polling station where identification documents are presented (potentially through a self-serve arrangement) and verified through the Document Verification Service (DVS). The NSW Electoral Commission used the DVS in the 2011 Federal Election to allow suitable identification documents to be presented at polling booths for those not yet enrolled but seeking to vote. There would still need to be alternatives for those not holding documents that are verifiable through the DVS or for those whose address on credentials is different to that on the Electoral Roll. While strictly not foolproof, if integrated into an electronic voting system linked to individuals, it could protect against multiple votes
- Create an electronic electoral 'tick off' list that updates when voter presents to vote or when postal votes are received. This list will provide real time information that multiple votes are being cast.
- Provide electronic postal vote capacity which will automatically be marked against an electronic electoral 'tick off' list.

- Highlight people on the electoral roll who are registered as General Postal Voters (GPV) or have actually cast a postal vote in that election. If a person presents at a polling booth who is registered as a GPV or has already voted, inform them of the fact and ask them if they have already voted in the election. This may prevent persons who may have forgotten that they have voted or prevent persons who are unsure what they are voting for from voting multiple times.
- Extensively market the offence of multiple voting to remind people of the possible criminal ramifications of the offence.
- Supply time-stamped CCTV at all polling stations. The CCTV would not obtain footage of the actual voting booth but the entry to the polling station. This footage could be used to identify persons of interest who attend multiple polling stations or corroborate evidence supplied to the AFP by the AEC.
- Record the time the attending voter attends at the polling station. This would allow investigators to trace the movements of persons of interest and could be compared to CCTV footage to prove or disprove statements by the alleged offender/s. This would be achieved easily with an electronic 'tick off' list.

While some of the above suggestions will be of assistance as a stand alone implementation, many will be of greater assistance if implemented in conjunction with other suggestions

5. Whether the complexity of gathering evidence is a disincentive to prosecution.

The AFP has assigned considerable resources to the above investigations which involved over 40 members from seven AFP offices speaking with 18 people in relation to multiple voting offences.

As a result of these investigations three people were formally Cautioned for casting multiple votes contrary to Section 339 1(A) of the Commonwealth Electoral Act 1918. The remaining 16 persons denied any involvement in casting multiple votes and as a result of insufficient corroborative evidence the matters were finalised.

Multiple voting offences are generally not complex investigations. The main impediment to prosecution is the lack of available evidence due to current voting processes which protects the individual's identity.

6. Whether the AFP has any views on the feasibility of alternative methods for dealing with these matters, for example, automatic fines that could then be contested in court.

The AEC already have a system whereby they contact alleged offenders and seek their feedback in relation to multiple voting allegations. It may

be advantageous if the AEC had the ability to issue fines to alleged offenders who responded that they did cast multiple votes or that the AEC believed that there was enough evidence to show this. If these matters were contested, they could then proceed to Court or be referred to the AFP.