

**AUSTRALIAN ELECTORAL COMMISSION**

**SUPPLEMENTARY SUBMISSION**

**TO THE JOINT STANDING COMMITTEE ON ELECTORAL  
MATTERS' INQUIRY INTO THE 2001 FEDERAL ELECTION**

**MULTIPLE VOTERS AND OTHER MATTERS**

**Canberra**

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# Multiple voters and other matters

## 1. Introduction

1.1 This submission by the Australian Electoral Commission (AEC) is presented to the Joint Standing Committee on Electoral Matters (JSCEM) in response to its 'inquiry into the conduct of the 2001 federal election', as advertised in the national press on 25 May 2002.

1.2 The submission contains commentary on the dual and multiple voter statistics for the 2001 federal election and AEC responses to questions on notice provided by the JSCEM in April and May 2003.

1.3 The AEC has on previous occasions commented on issues similar to those responded to here. Where this has occurred, the submission provides references to those previous comments.

## 2. Dual and multiple voting

2.1 During each election, the AEC compiles dual and multiple voting statistics. These statistics are regularly provided to the JSCEM as part of each federal election inquiry. In terms of the treatment of dual and multiple voting, the AEC divides those electors who have apparently voted twice (dual voters) from those electors who have apparently voted more than twice (multiple voters). The AEC applies this distinction because most apparent dual voters are more likely to be a result of administrative errors by the AEC, or because of confusion as a result of age, or language and cultural difficulties on behalf of electors.

### Procedures for detecting dual and multiple voting

2.2 There are comprehensive checks and balances in the *Commonwealth Electoral Act 1918* (the Act), and in AEC administrative procedures that ensure that instances of multiple voting are detectable. 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>

2.3 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, their 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.

2.4 If that 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

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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).

preliminary scrutiny. In the case of postal and provisional votes, an electronic version of the certified list is used for preliminary scrutiny.

2.5 Immediately following polling day, the certified lists for each Division are scanned to read the clock marks against the names on the lists. This process generates reports of multiple marks against names, and reports of no marks against names, together with details identifying the issuing location of the certified lists. Another part of the scanning process detects errors that have been notified by polling officials at the polling place, using the special clock marks for this purpose at the top of each page of the lists.

2.6 Divisional staff then make a manual check of the scanning reports for their Divisions against the original certified lists. In this first round of checking it is discovered in many cases that multiple marks listed in the scanning reports are the result of accidental marks on the original certified lists that have nothing at all to do with either official or voter error, or deliberate multiple voting. That is, the marks may turn out to be the result of dust specks, stains, or a mark pressed too hard from the previous page. These multiple marks, which are the result of accidental contamination of the certified lists, are then eliminated from further investigation.

2.7 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.

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

2.9 The Divisional Returning Officer (DRO) then proceeds to investigate the multiple marks that remain after the first two levels of manual checking by Divisional staff of the scanning reports against the original certified lists.

2.10 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 his or her 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 of apparent non voters. During the 2001 federal election, 9,123 possible dual voters were eliminated from further investigation as a result of matching with apparent non voters. The comparable figure in 1998 was 8,167.

2.11 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.

2.12 During 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. A further 23 electors indicated that a relative had voted for them. For the 1998 federal election, 622 electors indicated that they may have dual or multiple voted as a result of being confused or having language difficulties, and a further 42 indicated that a relative had voted for them.

2.13 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, and the matter is taken no further. At the 2001 federal election 867 electors were issued warning notices for apparent dual or multiple voting, compared with 565 in 1998.

2.14 Other cases are referred by the AEO 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 it has been decided that the matter should not be taken any further, that are of primary interest when examining the possibility of electoral fraud.

2.15 **Table A** indicates the number of apparent cases of dual and multiple voting referred to the AFP by State and Territory AEOs and the outcome of those cases for the 2001 and 1998 federal election.

2.16 It should be noted that the AEC's submission on dual and multiple voting to the JSCEM's 1998 federal election inquiry contained an inaccuracy in Table 1 and Table 2. The column headed 'Investigation' indicates that a large number of cases were referred to the AFP, but were then rejected. In fact, the figures indicate the cases referred to the AEO for investigation, not the AFP. The number of cases referred to the AFP are represented accurately in the table below.

**Table A: Apparent cases of dual and multiple voting referred to the AFP for the 2001 and 1998 federal election**

<b>2001 Federal election</b>	<b>NT</b>	<b>QLD</b>	<b>NSW</b>	<b>ACT</b>	<b>VIC</b>	<b>TAS</b>	<b>SA</b>	<b>WA</b>	<b>Total</b>
Referred to AFP	4	7	123	2	0	1	0	1	138
AFP rejected*	4	7	119	2	0	1	0	0	133
Referred by the AFP to the DPP for prosecution	0	0	4	0	0	0	0	1	5
<b>1998 Federal election</b>	<b>NT</b>	<b>QLD</b>	<b>NSW</b>	<b>ACT</b>	<b>VIC</b>	<b>TAS</b>	<b>SA</b>	<b>WA</b>	<b>Total</b>
Referred to AFP	0	10	231	6	9	0	6	1	263
AFP rejected*	0	10	203	6	9	0	6	1	235
Referred by the AFP to the DPP for prosecution	0	0	28	0	0	0	0	0	28

\* This includes instances where the AFP rejected because of lack of resources (the majority of the cases), or the AFP rejected because of insufficient evidence (the minority of cases).

2.17 As indicated in Table A, there were fewer referrals of potential multiple voters to the AFP after the 2001 federal election than the 1998 federal election. Because of the low rate of investigation by the AFP at the 1998 federal election, due in part to AFP resource constraints, the AEC and the AFP reached an unwritten agreement to refer only cases where the potential multiple voter had four or more marks recorded against their name. The unwritten agreement was not strictly followed, as there were only 77 potential multiple voters at the 2001 federal election, but it did result in significantly fewer referrals to the AFP.

2.18 Notwithstanding this, the level of acceptance by the AFP was still not high.

2.19 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.

2.20 The numbers of apparent dual and multiple votes were spread evenly across all Divisions, with no pattern of concentration in a particular Division. This indicates there was no attempt to defraud the federal electoral system by dual or multiple voting.

### **3. Delivery of Postal Vote Applications (PVAs)**

3.1 The JSCEM asked the AEC if there were any instances of political parties delivering PVAs to the AEC too late to be processed, and therefore threatening the franchise of the elector who had applied for the PVA.

3.2 In submission 181, the AEC indicated it was undertaking an investigation to ascertain the number of electors, if any, disenfranchised as a result of political parties delivering PVAs to the AEC too late to be processed. As the AEC did not collect this statistic for the 2001 federal election, the evidence collected so far in this investigation is anecdotal. On this basis the AEC is not able to say with certainty whether there were any instances of political parties delivering PVAs to the AEC too late to be processed.

3.3 In submission 147, the AEC discussed the delivery of PVAs that had been returned initially by electors to the political parties.<sup>2</sup> The key issues for the AEC in relation to political party PVAs, as indicated in submission 147, were:

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<sup>2</sup> 2002. Australian Electoral Commission. *Submission 147*. Paragraphs 6.2.1-6.2.21.

- The timeliness of forwarding PVAs to the AEC. In a number of instances, the AEC was able to cite instances where political parties had delayed delivery of PVAs to the AEC by a period of weeks;<sup>3</sup>
- Political parties returning PVAs to applicants on the basis that the PVAs were incomplete. The Act makes it clear that it is the responsibility of the DRO to determine the completeness of PVAs;<sup>4</sup> and
- Confusion associated with General Postal Voters who receive PVA applications from political parties.<sup>5</sup>

3.4 As part of the preparation for the next federal election, the AEC will be working with the political parties to ensure that delays in the delivery of PVAs to the AEC are reduced to a minimum.

3.5 The JSCEM also asked if there were any cases of the AEC receiving PVAs but, as a result of administrative error, not processing them in sufficient time to ensure the delivery of the postal vote.

3.6 At the 2001 federal election, there was one instance of this occurring. The problem occurred in the Division of Robertson and involved two PVAs that were delivered to a pre poll voting centre but were not then delivered to the Robertson Divisional office. In this case, the AEC identified the electors and contacted them to advise them to cast a pre poll vote, which they did.

## **4. Privacy and access issues**

### **Access to the roll by National Missing Persons Unit**

4.1 The JSCEM asked that the AEC advise whether the National Missing Persons Unit has electronic access to the roll via the AFP.

4.2 Schedule 2 of the *Electoral and Referendum Regulations 1940* (the Regulations) list the Commonwealth Government Agencies and Authorities that are entitled to receive confidential elector information. Schedule 3 of the Regulations sets out the purposes for which those agencies and authorities may use elector information provided in electronic format.

4.3 The National Missing Persons Unit is now part of the newly established Australian Crime Commission (ACC). The ACC has replaced the National Crime Authority, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. The ACC has access to an electronic version of the roll for the following purposes:

- collecting, analysing or disseminating information or intelligence relating to relevant criminal activities;
- investigating matters relating to relevant criminal activities; and
- assembling or analysing evidence about offences and suspected offences.

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<sup>3</sup> 2002. Australian Electoral Commission. *Submission 147*. Paragraph 6.2.3.

<sup>4</sup> 2002. Australian Electoral Commission. *Submission 147*. Paragraph 6.2.9.

<sup>5</sup> 2002. Australian Electoral Commission. *Submission 147*. Paragraph 6.2.11.

4.4 The ACC may not use elector information provided in electronic format for any other purpose than those listed above. Accordingly, the National Missing Persons Unit should not and, as far as the AEC is aware does not, have access to elector information in electronic format.

4.5 If the National Missing Persons Unit believes electronic access to the roll in electronic format is justified in its case, it can approach the Electoral Commissioner justifying access in terms of Information Privacy Principle 11 of the *Privacy Act 1988* and seek to have those purposes included under the entry for the Australian Crime Commission in Schedule 3 of the Regulations.

### **Widening of AEC demand powers**

4.6 To assist the AEC in obtaining useful datasets for purposes of Continuous Roll Update (CRU) activities, the AEC considers that it would be appropriate for the demand power, contained in section 92 of *the Commonwealth Electoral Act 1918* (the Act) to be broadened. Section 92 of the Act currently provides that:

All officers in the service of the Commonwealth, all police, all statistical, and electoral officers in the service of any State, officers in the service of any local governing body and all occupiers of habitations shall upon application furnish to the Electoral Commission or to any officers acting under its direction all such information as the Electoral Commission requires in connexion with the preparation, maintenance and revision of the Rolls.

4.7 While this would appear to be a fairly wide ranging demand power, it is restricted in its application to State government authorities, and does not apply at all to non government authorities. Further, the provision does not:

- contain a penalty provision for failure to comply with a request made under section 92;
- specify a time limit in which the information sought must be supplied to the AEC, or
- take into the account the cost or reasonableness of such a request.

4.8 The AEC has identified that a number of the more useful and relevant datasets are held by non Commonwealth Government bodies, such as Registrars of Births, Deaths and Marriages (currently these bodies are only required to provide the AEC with information relating to deaths), Motor Vehicle and Licensing authorities, Rental Tenancy Authorities, and Electricity Authorities. It would be beneficial to the AEC if it had the power to seek the information relating to recent changes of address (at cost rather than commercial rates) and set a reasonable timeframe for provision of the information, with penalties for unreasonable non compliance. It should be noted that unlike a number of other Commonwealth Government agencies that have demand powers, the AEC is not seeking the information to apply a penalty to a person, rather it is attempting to be proactive in seeking compliance, and to assist electors in exercising their franchise.

4.9 The tables below show the coverage of demand power provisions in relation to State and Territory electoral authorities and in relation to other Commonwealth Government Agencies.



**Table B: Examples of demand powers contained in State/Territory electoral legislation**

State and Territory	Act Name	Section	Applies to State agencies	Applies to local government agencies	Penalty provision for failure to comply	Must pay for info	Overrides other State or Territory provisions	Time frame for provision
Cwth	<i>Commonwealth Electoral Act 1918</i>	92	✓*	✓	X	X	X	X
NSW	<i>Parliamentary and Elections Act 1912</i>	31	✓	✓	X	X	X**	X
VIC	<i>Electoral Act 2002</i>	26	✓	✓***	X	X	X	✓
QLD	<i>Electoral Act 1992</i>	58	✓	✓	X	✓	✓	✓
WA	<i>Electoral Act 1907</i>	35	✓	✓	X	X	X	X
SA	<i>Electoral Act 1985</i>	27	✓♣	✓♣	✓	X	X	✓♦
TAS	<i>Electoral Act 1985</i>	28	✓	✓	X	X	X	X
ACT	<i>Electoral Act 1992</i>	67	✓	✓	✓	X	X	✓
NT	<i>Electoral Act 1995</i>	26	X	X	✓	X	X	X

\* Some agencies only

\*\* Overrides the Information Privacy Act

\*\*\* Plus Electric Authorities

♣ Refers to officers

♦ Set by the Electoral Commissioner

**Table C: Demand powers in other Commonwealth legislation**

Act Name	Section	Applies to Cwth agencies	Applies to State agencies	Applies to local govt agencies	Penalty provision - failure to comply	Must pay for info	Overrides other legislative provisions	Time frame for provision
<i>Social Security (Administration) Act 1999</i>	192, 196, 197, 198	✓	✓	✓	✓	X	✓ (not cwth)	✓
<i>Veterans' Entitlements Act 1986</i>	128	✓	✓	✓	✓	X	X	✓
<i>Migration Act 1958</i>	18, 21	✓	✓	✓	✓	X	X	✓
<i>Taxation Administration Act 1953</i>	13G	✓	✓	✓	✓	X	?	?

### **Lack of cohesion and clarity in Parts VII and VIII of Act**

4.10 Attachment D of submission 147, which contained the AEC's review of sections 89 – 92 of the Act, the AEC discussed a number of further matters for review, including the lack of cohesion between Parts VII and VIII of the Act. The AEC had the following to say in relation to this issue:

The increase in the types of possible enrolment and the changing nature of the electoral roll mean that the Electoral Act no longer sets out clear and cohesive instructions for applying for enrolment or changing enrolment details. In earlier form, Part VII of the Electoral Act appeared to deal with qualifications for enrolment while Part VIII dealt with applications for enrolment and their processing. Some of the procedures for applying for enrolment now occur in Part VII and different applications may have different criteria. Examples are that section 93 in Part VII of the Act, dealing with traditional enrolment, does not mention applying for enrolment, dealing instead with entitlement. Part VIII deals with claims (applications) for enrolment. Sections 94A, 95 and 96 in Part VII, however, deal with applications for enrolment from outside Australia and enrolment as an itinerant elector. This raises confusion as to the extent to which those applications are also bound by the provisions regarding claims for enrolment in Part VIII. It may be preferable to return to the situation in which Part VII deals with qualifications only and Part VIII deals with the way in which claims or applications are made and processed.

As the subject of this paper recommends clarifying sections 89-92, the AEC believes that Parts VII and VIII of the Electoral Act also require revision to clarify the complex and various entitlement and eligibility criteria and processes for enrolment. At the same time, these Parts should also be reviewed with a view to providing for the reality of modern communication and interaction with the Government. Like most areas of the Electoral Act,

Parts VII and VIII describe manual, paper-based forms and processes that might be streamlined and made more efficient through modern technologies.<sup>6</sup>

4.11 The JSCEM asked whether the AEC had any recommendation to make on this issue.

4.12 As the intent of the section was to foreshadow to the JSCEM future work priorities for the AEC, and the AEC has not yet initiated investigations in this area, the AEC does not at this stage wish to make a recommendation. However, when this matter has been reviewed, the AEC will inform the JSCEM of the outcome and advice of any suggested changes.

## **5. Registration of Curtin Labor Alliance**

5.1 The JSCEM asked a number of questions about the registration of the Curtin Labor Alliance political party.

5.2 On 13 February 2001, the AEC received an application from the Curtin Labor Alliance to register as a political party under the provisions of the Act. The application was accompanied by a copy of the party's constitution and was made by ten members of the party.

5.3 The AEC advertised the application on 2 August 2001, and by the time objections closed on 7 September 2001, three objections had been lodged.

5.4 The first objection was from the Australian Labor Party. The objection was based on:

- the use of the word 'Curtin';
- the use of the word 'Labor' in the name of the party on the basis that this would mislead and confuse voters regarding the relationship between the Australian Labor Party and the Curtin Labor Alliance; and
- that 'the Curtin Labor Alliance is a front party for the Citizens Electoral Council'.

5.5 In relation to the use of the word 'Curtin', the provisions of the Act do not allow the AEC to reject an application where a person's name has been used in the name of the party, and as the AEC determined that this word was not part of any other registered party name it did not breach the provisions of section 129 of the Act.

5.6 In relation to the term 'Labor', the AAT found in the 'liberals for forests' case that the resemblance between the names of the Liberal Party and liberals for forests was limited and subsequently set aside the decision of the Commission not to register liberals for forests. Also, given that another currently registered party also used the same spelling of Labor (that is, the Democratic Labor Party), the AEC believed that there were insufficient grounds to reject the application on that basis.

5.7 In relation to the claim that the Curtin Labor Alliance was a front party of the Citizens Electoral Council, the AEC conducted cross checking against all available party membership lists, including the Citizens Electoral Council, and

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<sup>6</sup> 2002. Australian Electoral Commission. *Submission 147*. Attachment D, paragraphs 69-70.

found that none of the Curtin Labor Alliance members had been identified as members by the Citizens Electoral Council for registration purposes.

5.8 The two further objections were based on the same issues, and were addressed in the same way as the first objection.

5.9 Both the Ryan and Aston by-elections delayed processing of the application. Processing was resumed after the return of the writ for the Aston by-election on 27 July 2001.

5.10 As the application complied with the technical requirements of section 126 of the Act, the AEC registered the party on 28 September 2001.

## **6. Expenditure on the 1998 federal election public awareness campaign**

6.1 The JSCEM asked for details of the public information campaign expenditure for the 1998 federal election. The table below details this information. It should be noted that because of changes to the way the public information campaign was organised for the 2001 federal election, these figures are not comparable with 2001 expenditure figures. The key difference is the outsourcing of the call centre for the 2001 federal election. The figures for 'Election leaflets' and the National Tally Room are, however, directly comparable.

**Table E: public information campaign expenditure for the 1998 federal election**

<b>Expenditure item</b>	<b>\$</b>
Advertising campaign	8,870,782
Public information materials and support	1,300,372
Election leaflet (mailed to households)	1,463,302
Election statistic and results	94,108
National tally room	363,165
<b>TOTAL</b>	<b>12,091,729</b>

Source: Electoral pocketbook issued following 1998 Federal Election