

## Voting

- 4.1 This chapter examines the voting methods currently available to Australians on polling day: ordinary voting, declaration voting, mobile polling and assisted voting. Informal voting and multiple voting are also considered.
- 4.2 A number of submissions canvassed more far-reaching changes to the voting system, including voluntary voting, optional preferential voting, changes to the 'Above the Line' voting system used for Senate elections, and electronic voting. These proposals are examined in chapter seven.

### Ordinary voting

- 4.3 The majority of Australian electors cast their vote at a polling booth in their home Division on election day. These votes are referred to as 'ordinary votes'. For the 2001 federal election, 84 per cent (over 10 million) of all votes cast were ordinary votes.

### Declaration voting

- 4.4 At the 2001 federal election, 15.92 per cent of all votes (nearly two million) were cast as 'declaration votes', where the elector must sign a declaration certificate stating that they are eligible to vote, the details

of which are checked before the vote is admitted to the count. Types of declaration votes are outlined in the table below.

**Table 4.1 Types of Declaration Votes**

<b>Type of vote</b>	<b>Provision</b>	<b>Electoral Act</b>
Postal vote	Electors who cannot attend a polling place anywhere in the State or Territory for which they are enrolled on polling day can apply in writing for a 'postal vote'. The Divisional Returning Officer (DRO) will then send them the ballot papers which must be posted back to the DRO before polling day.	Part XV – sections 182 to 200
Pre-poll vote	Electors who cannot attend a polling place on polling day can cast a 'pre-poll vote' in person at a Divisional office or pre-poll voting centre in the lead up to polling day and on polling day.	Part XVA – sections 200A to 202
Absent vote	Electors who are out of their Division but still within their home State or Territory, may cast an 'absent vote' at any polling place in that State or Territory.	section 222
Provisional vote	People whose names cannot be found on the certified list of electors for the Division in which they believe themselves to be enrolled, or whose names have already been marked off the certified list but who claim not to have voted, may cast a 'provisional vote'. These votes are not counted until a careful check of enrolment records has been made. Electors will then be advised of the outcome of that check.	section 235

*Source* AEC, 'Voting' at: [http://www.aec.gov.au/\\_content/what/voting/voting.htm#Declarationvotes](http://www.aec.gov.au/_content/what/voting/voting.htm#Declarationvotes), accessed 31 March 2003. Also Commonwealth Electoral Act 1918.

4.5 Submissions to the inquiry raised a number of issues related to declaration voting. These issues are examined below.

## Postal voting

4.6 Electors wishing to cast a postal vote may request a Postal Vote Application (PVA) form from the AEC, or may visit the AEC website and download the form. Alternatively they may receive a PVA sent by a number of political parties by direct mail or letter box drop. The voter completes the PVA and may return it directly to the AEC or to a political party that then forwards it to the AEC. A postal vote certificate (PVC) which contains the ballot papers is then issued to the applicant. The PVC must be sent back to the AEC prior to the close of the poll.<sup>1</sup>

1 The vote must be cast before the close of polling, although the Electoral Act (subsection 288(5A)) allows 13 days after the close of polls for the receipt of postal votes (paragraph 4.16 also refers).

- 4.7 At the 2001 federal election, 451,900 electors (3.74 per cent of the total) cast postal votes.<sup>2</sup>

#### Distribution and collection of PVAs by political parties

- 4.8 The AEC noted the practice by political parties of wide distribution of PVAs across Divisions, in the absence of requests for PVAs from the electors themselves. As expressed in its submissions to previous inquiries, the AEC was concerned that this practice results in a 'blurring between the political and the electoral'.<sup>3</sup>
- 4.9 The AEC raised two concerns about political parties' distribution and collection of PVAs:
- Candidates or parties may request that electors return the PVA form to them for forwarding to the AEC. The AEC is concerned that candidates and parties do not forward PVAs to the AEC as soon as they are received from electors, but wait until they collect a 'large' number and forward them together at a later date. For example, in the Division of Page, 61 PVAs were received from the National Party on 30 October 2001, and 16 were received from the ALP on 5 November 2001). According to the AEC there is:

a real risk that political parties or candidates holding large numbers of PVAs may lose or misplace some or all of these, or send them to the AEC after the deadline for receipt and thus disenfranchise some voters. Political parties may also deliver them so close to the deadline that the AEC is unable to process them in time and provide ballot materials to the applicant.<sup>4</sup>
  - During the 2001 federal election campaign some candidates and parties returned PVA forms to applicants when they considered that the application did not meet the requirements of the Electoral Act (for example, did not include witness details). According to the AEC, under section 188 of the Electoral Act it is the responsibility of the DRO or the Assistant Returning Officer (ARO) to determine whether a PVA meets the requirements of the Act.<sup>5</sup>

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2 Submission (AEC, no. 147), p. 31.

3 Submission (AEC, no. 147), pp. 33-35. See also AEC submissions to the 1996 and 1998 JSCEM reports, available at AEC internet site:  
[http://www.aec.gov.au/\\_content/why/committee/jscem.htm](http://www.aec.gov.au/_content/why/committee/jscem.htm), accessed 15 June 2003..

4 Submission (AEC, no. 147), p. 32.

5 Submission (AEC, no. 147), pp. 33-34.

4.10 The AEC submitted that in the 2001 federal election these activities caused processing problems for the AEC and confusion amongst some electors, particularly those who were already registered as General Postal Voters and who would automatically be sent ballot papers by the AEC (paragraph 4.80 refers). The AEC has alerted political parties to its concerns and:

concedes that political parties are unlikely to desist from the practice of the widespread distribution of PVAs ... If delays continue to occur, the AEC will in the interests of the voter have no option but to pursue action under section 197 of the Electoral Act.<sup>6</sup>

4.11 Section 197 of the Electoral Act requires that PVAs entrusted to another person must be forwarded to the AEC 'as soon as practicable', and stipulates a penalty of \$1,000 for non-compliance.<sup>7</sup>

4.12 The Member for Calare, Mr Peter Andren MP, also expressed concern about the distribution of postal voting material by political parties. Mr Andren was concerned that independent and minor-party candidates are at a disadvantage because they cannot afford mass mail-outs of postal vote material (unless they are incumbent candidates),<sup>8</sup> and also about the impact on voters and the election count:

Allowing applications to be sent by candidates could see households receive multiple applications from different candidates. Besides being likely to annoy many voters, this can only add to the paper waste generated by the election process.

In future elections, if the result is close, the larger the number of postal votes, the less likely it is that results will be known on the night.<sup>9</sup>

4.13 Mr Andren recommended that section 184AA of the Electoral Act be repealed, 'so that candidates can no longer provide postal vote

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6 Submission (AEC, no. 147), p. 35.

7 Submission (AEC, no. 147), pp. 32-33.

8 Incumbent MPs are permitted to use their Parliamentary Communications Allowance to provide constituents with postal, pre-poll and absentee voting information, and for the return of such forms to the AEC. See advice from Department of Finance and Administration, submission (Mr P Andren MP, no. 80) Attachment B.

9 Submission (Mr P Andren MP, no. 80), pp. 3-4.

applications to constituents as part of other printed election material authorised by them'.<sup>10</sup>

- 4.14 Whilst appreciating the concerns of the AEC and Mr Andren, the Committee is of the view that distribution of PVAs by candidates provides an important and now well-established service to electors, and that it is important for candidates and political parties to be confident that a service initiated by them has been successfully concluded. The relatively high rate of return experienced in many electorates demonstrates the helpfulness and popularity of the service. Breaking with this practice at future elections may lead to significant voter inconvenience and possibly disenfranchisement.
- 4.15 The Committee also notes that, when requested to provide evidence in support of its allegations, the AEC conceded that it could provide no evidence of instances where PVAs delivered to the AEC by political parties were received too late to be processed.<sup>11</sup> In the case of the Page and Hume PVAs, the majority of the PVAs complained of by the AEC were received by the AEC within five days of the date on which the applicants indicated that they had dispatched the PVA, and all were received by the AEC before the cut-off date for PVAs, 8 November 2001.

#### Postmarking and receipt of postal votes

- 4.16 The Electoral Act stipulates that where a postal vote certificate envelope has been postmarked after polling day, the enclosed vote shall not be counted. Where there is no legible postmark, and the signature of the witness bears a date on or before polling day, the envelope may be admitted for further scrutiny to determine if the vote is valid.<sup>12</sup>
- 4.17 The AEC argued that if a postal ballot paper is postmarked after polling day, but is signed and witnessed before polling day, it should be admitted to further scrutiny rather than discarded as an invalid vote. The AEC's reasoning is that many postal electors do not realise that they can (in fact, should) vote before polling day. Postal voters often post their ballot papers in the declaration certificate envelope on polling day. It is therefore a matter of chance whether or not their

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10 Submission (Mr P Andren MP, no. 80), pp. 3-4.

11 Submission (AEC, no. 203), pp. 6-7.

12 *Commonwealth Electoral Act 1918*, Schedule 3: 'Rules for the conduct of a preliminary scrutiny of declaration votes', items 7 and 7A.

envelopes are postmarked on that day, and counted in further scrutiny.<sup>13</sup>

- 4.18 The AEC examined postal vote certificates which were rejected in Western Australia at the 2001 federal election. The AEC found that of the 2,428 postal votes rejected, just under half (1,111) were rejected because they were received too late. Of those rejected because they were too late, 86 per cent (956) were signed and witnessed before polling day.
- 4.19 The AEC recommended changing the Electoral Act so that the date of the witness's signature, rather than the date of the postmark, is used to determine whether a postal vote was cast prior to the close of polling.<sup>14</sup>
- 4.20 The Committee believes it is a fundamental feature of Australia's electoral system that all votes are known to be cast before polls close. This is important to the system's integrity, transparency and fairness. The AEC's proposal would weaken this aspect of the electoral system, and the Committee does not support it. It believes that the AEC should address this issue through public information activities, including information on the PVA document itself.
- 4.21 The AEC also raised concerns about the timeframe for receipt of postal votes by DROs. Under subsection 228(5A) of the Electoral Act, a postal vote which has been postmarked on or before polling day is admitted to the scrutiny if:
- it is received by the DRO for the elector's home Division within 13 days after the close of the poll; or
  - it is received by the DRO from another DRO, ARO outside Australia, or presiding officer within 13 days after the close of poll, unless extended by direction of the Electoral Commissioner. Such postal votes must bear evidence that they were originally *received* by that other officer (as distinct from the vote being cast) prior to the close of the poll.<sup>15</sup>
- 4.22 The AEC argued that this provision has the unintended effect of disenfranchising electors simply because they are unaware that their postal vote must be returned to their specific Divisional office, rather

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13 Submission (AEC, no. 147), p. 36.

14 Submission (AEC, no. 147), p. 36.

15 Overseas postal voters may return their postal vote to the Returning Officer at their local DFAT post.

than to any AEC office or polling facility.<sup>16</sup> According to the AEC, over 5,000 postal votes were excluded from the scrutiny in 2001 because of this provision in the Electoral Act.

4.23 The Committee agrees with the AEC's recommendation that:

postal votes, cast on or before polling day, received by an AEO, ARO or another DRO, other than the DRO for the elector's home Division, after the close of the poll, be included in the scrutiny if it is subsequently received by the home DRO within 13 days after the close of the poll.<sup>17</sup>

### Recommendation 15

**4.24 The Committee recommends that postal votes cast on or before polling day, received by an AEO, ARO or another DRO other than the DRO for the elector's home Division, after the close of poll, be included in the scrutiny if it is subsequently received by the home DRO within 13 days after the close of the poll.**

#### Use of same ballot paper for postal and other votes

4.25 At present, the AEC produces two sets of ballot papers, one set for all votes other than postal votes, and one set for postal votes, which are overprinted with the words 'postal ballot paper'. The original reason for distinguishing the postal ballot papers was to ensure proper reconciliation of all ballot materials.

4.26 The AEC argued that strict procedures are now in force for the issue of postal vote material and for the accounting of all postal ballot papers through production, issue and receipt, thereby removing the requirement for separate identification of postal ballot papers.<sup>18</sup>

4.27 The AEC also raised this issue in the 1998 federal election inquiry, and the Committee recommended that the same ballot paper be used for

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16 Submission (AEC, no. 147), p. 36.

17 Submission (AEC, no. 147), p. 37.

18 Submission (AEC, no. 147), p. 37.

all forms of voting.<sup>19</sup> The Government did not accept this recommendation, stating:

The Government is taking action to strengthen electoral integrity and this should take precedence over administrative and cost efficiencies.<sup>20</sup>

#### **Automated Postal Vote Issue System**

4.28 At the 2001 federal election the AEC used its Automated Postal Vote Issue System (APVIS) for the first time in an election. The System was first used for the 1999 Republic Referendum.

4.29 Under APVIS, the preparation, packaging and dispatch of postal vote materials was undertaken by a private company contracted to the AEC. Prior to implementation of APVIS, these tasks had been undertaken by temporary staff at AEC offices. Under APVIS, delivery of materials to electors continued to be undertaken by Australia Post. The Committee notes the AEC's view that:

the new system alleviated much of the manual workload on staff in Divisions, and achieved significant cost savings, as well as resulting in time savings in the dispatch of postal vote materials to electors. APVIS was accountable and transparent in that it provided a national, computerised reporting system ... [which] could be accessed and monitored on demand by all DROs. APVIS also improved client service by enabling electors to telephone the AEC to obtain immediate information on the status of their postal voting materials.<sup>21</sup>

#### **General Postal Voters**

4.30 Under section 184A of the Electoral Act, electors may apply to be registered as General Postal Voters (GPVs) if they are not able to attend a polling booth in person. This may be because they do not live within 20 kilometres of a polling place (including a mobile polling station), or because they are physically unable to travel (for example, they are a patient in a hospital, or have a serious illness or infirmity,

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19 JSCEM, *The 1998 Federal Election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto*, Parliament of Australia, June 2000, Recommendation 25, p. 52.

20 Government Response to the JSCEM report: *The 1998 Federal Election*, tabled 1 March 2001, p. 10.

21 Submission (AEC, no. 147), p. 13.



or are unable to attend because of religious beliefs, or are in custody), or because they have a silent enrolment.<sup>22</sup>

- 4.31 The key service provided by the AEC to GPVs is that ballot papers are sent to them as soon as practicable following the declaration of nominations for a federal election, or the issue of a writ for a federal referendum.<sup>23</sup> GPVs are not required to fill out a Postal Vote Application form.
- 4.32 The AEC noted several instances where the current eligibility provisions for GPV registration cause difficulty. The first is that a person is not eligible to register as a GPV if they reside in a 'special hospital' (for example, a nursing home – see paragraph 4.30). The AEC submitted that this is a problem because of the need to cancel GPV status for electors who move into a special hospital. The AEC also stated that in some instances, the voting needs of physically handicapped people in special hospitals may be better served through GPV voting rather than mobile polling.
- 4.33 The AEC recommended that the Electoral Act be amended so that residents of special hospitals be allowed to register as General Postal Voters.<sup>24</sup>
- 4.34 The AEC was also concerned about GPV status for remote electors. People living on remote stations whose homes are within 20 kilometres of a mobile polling booth cannot register as GPVs. The AEC submitted that, while the introduction of remote mobile polling has been beneficial, some remote electors (for example, station workers) miss the opportunity to vote at a mobile polling booth because of last-minute work commitments. The AEC stated that:

[Station workers may] miss the small window of opportunity to vote when the remote polling team calls to their area, because they have been called away (often at short notice) to fix fences, drive cattle, etc. Prior to the establishment of remote mobile polling, station workers in remote areas were eligible for a [general] postal vote and this was often the most

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22 In relation to silent enrolment (section 104 of the Electoral Act), electors who consider that the publication of their addresses on the publicly available federal electoral roll would endanger the personal safety of themselves or their families, may make a request to the DRO that their addresses not appear on the roll. A request must give details of the relevant risk and be verified by statutory declaration. Silent electors are given the option of becoming General Postal Voters when filling out their silent elector enrolment form.

23 *Commonwealth Electoral Act 1918*, section 186.

24 Submission (AEC, no. 147), p. 40.

convenient and most appropriate means for many of them to vote.<sup>25</sup>

- 4.35 The AEC also noted that in the Northern Territory, station workers may register as GPVs for Territory elections, adding to the confusion for these electors at federal elections. The AEC recommended that the Electoral Act be amended to allow remote area workers whose occupation has the potential to prevent their voting at a mobile polling booth, to register as General Postal Voters.<sup>26</sup>

#### Committee comment

- 4.36 The Committee does not consider the AEC's arguments compelling. In particular, the Committee notes that mobile polling at special hospitals allows for greater scrutiny to ensure that proper procedures are being followed.

#### Overseas postal voting

- 4.37 Many Australians who are overseas at the time of an election avail themselves of the postal voting facility.
- 4.38 A number of submissions commented on perceived inefficiency in the operation of the postal voting process used by Australians overseas.<sup>27</sup> For example, Ms Michelle Kelleher of Florida, USA, submitted that she did not receive her postal vote until the day after it was due to be returned to the AEC.<sup>28</sup>
- 4.39 The Committee notes that the 2001 federal election took place two months after the September 11 terrorist attacks, which were followed by an anthrax scare. This badly disrupted USA postal services, which may have had an impact on the delivery of PVAs and PVCs to electors, and the return of such forms to diplomatic posts in America.
- 4.40 The AEC responded that the process for accessing, completing, and returning PVAs is as streamlined as possible given current legislative and technological limitations.<sup>29</sup> However, the AEC also advised that it

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25 Submission (AEC, no. 147), p. 40.

26 Submission (AEC, no. 147), p. 40.

27 See submissions (Bantwal Baliga, no. 12; Ms L Reeb, no. 21; Mr A D Zielinski, no. 23; Dr L Zinkiewicz, no. 61; Mr I Moller, no. 64; Ms M Kelleher, no. 76; and Ms L Shelley, no. 87).

28 Submission (Ms M Kelleher, no. 76).

29 Submission (AEC, no. 181), p. 5.

is negotiating with DFAT to dispatch ballot papers to overseas posts electronically.<sup>30</sup>

- 4.41 The AEC also suggested that postal voting could be expedited by a legislative change which would remove the requirement that PVAs require the signatures of the elector and a witness. This would allow the PVA to be completed and submitted as an online form.<sup>31</sup>
- 4.42 This would alleviate the concerns of some submitters. For example, Mr Ian Moller submitted that he had problems finding an Australian citizen in his area (Michigan, USA) to act as a witness.<sup>32</sup>
- 4.43 The Committee notes that the Electoral Act allows overseas voters who cannot find a suitable witness to complete a signed statement setting out the reasons why they were unable to meet the witnessing requirement for their PVA.<sup>33</sup> It seems that some submitters were unaware of this provision.
- 4.44 The Committee does not consider that current anecdotal evidence of difficulties encountered in voting by post from overseas is sufficient to warrant the removal of any key steps in the process. Each of the PVA procedures for application, witnessing, receipt and return, are important in ensuring the integrity and security of the postal voting system.

#### Other issues relating to postal voting

- 4.45 Submissions raised a number of other issues related to postal voting. These are briefly examined below.
- 4.46 A submission from the Hon. Bob Katter MP, Member for Kennedy, called for a change to the provisions for the application for a postal vote.
- 4.47 One of Mr Katter's constituents, Mrs Jenkin, is blind, and her husband has enduring Power of Attorney to sign all documents on her behalf. Mr Katter submitted that the Electoral Act does not allow an elector to have their postal vote application signed by another person under a Power of Attorney. For the 2001 federal election, Mrs Jenkin submitted a PVA signed by her husband, which was rejected by the

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30 Submissions (AEC, no. 181, p. 7 and no. 199, pp. 10-11).

31 Submission (AEC, no. 181), p. 5.

32 Submission (Mr I Moller, no. 64).

33 *Commonwealth Electoral Act 1918*, subsection 184(3A).

AEC. Mr Katter called for a change to the Electoral Act to allow PVAs to be signed by people with enduring Power of Attorney.<sup>34</sup>

- 4.48 The AEC confirmed that, under subsection 336(1) of the Electoral Act, applicants must sign PVAs in their own handwriting. However, the AEC noted that subsection 336(2) of the Act allows applicants who are unable to sign, to make their mark on the application and have it witnessed.<sup>35</sup> The AEC undertook to clarify the situation for future PVA applicants:

Nevertheless, it is extremely unfortunate that Mr Katter's constituent was unable to vote at the last election. The AEC will investigate making it clearer, on its relevant forms in the future that a personal signature or mark is required and that a power of attorney cannot be used.<sup>36</sup>

- 4.49 Two submissions raised concerns about the secrecy of postal votes. The H.S. Chapman Society stated that the inclusion of 'red slashes and symbols' on postal vote envelopes goes against the principle of secrecy for postal ballots:

The voter's vote can hardly be said to be handled with the greatest security and secrecy when it can now be identified with the greatest of ease.<sup>37</sup>

- 4.50 The AEC responded:

The red symbols on postal vote envelopes are intended to make them easier to identify in the sorting process so Australia Post could give them priority. The AEC has no record of difficulties with tampering or the loss of these envelopes.<sup>38</sup>

- 4.51 Mrs Meryl Meiklejohn submitted that declaration votes are not secret, as there is identifying information on the declaration envelope which ties the elector to the ballot paper it contains. Mrs Meiklejohn suggested the use of two envelopes: the declaration envelope which would include the voter's name, address and other relevant information; and a second envelope containing the ballot papers, with

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34 Submission (Hon. B Katter MP, no. 129).

35 *Commonwealth Electoral Act 1918*, section 336.

36 Submission (AEC, no. 174), p. 24.

37 Submission (H.S. Chapman Society, no. 146), p. 1.

38 Submission (AEC, no. 174), p. 29.

only the electorate marked on it. The second envelope would be placed into the declaration envelope and sent to the DRO.<sup>39</sup>

- 4.52 The Committee notes that Schedule 3 to the Electoral Act specifies that once the information on declaration envelopes has been examined to determine the validity of the vote, the votes are removed from the envelopes by the DRO ‘without unfolding or inspecting them or allowing any other person to do so’, and placed in a ballot-box for further scrutiny. This existing process already protects the secrecy of declaration votes.<sup>40</sup>
- 4.53 Mr Ronald Munro recommended that postal and absentee votes be ‘cut off within four working days of the election, so that voters are encouraged to vote before the election’.<sup>41</sup>
- 4.54 The Committee notes, in relation to Mr Munro’s suggestion, that:
- most absentee votes are cast at regular polling booths on election day and changing this system would be severely disruptive to both electors and the AEC; and
  - current postmarking requirements already ensure that only postal votes cast before the close of polls on election day are admitted to the scrutiny.

### Pre-poll voting

- 4.55 Electors who cannot attend a polling place on polling day can cast a pre-poll vote in person at a Divisional office or pre-poll voting centre in the lead up to polling day and on polling day if they are voting outside the State or Territory in which they are enrolled. Just under five per cent (585,616) of all votes cast in the 2001 federal election were pre-poll votes.<sup>42</sup>
- 4.56 Schedule 2 to the Electoral Act sets out the specific grounds for application for a pre-poll or postal vote. These include an elector’s absence from their enrolled State or Territory on polling day, or an inability to attend a polling booth on election day for one of a number of reasons (for example, they are a patient in a hospital, have a serious

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39 Submission (Mrs M Meiklejohn, no. 62).

40 *Commonwealth Electoral Act 1918*, Schedule 3, items 17-18. See also AEC: *Frequently Asked Questions – General Voting*, at [http://www.aec.gov.au/\\_content/what/faqs/vote\\_gen.htm#12](http://www.aec.gov.au/_content/what/faqs/vote_gen.htm#12), accessed 7 April 2003.

41 Submission (Mr R Munro, no. 50).

42 Submission (AEC, no. 147), p. 31.

illness or infirmity, are unable to attend because of religious beliefs, are in custody, or will be working throughout the polling hours).<sup>43</sup>

### Pre-polling in home Divisions

4.57 Since 1993, the AEC has recommended to successive election inquiries that the Electoral Act be amended to allow a pre-poll vote which is cast in an elector's home Division to be considered as an ordinary vote, rather than a declaration vote. The AEC's submission to this inquiry again recommended such a change, arguing that:

This would mean that such voters would be immediately marked off the Certified List of Voters for their home Division, and the consequence would be a reduction in the time delay associated with processing of declaration votes through the preliminary scrutiny to verify eligibility; a reduction in the administrative load and the costs associated with the issuing, sorting and collating of declaration votes, and faster election results.<sup>44</sup>

4.58 The AEC noted that pre-poll ordinary voting in home Divisions is allowed for Victorian and ACT parliamentary elections.

4.59 In the 1993, 1996 and 1998 federal election reviews, the Committee's predecessors rejected the AEC's above recommendation, on the basis that in general, an ordinary vote should only be available to an elector when voting in their home Division on election day.

4.60 The Committee has received no evidence in this inquiry warranting a change in this position.

### Scrutineers for pre-polling

4.61 The Electoral Act is silent on the attendance of scrutineers at pre-poll voting centres. The AEC noted that the *Referendum (Machinery Provisions) Act 1984* allows for scrutineers to be present at pre-poll voting centres, as scrutineers are allowed at 'each place in Australia where voting is being conducted'. The AEC recommended that a similar provision be included in the Electoral Act.<sup>45</sup>

4.62 The Committee considers that openness and transparency are key factors in ensuring high levels of electoral integrity, fairness and

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43 *Commonwealth Electoral Act 1918*, Schedule 2 : 'Grounds of application for postal or pre-poll vote'.

44 Submission (AEC, no. 147), p. 38.

45 *Referendum (Machinery Provisions) Act 1984*, section 27. Submission (AEC, no. 147), p. 39.

public confidence. Measures such as opening the pre-poll voting centres to correctly appointed scrutineers would increase openness and transparency.

### Recommendation 16

- 4.63 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to explicitly allow scrutineers to be present at pre-poll voting centres.**

#### Qualification for pre-poll voting

- 4.64 Mr Bruce Kirkpatrick and the H.S. Chapman Society raised concerns about the AEC's issue of pre-poll votes. Mr Kirkpatrick's submission stated that when he attended an AEC pre-poll centre in Sydney to inquire about pre-poll voting, an AEC officer was ready to issue him with a pre-poll vote despite Mr Kirkpatrick's belief that he did not qualify. Mr Kirkpatrick argued that pre-poll centres offer opportunities for electoral fraud:

Where voters are able to vote at any of many polling booths in their electorate without being properly identified and not just on polling day but over an extended period of weeks, where the votes go into envelopes at points from which scrutineers are excluded ... there has to be increased opportunity for the unscrupulous to perpetrate voting fraud.<sup>46</sup>

- 4.65 Mr Kirkpatrick submitted that these problems would be overcome if voters were required to prove their identity at the polling booth.

- 4.66 The H.S. Chapman Society similarly claimed that:

voters who pre-poll vote are not policed in any way to ensure they qualify to receive them. The conditions that apply are not always posted in an obvious area so that voters are aware of them.<sup>47</sup>

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46 Submission (Mr B Kirkpatrick, no. 77), p. 3.

47 Submission (H.S. Chapman Society, no. 146), p. 1.

4.67 Dr Amy McGrath, OAM representing the H.S. Chapman Society, cited two examples of AEC staff being willing to issue her with a pre-poll vote when she believed that she did not qualify.<sup>48</sup>

4.68 The AEC responded to these submissions by stating:

The most likely cause of the circumstance Mr Kirkpatrick describes is that the polling official assumed Mr Kirkpatrick's claim for a pre-poll vote was reasonable, and that, although he claimed he was going to be in the State, he was eligible for a pre-poll vote under one of the other grounds.<sup>49</sup>

4.69 The AEC also reiterated that scrutineers are present at the opening of declaration envelopes.

4.70 Implementation of the Committee's recommendation that it be made explicit that scrutineers are allowed to be present at pre-poll voting centres may address some of the concerns about pre-poll voting.

#### **Advertising of opportunities for pre-poll voting**

4.71 Mrs Ruth Gibbs asked that pre-polling opportunities be more widely advertised, and that more pre-poll centres be made available.<sup>50</sup> The AEC made no response to this submission.

4.72 The Committee is of the view that current pre-poll voting centres are adequate in number and sufficiently well publicised to enable qualifying voters to have ample opportunity to cast their ballot prior to the election.

#### **Absent voting**

4.73 Electors who are away from their Division but still within their home State or Territory on election day, may cast an 'absent vote' at any polling place in that State or Territory. At the 2001 federal election, 780,961 electors (6.46 per cent of the total) cast absent votes.<sup>51</sup>

4.74 Submissions did not raise significant concerns about absent voting provisions or arrangements. Comments by polling booth officials about facilitation of absent voting are discussed in chapter five.

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48 Submission (H.S. Chapman Society, no. 146), p. 1.

49 Submission (AEC, no. 174), pp. 11-12.

50 Submission (Mrs R Gibbs, no. 140).

51 Submission (AEC, no. 147), p. 31.



## Provisional voting

- 4.75 People whose names cannot be found on the certified list of voters for the Division in which they believe themselves to be enrolled, or whose names have already been marked off the certified list but who claim not to have voted, may cast a 'provisional vote'. These votes are not counted until a check of enrolment records has been made. Electors are then advised of the outcome of that check.
- 4.76 In the 2001 federal election, 107,396 provisional votes (0.89 per cent of the total) were admitted to the Senate scrutiny, and 81,266 provisional votes were admitted to the House of Representatives scrutiny.<sup>52</sup> In the course of this inquiry, concerns arose in relation to the reinstatement of provisional voters to the electoral roll. This is discussed in chapter two.

## Mobile polling

- 4.77 Mobile polling was introduced as a feature of the Australian electoral system in order to assist electors who encountered significant physical obstacles (mobility, distance, ill health etc.) to more easily cast their vote.
- 4.78 Certain electors unable to access a normal polling booth may be visited by a mobile polling booth. Mobile polling takes place in:
- hospitals and nursing homes - during the five days preceding polling day and on polling day;
  - remote areas - during the 12 days preceding polling day and on polling day;<sup>53</sup> and
  - prisons - by arrangement with the prison.<sup>54</sup>
- 4.79 Votes cast at mobile polling booths prior to election day are pre-poll votes. Votes cast on election day are ordinary votes, except where the elector is away from their home Division, in which case their vote will be cast as an absent vote.

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52 Submission (AEC, no. 200), p. 18.

53 As determined by the Electoral Commissioner; subsection 227(3) of the Electoral Act refers.

54 *Commonwealth Electoral Act 1918*, sections 224 to 227.

## Mobile polling at 'special hospitals'

- 4.80 The AEC asserted that the current mobile polling provisions do not adequately cover the voting needs of all people resident in 'special hospitals'. Section 224 of the Electoral Act relates to mobile polling at ordinary hospitals. Section 225 allows the AEC to gazette parts of other institutions (such as nursing homes) as 'special hospitals' to allow mobile polling to take place there. Under the current provisions of the Act, only patients at special hospitals who require 'continuous nursing care' qualify to use a mobile polling booth.
- 4.81 This means that electors in self-care facilities in nursing homes do not qualify for a mobile poll vote.
- This can cause frustration and resentment from residents in 'self-care' and 'retirement village' parts of an establishment when they are advised that the mobile polling facility is only available to 'patients' requiring 'continuous nursing care'. It is possible that one person is eligible to vote as a patient in a gazetted part of an establishment while the spouse of that person is not eligible to vote as a resident in another part of the establishment.<sup>55</sup>
- 4.82 The AEC recommended that the Electoral Act be amended so that mobile polling in special hospitals is no longer restricted to patients under 'continuous nursing care'. It cautioned that:
- these establishments are not to become ordinary polling places. The mobile polling facility should be restricted to residents and on-duty staff of the gazetted establishment.<sup>56</sup>
- 4.83 The Committee supports the extension of mobile polling to residents and patients of special hospitals. However, the Committee does not believe that mobile polling should be extended to on-duty staff of special hospitals, as implied by the AEC's recommendation. This would extend the mobile polling provisions for special hospitals beyond those currently relating to ordinary hospitals.
- 4.84 The Liberal Party of Australia highlighted the confusion surrounding mobile polling in 'special hospitals', and recommended that the AEC publish a full statement of how mobile polling in these establishments operates.<sup>57</sup>

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55 Submission (AEC, no. 147), p. 39.

56 Submission (AEC, no. 147), p. 40.

57 Submission (Liberal Party of Australia, no. 149), p. 5.

- 4.85 Current regulations and arrangements for mobile polling appear to be sitting uncomfortably with the ever-changing landscape of retirement, nursing home, and hospital accommodation. The result is confusion and frustration for many of the people mobile polling was designed to assist. The Committee believes further examination of this issue is required and recommends that the AEC provide the Committee with a report on mobile polling with a view to ensuring better management of mobile polling.

### Recommendation 17

- 4.86 **The Committee recommends that the AEC report to it in detail on how mobile polling currently operates, exactly where it believes mobile polling should take place, how mobile polling should be administered, and who should be entitled to cast their vote at a mobile polling station.**

### Remote mobile polling

- 4.87 Mr Barry Wakelin MP, Member for Grey, raised concern about the AEC practice of a mobile remote polling team visiting multiple remote communities and grouping all of those communities' votes together, and then counting and recording the votes of those multiple communities under the same heading, namely the remote mobile team identifier, for example 'Remote Mobile Team 1'.<sup>58</sup> Mr Wakelin submitted:

I remain totally opposed to the methodology of collecting all communities under the title of Mobile Booths. To give dignity and respect to the value of the individual vote in each community the counting should be done on a community by community basis.<sup>59</sup>

- 4.88 The AEC responded that Mr Wakelin's suggestion would have implications for the privacy of the vote:

On mobile polls, votes from a number of small communities are mixed in a single ballot box, decreasing the likelihood that votes from individuals within particular communities can be

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58 Submission (Mr B Wakelin MP, no. 108). See *Commonwealth Electoral Act 1918*, subsection 227(4).

59 Submission (Mr B Wakelin MP, no. 108).

identified. The same practice is applied to mobile teams in special hospitals for the same reason.<sup>60</sup>

- 4.89 The AEC also commented that the provision of a separate ballot box for each community would cause logistical problems:

In the case of remote mobiles undertaken by light aircraft, this suggestion could significantly increase the cost of conducting the mobile poll because the additional materials would require the hire of a larger aircraft, which may not be feasible due to the size of the relevant airstrips.<sup>61</sup>

## Assisted voting

- 4.90 The Electoral Act permits some voters to have assistance (from a person of their choosing or a polling official) to mark, fold, and deposit their ballot paper. A voter may have assistance if their sight is so impaired, or they are so physically incapacitated or illiterate, that they are unable to vote without assistance.<sup>62</sup>

- 4.91 Mr Barry Wakelin MP raised concerns about assisted voting, asserting that in his electorate, 'there is no evidence that the previous 90+% assisted voting has altered'.<sup>63</sup> Mr Wakelin also commented that in these communities, the level of informal voting was very low. He submitted that:

There is a great need to give fair and transparent awareness of individual rights to vote according to their beliefs and not on what one or two people in the polling booth area may be encouraging voters to do.<sup>64</sup>

- 4.92 The AEC responded:

The AEC absolutely refutes the implication of Mr Wakelin's statement that polling staff who assist voters are encouraging voters to vote in a particular way.<sup>65</sup>

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60 Submission (AEC, no. 174), p. 22.

61 Submission (AEC, no. 174), p. 22.

62 *Commonwealth Electoral Act 1918*, section 234.

63 Submission (Mr B Wakelin MP, no. 108).

64 Submission (Mr B Wakelin MP, no. 108).

65 Submission (AEC, no. 174), p. 21.

4.93 The issue of assisted voting was examined in detail in the previous Committee's report on the 1998 federal election.<sup>66</sup> In particular, the Committee understands that the AEC is currently drafting a report on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders, which the Committee inquiring into the conduct of the 1998 federal election recommended be done prior to the following federal election. This report and any action that follows from it may impact on the issue of assisted voting by Aboriginal people.

## Informal voting

4.94 The AEC regards a ballot paper as informal if 'it is not filled out correctly'.<sup>67</sup> Informal ballots are not counted towards any candidate, but are set aside for counting and research.

4.95 A vote is informal if:

- the ballot paper is not marked at all;
- the ballot paper does not have the official mark or has not been initialled by the polling official and the ballot paper is not authentic in the eyes of the DRO;
- the ballot paper has writing on it which identifies the voter;
- in the case of an absent, postal or provisional vote, the ballot paper is not contained in the declaration envelope; or
- the voter has not marked a vote correctly for it to be considered acceptable according to section 268 of the Electoral Act.<sup>68</sup>

4.96 Section 268 stipulates that a ballot paper is invalid if:

- in a Senate election, where the vote has been cast 'below the line', it has no vote indicated on it, or it does not indicate the voter's first preference for one candidate and the order of his or her preference for the remaining candidates;<sup>69</sup> or

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66 See AEC, *The 1998 Federal Election* (2000), as above, pp. 78-84.

67 AEC, *Electoral pocketbook*, Commonwealth of Australia, July 2002, p. 45.

68 AEC, *Electoral pocketbook*, Commonwealth of Australia, July 2002, p. 45.

69 A ballot is considered formal if 90 per cent of all candidates are allocated preferences. AEC, *Formal and Informal Votes*, [http://www.aec.gov.au/\\_content/what/voting/votes.htm](http://www.aec.gov.au/_content/what/voting/votes.htm), accessed 9 April 2003.

- in a House of Representatives election, it has no vote indicated on it, or it does not indicate the voter's first preference for one candidate and an order of preference for the remaining candidates.<sup>70</sup>

### Informal voting at the 2001 federal election

- 4.97 Australian elections have traditionally been characterised by a small, but not insignificant, informal vote.
- 4.98 At the 2001 federal election there were 580,590 informal votes (4.82 per cent) in the House of Representatives ballot. The AEC's research report states that this was 'the fourth largest since federation'.<sup>71</sup> The Committee believes it important to note that in recent history, informal voting for the House of Representatives was higher in both 1984 and 1987 than it was in 2001. Informal voting for the Senate also rose at the 2001 federal election to 3.9 per cent.
- 4.99 Table 4.2 provides statistics on informal voting from 1984 to 2001 for both the Senate and the House of Representatives.

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70 The Act also notes exceptions. For example, where a voter has indicated a first preference for one candidate and an order of preference for all the remaining candidates except one and the square opposite the name of that candidate has been left blank, the DRO may deem the voter's preference for that candidate to be voter's last preference. The DRO must therefore consider this to be a formal ballot. Sections 240, 268, 270 and 274 of the Electoral Act relate to informal voting for the House of Representatives.

71 AEC, *Research Report 1 – Informal Vote Survey House of Representatives 2001 Election*, Commonwealth of Australia, 2002, p. 1; available at: [http://www.aec.gov.au/\\_content/What/voting/research\\_2001Elections.htm](http://www.aec.gov.au/_content/What/voting/research_2001Elections.htm), accessed 15 June 2003.

Table 4.2 Informal voting at federal elections, 1984-2001 (% of total votes)

	1984	1987	1990	1993	1996	1998	2001
House of Representatives	6.3	4.9	3.2	3.0	3.2	3.8	4.8
Senate	4.3	4.1	3.4	2.6	3.5	3.2	3.9

*Source* AEC, Electoral pocketbook, 2002, p. 45 and AEC Submission 77 to the Inquiry on the conduct of the 1996 federal election, p. 27.

4.100 In 2001, South Australia and New South Wales recorded the highest State averages of informality (see table 4.3 below).

Table 4.3 Informal voting by state at the 2001 federal election (% of total votes)

	SA	NSW	WA	QLD	NT	VIC	ACT	TAS
	%	%	%	%	%	%	%	%
House of Representatives	5.5	5.4	4.9	4.8	4.6	4.0	3.5	3.4
Senate	3.1	3.5	3.6	3.0	2.8	5.6	2.3	3.3

*Source* AEC, Electoral pocketbook, 2002, p. 45.

4.101 Informal voting can take various forms. Table 4.4 outlines the distribution of informal votes by type.

Table 4.4 Informal votes for the House of Representatives by category and State, 2001 federal election (% of total informal votes)

	NSW	QLD	VIC	WA	SA	TAS	ACT	NT	NAT
<i>Category</i>	%	%	%	%	%	%	%	%	%
	<i>(total votes)</i>								
<b>Blanks</b>	20.38	15.67	24.95	23.36	24.52	27.86	30.84	20.74	<b>21.43</b> <b>(124,456)</b>
<b>Number 1 only</b>	32.47	46.42	26.05	29.87	36.63	23.60	28.76	27.95	<b>33.58</b> <b>(194,975)</b>
<b>Ticks and Crosses</b>	12.57	11.46	12.97	9.93	14.95	15.84	8.99	10.62	<b>12.42</b> <b>(72,262)</b>
<b>Langer Style</b>	2.37	2.00	3.22	4.18	1.05	6.88	0.83	14.56	<b>2.68</b> <b>(15,564)</b>
<b>Non Sequential</b>	22.52	10.49	14.15	21.75	13.40	13.17	7.66	15.06	<b>17.18</b> <b>(99,946)</b>
<b>Voter Identified</b>	0.04	0.03	0.07	0.11	0.03	0.02	0.04	0.00	<b>0.04</b> <b>(281)</b>
<b>Marks</b>	5.49	4.91	8.23	7.78	5.97	12.11	4.20	2.98	<b>6.31</b> <b>(37,017)</b>
<b>Slogans making numbering illegible</b>	0.28	0.30	0.42	0.18	0.57	0.01	0.05	0.00	<b>0.31</b> <b>(1,571)</b>
<b>Other</b>	3.87	8.72	3.98	2.83	2.87	0.51	18.63	8.09	<b>6.00</b> <b>(34,571)</b>
<b>Total</b>	<b>5.42</b>	<b>4.83</b>	<b>3.98</b>	<b>4.92</b>	<b>5.54</b>	<b>3.40</b>	<b>3.52</b>	<b>4.64</b>	<b>4.82</b> <b>(580,590)</b>

*Source* AEC. 2002. Research Report 1 – Informal Vote Survey, House of Representatives, 2001 Election [http://www.aec.gov.au/\\_content/what/voting/research\\_2001Elections.htm](http://www.aec.gov.au/_content/what/voting/research_2001Elections.htm)

*Notes* **Blank.** This category contains all those ballot papers that are completely blank, that is, no writing whatsoever.

**Number 1 only.** This category contains ballot papers where the elector expressed only a first preference by placing a single figure 1 against one candidate.

**Langer Style Voting.** This category contains ballot papers with repeating numbers such as 1,2,3,3,3...

**Non Sequential.** This category contains those ballot papers where the numbering is non-sequential such as 1,2,300,324,490 ...

**Voter Identified.** This category contains ballot papers bearing writing identifying the elector.

**Marks.** This category contains those ballot papers where there is no preference, or partial preference but slogans, written comments, marks etc are contained on the ballot papers.

**Slogans making numbering illegible.** This category contains all those ballot papers where slogans, writing or comments have been made and the words or marks interfere with the preferences in such a way that the numbering can not be deciphered.

**Other.** The other category contains ballot papers that can not be categorised into any of the above. Typically this category consists of ballot papers that have insufficient preferences expressed.

4.102 Just over one third of all informal votes were cast by voters who only numbered one box on the ballot paper. The second most prominent form of informal voting was a blank (21 per cent). A significant number of ballots were not marked in a sequential order (17 per cent), or were marked with ticks or crosses (12 per cent).



- 4.103 The inquiry received submissions on a number of issues in relation to informal voting. Many focussed on factors that may explain the increase in informal voting for the 2001 election. Others attempted a broader investigation into the phenomenon of informal voting and its underlying causes.
- 4.104 A thorough investigation of informal voting is beyond the scope of this inquiry. However some issues raised by participants are of particular relevance. These are discussed below.

#### The influence of state-based electoral systems on informality

- 4.105 Optional preferential voting, where voters have the option of 'just voting 1', was introduced for State elections in New South Wales in 1981 and in Queensland in 1991.
- 4.106 The interplay between this system at the State level and full preferential voting at the federal level is often put forward as an explanation of 'number 1 only' informality in federal elections by voters in those States.
- 4.107 Evidence to this inquiry focussed on a small number of seats in New South Wales.
- 4.108 Two months prior to the federal election, a by-election was held for the New South Wales state seat of Auburn. Auburn contains approximately 60 per cent of the federal electorate of Reid, the remainder falling within the federal electorate of Blaxland.
- 4.109 Electoral advertising for the Auburn by-election reminded electors that they were able to 'Vote 1 only', as is permitted by the optional preferential voting system used in NSW.
- 4.110 It was suggested that relatively high rates of informality for the 2001 federal election in both Reid (11.08 per cent<sup>72</sup>) and Blaxland (9.78 per cent<sup>73</sup>) may be explained by the confusion caused when differing preferential systems operate at the two levels of government.

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72 Over 33 per cent of informal ballots in Reid were only marked with the number 1. See AEC, *2001 Election Informal Ballot Paper Survey*, at: [http://www.aec.gov.au/\\_content/what/voting/survey/nsw/reid.htm](http://www.aec.gov.au/_content/what/voting/survey/nsw/reid.htm), accessed 15 June 2003.

73 Over 28 per cent of informal ballots in Blaxland were only marked with the number 1. This, however, was not the most prevalent form of informality in Blaxland. Slightly more prevalent were ballots marked non-sequentially. See AEC, *2001 Election Informal Ballot Paper Survey*, at: [http://www.aec.gov.au/\\_content/what/voting/survey/nsw/blaxland.htm](http://www.aec.gov.au/_content/what/voting/survey/nsw/blaxland.htm), accessed 15 June 2003.

- 4.111 The federal member for Fowler, Ms Julia Irwin MP, raised similar concerns regarding increased informality in her electorate, where the informal vote reached almost 13 per cent in 2001.<sup>74</sup>
- 4.112 It is interesting to note that only 28 per cent of informal votes in the electorate of Fowler were 'number 1 only' (significantly less than the national average of 33 per cent).
- 4.113 In South Australia, which does not operate an optional preferential system, the percentage of informal voting was the highest of any state or territory (at 5.54 per cent) and the proportion of 'number 1 only' informal votes was well above the national average (at more than 36 per cent).
- 4.114 Whilst there is intuitive appeal in the view that optional preferential voting at the State level may play a role in increasing informality at the federal level, and some anecdotal evidence to suggest it may be a factor, it is not overwhelmingly supported by the evidence at this stage and it is certainly not the sole explanatory factor.

#### Langer-style voting

- 4.115 Previous inquiries have spent considerable effort examining the phenomenon of non-sequential numbering and so-called Langer-style voting.<sup>75</sup>
- 4.116 Prior to 1996, subsection 270(2) of the Electoral Act provided that a House of Representatives ballot would still be formal where there was a '1' against the name of one candidate, and there were also numbers in all of the other squares, even if one of the numbers was repeated.
- 4.117 The Act previously stated that:
- any number that is repeated is disregarded in the counting of preferences.<sup>76</sup>
- 4.118 This provision, intending to preserve the franchise of voters who made numbering errors whilst filling in their ballot, had the unintended consequence of, in effect, allowing optional preferential voting (ballots numbered with a clear first preference but unclear later preference, for example, 1,2,3,3).

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74 Submission (Ms J Irwin MP, no. 95), p. 6.

75 See JSC EM, *The 1996 Election: Report of the Inquiry into the conduct of the 1996 Federal Election*, Parliament of Australia, June 1997, pp. 27-33; and JSC EM, *The 1998 Federal Election* (2000), as above, pp. 113-115.

76 JSC EM, *The 1996 Federal Election* (1997), as above, p. 27.

- 4.119 Despite the insertion into the Electoral Act of a prohibition on advertising and promoting the use of this loophole (section 329A), many instances were found in each of the 1987, 1990, 1993 and 1996 elections of individuals and parties encouraging optional preferential voting.
- 4.120 During the 1996 federal election, Mr Albert Langer campaigned for voters to cast a *de facto* optional preferential vote relying on section 270 of the Electoral Act. The AEC took action under section 329A. Mr Langer was ordered by the court to desist from his campaign. He ignored the order and was imprisoned for contempt of court.
- 4.121 This case generated widespread publicity for the optional preferential voting 'loophole', and such votes for the House of Representatives increased seven-fold.<sup>77</sup>
- 4.122 Following the 1996 election, the Committee's predecessor reviewed sections 270 and 329A of the Electoral Act and recommended that section 329A (and related sections) and subsection 270(2) be repealed so that House of Representatives ballot papers marked with non-consecutive numbers or which had numbers repeated would be considered informal.<sup>78</sup>
- 4.123 The Government supported these recommendations and they were enacted in the *Electoral and Referendum Amendment Act 1998*. Consequently, since 1998 ballot papers with repetitive numbering (for example, 1, 2, 2, 2 ... or 1, 2, 3, 3, 3) have been considered informal.
- 4.124 The Committee notes that the AEC's research report into informal voting indicates that Langer-style voting accounted for less than three per cent of all informal votes in 2001, so it can hardly be claimed that the 1998 amendments have driven any generalised increase in informality.
- 4.125 Some of the consequences of the 1998 amendments are of concern to some Committee members. Mr Daryl Melham, MP argued that the amendments eliminate any kind of savings provision for those voters who accidentally make mistakes, including those who marked their ballot papers 'non-sequentially'.<sup>79</sup> Non-sequentially marked papers differ from Langer votes in that there is no repetition of numbers. More often than not, numbers have simply been missed (for example,

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77 JSCEM, *The 1996 Federal Election* (1997), as above, p. 28.

78 JSCEM, *The 1996 Federal Election* (1997), as above, p. 32.

79 Transcript of Evidence 9 December 2002 (Mr D. Melham MP), pp. EM 317-320. See also Submission (AEC, no. 181), p. 23.

'1, 2, 3, 5, 8'). At the public hearing on 9 December 2002, Mr Melham proposed that a new savings provision be considered to preserve the votes of electors who mark their ballots non-sequentially.

- 4.126 The Committee understands and sympathises with Mr Melham's concerns about possible disenfranchisement. Certainly, it would be possible to amend the Electoral Act so as to admit ballots marked non-sequentially. However, as with previous provisions of this kind, it is likely that any new form of savings clause will create a different optional preferential voting 'loophole', which individuals or parties will seek to exploit as it suits them.

#### Other factors

- 4.127 Ms Irwin's submission outlined a number of other factors which may have impacted on the particularly high rate of informal voting in her electorate of Fowler, and by extension the higher than usual rate of informal voting nationwide.

- 4.128 These factors were the size of polling places; the introduction of 'composite' polling places; the number of candidates running for election; and the proliferation of how-to-vote cards and video voting information in various community languages as well as English.

- 4.129 Ms Irwin's overarching recommendation was that:

the AEC identify electorates with an abnormally high informal vote and such electorates should be targeted for special initiatives to reduce the level of informal voting.<sup>80</sup>

- 4.130 More specifically, Ms Irwin submitted that where voters have to queue for long hours to cast their vote, people may be more likely to cast an informal vote. Statistical analysis conducted by Ms Irwin's office suggested that the larger the polling booth and the longer the queue in a polling place (and therefore, overall time taken to cast a vote), the greater the level of informal voting.<sup>81</sup> Ms Irwin recommended that the AEC:

review the voting processes and the level of resources available at larger polling booths with a view to reducing delays in voting. This may include the use of morning only staff to cover the busiest voting times.<sup>82</sup>

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80 Submission (Ms J Irwin, MP, no. 95), p. 10.

81 Submission (Ms J Irwin, MP, no. 95), p. 5.

82 Submission (Ms J Irwin, MP, no. 95), p. 10.

- 4.131 The AEC noted that while it has considered increasing staff, ‘attendance by electors is variable and can depend on local and unforeseen circumstances, so the use of morning only staff, for example, may not be a solution to this problem’.<sup>83</sup> The AEC stressed that DROs have the discretion to manage peaks in elector attendance.<sup>84</sup>
- 4.132 The number of composite polling places – booths registered as polling places for more than one Division – increased from one to seven in the electorate of Fowler. Ms Irwin noted that higher levels of informal voting were evidenced at two of those composite polling places.<sup>85</sup> Ms Irwin suggested that where composite polling places are established, the AEC should continue its practice of writing to voters in the surrounding areas informing them of the change in boundaries and confirming the Division in which they are enrolled.<sup>86</sup>
- 4.133 Ms Irwin supported the use of educational tools such as video voting information, and recommended that the AEC expand the use of community language and English language video voting instructions in ‘targeted’ electorates.<sup>87</sup>
- 4.134 The AEC agreed ‘in principle’ with some of Ms Irwin’s suggestions, including the use in selected polling places of videotapes showing how to cast a formal vote. It emphasised that:
- a variety of factors influence formality, including the number of candidates, so the use of videotapes cannot be relied upon to address this issue ... These matters will be considered by the AEC as it develops a communication plan for the next federal election.<sup>88</sup>

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83 Submission (AEC, no. 174), p. 17.

84 Submission (AEC, no. 174), p. 17.

85 Submission (Ms J Irwin, MP, no. 95), p. 6.

86 Transcript of Evidence 11 November 2002 (Ms J Irwin MP) pp. 268-269.

87 Submission (Ms J Irwin, MP, no. 95), p. 10.

88 Submission (AEC, no. 174), pp. 16-17.

## Multiple voting

- 4.135 The term 'multiple voting' is often used to describe the deliberate act of fraudulently casting two or more ballots at the same election. The term is also associated with 'cemetery voting' or 'ghost voting', which refers to the act of voting in the name of a deceased person.
- 4.136 As explained in the AEC's Electoral Backgrounder on *Electoral Fraud and Multiple Voting*,<sup>89</sup> the procedures currently used for the detection and prosecution of multiple voting are as follows:
- During the election period, copies of the certified lists are issued by the AEC to the relevant DRO, who in turn supplies these to every issuing point at every polling booth in the Division.
  - Polling officials at each issuing point mark off an elector's name by drawing a short line between arrow marks, known as 'clock marks', to signify that that person has been issued with ballot papers.
  - Immediately following polling day, each identical certified list for each Division is electronically scanned to read the marks against the names on the list, in order to generate reports of multiple marks against names, and reports of no marks against names, together with details identifying the issuing location of the certified list.
  - A first round of checking involves Divisional staff manually checking the scanning reports for their Division against the original certified lists. This first round of checking often discovers cases of multiple marks in the scanning which may be attributed to dust specks, coffee stains, or a mark pressed too hard on the previous page. These marks, which are considered to have nothing to do with either official or voter error, or deliberate multiple voting, are then eliminated.
  - A second round of manual checking looks for reported polling official errors and other official errors by checking the remaining multiple marks on the scanning reports against the original certified lists and other documents. An Officer in Charge may report, in his or her return, that mistakes in the marking of the certified list had been made, or that notations may have been made

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89 AEC, *Electoral Fraud and Multiple Voting*, Electoral Backgrounder No. 14, October 2001, pp. 8-10. Available at: [http://www.aec.gov.au/\\_content/How/backgrounders/14/index.htm](http://www.aec.gov.au/_content/How/backgrounders/14/index.htm), accessed 15 June 2003.

in the margins of the lists indicating an error in marking off a name. These multiple marks are eliminated at this stage.

- The DRO then proceeds to investigate the remaining multiple marks by writing to each elector against whose name more than one mark is shown, to seek details of the polling places at which, or the method of declaration vote by which, the votes were apparently recorded. The DRO also writes to those electors with no marks against their name (as stipulated under section 245 of the Electoral Act).
- This correspondence may lead to further eliminations if, for example, a match is 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 (that is, an assumption is made of official error in marking one of the certified lists).
- If the elector, or close friends or family, write back with a reasonable explanation for casting more than one vote, the DRO generally writes back informing the elector of correct procedures and the penalties for voting more than once, and the matter is not taken further.<sup>90</sup> These names are subsequently eliminated.
- Where the elector writes back to the DRO indicating that more than one vote might have been cast deliberately, or if the elector fails to respond to repeated correspondence from the DRO, then such cases may be referred to the Australian Federal Police (AFP) for investigation. These final cases remain after the elimination of accidental contamination of the certified lists, polling official error, and instances where the DRO has decided that the matter should not be taken any further.
- Where a possible breach of the Electoral Act comes to the attention of the AEC, the matter may be referred to the AFP for investigation, and a brief of evidence may be referred to the Commonwealth Director of Public Prosecutions (DPP) for decision on whether a prosecution against the alleged offender should be instituted in accordance with the *Prosecution Policy of the Commonwealth*.

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<sup>90</sup> A reasonable explanation could be that elderly or confused electors had forgotten that they had already voted by post and subsequently voted again at a polling booth on polling day. Other reasons provided to the AEC have included language or literacy difficulties.

- All cases of detected multiple voting are examined by the AEC in each Division after the election, and where it appears that the level of multiple voting might have exceeded the winning margin for the elected candidate, the AEC considers disputing the election result by petition to the Court of Disputed Returns under section 357 of the Act.<sup>91</sup>
- 4.137 As in previous inquiries, a number of submissions raised concern about the incidence of apparent multiple voting at federal elections.<sup>92</sup> Many were not convinced that the current system does enough to prevent voters from ‘voting early, and voting often’.
- 4.138 Submissions essentially recommended various actions to prevent multiple voting, namely:
- the introduction of a computerised (that is, networked) electoral roll in each polling booth, so that once a person votes, his or her name is immediately deleted from all certified lists;<sup>93</sup>
  - the specification of a particular polling place for each elector, (known as precinct voting) or the specification of a Subdivision for each elector (known as Subdivisional voting);<sup>94</sup> and
  - the production of identification on request of a ballot paper.<sup>95</sup>
- 4.139 The ALP, on the other hand, suggested that age and gender details be included on the certified list of electors on polling day, to improve checking points for voter identity.<sup>96</sup>
- 4.140 Various changes have been made to the law concerning multiple voting, beginning with the widespread changes made to electoral law

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91 Under section 362 of the Electoral Act, the Court can only void the election if it is satisfied that the result of the election was likely to have been affected by an illegal practice, such as multiple voting.

92 Submissions (Ms G Behrens, no. 45; Festival of Light, no. 71; Rev. S Slucki, no. 72; Mr S McConnell, no. 35; The Council for the National Interest (WA Committee), no. 103; Liberal Party of Australia, no. 149; and ALP, no. 153).

93 Submissions (Ms G Behrens, no. 45 p. 1; Council for the National Interest, no. 103, p. 2).

94 Submissions (Festival of Light, no. 71, p. 3, Rev. S Slucki, no. 72, p. 1; Council for the National Interest, no. 103 p. 2.) The Council for the National Interest further recommended that voting outside the electorate of residence should only be done by postal or absentee vote, and with ‘justifiable cause’ demonstrated (p. 2).

95 Submissions (Festival of Light, no. 71, p. 3; Mr S McConnell, no. 35 p. 7; Council for the National Interest, no. 103, p. 2).

96 Submission (ALP, no. 153), p. 10.



in 1983/84.<sup>97</sup> In 1987, computerised scanning of certified lists was introduced, contributing to increased detection rates.<sup>98</sup>

4.141 In its consideration of the 1996 federal election, the Committee's predecessor expressed an interest in the re-introduction of Subdivisional voting and increasing the penalty levels for multiple voting (and other) offences.<sup>99</sup>

4.142 Penalty levels were increased with the passage of the *Electoral and Referendum Act 1998*. Multiple voting was also made a strict liability offence so as to facilitate the prosecution of multiple voters.<sup>100</sup>

4.143 The Government has not re-introduced Subdivisional voting, noting the view expressed in the AEC's 1998 implementation report that:

Such changes as are proposed will reduce the level of service which voters have enjoyed for many years ... This will have an effect on the time it will take to vote, especially for the first election or two after the introduction of this system, as electors become used to not being able to vote at any polling place within their Division. This will also lead to considerable confusion. This voting delay and confusion will cause some resentment and inevitable complaint, regardless of the level of advertising and information organised by the AEC.<sup>101</sup>

4.144 In assessing various proposals to better proof the electoral system against the possibility of deliberate multiple voting, the Committee is mindful of the argument, put consistently by the AEC since 1984, that:

instances of multiple voting that do occur show no pattern of concentration in any Division, marginal or otherwise ... That is, there is no evidence to suggest that the overall outcomes of

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97 AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 3.

98 AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 4.

99 JSCEM, *The 1996 Federal Election* (1997), as above, pp. 14-16 and pp. 90-91.

100 In its submission to the 1996 inquiry, the AEC recommended that the word 'wilfully' be deleted from section 339 of the Electoral Act as it made 'obtaining a prosecution for multiple voting extremely difficult' (1996 Report, p. 17). Both the Committee and the Government supported this recommendation and the Act was changed. In addition, when the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Act 2000* repealed the offences in the Electoral Act of forging and uttering, and making false and misleading statements, such conduct remained unlawful and contrary to offence provisions contained in the *Criminal Code Act 1995*. See AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 8.

101 AEC, *Electoral Reform Implementation Plan*, 1998, paragraph 4.1.5.1.

the 1984, 1987, 1990, 1993, 1996 and 1998 federal elections were affected by fraudulent enrolment or voting.<sup>102</sup>

- 4.145 The AEC submitted that the same was true of the 2001 federal election, noting that ‘the numbers of apparent dual and multiple votes were spread evenly across all Divisions, with no pattern of concentration in a particular Division’.<sup>103</sup>
- 4.146 The total number of cases of apparent dual and multiple voters resulting from the 2001 federal election was 16,980. Of these, 16,903 were cases of apparent dual voters, leaving only 77 cases of apparent multiple voting at the 2001 federal election.<sup>104</sup>
- 4.147 Some cases of apparent dual voting were eliminated from further AEC scrutiny through the two rounds of manual checking described at paragraph 4.136 (which reveal accidental marks on the original certified lists and errors by polling officials at polling places). A large number of apparent dual and multiple votes were then eliminated through the process of matching responses from apparent dual or multiple voters with those of apparent non-voters. Following the 2001 federal election, 9,123 possible dual voters were eliminated from further investigation as a result of matching with apparent non-voters.
- 4.148 Instances of apparent dual or multiple voting where the AEC accepted a ‘reasonable explanation’ at the last two federal elections are outlined in table 4.5.

Table 4.5 Apparent cases of multiple or dual voting with ‘reasonable explanations’, 1998 and 2001

Reason given	1998	2001
Multiple or dual vote as a result of confusion or language difficulties	622	739
Multiple or dual vote as a result of a relative voting on the elector’s behalf	42	23

Source Submission (AEC, no. 203) p. 5.

102 AEC, *Electoral Fraud and Multiple Voting* (2001), as above, p. 1.

103 Submission (AEC, no. 203), p. 6.

104 Correspondence from the AEC to the JSCEM secretariat, June 2003.

4.149 Where there is no reasonable explanation for an elector casting more than one vote, the cases are referred by the DROs to the AEO for the State or Territory for further consideration. As explained by the AEC:

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.

Other cases are referred by the AEO to the [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.<sup>105</sup>

4.150 Table 4.6 outlines those apparent cases of multiple or dual voting referred to the AFP for investigation.

Table 4.6 Apparent cases of multiple or dual voting referred to the AFP, 1998 and 2001

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

Source Submission (AEC, no. 203) p. 5

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

- 4.151 The table shows that there were fewer cases referred to the AFP resulting from the 2001 federal election than the 1998 federal election. The AEC attributed this decrease, in part, to an 'unwritten agreement' between the AEC and the AFP 'to refer only cases where the potential multiple voter had four or more marks recorded against their name'.<sup>106</sup> However, while this unwritten agreement established the general approach of referrals, it was not strictly followed, and cases of apparent dual voting were also referred to the AFP.<sup>107</sup>
- 4.152 In February 2002, the AFP and the AEC signed a service agreement so as to formalise the process of referring potential dual and multiple voters. The Committee welcomes this more systematic approach, and expects that the levels of apparent dual and multiple voting at federal elections will continue to be closely scrutinised.

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<sup>106</sup> Submission (AEC, no. 203), p. 6.

<sup>107</sup> Submission (AEC, no. 203), p. 6. Had the agreement been strictly followed, only the 77 cases of apparent multiple voting would have been referred to the AFP.