



REFERRAL TO THE AFP

**TO: The Coordinator
Operations Monitoring Centre
Australian Federal Police**

Refer to the AFP Website for location details
(<http://www.afp.gov.au/contact.aspx>)

Investigation (part A)	<input checked="" type="checkbox"/>	Search Warrant Assistance (part A&C)	<input type="checkbox"/>
Proceeds of Crime (part A&B)	<input type="checkbox"/>	Forensic Assistance (part A&D)	<input type="checkbox"/>
Pre Referral Advice	<input type="checkbox"/>		

PART A – REQUEST FOR INVESTIGATION

Refer to the AFP Website for information relating to referring matters to the AFP.
(<http://www.afp.gov.au/what-we-do/referrals.aspx>)

CONTACT DETAILS	
Referring Agency:	Australian Electoral Commission
Agency Reference Number / Operation Name:	Herbert dual marks
Referring Officer/ Case Officer Contact:	Name: Kathryn Toohey Telephone: (02) 6271 4568 Address: Locked Bag 4007, CANBERRA ACT 2601 Email: kathryn.toohey@aec.gov.au Signature of referring officer: 4 [REDACTED]
Date of Referral:	27 July 2016

REFERRAL DETAILS	
Allegation/Incident Description Relevant Act and Section/Penalty	Cases of electors in the Division of Herbert possibly voting more than once in the same election in contravention of subsections 339(1A) and 339(1C) of the <i>Commonwealth Electoral Act 1918</i> . The penalty for voting more than once – ss339(1A) - is 10 penalty units. The penalty for intentionally voting more than once – ss 339(1C) - is 60 penalty units or imprisonment for 12 months, or both.
Period of Offence	14 June 2016 to 2 July 2016

Incident Type	Voting more than once
Property/Fraud Value	N/A

SUSPECT DETAILS

Name	See attached spreadsheet listing 42 names and contact details (Attachment A)
Gender	
Date of Birth	
Address	
Postal Address	
Telephone	
Email	

CLIENT IMPACT

Tick the most appropriate box indicating the impact of the matter on your agency, and complete the explanatory notes section justifying the selection.

✓

✓	Critical	A matter is politically sensitive or goes to central issues of management of agency or program.	
	Significant	A serious or complex crime has been committed which the agency cannot resolve without AFP involvement.	
	Routine	AFP investigation desirable	
	Strategic Strike	A matter is defined as a strategic strike under a service agreement with the AFP	
	MOU/Agreement	As per agreed upon between referring agency and the AFP	

BACKGROUND INFORMATION/EXECUTIVE SUMMARY

Executive Summary

- 1 The formal re-count of ballot-papers cast for the election of a Member of the House of Representatives for the Division of Herbert was concluded on 26 July 2016 with the ALP candidate, Cathy O'Toole, having a margin of 35 votes over the incumbent, Mr Ewen Jones, the LNP candidate.
- 2 The various certified list of voters and the approved list of voters for the Division of Herbert have been scanned and matched. In addition the AEC has already done an assessment of the various electoral records that have already been provided to the AFP which indicate that 24 electors names have been marked off twice on a certified list of voters, 18 electors names have cast a vote in a declaration envelope together with a mark on a certified list indicating that an attendance vote was also cast. All of these details have been summarised in the document that appears at Attachment A.
- 3 Pre-poll voting commenced for the current Federal election on Tuesday 14 June 2014. Voting by way of a declaration vote (e.g. pre-poll declaration votes, postal votes, absent votes and provisional votes) commenced at the same time. The declaration envelopes containing the marked ballot papers are required to be delivered to the Herbert Divisional Returning Officer prior to midnight on Friday 15 July 2016 to enable them to be included in the count.
- 4 When a person attends a polling place or pre-poll voting office to cast an attendance vote, their name is marked off the certified list of voters or the approved list of voters. The declaration envelopes containing the two marked ballot papers are also marked off from the lists of voters on their receipt by the DRO and before the ballot papers are removed before being the subject of scrutiny and to be included in the count.
- 5 A breach of section 339(1A) and (1C) is an "illegal practice" under section 352 of the *Commonwealth Electoral Act 1918* (Electoral Act). Under subsection 362(3) of the Electoral Act, an "illegal practice" which satisfies the Court of Disputed Returns that "the result of the election was likely to be affected" can result in the Court voiding the election and ordering a new election.
- 6 Under section 355(e)(ii) of the Electoral Act a petition to the Court of Disputed Returns can only be lodged within 40 days of the returns of the writs for the election. At this time it is planned that the writs for the election will be returned on 8 August 2016. Accordingly, as the 40 days period would expire on Saturday 17 September 2016, petitions will be able to be lodged with the Court of Disputed returns up to COB 19 September 2016.
- 7 The AEC is entitled to file a petition to the Court of Disputed Returns where we have information that the result of the election was likely to have been affected (see section 357). The inclusion of this power has created an expectation that if the AEC is aware of facts in our possession which could result in the election being affected, then the AEC should file a Petition with the Court of Disputed Returns.
- 8 Given the possible number of electors who may have cast more than one vote in breach of sections 339(1A) and (1C) of the Electoral Act and the close margin of 35 votes between the first and second candidates, the possible existence of 42 electors who may have voted more than once may have an impact on the current election result in the Division of Herbert.

PORTING DOCUMENTATION

(Evidence gathered in relation to offences identified. Please attach copies of relevant documents and an Evidence Matrix)

- **Have you attached supporting documentation?**

No. The supporting documentation has previously been provided and additional information that has been requested by the AFP is currently being collated.

CONSIDERATION FOR A JOINT INVESTIGATION

Would your agency like this matter to be considered as a referral for joint investigation? If so, the reason why and indicate your agency's commitment in providing resources as required. (For Criminal Investigation referrals only)

Approved by:

Kathryn Toohey

Deputy Electoral Commissioner

Date: 27 July 2016

Released under the Freedom of Information Act 1982

REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Personal Information (identifying individual) redacted.
- 14 Business information (Bank Account details) redacted.
- 15 Business information (Billing Account details) redacted.
- 16 Legal Professional Communication redacted.
- 17 Deliberative material redacted.
- 18 Irrelevant material redacted.
- 19 Electoral Roll material redacted.
- 20 Tests, examinations or audits material redacted.
- 21 Management or assessment of personnel material redacted.
- 22 Proper and efficient conduct of the operations of AEC material redacted.